

TOKELAU – ITS LEGAL SYSTEM AND RECENT LEGISLATION

A H ANGELO*

I INTRODUCTION

1986 was a vintage year for Tokelau law. The Tokelau Amendment Act 1986 was passed with effect from 1 August 1986, four sets of regulations for Tokelau were promulgated with effect from 1 December 1986, and the commencement order was promulgated for section 12(2) of the Tokelau Amendment Act 1967¹. Additionally, 1986 was the year of the once in five year visit of the UN Committee of 24² and the year for the once in two year visit to Wellington of the leaders of Tokelau. All this in the afterglow of the first ever official visit by a New Zealand Prime Minister to Tokelau.³ Not since the period of the changeover for Tokelau from the Department of Maori and Island Affairs to the Ministry of Foreign Affairs in 1974⁴ has there been such activity on the legal front or in law related areas.

“While the cup runneth over” in this way it may be useful to review briefly the nature of the legal system of Tokelau and the effects of the particular legislative endeavours of 1986. This paper therefore considers the structure of government in Tokelau – under the heads executive, legislature and judiciary – the hierarchy of sources of law for Tokelau, the legislation in force as at 1 August 1987, and the specific changes brought about by the 1986 legislation.

Tokelau consists of the three atolls Atafu, Nukunonu and Fakaofu, and lies 480 kilometres to the north of Western Samoa.⁵ It became a British protectorate in 1877⁶ and was included within the Gilbert and Ellice Islands Colony in 1916.⁷ In 1926 the United Kingdom Government transferred administrative control for Tokelau, then known as the Union Islands, to New Zealand which administered the territory from Western Samoa.⁸ On

*Professor of Law, Victoria University of Wellington

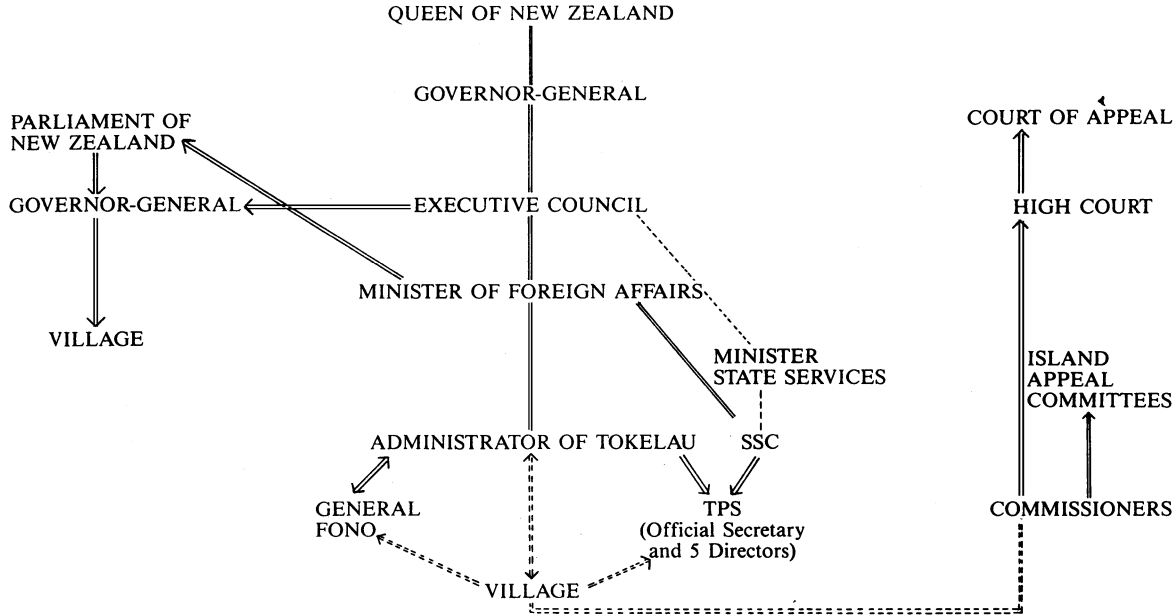
- 1 As inserted by s2(1) of the Tokelau Amendment Act 1980.
- 2 Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.
- 3 In January 1985.
- 4 And the placing of Tokelau under the aegis of the UN Committee of 24 in 1962.
- 5 See *Report of the Administrator of Tokelau for the year ended 31 March 1986*, New Zealand Parliament House of Representatives, Appendix to the journals, E14; *Report of the United Nations Visiting Mission to Tokelau 1986*, UNGA A/AC 109/877; *Pacific Islands Year Book* (15th ed, Pacific Publications, Sydney, 1984).
- 6 By virtue of the Western Pacific Order in Council of 1877, *Hertslets Treaties* vol XIV, 871.
- 7 Order in Council Annexing the Union Islands to the Gilbert and Ellice Islands Colony *SR and O Rev 1948* Volume IX, 661.
- 8 By clause 11 of Union Islands (No 2) Order in Council 1925, *New Zealand Gazette* 11 February 1926, Vol 1, 398, the Governor-General in Council had the power to sub-delegate to the Administrator of the territory of Western Samoa the authority to make laws for the peace, order, and good government of Tokelau. This power was exercised in the United Nations (No 1 of New Zealand) Order 1926, *New Zealand Gazette* 1926, Vol 1, 659.

MAIN LINES OF GOVERNMENTAL ORGANISATION OF TOKELAU

Legislative

Executive and Administrative

Judiciary



——— Tokelau law relationship
 Tokelau non-law relationships

..... non-Tokelau law relationships

1 January 1949 by effect of section 3 of the Tokelau Act 1948 Tokelau became part of New Zealand.

II STRUCTURE OF GOVERNMENT

1 *Executive and administrative power*

The table shows in diagrammatic form the main lines of governmental organization for Tokelau. By virtue of Tokelau's being part of New Zealand, the Head of State is the Sovereign for the time being of New Zealand and is, in terms of the Letters Patent of 1983,⁹ represented in and for New Zealand by the Governor-General. The Governor-General in turn acts, in respect of Tokelau, on the advice of the Executive Council and responsible ministers of government under the Letters Patent and the Constitution Act 1986.¹⁰ The Tokelau Act 1948 provides that the responsible minister for Tokelau is the Minister of Foreign Affairs.¹¹ The Tokelau Administration Regulations 1980 set up the administrative arrangements for Tokelau with the Administrator of Tokelau, or the Secretary of Foreign Affairs,¹² as the senior official. In the exercise of the powers of delegation provided in the Tokelau Administration Regulations 1980;¹³ the Administrator has delegated most powers to the Official Secretary who is the head of the Tokelau Public Service.

The Tokelau Public Service operates within the general constitutional structure provided by the Tokelau Act 1948 but is specifically controlled by a commission which is the State Services Commission¹⁴ of New Zealand. The Commission in its turn has, in the exercise of its powers of delegation under the Tokelau Amendment Act 1967;¹⁵ delegated a substantial number of its powers to the Official Secretary.

