

TOKELAU AMENDMENT BILL

AS REPORTED BY THE FOREIGN AFFAIRS AND DEFENCE COMMITTEE

COMMENTARY

Recommendation

The Foreign Affairs and Defence Committee has examined the Tokelau Amendment Bill and recommends that the bill be passed with the amendments shown in the attached version of the bill.

Committee commentary on the bill

Introduction

The Tokelau Amendment Bill amends the Tokelau Act 1948. It was introduced to the House by Hon Sir Robin Gray for Rt Hon Don McKinnon and referred to the Foreign Affairs and Defence Committee on 19 December 1995. The committee set a closing date of 15 February 1996 for submissions. Advice was received from the Administrator of Tokelau and legal advisers from the Ministry of Foreign Affairs and Trade. Professor Tony Angelo of Victoria University was appointed as a special adviser to the committee due to his close involvement with the constitutional development of Tokelau.

No submissions from the public were received. However, we were informed by our legal advisers of comments on the bill made by Sir Kenneth Keith on behalf of the Law Commission. We also received a report from the Regulations Review Committee in respect of the setting of the commencement date of the bill by Order in Council. The committee began its consideration of the bill at its meeting on 21 February 1996 and completed its deliberation on 1 May 1996.

Amendments recommended by the committee

Preamble

The most notable amendment to the bill we propose is the addition of a preamble, expressed in both English and Tokelauan, explaining the purpose and context of the bill. Although Government bills do not usually have a preamble, we consider it appropriate in this case because of the significance of the bill as part of constitutional developments in Tokelau. As select committees do not have the power to recommend the inclusion of a preamble (McGee, 1994, p 247), we instead recommend that the preamble be included in the bill at a later stage in its progression through the House. The proposed text of the preamble in English is

attached in appendix 1. The text of the Tokelauan version of the preamble is currently being finalised.

We are aware that in recent years Tokelau has been developing its own administrative and decision-making capabilities and moving steadily towards a greater degree of self government. The main purpose of this bill is to provide the General Fono of Tokelau, the Tokelauan national representative body, with a subordinate legislative power. This is consistent with New Zealand's obligation, by virtue of its membership of the United Nations, to help facilitate the development of self government in Tokelau. The existing constitutional relationship with New Zealand is maintained and New Zealand retains the ability to legislate for Tokelau. In order to give legislative effect to the wish to confer greater legislative powers on Tokelau, it is necessary to amend a New Zealand statute. We were concerned that the need to express the transfer of legislative powers in technical legal language would mean that the source of the powers would not be readily accessible to the people of Tokelau. After considering various options to remedy this difficulty, we decided that the inclusion of a preamble would be the best solution.

The text of the preamble was developed in consultation with Tokelau. It includes a statement from the Council of Faipule explaining the reasons why the General Fono requires its own legislative power. Moreover, we also decided that the preamble should be translated into Tokelauan to further the accessibility of what is an important constitutional document for Tokelau. This is a unique provision in New Zealand legislation, and considerable efforts were made to ensure that the preamble adequately reflected the spirit of Tokelau's aspiration for self government and its relationship with New Zealand.

Part I: Amendments to the principal Act

Part I of the bill consists of clauses 2 and 3, which amend the Tokelau Act 1948. We recommend no change to clause 2.

In the bill as introduced, clause 3 repeals sections 4A and 5 of the Tokelau Act 1948, and substitutes new sections 4A and 4B (which relate to the source of law for Tokelau and the application of the common law in Tokelau), and new sections 4B to 4H and 5 (which confer a rule-making power on the General Fono of Tokelau). We recommend that this clause be omitted and new clauses 3, 3A, 3B, and 3C substituted. The purpose of these changes is twofold. First, we considered that the structure of the bill should be altered so that amendments to the principal Act that provide the General Fono with rule making powers were given greater prominence. This reflects our intention to highlight the significance of these provisions. The second purpose in amending clause 3 was to clarify the drafting of some of the proposed new sections and to make some miscellaneous changes. As the amendments we propose make considerable changes to the order of the provisions within the bill, we have included an outline of these changes in the explanation of the amendments.

The new clause 3 inserts into the principal Act new sections 3A to 3C conferring on the General Fono the power to make rules for the peace, order, and good government of Tokelau. These new sections replace the provisions that were to be inserted as new sections 4C to 4H and new section 5. Their insertion earlier in the principal Act will help to highlight their significance.

