



### ANALYSIS

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1967, No. 38

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

[26 October 1967]

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 1967, and shall be read together with and deemed part of the Tokelau Islands Act 1948 (hereinafter referred to as the principal Act).

## PART I

### THE TOKELAU ISLANDS PUBLIC SERVICE

**2. Commencement**—This Part of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General, by Order in Council.

**3. Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“Employee” means a person employed in the Tokelau Islands Public Service:

“New Zealand controlling authority” means, in respect of a person employed in any branch of the New Zealand Government Service to which the State Services Act 1962 applies, the Commission, and, in respect of a person employed in any other branch of the New Zealand Government Service, the Minister in charge of that branch:

“New Zealand Government Service” means the service of Her Majesty in respect of the Government of New Zealand, not being honorary service; and includes service which is education service within the meaning of the Superannuation Act 1956:

“Tokelau Islands Public Service” means the service of the Tokelau Islands Administration; but does not include service remunerated by way of fees or commission only, or honorary service, or service in any of the following capacities, namely, as—

- (a) Minister of Island Territories:
- (b) Administrator of the Tokelau Islands:
- (c) Secretary of Island Territories:
- (d) Faipule, Fa‘amasino, or Pulenu‘u:
- (e) The holder of any position specified in a declaration made pursuant to section 5 of this Act.

**4. Appointment of employees**—(1) Subject to the provisions of this Part of this Act, the Commission may appoint to the Tokelau Islands Public Service such employees as it considers necessary.

(2) Notwithstanding anything to the contrary in any other Act, all employees of the Tokelau Islands Public Service shall be appointed by the Commission, and, subject to the provisions of any regulations made under section 9 of this Act, shall hold office subject to such conditions as may from time to time be prescribed or determined by the Commission.

(3) In case of the absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Tokelau Islands Public Service (whether by reason of death, resignation, or otherwise), and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the Commission to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(4) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

**5. Exemptions**—(1) The Governor-General in Council, on the recommendation of the Commission, may declare that any specified position or class of position in the Tokelau Islands Public Service shall cease to be a position in that Service, and thereupon any person then holding that position or any position in that class shall cease to be an employee of the Tokelau Islands Public Service, and shall thereafter hold his appointment during the pleasure of the Minister and upon such terms and conditions as the Minister directs from time to time.

(2) If any position to which a declaration under subsection (1) of this section refers is vacant at the time the declaration comes into force or thereafter becomes vacant, any appointment thereto shall be made by the Minister, and shall continue during his pleasure and upon such terms and conditions as the Minister directs from time to time.

(3) The Governor-General in Council, on the recommendation of the Minister, may revoke any declaration made under this section in whole or in part, and thereupon the person then holding any position in respect of which the declaration was so revoked shall, if his appointment is confirmed by the Commission, be deemed to have been duly appointed thereto by the Commission, and shall hold office as an employee of the Tokelau Islands Public Service.

**6. State Services Act 1962 not applicable**—Except as provided in this Part of this Act, the State Services Act 1962 shall have no application to the Tokelau Islands Public Service or to employees of the New Zealand Public Service in their capacity as employees of the Tokelau Islands Public Service.

**7. Delegation of powers**—(1) The Commission may from time to time, either generally or particularly, delegate any of its powers in relation to the Tokelau Islands Public Service (including this power of delegation) to any of its members or to any other person or persons.

(2) Subject to any general or special directions given by the Commission, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office.

(5) The delegation of any powers under this section shall not prevent the exercise of those powers by the Commission or by any person making the delegation.

**8. Duties of Commission**—(1) The Commission shall from time to time take such action as it thinks necessary to ensure a proper standard of efficiency in the Tokelau Islands Public Service.

(2) The Commission may from time to time issue instructions for carrying into effect the provisions of this Part of this Act and of any regulations made pursuant to section 9 of this Act.

