



Tuvalu

WASTE MANAGEMENT ACT

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Tuvalu

WASTE MANAGEMENT ACT

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Tuvalu

WASTE MANAGEMENT ACT¹

AN ACT TO MAKE PROVISION FOR ALL MATTERS CONNECTED WITH THE REGULATION AND MANAGEMENT OF WASTES AND THE PROVISION OF WASTE RELATED SERVICES IN TUVALU, AND FOR RELATED PURPOSES

Commencement [21st December, 2017]

PART 1 - PRELIMINARY

1 Short Title and Commencement

This Act may be cited as the Waste Management Act.

2 Interpretation

In this Act, unless the context otherwise requires –

“**this Act**” includes regulations made under this Act;

“**bulk wastes**” includes:

- (a) vehicle bodies, or any part of them;
- (b) vehicle engines, or any part of them;
- (c) tyres;
- (d) vehicle or marine batteries, or any of their component parts;
- (e) refrigerators, freezer units, stoves and cookers, washing machines, and similar household or commercial appliances;
- (f) paint tins and other containers; and

- (g) any other item to be disposed of which cannot be effectively disposed of by regular waste collection services provided to residential or commercial premises;

“designated waste management operators” includes:

- (a) each Kaupule in accordance with section 15(1); and
(b) the Department of Waste Management in accordance with section 15(3);

“Department of Waste Management” and **“Department”** means the Department within the Ministry which has responsibility for waste management;

“discharge” and **“dump”**, includes depositing, allowing to escape, or failing to prevent the discharge of any waste;

“environment” includes all natural, physical and social resources and ecosystems or parts thereof, people and culture and the relationship that exists between these elements;

“enforcement officer” means any officer appointed and empowered under section 39(1);

“hazardous waste” includes:

- (a) any wastes which are, or which have the potential to be, toxic or poisonous, or which may cause injury or damage to human health or the environment, including engine oils or other lubricating oils used in relation to machinery, and oil based paints and any chemical used in relation to paints;
(b) any specific substance, object or thing determined under this Act or any law to be a hazardous waste; and
(c) any other matter or thing deemed under international conventions applicable to Tuvalu to be hazardous wastes or to have the characteristics of hazardous wastes from time to time;

“head of a designated waste management operator” means the head of the Department of Waste Management, or the relevant Kaupule Secretary, as the case may be;

“green wastes” means biodegradable waste composed of garden wastes or other wastes from vegetation (such as grasses, plants and trees), but does not include domestic and commercial food waste;

“Kaupule” means a Kaupule constituted under section 5 of the Falekaupule Act;

“licence” means a licence granted under this Act or any other law applying licensing requirements to waste operations and the provision of waste services;

“major development” means any project, development or activity which is subject to the procedures for environmental impact assessment under Part V of the Environment Protection Act, and any other project, development or activity within Tuvalu that the Department of Waste Management determines to involve significant waste management issues;

“**Minister**” means the Minister responsible for waste management;

“**Ministry**” means the Ministry responsible for waste management;

“**occupier**”, in relation to any premises, means a person who occupies or controls those premises or a part of the premises (whether or not that person owns the premises or that part of them);

“**premises**” means residential, commercial, industrial or other premises of any kind;

“**private waste operators**” means those operators who are not designated waste management operators under the Act;

“**Waigani Convention**” means the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific region (Adopted at Waigani, PNG on 16 September 1995);

“**waste**” includes:

- (a) garbage, household refuse, rubbish, scraps and trade wastes;
- (b) bulk wastes; and
- (c) any other matter or thing determined from time to time to be waste in accordance with this Act;

“**waste service area**” means each of the areas designated for the provision of waste operations and services under section 14.

- (2) Where any power is given under this Act to regulate any matter, act or thing, then that power shall include a power to prohibit any matter, act or thing for the purpose of implementing the provisions of this Act.

3 Act to bind the Crown

This Act shall bind the Crown.

PART II - RESPONSIBILITIES FOR WASTE MANAGEMENT

4 The regulation of wastes in Tuvalu

- (1) Subject to the provisions of this Act, the responsibility for the regulation of wastes in Tuvalu is vested in the Department of Waste Management as provided for by this Act.
- (2) The implementation of international conventions relating to the management of hazardous wastes shall be the responsibility of the Department of Waste Management in accordance with the provisions of this Act, and whenever the Department is designated as the competent authority for Tuvalu under any such convention.

- (3) Regulatory control over waste dumps and waste disposal sites can be exercised by:
 - (a) designated waste management operators in accordance with their functions and powers provided for in this Act, and any other law relating to the management of wastes; and
 - (b) the Department of Environment in accordance with environmental impact assessment procedures, and any other relevant provisions of the laws which relate to environment protection.
- (4) The regulation of waste disposal at sea by the dumping and incineration of wastes shall be the responsibility of the Department of Marine and Port Services under the Marine Pollution Act.
- (5) Litter control measures shall be implemented and enforced in accordance with regulations made under this Act.
- (6) The management of and regulatory control over medical wastes shall be the responsibility of the Ministry of Health.

5 Waste Management Operations in Tuvalu

- (1) Waste management authorities designated under section 15 are responsible for the provision of waste collection services to residential and commercial premises in accordance with the provisions of Part IV.
- (2) The collection and disposal of wastes that cannot be managed by the provision of normal waste collection services to residential and commercial premises are to be undertaken by the Department of Waste Management in accordance with its functions and powers under this Act, and any other law relating to the management of wastes.
- (3) Waste dumps and waste disposal sites are to be managed by:
 - (a) each Kaupule in their capacity as a designated waste management operator; or
 - (b) the Department of Waste Management, where the need exists for additional technical and operational capacity for the proper disposal of wastes.
- (4) The storage and disposal of hazardous wastes is to be undertaken by the designated waste management operators in accordance with their functions and powers under this Act.
- (5) The cleaning of streets and public areas, and the provision of waste disposal receptacles in public places, are the responsibilities of the relevant designated waste management operators.
- (6) The collection and disposal of medical wastes is the responsibility of the Ministry of Health, which must ensure that such wastes are handled and

disposed of so as not to pose risks to the employees and contractors of the designated waste management operators.

