



**Tuvalu**

**INTERPRETATION AND GENERAL  
PROVISIONS ACT**

**2022 Revised Edition**

**CAP. 1.04**





Tuvalu

# INTERPRETATION AND GENERAL PROVISIONS ACT

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Tuvalu

# INTERPRETATION AND GENERAL PROVISIONS ACT

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO  
THE CONSTRUCTION, APPLICATION, INTERPRETATION AND  
OPERATION OF WRITTEN LAW; TO PROVIDE FOR THE EXERCISE  
OF STATUTORY POWERS AND DUTIES; AND FOR CONNECTED  
PURPOSES<sup>1</sup>**

Commencement [1st January 1989]

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Interpretation and General Provisions Act.

### 2 Commencement

This Act shall come into operation on 1st January, 1989.

### 3 Application

- (1) The provisions of this Act apply to every written law, whether the law was enacted, passed, made or issued before or after the commencement of this Act, unless in relation to a particular written law —
  - (a) express provision is made to the contrary in an Act;
  - (b) in the case of an Act, the intent and objects of the Act or something in the subject or context of the Act is inconsistent with such application; or

- (c) in the case of subsidiary legislation, the intent and object of the Act under which that subsidiary legislation is made is inconsistent with such application.
- (2) The provisions of this Act apply to this Act as they apply to an Act passed after this Act commences.

#### **4 Crown bound by Act**

This Act binds the Crown.

## **PART II - GENERAL PROVISIONS RELATING TO ACTS**

#### **5 Acts to be public Acts**

Every Act is a public Act and shall be judicially noticed as such.

#### **6 Acts to be divided into sections**

- (1) Every Act enacted after this Act shall be divided into sections.
- (2) A section of an Act has effect as a substantive enactment without introductory words.

#### **7 Preambles and schedules**

- (1) The preamble to a written law forms part of the written law and shall be construed as a part of the written law intended to assist in explaining its purport and object.
- (2) A Schedule or appendix to or table in a written law, together with any notes to the schedule, appendix or table form part of the written law.

#### **8 Headings, marginal notes, foot notes and descriptive**

- (1) The headings of the parts, divisions and subdivisions into which a written law is divided form part of the written law.
- (2) A marginal note or footnote to a written law and, notwithstanding subsection (1), a heading to a section, article, regulation, rule, bye-law or clause of a written law shall be taken not to be part of the written law.
- (3) Words in a written law descriptive of another written law or document shall not be used as an aid to the construction either of the written law in which they

occur or of that other written law or document and are intended for convenience of reference only.

## 9 Punctuation

Punctuation forms part of a written law and regard shall be had to it accordingly in construing the written law.

# PART III - PROVISIONS RELATING TO INTERPRETATION

## 10 Meaning of Words in Written laws

- (1) In this Act and every other written law, unless the context otherwise requires —
- “**Act**” means an Act of Parliament and includes a law which may, by reason of the Renaming of Ordinances Order 1986<sup>2</sup> be named and cited as an Act;
- “**act**” when used with reference to an offence or civil wrong, includes an omission and extends to a series of acts or omissions or a series of acts and omissions;
- “**affidavit**” in the case of a person allowed by law to affirm, declare or promise instead of swearing, includes such an affirmation, declaration and promise;
- “**alien**” means a person who is not a citizen of Tuvalu;
- “**amend**” includes repeal, revoke, rescind, cancel, delete, replace, substitute, add to or vary, and the doing of any of two or more of such things simultaneously or by the same written law;
- “**archipelagic waters**” means the archipelagic waters of Tuvalu as defined by or under section 6 of the Marine Zones Act;<sup>3</sup>
- “**Attorney-General**” means the Attorney-General for Tuvalu whose office is provided for by section 81 of the Constitution;<sup>4</sup>
- “**Auditor-General**” means the Auditor-General for Tuvalu whose office is provided for by section 176 of the Constitution;<sup>5</sup>
- “**authority**” includes a public officer and a public body;
- “**bye-law**” means a bye-law made under the Act in which that term is used;
- “**Cabinet**” means the Cabinet for Tuvalu established by section 75 of the Constitution;
- “**Chief Justice**” means the Chief Justice of Tuvalu whose office is provided for by section 125 of the Constitution;
- “**Christian name**” means any name prefixed or suffixed to a surname, whether received in Christian baptism or otherwise;

“**citizen of Tuvalu**” means a person who is a citizen of Tuvalu in terms of Part III of the Constitution;

“**commencement**”, when used with reference to a written law or a provision of a written law, means the date on which the law or provision comes or came into operation;

“**common law**” means the common law of Tuvalu as described in section 6 of the Laws of Tuvalu Act;<sup>6</sup>

“**Commonwealth citizen**” means a person who is recognized by the law of a Commonwealth country as being a citizen of that country;

“**Commonwealth country**” means a country declared by or under the Commonwealth Countries Act 1983<sup>7</sup> to be a Commonwealth country and includes a dependency of such a country;<sup>8</sup>

“**Constitution**” means the Constitution of Tuvalu established by law;<sup>9</sup>

“**contravene**”, in relation to any requirement or condition prescribed in or under a written law or in a grant, permit, lease, licence or authority granted by or under a written law, includes a failure to comply with the requirement or condition;

“**court**” means any court of Tuvalu of competent jurisdiction;

“**Court of Appeal**” means the Court of Appeal for Tuvalu established under section 137 of the Constitution;<sup>10</sup>

“**daily penalty**” means a penalty in accordance with section 69(4) for each day or part of a day during which an offence continues;

“**definition**” means the interpretation given by a written law to a word or expression;

“**document**” means —

- (a) a book, map, plan or graph;
- (b) a paper, parchment or other similar material on which there is writing capable of carrying a definite meaning to persons familiar with it; and
- (c) a tape, film or other device on which writing is recorded or stored;

“**enactment**” means a written law or any portion of a written law;

“**export**” means to take out, or cause to be taken out, of Tuvalu by air or water;

“**financial year**” means the period of 12 months ending on 30 June in any year, or such other period of 12 months as is fixed by or under an Act of Parliament;<sup>11</sup>

“**foreshore**” means the area between high and low water marks;

“**function**” includes power, duty, responsibility, authority and jurisdiction;

“**Gazette**” means the Tuvalu *Gazette*, published by order of the Government, and includes any supplement to the Gazette and any special or extraordinary issue of the *Gazette*;

“**goods**” includes all kinds of movable personal property;

“**Government**” means the executive Government of Tuvalu;

“**Government Printer**” means the Government Printer of Tuvalu and any other printer authorised by or on behalf of the Government to print a written law or other document of the Government;

“**Governor-General**” means the Governor-General of Tuvalu whose office is provided for by section 55 of the Constitution, and includes any person lawfully performing the functions of the Governor-General;

“**High Court**” means the High Court of Tuvalu established by section 123 of the Constitution;<sup>12</sup>

“**immovable property**” means —

- (a) land whether covered by water or not;
- (b) any estate, right, interest or easement in or over any land; and
- (c) things attached to land or permanently fastened to anything attached to land;

“**Imperial enactment**” means —

- (a) an Act of the Parliament of the United Kingdom;
- (b) an Order in Council;
- (c) any subsidiary legislation made under such an Act or Order in Council;

“**import**” means to bring, or cause to be brought, into Tuvalu by air or water;

“**individual**” means a natural person;

“**internal waters**” means the internal waters of Tuvalu as defined by or under section 5 of the Marine Zones Act;<sup>13</sup>

“**judge**”, or “**Judge of the High Court**”, means the Chief justice, or a Judge of the High Court appointed under section 125 of the Constitution;<sup>14</sup>

“**land**” includes land covered by water, any estate or interest in land, all things growing on land, and buildings and other things permanently fixed to land and any cellar, cistern, sewer, drain or culvert in or under land;

“**law**” means any law for the time being in force in, having legislative effect in, extending to, or applicable in Tuvalu;

“**local government council**” means a Kaupule established under the Falekaupule Act;<sup>15</sup>

“**magistrate**” means a person appointed to hold a magistrate’s court under section 7 or 9 of the Magistrates’ Courts’ Act<sup>16</sup>, and by virtue of section 2(2), of that Act includes a Senior Magistrate;