(3) In the exercise of its powers and duties in relation to the Tokelau Islands Public Service, the Commission may conduct such inquiries and investigations as it thinks necessary. For the purposes of conducting any such inquiry or investigation, the Commission shall have the same powers and authority to summon witnesses and receive evidence as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1908; and all the provisions of that Act shall apply to witnesses so summoned, and evidence so received and given, as completely and effectually as if the witnesses had been

summoned and the evidence had been received or given by virtue or under the authority of that Act, and as if that Act were in force in the Tokelau Islands.

**9. Public Service Regulations**—(1) The Commission may, with the approval of the Governor-General, make regulations as to the pay, allowances, discipline, control, and management of the Tokelau Islands Public Service. Any such regulations may be made either generally or with respect to any particular case or class of cases.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Commission may under that subsection make regulations relating to the appointment, promotion, transfer, retirement, removal, suspension, and dismissal of employees of the Tokelau Islands Public Service, including the review of or appeals against any decisions in relation thereto.

(3) Without limiting any other powers of the Commission, the Commission may affix to breaches of any regulations under this section or prescribe for offences against discipline a fine not exceeding twenty dollars according to the nature and gravity of the offence; and those fines shall be recoverable by deduction from salary or otherwise.

(4) Any regulation made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date on which it is made), and if no such date is specified shall come into force on the date of the publication in the *New Zealand Gazette* of a notification of the making of the regulation:

Provided that no provision of any regulation imposing any liability or disability shall come into operation before the date on which the regulation is made.

(5) No regulation made under this section shall be held to be invalid on the ground that it confers any discretionary authority on the Commission or on any person, or that it authorises the Commission or any person to determine the conditions on which leave of absence may be approved or allowances paid or any conditions of service not inconsistent with this Part of this Act, or that it leaves any matter to be determined, applied, dispensed with, prohibited, or regulated by the Commission or by any person from time to time by instruction, either generally or for any classes of case or in any particular case.

**10. Payment of salary and allowances**—(1) Subject to the provisions of any regulations made under section 9 of this Act, employees of the Tokelau Islands Public Service shall receive such pay and allowances as the Commission thinks fit.

(2) The pay and allowances of employees of the Tokelau Islands Public Service shall be paid from the Tokelau Islands Administration Account out of money appropriated by Parliament.

**11. Bonds and deeds of covenant by employees or prospective employees**—(1) An employee or prospective employee to whom money is advanced or on whose behalf expenditure is incurred with the approval of the Commission in connection with transportation, education, training, or sustenance, or for any other special purpose, may be required, as a condition of that advance or expenditure, to sign a bond in a form to be determined by the Commission requiring him to pay to the Crown the sum therein specified if he makes default in the performance of any condition of the bond.

(2) The Commission, instead of requiring a bond as aforesaid, may require the employee or prospective employee to sign a deed of covenant whereby he covenants to repay to the Crown all money so advanced to him or expenditure so incurred on his behalf, up to a maximum amount specified in the deed of covenant, if he fails to render service in accordance with the provisions of the deed of covenant.

(3) The amount of any such bond or, as the case may be, the maximum amount payable under any such deed of covenant shall be reduced during the currency thereof by an amount equivalent to the proportion that the service rendered by the employee or prospective employee in accordance with the condition of the bond or the provisions of the deed of covenant bears to the full period of service required for the discharge of the bond or deed of covenant.

(4) The Commission may require that such a bond or deed of covenant shall also be signed by a parent or guardian, or by some other person approved by the Commission, as surety, or the Commission may accept any other security offered by the employee or prospective employee. The parent or guardian or person who signs such a bond or deed of covenant shall be jointly and severally liable thereunder.

(5) Every such bond or deed of covenant shall be enforceable against the employee or prospective employee and the surety who signs it, notwithstanding anything in any enactment or rule of law; and the amount of the bond or, as the

case may be, the amount payable under the deed of covenant, subject to any deduction pursuant to subsection (3) of this section, shall be recoverable as liquidated damages.

