



GOVERNMENT OF TUVALU

MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT  
DEPARTMENT OF ENVIRONMENT

# REVIEW OF ENVIRONMENT RELATED LAWS IN TUVALU

ENVIRONMENT LEGISLATION  
DRAFTING PROJECT

SUPPORTED BY SPREP

PREPARED FOR THE DEPARTMENT OF ENVIRONMENT



**SPREP**

Secretariat of the South Pacific Regional  
Environment Programme

*FIRST PRINTED – JUNE 2007  
THIS VERSION IS CURRENT TO JUNE 2007*

**Graham Bruce Powell BA LLB (Hons)  
Apia SAMOA**

**REVIEW OF TUVALU'S ENVIRONMENT RELATED LAWS  
ENVIRONMENT LEGISLATIVE DRAFTING PROJECT**

|  |           |
|--|-----------|
| <b>INDEX</b>   | <b>2</b>  |
| <b>Table of Abbreviations</b>  | <b>5</b>  |
| <br>   |           |
| <b>1. BACKGROUND</b>   |           |
| <b>SCOPE AND METHODOLOGY</b>   | <b>6</b>  |
| 1.1 The Objectives of this Review  | 6         |
| 1.2 Current and proposed legislation   | 6         |
| 1.3 Assessing the relevance of laws to this Review                                 | 6         |
| 1.4 Key legislative matters identified in this Inventory                           | 7         |
| 1.5 Utilising and Up-dating this Inventory   | 7         |
| <br>   |           |
| <b>2. THE INVENTORY OF LAWS</b>  | <b>8</b>  |
| <br>   |           |
| <b>2.1 Laws which relate to constitutional authority and jurisdiction</b>          | <b>8</b>  |
| <br>   |           |
| <b>2.1.1 Constitution and jurisdiction</b>   | <b>8</b>  |
| <br>   |           |
| THE CONSTITUTION OF TUVALU 1986 (CAP. 1)   | 8         |
| MARINE ZONES ACT 1983 (CAP. 24A)   | 10        |
| <br>   |           |
| <b>2.1.2 Laws and law making</b>   | <b>12</b> |
| <br>   |           |
| INTERPRETATION AND GENERAL PROVISIONS ACT (CAP. 1A)                                | 12        |
| LAWS OF TUVALU ACT (CAP. 1B)   | 14        |
| <br>   |           |
| <b>2.1.3 Jurisdiction of the Courts</b>  | <b>15</b> |
| <br>   |           |
| SUPERIOR COURTS ACT (CAP. 1C)  | 15        |
| MAGISTRATES COURT ACT (CAP. 2)   | 15        |
| ISLAND COURTS ACT (CAP. 3)   | 16        |
| <br>   |           |
| <b>2.2 Administrative arrangements affecting the management of the environment</b> | <b>17</b> |
| <br>   |           |
| FALEKAUPULE ACT 1997   | 17        |
| EMERGENCIES AND THREATENED EMERGENCIES (SPECIAL POWERS) ACT (CAP. 9A)              | 19        |
| <br>   |           |
| <b>2.3 Environment Protection and Management</b>                                   | <b>20</b> |
| <br>   |           |
| <b>2.3.1 General environment protection provisions</b>                             | <b>20</b> |
| <br>   |           |
| FALEKAUPULE ACT 1997   | 20        |

|  |           |
|--|-----------|
| PENAL CODE (CAP. 8)                            | 23        |
| <b>2.3.2 Marine Pollution</b>                  | <b>24</b> |
| MARINE POLLUTION ACT 1991                      | 24        |
| HARBOURS ACT (CAP. 88)                         | 25        |
| HARBOURS REGULATIONS                           | 26        |
| SHIPPING ACT (CAP. 89)                         | 26        |
| MERCHANT SHIPPING ACT (CAP. 64A)               | 26        |
| WRECK AND SALVAGE ACT (CAP. 91)                | 27        |
| <b>2.3.3 Wildlife Protection and Reserves</b>  | <b>28</b> |
| WILDLIFE CONSERVATION ACT (CAP. 47)            | 28        |
| PROHIBITED AREAS ACT (CAP. 76)                 | 29        |
| CLOSED DISTRICTS ACT (CAP. 75)                 | 30        |
| CONSERVATION AREAS ACT 1999                    | 30        |
| FALEKAUPULE ACT 1997                           | 32        |
| <b>2.3.4 Animals</b>                           | <b>32</b> |
| ANIMALS (CONTROL OF EXPERIMENTS) ACT (CAP. 48) | 33        |
| DOGS ACT (CAP. 46)                             | 33        |
| FALEKAUPULE ACT 1997                           | 34        |
| <b>2.3.5 Quarantine arrangements</b>           | <b>35</b> |
| QUARANTINE ACT (CAP. 34)                       | 35        |
| BIOSECURITY BILL (MODEL LAW)                   | 37        |
| PLANTS ACT (CAP. 39)                           | 39        |
| IMPORTATION OF ANIMALS ACT (CAP. 43)           | 40        |
| IMPORTATION OF ANIMALS REGULATIONS 1965        | 41        |
| DOGS ACT (CAP. 46)                             | 42        |
| LIVESTOCK DISEASES ACT (CAP. 43A)              | 42        |
| FALEKAUPULE ACT 1997                           | 43        |
| <b>2.3.6 Hazardous substances</b>              | <b>43</b> |
| PESTICIDES ACT (CAP. 39A)                      | 43        |
| PETROLEUM ACT (CAP. 42)                        | 44        |
| MERCHANT SHIPPING ACT (CAP. 64A)               | 45        |
| SHIPPING REGULATIONS 1958                      | 46        |
| <b>2.4 Protection of human health</b>          | <b>46</b> |
| PUBLIC HEALTH ACT (CAP. 35)                    | 46        |

|  |           |
|--|-----------|
| PUBLIC HEALTH REGULATIONS 1926   | 47        |
| FOOD SAFETY ACT 2006   | 48        |
| PHARMACY AND POISONS ACT (CAP. 33)   | 48        |
| DANGEROUS DRUGS ACT (CAP. 32)  | 49        |
| METHYLATED SPIRITS ACT (CAP. 33A)  | 50        |
| FALEKAUPULE ACT 1997   | 51        |
| <b>2.5 Natural Resources</b>   | <b>52</b> |
| <b>2.5.1 Land</b>  | <b>52</b> |
| NATIVE LANDS ACT (CAP. 22)   | 52        |
| FORESHORE AND LAND RECLAMATION ACT (CAP. 26)   | 53        |
| CROWN ACQUISITION OF LANDS ACT (CAP. 24)   | 54        |
| NEGLECTED LANDS ACT (CAP. 23)  | 54        |
| FALEKAUPULE ACT 1997   | 56        |
| <b>2.5.2 Fisheries</b>   | <b>57</b> |
| MARINE RESOURCES ACT 2006  | 57        |
| FISHERIES (TROCHUS) REGULATIONS 1990   | 59        |
| FALEKAUPULE ACT 1997   | 59        |
| <b>2.5.3 Mining</b>  | <b>60</b> |
| MINERAL DEVELOPMENT LICENSING ACT (CAP. 25)  | 60        |
| FORESHORE AND LAND RECLAMATION ACT (CAP. 26)   | 62        |
| <b>2.5.4 Water resources</b>   | <b>62</b> |
| WATER SUPPLY ACT (CAP. 40)   | 62        |
| PUBLIC HEALTH ACT (CAP. 35)  | 63        |
| <b>2.6 Control of trans-boundary movements</b>   | <b>63</b> |
| CUSTOMS ACT (CAP. 55)  | 63        |
| MERCHANT SHIPPING ACT (CAP. 64A)   | 64        |
| CARRIAGE OF GOODS BY SEA ACT (CAP. 87)   | 65        |
| <b>2.7 Recognition and protection of culture and traditional institutions and values</b> | <b>65</b> |
| THE CONSTITUTION OF TUVALU 1986 (CAP. 1)   | 65        |
| LAWS OF TUVALU ACT (CAP. 1B)   | 66        |
| TUVALU CULTURAL COUNCIL ACT 1991   | 67        |
| FALEKAUPULE ACT 1997   | 67        |