“**magistrate’s court**” means a magistrate’s court constituted under Part II of the Magistrates Courts Act, and by virtue of section 2(2) of that Act includes the Senior Magistrate’s Court;

“**master**”, when used with reference to a vessel, includes every person (except a pilot) having command or charge of the vessel, and when used with reference to an aircraft, includes every person having command or charge of the aircraft;

“**medical officer**” means a person registered or deemed to be registered as a medical officer under the Health Professionals Act;<sup>17</sup>

“**medical practitioner**” means a person registered, or deemed to be registered, or licensed as a medical practitioner, or otherwise permitted to practise as a medical practitioner, under the Health Professionals Act;<sup>18</sup>

“**Minister**” means the Prime Minister or another Minister appointed under section 68 of the Constitution and includes —

- (a) a person appointed under section 70 of the Constitution to perform temporarily the functions of a Minister;
- (b) a person performing, in accordance with section 72 of the Constitution, the functions of a Minister in a caretaker government;

“**month**” has the meaning given in section 82;

“**movable property**” means property of every description except immovable property;

“**native**” means an indigenous inhabitant of Tuvalu and a descendant of an indigenous inhabitant, whether wholly or partly of indigenous descent;

“**non-native**” means any person other than a native;

“**oath**”, in the case of persons allowed by law to affirm, declare or promise instead of swearing, includes such affirmation, declaration and promise and “**swear**” in like case includes to so affirm, declare and promise;

“**occupy**” includes use, inhabit, be in possession of or enjoy the land or premises to which the word relates, otherwise than only as a servant or only for the purposes of the care, custody or charge of the land or premises;

“**offence**” means a crime, felony, misdemeanour or contravention or other breach of, or failure to comply with, a written law, for which a penalty is provided;

“**officer**” has the same meaning as “**public officer**”;

“**Parliament**” means the Parliament established for Tuvalu by section 83 of the Constitution;

“**penalty**” means a fine, imprisonment or other form of punishment;

“**perform**”, in relation to functions, includes the exercise of a power, responsibility, authority or jurisdiction;

“**person**” or any word or expression descriptive of a person includes any public body and any company, and association or body of persons, corporate or unincorporate, and this definition applies notwithstanding that the word “**person**” occurs in a provision creating or relating to an offence for the recovery of any fine or compensation;

“**police officer**” has the meaning given by the Police Service Act;<sup>19</sup>

“**power**” includes any privilege, authority or discretion;

“**prescribed**”, when used in or with reference to a written law, means prescribed by or under that written law;

“**Prime Minister**” means the Prime Minister whose office is provided for by section 64(1) of the Constitution, and includes —

- (a) a Minister performing the functions of the Prime Minister under section 68 of the Constitution;
- (b) a person performing in accordance with section 72 of the Constitution the functions of the Prime Minister in a caretaker government;

“**printing**” has the same meaning as “**writing**”;

“**property**” includes —

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition;

“**provided**”, when used in or with reference to a written law, means provided by or under that written law;

“**public body**” means —

- (a) a department, division or agency of the Government;
- (b) any undertaking by or of the Government;
- (c) Parliament;
- (d) a Kaupule;
- (e) a statutory corporation; or
- (f) any other body of persons, whether corporate or unincorporate, carrying on a service or undertaking which in the opinion of the Prime Minister is declared to be of a public nature for the benefit of Tuvalu;

“**public holiday**” means a day which is a general or special public holiday in terms of the Public Holidays Act;<sup>20</sup>

“**public office**” means an office of emolument in the service of the Crown in a civil capacity in respect of the Government, including the office of Judge, but

not including the office of Minister, Speaker, Member of Parliament or member of the Public Service Commission;

**“public officer”** or **“officer”** means a person holding or acting in a public office, but a person shall not be treated as such by reason only that —

- (a) being a person holding or acting in a public office, he is on leave of absence from the public office (including leave of absence pending relinquishment of the public office);
- (b) he is receiving a pension or other like allowance from the Crown;
- (c) he is a retired or reserve member of His Majesty's forces or a special constable;
- (d) he is a member, officer or servant of any Kaupule;
- (e) he is the holder of an office in the service or appointment of the Crown, or is performing any functions on behalf of the crown, if the only payment he receives in respect of that office or those functions are by way of travelling or subsistence allowances or a refund of out-of-pocket expenses;

**“public place”** includes —

- (a) every place to which, for the time being, the public are entitled to have access whether on payment or otherwise; and
- (b) a place which is for the time being used for a public or religious meeting or assembly or as an open court;

**“public seal”** means the Public Seal of Tuvalu;

**“registered”**, when used with reference to a document, means registered under the provisions of a written law applicable to the registration of the document;

**“regulation”** means a regulation made under the Act in which the term is used;

**“repeal”** includes rescind, revoke, cancel, delete or replace;

**“road”** includes any track, street, road, bridge, square, court, alley, lane, bridleway, footway, path, thoroughfare, passage or open space to which the public are entitled or permitted to have access whether on payment or otherwise;

**“rule”** means a rule made under the Act in which the term is used;

**“rules of court”**, when used in relation to a court, means rules made by the authority having power to make rules and orders regulating the practice and procedure of the court;

**“Secretary to Government”** means the Secretary to Government whose office is provided for by section 80 of the Constitution;

**“sell”** includes barter, exchange, offer to sell and expose for sale;

“**Senior Magistrate**” means a Senior Magistrate appointed under Part III of the Magistrates' Courts Act;

“**sign**” includes, in the case of a person unable to write, affixing or making a seal, mark or thumbprint;

“**Speaker**” means the Speaker of Parliament whose office is provided for by section 105 of the Constitution, and includes a Member of Parliament performing the functions of the Speaker under section 109 of the Constitution;

“**standard time**” means standard time as provided in section 78;

“**statutory corporation**” means a body corporate directly constituted by an Act of Tuvalu;

“**statutory declaration**” means a declaration made in accordance with section 12 or 13 of the Oaths and Statutory Declarations Act;<sup>21</sup>

“**street**” has the same meaning as “**road**”;

“**subsidiary legislation**” means any legislative provision made in exercise of any power in that behalf conferred by an Act, by way of bye-law, notice, order, proclamation, regulation, rule, rule of court, resolution or other instrument;

“**summary**”, in relation to the trial of any offence, means the trial of the offence by a magistrate's court;

“**summary conviction**” means conviction by a magistrate's court;

“**swear**” has the meaning given in the definition of “**oath**” in this subsection;

“**territorial sea**” means the territorial sea of Tuvalu as defined by or under section 7 of the Marine Zones Act;<sup>22</sup>

“**this Act**” includes any subsidiary legislation made and in force under the Act in which the expression appears;

“**transcription of an applied law**” means a transcription of an applied law caused to have been prepared under section 9(1) of the Laws of Tuvalu Act;<sup>23</sup>

“**Tuvalu**”, when used in a geographical sense, means the area of Tuvalu as defined in section 2 of the Constitution;<sup>24</sup>

“**Tuvaluan**” means a citizen of Tuvalu;

“**Tuvalu waters**” means —

- (a) the internal waters of Tuvalu;
- (b) the territorial sea of Tuvalu; and
- (c) where applicable, the archipelagic waters of Tuvalu;

“**under**”, in relation to a written law or a provision of a written law, includes “**by**”, “**in accordance with**”, “**pursuant to**” and “**by virtue of**”;

“**vehicle**” means any kind of wheeled transport propelled or drawn by mechanical power, or by an animal or person, and used or intended to be used

for the conveyance of persons or goods on a road, and includes a bicycle and a tricycle;

“**vessel**” includes —

- (a) any kind of water craft;
- (b) an aircraft; and
- (c) a hovercraft;

“**will**” includes any testamentary instrument and codicil and every writing making a voluntary posthumous disposition of property;

“**words**” includes figures and symbols;

“**written law**” means —

- (a) any Act for the time being in force;
- (b) any subsidiary legislation for the time being in force;
- (c) any Imperial enactment for the time being applicable in Tuvalu;

“**writing**” means letters, words, numbers or images, or their equivalent, set down or recorded by handwriting, typewriting, printing, photocopying, photography, lithography, magnetic impulse, mechanical or electronic recording or other form of data compilation;

“**year**” means any period of 12 months.