The day to day operation of governmental services in and for Tokelau is the responsibility of the 175 Tokelau public servants, the bulk of whom are based in Apia, Western Samoa. At a Tokelau level there is substantial interaction between the officers of the Tokelau Public Service and the village administration.

Tokelau traditional organization is on an atoll by atoll basis, that is to say a village by village basis, and that organization is still the heart of Tokelau government.

The General Fono is a joint meeting of representatives of each of the three islands. The current pattern is for the General Fono to meet twice a year. As a matter of practice and convention the General Fono now makes most policy decisions for Tokelau and controls the Tokelau budget. The General Fono is in an administrative sense an ad hoc body and has no continuing existence between meetings. Day to day matters are therefore controlled either at a village level or, in the case of a Tokelau wide matter,

9 Clause 1, SR 1983/225.

10 Clauses VII and VIII of the Letters Patent 1983, and s 3 of the Constitution Act 1986.

11 Section 9.

12 Regulations 3 and 4, SR 1980/189.

13 Regulation 5.

14 Section 2 of the Tokelau Amendment Act 1967.

15 Section 7.

by members of the Tokelau Public Service in consultation with the relevant village leaders through the Faipule^{15A} and Pulenuku^{15B} of each of the three islands. In executive and administrative matters it is the decisions of the General Fono communicated to the Administrator of Tokelau which are the basis for action at a policy level by the Minister of Foreign Affairs.

2 *Legislative power*

On the legislative side the supreme body is the Parliament of New Zealand. It makes law for Tokelau either by Acts which are expressly Tokelau law or by express provision in New Zealand Acts extending those Acts to Tokelau.¹⁶ Delegated legislation for Tokelau is typically made by the Governor-General under section 4 of the Tokelau Act 1948. Those regulations implement the decisions of the General Fono as communicated to the Minister of Foreign Affairs by the Administrator of Tokelau. Regulations may also be made for Tokelau under some of the New Zealand Acts which have been expressly extended to Tokelau.¹⁷ No specifically Tokelau regulations have to date been made under any Act other than the Tokelau Act 1948. The only other power to legislate given by the Tokelau Act 1948 is that vested in the State Services Commission under section 9 of the Tokelau Amendment Act 1967. That power has not yet been exercised.

The use of the "peace, order, and good government" formula in section 4 of the Tokelau Act 1948 highlights the colonial nature of the relationship of Tokelau to New Zealand and also provides the possibility for the Governor-General to delegate legislative authority in legislation made under that power. The only exercise of that power to date has been the grant of legislative power to each of the villages of Tokelau under regulation 18 of the Tokelau Village Incorporation Regulations 1986. Therefore the only Tokelau promulgated legislation will be made under regulation 18 and it will be made in the Tokelauan language.¹⁸

The general pattern for legislation for Tokelau is that ministerial clearance is required for matters of policy and that the specific legislative texts are prepared with a view to their use in Tokelauan translation. The fact that Tokelau functions on a day to day basis without reference to law and lawyers requires legislation that corresponds in large degree with what exists in practice or at least with what is within the experience of the Tokelau community.

3 *Judiciary*

Primary judicial authority in Tokelau is exercised by the Commissioner¹⁹ on each island. The jurisdictional limits for a Commissioner are set out

15A Head of the island.

15B The village mayor.

16 Eg s29 of the Citizenship Act 1977, and s65 of the Copyright Act 1962.

17 Eg Civil Aviation Regulations 1953, Marine Pollution (Dispersants and Exceptions) Regulations 1975.

18 All other Tokelau legislation is in English. All recent regulations are also available for use in Tokelau in a Tokelauan version.

19 Section 5 of the Tokelau Amendment Act 1986 provides for the appointment of a Commissioner for each island.

in the Tokelau Amendment Act 1986.²⁰ Although from a metropolitan point of view these limits are very restrictive, in practice they are more than adequate to deal with all Tokelau claims. Very few disputes are brought before the Commissioners, and most of those relate to what would in metropolitan New Zealand be regarded as petty criminal matters.²¹ There is currently only one warranted Commissioner and therefore on the two other atolls the powers of Commissioner are exercised by the Faipule for the time being. General judicial jurisdiction for Tokelau is exercised by the High Court of New Zealand both at first instance and appeal level.²² Appeal from the High Court is to the Court of Appeal.²³ Provision is also soon to be made for criminal matters to be heard on final appeal from the Commissioner to an island appeal tribunal.²⁴

III SOURCES OF LAW

The sources of law for Tokelau are dealt with specifically in sections 4 to 7A of the Tokelau Act 1948.

The pre-eminent source of law is the Tokelau Act 1948 and its many amendments.²⁵

The second source in order of importance is the body of New Zealand Acts which have been expressly extended to Tokelau.²⁶ It is clear that this source is the second most important, but precisely which statutes fall within it is not totally clear.²⁷

The third source is regulations made under New Zealand Acts. In order of priority they are regulations made under the Tokelau Act 1948,²⁸ regulations made under New Zealand Acts expressly extended to Tokelau,²⁹ and legislation made under the Governor-General's power to delegate legislative

- 20 **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 one year.

- 21 Eg assault, petty theft, unlawful sexual intercourse, and drunkenness. There are at present no lawyers in Tokelau, there is an anti-litigation consciousness, and there are no law books. The cases that do arise are criminal in nature and are dealt with following patterns strongly influenced by tradition. Substantial civil claims have not been made and the few that may have had the potential for litigation have been handled directly by the Tokelau Administration (the potential defendant) and settled by ex gratia payment. Whether the Tokelau Administration itself could be sued and by what procedure is not immediately clear in the absence of any legislation like the Crown Proceedings Act 1950 (NZ).

- 22 Sections 3 and 10 of the Tokelau Amendment Act 1986.

- 23 Section 4 of the Tokelau Amendment Act 1986.

- 24 Section 10(3) of the Tokelau Amendment Act 1986.

- 25 Sections 4 and 7A.

- 26 Section 6.

- 27 For a list of the statutes which are in force in Tokelau as at 1 August 1987 by the effect of s6, see Part I of the Appendix to this paper.

- 28 See Part 2 of the Appendix to this paper.

- 29 Supra n17.

authority in regulations made under the Tokelau Act 1948.³⁰ All these are authorised under section 4 of the Tokelau Act 1948.

The fourth ranking source of law for Tokelau is provided for in section 5 of the Tokelau Act 1948. This section covers all the pre-1949 Tokelau law which is not contrary to any of the sources listed in the three prior categories. Until 1916 the only law in force in Tokelau for Tokelauans was, technically speaking,³¹ Tokelau custom. The protectorate system that operated before that was in constitutional terms restricted to the control of British and foreign subjects in Tokelau and in their relationship with Tokelauans.³² It was only after 1916 when Tokelau became part of the Gilbert and Ellice Islands Colony that European-style law extended to Tokelau.