New section 3A contains the provisions of the previous new section 4C. The principal amendment in section 3A is to make it clear that the power of the General Fono to revoke regulations made under section 4 of the principal Act is limited to regulations already in force and does not apply in respect of regulations made after the passing of the bill. New section 3A also expressly empowers the General Fono to make rules authorising the issuing of commemorative coins. The

power contained in the previous new section 4C (2) (d) to revoke Ordinances of the Gilbert and Ellice Islands Colony has been removed. This issue is now addressed in new clause 3C. In addition, the express power to declare public holidays has been removed on the basis that this power is conferred in the more general power to make rules, and it is made clear that rules do not apply or have effect outside Tokelau.

New section 3B replaces previous new section 4D. A minor amendment has been made to the section to make it clear that rules made by the General Fono may not be inconsistent with international obligations that apply “in respect of Tokelau”, such as the major human rights conventions.

New section 3C contains the provisions of the previous new section 4E with minor amendment.

New section 3D replaces previous new section 4F relating to the publication of rules made by the General Fono. The previous section required publication in “Te Vakai”. As this publication no longer exists, we recommend that rules be required to be printed in Tokelauan and English and that a copy of each rule must be available at all reasonable times for public inspection and purchase at the Government Office in each village of Tokelau and at the office of the Administrator of Tokelau in Wellington.

New sections 3E, 3F, and 3G contain the previous new sections 4G, 4H, and 5, with minor amendments.

New clause 3A repeals sections 4A and 5 of the principal Act and substitutes new sections 4A and 4B. Those new sections are the same as the new sections 4A and 4B in clause 3 of the bill as introduced, with only a minor consequential amendment. New section 4A confirms that all laws in force in Tokelau immediately before the commencement of this section shall continue to be in force. New section 4B provides that English common law (including the principles and rules of equity) for the time being is to be in force in Tokelau in place of the common law that applies there currently. At present, English common law as at 1840, and New Zealand common law, applies in Tokelau. A similar provision is contained in Western Samoan law, and because of the proximity of Tokelau to Western Samoa, the new provision will make the law more accessible to the people of Tokelau.

It was suggested to us that new section 4B should go further and adopt the equivalent of the full Western Samoan provision, which also refers to “any custom and usage which has acquired the force of law in Western Samoa or any part thereof under the provisions of any Act or under a judgment of a court of competent jurisdiction”. We were advised, however, that this would not be appropriate at this stage in Tokelau’s constitutional development. The full Western Samoan formula has not been requested by Tokelau, and the issue of the role of custom and usage as a source of law has not been fully discussed in Tokelau.

New clause 3B amends section 8 of the principal Act, which provides that the Acts Interpretation Act 1924 is in force in Tokelau. We do not consider it appropriate that the Acts Interpretation Act 1924 should apply to rules made by the General Fono, or to laws made under the authority of such rules or under the authority of regulations made under section 4 of the principal Act (such as village rules made under the Tokelau Village Incorporation Regulations 1986). Therefore, we recommend that section 8 of the principal Act be amended by inserting a new subsection (2A) making provision to that effect.

The final change we recommend to the principal Act is contained in new clause 3C, which inserts a new section 8A. Proposed new section 4C (2) (d) (as inserted by clause 3 in the bill as introduced) gave the General Fono power to declare that any Ordinance of the Gilbert and Ellice Islands Colony shall cease to be in force in

Tokelau. We are aware that none of these Ordinances is currently appropriate to Tokelau. We therefore consider that it is better to repeal the Ordinances in this bill so as to allow the General Fono to begin rule-making unencumbered by law that is irrelevant to Tokelau.

Part II: Amendments to the Tokelau Amendment Act 1986

Clause 5 of the bill contains provisions that pertain to the appointment of Commissioners for Tokelau. It amends section 5 of the Tokelau Amendment Act 1986 by repealing subsections (2) and (3), and substituting new subsections (2), (2A), and (3). We recommend that proposed new subsection (3) be deleted because provisions for the incapacity or absence of Commissioners is already adequately addressed by section 6 of the Act.

Clause 6 of the bill relates to the jurisdiction of Commissioners. It amends section 7 of the Act by repealing subsection (3), and substituting new subsections (3) and (3A). We recommend a change to proposed new subsection (3A) (b), which confers jurisdiction on Commissioners to deal with offences against the law of Tokelau that occur beyond Tokelau. The object of the provision is to expand the jurisdiction of the Commissioners to offences that occur on vessels or aircraft in the service of Tokelau while they are travelling to, from, or between any of the islands of Tokelau. In order to make the provisions more comprehensible in Tokelau, we recommend that new subsection (3A) (b) be amended so that the new jurisdiction of the Commissioners is defined more precisely.

