

## **CUSTOM AS A SOURCE OF LAW RULES 2004**

### **1 Name**

These are the Custom as a Source of Law Rules 2004.

### **2 Custom as a source of law**

- (1) Where in a case before the High Court, any party to the proceedings or the Court raises a matter of Tokelau custom, the Court shall seek the advice of the General Fono on that question and shall adjourn its proceedings for 30 days or the earlier receipt of advice from the General Fono.
  - (2) Where the High Court refers a matter to the General Fono it shall —
    - (i) briefly state the facts relevant to the matter;
    - (ii) enquire whether there is Tokelau custom on the matter; and
    - (iii) if there is Tokelau custom on the matter, request a description from the General Fono of the custom.
  - (3) On receipt of a reference under this rule, the General Fono shall refer the matter to each Taupulega and shall, on the basis of the Taupulega responses, tender a formal response to the High Court.
  - (4) Where within 30 days from the date of the request the General Fono gives information on a Tokelau custom, the Court shall determine issues concerning the matter of custom by reference to that information.
  - (5) Where within 30 days from the date of the request the General Fono does not respond or responds that there is no relevant Tokelau custom, the High Court shall decide the matter on the basis that custom is not applicable.
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