6 Waste Management Planning

- (1) The Department of Waste Management has the principal responsibility for formulating and implementing a National Wastes Strategy, and the implementation of programs and projects in support of the Strategy.
- (2) The Department of Waste Management must ensure that the National Wastes Strategy, and the programs and projects which implement the Strategy, make adequate arrangements in relation to all of the following:
 - (a) identifying the operational needs for effective waste management, and the implementation of these needs in a coordinated and planned manner;
 - (b) securing land and resources for the effective collection and disposal of wastes;
 - (c) applying and enforcing operational standards in relation to waste operations and service;
 - (d) maintaining appropriate levels of waste management services which are cost effective;
 - (e) minimising the generation of wastes within Tuvalu;
 - (f) promoting the recycling of wastes, and ensuring that recycling operations are undertaken in accordance with appropriate regulatory requirements;
 - (g) particular arrangements for the collection, transportation, storage and disposal of hazardous wastes;
 - (h) the recording of statistics in relation to waste management, and the effective application of such information in the waste planning processes;
 - (i) ensuring that adequate arrangements are made for the rehabilitation of areas used for the dumping and disposal of wastes after such operations have ceased;
 - (j) promoting composting of green wastes and maximising opportunities from the effective management and use of such wastes; and
 - (k) minimising the impacts of wastes from major developments, and from building and construction sites.
- (3) The formulation of policies, strategies and programs must be undertaken in collaboration with the Kaupules in their capacity as designated waste management operators, and each Ministry and agency of government which has responsibilities in relation to the management of wastes in Tuvalu.
- (4) Nothing in this section affects the exercise of the regulatory powers specified in section 4, and all such approved policies, strategies and programs must take account of the relevant regulatory roles and responsibilities.

7 Compliance with requirements under other laws

- (1) Any person who provides waste related services or who undertakes waste related operations, must comply with all requirements applicable to their waste services and operations under any applicable law, in addition to the requirements which apply under this Act.
- (2) In addition to any penalty imposed under any law for a breach of subsection (1) by any person who provides waste related services or who undertakes waste related operations (other than a designated waste management operator), any failure on the part of such person to observe or comply with a legal requirement under that subsection is ground upon which the Department of Waste Management can take any of the following action:
 - (a) suspending or revoking any registration or licence applying to the person in breach;
 - (b) refusing any subsequent registration or licence sought by the person in breach; and
 - (c) terminating any contract between a waste management operator and the person in breach.

8 Audit of waste generation and disposal

- (1) The Department of Waste Management has authority to undertake an audit of the wastes generated and disposed of in Tuvalu from time to time.
- (2) For the purposes of undertaking any audit under subsection (1), officers of the Department of Waste Management may exercise any of the powers under section 39(2)(a)-(d) (inclusive).
- (3) The designated officers of the Department of Waste Management may require:
 - (a) any designated waste management operator;
 - (b) any holder of a licence issued under this Act; and
 - (c) any other person conducting any waste related operation or providing any waste services –to undertake or participate in any audit of wastes generated or disposed of during any period.
- (4) The provisions of section 13 shall apply to all persons to whom sub-section (3) applies.

PART III - GENERAL POWERS IN RELATION TO WASTES

9 Designation of wastes

- (1) Any object, substance or thing may be determined to be a waste or hazardous waste for the purpose of this Act –
 - (a) by Regulations made under this Act deeming any class or type of object, substance or thing to be waste or a hazardous waste;
 - (b) under approved standards, rules, operating procedures, guidelines and codes of practice made under section 25; or
 - (c) by the service of a written notice on a person who appears to own or control the object, substance or thing declaring any particular object or thing to be waste or a hazardous waste.
- (2) A notice under sub-section (1)(c) may be served under the authority of the head of the Department of Waste Management, or a Kaupule Secretary holding office under section 99 of the Falekaupule Act.

10 Special waste related levies

- (1) The Minister, acting on the advice of Cabinet, may make regulations which:
 - (a) impose special levies on particular goods which have adverse effects on the environment;
 - (b) impose additional charges on premises in commercial areas where services are provided by a designated waste management operator to maintain cleanliness of street, footpaths and public areas;
 - (c) impose any other type of special levy relating to waste management services, or for the purpose of recovering costs incurred in the management of wastes; and
 - (d) provide for the payment, collection and use of special levies and additional charges.
- (2) Any levy imposed by regulations made under subsection (1) may be imposed, collected and recovered through court proceedings in accordance with the Regulations which impose the levy, or in the absence of any such provision by the head of the Department of Waste Management in the name of the Government of Tuvalu.

11 Controls over certain wastes

- (1) Regulations made under this Act may impose requirements in relation to certain wastes having adverse impacts on the environment or human health by:

- (a) imposing prohibitions in relation to the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes;
 - (b) regulating the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes, and imposing conditions in relation to them;
 - (c) requiring the lodging of a deposit in relation to certain objects, substances or things which may become wastes to ensure their appropriate disposal by recycling or otherwise; or
 - (d) imposing obligations on persons importing, exporting, using or manufacturing certain objects, substances or things which may become wastes in relation to their eventual disposal.
- (2) Regulations made under subsection (1) may prescribe any matter necessary for the protection of the environment or human health from objects, substances or things which may become wastes, and any matter concerning the administration of any scheme requiring the lodging of deposits or obligations to dispose of such objects, substances or things.
 - (3) Regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$5,000 for individuals and \$10,000 for corporations or persons who commit this offence on more than one occasion, or imprisonment for terms not exceeding 3 months, or both.
 - (4) All objects, substances or things prohibited under sub-section (1)(a) shall be deemed to be prohibited imports for the purposes of section 33 of the Customs Act.