- (2) A reference in a written law to the Sovereign reigning at the time the law was enacted or made, or to the Crown, is to be construed as a reference to the Sovereign for the time being.
- (3) A reference in a written law to “**the Minister**” —
  - (a) in the case of a reference in an Act, means the Minister responsible for the administration of the Act, or the provision of the Act, in which the expression occurs;
  - (b) in the case of a reference in subsidiary legislation, means the Minister responsible for the administration of the Act, or the provision of the Act, under which the subsidiary legislation is made; and
  - (c) includes a Minister for the time being acting for or on behalf of the Minister referred to in paragraph (a) or (b), as the case may require.

## 11 Commonly used title

In a written law, an expression or name which is the commonly used title of a person or thing means that person or thing even if it is not the official, formal or full title of that person or thing.

**12 Parts of speech and grammatical forms**

Where a word or expression is defined in a written law, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

**13 Gender and number**

In a written law —

- (a) words and expressions importing the masculine gender include the feminine gender;
- (b) words and expressions importing the feminine gender include the masculine gender; and
- (c) words and expressions —
  - (i) in the singular number include the plural; and
  - (ii) in the plural number include the singular.

**14 Where Crown bound**

An Act does not bind the Crown unless it is expressed to do so or unless it appears to do so by necessary implication.

**15 Law always speaking**

- (1) A written law is considered as always speaking.
- (2) Where a written law, or thing expressed in a written law, is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to the written law and every part of it according to its true spirit, intent and meaning.

**16 Principles of interpretation**

- (1) A construction of a written law which promotes the general legislative purpose underlying the provision in question is to be preferred to a construction which does not.
- (2) The general legislative purpose is primarily to be derived from the written law itself (including any source referred to in the written law).
- (3) The court may refer to any other source in addition if it thinks fit to do so having regard to the requirements of justice including —
  - (a) the desirability of persons being able to rely on the meaning conveyed by the written law itself; and
  - (b) the need to avoid prolonging legal proceedings without compensating advantage.

## **17 International obligations**

A construction of a written law which is consistent with the international obligations of Tuvalu is to be preferred to a construction which is not.

## **18 Other rules of interpretation**

- (1) This Act does not exclude the application in any particular case of a rule of interpretation not referred to in this Act but if this Act applies in the particular case the rule is applicable subject to this Act.
- (2) Where a transcription of an applied law refers to the Interpretation and General Clauses Act, such a reference after the commencement of this Act shall be construed as a reference to this Act and such a reference in a transcription is amended accordingly.

## **19 Construction of internal references to section etc**

- (1) Where in a written law reference is made to a Part, Chapter, section, schedule, appendix or form without anything in the context to indicate that a reference to another written law is intended, the reference is to be construed as a reference to the Part, chapter, section, schedule, appendix or form of the written law in which the reference is made.
- (2) Where in a provision of a written law reference is made to a subsection, paragraph, sub-paragraph or other division without anything in the context to indicate that a reference to a division of another provision is intended, the reference is to be construed as a reference to a subsection, paragraph, sub-paragraph or other division of the provision in which the reference is made.

## **20 Disjunctive construction “or”**

- (1) In relation to a written law passed or made after the commencement of this Act, but subject to subsection (2), “or”, “other” and “otherwise” are to be construed disjunctively and not as implying similarity unless the word “similar” or some other word of like meaning is added.
- (2) This section shall not apply to any enactment which continues or directly amends, but does not repeal entirely, the text of an existing written law.

## **21 Reference to a series of provisions**

Where consecutive provisions of a written law are described by reference to the first and last of those provisions, the description shall be read as including both the first and last of those provisions.

## 22 Application, rules of interpretation

Definitions and rules of interpretation in a written law apply to the provisions containing them as well as to the other provisions of the written law.

# PART IV - CITATION AND COMMENCEMENT OF WRITTEN LAWS

## 23 Citation of written laws

- (1) A written law may be cited —
  - (a) by its short title or by any citation given to it;
  - (b) in the case of an Act which is not included in any revised or other edition of the Laws of Tuvalu by reference to the year in which it was enacted and its number among the Acts of that year;
  - (c) in the case of an Act in a revised or other edition of the Laws of Tuvalu by the Chapter number allocated to it in that edition;
  - (d) in the case of subsidiary legislation, by reference to the year in which it was made and its number as a statutory instrument of that year or the number of the notice in the *Gazette* in which it was published;
  - (e) in the case of an Imperial enactment, in accordance with the Interpretation Act 1978 of the United Kingdom; or
  - (f) in the case of a transcription of an applied law or an Imperial Law replacement Act, by reference to its number in a separate series of that year prefixed by the letters “PT” or “PR” respectively.
- (2) A provision of a written law may be cited by reference to the Part, section, regulation, rule, clause or other division of the written law in which the provision is contained.
- (3) The citation of or reference to a written law shall be made according to the copy of that written law printed by the Government Printer, or, if not so printed, the copy published in the *Gazette*.

## 24 Reference includes amendments and subsidiary

A reference in a written law to the Constitution, a written law or to any provision of the Constitution or a written law —

- (a) is a reference to it as from time to time amended; and
- (b) includes a reference to any subsidiary legislation made under the written law to which reference is made.

## 25 Publication of written laws, notices etc

- (1)
  - (a) Every Act;
  - (b) all subsidiary legislation (except bye-laws made by Kaupules); and
  - (c) any notice, order, proclamation or other instrument made in exercise of a power conferred by an Act which is not a legislative provision but which by or under the Act is to be published in the *Gazette*,

shall be published by exhibition at the Government Office Building, Vaiaku, Funafuti and shall in due course be printed in the *Gazette*.
- (2) A certificate of publication by exhibition on a particular date in accordance with subsection (1) signed by the Secretary to Government or the Attorney-General is evidence of publication on that date and shall be judicially noticed as such.
- (3) Without prejudice to the commencement of a written law in accordance with section 26, intimation of the coming into operation of every written law shall be made by the Government by radio broadcast and local newspaper either —
  - (a) before the commencement; or
  - (b) as soon as possible after the commencement.
- (4) Without prejudice to the commencement of a written law in accordance with section 26, every issue of the *Gazette* shall as soon as practicable after it is printed and distributed be exhibited publicly at the office of the Island Executive Officer<sup>25</sup> on each island.

## 26 Commencement of written laws

- (1) No written law shall come into operation until it has been published by exhibition in accordance with section 25(1), but —
  - (a) a written law may have retrospective effect in accordance with section 86(b) of the Constitution;
  - (b) the commencement of a written law may be postponed in accordance with this.
- (2) Every written law comes into operation unless the contrary intention appears in it, on the date of its publication by exhibition in accordance with section 25(1).
- (3) A power to fix a day on which a written law comes into operation does not include, unless express provision is made in an Act, power to fix a day earlier than the date of publication by exhibition in accordance with section 25(1).
- (4) Subject to subsection (7) where provision is made in a written law indicating that the written law is to come into operation by notice, the notice may —
  - (a) fix a date (including a time on a particular day); or

- (b) fix the commencement by reference to the occurrence of an event (which, without limiting in any way the operation of this paragraph, includes the publication by exhibition of the notice in accordance with section 25 (1)), and the provision comes into operation accordingly.
- (5) Where provision is made in a written law indicating that the written law is to come into operation by notice, one, or more than one, notice in accordance with subsection (4) shall be published in accordance with section 45 to provide for the commencement of various provisions of the written law —
- (a) on the same day;
- (b) on different days for, or for different purposes of, different provisions; or
- (c) on the occurrence of one, or more than one, event,
- whether or not fixing, or referring to, the same day.
- (6) A notice under subsection (5) for the partial operation of a written law may make such provision as appears to the Minister to be necessary or expedient in connection with the provisions brought into operation, including adaptations of that written law or any other written law in consequence of the partial operation of that written law.
- (7) Subject to the Act concerned, a notice referred to in subsection (4) or (5) shall not fix a date, time or event occurring earlier than the date of publication of the notice by exhibition in accordance with section 25(1).
- (8) Where in relation to a written law, or any part of a written law, a notice fixes a particular date as the date on which that written law or part comes into operation but does not fix a time on that day, the written law or part comes into operation at the first moment of the day so fixed.
- (9) A reference in a written law to the day of coming into operation or to the commencement of a written law is to be construed, where different provisions of the written law come into operation on different days, as a reference to the day of coming into operation of the appropriate provisions of that written law.