The body of law of European origin which operated in the Gilbert and Ellice Islands Colony, and which extended to Tokelau when Tokelau became part of the Colony in 1916, was very small.³³ Beyond the legislation made by the High Commissioner there was the body of native laws (custom). By the time Tokelau was excluded from the Gilbert and Ellice Islands Colony system in 1926 the volume of legislation that had been passed was still not great and very little of it was in fact carried forward to Tokelau's new era. Provision was again³⁴ made for the continuance in force of the existing laws and so custom in the areas not specifically provided for was continued. Between 1926 and 1949 only five pieces of legislation were made for Tokelau by the New Zealand authorities — only three of those enactments are still in force and only one of the three could be said to be of any significance to current Tokelau affairs.³⁵ The situation under section 5 is, therefore, that it preserves —

1 some regulations from the protectorate era;³⁶

30 Tokelau Village Incorporation Regulations 1986.

31 It now seems clear that some Protectorate legislation was applied to the Tokelauans from about the turn of the century. Additionally, the *Native Laws of the Union Group 1912* (Govt Printer Fiji) gives clear evidence of British administrative involvement in Tokelau.

32 Eg The Liquor Regulation 1888, *Fiji Royal Gazette 1888* 439 and *Fiji Royal Gazette 1889* 11 — To prohibit the supply of intoxicating liquors to natives of the Western Pacific Islands; The Arms Regulation 1893, *Fiji Royal Gazette 1893* 76 — To prohibit the supply of arms, ammunition, and explosive substances to natives of the Western Pacific Islands.

33 The Gilbert and Ellice Islands Colony was established on 12 January 1916 by the Gilbert and Ellice Islands Order in Council 1915, *SR and O Rev 1948* vol IX, 655. On 5 May 1916 when Tokelau became part of the Gilbert and Ellice Islands Colony it therefore necessarily became subject to the Gilbert and Ellice Island laws which were in force as a result of the Order in Council setting up the Colony. This legislative transition was not dramatic in any way because of the effect of Regulation 7 of the Gilbert and Ellice (Union group) Regulation 1909, *Fiji Royal Gazette 1909* 1065, which had co-ordinated the legislation for the Gilbert and Ellice Islands and Tokelau as from the end of 1909. For a list and texts of relevant legislation see *Tokelau Subdelegated Legislation 1877-1948* (Tokelau Administration and Victoria University of Wellington, Wellington, 1986).

34 Clause IV of the Union Islands (No 2) Order in Council 1925, *New Zealand Gazette* 11 February 1926, vol 1, 398.

35 The Port of Apia deemed Port of Entry for Union Islands Ordinance, *Western Samoa Gazette* supplement, No 1, 4 March 1941, 805.

36 Eg Arms Regulation Amendment Regulation 1893 *Fiji Royal Gazette 1893*, 320; Native Contracts Regulation 1896 *Fiji Royal Gazette 1896*, 242.

- 2 some Gilbert and Ellice Islands legislation;³⁷
- 3 some United Kingdom Acts which were expressly extended to Tokelau before 1949 and any subsidiary legislation under those Acts;
- 4 some United Kingdom prerogative instruments that extended to Tokelau;
- and
- 5 the custom of Tokelau.³⁸

The significance of custom as a source is not as great as might be expected because custom has been overridden by legislation in the areas of maintenance of public order, marriage, divorce and adoption. What is significant is the place of custom as a source of law.

In 1969 new sources of law were introduced by sections 4A and 5A of the Tokelau Act 1948.³⁹ These provisions present two problems. The first is, "Where in the pre-existing ranking of sources do they fit?" and secondly "What precisely do they mean?"

Section 4A provides for the law of England to be a source of law for Tokelau. Section 5A explains, in respect of the application of that source of law, the relative importance of Law and Equity. The focus therefore is on section 4A. In order of importance section 4A provides for three elements: The statute law of England, the Common Law, and Equity. Several criteria need to be satisfied for section 4A to be effective. The first is that the law of England applicable is the law of England of 14 January 1840, secondly that law must not be inconsistent with the Tokelau Act 1948, thirdly it must not be inapplicable to the circumstances of Tokelau, and fourthly an English statute that fulfils the other criteria must also have been in force in metropolitan New Zealand on 22 July 1969.

The relationship with the other sources is far from clear⁴⁰ but, given the reference to inconsistency with the Tokelau Act 1948, section 4A sources may be seen to be clearly subordinate to the first and second sources and, less clearly, perhaps also subordinate to sources 3 and 4 because the "law

37 Technically thirteen sets of regulations, although for various practical and historical reasons many of those may be inoperable. None are in fact being used.

38 Whether any bylaws were made under rule 15 of the Native Laws Ordinance 1917, *Western Pacific High Commission Gazette 1917*, 39, is not known but none are in use.

39 **4A. Law of England as in 1840 to be in force in Tokelau** — The law of England as existing on the 14th day of January in the year 1840 (being the year in which the Colony of New Zealand was established) shall be in force in Tokelau, save so far as inconsistent with this Act or inapplicable to the circumstances of Tokelau: Provided that no Act of the Parliament of England or of Great Britain or of the United Kingdom passed before the said 14th day of January in the year 1840 shall be in force in Tokelau, unless and except so far as it is in force in New Zealand at the commencement of this section.

5A. Common law and equity to be administered concurrently — Every Court having jurisdiction in Tokelau shall within the limits of its jurisdiction administer common law and equity concurrently, and in all cases in which there is a conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

40 Section 4(2), the key section in this regard, was not amended in 1969.

of England” was conceived in 1969 as a back-stop in the legal system,⁴¹ and because it is clearly less specific to Tokelau than the other sources of law. If this latter reasoning is correct, in areas not otherwise provided for, Tokelauan custom ranks before the law of England as a source. If not, and section 4A ranks before section 5 sources (or if section 5 is construed to exclude custom on the basis that “laws in force” does not refer to the native practices), then the law of England would pre-empt any custom of the people of Tokelau. In that circumstance the only role for custom would be to the extent it is admissible as a source of law at Common Law.

The better view, though probably not the one that motivated the legislator in 1969, may be that section 5 takes precedence over section 4A and that section 5 refers to custom as well as legislation given that the devolution orders specifically referred to the custom as a source of law.

IV 1986 LEGISLATION

1 *The Tokelau Amendment Act 1986*

The main purpose of this Act was to provide a viable court system for Tokelau. The system technically in force before 1 August 1986 can be found in the Tokelau Amendment Act 1970. That system provided for primary jurisdiction in a Commissioner on each island of Tokelau. The court of general jurisdiction, and the court of appeal for petty matters, was the Niue High Court with jurisdiction of an equivalent nature for some matters in the New Zealand High Court. Appeal from the Niue High Court and the New Zealand High Court was to the New Zealand Court of Appeal and potentially there was, as a matter of prerogative right, appeal to the Privy Council.