Part III: Consequential amendments

We recommend some minor consequential amendments to clause 9.

We also recommend that clause 10 be omitted. This is consequential on the insertion of new clause 3c, which provides that all Ordinances of the Gilbert and Ellice Islands Colony cease to be in force in Tokelau.

Appendix 1

WHEREAS—

1. The Tokelau Act 1948 provides that Tokelau is part of New Zealand, and further provides, among other things, that the Governor-General may, by Order in Council, make regulations for the peace, order, and good government of Tokelau:
2. Tokelau is a non-self-governing territory under the Charter of the United Nations:
3. New Zealand, as the state responsible for the administration of Tokelau, has an obligation, by virtue of New Zealand's membership of the United Nations, to develop self-government in Tokelau:
4. Traditional authority in Tokelau is vested in its villages, and the needs of Tokelau at a local level are generally met through the administration of customary practices by elders:
5. The needs of Tokelau at a national level are the responsibility of the Government of New Zealand, and in particular the Administrator of Tokelau:
6. The elders of Tokelau have for many years wished to have a greater and more direct involvement in the government of Tokelau at a national level:
7. As part of New Zealand's obligation and desire to comply with those wishes,—
 - (i) In 1993, the powers of the State Services Commissioner in relation to Tokelau were delegated to Tokelau Public Service Commissioners; and
 - (ii) In 1994, the powers of the Administrator of Tokelau were delegated to the General Fono when in session, and to the Council of Faipule when the General Fono is not in session:
8. On 7 April 1995, the Council of Faipule issued the following statement:

“To the Administrator of Tokelau

“Tokelau is aware of the proposal to change the Tokelau Act to give the General Fono a power to make laws. This proposal has been discussed again by the people and the Taupulega of each Village during the last month.

“We confirm the strong and unanimous view of Tokelau that—

“1. It is now essential to the development of self-government to have a legislative power.

“2. Since the conferral of administrative power by delegation by the Administrator in 1994, it has on several occasions proved an embarrassment to the Government of Tokelau that it has had no power to enforce its governmental decisions.

“3. Any power the Parliament may give may be subordinate to Acts & Treaties but must be sufficient to enable amendment or repeal of (1) pre-1949 law, (2) regulations made by the Governor-General under the Tokelau Act, and (3) the law relating to taxes.

“4. Any power may be subject to disallowance by the Administrator.

“Tokelau asks for the exercise of your good offices in this as a matter of high priority.”:
9. This Act—
 - (i) Confers on the General Fono a power to make rules for Tokelau, including the power to impose taxes, and to declare public holidays; and
 - (ii) Provides that any such rules may be disallowed by the Administrator of Tokelau; and

(iii) Amends the Tokelau Act 1948 as it relates to the sources of law for Tokelau and the jurisdiction of Tokelau Commissioners; and

(iv) Makes other amendments to the Tokelau Act 1948:

10. Tokelau welcomes this Act, as in accordance with its wish to paddle its canoe to the greatest extent possible, and as consistent with a long-standing desire by three dispersed atoll communities to come together and become stronger, on the basis of their shared language and culture, as one family and nation:
 11. Tokelau also welcomes this Act as a fresh breeze to fill the sails of Tokelau's canoe, and in the knowledge that the conferral of legislative power is a step of large constitutional significance which strengthens the General Fono in its role as Tokelau's supreme national body:
 12. Both Tokelau and New Zealand recognise that the role this Act gives to the Administrator of Tokelau in the rule-making process reflects the present constitutional relationship between Tokelau and New Zealand. However, both also acknowledge that this Act, in conferring greater powers on Tokelau's own political institutions, looks forward in a constructive spirit. Both Tokelau and New Zealand expect that the established patterns of consultation and advice will continue in relation to the rule-making power, in order to further the development of self-government in Tokelau:
-

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

The quick brown fox

Text struck out unanimously

New (Unanimous)