## **27 Commencement on specified day**

Where a written law or part of a written law is expressed to come into operation on a particular day but does not fix a time on that day, it comes into operation at the first moment of that day.

## **28 Commencement of commencement provision**

The provision of a written law which indicates the manner of the coming into operation of the written law provision comes into operation on the date on which the written law is published by exhibition in accordance with section 25(1).

## 29 Evidence of assent and commencement

A copy of a written law printed by the Government Printer, or, if the written law has not been so printed, a copy published in the *Gazette* —

- (a) which in the case of an Act includes a date purporting to be the date on which the Governor-General assented to the Act is evidence that the Governor-General assented to the Act on that date and shall be judicially noticed as such; and
- (b) a date purporting to be the date on which the written law or any provision of the written law came or will come into operation is evidence that the written law or provision came or will come into operation on that date and shall be judicially noticed as such; but without prejudice to the operation of section 28.

## PART V - REPEAL, AMENDMENT AND EXPIRY OF WRITTEN LAWS

### 30 Amending law construed with amended law

A written law amending any other written law shall be read as one with the other written law.

### 31 General savings on repeal

- (1) The repeal of a written law does not, unless the contrary intention appears, —
  - (a) revive anything not in force or existing at the time at which the repeal takes effect;
  - (b) affect the previous operation of the repealed written law, or anything duly done or suffered under the repealed written law;
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed written law;
  - (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed written law; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repeal had not been made.

- (2) The inclusion in the repealing provisions of a written law of any express saving with respect to the repeals effected by those provisions shall not be taken to

prejudice the operation of subsection (1) with respect to the effect of those repeals.

- (3) The repeal of a written law that validated or continued in force any act, matter or thing does not affect the validation or continuance.
- (4) Where a written law repeals a repealing enactment, the repeal does not revive any written law previously repealed by that enactment unless words are added reviving it.
- (5) When a written law repeals part only of any other written law, this section applies as it would apply if the other written law were wholly repealed.

### **32 Repeal and substitution**

- (1) Where a written law repeals wholly or partly another written law and substitutes provisions for the written law so repealed, that repealed written law remains in operation until the substituted provisions come into operation.
- (2) Where a written law —
  - (a) repeals wholly or partly another written law and substitutes provisions for the written law so repealed; or
  - (b) repeals and re-enacts, with or without modification, another written law, then —
    - (i) all districts or other local divisions or areas;
    - (ii) all councils, corporations, boards, tribunals, commissions, trusts or other bodies constituted, and all elections and appointments of members made;
    - (iii) all offices constituted and appointments of officers made;
    - (iv) all subsidiary legislation, warrants, certificates and documents made; and
    - (v) all other acts, matters and things,

which, at the commencement of the repealing law, are respectively in existence, or in force or operation, under or for the purposes of the repealed written law, shall, so far as consistent with the repealing law, subsist for the purposes of that law and shall continue as if the repealing law had been in operation when they respectively originated or were constituted, made or done and they had originated or been constituted, made or done under that law.

- (3) Subsidiary legislation which continues in operation under subsection (2) may be amended or repealed as if it had been made under the repealing law.
- (4) Where a written law repeals wholly or partly another written law and substitutes provisions for the written law repealed, then, unless the contrary intention appears, any reference, whether express or implied, in any other written law to

the provision so repealed is to be construed as a reference to the provision substituted.

### **33 Repeal of written law as amended**

Where a written law which has been amended by any other written law is repealed, that repeal includes the repeal of —

- (a) the other written law if it then has effect only as a written law to amend the repealed written law; or
- (b) in any other case, the provisions of the other written law to the extent that it has effect to amend the repealed written law.

### **34 Expiry etc of written law**

- (1) Upon the expiry or lapse of a written law, sections 31 and 33 apply as if the written law had been repealed.
- (2) Where a written law or a provision of a written law is expressed to expire or lapse on a particular day, it expires or lapses at the beginning of the day following that particular day.

## **PART VI - SUBSIDIARY LEGISLATION**

### **35 Confirmation or approval**

If a written law which empowers or directs that making of subsidiary legislation requires that the subsidiary legislation be confirmed or approved by another person or authority, the subsidiary legislation does not come into operation until it is so confirmed or approved.

### **36 Presentation to Parliament**

- (1) Subject to subsection (2), as soon as practicable after it is made, subsidiary legislation —
  - (a) shall be presented to the Speaker by the Minister accompanied by an explanatory memorandum explaining, in simple terms, its effect; and
  - (b) shall be tabled in Parliament with the explanatory memorandum by the Speaker.
- (2) Tabling of a copy of the *Gazette* containing the subsidiary legislation and explanatory memorandum is compliance with subsection (1)(b).

### 37 Disallowance

- (1) On a motion of not less than one day's notice, Parliament may, by resolution, disallow (but may not amend) any subsidiary legislation that has been tabled under section 36 in Parliament during the current or preceding session.
- (2) Subsidiary legislation may be disallowed under subsection (1) only on one or more of the following grounds, and the ground or grounds which are claimed to apply must be stated or indicated in the motion for disallowance —
  - (a) that the subsidiary legislation does not conform to the general principles of the law under which it was made, or of the Constitution (especially Part II (Bill of Rights) of the Constitution);
  - (b) that section 39(1) applies (without prejudice to any other course of action available by virtue of that subsection);
  - (c) that the power to make the subsidiary legislation was used in a way, or for a purpose, that is unexpected, or that Parliament could not reasonably be thought to have intended to allow;
  - (d) that the subsidiary legislation makes provision that should properly be made by Act;
  - (e) that the subsidiary legislation is made under an enactment excluding it from challenge in the courts;
  - (f) that the subsidiary legislation appears to have retrospective effect where the law under which it was made does not so provide;
  - (g) that the actual operation of the subsidiary legislation may have unexpected effects or effects that Parliament could not reasonably be thought to have intended to allow; or
  - (h) that the form or meaning of the subsidiary legislation requires clarification.
- (3) The disallowance of subsidiary legislation under this section has the same effect as its repeal on the date of disallowance.
- (4) This section does not apply to subsidiary legislation a draft of which is tabled in Parliament by the Speaker, at the request of a Minister, and which is approved by Parliament by resolution passed not more than 90 days before the date on which the subsidiary legislation is made.

### 38 Interpretation

- (1) Except where the context otherwise requires, words and expressions used in subsidiary legislation made under a particular written law have the same meaning as in the written law.
- (2) A reference in subsidiary legislation to “the Act” is a reference to the particular Act under which the subsidiary legislation is made.

### **39 General Provisions**

- (1) No subsidiary legislation shall be inconsistent with the provisions of any Act and subsidiary legislation is void to the extent of any such inconsistency.
- (2) Subsidiary legislation has the same force and effect and is binding and is construed for all purpose as if it has been contained in the Act under which it was made.
- (3) Subsidiary legislation shall not be expressed to come into operation on a day before the date of publication in any case where, if the subsidiary legislation so came into operation —
  - (a) the rights of a person (other than the Crown or a public body) existing immediately before the date of publication would be affected in a manner prejudicial to that person; or
  - (b) liabilities would be imposed on any person (other than the Crown or a public body) in respect of anything done or omitted to be done before the date of publication,

and if any provision is made in contravention of this subsection, that provision is void.

- (4) Subsidiary legislation which purports to be made in exercise of a particular power or powers shall be treated as having been made in exercise also of all other powers which would enable it to be made.
- (5) The power to make any subsidiary legislation includes the power to amend or repeal any subsidiary legislation made in exercise of that power; and if the person on whom the power is conferred has been wholly or partly replaced by another person, the power to amend or repeal may be exercised by the replacing person concerning all matters or things within his jurisdiction as if he were the original person.
- (6) Where an Act confers power on an authority to make subsidiary legislation for any general purpose and for any special purposes, the enumeration of the special purposes does not derogate from the generality of the powers conferred with reference to the general purpose.
- (7) It is presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed.
- (8) Subsidiary legislation extends to the whole of Tuvalu in its application unless the contrary intention appears.

