

TOKELAU ISLANDS AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Tokelau Islands Act 1948.

Clause 1 relates to the Short Title.

PART I

CIVIL AND CRIMINAL JURISDICTION

This Part makes provision for the exercise of civil and criminal jurisdiction necessary to administer the laws of the Tokelau Islands. At present, the only provisions for the administration of justice in the Tokelau Islands are contained in the Native Laws Ordinance 1917 of the Gilbert and Ellice Islands Protectorate, under which a Native Magistrate is to be appointed for each island, whose duties include the administration of the Native Laws and Regulations.

Clause 2 provides that this Part is to come into force on a date to be fixed by Order in Council.

Clause 3 defines the term "Commissioner" for the purposes of this Part. Provision is made in *clause 9* for the appointment of Commissioners.

Clause 4 provides that the High Court of Niue may exercise all civil and criminal jurisdiction that is necessary to administer the laws of the Tokelau Islands as if it had been established as a separate Court of Justice for those islands. The Court may sit either in the Tokelau Islands or in Niue. A Commissioner of the High Court or a Justice of the Peace for Niue will not, however, be entitled to exercise any jurisdiction in respect of the Tokelau Islands.

Clause 5 provides that the civil jurisdiction of the Supreme Court of New Zealand extends to the Tokelau Islands, and may be exercised in New Zealand as if those islands formed part of New Zealand. The effect of this is to enable civil proceedings to be brought in the Supreme Court in respect of causes of action and other matters arising in the Tokelau Islands.

Clause 6 provides that the criminal jurisdiction of the Supreme Court of New Zealand extends to acts done or omitted in the Tokelau Islands which are offences against the laws of the Tokelau Islands and which, if done or omitted in New Zealand, would be indictable offences. Except where the Supreme Court has jurisdiction apart from this clause, no proceedings may be taken unless the offender is found in New Zealand. The penalty imposed must not exceed that provided for that offence under the law of the Tokelau Islands.

Clause 7 provides that the High Court of Niue, in the exercise of its jurisdiction in respect of the Tokelau Islands, may state a case for the opinion of the Supreme Court of New Zealand.

Clause 8 provides for an appeal to the Supreme Court of New Zealand against any final judgment of the High Court of Niue in the exercise of its jurisdiction in respect of the Tokelau Islands in the same manner as in the case of an appeal from a final judgment of the High Court in the exercise of its jurisdiction in respect of Niue. This in effect confers a right of appeal as follows:

- (a) As of right, from any conviction by the High Court whereby the appellant has been sentenced to imprisonment for a term not exceeding 6 months or to a fine of not less than \$200, and from any such sentence.
- (b) As of right, when the matter in dispute amounts to or is of the value of \$400 or upwards.
- (c) With the leave of the High Court, where the question involved is of general or public importance.

Clause 9 provides for the appointment by the Governor-General of a Commissioner for each of the Islands of Atafu, Fakaofu, and Nukunonu, and defines the conditions on which they hold office.

Clause 10 defines the jurisdiction of Commissioners. A Commissioner will have jurisdiction in the island for which he is appointed—

- (a) In actions for the recovery of any debt or damages not exceeding \$100.
- (b) In actions for the recovery of chattels not exceeding \$100 in value.
- (c) In criminal proceedings for any offence punishable by fine only, but he may not impose a fine exceeding \$20.
- (d) In criminal proceedings for any offence punishable by imprisonment for not more than 1 year, but he may not impose any term of imprisonment exceeding 3 months.

Clause 11 confers a right of appeal to a Judge of the High Court of Niue against any judgment of a Commissioner, whether in civil or criminal proceedings.

Clause 12 consequentially declares that certain Ordinances of the Gilbert and Ellice Islands will cease to be in force in the Tokelau Islands.

PART II

MISCELLANEOUS AMENDMENTS

Clause 13 inserts a definition of “enactment” in section 2 of the principal Act. References appear in that Act to Acts of the Parliament of New Zealand that are in force in the Tokelau Islands, and doubts have arisen as to whether those references include parts of New Zealand Acts where only certain sections are in force in those islands, and as to whether those references include other subordinate legislation.

This definition will enable the term “enactment” to be used instead of the term “Act” and so make the position clear.

Clause 14 substitutes the word “enactment” for the word “Act” in section 7 of the principal Act, which at present provides that when any Act is in force in the Tokelau Islands, amendments of that Act and regulations made thereunder will be in force there also. This amendment is intended to clarify the doubt referred to in the note to *clause 13*.

Clause 15 inserts a new section 7A in the principal Act providing that every enactment of the Parliament of New Zealand and any other enactment which is in force in the Tokelau Islands shall, in their application to the Tokelau Islands, be read subject to the provisions of the principal Act, with such modifications as are necessary for such application.

PART I

CIVIL AND CRIMINAL JURISDICTION

2. Commencement—This Part of this Act shall come into force on a date to be appointed for its commencement by the Governor-General, by Order in Council. 5

3. Interpretation—In this Part of this Act, unless the context otherwise requires, “Commissioner” means a Commissioner for Atafu or for Fakaofu or for Nukunonu appointed under section 9 of this Act.

4. High Court of Niue may exercise jurisdiction in Tokelau Islands—(1) The High Court of Niue shall have all jurisdiction, whether civil or criminal, which may be necessary to administer the laws of the Tokelau Islands 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 the said islands. 10 15

(2) In the exercise of the jurisdiction conferred on it by this section, the High Court of Niue may sit either in the Tokelau Islands or in Niue.