|   |           |
|---|-----------|
| TUPE FAKANA A FALEKAUPULE ACT 1999  | 68        |
| COPYRIGHT ACT (CAP. 60)   | 68        |
| <b>3. Legislative obligations under international conventions</b>   | <b>70</b> |
| The Convention on Biological Diversity  | 70        |
| Cartagena Protocol  | 71        |
| Framework Convention on Climate Change  | 71        |
| Regional Seas Conventions   | 72        |
| Convention to Combat Desertification  | 73        |
| The Vienna Convention and Montreal Protocol<br>on Ozone Depleting Substances  | 74        |
| Basel Convention and Waigani Convention to control the<br>trans-boundary movements and disposal of hazardous wastes | 75        |
| CITES (International trade in endangered species)   |           |
| Stockholm Convention  | 75        |

#### TABLE OF ABBREVIATIONS

|       |   |
|-------|---|
| DoE   | Department of Environment of MNRE             |
| MNRE  | Ministry of Natural Resources and Environment |
| SPREP | South Pacific Regional Environment Programme  |

## **1. BACKGROUND SCOPE AND METHODOLOGY**

### **1.1 The Objectives of this Review**

The central objective of the current project is the drafting of a range of environment related laws for Tuvalu. These include an Environment Protection Act which shall form the foundation of environment related legislation in Tuvalu. It is proposed that a number of laws shall then be drafted in relation to ozone depleting substances, environment impact assessment (EIA), living modern organisms and other matters which relate to the observance in Tuvalu of its international environment related obligations. The effectiveness of these draft laws shall be dependant to a large degree on ensuring that they are compatible with existing laws in Tuvalu, and with the constitutional and legislative processes that are noted in this Review.

### **1.2 Current and proposed legislation**

This Inventory of Tuvalu's laws relevant to this project includes both current laws, and those that are at an advanced stage of formulation and drafting, but which have not yet been enacted.

Current laws are called "Acts". Proposed laws are termed "Bills". Regulations that have been drafted but not promulgated are noted as "Draft" Regulations.

### **1.3 Assessing the relevance of laws to this Review**

It is common that legislative reviews applying to particular areas of the law require a subjective determination as to the relevance of particular laws, and therefore as to their inclusion in an Inventory such as this.

In this case however, the basic objectives of this project may be assisted by broadly identifying and scoping the full range of environment related laws in Tuvalu.

These objectives centre the focus of this Inventory on the following areas of the law –

- Matters relating to constitutional authority and jurisdiction
- Administrative arrangements affecting the management of the environment
- Environment Protection and Management
- Protection of human health
- Natural Resources
- Control of Transboundary movements
- Recognition and protection of culture and traditional institutions and values
- Public awareness and participation (including the involvement of the private sector)
- Other regulatory regimes
- Regional and international cooperation and harmonisation of arrangements

These then form the principal basis of determining the relevance of any particular law to this Inventory.

To make this Report readable and to assist in its practical applications, the laws are noted under the above headings.

#### **1.4 Key legislative matters identified in this Inventory**

In this Inventory the following information is provided in relation to each relevant law –

- The year the law was passed
- The date of the law's commencement
- The number of amendments made to the law and the years these were made
- The laws repealed at the time the law came into effect
- The government ministry or agency principally responsible for the administration of the law (unless there is no clearly defined responsibility in relation to a particular law)

The relevant provisions of each law are then stated. In most cases the individual sections are considered. In some cases the relevant Parts of the law are noted so that a number of sections are given consideration to in this manner.

#### **1.5 Utilising and Up-dating this Inventory**

The methodology outlined above permits the Inventory to be kept current by making suitable changes to its provisions periodically. These changes could include the following matters –

- Deleting any laws that have been repealed
- Adding any new laws
- Noting any amendments made to a law, either as additions to, deletions from or changes made to the law

If this Inventory is periodically up-dated in this fashion then it may be applied to the following purposes for an extended period of time –

- As an up to date account of the current state of Tuvalu's laws related to environment generally.
- As the basis of "country reports" to regional meetings dealing with environment related matters.
- As an overview of laws relating to environment protection and resource management in Tuvalu
- As a tool to be used by consultants implementing aid funded programmes or domestic law reform initiatives in Tuvalu relevant to environment related issues.

## 2. THE INVENTORY OF LAWS

### 2.1 Laws which relate to constitutional authority and jurisdiction

#### 2.1.1 *Constitution and jurisdiction*

#### **THE CONSTITUTION OF TUVALU 1986 (CAP. 1)**

*Year passed* – 1986

*Effective from* – 1<sup>st</sup> October 1986

*Amended* – 1992, 2000, 2002 (2 amendments)(All laws previously termed as Ordinances are now called Acts)

*Repealed* – Tuvalu Independence Order (UK) 1978 and the Constitution set out in the Order

*The Constitution is the underlying law and no individual, body or Ministry has specific administrative responsibility for it.*

#### Main object

To make provision for the constitutional framework of Tuvalu.

#### Relevance to this Review

This law provides the basis for law-making in Tuvalu, it sets the limits of Tuvalu's jurisdiction and has many other provisions which enable the management of the environment by the responsible Minister and officers of the Public Service.

(There are no specific references in Tuvalu's Constitution to conservation of resources and sound environmental or resource management. The rights of future generations however are acknowledged in the *Principles of the Constitution*.)

#### Substance of relevant provisions

*Preamble* The State of Tuvalu is based upon Christian principles, the rule of law and Tuvaluan custom and tradition.

*Principles* The rights of the people of Tuvalu, both present and future, to a full, free and happy life, and to moral, spiritual, personal and material welfare is affirmed as one given to them by God.

Whilst taking its place amongst the community of nations it is acknowledged that the stability of Tuvaluan society and the welfare of its people (both present and future) depends largely on the maintenance of Tuvaluan values, culture and traditions, including the vitality and the sense of identity of island communities.



In government and social affairs the guiding principles include “agreement, courtesy and the search for consensus, in accordance with traditional Tuvaluan procedures, rather than the alien ideas of confrontation and divisiveness” and “the need for mutual respect and cooperation between the different kinds of authorities concerned, including the central Government, the traditional authorities, local governments and authorities, and the religious authorities”.

Section 2 The area of Tuvalu is defined. This includes the defined land areas and also the territorial sea and the inland waters as declared by law. Additional areas of land and waters may be declared by law. Laws may claim the jurisdiction (complete or partial) of Tuvalu over any area of land or water and laws may have extra-territorial effect.

Section 3 This Constitution is the supreme law of Tuvalu. Inconsistent laws are void to the extent of the inconsistency. All laws shall be interpreted and applied subject to this Constitution and so as to conform with it.