### **40 Acts done under subsidiary legislation**

An act is deemed to be done —

- (a) under an Act;

- (b) by virtue of the powers conferred by an Act;
- (c) in pursuance or execution of the provisions of an Act; or
- (d) under the authority of an Act,

if it is done under or by virtue of, or in pursuance or execution of, or under the authority of subsidiary legislation made under any power contained in the Act.

#### **41 Constitution of offences**

- (1) Subsidiary legislation may —
  - (a) constitute offences in respect of the contravention of any of the provisions of the subsidiary legislation; and
  - (b) subject to subsection (2), prescribe the penalty which may be imposed on conviction for any such offence.
- (2) The penalty which may be prescribed for a contravention referred to in subsection (1) shall not exceed either or both a fine of \$2,000 or imprisonment for 12 months.

#### **42 Fees and charges**

- (1) Subsidiary legislation may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in the subsidiary legislation or in the written law under which the subsidiary legislation is made.
- (2) Where provision is made by subsidiary legislation for fees or charges, the subsidiary legislation may provide for all or any of —
  - (a) specific fees or charges;
  - (b) maximum or minimum fees or charges;
  - (c) maximum and minimum fees or charges;
  - (d) fees or charges according to value;
  - (e) the payment of fees or charges or either generally or under specified conditions or in specified circumstances; and
  - (f) the reduction, waiver or refund, in whole or in part, of the fees or charges, either on the happening of an event or in the discretion of a specified authority.
- (3) A reduction, waiver or refund provided under subsection (2)(f) may be expressed to apply or be applicable either generally or specifically —
  - (a) in respect of certain matters or transactions or classes or descriptions of matters or transactions;
  - (b) in respect of certain documents or classes or descriptions of documents;
  - (c) when an event happens or ceases to happen;

- (d) in respect of certain persons or classes or descriptions of persons; or
- (e) in respect of any combination of such matters transactions, documents, or events,

and may be expressed to apply or to be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified in the subsidiary legislation.

### **43 Making of subsidiary legislation**

- (1) The power to make subsidiary legislation may be exercised —
  - (a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions or in relation to any specified case or class or description of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised —
    - (i) the same provision for all the cases, a different provision for different cases or classes or descriptions of cases, or different provisions for the same case or classes or descriptions of case for different purposes of the legislation; or
    - (ii) any such provision either unconditionally or subject to specified conditions.
- (2) Subsidiary legislation may be made —
  - (a) so as to apply —
    - (i) at all times or at a specified time;
    - (ii) subject to section 39(8), throughout Tuvalu or in a specified part of Tuvalu;
  - (b) so as to require a matter affected by the legislation to be —
    - (i) in accordance with a specified standard or specified requirement;
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
  - (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body; and
  - (d) so as to provide, in a specified case or class of case for the exemption of persons or things or a class of persons or things from the provisions of the subsidiary legislation, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (3) In this section “specified” means specified in the subsidiary legislation.

## PART VII - POWERS AND DUTIES

### 44 Continuing effect of powers and duties

Where a written law confers a power or imposes a duty, the power may be exercised, or the duty shall be performed, from time to time as occasion requires, and as often as is necessary to correct any error or omission in any previous exercise or performance of the power or duty, notwithstanding that the power or duty is not generally capable of being exercised from time to time.

### 45 Extent of power

Where a written law confers a power to do or enforce the doing of any act or thing, all powers reasonably necessary to enable the act or thing to be done or its doing to be enforced are also conferred by the written law.

### 46 Construction of power in written law

- (1) Where a written law confers power to —
  - (a) make any subsidiary legislation;
  - (b) make any instrument; or
  - (c) exercise any power,

and the written law conferring the power prescribes conditions to be observed, performed or in existence before the power may be exercised, those conditions are presumed to be duly fulfilled if in the subsidiary legislation or instrument exercising the power there is a statement to the effect that it is made in exercise of, or in pursuance of, the power conferred by the written law and that the conditions have been fulfilled.

- (2) A power conferred by a written law to provide for, prohibit, regulate or otherwise control any act or thing, includes —
  - (a) power to do so by the grant of a licence or by registration; and
  - (b) power to prohibit acts whereby the prohibition, regulation or control might be evaded.
- (3) Where a written law confers power to issue, grant, give or renew a licence, registration, lease, right, approval or exemption, that power includes —
  - (a) a discretion to issue, grant, give or renew or to refuse to issue, grant, give or renew;
  - (b) power to issue, grant, give or renew subject to conditions or further conditions which are prescribed or are stated in writing in the instrument and which are not inconsistent with that written law;

- (c) power to amend or vary the licence, registration, lease, right, approval or exemption or to amend or vary the conditions or to impose further conditions in accordance with paragraph (b).
- (4) Nothing in subsection (3) affects any right which may be conferred by any written law on a person to appeal against a refusal to issue, grant, give or renew a licence, registration, lease, right, approval or exemption.
- (5) A power conferred by a written law —
  - (a) to give a direction, includes a power to amend the direction;
  - (b) to give a direction, includes a power to do so subject to conditions not inconsistent with the written law;
  - (c) to approve a person, matter, or thing, includes power to withdraw approval of the person, matter or thing;
  - (d) to make, issue or approve a proclamation, order, notice, declaration, instrument, notification, register or list, includes power to amend or suspend the proclamation, order, notice, declaration, instrument, notification, register or list or to substitute another for one already made, issued or approved; or
  - (e) to give directions with respect to any matter or thing, includes a power to prohibit the matter or thing.
- (6) Where in any case subsection (2)(a) applies to a power under a written law, subsections (3) and (5)(a) and (b) also apply in relation to that power.
- (7) When a person is required or permitted to do any thing for which a fee is payable or a charge made under a written law that person may decline to do that thing —
  - (a) until the fee or charge is paid; or
  - (b) where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by that person.
- (8) Where a thing has been done for which an estimated amount has been paid as provided in subsection (7)(b), that amount shall be adjusted to the correct amount either by means of a further payment or by a refund of the amount overpaid.
- (9) In this section, “licence” includes authorisation, certificate or permit.

#### **47 Majority may act**

- (1) Where any act or thing may or is required to be done under a written law by more than two persons, a majority of them may do it.
- (2) Subsection (1) extends to and includes —

- (a) any case where a power or duty is conferred or imposed on persons jointly or collectively; and
- (b) courts and tribunals.

#### **48 Reference to holder of office**

A reference in a written law to the holder of an office by the term designating his office is a reference to the person for the time being holding or acting in or discharging the functions of the office.

#### **49 Powers of appointment**

- (1) A power under a written law to appoint a person to hold or act in an office, perform a function or be or do any other thing may be exercised —
  - (a) by appointing a person by name; or
  - (b) by appointing the holder of an office by the term designating his office.
- (2) An appointment made as provided in subsection (1)(b) operates so as to appoint the person who, from time to time, holds, acts in or discharges the functions of the office designated.
- (3) A power or a duty on a person under a written law to make an appointment to an office or position including an acting appointment, includes a power —
  - (a) to remove or suspend a person so appointed and to reappoint or reinstate such a person;
  - (b) where a person so appointed is suspended or unable, or expected to become unable, for any other cause to perform the functions of the office or position to appoint a person to act temporarily in place of the person so appointed during the period of suspension or inability, but a person shall not be appointed to so act temporarily unless he is eligible and qualified to be appointed to the office or position; and
  - (c) to specify the period for which the person appointed in exercise of such a power or duty shall hold his appointment.
- (4) For the purposes of subsection (3)(b), “cause” includes —
  - (a) illness;
  - (b) temporary absence from Tuvalu; and
  - (c) conflict of interest.
- (5) The validity of anything done by a person purporting to act under an appointment made under subsection (3)(b) shall not be called in question on the ground that the occasion for his appointment had not arisen or had ceased.
- (6) Where a written law confers a power or imposes a duty on a person to make an appointment to an office or position and that power or duty is exercisable only

on the nomination or recommendation, or is subject to the approval, concurrence, or consent of some other person, then the powers conferred by subsection (3) shall only be exercisable on such nomination or recommendation or subject to such approval, concurrence, or consent.

- (7) Where the holder of an office is on leave of absence pending the relinquishment of the office, another person may be appointed to, and may discharge the functions of, the office.

