

## TOKELAU ISLANDS AMENDMENT BILL

---

### EXPLANATORY NOTE

THIS Bill amends the Tokelau Islands Act 1948.

*Clause 1* relates to the Short Title.

*Clause 2* corrects the spelling of the Island of Nukunonu in the definition of “the Tokelau Islands” in section 2 of the principal Act. It is referred to in that section as “Nukunono”.

*Clause 3* provides that the law of England as existing on 14 January 1840, being the year in which the Colony of New Zealand was established, is in force in the Tokelau Islands save so far as it is inconsistent with the Tokelau Islands Act 1948 or is inapplicable to the circumstances of the Tokelau Islands.

*Clause 4* provides that every Court having jurisdiction in the Tokelau Islands is to administer common law and equity concurrently.

*Clause 5* amends section 2 of the Tokelau Islands Amendment Act 1967 by providing a definition of the term “Commission”.

*Clause 6* provides that a seconded employee of the Tokelau Islands Public Service may elect to cease to be a contributor to the Government Superannuation Fund.

*Clause 7* enables land to be taken for public purposes by the Minister, by Warrant, instead of requiring an Order in Council.

*Clause 8* abolishes the distinction between legitimate and illegitimate children. *Subclauses (2) and (3)* include provisions to ensure that existing wills and other instruments, which would have been prepared on the basis of existing common law rules, are not affected, and provisions that estates of persons dying before the passing of the Act are to be distributed in accordance with the former law.

*Subclause (5)* includes provisions protecting executors, administrators, and trustees who make distributions excluding persons who trace their relationship otherwise than through lawful wedlock and whose relationship is unknown to the executor, administrator, or trustee.

*Hon. Mr. Hanan*

## TOKELAU ISLANDS AMENDMENT

---

### ANALYSIS

Title	4. Common law and equity to be administered concurrently
1. Short Title	5. Meaning of "Commission"
2. Meaning of "Tokelau Islands"	6. Contribution to Government Superannuation Fund
3. Law of England as in 1840 to be in force in Tokelau Islands	7. Taking of land for public purposes
	8. Legitimacy

---

### A BILL INTITULED

#### An Act to amend the Tokelau Islands Act 1948

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Tokelau Islands Amendment Act 1969, and shall be read together with and deemed part of the Tokelau Islands Amendment Act 1948\* (hereinafter referred to as the principal Act).
- 10 2. **Meaning of "Tokelau Islands"**—Section 2 of the principal Act is hereby amended by omitting the word "Nukunono", and substituting the word "Nukunonu".
- 15 3. **Law of England as in 1840 to be in force in Tokelau Islands**—The principal Act is hereby amended by inserting, after section 4, the following section:

\*Reprinted, 1958, Vol. 2, p. 1291  
Amendments: 1963, No. 15; 1967, No. 38

“4A. The law of England as existing on the fourteenth day of January in the year eighteen hundred and forty (being the year in which the Colony of New Zealand was established) shall be in force in the Tokelau Islands, save so far as inconsistent with this Act or inapplicable to the circumstances of the Tokelau Islands: 5

“Provided that no Act of the Parliament of England or of Great Britain or of the United Kingdom passed before the said fourteenth day of January in the year eighteen hundred and forty shall be in force in the Tokelau Islands, unless and except so far as it is in force in New Zealand at the commencement of this section.” 10

**4. Common law and equity to be administered concurrently**—The principal Act is hereby further amended by inserting, after section 5, the following section: 15

“5A. Every Court having jurisdiction in the Tokelau Islands 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.” 20

**5. Meaning of “Commission”**—Section 3 of the Tokelau Islands Amendment Act 1967 is hereby amended by inserting, before the definition of the term “employee”, the following definition:

“‘Commission’ means the State Services Commission constituted under the State Services Act 1962:” 25

**6. Contribution to Government Superannuation Fund**—Section 14 of the Tokelau Islands Amendment Act 1967 is hereby amended by inserting, after subsection (4), the following subsection: 30

“(4A) Any permanent employee of the New Zealand Government Service who holds positions concurrently in both services and is a contributor to the Fund, shall have the right, pursuant to section 28 of the Superannuation Act 1956, to cease to be a contributor.” 35

**7. Taking of land for public purposes**—Section 24 of the Tokelau Islands Amendment Act 1967 is hereby amended:

(a) By omitting from subsection (1) the words “The Governor-General may from time to time, by Order in Council”, and substituting the words “The Minister of Island Affairs may from time to time, by Warrant”: 40

- (b) By omitting from subsection (1) the words “the order” wherever they occur, and substituting in each case the words “the warrant”:
- 5 (c) By omitting from subsection (5) the words “Order in Council” and substituting the words “the Minister, by Warrant”.

8. **Legitimacy**—(1) Every person, whether born before or after the passing of this Act, and whether born in the Tokelau Islands or not, and whether or not his parents or either of them  
10 were domiciled in the Tokelau Islands at the time of his birth, shall for all the purposes of the law of the Tokelau Islands be deemed to be the legitimate child of each of his parents, and all other relationships in respect of that person shall be deemed to be traced through lawful wedlock accordingly.

- 15 (2) The provisions of this section—
- (a) In so far as it affects wills, shall have effect only in relation to the wills of testators who die after the passing of this Act; and
  - 20 (b) In so far as it affects instruments other than wills, shall have effect only in relation to instruments executed after the passing of this Act.

(3) All wills of testators who have died before the passing of this Act, and all other instruments executed before the passing of this Act, shall be governed by the enactments and  
25 rules of law which would have applied to them if this Act had not been passed.

(4) The estates of all persons who have died intestate as to the whole or any part thereof before the passing of this Act shall be distributed in accordance with the enactments which  
30 would have applied to them if this Act had not been passed.

(5) No action shall lie against any executor or administrator or trustee of the estate of any person who dies after the passing of this Act or the trustee under any instrument executed after the passing of this Act by any person whose relationship to the  
35 deceased or to any other person or, as the case may be, to the settlor or to any other person is in any degree traced otherwise than through lawful wedlock, by reason of the executor or administrator or trustee having made any distribution of the estate or trust disregarding the claims of the person so related  
40 where at the time of making the distribution the executor, administrator, or trustee had no notice of the relationship of that person to the deceased or the settlor or any other person.