This system was enacted⁴² before Niue had achieved associated statehood with New Zealand. That change of status by Niue came about in 1974.⁴³ The Tokelau Amendment Act 1970 was brought into force in 1975⁴⁴ by which time there was no power for the New Zealand Parliament to legislate for Niue except by the request and consent procedure⁴⁵ and that had not been followed for the Tokelau Amendment Act 1970. The system envisaged in 1970 was therefore not effective because the requisite Niue legislation had not been promulgated. In practice no harm was done because the pattern in Tokelau is not to use the law nor to take any dispute beyond the village to which it relates. The technical constitutional defect affected not only the question of jurisdiction of the courts but also, because

41 “Clause 3 puts the laws of the Tokelau Islands on the same footing as the laws of New Zealand. It provides that where no specific provision is made in the Tokelau Islands laws then the law of England is applicable according to the particular circumstances and evidence available. The equivalent New Zealand law is contained in section 2 of the English Laws Act 1908.” NZ Parliamentary Debates 1969; vol 360, 481. In the First Reading debate Mr Rata suggested that a measure “to clarify and consolidate” the law would have been preferable (*ibid* 40).

42 On 13 November 1970.

43 By the Niue Constitution Act 1974.

44 By the Tokelau Amendment Act Commencement Order 1975.

45 Article 36 of the Constitution of Niue.

of the nature of the punishments involved,⁴⁶ meant Tokelau had no court to punish serious crimes such as murder and rape, nor to impose the penalties envisaged by the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977.⁴⁷

It is possibly a moot question whether the "existing law" provisions under the Niue Constitution⁴⁸ may have saved the Tokelau Amendment Act of 1970. However, given the express provision requirements of section 675 of the Niue Act 1966 and the express constitutional requirements about the jurisdiction of the Niue High Court, it is suggested the better view is that the 1970 Amendment Act was never totally effective.

It was important for legal and practical reasons to remedy this jurisdictional defect. In accordance with New Zealand policy in respect of Tokelau, the General Fono of Tokelau was asked for its view on the questions involved. In particular, it was asked whether a request should be made to Niue for the request and consent procedure to be used to make the 1970 enactment effective or whether the courts of some other jurisdiction would be preferred as Tokelau courts. The General Fono was clear: to the extent that outside courts were needed for Tokelau the appropriate courts were those in New Zealand — that is to say the High Court and the Court of Appeal. That decision was taken in April 1984 and the matter was referred to Wellington for the preparation and promulgation of the appropriate legislation.

Another purpose served by the Act is a consequence of the decision about the Niue courts. The Tokelau Amendment Act 1967 deals with decisions about land which has been compulsorily acquired by government for public purposes and referred disputes to the Niue Land Court. Consistent with Tokelau tradition the General Fono decided that instead of referring a disputed valuation to a court for final decision the matter should be arbitrated.

The opportunity was also taken to bring the law into line with custom and practice in respect of the office of Faipule⁴⁹ and the appointment of Commissioner respectively. The Act also amends section 4 of the Tokelau Act 1948 to make it possible for the villages to impose levies and fees by delegated legislation.

46 Section 10(2): "A Commissioner shall not have power to impose any fine exceeding \$150 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."

47 Eg in s6 where a foreign fishing craft is used for fishing within Tokelau's territorial sea, the owner, master, and the crew are liable on conviction — (a) In the case of the owner or master, to a fine not exceeding \$100,000; and (b) In the case of any other crew member, to a fine not exceeding \$5,000.

48 **71. Existing law to continue** — Subject to this Constitution —

(a) The existing law shall, until repealed, and subject to any amendment thereof, continue in force on and after Constitution Day;

(b) All rights, obligations, and liabilities arising under the existing law shall continue to exist on and after Constitution Day, and shall be recognised, exercised, and enforced accordingly

82. Interpretation — (1) In this Constitution, unless the context otherwise requires — "Existing law" means any law in force in Niue immediately before Constitution Day; and includes any enactment passed or made before Constitution Day and coming into force on or after Constitution Day

49 *Supra* n15A and *infra* n57.

(a) Clause by clause analysis

(i) Section 1

Section 1 provides for the commencement of the Amendment Act. There is no particular reason for 1 August 1986 having been chosen. It was important, however, that the Act come into force at as early a date as possible and the inclusion of the specific date helps to identify the date of commencement of the Act for administrators far from Wellington. There are no cases immediately affected by the Act, though the clarification⁵⁰ of the legal penalties that may be imposed by the Commissioners is not without practical significance.

(ii) Section 2

Section 2 is as in the 1970 Amendment Act.

(iii) Section 3

Under section 3 the New Zealand High Court now acts as a High Court for Tokelau, in place of the Niue High Court. The jurisdictional formula is the same as in the Judicature Act 1908 of New Zealand and not the potentially limiting formula of the 1970 Amendment Act.⁵¹ Subsection (2) addresses the problem created by the special administrative and judicial structure of Tokelau and in particular the absence of a District Court system and of Justices of the Peace. The only inferior court in Tokelau is the Commissioner's court on each island.

Subsection (3) makes possible the use of some place other than New Zealand or Tokelau for the High Court sittings. This is important because of the isolation of Tokelau, but at present it is difficult to see where else the High Court might properly sit, particularly in the exercise of its criminal jurisdiction. The most obvious choice for a place of sitting would be Apia in Western Samoa, but for reasons of Western Samoan law that is not possible. Should special legislation dealing with the status of the Tokelau office in Apia be promulgated in Western Samoa the possibility of a special jurisdiction for Tokelau on the analogy of a consular court might be possible. The absence of matching legislation in any other jurisdiction effectively rules out the use of subsection (3) for the time being because, for instance, any order of the court for detention for trial would be unlawful and the court would lack power over witnesses.

The Tokelau law is clear that prisoners may be transferred to New Zealand to serve their prison term.⁵² Section 3 does not deal with the practical aspects of the use of New Zealand as a venue for the trial of criminal matters. Without special New Zealand legislation on the topic, there is no authority in the New Zealand police or prison authorities to enforce the decisions of the High Court in the exercise of its jurisdiction under Tokelau law.

⁵⁰ In section 7.

⁵¹ Section 4.

⁵² Section 243 of the Tokelau Crimes Regulations 1975.

(iv) Section 4

Section 4 follows the model of the 1970 Amendment Act. It assumes that the Court of Appeal of New Zealand has jurisdiction to administer the laws of Tokelau. Further, it implements the decision of the General Fono that the Court of Appeal in New Zealand should be the final Court of Appeal for Tokelau.

(v) Section 5

Section 5 is almost word for word section 9 of the 1970 Amendment Act. The provision has been used in the past and after 1975 there were several appointments, each of which followed the election of a Faipule.⁵³ Only one of those who was given the warrant of office is still a Commissioner. The others have either passed the relevant age or time for retirement or, in one case, resigned on ceasing to be Faipule. Where there is no Commissioner the functions of the office are performed in accordance with section 6 by the Faipule. The concept of an official of the village being beyond democratic control is not readily accepted by the village councils and therefore for the time being the possibility of a person being a Commissioner "during good behaviour" is unacceptable.

