



**Tuvalu**

# **LAWS OF TUVALU ACT**

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Tuvalu

## LAWS OF TUVALU ACT

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Tuvalu

## LAWS OF TUVALU ACT

### AN ACT TO DECLARE WHAT CONSTITUTES THE LAWS OF TUVALU; AND FOR CONNECTED PURPOSES<sup>1</sup>

Commencement [1st January 1988]

#### 1 Short title

This Act may be cited as the Laws of Tuvalu Act.

#### 2 Commencement

This Act shall come into operation on 1st January, 1988.

#### 3 Interpretation

- (1) In this Act, unless the context otherwise requires —  
“**applied law**” means an imperial enactment such as is described in section 7;  
“**common law of Tuvalu**” means the common law as described in section 6;  
“**customary law**” has the meaning assigned by section 5.
- (2) A reference in this Act to an Act includes subsidiary legislation made under the Act.

#### 4 Laws of Tuvalu

- (1) The Constitution is the supreme law of Tuvalu and the other laws comprising the Laws of Tuvalu have effect subject to its provisions.
- (2) In addition to the Constitution, the Laws of Tuvalu comprise —

- (a) every Act;
- (b) customary law;
- (c) the common law of Tuvalu;
- (d) every applied law.

## **5 Customary law**

- (1) Customary law comprises the customs and usages, existing from time to time, of the natives of Tuvalu.
- (2) Subject to section 4(1), customary law shall have effect as part of the law of Tuvalu, except to the extent that it is inconsistent with an Act or an applied law published under section 11(1) and subsidiary legislation made thereunder and so published.
- (3) Schedule 1 has effect with respect to the determination and recognition of customary law.
- (4) The Minister may amend Schedule 1 by regulation, subject to the agreement of the Chief Justice.

## **6 Common law of Tuvalu**

- (1) Subject to this section, the common law of Tuvalu comprises the relevant rules, as applied in the circumstances pertaining, from time to time, in Tuvalu.
- (2) In ascertaining for the purposes of subsection (1) the relevant rules –
  - (a) the effect of any imperial enactment, enacted or made after 1st January, 1961, on those rules shall be disregarded, save in so far as the imperial enactment had or has effect as part of the law of Tuvalu; and
  - (b) any such rule that is inapplicable or inappropriate in the circumstances pertaining, from time to time, in Tuvalu shall be disregarded.
- (3) Subject to section 4(1), the common law of Tuvalu shall have effect as part of the law of Tuvalu, save in so far as –
  - (a) it is inconsistent with an Act or an applied law; or
  - (b) in its application to any particular matter it is inconsistent with customary law in respect of that matter.
- (4) In every court the rules generally known as the common law and the doctrines of equity included in the relevant rules and comprised in the common law of Tuvalu, shall be administered concurrently; but in the event of a conflict between those rules and those doctrines with reference to the same matter, the doctrines of equity shall prevail.
- (5) In this section, “the relevant rules” means the rules generally known as the English common law and the doctrines of equity.

## **7 Applied laws**

- (1) The applied laws comprise those imperial enactments which have effect as part of the law of Tuvalu.
- (2) For the purpose of its application as part of the law of Tuvalu, an applied law shall be construed with such —
  - (a) changes as to names, titles, offices, persons and institutions; and
  - (b) other formal and non-substantial changes,as are necessary to adapt it to the provisions of the Constitution.

## **8 Adaptation of applied law**

- (1) The Attorney-General may, by regulation, make such amendments to an applied law as may appear to him to be necessary or expedient for bringing that law into conformity with the Constitution, any Act or customary law or with the circumstances prevailing in Tuvalu and, in particular, may —
  - (a) make such changes as to names, titles, offices, persons and institutions as are necessary to so adapt the applied law;
  - (b) substitute for references in the applied law references to the equivalent provisions in an enactment where that is necessary to make the applied law consistent with the enactment; and
  - (c) vary financial references, including penalties, in the applied law so as to take account of changes in currency or currency values.
- (2) The power under subsection (1) shall not be exercised in relation to a transcription of an applied law published under section 11 (1).

## **9 Powers of Attorney-General in relation to applied law**

- (1) The Attorney-General may cause to be prepared a transcription of an applied law incorporating —
  - (a) changes such as are referred to in section 7(2);
  - (b) any amendments made to the applied law by regulations made under section 8; and
  - (c) changes or modifications effected by the exercise of any of the powers set out in Schedule 2.
- (2) The power under subsection (1) in relation to an applied law may also be exercised in relation to subsidiary legislation made under the applied law.
- (3) The power under subsection (1) shall not be exercised in relation to a transcription of an applied law published under section 11(1).