## **50 Change of title of public officer**

- (1) Where the title of a public office or officer is changed, the Governor-General may by notice notify the change and declare that, for the purposes of all written laws, the title of the office or officer is replaced by the new title specified in the notice.
- (2) Where the functions of a public officer are transferred to another public officer the Governor-General may by notice notify that such references by office to a particular public officer as are specified in the notice shall be read and construed as references to such other public officer as is specified.
- (3) Where a notice is published under subsection (1) or (2) any written law or document containing a reference whether express or implied, to the title so changed or functions so transferred is deemed, unless the context otherwise requires, to have been amended by the substitution for that reference of a reference to the new title or officer.

## **51 Exercise of power before commencement**

Where a written law or a provision of a written law which is not to come into operation immediately on its publication confers a power —

- (a) to make any appointment;
- (b) to hold elections;
- (c) to make any subsidiary legislation;
- (d) to establish any office;
- (e) to prescribe any fee or form;
- (f) to give any directions; or
- (g) to do any other thing for the purposes of the Act,

the power may be exercised at any time after the publication of the written law by exhibition in accordance with section 25(1), but no act, matter or thing done in exercise of the power has any effect before the commencement of the written law except in so far as it is necessary for bringing the written law into operation.

**52 Power to relate back appointments**

Any appointment made under a written law may be declared to have effect as from the date on which the person appointed in fact began to discharge the functions of his appointment, not being a date earlier than the commencement of that written law.

**53 “May” and “shall”**

- (1) Where in a written law the word “may” is used in conferring a power, it is to be interpreted to imply that the power so conferred may be exercised or not, at discretion.
- (2) Where in a written law the word “shall” is used in conferring a function, it is to be interpreted to mean that the function so conferred must be performed.

**54 Signification of discharge of functions**

- (1) The fact of the exercise or performance of a power or duty under a written law by the Governor-General, the Prime Minister or a Minister —
  - (a) may, in the case of the Governor-General be signified under the hand of the Prime Minister, the Secretary to Government or the Attorney-General;
  - (b) may, in the case of the Prime Minister, be signified under the hand of the Secretary to Government or the Attorney-General;
  - (c) may, in the case of a Minister, be signified under the hand of the Secretary to Government or the Secretary who is directly responsible to the Minister.
- (2) Subsection (1) applies in relation to a power or duty whether conferred or imposed or delegated to a Minister.

## **PART VIII - DELEGATIONS**

**55 Delegation of functions**

- (1) Subject to subsection (2) and section 56, where by or under a written law a Minister or public officer is empowered to exercise any power or required to perform any duty, he may delegate the exercise of the power or the performance of the duty to a person named, or to persons of a specified class, or to the holder or holders for the time being of a specified office or class of offices, in the instrument of delegation, and immediately or from the date specified in that instrument the delegate may exercise the power and shall perform the duty delegated.
- (2) A delegation under subsection (1) —

- (a) shall be made in writing;
  - (b) may be made subject to such conditions, exceptions and limitations as are specified in the instrument of delegation;
  - (c) may be revoked or varied, in writing, at will;
  - (d) does not prevent or affect the exercise or performance by the delegator of the power or duty so delegated.
- (3) A delegation under subsection (1) —
- (a) of a power is deemed to include the delegation of any duty incidental to or connected with the power; and
  - (b) of a duty is deemed to include the delegation of any power incidental to or connected with the duty.
- (4) Where under a written law the performance of a function by a person is dependent on his opinion, belief or state of mind in relation to a matter and the function has been delegated under subsection (1), the function may be exercised by the delegate on his own opinion, belief or state of mind in relation to the matter.
- (5) Where under a written law an act or thing may, or is required to be, done to, by reference to or in relation to, a person and that person has under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing is to be regarded as effectually done if done to, by reference to or in relation to the person to whom that function has been delegated.

## **56 Restrictions on delegation**

Section 55 does not entitle any person to delegate the exercise of any power or the performance of any duty —

- (a) which is expressly prohibited from delegating by any written law;
- (b) to make any subsidiary legislation;
- (c) to hear appeals.

## **PART IX - BOARDS AND COMMITTEES**

### **57 Power to appoint chairman etc**

Where a written law confers power on a person to appoint persons to be members of a board, tribunal, commission, committee, or similar body, the person so appointing may appoint a chairman, a deputy chairman, a vice chairman and a secretary of the board, tribunal, commission, committee or similar body.

**58 Power to appoint public officer etc**

Where a written law confers power on a person to appoint persons to be members of a board, tribunal, commission, committee or similar body, the person so empowered may appoint a public officer, by his official designation, to be a member of the board, tribunal, commission, committee or similar body, and, on the appointment and until the appointment is revoked or otherwise determined, the person for the time being holding that public office is a member of the board, tribunal, commission, committee or similar body.

**59 Appointment of alternate and temporary members**

Where a board, tribunal, commission, committee or similar body is established by or under a written law, any person who is empowered by the written law to appoint any or all of the members may —

- (a) appoint a duly qualified person to be an alternate member for a substantive member and the alternate member may attend any meeting of the board, tribunal, commission, committee or similar body when the substantive member is temporarily unable to attend for any reason; and
- (b) appoint a duly qualified person to be a temporary member in the place of a substantive member who is precluded by illness, absence from Tuvalu or any other cause from exercising his functions as such,

and when attending a meeting of the board, tribunal, commission, committee or similar body, such an alternate or temporary member is deemed for all purposes to be a member.

**60 Powers, not affected by vacancy etc**

Where a board, tribunal, commission, committee or similar body is established by or under a written law the powers of the board, tribunal, commission, committee or similar body are not affected by —

- (a) a vacancy in its membership;
- (b) a defect in the appointment or qualification of a person purporting to be a member;
- (c) any minor irregularity in the convening or conduct of a meeting; or
- (d) the presence or participation at a meeting of a person not entitled to be present or to participate.

**61 Power of majority**

- (1) Where a written law confers a power or imposes a duty on a body, being a board, tribunal, commission, committee or similar body, the power may be exercised or duty performed by the majority of its members.

- (2) Whenever a body is assembled, in all matters in which a decision is taken by vote (by whatever name the vote may be called) the chairman or other member presiding shall have a casting vote as well as a deliberative vote.
- (3) The exercise of any power vested in a body may be signified either by the chairman or other person presiding at the meeting or other deliberation at which the power was exercised or at which, as the case may be, authority to exercise it was conferred, or by any person from time to time authorised by the body to signify the exercise of the power.

## **62 Seal**

Where any Act constitutes any board, tribunal, commission, committee or similar body to be a body corporate having perpetual succession and a common seal, and any document requires to be sealed with the common seal, then the common seal shall be affixed by the chairman or presiding member of the board, tribunal, commission, committee or similar body or by a member appointed by the chairman or presiding member for that purpose, and shall be authenticated by the signature of the chairman or presiding member or that member.

## **PART X - LEGAL PROCEEDINGS AND PENALTIES**

### **63 Evidence of signature of authority**

Where the consent of an authority is necessary before any proceedings, whether civil or criminal, are commenced a document or instrument giving the consent and purporting to be signed by the authority is evidence that the consent has been given, without proof that the signature to the document or instrument is that of the authority.

### **64 Evidence by document etc**

Where a written law provides that a document or instrument is evidence of a fact without anything in the context to indicate that the document or instrument is conclusive evidence then, in any legal proceedings, the document or instrument is admissible in evidence and the fact is deemed to be established in the absence of evidence of the contrary.

### **65 Ex-officio proceedings not to abate**

Civil proceedings taken by or against a person in virtue of his office are not discontinued or abated by his death, resignation, absence or removal from office, but may be carried on by or against the person for the time being holding, acting in or discharging the functions of the office.

**66 Power to administer oath**

Any court, Judge or person authorised by law or by the consent of the parties to hear and determine any matter or thing has authority to administer an oath to all witnesses legally called before the court, Judge or other person.

**67 Imposition of penalty no bar to civil action**

The imposition of a penalty or fine by or under the authority of a written law does not relieve a person from liability under any civil proceedings.

**68 Offences under more than one written law**

Where an act constitutes two or more offences, whether under the same written law or otherwise, the offender is liable to be prosecuted and punished for any or all of such offences but, subject to section 20 of the Penal Code,<sup>26</sup> is not liable to be punished twice for the same offence.

