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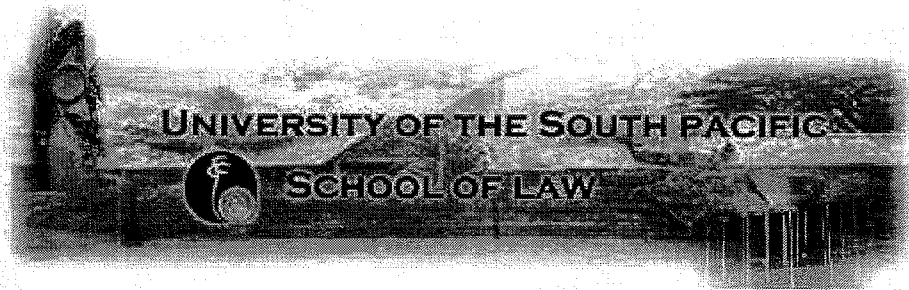
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PACIFIC LAW MATERIALS

New Zealand - Legislation

Commencement: 1 January 1949

NEW ZEALAND

TOKELAU

REPRINTED ACT

[WITH AMENDMENTS INCORPORATED]

TOKELAU

REPRINTED AS ON 1 OCTOBER 1977

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THE TOKELAU ACT 1948

1948, No. 24

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

[29 October 1948]

In the Short Title of this Act the word "Islands" was omitted by s. 2 of the Tokelau Amendment Act 1976, and in the Title the words "Tokelau" and "Its" were substituted for the words "the Tokelau Islands" and "thereof" respectively by s. 3(1)(a) of that Act.

WHEREAS by an Order of His Majesty in Council dated the 29th day of February 1916, and published in the *Western Pacific High Commission Gazette* on the 5th day of May 1916, certain islands in the Pacific Ocean known as the Tokelau Islands and also known as the Union Islands (hereinafter referred to as [Tokelau]) were annexed to His Majesty's dominions, and the boundaries of the Gilbert and Ellice Islands Colony were extended so as to include [Tokelau]: And whereas by an Order of His Majesty a 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 Her 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:

The references to Tokelau in square brackets were substituted for references to the Tokelau Islands by s. 3(8) of the Tokelau Amendment Act 1976.

1. Short Title, Commencement-(1) This Act may be cited as [the Tokelau Act 1948].

(2) This Act shall come into force on the 1st day of January 1949.

In subs. (1) the word "Islands" was omitted from the Short Title of the Tokelau Act 1948 by s. 2(2) of the Tokelau Amendment Act 1976.

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.]]]

[(3) In this Act, unless the context otherwise requires,-

"Administrator" means the Administrator of

[[Tokelau]];

"Elder" means the head of a Tokelauan family;

"Faipule", in relation to any island, means the chief representative of the Administrator on that island;

"Tokelauan" means a person belonging to the Polynesian race of [[Tokelau]]; and includes a person descended from a Tokelauan.]

In subs. (1) and (3) the word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3 (1) (b) of the Tokelau Amendment Act 1976.

In subs. (1) the word "Nukunonu" was substituted for the word "Nukunono" by s. 2 of the Tokelau Amendment Act 1969.

Subs. (2) was added by s 13 of the Tokelau Amendment Act 1970, and in that subsection the reference to the Minister of Foreign Affairs was substituted for a reference to the Minister of Island Affairs by s 2 (3) (a) of the Tokelau Amendment Act 1974.

Subs. (3) was added by s 2 of the Tokelau Amendment Act 1971. See s. 1 (2) of that Act.

As to subs. (1), in relation to the definition of the term "Tokelau" vesting of portion of the islet of Fenuafala in the native inhabitants Fakaofu, see s. 2 of the Tokelau Amendment Act 1963, and in relation to the said definition, every island shall be deemed to be a separate for the purpose of determining whether any service is an International air service; see s. 24A (1) of the International Air Services Licensing Act 1947.

3. Tokelau to form part of New Zealand-[[Tokelau is] hereby declared to form part of New Zealand.

The words "Tokelau is" were substituted for the words "the Tokelau Islands are" by s. 3(1)(c) of the Tokelau, Amendment Act 1976.

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, by Order in Council, make all such regulation 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 an 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 [Tokelau] by section 5 of this Act, or because it deals 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) The power conferred on the Governor-General section to make regulations for [Tokelau] shall extend to the imposition of tolls, rates, dues, fees, fines, taxes, and other charges.