12 Registration and licensing of private waste operators

- (1) All landfill sites, waste dumps and waste disposal facilities in Tuvalu must be licensed by the Department of Waste Management, which may impose any conditions in relation to the operation of the site, dump or facility under the licence.
- (2) The registration and licensing of other waste management operations or services may be required in accordance with Regulations made under this Act.
- (3) The Minister may authorise a designated waste management operator to discharge the responsibilities of registering and licensing any facility or operation under this Act or Regulations made under this Act.
- (4) It shall be a condition of every licence issued under this section that the licensee shall comply with all legal requirements applying to development controls, environment protection and the health and safety of workers in the workplace.
- (5) Any person who operates a landfill site, a waste dump or any waste facility, or undertakes any waste management operation or service which is required to be licensed under subsection (2):

- (a) without a licence issued by the Department of Waste Management; or
- (b) in breach of any condition of a licence granted under this section: commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both.

13 Requirement to provide information etc

- (1) All holders of licences issued under this Act and all persons conducting any waste related operation, business or activity must –
 - (a) provide all information, statistics and copies of records relating to any waste operation that is required to be provided by the Department of Waste Management from time to time; and
 - (b) file any returns required by the Department of Waste Management giving accurate information concerning any waste management related matter required to be provided in the returns.
- (2) If any international waste related convention requires that any report be made, or that any information or data be collected and provided, the Minister may make a written request to any person to provide relevant information or data.
- (3) Any person to whom a written request has been made under this section who refuses or fails to comply with the request, commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

PART IV - WASTE MANAGEMENT OPERATIONS

14 Designation of waste service areas

- (1) The waste service areas within Tuvalu for the purposes of this Act shall be the Falekaupule areas specified in Schedule 1 of the Falekaupule Act.
- (2) Nothing in this section affects the functions and powers of the Department of Waste Management to provide certain waste management operations, services and programs on a nation-wide basis, or for the purposes of managing wastes which are beyond the capacity of Kaupules to deal within their capacities as designated waste management operators.

15 Designated waste management operators

- (1) The designated waste management operator for each waste service area shall be the relevant Kaupule for that area.
- (2) The Kaupules may exercise their authority under this Act as designated waste management operators by making by-laws under the Falekaupule Act in relation to any matter provided for in this Part.

- (3) The Department of Waste Management shall be a designated waste management operator for the purposes of performing the functions specified in section 16(2), and as provided for in this Act and any other law related to the management and control of wastes.
- (4) In addition to the functions provided for in section 16(2), the Department of Waste Management has the following functions and powers in relation to the activities and operations of the Kaupules as designated waste management operators:
 - (a) the Department may provide support to a Kaupule in relation to the management of contracts for the provision of waste management services by contractors;
 - (b) the Department may provide financial support to a Kaupule for the provision of waste management services by the Kaupule or by contractors, and can impose any conditions that the Department determines in relation to the provision of such financial support; and
 - (c) the Department can give directions to a Kaupule in relation to the provision of waste management services to ensure that they are undertaken in an efficient, responsible and cost-effective manner.
- (5) If a Kaupule refuses or fails to comply with a direction given under subsection (5) the Department may do any of the following:
 - (a) withdraw any support that it has provided to the Kaupule under this section;
 - (b) refuse to provide any support under this section until conditions are complied with;
 - (c) undertake any activity or provide any waste management service until the Kaupule complies with the direction.
- (6) The Department of Waste Management may establish committees to assist in the performance of any function or the exercise of any power under this Act, and may delegate by notice in writing, any function or power under this Act to such a committee.

16 Functions of designated waste management operators

- (1) The functions of the Kaupules as designated waste management operators include responsibilities to –
 - (a) provide compulsory waste collection services to residential and commercial premises;
 - (b) provide waste management services to aircraft, ships and other vessels;
 - (c) provide other waste management services, including the collection and disposal of wastes from other waste service areas;

- (d) cooperate with public health and environment officers in the discharge of their responsibilities relating to regulating and monitoring wastes, and monitoring waste management processes and facilities;
 - (e) prepare, adopt and enforce rules, operating manuals, codes of practice and standards relating to the wastes management services and facilities provided by or under the control of the operator;
 - (f) implement litter and waste control measures, including programs aimed at promoting recycling of wastes, and minimising the generation of wastes;
 - (g) prepare reports and maintain statistical records relevant to the management of wastes in their waste service area, and the regularly report on such matters in accordance with this Act; and
 - (h) perform any other functions provided for by law.
- (2) The functions of the Department of Waste Management as a designated waste management operator include:
- (a) the management and operation of waste disposal facilities for hazardous wastes and other wastes not effectively dealt with at other dumping sites;
 - (b) programs and services relating to the collection and disposal of hazardous and bulk wastes;
 - (c) ensuring the proper siting, development and management of landfill areas and approved dumping and waste storage sites that incorporate comprehensive environmental management systems and measures;
 - (d) the provision of other appropriate waste treatment, storage and disposal facilities;
 - (e) cooperating with public health and environment officers in the discharge of their responsibilities relating to monitoring, reporting and controlling impacts on the environment;
 - (f) the preparation of reports and the compilation of statistics relevant to the management of wastes in Tuvalu, and the regular reporting of such matters in accordance with this Act;
 - (g) raising public awareness of matters concerning the minimisation of the generation of wastes, the recycling of wastes and the effective management of wastes; and
 - (h) arranging for programs of public information concerning waste management issues with an aim to:
 - (i) minimising the generation of wastes;
 - (ii) ensuring that wastes are stored and disposed of in a manner which minimises their harmful effects on human health and the environment; and
 - (iii) promoting informed decision-making about waste related matters which may affect the health and well-being of the community;

- (i) formulating and implementing policies, programs and initiatives aimed to reduce the generation of wastes; and
- (j) providing administrative and technical support to any committee established under section 15(6).

