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1986, No. 31

An Act to amend the Tokelau Act 1948

[10 July 1986]

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 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 the 1st day of August 1986.

PART I**CIVIL AND CRIMINAL JURISDICTION**

2. Interpretation—In this Part of this Act, unless the context otherwise requires, “Commissioner” means the Commissioner for Atafu or for Fakaofa or for Nukunonu appointed under section 5 of this Act.

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) of this section may, subject to the provisions of any regulations made under the principal Act, 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) of this section, the High Court may sit either in Tokelau or in New Zealand, or in such other appropriate place as the Chief Justice may direct.

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 of this Act 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 Fakaofo;
- (c) Commissioner for Nukunonu.

(2) Every Commissioner, unless that Commissioner sooner ceases to hold office, shall retire from office on reaching the age of 68 years.

(3) Notwithstanding anything in subsection (2) of this section, where a Faipule holds concurrently the office of Commissioner, that person shall remain in office as Commissioner, unless that person is sooner removed from office as Commissioner or resigns that office, until the completion of that person's term of office as a Faipule, notwithstanding that that person attains the age of 68 years before the completion of that person's term of office as a Faipule.

(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.

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:
- (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 one 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 any regulation made for the purposes of section 10(3) of this Act, a Commissioner shall have jurisdiction only in respect of the island for which that Commissioner is appointed.
- (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.

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) of this Act, 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.

Cf. 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.

Cf. 1947, No. 16, s. 36

10. Appeal from Commissioners—(1) Subject to subsections (2) and (3) of this section, 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 of this Act—

- (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) of this section 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) of this section 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 I 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 I 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.

Consequential Amendments

12. Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977—Section 2 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 is hereby amended by

repealing the definition of the term "Court", and substituting the following definition:

"'Court' means the High Court of New Zealand exercising the jurisdiction conferred on it by section 3 of the Tokelau Amendment Act 1986.".

13. Tokelau Crimes Regulations 1975—(1) Every reference in Parts V to VII of the Niue Act 1966 to the High Court, or to the Registrar of the High Court, or to the Chief Justice of the High Court, shall, in the application of those Parts of that Act to Tokelau (pursuant to regulation 2 of the Tokelau Crimes Regulations 1975), be read as references to the High Court of New Zealand, to a Registrar of the High Court of New Zealand, and to the Chief Justice of New Zealand respectively.

(2) The Tokelau Crimes Regulations 1975 are hereby amended by omitting from regulation 3 the words "the High Court of Niue", and substituting the words "the High Court of New Zealand".

14. Tokelau (New Zealand Laws) Regulations 1975—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by omitting from regulation 2 (2) the words ", and every reference to the Supreme Court shall be read as a reference to the High Court of Niue".

15. Chattels Transfer Act in force in Tokelau—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by revoking regulation 3, and substituting the following regulation:

"3. (1) The Chattels Transfer Act 1924 shall be in force in Tokelau.

"(2) In the application of that Act to Tokelau, every reference to a Justice of the Peace shall be read as a reference to a Judge of the High Court of New Zealand and to the Commissioner for Atafu or for Fakaofa or for Nukunonu."

16. Trustee Act in force in Tokelau—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by revoking regulation 6, and substituting the following regulation:

"6. (1) The Trustee Act 1956 shall be in force in Tokelau, subject to the modification set out in subclause (2) of this regulation.

"(2) Every reference in that Act to New Zealand shall be read as a reference to Tokelau."

17. Saving—The amendment by any provision of sections 13 to 16 of this Act of the regulations specified in those sections shall be without prejudice to any power of amending or revoking those regulations.

18. Repeals and savings—(1) The following enactments are hereby repealed:

- (a) The Tokelau Amendment Act 1970;
- (b) Sections 3 and 4 of the Tokelau Amendment Act 1971;
- (c) Section 2 (2) (d) and sections 5 and 6 of the Tokelau Amendment Act 1976;
- (d) The Tokelau Amendment Act 1983.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal by subsection (1) of this section of the Tokelau Amendment Act 1970 shall not affect—

- (a) The amendments made by section 9 (6) and Part II of that Act; and
- (b) The effect of section 12 of that Act, which section declared that certain Ordinances of the Gilbert and Ellice Islands Colony were to cease to have effect as part of the law of Tokelau.

PART II

OTHER AMENDMENTS

19. Interpretation—Section 2 (3) of the principal Act (as enacted by section 2 of the Tokelau Amendment Act 1971) is hereby amended by repealing the definition of the term “Faipule”, and substituting the following definition:

“‘Faipule’, in relation to any island, means the person elected as the Faipule for that island.”.

20. Regulations for the peace, order, and good government of Tokelau—(1) Section 4 of the principal Act is hereby amended by repealing subsection (3) (as amended by section 2 of the Tokelau Amendment Act 1978), and substituting the following subsection:

“(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.”

(2) The Tokelau Amendment Act 1978 is hereby consequentially repealed.

21. Taking of land for public purposes—Section 24 of the Tokelau Amendment Act 1967 is hereby amended by repealing subsection (3) (as amended by section 3 (4) (b) of the Tokelau Amendment Act 1976), and substituting the following subsections:

“(3) The Administrator of Tokelau shall, within 90 days after the date on which any land so taken has vested in the Crown, offer to the persons entitled to share in the compensation such sum by way of compensation as the Administrator thinks fit.

“(3A) Where all the persons entitled to share in the compensation offered under subsection (3) of this section do not, within 60 days after the offer has been communicated to them, accept the sum offered, the compensation shall be assessed and awarded by an arbitrator appointed by agreement between the Administrator and those persons, or, if no agreement can be reached, by 2 arbitrators, one to be appointed by each of the Administrator and those persons, together with an umpire appointed by the 2 arbitrators.”

22. Restriction on alienation of certain land—The Tokelau Amendment Act 1967 is hereby amended by inserting, after section 25, the following section:

“25A. It shall not be lawful or competent for any person who is the owner of any land to which section 18 (2) of this Act applies to make any alienation or disposition of that land, or of any interest in that land, whether by way of sale, lease, licence, mortgage, or otherwise howsoever, other than an alienation or disposition in favour of a Tokelauan, or the Crown.”