Section 4 The Constitution is to be interpreted and applied consistently with the Principles set out in the Preamble, and to achieve the aims of fair and democratic government in the light of reason and experience and of Tuvaluan values.

Part II Contains a Bill of Rights which ensures the following principles –

- Freedom under the law (section 10)
- Right to life (section 16)
- Right of personal liberty (section 17)
- Freedom from slavery and forced labour (section 18)
- Freedom from inhuman treatment (section 19)
- Right to property and freedom from unjust deprivation of property (section 20)
- Right to privacy of home and property – rights of entry on property to investigate offences etc are preserved (section 21)
- Right to protection of the law – including obligations to inform arrested persons of the offence and to allow adequate opportunities to defend criminal charges (section 22)
- Freedom of belief (section 23)
- Freedom of expression (section 24)
- Freedom of assembly and association (section 25)
- Freedom of movement (section 26)
- Freedom from discrimination (section 27)
- Other rights conferred by law (section 28)

Under section 29 it is acknowledged that it may be necessary to restrict some rights if their exercise may be divisive, unsettling or offensive, or may directly threaten Tuvaluan values and culture.

- Section 35 Provides for the declaration of public emergencies. (During emergency periods certain restrictions apply to the basic rights and freedoms. Safeguards are provided for persons detained during such periods.)
- Part VI Makes provision for Parliament and law making.
- Section 85 Acts of Parliament may provide for the delegation to any person or authority (other than Parliament) of power to make regulations and other subsidiary laws. Controls may be placed in relation to the exercise of delegated powers.
- Schedule 1 This Schedule states the rules for interpreting this Constitution. It is specifically provided that a power to regulate an act or thing given under the Constitution does not include a power to prohibit, unless the context indicates otherwise.

### **MARINE ZONES ACT 1983 (CAP. 24A)**

*Year passed* – 1983

*Effective from* – 1<sup>st</sup> January 1984

*Amended* – 1988

*Laws repealed* – No laws repealed

#### Main object

To make provision in respect of Tuvalu’s internal waters, archipelagic waters, the territorial sea, the EEZ and the contiguous zone.

#### Relevance to this Review

This law provides for the jurisdiction of Tuvalu to extend to various maritime zones. This important for the effective application of environment related laws to Tuvalu’ seas.

#### Substance of relevant provisions

- Section 2 This section provides definitions for “conservation and management” of the fishery resource and the marine environment, and also for the “fishery resource”
- Section 3 This section makes references to international law non-justiciable by the courts.
- Section 4 The provisions of this Act must be read as being subject to any applicable treaty or convention which has been finally accepted by Tuvalu.
- Section 5 Provision is made for the internal waters of Tuvalu.

- Section 6 Provision is made for the archipelagic waters of Tuvalu.
- Section 7 The territorial seas of Tuvalu extend to 12 nautical miles from the base-line.
- Section 8 The out limit of the exclusive economic zone is 200 nautical miles from the base-line.
- Section 9 For the purpose of any law of Tuvalu the contiguous zone is the sea within 24 nautical miles from the base-lines from which the breadth of the territorial sea is measured.
- Section 10 The jurisdiction of Tuvalu extends to the airspace above, and the subsoil and seabed below, the internal waters and archipelagic waters, and to territorial sea.
- Section 11 The sovereign rights of Tuvalu in relation to the EEZ are stated in this section.
- Section 12 Rights of free passage in accordance with international law are given to other States in the marine zones described under this Act.
- Section 13 If no other Act makes relevant provision, Regulations may be made for the following purposes in relation to the EEZ –
- Regulating scientific research
  - Regulating exploration and exploitation for energy purposes and other economic purposes
  - Regulating construction and operation of artificial islands and structures
  - Prescribing measures for the protection and preservation of the marine environment
  - Giving effect to Tuvalu’s rights and obligations in relation to the EEZ.

### ***2.1.2 Laws and law making***

#### **INTERPRETATION AND GENERAL PROVISIONS ACT 1988 (CAP. 1A)**

*Year passed* – 1988

*Effective from* – 1<sup>st</sup> January 1989

*Amended* – No amendments

*Laws repealed* – The Interpretation and General Clauses Act

### Main object

To consolidate and amend the law relating to the construction, application, interpretation and operation of written laws.

### Relevance to this Review

This law makes important provision in relation to the interpretation of all laws, and in relation to the making of regulations under Acts. These matters are important if the new environment law is to rely on the making of regulations to give it full effect.

### Substance of relevant provisions

- Section 10 Some relevant definitions include “export”, “foreshore”, “import”, “individual”, “occupy”, “person”, “property”, “public body”, “regulation”, “sell”, “subsidiary legislation” and “this Act” (to include any subsidiary legislation made under an Act). A reference to “the Minister” in an Act means the Minister responsible for the administration of the Act, and in regulations means the Minister responsible for the administration of the Act under which the Regulations have been made.
- Section 14 An act does not bind the Crown unless it is expressed to do so.
- Section 25 Every law shall be published by exhibition at the Government buildings, and in due course in the Gazette. A notice of the coming into effect of any law shall be given by radio broadcast and a local paper before its commencement, or as soon as possible after commencement.
- Section 26 No law may come into effect until it is published by exhibition under section 25(1). An express provision in the law may enable it to take effect on a date earlier than its publication.
- Section 35 If an Act requires that subsidiary legislation must be approved by any person or authority, then the regulations do not take effect until such approval is given.
- Section 36 All subsidiary legislation must be tabled in the Parliament by the relevant Minister. Under section 37 Parliament may vote to disallow any subsidiary legislation.
- Section 38 Unless otherwise provided words and expressions used in subsidiary legislation shall have the same meaning as is given to them in the Act under which it is made.

- Section 39 Subsidiary legislation has the same force and effect and is binding and is construed for all purposes as if it has been contained in the Act under which it is made.
- Section 40 Any act done under subsidiary legislation is deemed to have been done under the relevant Act.
- Section 41 Subsidiary legislation may constitute offences and prescribe penalties. These penalties are limited to fines of \$2000 or imprisonment for 12 months. (However under section 3 an express provision in an Act may displace the application of this Act).
- Section 42 Subsidiary legislation may provide for fees and charges to be imposed. These may be specific fees, minimum or maximum fees or fees set according to value. Provision may be made for payment under specified conditions or in specified circumstances, and for the reduction waiver or refund of fees.
- Section 53 Where the word “may” is used in conferring a power, it is to be interpreted to imply that the power may or may not be exercised in accordance with the exercise of a discretion. But if the word “shall” is used then it is to be interpreted to mean that the power must be exercised.
- Part VIII Prescribes requirements for the proper delegation of any power that is conferred by a law. But a person may never delegate a power which he or she is expressly prohibited from delegating by the relevant law. And there may be no delegation of a power to make subsidiary legislation or to hear appeals.
- Part IX Makes provision in relation to Boards and Committees established under laws, including the following matters –
- The power to appoint a chairperson (section 57)
  - The power to appoint public officers by their official designation (section 58)
  - The power to appoint alternate and temporary board members (section 59)
  - Powers of boards, commissions, committees etc are not affected by a vacancy in their membership, any defect in appointment, any minor irregularity in conducting meetings or the presence and participation of a non-member (section 60)
  - Powers of boards etc may be exercised by the vote of the majority of members (section 61)
  - Documents required to be made under seal may be sealed and signed by the Chairperson, or a member authorised by the Chairperson (section 62)

## **LAWS OF TUVALU ACT 1987 (CAP. 1B)**

*Year passed* – 1987 (No 8 of 1987)

*Effective from* – 1<sup>st</sup> January 1988

*Amended* – No amendments

*Laws repealed* – Certain provisions of the Magistrates Court Act, the Islands Court Act, the Penal Code and the Local Government Act were repealed or amended.