17 Powers of designated waste management operators

- (1) Designated waste management operators may exercise any power necessary or incidental to the discharge of their functions under this Act, including the power to:
 - (a) perform any responsibility and exercise any power vested in them by this Act or any other law, or by the Government of Tuvalu;
 - (b) determine that certain services are compulsory services which must be provided to and accepted by owners and occupiers of premises, and persons who generate wastes;
 - (c) determine that any object, substance or thing is deemed to be waste in accordance with section 9;
 - (d) do anything necessary to ensure that wastes in Tuvalu are managed in an environmentally sound manner with minimum adverse effects to human health;
 - (e) do anything necessary to assist other government agencies to ensure that Tuvalu is in compliance with its international obligations in relation to the management and movement of wastes;
 - (f) undertake prosecutions for breaches of this Act, and to recover fines imposed and the costs arising from taking such legal proceedings; and
 - (g) take legal proceedings to prevent or restrain activities which are in breach of this Act.
- (2) If any prosecution is undertaken by a Kaupule in its capacity as a designated waste management operator in accordance with any law relating to wastes, the fine imposed by the court is payable to the relevant Kaupule.

18 Performance of community obligation

- (1) A designated waste management operator shall undertake community obligations at the direction of the Minister, which may involve any activity aimed at keeping public areas clean and free of wastes, including:
 - (a) street cleaning and other activities to maintain the cleanliness of public areas; and
 - (b) providing waste receptacles in public areas and other appropriate facilities for minimising and dealing with wastes on public roads and reserves, and other areas accessible to the public.

- (2) A designated waste management operator shall only be obliged to perform a community obligation under this section if the Government undertakes to pay to the designated waste management operator the agreed cost of providing the necessary services and undertaking the required activities.

19 Operating subsidies for waste collection and disposal services

- (1) Operating subsidies shall be paid to designated waste management operators for their operations and waste services from monies made available for such purposes in accordance with government financial and budgetary processes.
- (2) Any operating subsidy payable under subsection (1) may be made conditional upon satisfactory operational practice and service delivery in accordance with standards applying to such operations and services.
- (3) Operating subsidies, or any part of them, may be linked to any requirement that waste management services be contracted out in accordance with section 27, or that any other function or power under this Act be performed or exercised by the designated waste management operator.

20 Fees and charges for waste management services

- (1) Subject to subsections (2), (8) and (9), all fees imposed under this section shall be set by:
 - (a) Regulations made under this Act; or
 - (b) by-laws made by Falekaupules under the authority of the Falekaupule Act.
- (2) Subsection (1) does not apply to a fee charged by a designated waste management operator for a garbage collection service based upon the use of “pre-paid bags”, and the designated waste management operator can set a fee for such bags if a service of this nature is used.
- (3) A compulsory garbage collection fee may be applied to all residential premises in a designated waste service area, and to all other premises to which the commercial waste collection fee does not apply.
- (4) A commercial waste collection fee may be applied to all commercial premises but a designated waste management operator may approve a zero rating to commercial premises which have made satisfactory arrangements for the proper management and disposal of the wastes generated at the premises.
- (5) The residential and commercial collection fees imposed under this section:
 - (a) may be set as annual charges or be imposed on any other basis; and
 - (b) may be set at different levels for particular areas, taking account of matters such as the ability of persons to pay the fees.

- (6) Additional or increased fees may be applied to premises or classes of premises which generate particular types of waste or greater quantities of wastes, or which are located in areas which necessitate particular waste collection measures to be applied.
- (7) Fees may be set and imposed under this section for:
 - (a) depositing wastes at landfill sites and approved dumps;
 - (b) the collection, storage or disposal of hazardous wastes; and
 - (c) any other waste service provided by a designated waste management operator, including for the collection and disposal of wastes from ships and other vessels, and from places outside of the area of the designated waste management authority.
- (8) A fee for the collection, storage or disposal of a particular hazardous waste, or for the provision of any other service may be set by the head of a designated waste management operator, if no sufficient or appropriate fee has been set under this section.
- (9) The head of a designated waste management operator may determine for the purposes of this section:
 - (a) the status of any premises as residential or commercial;
 - (b) the charge to be applied to any premises which are both residential and commercial;
 - (c) the imposition of increased fees under subsection (6) to particular premises;
 - (d) whether a particular service is provided as part of the normal garbage or waste collection service, or is another service for which an additional charge is to be imposed.
- (10) A person obliged to pay a fee or charge imposed as a result of the exercise of a power under this section by a designated waste management operator (other than under subsection (2)) may, by written notice, request a review of the decision by the Minister, and in determining such a request the Minister may:
 - (a) affirm the decision of the designated waste management operator; or
 - (b) amend the decision of the designated waste management operator in any appropriate manner; and
 - (c) may authorise the payment of a refund.
- (11) A request for a review under subsection (10) does not postpone the obligation to pay the fee or charge, and the Minister may decline to consider a request if the person making it has not paid the fee or charge.

21 Remission of fees and charges

The head of a designated waste management operator may authorise the remission of the compulsory residential garbage collection charge if:

- (a) an application is made in writing for remission by either the owner or occupier of residential premises; and
- (b) the head of a designated waste management operator is satisfied that the residential premises:
 - (i) have not been or will not be occupied for a continuous period of not less than 3 months; or
 - (ii) are not accessible to the garbage collection vehicles; or
 - (iii) meet any other conditions or requirements approved by the designated waste management operator as being grounds for the granting of remission.

22 Interest on unpaid dues

A designated waste management operator may charge interest at the rate of 10% per annum on any fees, charges and levies not paid within 30 days of the date upon which payment is due.