In subss. (1), (2), and (3) the word "Tokelau" was substituted words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

For Census Regulations, see S.R. 1961/88.

For Rhinoceros Beetles Regulations, see S.R. 1964/57.

For Adoption Regulations, see S.R. 1966/160.

For Finance Regulations, see S.R. 1967/40.

For Tokelau (New Zealand Laws) Regulations, see S.R. 1969/109 and the note to s.6.

For Births and Deaths Regulations, see S.R. 1969/131.

For Marriage Regulations, see S.R. 1969/132.

For Consular Immunities Regulations, see S.R. 1969/136.

For Administration Regulations, see S.R. 1971/268.

For Divorce Regulations, see S.R. 1975/262.

For Tokelau (New Zealand Laws) Regulations, see S.R. 1975/263 and the note to s. 6.

For Crimes Regulations, see S.R. 1975/279.

Parts V to VII of the Niue Act 1966 are expressed to be in force in Tokelau; see S.R. 1975/279.

[4A. Law of England as in 1840 to be in force in Tokelau-The law of England as existing on the 14th day of January in the year 1840 (being the year in which the Colony of New Zealand was established) shall be in force in [[Tokelau]], save so far as inconsistent with this Act or inapplicable to the circumstances of [[Tokelau]]:

Provided that no Act of the Parliament of England or of Great Britain or of the United Kingdom passed before the said 14th day of January in the year 1840 shall be in force in [[Tokelau]], unless and except so far as it is in force in New Zealand at the commencement of this section.]

This section was inserted by s. 3 of the Tokelau Amendment Act 1969.

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

5. Existing laws to continue in force-All laws in force in [Tokelau] at the commencement of this Act shall continue in force except so far as they are inconsistent with this or any other Act of the Parliament of New Zealand in force in [Tokelau] or with any regulation in force therein.

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

[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.]

This section was inserted by s. 4 of the Tokelau Amendment Act 1969.

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

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].

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

The following New Zealand Acts are expressed to be in force in Tokelau:

The Visiting Forces Act 1939; see s. 7 of that Act.

The United Nations Act 1946; see s. 4 of that Act

The International Air Services Licensing Act 1947; see the definition of "New Zealand" in s. 2 of that Act, and s. 24A.

The British Nationality and New Zealand Citizenship Act 1948; see s. 33(1)(b) of that Act.

The Republic of Ireland Act 1950; see s.4 (1)(b) of that Act.

The Republic of India Act 1950; see s. 3(1)(b) of that Act.

The Treaty of Peace (Japan) Act 1951; see s. 3 of that Act.

The Official Secrets Act 1951; see s. 17(1) of that Act.

The Patents Act 1953; see s. 118 of that Act.

The Designs Act 1953; see s. 50 of that Act.

The Trade Marks Act 1953; see s. 86 of that Act.

The Merchandise Marks Act 1954; see s. 23(1) of that Act.

The Geneva Conventions Act 1958; see s. 10(1) of that Act.

The Republic of Ghana Act 1960; see s. 3(1)(b) of that Act.

The Republic of Cyprus Act 1961; see s. 5(1) of that Act.

The Copyright Act 1962; see s. 65 of that Act.

The Republic of Nigeria Act 1963; see s. 3(1)(b) of that Act.

The Malaysia Act 1963; see s. 3(1)(b) of that Act.

The Uganda Act 1964; see s. 3(1)(b) of that Act.

The Decimal Currency Act 1964; see s. 3(1)(b) of that Act.

The Civil Aviation Act 1964; see s. 28 of that Act.

The Republic of Zambia Act 1965; see s. 3(1)(b) of that Act.

The Republic of Kenya Act 1965; see s. 3(1)(b) of that Act.

The Republic of Tanzania Act 1966; see s. 5(1)(b) of that Act.

The Republic of Singapore Act 1966; see s. 3(1)(b) of that Act.

The Republic of Malawi Act 1966; see s. 3(1)(b) of that Act.

The Lesotho Act 1967; see s. 3(1)(b) of that Act.

The Republic of Botswana Act 1967; see s. 3(1)(b) of that Act.

The Carriage by Air Act 1967; see s. 3(2) of that Act.

The Swaziland Act 1968; see s 3(1)(b) of that Act.

The Diplomatic Privileges and Immunities Act 1968; see s.25(1) of Act.

The Republic of Nauru Act 1969; see s. 3(1)(b) of that Act.