**12. Concurrent offices**—An employee of the Tokelau Islands Public Service may hold concurrently any offices, whether judicial or administrative, to which he may be appointed.

**13. Employment in New Zealand Government Service and Tokelau Islands Public Service**—(1) Any person permanently employed in the New Zealand Government Service may, with the consent of the New Zealand controlling authority, be appointed to any position in the Tokelau Islands Public Service in all respects as if he were an employee thereof; but, until he is appointed to a position in the Tokelau Islands Public Service, no such person shall have any right of appeal against any determination of the Commission in relation to any appointment, promotion, or transfer in or to the Tokelau Islands Public Service.

(2) Any person permanently employed in the Tokelau Islands Public Service may be appointed to any position in the New Zealand Government Service in all respects as if he were permanently employed therein; but, until he is appointed to a position in the New Zealand Government Service, no such person shall have any right of appeal against any determination of the New Zealand controlling authority in relation to any appointment, promotion, or transfer in the New Zealand Government Service.

(3) Any person appointed to a position in the Tokelau Islands Public Service under subsection (1) of this section or to a position in the New Zealand Government Service under subsection (2) of this section may hold positions concurrently in both services, and in such a case—

- (a) His status, rights, and liabilities in each service shall be unaffected by the fact that he holds a position in the other service; and
- (b) In respect of each position he shall be subject to the laws governing the service to which that position belongs, irrespective of his tenure of a position in the other service; and
- (c) He shall in respect of each service be qualified for promotion, increase of salary, and appointment to any other position as if he held no position in the other service.

(4) So long as any person so holds positions concurrently in both services, he shall be deemed to be absent on leave without pay from the New Zealand Government Service or, as the case may be, from the Tokelau Islands Public Service, unless the New Zealand controlling authority or, as the case may be, the Commission otherwise directs.

(5) When an employee of the New Zealand Government Service is appointed to a position in the Tokelau Islands Public Service, and then or thereafter ceases to hold a position in the New Zealand Government Service, he shall not be deemed for that reason to have retired from the New Zealand Government Service, but shall become a supernumerary employee of that service, and, unless he sooner resigns from the New Zealand Government Service, shall so remain until he ceases to be employed in the Tokelau Islands Public Service and for such further period, not exceeding six months, as the New Zealand controlling authority may from time to time in any case allow.

(6) When an employee of the Tokelau Islands Public Service is appointed to a position in the New Zealand Government Service, and then or thereafter ceases to hold a position in the Tokelau Islands Public Service, he shall not be deemed for that reason to have retired from the Tokelau Islands Public Service, but shall become a supernumerary employee of that service, and, unless he sooner resigns from the Tokelau Islands Public Service, shall so remain until he ceases to be employed in the New Zealand Government Service and for such further period, not exceeding six months, as the Commission may from time to time in any case allow.

(7) A supernumerary employee shall receive no pay in respect of the service of which he is a supernumerary employee, but shall for all other purposes be deemed to remain an employee of that service.

(8) Any employee of the Tokelau Islands Public Service may, with the consent of the New Zealand controlling authority, be attached to the New Zealand Government Service for training or experience, and during the period of his service in New Zealand that employee shall be paid such salary and allowances as may be determined by the New Zealand controlling authority.

**14. Contribution to Government Superannuation Fund by employees—**(1) While any employee to whom subsection (1) of section 13 of this Act applies holds positions concurrently in both services, or is a supernumerary employee of the New

Zealand Government Service in accordance with the provisions of subsection (5) of that section, and is a contributor to the Government Superannuation Fund, the salary together with increments, if any, that in the opinion of the New Zealand controlling authority he would have been entitled to receive in respect of his employment in the New Zealand Government Service had he not been appointed to the Tokelau Islands Public Service shall be deemed to be his salary for the purposes of the Superannuation Act 1956:

Provided that, when any such employee has held a position in the Tokelau Islands Public Service for a continuous period of six years, he may, at any time after the expiration of that period while he still holds a position in that service, or, if he is transferred to or returns to employment in the New Zealand Government Service, within one year after the termination of service in the Tokelau Islands, elect to contribute on the salary received by him in respect of his employment in the Tokelau Islands Public Service (exclusive of any special allowance received by him in respect of his residence in the Tokelau Islands) with effect from the date of his appointment in the last-mentioned service.