23 Collection of fees and charges

- (1) All fees and charges payable to a designated waste management operator in accordance with this Part may be recovered by the designated waste management operator as a debt.
- (2) The garbage collection fee imposed on premises may be recovered in accordance with subsection (1) from the owner or occupier of the premises.
- (3) A designated waste management operator may enter into arrangements for the collection of fees and charges by persons or organisations approved by the operator to be collection agents.

24 Operation plans

- (1) Each designated waste management operator may be required by the Minister to prepare a three-yearly operating plan with financial projections forming the basis of each year's annual operating plan and annual estimates.
- (2) Operating plans prepared in accordance with subsection (1) shall be prepared so as to reflect the views and interests of the householders and commercial businesses in the waste service area and the head of a designated waste management operator shall ensure that adequate opportunities are provided during its formulation to permit such views and interests to be expressed.
- (3) The head of a designated waste management operator shall during the month of April in each year prepare an Annual Operating Plan and Estimates of Revenue and Expenditure for the next financial year.

- (4) The Annual Operating Plan and Estimates of Revenue and Expenditure shall be provided to the Minister, the Minister shall forward a copy to the Minister of Finance.

25 Approved standards, operating procedures, codes of practices etc.

- (1) For any purpose associated with its operations, a designated waste management operator may make and impose standards, rules, operating procedures, guidelines and codes of practice relevant to any aspect of its waste management functions.
- (2) Without limiting the generality of subsection (1), a designated waste management operator may impose rules prescribing:
 - (a) the size and nature of waste receptacles;
 - (b) the placing of wastes and waste receptacles so as to facilitate the collection of wastes;
 - (c) the imposition of any requirement to ensure the effective containment of wastes;
 - (d) requirements for the storage of certain wastes;
 - (e) any requirement which promotes the recycling of them;
 - (f) the means by which green wastes are to be made available for composting, or for collection and disposal;
 - (g) requirements for the disposal of wastes from building and construction sites;
 - (h) the segregation of certain types of wastes;
 - (i) procedures to be observed when wastes are disposed of at waste dumps and waste disposal facilities; and
 - (j) any other matter to facilitate the orderly keeping, collection and disposal of wastes.
- (3) Designated waste management operators may display signs at their operational facilities and on their vehicles which give directions to be observed by all persons within the facilities, or in the vicinity of the vehicles, of a designated waste management operator.
- (4) Officers and contractors of designated waste management operators may give directions to any person within the areas and facilities of the designated waste management operator for the purpose of ensuring compliance with any, standard, rule, operating procedure, guideline, code of practice or sign made or displayed in accordance with this section.
- (5) Any person who fails or refuses to comply with:
 - (a) any rule, operating procedure, guideline or code of practice which is stated to be applicable to them; or

- (b) the requirements stated on any sign displayed in accordance with this section; or
 - (c) any direction given under subsection (4) -
- commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

26 Reporting by waste management operators

Each designated waste management operator shall:

- (a) prepare and submit reports relating to any aspect of waste management under its responsibility at the request of the Department of Environment or the Ministry of Health;
- (b) ensure that the Ministry of Health is immediately notified of any matter related to waste management that comes to its notice which may adversely affect human health; and
- (c) ensure that the Director of Environment is immediately notified of any matter related to waste management that comes to its notice which may adversely affect the environment.

27 Contracted waste services

- (1) A designated waste management operator may enter into contractual arrangements for the provision of services necessary to discharge its functions and to perform its waste management activities related to the collection, transportation disposal and management of wastes.
- (2) Subject to subsection (3), a contractor engaged by a designated waste management operator in accordance with this section may be authorised to:
 - (a) give any necessary direction or impose any necessary operational requirement, consistent with this Act and any regulation, rule, operating procedure or code of practice made under this Act; and
 - (b) take any other necessary action or do any other necessary thing in accordance with the contract made with the designated waste management operator.
- (3) It shall be a condition of every contract to which this section relates that the contractor shall comply with all legal requirements, applying to development controls, environment protection and the health and safety of workers in the workplace.

28 Recycling and composting of wastes

- (1) Designated waste management operators must promote the recycling of wastes and for this purpose standards, rules, operating procedures, guidelines, codes of

practice, signs and directions may be made, displayed or given in accordance with section 25.

- (2) Persons or companies engaged in commercial activities associated with the recycling of wastes must:
 - (a) comply with all requirements imposed under this section;
 - (b) ensure that no aspect of their activities gives rise to a breach of Tuvalu's international obligations associated with the movement and management of wastes; and
 - (c) observe internationally accepted practices in relation to their waste related activities.
- (3) For the purposes of achieving compliance with subsection (2), Regulations made under this Act may require that persons or companies engaged in commercial activities associated with the recycling of wastes be registered or licensed, and such requirements may be administered by the Department of Waste Management.
- (4) The following requirements apply to green wastes which are put out for collection in a waste service area or which are disposed of at a waste disposal facility operated by a designated waste management operator:
 - (a) all green wastes must be segregated from all other wastes;
 - (b) no plastic or other object or material can be combined with the green wastes when they are disposed of or put out for collection, unless the green wastes have been shredded and the material aids the composting of the green waste;
 - (c) branches and tree trunks must be cut to a length of not more than 1 metre, and each length must not weigh more than 10 kg.
- (5) Any person who fails or refuses to comply with subsection (4) commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

29 Indemnities for staff of designated waste management operators

- (1) All staff of a designated waste management operator shall not be personally liable for any act or omission occurring in good faith in the exercise, or purported exercise of powers, functions, duties and responsibilities under this Act, or any other law applying to the designated waste management operator.
- (2) Sub-section (1) shall apply to any contractor, and its employees, engaged by a designated waste management operator in accordance with section 27, and which is acting in accordance with its obligations to the designated waste management operator.