## 10 Presentation of applied law to Parliament

- (1) The Attorney-General may cause to be presented to the Speaker —
  - (a) the transcription of an applied law prepared under section 9, including, where applicable, any subsidiary legislation made under the applied law; and
  - (b) a memorandum giving particulars of the changes and modifications incorporated in that version,and the Speaker shall refer these to a select committee of Parliament.
- (2) When the select committee reports on a reference made to it under subsection (1) —
  - (a) the Attorney-General shall table the transcription of the applied law, including, where applicable, any subsidiary legislation made under the applied law and the memorandum referred to in subsection (1) (b); and
  - (b) the chairman of the select committee shall table the report of the select committee,in each case as soon as possible after the report is made and not later than at the next following session of Parliament.
- (3) Parliament may, in the session referred to in which the transcription of the applied law is tabled under subsection (2) or in the next following session, on a motion of not less than 2 clear days notice, by resolution —
  - (a) make an amendment (certified by the Attorney-General as one which could have been made under section 7(2), 8(1) or 9(1) (c) and Schedule 2) to; or
  - (b) reject, on a ground referred to in subsection (4),the transcription of the applied law or any subsidiary legislation made under it.
- (4) The grounds on which Parliament may reject a transcription of an applied law are —
  - (a) that all or any of the changes or modifications incorporated in the transcription are not changes or modifications which may be so incorporated under section 7(2), 8(1) or 9(1) (c) and Schedule 2; or
  - (b) that the applied law conflicts with customary law.

## 11 Publication of transcription of applied law

- (1) Where a transcription of an applied law has been tabled under section 10 and has not been rejected in the session of Parliament in which it was tabled or in the next following session, the Attorney-General shall cause the transcription of the applied law, including, where relevant, any subsidiary legislation tabled under that section with the applied law, to be published.

- (2) The transcription published under subsection (1) shall incorporate any amendments made under section 10(3)(a).
- (3) A transcription of an applied law published under subsection (1) shall have incorporated in it a certificate of the Attorney-General to the effect that the transcription is so published.

## 12 Effect of publication of transcription of applied law

With effect from the date of publication under section 11 of a transcription of an applied law —

- (a) that transcription shall have effect as part of the law of Tuvalu and any other version shall cease to so have effect;
- (b) any subsidiary legislation made under the applied law —
  - (i) which is published with the applied law shall so have effect and any other version shall cease so to have effect; or
  - (ii) which is not so published shall cease to so have effect.

## 13 Judicial precedent

- (1) Every court is bound to follow any decision of the Sovereign in Council on a question of law if given (whether before or after the commencement of this Act) in relation to an appeal from Tuvalu; but if otherwise given, such a decision is of persuasive authority only.
- (2) A court is not bound by any decision on a question of law of a court constituted for a country other than Tuvalu.
- (3) A court is bound by any decision on a question of a court which is a superior court in relation to it.
- (4) The Court of Appeal or the High Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right to do so.
- (5) In this section —

“**Sovereign in Council**” has the meaning assigned by Division 4 of the Constitution;

“**superior court**”, in relation to another court, means a court which has jurisdiction to determine appeals from, or to review, decisions of the other court, but does not include the Sovereign in Council.

**SCHEDULE 1***(Section 5(3))***DETERMINATION AND RECOGNITION OF CUSTOMARY LAW****Proof of Custom**

1

- (1) Questions of –
- (a) the existence and nature of customary law in relation to a matter; and
  - (b) the application of customary law in, or its relevance to, any particular circumstances,

shall be determined as questions of law, and, accordingly, any such question may be raised by the court itself, notwithstanding that the question has not otherwise been raised.

- (2) If, in any proceedings, after having –
- (a) considered such submissions thereon as may be made by or on behalf of the parties; and
  - (b) consulted such reported cases, legal text books or other similar sources, as may be appropriate,

a court entertains any doubt on any question referred to in sub-paragraph (1), the court shall proceed to inquire into the question in accordance with sub-paragraphs (3) to (5), and, if necessary, it may adjourn the proceedings to enable such an inquiry to take place.

- (3) The inquiry shall –
- (a) be held as part of the proceedings; and
  - (b) subject to sub-paragraph (4), be conducted in such manner as the court considers expedient.
- (4) In considering the question in doubt, the court –
- (a) is not bound to observe strict legal procedure or apply technical rules of evidence;
  - (b) may, of its own motion, call such evidence or require the opinions of such persons as it thinks fit;
  - (c) shall –
    - (i) admit and consider such evidence as is available (including hearsay evidence and expressions of opinion); and
    - (ii) otherwise inform itself as it thinks fit;

- (d) shall consider such submissions on the question as may be made by or on behalf of the parties,
- but this sub-paragraph does not limit in any way the discretion of the court in obtaining evidence or informing itself on the question.
- (5) For the purposes of the decision on a question referred to in sub-paragraph (1), a court may –
- (a) consult to the extent that is appropriate –
- (i) reported cases;
- (ii) books, treaties, works of reference or official reports (whether published or not);
- (iii) statements made by local government councils (whether published or not);
- (b) accept any matter or thing stated in such sources as evidence on the question.
- (6) Notwithstanding sub-paragraph (1), where appeal is made from a decision of a court, the court that hears the appeal may consider afresh a question referred to in that sub-paragraph that arises in the appeal.

