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1996, No. 31

An Act to amend the Tokelau Act 1948

[10 June 1996

TULOU!

TALU AI ONA—

1. Ko te Tulafono Fakapalemene o Tokelau 1948 e fakatatia mai ai ko Tokelau he vaega e o Niuhila, ma fakamanino atili ai, fakatahi ma ictahi mea, ko te Kovana Hili e mafai i te Fakatonuga a te Pulega Faitulafono, ke fai e ia ni tulafono fakatonutonu mo te filemu, pulea, ma te malo lelei o Tokelau:

2. Ko Tokelau he atunuku e he ki faia hona malo pulea fakalotoifale i lalo o te Feagaiga Fakavae a Malo Kaufakatahi:
3. Ko Niuhila e iei tona tiute ke atiake te mafai e Tokelau ona pulepulea ma fai e ia lava ana tonu fakailotoifale, ona ko te atunuku ia e tauhia ma pulepulea ia Tokelau mae e i loto foki o Malo Kaufakatahi:
4. Ko te pulega mahani o Tokelau e fatu ki luga o na nofonofoga fakanuku, ma ko te fakafetauiga o manakoga o tagata i loto o na nuku e fakataunuku i na faiga mahani ma e i lalo o te pulega a na Taupulega:
5. Ko na manakoga fakateatunuku o Tokelau, he tiute e o te Malo o Niuhila te e patino ki te Ulu Fakatonu o Tokelau:
6. Kua lahi na taubaga talu ona iei he naunau malohi o na Taupulega o Tokelau ke i loto ma kakau atili ki latou ki te pulega faigamalo fakateatunuku o Tokelau:
7. Ko he vaega e o te tiute taukave o Niuhila mae he naunauga foki e o ia ke mulimuli ki na manakoga iena,—
 - (i) I te 1993 ko na paoa o te Komehina o Tautuaga a te Malo (o Niuhila) i ona aia fakatetulafono mo Tokelau, na tuku atu ke fakaaoga e na Komehina o te Kaufaigaluega Tautua a Tokelau; ma
 - (ii) I te 1994 na tuku mai ai na paoa o te Ulu Fakatonu o Tokelau ke fakaaoga e te Fono Fakamua kafai e nofoia, ma te Fono a Faipule kafai e he nofoia te Fono Fakamua:
8. I te aho 7 o Apelila 1995 na fakahalalau ai e te Fono a Faipule tenei fakaaliga:

“Ki te Ulu Fakatonu o Tokelau

“Kua iloa e Tokelau te fuafuaga ke hui te Tulafono Fakapalemene o Tokelau ke tuku ki te Fono Fakamua te paoa fai tulafono. Ko te fuafuaga tenei na toe talanoagia e tagata ma na Taupulega a na nuku takitahi i te mahina kua teka.

“E fakamaonia e ki matou te manatu malohi fakatahi o Tokelau e veia—

“1. I te taimi nei kua tatau lele ke maua he paoa faitulafono mo te atiakega o te malo pulea fakalotoifale.

“2. Talu mai te tukumaiga ke fakaaoga te paoa o te pulega fakatonutonu e te Ulu Fakatonu i te 1994, na lagona ho ai e te Malo o Tokelau te loto vaivai ona e

he ki maua e ia te paoa ke fakamautu ai ana tonu fakafaigamalo.

“3. Ko ho he paoa e mafai ke tuku e te Palemene e he hili atu tona malohi fakatetulafono i lo i na Tulafono Fakapalemene ma na Feagaiga, ka e tatau ke lava ke mafai ai te toe falitega pe ko te fakaheaoga (1) na tulafono i mua atu o te 1949 (2) na tulafono fakatonutonu na fai e te Kovana Hili i lalo o te Tulafono Fakapalemene o Tokelau, ma (3) te tulafono ki na lafoga.

“4. Ko ho he paoa e mafai ke fakaheai e te Ulu Fakatonu.