(2) For the purposes of the proviso to subsection (1) of this section, an appointment to a position in the Cook Islands Public Service or in the Niue Public Service in relation to the Tokelau Islands Administration made before the commencement of this Act shall be deemed to be an appointment to the Tokelau Islands Public Service, and service in that position before the commencement of this Part of this Act shall be deemed to be service in a position in the Tokelau Islands Public Service.

(3) While any person to whom subsection (2) of section 13 of this Act applies holds positions concurrently in both services, or is a supernumerary employee of the Tokelau Islands Public Service under subsection (6) of that section, or is attached to the New Zealand Government Service under subsection (8) of that section, the salary together with increments, if any, that in the opinion of the Commission he would have been entitled to receive in respect of his employment in the Tokelau Islands Public Service had he not been appointed to a position in or been attached to the New Zealand Government Service shall be deemed to be his salary for the purposes of the Superannuation Act 1956:

Provided that, when any such employee had held a position in the New Zealand Government Service for a continuous period of six years, he may, at any time after the expiration

of that period while he still holds a position in that service, or, if he is transferred to or returns to employment in the Tokelau Islands Public Service, within one year after the termination of service in New Zealand, elect to contribute on the salary received by him in respect of his employment in the New Zealand Government Service with effect from the date of his appointment in the last-mentioned service.

(4) Upon any such election, there shall be payable by the employee to the Fund, within such time and in such manner as the Government Superannuation Board determines, such sum as the Board fixes in respect of the excess of his salary during the past period as an employee of the Cook Islands Public Service or of the Niue Public Service or of the Tokelau Islands Public Service or of the New Zealand Government Service, as the case may be, over the amount deemed to be his salary during that period under the foregoing provisions of this subsection.

(5) In this section the term "employee" includes—

(a) The Administrator of the Tokelau Islands:

(b) The holder of any position specified in a declaration made pursuant to section 5 of this Act.

**15. Provisions as to existing employees**—Every person who immediately before the commencement of this Part of this Act was an employee of the Niue Public Service to whom section 671 of the Niue Act 1966 applied shall be deemed to be an employee of the Tokelau Islands Public Service, and shall hold the position in the last-mentioned Service corresponding to the position in the Niue Public Service held by him immediately before the commencement of this Part of this Act.

**16. Consequential amendments to Superannuation Act 1956**—(1) The Superannuation Act 1956 (as amended by section 733 (4) of the Niue Act 1966) is hereby consequentially further amended—

(a) By inserting in the definition of the term "Government service" in subsection (1) of section 2, after the words "Niue Public Service", the words "and the Tokelau Islands Public Service":

(b) By inserting in subsection (1) of section 50, and also in subsections (2), (3), (4), (5), and (10) (as added by section 8 of the Superannuation Amendment Act 1964), after the words "Niue Public Service", the words "or the Tokelau Islands Public Service":

(c) By inserting in subsection (1) of section 51, and also in subsection (2), subsections (2A) and (2B) (as inserted by section 15 of the Superannuation Amendment Act 1959), and subsection (3), after the words "Niue Public Service", the words "or the Tokelau Islands Public Service":

(d) By omitting from subsection (2) of section 51 the words "partly in one of those Services and partly in one or both of the other Services", and substituting the words "partly is one of those Services and partly in one or more of the other Services".

