

# **Tokelau Amendment Act 1996**

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

### **Preamble**

TULOU!

TALU AI ONA—

1. Ko te Tulafono Fakapalemene o Tokelau 1948 e fakatatia mai ai ko Tokelau he vaega e o Niuhihila, ma fakamanino atili ai, fakatahi ma ietahi 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 fakalo-toifale i lalo o te Feagaiga Fakavae a Malo Kaufakatahi:
3. Ko Niuhihila 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 Niuhihila te e patino ki te Ulu Fakatonu o Tokelau:
6. Kua lahi na tauhaga 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 Niuhihila 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 Niuhihila) 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 TokelauKua 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 Niuhila 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 Niuhila 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 fakaaauau 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 1**

### **Amendments to principal Act**

#### **2 Interpretation**

- (a) *This paragraph repealed the definition of the term **Faipule** in s 2(3) of the principal Act.*
- (b) *This paragraph repealed the definition of the term **General Fono** in s 2(3) of the principal Act.*

#### **3 New sections inserted**

*This section inserted sections 3A to 3G of the principal Act.*

#### **4 New sections substituted**

- (1) *This subsection substituted, section 4A, inserted s 4B, and repealed s 5 of the principal Act.*
- (2) *This subsection amended s 4(2) of the principal Act.*

#### **5 Acts Interpretation Act in force in Tokelau**

*This section inserted s 8(2A) of the principal Act.*

#### **6 Ordinances of Gilbert and Ellice Islands Colony to cease to apply in Tokelau**

*This section inserted s 8A of the principal Act.*

## **Part 2**

### **Amendments to Tokelau Amendment Act 1986**

#### **7 High Court of New Zealand to be a court of law for Tokelau**

*This section amended section 3(2) Tokelau Amendment Act 1986.*

#### **8 Appointment of Commissioners**

- (1) *This section substituted section 5(2) and (3) Tokelau Amendment Act 1986.*

- (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**

*This section substituted s 7(3) Tokelau Amendment Act 1986.*

**10 Correcting drafting error**

- (1) This subsection substituted section 18(1)(c) Tokelau Amendment Act 1986.
- (2) This section shall be deemed to have come into force on the 1st day of August 1986.

**Part 3**

**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 (SR 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.