



**THE TOKELAU COMMISSIONS OF INQUIRY REGULATIONS
1991**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 1st day of July 1991

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tokelau Act 1948, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Tokelau Commissions of Inquiry Regulations 1991.

(2) These regulations shall come into force on the 1st day of August 1991.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Administrator” means the Administrator of Tokelau:

“Commission” means any person or persons appointed under regulation 3 of these regulations to be a Commission:

“Document” means a document in any form; and includes—

(i) Any writing on any material:

(ii) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(iii) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(iv) Any book, map, plan, graph, or drawing:

(v) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.

3. Appointment of Commissions—(1) The Administrator may, from time to time, appoint any person or persons to be a Commission to inquire into and report on any question arising out of or concerning—

(i) The administration of the government of Tokelau:

(ii) The Tokelau Public Service:

(iii) Any public or local institution in Tokelau:

(iv) Any other matter of public importance in relation to Tokelau.

(2) The members of any Commission may be appointed on such terms and conditions as the Administrator thinks fit.

(3) Where a Commission has 2 or more members, the Administrator shall appoint 1 of its members as the presiding member.

4. Instrument of appointment—(1) Every appointment of a Commission shall be in writing, and shall specify the subject matter of the inquiry, and the date by which the Commission is to report to the Administrator.

(2) The instrument of appointment of a Commission may include such directions as the Administrator thinks fit relating to the inquiry to be conducted by the Commission, including directions relating to where the Commission is to conduct its inquiry, when the inquiry is to be conducted, and how the inquiry is to be conducted.

5. Duties of Commission—(1) Every Commission shall make a full, faithful, and impartial inquiry into the question specified in the instrument of appointment.

(2) Every Commission shall conduct its inquiry in accordance with the directions (if any) specified in the instrument of appointment.

(3) Every Commission shall, not later than the date specified in the instrument of appointment as the date by which the Commission is to report to the Administrator (or any extension of that date), make a written report to the Administrator setting out—

- (i) A full account of the proceedings of the Commission; and
- (ii) The findings of the Commission, and the reasons for those findings; and
- (iii) The recommendations (if any) of the Commission.

6. Rules of natural justice to be observed—In all proceedings under these regulations, every Commission shall observe the rules of natural justice.

7. Adverse comment—Without limiting regulation 6 of these regulations, a Commission shall not, in any report made under these regulations, make any comment that is adverse to any person unless that person has been given a reasonable opportunity to be heard.

8. Proceedings to be conducted in public—(1) Except as provided in this regulation, and subject to any directions contained in the instrument appointing a Commission, a Commission shall conduct its proceedings in public.

(2) A Commission may deliberate in private as to its report, or as to any question arising in the course of its proceedings.

(3) If a Commission is of the opinion that it is necessary or desirable to do so, having regard to the interests of any person and to the public interest, it may, of its own motion or on the application of any party to the proceedings,—

- (i) Order that the whole or any part of its proceedings shall be conducted in private;
- (ii) Make an order excluding all or any persons from the whole or part of its proceedings.

(4) Every application to a Commission under subclause (3) of this regulation shall be heard in private, but the other parties to the proceedings shall be entitled to be present and to make submissions with regard to the application.

(5) In any case where any proceedings of a Commission are held in private, the Commission may allow any particular person to attend the private hearing if it is satisfied that that person has a special and proper interest in the matter to be heard.

9. Persons entitled to be heard—(1) Any person who—

- (i) Is a party to the inquiry; or
- (ii) Satisfies the Commission that the person has a sufficient interest in the inquiry—

shall be entitled to appear and be heard at the inquiry.

(2) Any person who satisfies the Commission that any evidence given before it may adversely affect that person's interests shall be given an opportunity during the inquiry to be heard in respect of the matter to which the evidence relates.

(3) Every person who is entitled, or given an opportunity, to be heard under this regulation may appear in person or by that person's counsel or agent.

10. Evidence—(1) A Commission may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the subject of its inquiry, whether or not it would be admissible in a Court of law.

(2) A Commission may take evidence on oath, and for that purpose a member of the Commission may administer an oath.

(3) A Commission may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Commission thinks fit, verifying it by oath.

11. Powers of investigation—(1) For the purposes of its inquiry, a Commission, or any person authorised in writing in that behalf by the Commission, may—

(i) Inspect and examine any document or thing:

(ii) Require any person to produce for examination any documents or things in that person's possession or under that person's control, and to allow copies of or extracts from any such documents to be made or taken:

(iii) Require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by the Commission.

(2) The Commission may, if it thinks fit, require that any written information or particulars furnished under this regulation shall be verified by statutory declaration or otherwise as the Commission may require.

(3) For the purposes of the inquiry, the Commission may order that any information or particulars, or a copy of the whole or any part of any document furnished or produced to it, be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

(4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of documents and things to the Commission, as witnesses have in Courts of law.

12. Power to summon witnesses—(1) For the purposes of the inquiry a Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the inquiry.