(3) Notwithstanding anything in this Part of this Act, a Commissioner of the High Court of Niue or a Justice of the Peace for Niue appointed under Part III of the Niue Act 1966 shall not exercise any jurisdiction in respect of the Tokelau Islands. 20

5. Civil jurisdiction of Supreme Court extends to Tokelau Islands—The civil jurisdiction of the Supreme Court of New Zealand shall extend to the Tokelau Islands, and may be exercised in New Zealand in respect of those islands in the same manner in all respects as if those islands were for all purposes part of New Zealand. 25 30

6. Criminal jurisdiction of Supreme Court in respect of Tokelau Islands—(1) The criminal jurisdiction of the Supreme Court of New Zealand shall extend to acts done or omitted in the Tokelau Islands which are offences against the laws of the Tokelau Islands and which, if done or omitted in New Zealand, would be indictable offences, and may be exercised in New Zealand in respect of such offences accordingly in the same manner as if they were indictable offences committed in New Zealand. 35

(2) Except in the case of an offence in respect of which, pursuant to the Crimes Act 1961, the Supreme Court has jurisdiction notwithstanding that the offence was committed outside New Zealand, the jurisdiction conferred by subsection
5 (1) of this section shall be exercised only in respect of persons found in New Zealand.

(3) In respect of any offence which is within the jurisdiction of the Supreme Court under this section, the like proceedings before Justices of the Peace or a Stipendiary Magistrate may
10 be taken in New Zealand as in the case of offences committed in New Zealand.

(4) The punishment to be imposed by the Supreme Court for any such offence (not being an offence in respect of which, pursuant to the Crimes Act 1961, the Supreme Court
15 has jurisdiction as aforesaid) shall be that which is provided for that offence by the laws of the Tokelau Islands.

7. High Court of Niue may state a case for the Supreme Court—A case may be stated by the High Court of Niue exercising civil or criminal jurisdiction in respect of the
20 Tokelau Islands for determination by the Supreme Court of New Zealand in the same manner as the High Court may state a case in the exercise of its jurisdiction in respect of Niue.

8. Appeal from final judgment of High Court of Niue—An
25 appeal shall lie to the Supreme Court of New Zealand from any final judgment of the High Court of Niue exercising civil or criminal jurisdiction in respect of the Tokelau Islands in the same manner as from any final judgment of the High Court exercising its jurisdiction in respect of Niue.

9. Appointment of Commissioners—(1) The Governor-General may appoint fit and proper persons to be—

- (a) Commissioner for Atafu:
- (b) Commissioner for Fakaofu:
- (c) Commissioner for Nukunonu.

35 (2) Every Commissioner, unless he sooner ceases to hold office, shall retire from office on reaching the age of 60 years.

(3) The Governor-General may, if he thinks fit, remove a Commissioner for inability or misbehaviour.

(4) A Commissioner may resign his office by writing under
40 his hand addressed to the Administrator of the Tokelau Islands.

(5) Every Commissioner shall be paid out of the Tokelau Islands General Account such salary or allowance and other allowances as may be fixed by the Administrator of the Tokelau Islands.

(6) Section 3 of the Tokelau Islands Amendment Act 1967 is hereby amended— 5

(a) By omitting from paragraph (d) of the definition of the term “Tokelau Islands Public Service” the word “Fa’amasino”:

(b) By adding to the same definition the following paragraph: 10

“(b) Commissioner for Atafu, Commissioner for Fakaofu, or Commissioner for Nukunonu.”

10. Jurisdiction of Commissioners—(1) A Commissioner shall have jurisdiction— 15

(a) In actions for the recovery of any debt or damages not exceeding \$100 in amount:

(b) In actions for the recovery of chattels not exceeding \$100 in value:

(c) In criminal proceedings for any offence punishable by fine only: 20

(d) In criminal proceedings for any offence punishable by imprisonment for not more than one year.

(2) A Commissioner shall not have power to impose any fine exceeding \$20 or to impose any term of imprisonment exceeding 3 months, whatever may be the maximum fine or term of imprisonment provided by law for the offence. 25

(3) A Commissioner shall have jurisdiction only in respect of the island for which he is appointed.

(4) Save as aforesaid, a Commissioner shall not exercise any of the powers or functions, whether judicial or administrative, of a Judge of the High Court of Niue in respect of the Tokelau Islands. 30

11. Appeal from Commissioners—Any party to any proceedings, whether civil or criminal, before a Commissioner may appeal from the judgment of the Commissioner to a Judge of the High Court of Niue in the same manner as a party to any proceedings before a Commissioner of that Court may appeal from a judgment of the last-mentioned Commissioner to a Judge of the Court pursuant to the rules of the Court. 35 40

12. 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 commencement of this Part of this Act cease to have effect as part
5 of the law of the Tokelau Islands:

(a) The Native Laws Ordinance 1917:

(b) The Native Laws Amendment (Bastardy) Ordinance 1921:

(c) The Native Laws (Divorce) Ordinance 1921:

10 (d) The Native Laws Amendment Ordinance 1923.

(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
15 by that subsection.

PART II

MISCELLANEOUS AMENDMENTS

13. Interpretation—Section 2 of the principal Act is hereby amended by adding, as subsection (2), the following sub-
20 section:

“(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 Island Affairs.”

25 **14. When enactment in force in Tokelau Islands, amendments and regulations to be in force also**—Section 7 of the principal Act is hereby amended by omitting the word “Act” wherever it occurs, and substituting in each case the word “enactment”.

30 **15. Other enactments in force in Tokelau Islands to be read subject to principal Act**—The principal Act is hereby further amended by inserting, after section 7, the following section:

35 “7A. 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 the Tokelau Islands, and all regulations, rules, Orders in Council, and other acts of authority under that enactment that are in force in the Tokelau Islands, shall, in their application to the Tokelau Islands, be read subject to the provisions of this Act, and
40 subject also to all modifications necessary for such application.”