Subsection (6) provides for the payment of a salary or allowance to Commissioners, but none has been paid. The reason is probably that the Commissioner has always⁵⁴ also been the Faipule, an office which carries a stipend in its own right.⁵⁵ Another reason why the Commissioner may to date have received no provision for salary or allowance is that in practice the job of Commissioner has no clear functional existence beyond that of the customary one of Faipule. There is a very low volume of judicial work and the cases are principally of a petty criminal nature. They are typically dealt with by the Faipule in the context of meetings with the elders in the way they would have been dealt with in the village before the advent of courts.

The Faipule are not lawyers and are not law trained; some have very little English. The possibility of non-local professional people being appointed as Commissioner is theoretically present, but in practice it is unlikely to occur.

(vi) Section 6

Section 6 makes only one small change from the law as promulgated in 1970, and that is the deletion of the words "with the authority of the Administrator".⁵⁶ The election of the Faipule has nothing to do with the

53 There have been no warrants issued to a Commissioner since the 1984 elections.

54 That is except for a brief period in 1984 in Nukunonu and up until the last elections in January 1987. The present position (August 1987) is that no Commissioner is also Faipule. The question arises, as it did in Nukunonu in 1984, whether the warranted Commissioner who is no longer Faipule will resign or whether he will remain in office till he reaches the age of 68 years.

55 The office of Faipule is the highest paid of the village officers.

56 After the words "any person performing in that island the functions of a Faipule" in s9A.

Administration and is regulated by custom.⁵⁷ Equally in practice the Administrator has never authorised a specific Faipule to act as Commissioner in the absence of a warrant holder. The amendment therefore regularises the present practices and respects the division of function between the customary authorities and the government.

(vii) Sections 7, 8 and 9

Section 7 considerably extends the previous law. In particular the civil jurisdiction of the Commissioner is extended to enable suits involving local assets of value to be dealt with on the island. In Tokelau property is rarely individual property but there are some significant assets in the form of boats, outboard motors, radios and hi-fi equipment; these can now be dealt with locally in the event of any dispute concerning them. The main asset in Tokelau is land. That, however, is specifically beyond the realm of the general court system and reserved for custom by the Tokelau Amendment Act 1967.⁵⁸ Jurisdiction has not been a matter of great concern and the very few civil claims brought to the notice of the authorities have concerned matters such as title to chickens or the disputed ownership of fishing knives. fishing knives.

Subsection (2) reflects the current pattern of punishment for criminal offences used on the islands. Most matters are dealt with either by way of fine or by an order for the performance of community work. A typical fine would be \$20 or two weeks community service. This subsection acknowledges and regularises the status quo.

Where the penalty imposed by the Commissioner is a small one, the communities felt that it would be inappropriate to involve the court in New Zealand or have a High Court Judge travel to Tokelau to deal with the appeal. Subsection (3) therefore opens up the possibility of locally heard appeals in petty criminal matters.

Subsection (4) is a further recognition of current practice⁵⁹ and formalises the customary input and procedure in criminal cases on most of the islands.

Sections 8 and 9 are new and follow the pattern in the District Courts Act 1947 (NZ). They make it possible in civil cases for the matter to be dealt with by a Commissioner in Tokelau when the value of the subject-matter claimed or the cause of action is more than \$1000.

57 The Faipule is elected in each village for a three year term by the free vote of every adult of the village. The rules for nomination of candidates for Faipule and the actual voting procedures vary slightly from island to island. The function of the Faipule is to represent the village in its contacts with the outside world and with the Tokelau Administration in particular. The Faipule is clearly not the representative of the Administrator on the islands but is rather the representative of the island to the Administrator. The Faipule is typically the chairman of the village council. See also section 19 of the Amendment Act 1986, and regulation 8 of the Tokelau Village Incorporation Regulations 1986.

58 Section 20(2): "... the beneficial ownership of Tokelauan land shall be determined in accordance with the customs and usages of the Tokelauan inhabitants of Tokelau."

59 Section 5(1) speaks of consulting the "elders" of the island concerned and s7(4) of the *taupulega*. The two expressions are not always coterminous: In the case of the island with the largest population (Fakaofu) there are about 80 elders; the *taupulega* is a smaller group of about 25 senior elders.

Despite these sections some jurisdictional problems remain: there is no jurisdiction in Tokelau over petty offences committed on the high seas around Tokelau – in particular the concern is with offences committed on the boats travelling between the islands of Tokelau and with offenders moving from one island to the next; where the Commissioner of an island is a party in a case or is challenged or challenges himself the matter must be dealt with by the High Court.

(viii) Section 10

Section 10 follows very closely the pattern established in 1970 and provides that the formal channel for information on appeals is through the Administrator. The Administrator has delegated performance of these duties to a member of the Tokelau Public Service under the Tokelau Administration Regulations 1980 and the Administrator's representative on each island, the Administration Officer, will be the person to whom the appeal notice will be given.

Subsection (3) provides the possibility of local appeals in petty matters. Both tradition and the cost of doing otherwise make subsection (3) an eminently sensible provision in the Tokelau context. Until the promulgation of appropriate regulations no appeal is possible in respect of the offences covered by subsection (3).

(ix) Section 11

Section 11 is a validation clause. So far as is known there is only one decision affected and that was a Tokelau divorce granted by the High Court in Niue.⁶⁰ The grant of the divorce should have been in accordance with the Tokelau Divorce Regulations 1975 but the order shows that the divorce was in fact granted under the Niue Act 1966. The divorce was therefore a doubly defective one.

(x) Section 12

Section 12 makes possible the exercise of jurisdiction under the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977. It should be noted however that the regulations that are required to activate the exclusive economic zone have not yet been promulgated.

The list of consequential amendments presented by sections 12 to 18

60 *Saiosi*, File C/2/75 (High Court of Niue). It may be queried whether section 11 would in fact validate that divorce. It would only do so if the Tokelau Amendment Act 1970 was definitive of the courts for Tokelau, in which case the exercise of the jurisdiction by the High Court of Niue under the Tokelau Divorce Regulations 1975 would have been an exercise of its jurisdiction as conferred by the Tokelau Amendment Act 1970. However, given the breadth of section 4 of the Tokelau Act 1948 it is at least arguable that a use of the Niue High Court under the Tokelau Divorce Regulations 1975 would have been in the purported exercise of a jurisdiction conferred other than by Part I of the Tokelau Amendment Act 1970.

is not complete.⁶¹ A number of the references to courts that were previously defective because of the use by Tokelau of the Niue courts⁶² are now perhaps not so because a reference to the High Court in those Acts can be construed as a reference to the High Court in the exercise of its jurisdiction under this Act.

(xi) Section 19

Though section 19 regularises the use of the term *Faipule* for the Tokelau Act 1948, there are some pieces of legislation which use the term inaccurately.⁶³

(xii) Section 20

The significant change to section 4 of the Tokelau Act is the empowering of "any specified authority or person to impose tolls, rates, dues, fees, fines, taxes and other charges", ostensibly to make it possible for the villages to impose levies and fees by delegated legislation. The decision of *Tagaloo*⁶⁴ shows however that these things could be done by way of regulation without the specific enumeration of the matters.⁶⁵

(xiii) Section 22

There is only one piece of fee simple land⁶⁶ in Tokelau and this provision clarifies the law relating to it. It uses an ethnic rather than a nationality criterion and therefore does not itself preclude the possibility of an alien acquiring the land. The right of a non-New Zealand citizen to buy would be limited by the Common Law restriction on purchases by aliens.