*Administered by*

### Main object

To declare what constitutes the laws of Tuvalu.

### Relevance to this Review

In managing the environment of Tuvalu it is important to appreciate the nature of all applicable laws in Tuvalu.

### Substance of relevant provisions

- Section 4 The constitution is the supreme law. The other laws of Tuvalu are –
- Every Act
  - Customary law
  - The common law of Tuvalu
  - Every applied law
- Section 5 Customary law comprises the customs and usages existing from time to time of the natives of Tuvalu. Customary law shall have effect as law in Tuvalu except to the extent that it is inconsistent with an Act or applied law, and subsidiary legislation made under them. Customary law is to be determined in accordance with the principles stated in Schedule 1 (Determination and Recognition of Customary Law).
- Section 6 The common law of Tuvalu is described as being the relevant rules as applied in the circumstances in Tuvalu from time to time. The rule of common law and the doctrines of equity are to be administered concurrently.
- Section 7 The applied laws are the imperial enactments which still have effect as part of the laws of Tuvalu. This may be applied with any necessary application of comparable names, titles, offices, persons and institutions as are applicable to Tuvalu.
- Section 8 The Attorney General may adapt any imperial enactment to meet the circumstances of Tuvalu by making regulations to that effect.

Section 13 Provision is made for judicial precedent obliging courts to follow the decisions made by higher courts in Tuvalu's court hierarchy.

### **2.1.3 Jurisdiction of the Courts**

#### **SUPERIOR COURTS ACT 1987 (CAP. 1C)**

*Year passed* – 1987 (Act 9 of 1987)

*Effective from* – 5<sup>th</sup> February 1988

*Amended* – No amendments

*Laws repealed* – Various imperial enactment stated in Schedule 2

#### Main object

To make provision in respect of the jurisdiction, powers and authorities of the High Court and the Court of Appeal and to make provision for appeals to the Sovereign in Council.

#### Relevance to this Review

This law is of marginal relevance to matters of environment management but the jurisdiction of the courts is a significant issue in the context of enforcement.

#### Substance of relevant provisions

Section 3 The High Court has such jurisdiction as is vested in it by this Act and any other law. It has unlimited jurisdiction in relation to civil and criminal matters. It also has a supervisory jurisdiction over all inferior courts (and tribunals in relation to administrative decisions).

Section 5 The High Court may –

- Make order and give directions as may be appropriate or necessary in the interests of justice
- Make orders preventing the abuse of the process of the law
- Make binding declarations of right
- Make orders in the nature of the prerogative writs

Section 9 The Court of Appeal has jurisdiction to hear and determine appeals from decisions of the High Court.

Part IV Provision is made for appeals to the Sovereign in Council from decisions of the Court of Appeal if the Court of Appeal grants leave.

#### **MAGISTRATES COURT ACT (CAP. 2)**

*Year passed* – 1963

*Effective from* – 14<sup>th</sup> October 1963

*Amended* – 1965, 1965, 1967, 1968, 1969, 1972 (2 amendments), 1974, 1975, 1982, 1987 (2 amendments) and 1989

*Laws repealed* – No laws repealed

Main object

To provide for all matters concerning the Senior Magistrates Court and the Magistrates Courts.

Relevance to this Review

Criminal prosecutions under the proposed environment law shall be undertaken principally in these courts.

Substance of relevant provisions

Section 3 Courts of summary jurisdiction known as the Senior Magistrates Courts and the Magistrates Courts are established.

Section 5 Subject to any express provision to the contrary in any Act, each court shall exercise jurisdiction throughout Tuvalu.

Section 25 Senior Magistrates Courts have jurisdiction to try summarily any offence for which the maximum penalty does not exceed 14 years imprisonment, or a fine, or both. However Senior Magistrates may not impose penalties exceeding 5 years imprisonment or a fine exceeding \$1000.

Magistrates Courts have jurisdiction to try summarily any offence for which the maximum penalty does not exceed 1 year imprisonment, or a fine not exceeding \$200, or both.

These jurisdictions are subject to any law making alternative provision.

**ISLAND COURTS ACT (CAP. 3)**

*Year passed* – 1965

*Effective from* – 12<sup>th</sup> October 1965

*Amended* – 1967, 1969, 1971 (2 amendments), 1972 (2 amendments), 1982, 1987, 1988 and 1989

*Laws repealed* – No laws repealed

Main object

To make provision in relation to all matters concerning Island Courts.



### Relevance to this Review

Island Courts may have jurisdiction to hear cases involving breaches of regulations made under the proposed environment law.

### Substance of relevant provisions

- Section 3 Courts of summary jurisdiction known as Island Courts are established throughout Tuvalu. These courts are subordinate to Magistrates Court.
- Section 4 The jurisdiction of Island Courts is limited to the island for which is it established.
- Section 5 The criminal jurisdiction of the Island Courts is set out in Schedule 2. This includes any law which expressly grants jurisdiction to the Island Courts and any offence for which the maximum penalty is a fine of \$1000 or imprisonment for 6 months. The Schedule all lists a range of specific provisions of certain Acts which fall within the jurisdiction of the Island Courts.

## **2.2 Administrative arrangements affecting the management of the environment**

NOTE: There is currently no law in Tuvalu which makes express provision concerning the responsibility for managing the environment.

This shall be remedied if the proposed Environment Protection Act becomes law. This Act shall vest wide ranging administrative responsibilities in the DoE. It is envisaged that the Act ( and regulations made under the Act) shall provide for functions and powers relating to –

- The powers of the Minister and Director
- The appointment of environment officers, and their powers
- The conduct of environment impact assessments
- The regulation and control of pollution and wastes
- All matters concerning the implementation of international environment related conventions
- The protection of the biodiversity
- Responses to climate change

Current laws make some administrative arrangements concerning the environment are -

### **FALEKAUPULE ACT 1997**

*Year passed* – 1997

*Effective from* –

*Amended* – No amendments

*Laws repealed* – Local Government Act

*Administered by*

Main object

To make provision for Falekaupule and Kaupule in each island of Tuvalu as the local government structure.

Relevance to this Review

Many functions and powers of Falekaupule exercised through their Kaupule and officers relate to matter of environmental management.