“E talohaga e Tokelau te lagolago malohi o to ofiha ke fakataua lahi ai tenei matakupu.”:

9. Ko te Tulafono Fakapalemene tenei—

(i) E kaumai ai ki te Fono Fakamua he paoa ke fai ai ni tulafono mo Tokelau, e aofia ai te paoa ke poloaki ai na lafoga, ma ke fakatonu ai na aho malolo; ma

(ii) E fakatatia ai te mafai ke fakaheai e te Ulu Fakatonu o Tokelau na tulafono ve; ma

(iii) E toe falite ai te Tulafono Fakapalemene o Tokelau o te 1948 agai ki na pogai o tulafono mo Tokelau ma te pule faifakamahinoga a na Fakamahino Tokelau; ma

(iv) E fai ai ni ie tahi falitega o te Tulafono Fakapalemene a Tokelau o te 1948:

10. E talia e Tokelau tenei Tulafono Fakapalemene ona e taoga ma tona fofou ke aloalo lava e ia tona paopao ki te mea e ia nafatia, ma e taoga foki ma he fatofatoga kua leva o na kauafua e tolu o Tokelau ke nonoa fakatahi ki latou, ona ko te tutuha o te latou gagana ma te aganuku, ko he kaiga ma he atunuku e fokotahi:

11. E talia fiafia foki e Tokelau tenei Tulafono Fakapalemene, ona e ve he laulaumatagi foou ke fakakapu ai te la o tona vaka, ma te iloa ko te tukumaiga o he paoa faitulafono, ko he laka taua lahi tau tulafono fakavae, teia e fakamalohia ai te Fono Fakamua i tona tulaga ko te fono faitonu maualuga ia o Tokelau:

12. E aloakia e Tokelau ma Niuhihila ko te tiute fai tulafono e tuku atu e te Tulafono Fakapalemene ki te Ulu Fakatonu o Tokelau e matea ai te hokotaga fakatulafono fakava o malo o Tokelau ma Niuhihila e iei nei. Kae, e amanakia foki e ki laua, ko te Tulafono

Fakapalemene tenei, e tuku ma fakamalohia ai te paoa o na nofonofoga pule a Tokelau, e takina pea i ni agaaga kikila mamao ma te fatufatu lelei. Ko Tokelau ma Niuhila e fakamoemoe ko na faiga mahani o na fakataumunaga haele ma te hakili fautuaga, ka fakaauau agai ki te paoa faitulafono ke atiake atili ai he malo pulea fakalotoifale i Tokelau:

MALO FAKAFETAI!

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:

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

1. Short Title and commencement—(1) This Act may be cited as the Tokelau Amendment Act 1996, and shall be read together with and deemed part of the Tokelau Act 1948 (hereinafter referred to as the principal Act).

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

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—

(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).

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.

“(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:
- “(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:
- “(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 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.

“(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.

“(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—

- “(a) Any Act of the Parliament of New Zealand that is in force in Tokelau; or
- “(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.

“(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
- “(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 General Fono may determine its own procedures for making, amending, and revoking rules under section 3A of this Act.

“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.

“(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,—

at the Administration Office of each village of Tokelau; and

“(b) 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 Administrator from time to time determines,—

at the office of the Administrator at Wellington.

“(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—

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

“(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 section.

“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.

“(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

“3C. **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 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.”

Cf. 1989, No. 143, s. 8

4. 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:

“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.

“(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—

“(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—

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

“(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—

“(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

“(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 4A”.

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

“(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.”

6. 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.

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

PART II

AMENDMENTS TO TOKELAU AMENDMENT ACT 1986

7. 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”.

8. 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.

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

(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,—

(a) Shall continue to hold office; and

- (b) Unless 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.

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

“(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 3A of the principal Act, a Commissioner shall have jurisdiction only in respect of—

“(a) The island for which that Commissioner is appointed; and

“(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:

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

“(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—

“(i) Is in the service of Tokelau; and

“(ii) Is travelling to or from Tokelau or between any of the islands of Tokelau.”

10. Correcting drafting error—(1) Section 18 (1) of the Tokelau Amendment Act 1986 is hereby amended by 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 the 1st day of August 1986.

PART III

CONSEQUENTIAL AMENDMENTS

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

- (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.

12. Community services levy to continue until rules made by General Fono—Until such time as the General Fono makes rules under section 3A of the principal Act (as inserted by section 3 of this Act) imposing any levy or tax on income, then, notwithstanding—

- (a) The repeal, by section 11 (1) (a) of this Act, of the Tokelau Amendment Act 1982; and
- (b) The revocation, by section 11 (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.

This Act is administered in the Ministry of Foreign Affairs and Trade.