### **Recognition of Custom**

2. Subject to this Schedule, customary law shall be recognised and enforced by, and may be pleaded in, all courts except so far as in a particular case or in a particular context its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest.

### **Criminal Cases**

3. Subject to this Act and to any other enactment, customary law may be taken into account in a criminal case only for the purpose of –

- (a) ascertaining the existence or otherwise of a state of mind of a person; or
- (b) deciding the reasonableness or otherwise of an act, default or omission by a person; or
- (c) deciding the reasonableness or otherwise of an excuse; or
- (d) deciding, in accordance with any other enactment, whether to proceed to the conviction of a guilty party; or
- (e) determining the penalty (if any) to be imposed on a guilty party,
- or where the court thinks that by not taking the customary law into account injustice will or may be done to a person.

**Civil Cases**

4. Subject to this Act and to any other enactment, customary law may be applied in a case other than a criminal case in relation to –

- (a) the ownership by custom of or of rights in, over or in connection with land owned by a native or natives (in this Schedule referred to as “native land”) or –
  - (i) any thing in or on native land; or
  - (ii) the produce of native land, including rights of hunting on, or gathering, or taking minerals, from, native land; or
- (b) the ownership by custom of rights in, over or in connection with any area of the territorial sea or any lagoon, inland waters or foreshore, or in or on the seabed, including rights of navigation, fishing or gathering;
- (c) the ownership by custom of water, or of rights in, over or to water; or
- (d) the devolution of native land or of rights in, over or in connection with native land, whether –
  - (i) on the death or the birth or the adoption of a person; or
  - (ii) on the happening of a certain event; or
- (e) defamation; or
- (f) the legitimacy, legitimation and adoption of children; or
- (g) the rights of married persons arising out of their marriage or on the termination of their marriage or on the termination of their marriage by nullity, divorce or death, the right of a member of a family to support by other members of that family, or the right to the custody or guardianship of infants; or
- (h) the duty of members of a community to contribute, whether by labour, money, or in kind, to projects for the welfare of that community; or
- (i) a transaction that –
  - (i) the parties intended should be; or
  - (ii) justice requires should be, regulated wholly or partly by customary law and not by any other law; or
- (j) the reasonableness or otherwise of an act, default or omission by a person; or
- (k) the existence of a state of mind of a person, or where the court thinks that by not taking the customary law into account injustice will or may be done to a person.

**Customary law in relation to family matters, etc.**

5. Notwithstanding anything in the common law, customary law shall be applied in deciding questions arising in connection with the matters specified in paragraph 4 (f) and (g).

**Conflict of customary law**

6.

- (1) Subject to this paragraph, and to any other enactment, where –
  - (a) in a matter before a court a question arises as to which of two or more rules of customary law should prevail; and
  - (b) the court is not satisfied on the evidence before it as to the question, the court shall consider all the circumstances and may adopt those rules that it is satisfied the justice of the case requires.
- (2) Where a court is not satisfied as to which of two or more rules of customary law applies, or should under sub-paragraph (1) be applied, to or in relation to a matter, the court may apply, with the necessary modification as nearly as may be, the rules of the common law.
- (3) The principles set out in sub-paragraphs (1) and (2) may be varied or departed from by a court in any particular case to such extent as the justice of the case requires.

**Savings**

7. Nothing in this Schedule affects the operation of the Native Lands Act<sup>2</sup> or the Tuvalu Lands Code<sup>3</sup>.

**SCHEDULE 2***(Section 9)***POWERS OF ATTORNEY-GENERAL IN RELATION TO APPLIED LAW**

The Attorney-General has power to –

- (a) make such changes as are necessary or expedient for the purpose of securing uniformity of expression in an applied law;
- (b) consolidate into 1 applied law any 2 or more applied laws, making such alterations as are thereby rendered necessary or expedient;
- (c) alter the order of sections in any applied law;
- (d) renumber the sections in any applied law in all cases where it may be necessary or expedient to do so;
- (e) alter the form or arrangement of any section, by transferring words, by combining it in whole or in part with another section or other sections or by dividing it into 2 or more subsections or paragraphs;
- (f) delete the enactment provision in an applied law;
- (g) provide a long title or a short title to any applied law that may require it or to alter a long title or short title of any applied law;
- (h) supply or alter tables of contents, chronological tables and notes;
- (i) correct grammatical, typographical and similar errors in an applied law, and for that purpose to make verbal additions, omissions, or alterations not affecting the meaning of an applied law;
- (j) correct cross references;
- (k) make such amendments as are necessary to resolve ambiguities, remove doubts or improve the form and manner in which the applied law is stated; and
- (l) generally, do all such things relating to form and manner of expression as appear to him to be necessary for improving the applied law in its application to Tuvalu and for compatibility with the form and manner of expression used in other written laws.

## ENDNOTES

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<sup>1</sup> 1990 Revised Edition, Cap 1B - Act 8 of 1987

<sup>2</sup> Cap. 46.20

<sup>3</sup> Cap. 46.20.2