Substance of relevant provisions

Part II Provides for the establishment of Falekaupule and Kaupule for Funafuti atoll, Nanumaga atoll, Nanumea, Niutao and Niulakita atoll, Nui atoll, Nukufetau, atoll, Nukulaelae atoll and Vaitupu atoll, with 6 elected members for each Kaupule

Part III - Makes provision in relation to the composition of Kaupule, including -

- Election of Kaupule members (section 8)
- Qualification of voters (section 14)
- Regulation of elections (section 16)
- Election of Pule o Kaupule (section 18)
- Functions of Pule o Kaupule (section 19)

Part IV Regulates meetings and proceedings of Kaupule, including provision for –

- Number of meetings (section 21)
- Convening of meetings (section 22)
- Standing orders (section 31)
- Payment of allowances (section 32)
- Attendance of non-members (section 34)
- Appointment of committees (section 35)
- Standing committees (section 36)
- Standing orders for committees (section 37)

Part V Prescribes the functions of Falekaupule and Kaupule, including provisions for -

- Duty to discharge functions (section 39)
- Functions as prescribed in Schedule 3(section 40)
- Prevention of crime (section 41)
- Powers of public officers (section 49)
- Power to enforce functions (section 50)
- Expenses in respect of transferred functions (section 51)
- Powers in emergency (section 52)

- Part VI Under this Part Kaupules may make bye-laws in relation to their functions
- Part VIII Provision is made for the imposition and collection of a Community Development Tax and other Rates
- Part IX Comprehensive provision is made in relation to the officers and other staff of Kaupule
- Section 121 The Assembly of each Falekaupule must be convened every 3 months.
- Section 122 Each Falekaupule must prepare a Local Development Plan which will set out programmes and priorities for social and economic developments for that area.
- Section 124 The Minister may transfer the powers of public officers to Kaupule.
- Section 125 Protocols are stated for consultations between the Minister and Falekaupule.
- Section 126 It is an offence to obstruct officers etc.
- Section 129 The Minister may, after consultation with each Falekaupule, make regulations applying to all Falekaupule areas or to a particular Falekaupule area for the better carrying into effect of the provisions of this Act

### Schedule 3 – FUNCTIONS OF FALEKAUPULE

The functions of Falekaupule relevant to –  
 environment protection and management are stated in 2.3.1.  
 wildlife protection are stated in 2.3.3.  
 animals are stated in 2.3.4.  
 quarantine are stated in 2.3.5.  
 public health are stated in 2.4.  
 fisheries are stated in 2.5.2.  
 the recognition and protection of culture are stated in 2.7.

### **EMERGENCIES AND THREATENED EMERGENCIES (SPECIAL POWERS) ACT (CAP. 9A)**

*Year passed* – 1987

*Effective from* – 6<sup>th</sup> August 1987

*Amended* – No amendments

*Laws repealed* – No laws repealed

Main object

To empower the Head of State to make regulations to deal with threatened public emergencies and for regulations to have effect during periods of public emergency.

Relevance to this Review

This law may have some relevance to the management of the environment during periods of emergency or threatened emergency.

Substance of relevant provisions

Section 3 This section empowers the Head of State to make emergency regulations if a public emergency is threatened. The regulations must be reasonably justifiable for dealing with the threat or situation.

Section 4 During periods of emergency under section 36 of the Constitution emergency regulations may be made that are reasonably justifiable for dealing with the emergency, and which may provide *inter alia* –

- for the detention of people or the restriction of movements
- for the compulsory evacuation of islands or areas
- for the taking of control of any property
- for the regulation or control of supplies and services and the use of food, water, fuel or light
- for the restoration of essential services
- for emergency health measures

**2.3 Environment Protection and Management****2.3.1 General environment protection provisions****FALEKAUPULE ACT 1997**

(Details are in 2.2)

**SCHEDULE 3 – FUNCTIONS OF FALEKAUPULE****1. Agriculture, Livestock and Fisheries**

- (b) to control plant diseases, weeds and pests in accordance with the Plants Act;
- (c) to control or exterminate insect, animal or other pests detrimental to crops;
- (e) to regulate by bye-laws areas and methods of planting and types of crops and trees;
- (g) to prohibit, restrict or regulate by bye-laws the movement of livestock in or through the Falekaupule area;
- (h) to prohibit, restrict and regulate by bye-laws the keeping of livestock of any description;

- (i) to establish; maintain and control pounds, seize and impound any stray animal and provide by bye-laws for the payment of compensation for damage done by any such animal;
- (j) to prohibit cruelty to animals and any specified acts of cruelty to animals in accordance with the Animals (Control of Experiments) Act;
- (k) to establish, erect, maintain and control slaughter houses;
- (l) to provide for the control, destruction and licensing of dogs in accordance with the Dogs Act;
- (m) to prevent and control the outbreak or the prevalence of any disease among animals in accordance with the Quarantine Act;
- (n) to provide for the improvement and control of fishing and related industries in accordance with the Fisheries Act;
- (o) to prohibit, restrict or regulate the hunting, capture, killing or sale of animals, reptiles, birds or fish in accordance with the Wildlife Conservation Act.

## **2. Building and Town or Village Planning**

- (a) to regulate and control by bye-laws the erection and construction, demolition, re-erection and reconstruction, conversion and re-conversion, alteration, repair, sanitation and ventilation of public and private buildings and structures;
- (b) to provide by bye-laws for building lines and the layout of buildings;
- (c) to make advances, upon such conditions as may be approved by the Minister, for the purpose of enabling persons to build or buy dwelling-houses;
- (d) to prepare and undertake by means of bye-laws control schemes for improved housing layouts and settlements;
- (e) to prescribe the conditions to be satisfied by a site for any building or for any class of building;
- (f) to prohibit by bye-laws the construction of any new building unless and until the approval of the Kaupule has been obtained;
- (g) to provide for the demolition of dangerous buildings and for the recovery of any expenses incurred in connection with such demolition;
- (h) to prohibit or regulate by bye-laws the use in any defined area of any inflammable material in the construction or repair of any building;
- (i) to build; equip and maintain social or sporting centres; public libraries and museums, communal feeding centres, restaurants, rest houses, or buildings designed and used for public or educational purposes;
- (j) to build, equip, maintain and let shops;
- (k) to prohibit or regulate by bye-laws the making of pulaka pits or other excavations;
- (l) to control and regulate by bye-laws the siting of advertisements and hoardings or other structures designed for the display of advertisements,
- (m) to regulate by bye-laws the use of natural building and construction materials;
- (n) to establish, erect and maintain public monuments and to make collections of money towards the establishment or maintenance of them;
- (o) to restrict by bye-laws the use of barbed wire and the use of broken glass or the like on fences and walls;
- (p) to name streets and public places;

- (q) to lay out and adorn any public place by any architectural scheme or ornamentation, including the erection of statues, fountains or other structures.

#### **4. Forestry and Trees**

- (a) to establish, preserve, maintain, improve and control tree nurseries, forests and woodlands and to sell the produce from them;
- (b) to plant and tend trees in, and remove trees from any public place.

#### **5. Land**

- (a) to prevent and control erosion of land by the sea or other cause;
- (b) to provide for the fencing of land and for the maintenance and repair of such fencing;
- (c) to engage in and promote the reclamation of land from the sea on behalf of the Crown, in accordance with the Foreshore and Land Reclamation Act.

#### **6. Relief of Famine and Drought**

- (a) to regulate by bye-laws the areas and methods of planting and types of crops in areas which are liable to drought or famine;
- (b) in time of famine or drought to provide or arrange for the provision of appropriate relief.

#### **9. Public Order, Peace and Safety**

- (c) to prevent, abate and control fires;
- (d) by bye-laws to prohibit, control and restrict the storage of inflammable or offensive materials in specified areas;
- (f) to prevent and remove public nuisances;
- (k) to prohibit or restrict by bye-laws the drinking of alcohol in public places other than licensed premises.