61 Those that remain and require amendment are the Civil Aviation Act 1964, Copyright Act 1962, Merchandise Marks Act 1954, Marine Pollution Act 1974, Partnership Act 1908, and Property Law Act 1952. These acts refer to a New Zealand District Court. has no jurisdiction for Tokelau.

62 Eg Bills of Exchange Act 1908, Citizenship Act 1977, Marine Pollution Act 1974.

63 Eg Tokelau Rhinoceros Beetle Regulations 1964.

64 [1927] NZLR 883.

65 However, having once started on the road of specific enumeration evidenced by s4(3) the maxim *expressio unius est exclusio alterius* appears to have come into operation. An amendment was made for "commemorative" coins in 1978. The coins are not in general circulation as legal tender in Tokelau and are not commemorative in the ordinary sense of the word. They were minted in 1978, 1979, 1980, 1981, 1982 and 1983 primarily for the purpose of revenue earning. (Though New Zealand money has been legal tender in Tokelau since 1967 it is only recently that accounting on the islands has been done in New Zealand dollars. Prior to that the transactions were in Western Samoan *tala*.) The promulgation of the Tokelau Amendment Act 1982 for the raising of a local tax may in part have been the result of lack of a clear understanding of the "peace, order, and good government" formula.

66 Given the pattern of legislation for Tokelau relating to the protection of land (eg Small Islands Native Lands Regulation, *Fiji Royal Gazette 1896*, 267 (to prohibit the alienation of Native Land in Small Islands forming part of Her Majesty's Dominions or being under Her Majesty's Protection) or Native Lands Ordinance 1917, *Western Pacific High Commission Gazette 1917*, 211 (Rule 4: ". . . native lands in the colony shall not be alienated by sale, gift, lease or otherwise to non-natives."), it is moot whether there could have ever been any fee simple land in Tokelau. Since the Tokelau Amendment Act 1963, the Government of New Zealand has clearly accepted that there is fee simple land.

(b) Summary

The changes to the law brought about by this Act were long overdue. The Act provides a court system for Tokelau, it legitimises local practices in the field of the exercise of judicial power, it clarifies and declares the law in a number of areas that were confused in practice, and also provides a solid base for the future development of Tokelau law.

2 *The Tokelau Village Incorporation Regulations 1986*

The reality of Tokelau on a day to day basis is the central role of the villages. These regulations, for the first time in 11 years,⁶⁷ give legal recognition to the existence of the villages, to their administrative importance and to the functioning of their officials. The legal importance of the village leader has been recognized since 1970 in the conferral of judicial power on the Faipule. The law now recognizes the executive existence and role of the elders and of the other two officers of the village — the Puluenuku⁶⁸ and the Failautuhi.⁶⁹

The regulations also again⁷⁰ empower the making of law by the villages. As a matter of practice the villages have always made law and the villagers have abided by it as the only recognizable normative system known to them. The practical consequence of regulation 18⁷¹ will therefore be very little; the change is that the rules are now required to be promulgated, and to be available for consultation, in both English and Tokelauan in all the islands. It is anticipated that the villages will review their existing rules and, at least in respect of those that impose penalties or licence certain activities, will legalise those rules by use of the regulation 18 form. Arguably these regulations are the most significant legal development for Tokelau since the repeal of similar legislation in 1975,⁷² and perhaps the most significant legislative step taken by New Zealand for Tokelau since the 1967 Amendment Act and its provision for Tokelauan land and the Tokelau Public Service.

Village elections are held for the offices of Faipule and Puluenuku. The electors are all the inhabitants of the village who are over the age of 21 years. Who may be a candidate for election and who nominates the candidates for election currently varies from island to island and is governed by custom. There has been, as a result of the consultations on Tokelau before the promulgation of these regulations, considerable discussion about election processes and it is therefore possible that there will be a continuing evolution in the customary rules on the matter for the elections of 1990. However the nominations are made, the actual voting process on each island is similar. There are usually six or seven candidates and a series of ballots⁷³

67 Since the repeal of the Native Laws Ordinance 1917 by the Tokelau Amendment Act 1970 which came into effect on 1 December 1975.

68 *Supra* n15B.

69 The village clerk.

70 *Cp* rule 15 of the Native Laws Ordinance 1917.

71 The regulation which empowers a village to make rules.

72 Section 12(1) of the Tokelau Amendment Act 1970.

73 Usually three.

until one candidate for the office gets at least 50 percent of the votes cast. The general attitude on the islands appears to be that nomination and, hence ultimately for some, election is a matter in the control of the village not the candidate: Public office is seen as a duty to the community.

3 *The Tokelau Marriage Regulations 1986*

These regulations embody a number of significant changes of the law though only a few of the provisions of the 1969 regulations were affected. The minimum age of capacity was to be set at 16, which is seen by the elders to be in broad conformity with the provisions of both Western Samoa and New Zealand and also to correspond with the age at which a person does not compulsorily have to attend school in Tokelau.⁷⁴ The law states that a person under the age of 16 cannot in any circumstance contract a valid marriage in Tokelau though the question of capacity for conflict of laws⁷⁵ purposes remains.

For many years there has been discussion in Tokelau and concern about the prohibited degrees of marriage in respect of consanguineous relations. The problem first surfaced in respect of the Native Laws Ordinance 1917 but had, as Hooper and Huntsman explain, no practical impact in Tokelau at the time.⁷⁶ The serious change was the promulgation by New Zealand of the Tokelau Marriage Regulations 1969 and the incorporation in them of the prohibited degrees of metropolitan New Zealand. The Tokelau reaction to those regulations was one of distress.

That distress was at least partially alleviated by the amendment in 1975⁷⁷ which extended the prohibition to first cousin marriages. There remained, however, in Tokelau considerable feeling that the law should prohibit the relationships which were prohibited customarily.⁷⁸ That view was still current in 1984 when the discussions on the amendment of the regulations

74 Article 2 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 UNTS 232, states that parties to the Convention shall take legislative action to specify a minimum age for marriage.