30 Protection of assets of designated waste management operators

No asset of a designated waste management operator may be subject to distress or be taken in execution of any legal proceedings against the operator, its staff or its contractors, if the asset is:

- (a) any building, plant, equipment or installation used at or situated at a landfill or waste treatment, dumping or storage site operated by the designated waste management operator;
- (b) any vehicle or attachment to a vehicle used for the purposes of waste collection by or on behalf of a designated waste management operator; or
- (c) any item of office equipment used at the premises of a designated waste management operator.

PART V - REGULATING WASTES AT MAJOR DEVELOPMENTS**31 Controls over waste generated at major developments**

- (1) The Department of Waste Management has authority to require that a waste management plan be prepared for any major development.
- (2) A notice may be served on the developer of a major development requiring that a waste management plan be prepared and submitted at any time before or during the construction of the major development.
- (3) A developer of a major development that has been given notice in writing of the requirement for a waste management plan to be prepared and submitted must comply with the requirements stated in the notice within the time stipulated in the notice.
- (4) The Department of Waste Management has authority to receive and assess a waste management plan submitted in relation to a major development, and can:
 - (a) approve the plan (with or without conditions); or
 - (b) reject the plan and require it to be re-submitted with additional details specified by the Department.
- (5) The Department of Waste Management has authority to determine and impose any fees or charges for managing the wastes generated by a major development, and all costs which arise as a result of the imposition of a condition by the Department are the responsibility of the developer.
- (6) A developer who does any of the following:
 - (a) fails to prepare and submit a waste management plan when required to do so under this section;

- (b) fails to comply with any condition applying to the approval of a waste management plan; or
- (c) fails to re-submit a waste management plan after it has been rejected and resubmission has been required

commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000, and \$2,000 for every day that the offence continues.

- (7) In addition to any penalty imposed under subsection (6), a developer who breaches any requirement of this section or of an approved waste management plan is liable to pay all costs associated with dealing with the wastes which are the subject of the breach.

PART VI - HAZARDOUS WASTES AND INTERNATIONAL CONVENTIONS

32 Conventions to which this Part applies

This Part applies to the Waigani Convention and any other international waste related convention for which the Department of Waste Management is approved to be the competent authority for Tuvalu.

33 Department to implement certain waste related conventions

- (1) The roles of the Department of Waste Management in relation to a Convention to which this Part applies include all of the following:
 - (a) making arrangements for the attendance at any meeting of the Parties of such a Convention, and other relevant meetings, of a suitably qualified person to represent the interests of the Government of Tuvalu;
 - (b) liaising with relevant regional or international bodies to ensure that the representation of the Government of Tuvalu at any meeting concerning such a Convention is informed and effective;
 - (c) accessing and utilising available funds and resources by preparing and submitting project proposals and undertaking programs to implement such Conventions;
 - (d) assisting any other Department and agency of Government to implement any aspect of such a Convention;
 - (e) giving or receiving any notice, and granting or refusing an approval under the terms of such a Convention;
 - (f) preparing any necessary Report, and reporting on a regular basis to the Minister and Cabinet in relation to the implementation of any such Convention;

- (g) sharing information and otherwise providing such cooperation as is required by any such Convention;
 - (h) recommending that any law of Tuvalu be amended or enacted in order to effectively implement any requirement of such a Convention; and
 - (i) doing any other act or thing (in conjunction with any other relevant Department or agency of Government) to implement any obligation under such a Convention.
- (2) In addition to the roles of the Department under this section, the Department may be designated by the Minister, or under any Act or regulations, as the focal point for the purposes of any Convention to which this Part applies.
- (3) As focal point, the Department shall perform such roles and duties as are necessary to implement any Convention to which this Part applies, and which may be vested in it by any Act or regulations making provision for any such Convention to be implemented in Tuvalu.

34 Requirement to provide assistance, information, data etc

- (1) If any Convention to which this Part applies requires that any report be made, or that any information or data be collected and provided, the Minister may make a written request to any person to provide relevant information or data.
- (2) Any person to whom a written request has been made under sub-section (1) who, without reasonable justification, refuses or fails to comply with the request, commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

35 The precautionary principle

- (1) All persons and agencies having responsibilities under this Act, or whose functions and powers relate to any matter or thing involving the management of wastes in Tuvalu and the implementation of a Convention to which this Part applies, must apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.
- (2) To clarify the application of subsection (1), the precautionary principle is applied if, in the event of a threat of damage to Tuvalu's natural resources or to the environment of Tuvalu, or a risk to human health in the Tuvalu, a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter or thing regulated under any law or a Convention to which this Part applies.

36 Regulations dealing with hazardous wastes and relevant Conventions

- (1) The Minister, with the consent of Cabinet, may make regulations as may be necessary or expedient for regulating and managing hazardous wastes and substances in Tuvalu.
- (2) Without limiting the generality of subsection (1), regulations may make provision for -
 - (a) specifying toxic and hazardous wastes and regulating the manner in which such wastes may be stored, transported and disposed of;
 - (b) securing the observance and effective implementation of international conventions and obligations relating to hazardous wastes applicable in Tuvalu, or of general application within the South Pacific region, including
 - (i) all aspects of the enforcement framework as the competent authority under any applicable conventions;
 - (ii) the promotion of inter-agency cooperation and coordination;
 - (iii) imposing obligations to re-import in accordance with any applicable Convention;
 - (iv) vesting powers in relevant agencies to obtain information;
 - (v) applying powers and promoting capacity to monitor and verify compliance, and to order remedial or preventive action;
 - (vi) the imposition of “**user fees**” and the “**polluter pays**” principle, and any other applicable provision of international law;
 - (c) determining the types of “**hazardous wastes**” to be regulated under this Act, and to provide appropriate definitions for them;
 - (d) imposing planning requirements (including compliance, implementation and emergency planning) for government agencies and for companies and persons who create hazardous wastes or are involved in the management of hazardous wastes;
 - (e) applying and enforcing relevant international standards and practices related to the management of hazardous wastes;
 - (f) the collection, evaluation and reporting of data;
 - (g) monitoring the effects of hazardous wastes and the status of implementation of the applicable Conventions related to them;
 - (h) requiring registers of hazardous wastes to be maintained, and for the information to be recorded in them;
 - (i) imposing controls over imports and exports of hazardous wastes, including the tracking of shipments and other border control activities such as customs codes and identification measures;
 - (j) imposing requirements relating to containers, packaging and labelling for hazardous wastes;