The quick brown fox

Text inserted unanimously

~~*(The quick brown fox)*~~

Words struck out unanimously

The quick brown fox

Words inserted unanimously

Rt. Hon. Don McKinnon

TOKELAU AMENDMENT

ANALYSIS

| | | |
|---|--|--|
| Title | 4B. Application of common law of England | |
| 1. Short Title and commencement | 3B. Acts Interpretation Act in force in Tokelau | |
| PART I AMENDMENTS TO PRINCIPAL ACT | | |
| 2. Interpretation | 3C. Ordinances of Gilbert and Ellice Islands Colony to cease to apply in Tokelau | |
| 3. New sections inserted | PART II AMENDMENTS TO TOKELAU AMENDMENT ACT 1986 | |
| 3A. General Fono may make rules | 4. High Court of New Zealand to be a court of law for Tokelau | |
| 3B. Rules subject to other enactments and international obligations | 5. Appointment of Commissioners | |
| 3C. Procedure for making rules | 6. Jurisdiction of Commissioners | |
| 3D. Availability of rules | 7. Correcting drafting error | |
| 3E. Proof of rules | PART III CONSEQUENTIAL AMENDMENTS | |
| 3F. Disallowance of rules | 8. Consequential repeals and revocation | |
| 3G. Restoration of Acts or regulations | 9. Community services levy to continue until rules made by General Fono | |
| 3A. New sections substituted | | |
| 4A. Existing laws to continue in force | | |

A BILL INTITULED

An Act to amend the Tokelau Act 1948

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Tokelau Amendment Act 1995, and shall be read together with and deemed part of the Tokelau Act 1948* (hereinafter referred to as the principal Act).

10 (2) Except as provided in **section 7 (2)** of this Act, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

*Reprinted 1977 (1976, Vol. 5, p. 4489)
Amendments: 1980, No. 147; 1982, No. 148; 1986, No. 31

PART I

AMENDMENTS TO PRINCIPAL ACT

2. Interpretation—Section 2 (3) of the principal Act (as enacted by section 2 of the Tokelau Amendment Act 1971) is hereby amended—

5

(a) By repealing the definition of the term “Faipule” (as substituted by section 19 of the Tokelau Amendment Act 1986);

(b) By repealing the definition of the term “General Fono” (as inserted by section 2 (1) of the Tokelau Amendment Act 1982).

10

Struck Out (Unanimous)

3. New sections substituted—The principal Act is hereby amended by repealing section 4A (as inserted by section 3 of the Tokelau Amendment Act 1969) and section 5, and substituting the following sections:

15

“4A. Existing laws to continue in force—(1) Subject to section 4B of this Act, all laws in force in Tokelau immediately before the commencement of this section shall continue in force.

20

“(2) Without limiting the generality of subsection (1) of this section, the laws referred to in that subsection include those Acts of the Parliament of England or of Great Britain or of the United Kingdom passed before the 14th day of January 1840 that—

25

“(a) Were in force in New Zealand on the 22nd day of July 1969; and

“(b) Were in force in Tokelau immediately before the commencement of this section.

“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—

30

“(a) That it is excluded by any other enactment in force in Tokelau; or

35

“(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

Struck Out (Unanimous)

immediately before the commencement of this section, but nothing in this section shall affect—

5 “(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

10 “(c) Any right, interest, or title acquired, accrued, or established before that date, or any remedy or proceeding in respect of any such matter.

“4c. **General Fono may make rules**—(1) Subject to sections 4b and 4h 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.

15 “(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:

20 “(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:

25 “(c) The power to declare that any Act of the Parliament of England or of Great Britain or of the United Kingdom shall cease to be in force in Tokelau:

“(d) The power to declare that any Ordinance of the Gilbert and Ellice Islands Colony shall cease to be in force in Tokelau:

30 “(e) The power to declare that any regulation made under section 4 of this Act shall cease to be in force in Tokelau:

“(f) The power to declare any day to be a public holiday.

35 “(3) Without limiting the generality of subsection (1) 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.

40 “(4) The General Fono may from time to time amend or revoke any rule made under this section.

Struck Out (Unanimous)

- “4D. Rules subject to other enactments and international obligations—**(1) Any rule made under **section 4c** of this Act that is inconsistent with—
- “(a) Any Act of the Parliament of New Zealand that is in force in Tokelau; or 5
- “(b) Any regulation made under section 4 of this Act after the commencement of this section; or
- “(c) Any international obligation of Tokelau— shall, to the extent of the inconsistency, be of no effect. 10
- “(2) No rule and no provision of any rule made under **section 4c** 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 15
- “(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.
- “4E. Procedure for making rules—**Subject to this Act, the General Fono may determine its own procedures for making rules under **section 4c** of this Act, and for amending or revoking such rules. 20
- “4F. Publication and availability of rules—**(1) A copy of every rule made under **section 4c** of this Act shall be printed in Tokelauan and in English in the first available issue of *Te Vakai* published after the making of the rule. 25
- “(2) A copy of every rule made under **section 4c** of this Act shall be available at all reasonable times—
- “(a) For public inspection, without fee; and 30
- “(b) For purchase, on payment of such amount (if any) as the Taupulega of the relevant village determines,— at the Administration Office of each village of Tokelau.
- “(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 4c** of this Act. 35
- “4G. Proof of rules—**(1) In any proceedings, the production of any document purporting to be a copy of any rule made under **section 4c** 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— 40

Struck Out (Unanimous)

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

5 “(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
10 section.