(2) For the purposes of these regulations, the power to issue summonses or to do any other act preliminary or incidental to the hearing of any matter by the Commission, may be exercised by the Commission or its presiding member, or by an officer of the Commission purporting to act by direction or with the authority of the Commission or its presiding member.

13. Service of summons—(1) A summons to a witness may be served—

(i) By delivering it to the person summoned; or

(ii) By posting it by registered letter addressed to the person at that person's usual place of residence.

(2) The summons shall,—

- (i) Where it is served under subclause (1) (i) of this regulation, be served at least 24 hours before the attendance of the witness is required:
- (ii) Where it is served under subclause (1) (ii) of this regulation, be served at least 10 days before the date on which the attendance of the witness is required.

(3) If the summons is posted by registered letter, it shall be deemed for the purposes of subclause (2) (ii) of this regulation to have been served at the time when the letter would be delivered in the ordinary course of post.

14. Witnesses' allowances—(1) Every person who, pursuant to a summons issued under regulation 12 of these regulations, attends the inquiry conducted by a Commission shall be entitled to be paid such amount (if any) as is reasonable in respect of witnesses' fees, allowances, and travelling expenses.

(2) The amount (if any) to which a witness is entitled in respect of witnesses' fees, allowances, and travelling expenses shall be determined in each case by the Commission.

(3) The amounts of the witnesses' fees, allowances, and travelling expenses payable under subclause (1) of this regulation shall be paid out of the Tokelau General Account.

15. Protection of witnesses, etc.—Every witness giving evidence, and every counsel or agent or other person appearing before a Commission, shall have the same privileges and immunities as witnesses and counsel in Courts of law.

16. Procedure—(1) Subject to these regulations and to any directions specified in its instrument of appointment, a Commission may regulate its procedure in such manner as it thinks fit.

(2) Every question arising in the course of the proceedings of a Commission shall be determined by a majority of the votes of the members present.

(3) The member presiding at any proceedings of a Commission shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

17. Administrative services—The Official Secretary shall provide such secretarial, administrative, and other services as may be necessary to enable every Commission to exercise its functions and powers.

18. Protection from suit—(1) No proceedings, civil or criminal, shall lie against the Administrator or any employee or agent of the Tokelau Administration, or against the Government of New Zealand or any of its employees or agents, in respect of anything done or omitted in the exercise or performance in good faith of any function, duty, or power under these regulations.

(2) No proceedings, civil or criminal, shall lie against any member of a Commission for anything that the person may do or report or say in the course of the exercise or intended exercise of that person's duties under these regulations, unless it is shown that the person acted in bad faith.

19. Proceedings privileged—Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by a Commission under these regulations shall be privileged in the same manner as if the inquiry were proceedings in a Court.

20. Perjury—For the purposes of section 181 of the Niue Act 1966 (which relates to perjury), as applied to Tokelau by regulation 2 of the Tokelau Crimes Regulations 1975*, the proceedings of a Commission are deemed to be judicial proceedings.

21. Offences—(1) Every person commits an offence against this regulation who, having been summoned to attend to give evidence before a Commission or to produce to it any documents or things, without reasonable excuse,—

- (i) Fails to attend in accordance with the summons; or
- (ii) Refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Commission or any member of it to answer; or
- (iii) Fails to produce any such document or thing.

(2) Every person commits an offence against this regulation who,—

- (i) Without reasonable excuse, fails to comply with, or evades or attempts to evade, any order made under regulation 8 (3) (ii) of these regulations; or
- (ii) Wilfully obstructs or hinders a Commission or any member of it or any person authorised by a Commission in any inspection or examination of documents or things pursuant to regulation 11 (1) (i) of these regulations; or
- (iii) Without reasonable excuse, fails to comply with any requirement of a Commission, or any person authorised by a Commission, made under regulation 11 (1) (ii) or (iii) of these regulations; or
- (iv) Without reasonable excuse, acts in contravention of or fails to comply with any order made by a Commission under regulation 11 (3) of these regulations or any term or condition of the order; or
- (v) Wilfully assaults, insults, or obstructs any member of a Commission, or any witness or any officer of a Commission, during a sitting of a Commission or while a member of a Commission, a witness, or an officer is going to, or returning from, a sitting of a Commission; or
- (vi) Wilfully assaults, insults, or obstructs any person in attendance at a sitting of a Commission; or
- (vii) Wilfully interrupts, or otherwise misbehaves at, a sitting of a Commission.

(3) Every person who commits an offence against this regulation is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$150.

22. Revocations—(1) The Tokelau (New Zealand Laws) Regulations 1969† are hereby amended by revoking regulation 6.

*S.R. 1975/279
†S.R. 1969/109

(2) The Death and Fire Inquiries Ordinance 1924* (No. 7 of 1924) shall, after the commencement of these regulations, cease to have effect as part of the law of Tokelau.

MARIE SHROFF,
Clerk of the Executive Council.

**Western Pacific High Commission Gazette 1924, p. 97*

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 August 1991, provide for the appointment of Commissions of Inquiry for Tokelau, set out their powers, and regulate their proceedings.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 4 July 1991.
These regulations are administered in the Ministry of External Relations and Trade.