**69 Maximum, minimum, cumulative and daily penalties**

- (1) Where in a written law a penalty is prescribed for an offence, the offence is punishable by a penalty not exceeding the penalty prescribed.
- (2) Where in a written law more than one penalty is prescribed for an offence, the use of the word “and” means that the penalties may be imposed alternatively or cumulatively.
- (3) Where in a written law a maximum penalty and a minimum penalty are prescribed in respect of an offence, the offence is punishable by a penalty not less than that minimum nor greater than that maximum.
- (4) Where in a written law a penalty prescribed in respect of an offence is referred to as being a daily penalty, that reference indicates that a penalty not exceeding that daily penalty may, in addition to any other penalty that may be imposed in respect of the offence, be imposed for each day or part of a day during which the offence continues.

**70 Continuing offences**

- (1) Where —
  - (a) by or under a written law an act or thing is required or directed to be done within a particular period or before a particular time; and
  - (b) failure to do that act or thing within that period or before that time constitutes an offence; and
  - (c) that act or thing is not done within that period or before that time,the following provisions apply —

- (i) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;
  - (ii) where a person is convicted of an offence that, by virtue of paragraph (i), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of conviction during which the failure to do that act or thing continues; and
  - (iii) unless otherwise provided, the daily penalty applicable to each separate and further offence is \$50.
- (2) Where —
- (a) by or under a written law an act or thing is required or directed to be done but no period within which it is to be done is specified; and
  - (b) failure to do that act or thing constitutes an offence; and
  - (c) a person is convicted of an offence in respect of a failure to do that act or thing,
- that person is guilty of a separate and further offence in respect of each day after the day of conviction during which the failure to do that act or thing continues and, unless otherwise provided, the daily penalty applicable to each such separate and further offence is \$50.
- (3) Charges against the same person for any number of offences under subsection (1)(ii) or subsection (2) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.
- (4) If a person is convicted of more than one offence under subsection (1)(ii) or more than one offence under subsection (2), the court may impose one penalty in respect of all the offences of which the person is so convicted under the relevant subsection, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed separately in respect of each offence.

## 71 Offence if liable to penalty

Where in any provision of a written law a liability to a penalty is expressed, any contravention of that provision is an offence punishable on conviction by a penalty not exceeding the penalty so expressed.

## 72 Amendment of penalty

For the avoidance of doubt, where an act or omission constitutes an offence and the penalty for that offence is varied between the commission of the offence and

conviction for that offence, the offender is liable to the penalty prescribed at the time of the commission of the offence.

### **73 Offences by bodies corporate**

- (1) Where at any time a body corporate commits an offence under a written law (enacted or made after the commencement of this Act) with the consent or connivance of, or because of neglect by, an individual, the individual commits the same offence if at that time —
  - (a) he is a director, manager, secretary or similar officer of the body corporate;
  - (b) he is purporting to act as such an officer; or
  - (c) the body corporate is managed by its members of whom he is one.
- (2) Where a body corporate commits an offence against a written law (enacted or made after the commencement of this Act) for which the only penalty prescribed is a term of imprisonment, the body corporate is punishable on conviction by a fine which —
  - (a) if the penalty so prescribed is a term of six months or under, does not exceed \$1,000;
  - (b) if the penalty so prescribed is over a term of six months but not over a term of two years, does not exceed \$2,000; and
  - (c) if the penalty so prescribed is over a term of two years, does not exceed \$3,000.

### **74 Service of documents**

- (1) A document or notice required or permitted to be served on, or given, delivered and notices sent to, a person under or for the purposes of a written law, may, unless the contrary intention appears, be served, given, delivered or sent —
  - (a) in the case of an individual (except where paragraph (b) or (c) applies) by serving it personally on the individual or by sending it by pre-paid post to him at his usual or last known place of abode or business;
  - (b) in the case of a public officer in his capacity as such, by serving it personally on him or by leaving it at or sending it by pre-paid post to him at the principal office where he exercises and performs his functions;
  - (c) in the case of a partnership —
    - (i) by serving it personally on a partner or the person having the control or management of the partnership or by sending it by pre-paid post to him at his usual or last known place of abode; or
    - (ii) by leaving it at or sending it by pre-paid post to the principal office of the partnership;

- (d) in the case of a body corporate, by leaving it at or sending it by pre-paid post to the registered or principal office of the body corporate; or
  - (e) in the case of —
    - (i) a body (whether incorporated or not) constituted or established by a written law; or
    - (ii) an association of persons (whether incorporated or not),  
by leaving it at or sending it by pre-paid post to the principal office of the body or association or any other office specified by the body or association as one at which it will accept service of documents or notices of the same kind as that document or notice.
- (2) For the purposes of subsection (1)(c) or (1)(d), the principal office of a company registered outside Tuvalu or of a partnership carrying on business outside Tuvalu is its principal place of business in Tuvalu or, if the company has no place of business in Tuvalu the address of the person authorised to accept service in terms of section 228(2) of the Companies Act.<sup>27</sup>
- (3) Where a document or notice is required or permitted under or for the purposes of a written law to be served on, or given, delivered, or sent to, a person as being the person having an interest in land and it is not practicable after reasonable inquiry to ascertain that person's name or address, the document or notice may be served, given, delivered or sent —
- (a) by addressing it to that person by the description of the person having that interest in the land (naming it); and
  - (b) by delivering the document or notice to some responsible person on the land or affixing it, or a copy of it, in a conspicuous position on the land.
- (4) Where a document or notice is sent by post under subsection (1), service or notice is deemed to have been effected or given, unless the contrary is proved, at the time at which the document or notice would be delivered or received by the addressee in the ordinary course of post.

## 75 Fines

A fine or penalty imposed by or under the authority of a written law shall be paid into the Consolidated Fund.<sup>28</sup>

## 76 Disposal of forfeits

- (1) Where under a written law movable property is adjudged by a court or other person or authority to be forfeited, it is forfeited to the Crown, and if it is ordered by a competent authority to be sold, the net proceeds of sale shall be paid into the Consolidated Fund.
- (2) Subsection (1) does not apply where under a written law the whole or any part of a forfeit or of the proceeds of a forfeit are expressed to be recoverable by

some person or may be granted by a court or other person or authority to some person.

## **77 Rights and duties of Attorney-General**

- (1) The Attorney-General is entitled to the same rights, powers, duties, privileges and discretions in the courts of Tuvalu, and as to the institution of and participation in proceedings in those courts, as are enjoyed in England by His Majesty's Attorney-General.
- (2) The Attorney-General is ex-officio a justice of the peace for Tuvalu.

## **PART XI - TIME AND DISTANCE**

### **78 Standard time**

- (1) The standard time in Tuvalu is 12 hours in advance of Greenwich Mean Time.
- (2) Whenever an expression of time occurs in a written law, or document, the time referred to shall, unless it is otherwise expressly provided, be the standard time of Tuvalu.

### **79 References to “am” and “pm”**

The expression “a.m.” indicates the period between midnight and to the following noon, and the expression “p.m.” indicates the period between noon and the following midnight; and where two such expressions occur conjunctively in relation to any specified hour or in conjunction with the word “sunset”, or “sunrise” they are to be construed as relating to a consecutive period of time.

### **80 Where no time prescribed**

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

### **81 Computation of time**

- (1) In computing time for the purposes of a written law —
  - (a) where a period of time is expressed to begin at, on or with a specified day, that day is included in the period;
  - (b) where a period of time is expressed to be reckoned from or after a specified day, that day is not included in the period;

- (c) where anything is to be done within a time before a specified day, the time does not include that day;
  - (d) where a period of time is expressed to end at, on or with a specified day or to continue to or until a specified day, that day is included in the period;
  - (e) where the time limited for the doing of a thing expires or falls on an excluded day, the thing may be done on the next day that is not an excluded day;
  - (f) where there is a reference to a number of clear days or “at least” or “not less than” a number of days between two events, in calculating the number of days there are to be excluded the days on which the events happen;
  - (g) where there is a reference to a number of days not expressed to be clear days of “at least” or “not less than” a number of days between two events, in calculating the number of days there is to be excluded the day on which the first event happens and there is to be included the day on which the second event happens;
  - (h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding is to be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day;
  - (i) where an act or proceeding is directed or allowed to be done or taken within a period of time not greater than 6 days, no excluded day is to be reckoned in calculating that period of time.
- (2) For the purposes of this section, “excluded day” means a Sunday or a public holiday.