#### **10. Communications and Public Utilities**

- (a) to make, alter, divert and maintain roads, streets, parking areas, paths, culverts; causeways, bridges, drains and water-courses;
- (h) by bye-laws to prohibit, restrict or control the access of motor traffic to any road or parking area maintained by the Falekaupule and to impose speed limits in respect of any road maintained by the Falekaupule in accordance with the Traffic Act,
- (j) to regulate or prohibit by bye-laws the planting, cutting or destruction of any trees or vegetation growing along any street, road, path or in any public place;
- (k) to provide by bye-laws that the owners or occupiers of any land or premises maintain, clear and keep free from vegetation and rubbish such land or premises and the roads, streets, paths or public places adjoining them;
- (l) to prevent damage or obstruction to any roads; streets, paths, or open spaces maintained by the Falekaupule.

#### **12. Miscellaneous**

- (a) to establish, maintain and provide information and publicity programs;
- (c) to promote and regulate the development of an arts and crafts industry;

- (e) to establish and manage, and by bye-laws to regulate, recreation grounds, open spaces and parks;
- (h) to perform any other function, whether similar to those set out in this Schedule or not, conferred upon the Falekaupule by the Minister in writing after consultation with the Falekaupule.

### **PENAL CODE (CAP. 8)**

*Year passed* – 1965

*Effective from* – 18<sup>th</sup> October 1965

*Amended* – 1967, 1968, 1969 (2 amendments), 1970, 1971, 1972 (2 amendments), 1973 (3 amendments), 1979 (2 amendments), 1981 (3 amendments), 1985, 1986 and 1987

*Laws repealed* – No laws repealed

#### Main object

To establish a code of criminal law

#### Relevance to this Review

Certain offences relating to the environment are prescribed under this law.

#### Substance of relevant provisions

Some offences in the Code are relevant to the environment and the welfare of animals. These include –

- Giving false information to a public servant – section 122
- Trespass on burial places – section 125
- Polluting or obstructing watercourses – section 172
- Posting placards – section 173
- Wearing a uniform without authority – section 175
- Sale of noxious or adulterated foods and drugs – section 178
- Fouling the air – section 179
- Offensive trades – section 180
- Endangering property with fire – section 181
- Killing tame birds – section 281
- Killing animals with the intent to steal – section 282
- Larceny of or dredging for oysters – section 283
- Injuring animals – section 318
- Attempts to destroy property by explosives – section 320
- Communicating infectious diseases to animals – section 321

### 2.3.2 *Marine Pollution*

#### **MARINE POLLUTION ACT 1991 (No. 1 of 1992)**

*Year passed* – 1992

*Effective from* – No stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

#### Main object

To make provision for preventing and dealing with pollution of the sea, and to enable effect to be given to international conventions for the prevention of marine pollution and the protection of the marine environment.

#### Relevance to this Review

This is a comprehensive and relatively modern law dealing with marine pollution and the dumping and incineration of wastes at sea.

#### Substance of relevant provisions

- Section 2 Definitions are given to “Convention” (which includes specific reference to 5 relevant conventions), “dumping”, “garbage”, “incineration”, “oil”, “pollutant”, “pollution damage”, “sea”, “sewage” and “Tuvaluan waters”.
- Section 3 It is an offences to discharge oil or pollutants into Tuvaluan waters.
- Section 4 It is an offence for Tuvaluan ships to discharge oil or pollutants outside Tuvaluan waters.
- Section 5 Discharge of garbage and sewage from ships and platforms into the marine environment is regulated.
- Section 6 A range of special defences is provided for.
- Section 7 Provision is made for Tuvaluan ships and ships in Tuvaluan waters to carry equipment to prevent pollution.
- Section 8 Provision is made for Tuvaluan ships and ships in Tuvaluan waters to carry equipment to deal with pollution.
- Section 10 Provision is made for reception facilities in port for disposal of oil and pollutant residues, garbage and sewage from ships.



- Section 11 Provides for duties to report discharges.
- Section 12 Provides for duties to report threatened discharges.
- Section 13 Regulations may require the keeping and production of records.
- Section 14 Powers of inspection are provided for.
- Section 15 Regulations may provide for the enforcement of Conventions relating to pollution.
- Part III Deals with dumping and incinerating wastes at sea, and includes provisions relating to –
- The ships that this Part applies to (section 16)
  - Offence to dump radioactive wastes or other matter (section 18)
  - Offence to store radioactive wastes (section 19)
  - Offence to store toxic or other hazardous wastes (section 20)
  - Offence to dump waste without a permit (section 21)
  - Regulations to deal with the dumping and incineration of wastes (section 22)
  - The powers of the Minister to grant permits (section 23)
  - Special defences (section 24)
- Part IV Deals with marine casualties
- Section 33 A general regulation making power is provided for.
- Schedule - Criteria to Govern Dumping of Waste and other matters

### **HARBOURS ACT (CAP. 88)**

*Year passed* – 1957

*Effective from* – 5<sup>th</sup> June 1957

*Amended* – 1968, 1971, 1972, 1974 and 1987

*Laws repealed* – No laws repealed

*Administered by*

- Section 24 Derelict vessels can be cleared from the harbour.
- Section 44 It is an offence to throw anything into a harbour or to allow it to fall in, whether it comes from land or from a vessel. It is also offence to let something fall on to land from where it may enter a harbour. Timber and vessels no longer fit for service must not be placed or left in a harbour.

## **HARBOURS REGULATIONS**

Year made - 1958

Regulation 9 It is an offence for the master or owner of a vessel or shore installation to discharge oil into a harbour, or allow oil to enter into a harbour.

## **SHIPPING ACT (CAP. 89)**

*Year passed:* 1957

*Date of effect:* 1<sup>st</sup> January 1958

*Amended:* 1958, 1971 (2 amendments), 1972, 1975 and 1987

*Repealed* – No laws repealed

*Administered by*

### Main objects

To provide for the control and safety of shipping on lagoons and inland waters of Tuvalu.

### Relevance to this Review

Certain provisions may have relevance to the prevention of pollution.

### Substance of the relevant provisions

Section 2A After the commencement of the Merchant Shipping Act 1987 this law only applies to lagoon service vessels.

Section 14 All ships must have seaworthiness certificates.

Section 18 Orders may be made for the detention and repair of unseaworthy vessels.

Section 26 Provision is made in relation to the discharge of substances in ports and port approaches in contravention of international conventions.

## **MERCHANT SHIPPING ACT (CAP. 64A)**

*Year passed* – 1987

*Effective from* – 1<sup>st</sup> June 1988

*Amended* – 1991 (2 amendments) and 2004

*Laws repealed* – The Merchant Shipping (Fees) Act and the Merchant Shipping Acts (UK) 1894 and 1974

*Administered by*

Main object

To make provision for the registration of ships and the control of merchant shipping.

Relevance to this Review

This Act makes comprehensive provision in relation to shipping and the registration of ships.

Substance of the relevant provisions

Part II Makes comprehensive provision in relation to the registration of ships.

Section 11 Deals with the survey and measurement of ships.

Section 41 The Registrar is empowered to require that information be provided.

Section 44 Provides for the liability of ship owners.

Section 45 Requires the registration of managing owners.

Part III Deals with the obligations under international maritime conventions. This includes a general reference to conventions which relate to the prevention, control and reduction of pollution of the sea.

Section 48 Regulations may be made to implement any international maritime convention.

**WRECK AND SALVAGE ACT (CAP. 91)**

*Year passed:* 1966

*Date of effect:* 7<sup>th</sup> February 1966

*Amended:* 1971

*Repealed the following laws:* No laws repealed

*Administered by*

Main objects

To make comprehensive provision in relation to ship wrecks and their salvage.

