

TOKELAU AMENDMENT ACT 1986

An Act to amend the Tokelau Act 1948

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.

2 Interpretation

In this Part of this Act, unless the context otherwise requires, Commissioner means the Commissioner for Atafu or for Fakaofu or for Nukunonu appointed under section 5 of this Act.

PART 1 CIVIL AND CRIMINAL JURISDICTION

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 and to the provisions of any rules made by the General Fono, 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 Fakaofu:
 - (c) Commissioner for Nukunonu.
- (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.
- (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 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.
- (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.

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.

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.

11–22 [Spent]