75 Regulation 6.

76 Huntsman and Hooper, "The Desecration of Tokelau Kinship" (1976) 85 Poly Soc 257, 271-272: "During the period when the islands were part of the Gilbert and Ellice Islands Colony, from 1916 to 1925, marriage came under the regulation of the Natives Laws Ordinance 1917 which provided for the proper publication of banns, the registration of marriages and definitions of the ages at which marriage could take place for both males and females. Incest, translated as *mataifale* in the Samoan version of the laws which reached the Tokelauas, was made punishable by imprisonment with hard labour for between two and five years. Although the Ordinance did not define *mataifale*, the legal situation was that Common Law prevailed, prohibiting "carnal connection" between parent and child, brother and sister, and grandparent and grandchild. The extent to which this legal situation was known in the atolls is uncertain. According to some informants, the Ordinance during the early years following its promulgation was interpreted locally as preventing marriages between kinsmen related *i te tolu o tupulaga* 'in the third generation'; that is, second cousins. But however much this interpretation might have accorded with the contemporary ideology of *kaiga*, it cannot have been common for many years, since a number of still extant marriages between second cousins date from the early 1920s. (According to other contemporary informants, the Ordinance was interpreted as preventing marriages only between those related as first cousins or closer.)"

77 Tokelau Marriage Regulations 1969, Amendment No 1 SR 1975/194.

resumed. By 1984 other forces were at work, notably the impact of greater freedom of movement for people in and out of Tokelau and between Tokelau and metropolitan New Zealand. In 1984 the elders were therefore very conscious of the fact that young Tokelauans could come to New Zealand or that young Tokelauans in New Zealand could as first cousins marry and return to Tokelau and confront the elders with a fait accompli.

The answer to the problem was worked out over the following two years and is as set out in the regulations. No new prohibited degrees were added to the regulations and provision was made for a dispensation, i.e. a relaxation in the rule of the prohibition on first cousin marriage. In one sense that is a substantial step given the customary belief and the recent concern that even second cousins should not marry. However, the complementary change in the person in whom the dispensation power is vested must be noted. It is now the village that decides whether the dispensation should be granted. The indications are that in Nukunonu the dispensation is likely to be given⁷⁹ if the question arose in practice but that in Fakaofu the dispensation is not likely to be given, though even in Fakaofu discussions in the Fono did indicate that were the interests of an unborn child at stake common humanity might require that the dispensation be granted.

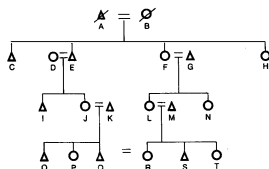
4 *The Tokelau Births and Deaths Registration Regulations Amendment 1986*

The main amendment here relates to the change in the authority or control of the civil status registers in Tokelau. The law is following in the footsteps of the practice. The administrative arrangements for some years now have been that the register is controlled by the Tokelau Administration in Apia and that the village officials, who for a long time were the responsible officers, have no civil status functions. The law now reflects the current administrative practice.

5 *The Tokelau Affidavits and Declarations Regulations 1986*

A number of pieces of legislation in force in Tokelau before 1 December 1986 provided for the taking of statutory declarations and referred to

78 In marriages "in the third generation" or between second cousins should be prohibited — Q and O in the diagram. See Huntsman and Hooper, "The Desecration of Tokelau Kinship" (1976) 85 *Poly Soc* 257.



79 The elders of Nukunonu were not particularly concerned with a tightening of the law because as a religious matter their church accepted first cousin marriages.

affidavits.⁸⁰ There was in fact no statutory provision for the taking of declarations in Tokelau nor was there any legislation relating to affidavits.⁸¹ The purpose of these regulations was therefore to remedy the defect in the law.⁸²

The Tokelau community has an aversion to the taking of oaths and therefore will not frequently make affidavits. This aversion relates to the strong religiosity of Tokelauans rather than their lack of religious feelings. The typical Tokelauan will therefore affirm or declare rather than swear, simply because the community does not believe it right to call the wrath of God down upon somebody for such ordinary matters as are likely to be involved in the statements to which these regulations will have most application. The community is concerned that the people tell the truth but believes that will flow from the affirmation or declaration.

The evidential provisions of these regulations are to be read in conjunction with the provisions for the taking of oral evidence in the Tokelau Crimes Regulations 1975.

6 *The 1980 Commencement Order*

The promulgation of section 12(2) of the Tokelau Amendment Act 1967 in section 2(1) of the Tokelau Amendment Act 1980 reflected discussions and the experience of the State Services Commission at that time. Practice then, and subsequently, has been consistent with the view that service in the Tokelau Public Service and service as a village official is mutually exclusive. This commencement order therefore, somewhat belatedly, reflects the earlier policy decision and the consistent practice in Tokelau and the Tokelau Public Service.

V CONCLUSION

The legislation of 1986 would appear to be clearly in accordance with the New Zealand Government policy commitment⁸³ in respect of Tokelau: all the legislation is the result of initiatives by or in consultation with Tokelau.⁸⁴ The legislation was not simply approved by the Tokelau community but embodies Tokelau decisions. Most of the legislation was corrective rather than reformative and responds to the desires and needs of the Tokelau community. The legislation also shows clear progress in the

80 Eg Regulation 21 of the Tokelau Marriage Regulations 1969 and Regulation 10 of the Tokelau Births and Deaths Registration Regulations 1969.

81 Though there is reference to the taking of oaths and the taking of affirmations in the Tokelau Crimes Regulations 1975.

82 And to make the necessary consequential amendments in the legislation that did refer to declarations.

83 The legislative pattern established by the laws promulgated in 1986 is continuing in various reform projects now being discussed in Tokelau and is being advanced in the sense that many more of those projects have been initiated by Tokelau.

84 Cp *Report of the Administrator of Tokelau for the year ended 31 March 1983*, New Zealand Parliament House of Representatives. Appendix to the journals, vol 4, E14, 4 – “The New Zealand Parliament passed a further amendment to the Tokelau Act during the year. This amendment, which brought the Community Services Levy into force, was significant in that it was passed at the direct request of the Tokelau General Fono.”

move towards self-determination: There is both more recognition of Tokelau in the law and more power to Tokelau in the law — the villages and their officers are recognised, and administrative and legislative powers are vested expressly in them.

The elders want more legal recognition of their authority, the UN requirements are that Tokelau should be given more recognition of its authority and the power to control its own affairs,⁸⁵ and the New Zealand Government has a policy commitment to foster a greater degree of self-government in Tokelau. It may therefore be predicted with reasonable confidence⁸⁶ that the legislative trends of 1986 will be followed in the future.

APPENDIX

PART 1

NEW ZEALAND ACTS EXTENDED TO TOKELAU – AS AT 1 AUGUST 1987

Act	Authority for Extension
Acts Interpretation Act 1924	s8 Tokelau Act 1948
Administration Act 1969 (Part III only)	SR 1969/109 & s7 Tokelau Act 1948
Arbitration Act 1908	SR 1975/263
Arbitration Clauses (Protocol) and Arbitration (Foreign Awards) Act 1933	s7 Tokelau Act 1948
Atomic Energy Act 1945 (except s5A)	SR 1969/109
Bills of Exchange Act 1908	SR 1969/109

85 Consensus Adopted by the General Assembly at its 99th Plenary Meeting on 2 December 1985 — In this regard, the Assembly notes that the people of the Territory have expressed the view that, for the time being, they do not wish to review the nature of the existing relationship between Tokelau and New Zealand **but that they desire to be given some latitude and some degree of autonomy in decision-making.** The Assembly welcomes the assurances of the administering Power that it will continue to be guided solely by the wishes of the people of Tokelau as to the future status of the Territory and that **it is committed to responding positively to the expressed desires of the people of Tokelau.** The Assembly calls upon the administering Power to continue its programme fostering awareness among the people of Tokelau of the possibilities open to them in the exercise of their right to self-determination and within the context of its efforts to ensure the preservation of the identity and cultural heritage of the people of Tokelau. **The Assembly is of the opinion that the administering Power should continue to inform the Tokelauan people of the consideration of their Territory by the United Nations. The Assembly recognizes that the political and economic development of Tokelau is an important element in the process of self-determination.** In this connection, the Assembly notes with satisfaction that the General Fono (Council) of Tokelau is assuming greater authority in local political, economic and financial affairs. (Emphasis added.)