“4H. **Disallowance of rules**—(1) A copy of every rule made
under section 4c of this Act shall, as soon as practicable after it is
made, be sent to the Administrator.

15 “(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
20 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.

25 “(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
30 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

35 “(b) By written notice, inform the General Fono of the
reasons for the disallowance.

Cf. 1989, No. 143, ss. 5 (2), 7

“5. **Restoration of Acts, Ordinances, or regulations**—

40 (1) Where any rule or any provision of any rule, being a rule or
provision that—

Struck Out (Unanimous)

“(a) Declares that any Act of the Parliament of England or of Great Britain or of the United Kingdom shall cease to be in force in Tokelau; or

“(b) Declares that any Ordinance of the Gilbert and Ellice Islands Colony shall cease to be in force in Tokelau; or 5

“(c) Declares that any regulation made under section 4 of this Act shall cease to be in force in Tokelau,—
is disallowed under **section 4H** of this Act, the disallowance of the rule or provision has the effect of restoring the Act, Ordinance, or regulation in force in Tokelau, as the Act, Ordinance, 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. 10 15

“(2) The restoration of an Act, Ordinance, 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.”

New (Unanimous)

20

3. New sections inserted—The principal Act is hereby amended by inserting, after section 3, the following sections:

“**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. 25

“(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: 30

“(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: 35

New (Unanimous)

- “(c) The power to declare that any Act of the Parliament of England or of Great Britain or of the United Kingdom shall cease to be in force in Tokelau:
- 5 “(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.
- 10 “(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.
- 15 “(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—
- 20 “(a) Any Act of the Parliament of New Zealand that is in force in Tokelau; or
- 25 “(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.
- 30 “(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
- 35 “(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
- 40 General Fono may determine its own procedures for making, amending, and revoking rules under **section 3A** of this Act.

New (Unanimous)

“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.

5

“(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,—

10

at the Administration Office of each village of Tokelau; and

“(b) Be available at all reasonable times—

15

“(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.

20

“(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—

25

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

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

30

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.

35

“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.

40

New (Unanimous)

“**(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.

Cf. 1989, No. 143, ss. 5 (2), 7

“**3G. Restoration of Acts or regulations**—(1) Where any rule or any provision of any rule, being a rule or provision that—

“**(a)** Declares that any Act of the Parliament of England or of Great Britain or of the United Kingdom shall cease to be in force in Tokelau; or

“**(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

New (Unanimous)

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.” 5

Cf. 1989, No. 143, s. 8

3A. New sections substituted—(1) The principal Act is hereby amended by repealing section 4A (as inserted by section 3 of the Tokelau Amendment Act 1969) and section 5, and substituting the following sections: 10

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. 15

“(2) Without limiting the generality of **subsection (1)** of this section, the laws referred to in that subsection include those Acts of the Parliament of England or of Great Britain or of the United Kingdom passed before the 14th day of January 1840 that— 20

“(a) Were in force in New Zealand on the 22nd day of July 1969; and

“(b) Were in force in Tokelau immediately before the commencement of this section.

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— 25

“(a) That it is excluded by any other enactment in force in Tokelau; or 30

“(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— 35

“(a) The validity, invalidity, effect, or consequences of anything done or suffered before the date of the commencement of this section; or

New (Unanimous)

“(b) Any status or capacity existing immediately before that date; or

5 “(c) Any right, interest, or title acquired, accrued, or established before that date, or any remedy or proceeding in respect of any such matter.”

(2) Section 4 (2) of the principal Act is hereby consequentially amended by omitting the expression “section 5”, and substituting the expression “**section 4B**”.

10 **3B. Acts Interpretation Act in force in Tokelau**—Section 8 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

15 “(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 Acts Interpretation Act 1924 as that Act applies in Tokelau.”

20 **3C. Ordinances of Gilbert and Ellice Islands Colony to cease to apply in Tokelau**—The principal Act is hereby amended by inserting, after section 8, the following section:

“8A. (1) After the commencement of this section, no Ordinance of the Gilbert and Ellice Islands Colony shall be in force in Tokelau.