Relevance to this Review

These issues may have impacts on the marine environment.

Substance of the relevant provisions

- Section 3 The Minister is appointed as the receiver of wrecks.
- Section 4 The receiver of wrecks is empowered to charge of all matters at wreck sites.
- Section 6 All articles washed ashore must be delivered up to the receiver.
- Section 11 Rules apply to persons finding wrecks.
- Section 14 Wreck under \$20 in value or which is perishable may be sold immediately.
- Section 33 Penalties apply to plundering or secreting wreck.

### ***2.3.3 Wildlife Protection and Reserves***

#### **WILDLIFE CONSERVATION ACT (CAP. 47)**

*Year passed:* 1975

*Date of effect:* 29<sup>th</sup> May 1975

*Amended:* No amendments

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To provide for the conservation of wildlife.

#### Relevance to this Review

Species of wildlife may be protected under this Act. Wildlife sanctuaries may be declared under this Act.

#### Substance of the relevant provisions

- Section 3 Birds and animals may be declared either fully or partially protected. Partial protection prevents hunting during a closed season. “Designated areas” may be declared for the protection of certain species.
- Section 4 Provision is made for the appointment of wildlife wardens.
- Section 5 Prohibitions of hunting, killing or capturing can be applied during closed seasons. So too can prohibitions against possessing, acquiring, selling or giving any which have been unlawfully killed or captured, or any part or product of them. Exceptions can be granted under licences. A general notice allowing specified species to be captured but not killed can also be applied.

- Section 6 Prohibitions against searching for, taking or wilfully destroying or damaging eggs and nests apply in closed seasons. Prohibitions also apply to possessing, acquiring, selling or giving eggs or nests that have been unlawfully taken. Exceptions can be granted under licences.
- Section 7 There is a prohibition on hunting turtles on land. Licences for turtle hunting on land may be granted.
- Section 8 Areas may be declared as wildlife sanctuaries. In such sanctuaries the hunting, killing or capturing of birds and other animals without a licence is prohibited. Eggs and nests are also accorded protection. Conditions may be placed on licences authorising entry into “closed areas”.
- Section 9 Possession of protected birds and animals and wild turtles is an offence.
- Section 11 Wildlife wardens are given powers of arrest, search and seizure.
- Section 13 Wildlife wardens may undertake prosecutions.

### **PROHIBITED AREAS ACT (CAP. 76)**

*Year passed:* 1957

*Date of effect:* 22<sup>nd</sup> March 1957

*Amended:* 1968

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To provide for certain islands and their territorial waters to be prohibited areas.

#### Relevance to this Review

Prohibited areas declared under this Act could be set aside for conservation purposes.

#### Substance of the relevant provisions

- Section 2 The “territorial waters” of the islands is defined.
- Section 3 Any island can be declared to be a prohibited area.
- Section 4 Entry into prohibited areas is forbidden without permission.
- Section 5 Powers to remove persons from protected areas are provided for.

## **CLOSED DISTRICTS ACT (CAP. 75)**

*Year passed:* 1936

*Date of effect:* 8<sup>th</sup> December 1936

*Amended:* 1968 and 1971

*Repealed the following laws:* No laws repealed

*Administered by*

### Main objects

To provide for the declaration of closed districts.

### Relevance to this Review

Closed districts can be declared for conservation purposes, and these can be parts of islands.

### Substance of the relevant provisions

- Section 3 The Minister may declare closed districts. The grounds for such declarations are that they must be reasonably required in the interests of public health, environmental conservation of the fulfilment of Tuvalu's international treaty obligations.
- Section 4 Natives of the closed areas and government officers may enter closed areas. Person may be licensed to enter.
- Section 5 Conditions of entry may apply to licences.
- Section 6 Licences may be revoked.
- Section 11 Regulations may be made generally for the purposes of giving effect to this Act.

## **CONSERVATION AREAS ACT 1999 (No. 3 of 1999)**

*Year passed* – 1999

*Effective from* – Not stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

### Main object

To make provisions for the declaration and management of conservation areas.

### Relevance to this Review

This is a law which makes clear provision for the declaration of conservation areas and more detailed provision that similar laws applying in Tuvalu for the management of such areas.

### Substance of relevant provisions

- Section 3 The Minister may by order in the Gazette declare any part of the territory of Tuvalu as a Conservation Area upon receipt of a report of a Kaupule and after due consultation with the Kaupule recommending the establishment of a Conservation Area. The report of a Kaupule shall include a scientific assessment which shall make an assessment as to the best location and size of a conservation area.
- Section 4 Any conservation area shall have one or more of the following objectives -
- (a) to protect the environment (including coastal, marine and terrestrial)
  - (b) to conserve natural resources of the island communities and to provide for their sustainable utilization by present and future generations
  - (c) to preserve biological diversity
  - (d) to preserve and enhance the natural scenic beauty
  - (e) to promote the enjoyment by the public of the conservation areas; and
  - (f) to promote the scientific study and research
- Section 5 The Kaupule shall, from time to time, make or cause to be made an ecological conservation area
- Section 6 The Kaupule shall be responsible for the overall management of the conservation areas and shall appoint a special committee to include all main parties with interest in the conservation area including Government Departments and local community representatives. The Kaupule, with the assistance of the Government shall prepare or cause to be prepared a management plan for the conservation area based on the report of the survey made under section 5. The plan shall be prepared in full consultation with representatives of the community.
- Section 7 The management plans shall make provision for -
- (a) an assessment of the present state of the conservation area;
  - (b) the achievement of the long term community and conservation goals and objectives;
  - (c) management and conservation measures including activities, procedures, restrictions and prohibitions to be undertaken for the effective and efficient management and development of the conservation area;
  - (d) the development of an appropriate community based management structure for the conservation area including public awareness and training programs to sustain on going community management; and

- (e) identification of appropriate and equitable means for managing and distributing benefits from the project.

Section 9 The Kaupule may enter into a written agreement with landowners as it deems necessary to secure its right to access to and to control the conservation area.

Section 10 The Kaupule shall establish a special fund to be known as the Conservation Area Fund which shall be used for the management of the conservation areas. The following moneys shall be paid to the Fund –

- (a) sums provided by the Government for the purpose;
- (b) any fees levied in accordance with the provisions of this Act or regulations or bye-laws;
- (c) any fines collected as a breach of this Act or the regulations or bye-laws;
- (d) loans, grants, donations or other voluntary contributions to the Fund from local or international sources; and
- (e) interest arising out of any investment of the fund.

Section 14 This section prescribes a range of offences relating to polluting, hunting and removing things from conservation areas.

Section 15 The Minister may make regulations for the implementation of the provisions of this Act and in particular -

- (a) the protection of the flora and fauna within the conservation areas; and
- (b) the care, control and management of the conservation areas.

Section 16 The Kaupule may issue bye-laws for the implementation of the provisions of this Act and in particular relating to -

- (a) undertaking of any activity in the conservation areas;
- (b) regulating the use and enjoyment of the conservation areas including charges of fees;
- (c) the licensing of boats and crafts employed in transportation of people within the conservation areas;
- (d) the licensing of any guides required by the visitors; and
- (e) securing the observance of sanitary and cleanly conditions and practices at and in respect of conservation areas including beaches within the area

## **FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

### **Schedule 3 – FUNCTIONS OF THE FALEKAUPULE**

#### **1. Agriculture, Livestock and Fisheries**

- (o) to prohibit, restrict or regulate the hunting, capture, killing or sale of animals, reptiles, birds or fish in accordance with the Wildlife Conservation Act.