86 Several more sets of regulations are already with Parliamentary Counsel. Further, at a special Law Fono of 18-20 February 1987, as the culmination of 18 months of discussion, Tokelau formally approved the content of new regulations for Crimes, Procedure and Evidence, for Interpretation, for Customs, for Health, for the Police, for the Tokelau Public Service, and for Wrecks and Salvage.

Carriage by Air Act 1967	s3
Carriage of Goods Act 1979	SR 1969/109 and s7 Tokelau Act 1948
Chattels Transfer Act 1924	SR 1975/263
Cheques Act 1960	s7 Tokelau Act 1948
Citizenship Act 1977	s29
Citizenship (Western Samoa) Act 1982	s11
Civil Aviation Act 1964	s28
Commissions of Inquiry Act 1908	SR 1969/109
Commonwealth Countries Act 1977	s5
Constitution Act 1986	s3
Consular Privileges & Immunities Act 1971	s12
Copyright Act 1962	s65
Deaths by Accidents Compensation Act 1952	SR 1969/109
Decimal Currency Act 1964	s3
Designs Act 1953	s50
Diplomatic Privileges & Immunities Act 1968	s25
Geneva Conventions Act 1958	s10
Health Benefits (Reciprocity with the United Kingdom) Act 1982	Sched art 1(c)(ii)
Health Benefits (Reciprocity with Australia) Act 1986	Sched art 1(4)(b)
International Finance Agreements Act 1961	s8
Marine Insurance Act 1908	SR 1975/263
Marine Pollution Act 1974 (ss1-2 Part 1, ss60, 62-66, 67(1)(a), 67(2)-(5), 68-70 only)	SR 1975/263
Mercantile Law Act 1908	SR 1969/109
Merchandise Marks Act 1954 ⁸⁷	s23

87 The Merchandise Marks Act 1954, in force in Tokelau by virtue of section 23 of that Act, was repealed by the Fair Trading Act 1986. There are three possibilities for Tokelau: (a) that the Fair Trading Act 1986 is not Tokelau law as it was not expressly extended to Tokelau; or (b) that Parliament in repealing the Merchandise Marks Act 1954 repealed section 23 and intended the Merchandise Marks Act 1954 to cease to be Tokelau law; or (c) that the Merchandise Marks Act 1954 was repealed and substituted by the Fair Trading Act 1986. The better view of these alternatives is that the Merchandise Marks Act 1954 is still Tokelau law. The Fair Trading Act 1986 was not expressly extended to Tokelau, neither was it a substitution for the Merchandise Marks Act 1954.

Official Secrets Act 1951 ⁸⁸	s17
Partnership Act 1908	SR 1969/109
Patents Act 1953	s118
Post Office Act 1959 (except Parts XIII-XVI)	SR 1969/109
Property Law Act 1952	SR 1969/109
Royal Titles Act 1974	s3
Sales of Goods Act 1908	SR 1969/109
Sea Carriage of Goods Act 1940 (Parts I and II and ss 11, 12, 13(2) only)	SR 1969/109
Seal of New Zealand Act 1977	s7
Tokelau Act 1948	specific to Tokelau
Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977	specific to Tokelau
Trade Marks Act 1953	s86
Trustee Act 1956	SR 1975/263
United Nations Act 1946	s4
Visiting Forces Act 1939	s7

88 The Official Secrets Act 1951 which was extended to Tokelau by section 17 of that Act was repealed in 1982 by the Official Information Act 1982. The Official Information Act 1982 is Tokelau law if: (a) it was expressly extended to Tokelau pursuant to section 6 of the Tokelau Act 1948, or (b) it was passed in substitution for the Official Secrets Act 1951, and is applicable to Tokelau. The Official Information Act 1982 does not have a sufficient extension provision (section 7(a)(iii) of the Act is inconclusive on this point), and it was not passed in substitution for the Official Secrets Act 1951. Although the repeal of the Official Secrets Act 1951 is by the Official Information Act 1982, the substantive material of the Official Secrets Act 1951 is in Acts Nos 157-160 of 1982 (Crimes Amendment Act (No 2) 1982, Summary Proceedings Amendment Act (No 3) 1982, Summary Offences Amendment Act (No 2) 1982 and State Services Amendment Act (No 3) 1982). If Acts 157-160 of 1982 are substitutes for the Official Secrets Act 1951, the position for Tokelau is anomalous as none of the principal Acts for which those enactments were amendments is Tokelau law; without more adaptation the amendments cannot be applicable to Tokelau. An alternative view is that the Official Information Act 1982, although not a substantive substitute for the Official Secrets Act 1951, was promoted, and is perceived by the public as a substitute for the Official Secrets Act 1951. If the Official Information Act 1982 is regarded as Tokelau law on the basis of section 7 of the Tokelau Act 1948, the Tokelau Crimes Regulations 1975 should properly be amended to take account of the criminal provisions which were originally in the Official Secrets Act 1951 and which are now, in metropolitan New Zealand, to be found in Acts Nos 157-160 of 1982. The better view, in terms of sections 6 and 7 of the Tokelau Act 1948, is probably that the Official Information Act 1982 is not Tokelau law, and that the Official Secrets Act 1951 was never repealed for Tokelau.

PART 2**TOKELAU SUBSIDIARY LEGISLATION**

Made under section 4 of the Tokelau Act 1948 — as at 1 August 1987

- Tokelau Departure Regulations 1952
- Tokelau Copra Regulations 1952
- Tokelau Customs Duties Regulations 1957
- Tokelau Census Regulations 1961
- Tokelau Rhinoceros Beetle Regulations 1964
- Tokelau Adoption Regulations 1966
- Tokelau Finance Regulations 1967
- Tokelau (New Zealand Laws) Regulations 1969
- Tokelau Births and Deaths Registration Regulations 1969
- Tokelau (New Zealand Laws) Regulations 1975
- Tokelau Crimes Regulations 1975
- Tokelau Coinage Regulations 1978
- Tokelau Administration Regulations 1980
- Tokelau Village Incorporation Regulations 1986
- Tokelau Marriage Regulations 1986
- Tokelau Affidavits and Declarations Regulations 1986
- Tokelau Divorce Regulations 1987