25 “(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
30 of New Zealand that has been repealed by **subsection (1)** of this section.”

PART II

AMENDMENTS TO TOKELAU AMENDMENT ACT 1986

35 **4. High Court of New Zealand to be a court of law for Tokelau**—Section 3 (2) of the Tokelau Amendment Act 1986 is hereby amended by inserting, after the word “Act”, the words “and to the provisions of any rules made by the General Fono”.

5. Appointment of Commissioners—(1) Section 5 of the Tokelau Amendment Act 1986 is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) Subject to subsections (4) and (5) of this section, every Commissioner shall hold office for a term of 3 years. 5

“(2A) Every Commissioner shall be eligible for reappointment from time to time.”

Struck Out (Unanimous)

“(3) Notwithstanding anything in **subsection (2)** of this section, but subject to subsections (4) and (5) of this section, where a Faipule holds concurrently the office of Commissioner, that person shall remain in office as Commissioner until the completion of that person’s term of office as a Faipule, even though that person’s term of office as Commissioner expires before the completion of that person’s term of office as a Faipule.” 10 15

(2) Every person who, immediately before the commencement of this section, holds office as a Commissioner under section 5 of the Tokelau Amendment Act 1986— 20

(a) Shall continue to hold office; and

(b) Unless (*soon*) sooner vacating office under subsection (4) or subsection (5) of that section, shall vacate office at the expiry of the period of 3 years beginning on the date of his or her appointment as a Commissioner, but shall be eligible for reappointment. 25

6. Jurisdiction of Commissioners—Section 7 of the Tokelau Amendment Act 1986 is hereby amended by repealing subsection (3), and substituting the following subsections: 30

“(3) Subject to **subsection (3A)** of this section, to any regulations made under the principal Act, and to any rules made by the General Fono under (*section 4c*) **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 35

“(b) The territorial sea of Tokelau that surrounds that island.

“(3A) Notwithstanding anything in **subsection (3)** of this section, but subject to subsection (1) of this section, any Commissioner may exercise jurisdiction in respect of the following offences: 40

“(a) Any offence to which section 9 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 applies:

Struck Out (Unanimous)

5 “(b) Any offence that, under the law of Tokelau, may be committed beyond Tokelau (whether or not that offence may also be committed in Tokelau), in any case where that offence is committed beyond Tokelau.”

10 *New (Unanimous)*

“(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—
15 “(i) Is in the service of Tokelau; and
“(ii) Is travelling to or from Tokelau or between any of the islands of Tokelau.”

7. Correcting drafting error—(1) Section 18 (1) of the Tokelau Amendment Act 1986 is hereby amended by
20 repealing paragraph (c), and substituting the following paragraph:

“(c) Section 2 (2) (d), section 3 (5), and section 3 (6) of the Tokelau Amendment Act 1976:”.

(2) This section shall be deemed to have come into force on
25 the 1st day of August 1986.

PART III

CONSEQUENTIAL AMENDMENTS

8. Consequential repeals and revocation—(1) The following enactments are hereby consequentially repealed:

30 (a) The Tokelau Amendment Act 1982:

(b) Section 19 of the Tokelau Amendment Act 1986.

(2) The Tokelau Amendment Act (Community Services Levy) Order 1994 (S.R. 1994/187) is hereby consequentially revoked.

9. Community services levy to continue until rules made by General Fono—Until such time as the General Fono makes rules under ~~(section 4c)~~ section 3A of the principal Act (as
35

(*substituted*) inserted by section 3 of this Act) imposing any levy or tax on income, then, notwithstanding—

- (a) The repeal, by section 8 (1) (a) of this Act, of the Tokelau Amendment Act 1982; and
- (b) The revocation, by section 8 (2) of this Act, of the Tokelau Amendment Act (Community Services Levy) Order 1994,—

the provisions of that Act, as they existed immediately before the commencement of this section, and that order, shall continue in force as if that Act had not been so repealed, and as if that order had not been so revoked, and the community services levy imposed by that Act shall be payable accordingly.

Struck Out (Unanimous)

10. Public Holidays Ordinance 1917 to cease to apply to Tokelau—(1) After the commencement of this section, the Public Holidays Ordinance 1917 of the Gilbert and Ellice Islands Colony shall cease to have effect as part of the law of Tokelau.

(2) The provisions of sections 20, 20A, and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Ordinance specified in subsection (1) of this section as if that Ordinance were an Act of the Parliament of New Zealand that has been repealed by that subsection.