- (k) applying licensing, permit and certification systems, including permits for the collection, transportation and disposal of hazardous wastes;
- (l) imposing requirements relating to the sound management of hazardous wastes, and the operation of waste management and disposal facilities;
- (m) imposing requirements for the provision of safety equipment and procedures, and for the training of employees working with hazardous wastes;
- (n) applying specific requirements relating to managing radioactive wastes in Tuvalu's jurisdiction, including regulating or prohibiting the importation of equipment and materials which may generate or become radioactive wastes;
- (o) imposing controls over the incineration and dumping of hazardous wastes;
- (p) the effective involvement of community and industry representatives in planning and decision-making processes;
- (q) the provision of relevant information, education and training programmes; and
- (r) facilitating the implementation of regional and sub-regional initiatives concerning the proper management of hazardous wastes.

PART VII – OFFENCES RELATING TO WASTES

37 Controls over certain wastes

- (1) The Department of Waste Management, and a designated waste management operator, may serve written notice on any person requiring that any wastes owned, possessed or under the control of that person –
 - (a) be stored, transported or disposed of in any required manner;
 - (b) not be stored, transported or disposed of in any particular manner;
 - (c) be removed from a particular place and properly disposed of; or
 - (d) be made available for recycling in any manner stated in the notice.
- (2) A person who fails to comply with any notice given under subsection (1) commits an offence and is liable upon conviction to a fine:
 - (a) not exceeding \$1,000, in the case of an individual; or
 - (b) not exceeding \$2,000, in the case of a corporation, or an individual who has committed an offence against this section on a previous occasion.

38 Offences against designated waste management operators

- (1) Any person who:

- (a) damages, interferes with or removes any property or sign at a dump site or waste management facility operated by a designated waste management operator; or
- (b) enters any dump site or waste management facility without the authority of the relevant designated waste management operator; or
- (c) lights any fire at any dump site without the authority of the relevant designated waste management operator:

commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

- (2) Any person who impedes, hinders or obstructs:

- (a) an officer of the Department of Waste Management or a designated waste management operator in the exercise of a function or power under this Act; or
- (b) any contractor engaged by a designated waste management operator to undertake a waste management service –

commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

- (3) Any person who uses any rubbish bin provided by a designated waste management operator for the purposes of collecting and disposing of wastes, in any manner other than for that purpose, commits an offence and is liable upon conviction to a fine not exceeding \$100.

39 Enforcement officers and powers

- (1) The powers provided for under subsection (2) may be exercised by:
- (a) officers of the Department of Waste Management designated for the purposes of this section by the head of the Department of Waste Management;
 - (b) police officers;
 - (c) environment officers;
 - (d) authorised officers under any law relating to public health;
 - (e) officers of Kaupules in their capacity as designated waste management operators, and their contractors (if approved by the Department of Waste Management); and
 - (f) any other person approved by the Department of Waste Management from time to time.
- (2) For the purposes of implementing and enforcing the provisions of this Act, and monitoring and containing the effects of wastes on human health and the environment, the persons referred to in subsection (1) may:
- (a) enter upon any land;

- (b) enter private premises after notifying the owner of their intention to do so;
 - (c) take samples of wastes, soil and water for testing and analysis;
 - (d) require the production of records and information relevant to the management, storage, movement and disposal of wastes;
 - (e) order that certain wastes or materials apparently containing or affected by wastes be contained, removed or otherwise dealt with so as to minimise their adverse effects on human health or the environment; and
 - (f) order that certain items, substances or things be regarded as wastes, and be removed from land or premises and deposited at an approved dump or waste management or disposal facility.
- (3) Any person who refuses or fails to comply with an order given under subsection (2)(e) commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both.

40 Prosecutions under this Act

- (1) Prosecutions for offences against this Act may be undertaken by the Department of Waste Management, police officers, environment officers, authorised officers under laws relating to public health, and officers of Kaupules in their capacity as designated waste management operators.
- (2) In addition to imposing a fine for any offence against this Act, the court may order that the offender is to pay to the relevant designated waste management operator, the costs of the prosecution, and of removing and disposing of any waste to which the offence relates.
- (3) When any prosecution is taken by or on behalf of a Kaupule under this Act, or any regulations made under this Act –
 - (a) any fine imposed by a court shall be payable to the Kaupule; and
 - (b) the Kaupule may recover any fine as a debt owed to it, by civil proceedings taken by the Kaupule against the offender.

41 Jurisdiction of the Courts to try offences

- (1) Despite any provision of the Magistrates' Courts Act (Cap. 2) to the contrary, the trial of all cases involving offences under this Act or any regulations made under this Act may be heard by the Senior Magistrate's Courts which may impose any punishment up to the full penalty prescribed under this Act or regulations.
- (2) Nothing in subsection (1) affects the jurisdiction of a Magistrate's Court to hear and determine any case involving an offence against this Act which falls within its jurisdiction as provided for in the Magistrates' Courts Act.

- (3) Regulations made under this Act may provide for any offence under the regulations to be heard and determined by an Island Court in accordance with the Island Courts Act, and in such cases the jurisdiction of the Island Court shall be increased to impose any fine up to the maximum fine provided in the regulations for such offences.

42 Penalty Notices

- (1) In this section:

“**penalty notice offence**” means an offence against this Act, or Regulations made under this Act, that is prescribed by Regulations as a penalty notice offence.