## 82 Reckoning of months

- (1) In a written law, “month” means a calendar month, that is to say a month reckoned according to the calendar.
- (2) If a period of a whole number of months specified in a written law begins (in accordance with section 81) —
  - (a) on the first day of a month, it ends on the last day of the appropriate month;
  - (b) on any day of a month, other than the first day, it is reckoned from the day on which it is to begin to one day earlier than the same day in the appropriate month; or if the same day does not occur in the appropriate month, to the last day of that month.
- (3) Examples of the operation of subsection (2) are —
  - (a) a period of one month beginning on 1<sup>st</sup> March ends on 31<sup>st</sup> March;

- (b) a period of 3 months beginning on 15<sup>th</sup> January ends on 14<sup>th</sup> April;
- (c) a period of 6 months beginning on 30<sup>th</sup> or 31<sup>st</sup> August ends on 28<sup>th</sup> February (or 29<sup>th</sup> February in a leap year).

### **83 Power to extend time**

Where in a written law a time is prescribed for doing any act or taking any proceeding and power is given to a court, public body, public officer or other authority to extend such time, then the power —

- (a) may be exercised by the court, public body, public officer or other authority although the application for the same is not made until after the expiration of the time prescribed; and
- (b) unless the context otherwise requires, may be exercised from time to time.

### **84 Warrants, etc, valid on Sunday or public holiday**

Any summons, notice, warrant or other process may be issued, served or executed and any arrest, search or seizure may be carried out or made on any day, whether a Sunday or a public holiday or not, and at any hour of the day or night.

### **85 Distance**

In the measurement of any distance for the purposes of a written law, the distance shall be measured in a straight line on a horizontal plane.

## **PART XII - MISCELLANEOUS AND REPEALS**

### **86 Gazette as evidence**

- (1) A copy of the *Gazette* containing a written law is evidence of the due making of the written law and of its tenor.
- (2) A copy of the *Gazette* containing a notice or publication (not being subsidiary legislation) is evidence of the tenor of the notice or publication.

### **87 Deviation from form**

Where a form is prescribed or specified by or under a written law, the use of the form is not invalidated by any variation or alteration of the form that is not calculated or likely to mislead or does not materially affect the substance of the form.

**88 Fees for official documents, signatures etc**

- (1) Where by a written law the signature of the Governor-General or of a Minister or of a public officer is required to —
  - (a) a certificate, authorisation, consent, licence, permit or exemption; or
  - (b) an alteration, transfer or renewal of, addition to, endorsement on, or duplicate or copy of a document mentioned in paragraph (a),and no fee for the signature is prescribed by law, there is payable for the signature such fee as the Minister may prescribe by notice.
- (2) Where a written law requires or authorises the issue of a document by a Minister or public officer —
  - (a) the Minister may; and
  - (b) the public officer may, subject to any directions of the Minister,issue a copy or duplicate of the document, on payment of such fee as may be prescribed by law or, if no fee is so prescribed, as the Minister may prescribe by notice.
- (3) Where a written law requires or authorises an alteration, transfer or endorsement of or addition to a certificate, authorisation, consent, licence, permit or exemption by a public officer, such fee is payable as may be prescribed by law or, if no fee is so prescribed, as the Minister may prescribe by notice.
- (4) Where an extract of a document, book, record or instrument may be properly certified by a public officer as a true extract of the document, book, record or instrument, such fee is payable for the certifying of the extract by the public officer as may be prescribed by law or, if no fee is so prescribed, as the Minister may prescribe by notice.

**89 Reprint of written laws**

The Government Printer may, with the authority of the Attorney-General, print copies of a written law with all additions, omissions, substitutions and amendments effected by an amending written law and the copies shall, unless the contrary is proved, be deemed to be authentic copies of the written law so amended at the date of printing.

**90 Correction of errors in written laws**

The Attorney-General may, by order, correct a typographical error or error in punctuation in a written law.

## PART XIII - IMPERIAL ENACTMENTS<sup>29</sup>

### 91 Modifications

An imperial enactment shall be judicially noticed as such and shall be read with such modifications as to names, localities, courts, officers, persons, moneys, penalties or otherwise as may be necessary to make the same applicable to the circumstances of Tuvalu.

### 92 Citation of Imperial enactments

An imperial enactment may be cited by a short title or citation, if any, or by reference to the regnal or calendar year in which it was passed or by the number assigned to any statutory instrument or statutory rule and order.

### 93 Construction of reference to Imperial enactment

A reference in any law to an imperial enactment or to any provision, part or division thereof shall be construed as a reference to the same as the same may be from time to time amended and as a reference to any imperial enactment or to any provision, part or division thereof, substituted therefor.

### 94 References to subsidiary legislation under Imperial Acts

A reference in any law to any imperial Act shall include a reference to any Order in Council, rule, regulation, proclamation, order, notice, rule of court, bye-law or other instrument made under or by virtue thereof and having legislative effect.

### 95 Construction of Imperial enactments

Any imperial enactment shall be construed in accordance with the terms thereof and of any interpretation statute applicable thereto and, to the extent to which no provision is made in the imperial enactment or in such statute for the interpretation thereof, in accordance with the provisions of this Act as if such imperial enactment were itself an Act; and any reference in this Act to an Act or Ordinance shall, in the interpretation of an imperial enactment, include a reference to imperial enactments.

### 96 Proof of Imperial enactments

A copy of —

- (a) any printed collection purporting to be printed or published by authority;  
or
- (b) the *Gazette*, purporting to be printed by the Government Printer,

containing any imperial enactments, shall be *prima facie* evidence in all courts and for all purposes whatsoever of the due making and tenor of such imperial enactment, without any proof being given that such copy was so printed.

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## ENDNOTES

<sup>1</sup> 1990 Revised Edition, Cap 1A – Act 7 of 1988, LN 16/1988

Amended by Act 12 of 2009, commencement 3 December 2009

Amended by Act 9 of 2021, commencement 3 June 2022 by LN 26/2022

Amended by Act 10 of 2023, commencement 22 December 2023

Cross references to the repealed 1986 Constitution, have been changed to references to the new Constitution, in accord with Schedule 5 clause 2 of the 2023 Constitution

<sup>2</sup> LN 14/86

<sup>3</sup> Cap 48.24

<sup>4</sup> Cap 1.02

<sup>5</sup> See also now section 3 of the Audit Act, Cap 32.02

<sup>6</sup> Cap 1.06

<sup>7</sup> Cap 52.05

<sup>8</sup> Cap 36.05

<sup>9</sup> Cap 1.02

<sup>10</sup> See also now the Superior Courts Act, Cap 7.68

<sup>11</sup> Amended by Act 10 of 2023

<sup>12</sup> See also now the Superior Courts Act, Cap 7.68

<sup>13</sup> Cap 48.28

<sup>14</sup> See also now the Superior Courts Act, Cap 7.68

<sup>15</sup> Cap 4.08

<sup>16</sup> Cap 7.36

<sup>17</sup> Cap 28.12

<sup>18</sup> Cap 28.12

<sup>19</sup> Cap 20.24; Substituted by Act 12 of 2009

<sup>20</sup> Cap 4.50

<sup>21</sup> Cap 7.48

<sup>22</sup> Cap 48.24

<sup>23</sup> Cap 1.06

<sup>24</sup> See also the Marine Zones Act, Cap 48.24

<sup>25</sup> Section 131(5) of the Falekaupule Act (Cap 4.08) provides –

“Any reference in any written law in force immediately before the commencement of this Act to a local government council or to a president, executive officer or other officer of such a council shall be read and construed as if it were a reference to a Kaupule, a Pule o Kaupule, a Failautusi ote Kaupule or other officer of a Kaupule respectively, and every reference to a council fund shall be read and construed as a reference to a Kaupule fund.”

<sup>26</sup> Cap 10.20

<sup>27</sup> Cap 40.08

<sup>28</sup> Fine Units are provided for under section 96 of the Police Service Act (Cap 20.24) and are valued at \$10 until increased by regulation

<sup>29</sup> Sections 91 to 96 were originally contained in Part XI of the Interpretation and General Clauses Act which, apart from Part XI, was repealed by this Act