(2) Section 50 of the Superannuation Act 1956 is hereby further amended by inserting, after subsection (5), the following subsection:

"(5A) Where any person who is a permanent officer of the Tokelau Islands Public Service is a contributor to the Fund, then, for the purposes of this Act any period of service by him as an employee of the Tokelau Islands Administration or of the Western Samoan Public Service in relation to the Tokelau Islands Administration shall be deemed to be a period of service in the Government service."

(3) Section 50 of the Superannuation Act 1956 is hereby consequentially further amended by inserting, after subsection (9A) (as inserted by section 733 (5) of the Niue Act 1966), the following subsection:

"(9B) Notwithstanding anything in Part I of the Tokelau Islands Amendment Act 1967, every person shall be deemed for the purposes of this Act to be a permanent officer of the Tokelau Islands Public Service while he is the holder of either of the following offices:

"(a) Administrator of the Tokelau Islands:

"(b) The holder of any position specified in a declaration made pursuant to section 5 of the Tokelau Islands Amendment Act 1967."

(4) All payments made to the Government Superannuation Board after the commencement of the principal Act and before the commencement of this Part of this Act by persons in the employ of the Tokelau Islands Administration by way of contributions for superannuation purposes shall be deemed to have been validly made and received, and those payments shall be deemed to be superannuation contributions for the purposes of the Superannuation Act 1956, and the periods in respect of which those payments were made shall be deemed to be contributory service for the purposes of that Act.

**17. Repeals**—Section 671 and paragraph (f) of subsection (4) of section 733 of the Niue Act 1966 are hereby repealed.

## PART II

### LAND

**18. Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

“Customary title” means title to land in accordance with the customs and usages of the Tokelauan inhabitants of the Tokelau Islands:

“Public purposes” includes public health, education, public recreation, the burial of the dead, water supply, drainage, lighting, the provision of public buildings, the provision of sites for townships, the provision of wharves and harbours, the provision of radio transmitters, and all lawful purposes and functions of the Tokelau Islands Administration:

“Tokelauan” means a person belonging to the Polynesian race of the Tokelau Islands; and includes a person descended from a Tokelauan:

“Tokelauan land” means land vested in the Crown but held by the inhabitants of the Tokelau Islands by customary title, and not by grant from the Crown.

(2) Any land in the Tokelau Islands which at the commencement of the principal Act was owned in fee simple by any person other than the Crown shall for the purposes of this Part of this Act be deemed to be held in fee simple by grant from the Crown, and accordingly shall be deemed not to be Tokelauan land for the purposes of this Part of this Act.

**19. Designation of land**—Subject to the provisions of this Part of this Act, all land in the Tokelau Islands is hereby declared to be Tokelauan land.

**20. All land in Tokelau Islands (with certain exceptions) vested in Crown, subject to customary title**—(1) Subject to the provisions of this Part of this Act, all land in the Tokelau Islands (not being land to which subsection (2) of section 18 or section 21 of this Act applies) is hereby declared to be vested in the Crown as the trustee of the beneficial owners thereof, and shall be held by the Crown subject to the customary title, and all such land is hereby declared to be Tokelauan land accordingly, but shall remain subject to any rights which

may have been lawfully acquired in respect thereof before the passing of this Act otherwise than in accordance with the customs and usages of the Tokelauan inhabitants of the Tokelau Islands.

(2) Subject to the provisions of this Part of this Act, the beneficial ownership of Tokelauan land shall be determined in accordance with the customs and usages of the Tokelauan inhabitants of the Tokelau Islands.

**21. Foreshore and seabed vested in Crown**—The foreshore of the Tokelau Islands—that is to say, all land lying between high-water mark at mean high-water spring tides and low-water mark at mean low-water spring tides—and the seabed and subsoil of submarine areas bounded on the landward side by that low-water mark along the coast of the Tokelau Islands and on the seaward side by a line every point of which is distant three international nautical miles from the nearest point of that low-water mark shall be deemed to be and always to have been vested in the Crown, subject only to the public rights of fishing and navigation.