The Republic of Guyana Act 1970; see s. 3(1)(b) of that Act.

The Republic of The Gambia Act 1970; see s. 3(1)(b) of that Act.

The Tonga Act 1970; see s. 3(1)(b) of that Act.

The Consular Privileges and Immunities Act 1971; see s. 12(1) of that Act.

The Republic of Sierra Leone Act 1971; see s. 3(1)(b) of that Act.

The Republic of Bangladesh Act 1972; see s. 5(1)(b) of that Act.

The Republic of Sri Lanka Act 1972; see s. 3(1)(b) of that Act.

The Royal Titles Act 1974; see s. 3(1) of that Act.

The Seal of New Zealand Act 1977; see s. 7(3) of that Act.

In the enforcement of Commonwealth maintenance orders in New Zealand, Tokelau is deemed to be a Commonwealth country not forming part of New Zealand; see s. 61(2) of the Domestic Proceedings Act 1968.

The Diplomatic Immunities (Western Samoa Trade and Development Commissioner) Order 1967 is expressed to be in force in Tokelau; see SR. 1967/110.

The Consular Immunities Regulations 1969 is expressed to be in force in Tokelau; see S.R. 1969/136/4

In the Tokelau (New Zealand Laws) Regulations 1969 (S.R. 1969/14) the following New Zealand enactments are expressed to be in force in Tokelau:

Part III of the Administration Act 1952; see regulation 2.

The Atomic Energy Act 1945, excepts. S.5A; see regulation 3.

The Bills of Exchange Act 1908; see regulation 4.

The Carriers Act 1948, except s. 3(2); see regulation 5.

The Commissions of Inquiry Act 1908; see

regulation 6.

The Deaths by Accidents Compensation Act 1952; see regulation 7.

The Demise of the Crown Act 1908; see regulation 8.

The Mercantile Law Act 1908; see regulation 9.

The Partnership Act 1908; see regulation 10.

The Post Office Act 1959, except Parts XIII to XVI; see regulation 11.

The Property Law Act 1952; see regulation 12.

The Sale of Goods Act 1908; see regulation 13.

Parts I and II of the Sea Carriage of Goods Act 1940; see regulation 14.

The Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland Act 1947; see regulation 15.

As to Regulations and Ordinances ceasing to form part of the law Tokelau, see regulation 16 of S.R. 1969/109.

In the Tokelau (New Zealand Laws) Regulations 1975 (S.R. 1975/263), the following New Zealand enactments are expressed to be in force in Tokelau:

The Arbitration Act 1908; see regulation 2.

The Chattels Transfer Act 1924; see regulation 3.

The Marine Insurance Act 1908; see regulation 4.

The Marine Pollution Act 1974; see the provisions in regulation 5.

The Trustee Act 1956; see regulation 6.

The Western Samoa Act 1961, s 5; see regulation 7.

Parts V to VII of the Niue Act 1966 are expressed to be in force in Tokelau, see S.R. 1975/279/2.

As to Regulations and Ordinances ceasing to form part of the law of Tokelau, see regulation 8 of S.R. 1975/263.

7. When Act in force in Tokelau, amendments and regulations to be in force also-When any [enactment] of the Parliament of New Zealand is in force in [Tokelau], every existing or future amendment of that [enactment]

and all existing or future regulations, rules, Orders in Council, and other acts of authority in force under any such [enactment], and every Act passed in substitution for any such [enactment] shall, so far as applicable and with all necessary modifications, be or become also in force therein, except where otherwise expressly provided.

The word "enactment", wherever it occurs, was substituted for the word "Act" by s. 14 of the Tokelau Amendment Act 1970.

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

[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.]

This section was inserted by s. 15 of the Tokelau Amendment Act 1970.

The word "Tokelau" was substituted for the words "the Tokelau Island" by s.3(1)(c) of the Tokelau Amendment Act 1976.

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.

(3) *This subsection amended s. 4 of the Acts Interpretation Act 1924, reprinted 1966, Vol. 3, p. 1981.*

The word "Tokelau" was substituted for the words "the Tokelau Islands" by s. 3(1)(c) of the Tokelau Amendment Act 1976.

[9. Act to be administered by Minister of Foreign Affairs-The Minister of Foreign Affairs shall be charged with administration of this Act.]

This section was substituted for the former s.9 (as substituted by s. 8 of the Maori and Island Affairs Department Act 1968) by s. 2(1) of Tokelau Amendment Act 1974.