- (2) An Enforcement Officer may serve a penalty notice on a person (other than a child) if it appears that:
 - (a) the person has committed a penalty notice offence; and
 - (b) it may be an effective deterrent to the person committing further offences.
- (3) A penalty notice is a written notice to the effect that:
 - (a) if the person served does not wish to have the matter determined by a Court, the person can pay, within 28 days and to the person specified in the notice, the amount of the penalty prescribed by the Regulations which permit the offence to be dealt with under this section; and
 - (b) if the person does not pay in accordance with paragraph (a), the person must appear in Court for the offence, or the matter may be dealt with in the person’s absence.
- (4) An Enforcement Officer issuing a penalty notice may include in the notice a date, being a sitting day of the court that is at least 28 days after the issue of the notice, for the person to attend court if the notice is not paid before that date.
- (5) A penalty notice must be served personally.
- (6) If the amount of penalty prescribed for an alleged penalty notice offence is paid:
 - (a) no person is liable to any further proceedings for the alleged offence; and
 - (b) payment is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) If the prescribed penalty is not paid within 28 days after the penalty notice is served:
 - (a) if the penalty notice includes a court date in accordance with subsection (4):
 - (i) the person may attend court on that day for the alleged offence to be dealt with; or

- (ii) if the person does not attend court on that day, the court may deal with the matter in the person's absence; or
- (b) in any other case the Registrar of the Court shall issue a summons for the person to attend court for the alleged offence to be dealt with.

43 Proving matters relating to wastes

- (1) If in any prosecution under this Act:
 - (a) evidence is given by a medical practitioner, or any health inspector, that a waste, chemical, substance or item is hazardous or is dangerous to human or animal health, or that any matter constitutes a health risk; or
 - (b) evidence is given by an Environment Officer appointed under section 9 of the Environment Protection Act that there has been, or may be, a harmful or adverse effect on the environment –

the court shall accept that evidence as prima facie evidence of the matters alleged.

- (2) If a prosecution relates to a chemical or other similar substance, the Court may have regard to any information disclosed on the packaging of the chemical or substance to determine whether there is a danger to health or to the public.
- (3) Nothing in this section shall limit or affect the manner in which any matter may be proved to the satisfaction of a Court.

44 Employers to be liable

If any person commits an offence against this Act involving the illegal disposal of wastes while acting in the course of that person's employment, the employer of that person shall be liable to be prosecuted for the offence as if the employer had committed it.

PART 1 - MISCELLANEOUS PROVISIONS

44 Protection of persons performing duties under this Act

Any person who lawfully exercises any power or performs any function under the authority of this Act (including members of committees established under section 15(6), and all enforcement officers under this Act) shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

46 Regulations

- (1) The Minister, acting on the advice of Cabinet, may make Regulations for the proper management and regulation of wastes, and for the management and operations of the Department of Waste Management and other designated waste management operators, and for the effective implementation of this Act.
- (2) Without limiting the generality of subsection (1), regulations may:
 - (a) provide for the effective management of wastes;
 - (b) prescribe litter and waste control measures and standards;
 - (c) regulate and control all aspects of the collection, disposal and treatment of sanitary wastes, including septic sludges, disposable nappies and other such wastes, including provisions for:
 - (i) setting fees for the collection, disposal and treatment of sanitary wastes;
 - (ii) standards of construction and approved types of disposal and treatment systems;
 - (iii) maintenance obligations in relation to septic tanks and other systems for the collection, storage and treatment of such wastes;
 - (iv) obligations to dispose of septic sludges only at approved facilities, and only by using approved arrangements; and
 - (v) any other matter related to the effective management of sanitary waste, and the provision of sanitation operations and services;
 - (d) prohibit the importation, use or sale of any items which generate wastes, or restrict such items so that the generation of wastes is minimised;
 - (e) prescribe procedures for the collection of waste related information and for its dissemination so as to raise awareness of waste related matters and permit informed decision making to be made by all sections of the community in relation to the minimisation of the generation of wastes and the adverse effects of wastes on human health and the environment;
 - (f) provide for systems of registration and licensing of businesses dealing with waste management and disposal;
 - (g) promote or regulate the recycling of wastes, including the composting of green wastes;
 - (h) specify toxic and hazardous wastes and regulate the manner in which such wastes are to be stored, transported and disposed of;
 - (i) define any other category or type of wastes, and provide for the effective management and control;
 - (j) provide for the determination of any particular object, substance or thing to be waste, or a type of waste, for the purposes of this Act, and which apply certain presumptions and other aids for the determination of such matters by courts; and

- (k) secure the observance and effective implementation of international conventions and obligations relating to wastes applicable in Tuvalu, or of general application within the South Pacific region; and
 - (l) require the observance of approved standards, rules, operating procedures and codes of practices applying to agencies or businesses that operate waste management or disposal services.
 - (m) provide for any other power or procedure for the enforcement of this Act, and any law relating to the management and control of wastes, including arrangements for the use of penalty notices in relation to offences against this Act or the Regulations, including:
 - (i) prescribing an offence under the Act or the Regulations, as a penalty notice offence;
 - (ii) fixing the penalty payable for a penalty notice offence, provided that the amount of a penalty prescribed for a penalty notice offence must not to exceed the maximum amount of penalty that could be imposed for the offence by a court;
 - (iii) prescribing different penalties for different offences or classes of offences;
 - (iv) prescribing different penalties for the same penalty notice offence committed in different circumstances; and
 - (n) provide for the use of community service orders imposed by Courts in relation to offenders against this Act or the Regulations.
- (3) In addition to procedures for penalty notices and community service orders referred to in subsection (2), Regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$10,000, or imprisonment for a period not exceeding 3 months, or both.
- (4) In addition to any penalty prescribed by Regulations in accordance with subsection (3), Regulations made under this Act may empower a Court to order that an offender pay any costs associated with properly dealing with and disposing of a waste that is the subject of the offence, and any costs associated with cleaning up any place or thing that is necessary as a result of the offence.

ENDNOTES

¹ Act 22 of 2017