**22. Control of Crown land by Administrator**—The Administrator of the Tokelau Islands may exercise on behalf of the Crown all rights of suit, entry, re-entry, receipt of rents and profits, use, management, control, and possession vested in the Crown in respect of any land in the Tokelau Islands.

**23. Saving of existing interests in Tokelauan land**—Where at the passing of this Act any Tokelauan land is subject to any valid and subsisting leasehold or other interest vested in any person or body corporate otherwise than by way of customary title, that leasehold or other interest shall be deemed to be held by grant from the Crown.

**24. Taking of land for public purposes**—(1) The Governor-General may from time to time, by Order in Council, take any land in the Tokelau Islands for any public purpose specified in the order, and it shall thereupon become absolutely vested in the Crown as from the date of the order, or from any later date specified therein in that behalf, free from all estates, rights, and interests of any other person therein, save so far as any such estates, rights, or interests are expressly saved by the order.

(2) When any land has been so taken for a public purpose, all persons having in respect of that land any right, title, estate, or interest which is extinguished or divested by the taking of the land, shall be entitled to compensation therefor from the Crown.

(3) The Administrator of the Tokelau Islands shall, within ninety 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 he thinks fit. If the offer is not accepted by all those persons within sixty days after it has been communicated to them, the compensation shall be assessed and awarded by a Judge or Commissioner of the Land Court of Niue, either on the application of the Administrator or of any person claiming the compensation or any share therein.

(4) Any compensation so awarded to any person shall constitute a debt due to him by the Crown, and shall be paid from the Tokelau Islands Administration Account out of money appropriated by Parliament.

(5) Any lease, easement, or other limited right, title, estate, or interest in any land may be taken by Order in Council, for any public purpose, and compensation in respect thereof shall be payable in the same manner as in the case of land taken under the foregoing provisions of this section.

**25. Alienation of land by Tokelauans**—(1) Save so far as may be otherwise provided by regulations made under the principal Act, it shall not be lawful or competent for a Tokelauan to make any alienation or disposition of Tokelauan land, or of any interest in Tokelauan land, whether by way of sale, lease, licence, mortgage, or otherwise howsoever, other than an alienation or disposition in favour of the Crown, nor shall Tokelauan land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of a Tokelauan on his death or insolvency.

(2) For the purposes of this section, a contract of sale of crops, timber, minerals, or other valuable thing attached to or forming part of any Tokelauan land shall be deemed to be a contract for the alienation of an interest in the land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract.

(3) For the purposes of this section, all rent and other money receivable by a Tokelauan in respect of his interest in any Tokelauan land shall be deemed to be an interest in the land.

(4) The Administrator of the Tokelau Islands may, in the name of Her Majesty, grant a lease of any Tokelauan land for a period not exceeding forty years, and on such terms as he thinks fit, if he is satisfied that the grant of such a lease is in accordance with the desires and interests of the owners of the land and with the public interest, and he may on the like conditions accept a surrender of any lease so granted by him.

(5) Every such lease shall operate as if it were a lease of Crown land, but the rents or other revenues derived therefrom shall be received by the Crown in trust for the owners of the land.

(6) Nothing in this section shall affect the power of Tokelauans to dispose of Tokelauan land amongst themselves according to the customs and usages of the Tokelauan inhabitants of the Tokelau Islands.

**26. Certain Gilbert and Ellice Islands Ordinances not to apply to Tokelau Islands—**(1) The following Ordinances of the Gilbert and Ellice Islands Colony shall after the passing of this Act cease to have effect as part of the law of the Tokelau Islands:

- (a) The Native Lands Ordinance 1917;
- (b) The Native Lands Amendment Ordinance 1919;
- (c) The Gilbert and Ellice Native Lands Ordinance 1922;
- (d) The Native Lands (Amendment) Ordinance 1935.

(2) The provisions of sections 20, 20A, and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Ordinances specified in subsection (1) of this section as if they were Acts of the Parliament of New Zealand that had been repealed by that subsection.