### **2.3.4 Animals**

#### **ANIMALS (CONTROL OF EXPERIMENTS) ACT (CAP. 48)**

*Year passed:* 1957

*Date of effect:* 11<sup>th</sup> September 1957

*Amended:* 1968 and 1971

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To control experiments on animals.

#### Relevance to this Review

There is relevance to the protection of animals in these provisions. Although no absolute protection is offered.

#### Substance of the relevant provisions

Section 3 Experiments on animals may only be performed by licensed persons.

Section 4 Experiments may not be performed for the enhancement of skills.

Section 6 Restrictions apply to the performance of licensed experiments.

Section 10 Provision is made for the keeping of records by licensees and for the inspection of records.

Section 11 Returns may be required from licensees.

Section 12 A general regulation making power is provided for.

#### **DOGS ACT (CAP. 46)**

*Year passed* – 1919

*Effective from* – 17<sup>th</sup> July 1919

*Amended* – 1929, 1950, 1957, 1958, 1965, 1969, 1971, 1972, 1981 and 2002

*Laws repealed* – No laws repealed

*Administered by*

#### Main object

To provide for dogs and the registration of dogs.

### Relevance to this Review

This law is of marginal relevance but the effective control of dogs has implications for a better environment.

### Substance of relevant provisions

- Section 3 Magistrates may order the destruction or control of dangerous dogs
- Section 4 It is an offence to not muzzle a dangerous dog.
- Section 5 Provision is made in relation to dogs attacking persons or animals on public roads.
- Section 6 Provision is made in relation to dogs seen biting persons or animals.
- Section 7 The owner of cattle, goats, pigs or poultry may kill dogs that attack their animals.
- Section 9 The Minister may make regulations which provide for –
- The destroying or detention in quarantine and isolation any dog arriving in Tuvalu
  - Controlling or prohibiting the movement of any dog between islands
  - Controlling dogs running at large

Sections 10 – 24 deal with the registration of dogs.

## **FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

### Schedule 3 – FUNCTIONS OF THE FALEKAUPULE

#### 1. Agriculture, Livestock and Fisheries

- (g) to prohibit, restrict or regulate by bye-laws the movement of livestock in or through the Falekaupule area;
- (h) to prohibit, restrict and regulate by bye-laws the keeping of livestock of any description;
- (i) to establish; maintain and control pounds, seize and impound any stray animal and provide by bye-laws for the payment of compensation for damage done by any such animal;
- (j) to prohibit cruelty to animals and any specified acts of cruelty to animals in accordance with the Animals (Control of Experiments) Act;
- (k) to establish, erect, maintain and control slaughter houses;

- (l) to provide for the control, destruction and licensing of dogs in accordance with the Dogs Act;
- (m) to prevent and control the outbreak or the prevalence of any disease among animals in accordance with the Quarantine Act.

### ***2.3.5 Quarantine arrangements***

#### **QUARANTINE ACT (CAP. 34)**

*Year passed:* 1929

*Date of effect:* 1<sup>st</sup> January 1931

*Amended:* 1931, 1940, 1946, 1952, 1967, 1968, 1969, 1971, 1972, 1973, 1974

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

To make comprehensive provision in relation to quarantine.

#### Relevance to this Review

The effective imposition of quarantine arrangements and requirements are an important aspect of environment protection. It is also relevant in the context of trans-boundary movements.

#### Substance of the relevant provisions

Section 5 Provision is made for the appointment of quarantine officers.

Section 6 Provision is made for the appointment of temporary officers.

Part III General quarantine provisions are made relating to –

- infected places
- ports of entry
- emergency quarantine grounds
- obligations of ships masters coming from infected places
- fumigation of vessels

Part IV Comprehensive provision is made in relation to the quarantine of vessels, persons and goods.

Part VI Provision is made in relation to miscellaneous matters including –

- powers of officers
- forfeiture of goods
- vaccinations
- cleansing and disinfecting vessels

Section 82 A general regulation making power is provided for, including regulations relating to –

- requiring notification to a quarantine officer of each case of a quarantinable disease which arises in Tuvalu or within any specified part of the Islands or within any quarantine area.
- prescribing the precautions to be taken to prevent the ingress to or egress from a vessel of rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease.
- prescribing the measures to be taken by the masters, owners or agents of vessels to destroy rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease which may exist on the vessels.
- prescribing and establishing and maintaining on vessels, or within any quarantine area, of conditions unfavourable to, and to the migration of, rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease, and fixing the time limit for the completion of any work necessary for the purpose of establishing such conditions, and empowering the Secretary, in case of default by the master, owner or agent, to carry out any such work at the expense of the master, owner or agent.
- prescribing the precautions to be taken by masters of vessels in respect of the vessels and their crews, passengers and cargoes at infected places, and on the voyage from infected places, and on voyages between ports or places in the Islands, to prevent the introduction into the Islands or spread of quarantinable diseases.
- regulating the discharge from vessels of any water, ballast or refuse.
- regulating the sanitary condition of vessels in ports.
- providing for the granting of certificates by quarantine officers in relation to any vessels or goods examined or treated by them or under their supervision.
- prescribing the movements of any person subject to quarantine
- prescribing measures of disinfection, fumigation and other measures of quarantine which vessels, persons or goods subject to quarantine shall carry out or be subjected to.
- prescribing the conditions under which any prophylactic or curative vaccine or serum may be prepared and offered for sale.
- establishing and maintaining places, works and services for the sanitary control of aerial navigation, and prescribing sanitary measures to be taken in respect of international aerial navigation, either generally or in relation to specific diseases, in accordance with the provisions of any International Convention for the sanitary control of aerial navigation for the time being in force.
- requiring and prescribing reports from vessels by radiotelegraphy.

- regulating traffic within the Islands by land and sea, and prescribing measures of quarantine in relation to such traffic for the prevention of the occurrence or spread of communicable diseases.

## **BIOSECURITY BILL (MODEL LAW PREPARED IN 2004)**

### Main objects

To protect the health, environment and agriculture of Tuvalu and to facilitate trade in its animal and plant products.

### Relevance to this Review

This draft law seeks to make comprehensive provision for biosecurity related issues and processes, and to harmonise these in the region.

### Substance of relevant provisions

*Section 2* There are definitions given to “environment”, “export”, “import”, “fish”, “living organism” and “organism” which should be harmonised with those given in related laws. There is no definition of “living modified organism”. “Regulated articles” include all living organisms, whether modified or not.

“Pest risk analysis” or “PRA” is defined but does not appear to be referred to in any substantive provision.

*Section 3* The purposes of the law are stated to be –

- controlling the introduction and spread of new pests and diseases affecting plants and animals;
- controlling those pests and diseases affecting plants and animals that are already present in Tuvalu;
- providing for the safe import and export of animals and animal products and plants and plant products;
- facilitating cooperation in the prevention of the international movement of pests and diseases affecting plants and animals.

There is no application of a precautionary principle.

*Section 7* This law is in addition to any other regulatory law and does not derogate from the application of any such law.

*Section 9* All regulated articles must be declared and submitted for biosecurity control when being brought into Tuvalu.

*Section 10* Articles may be designated as prohibited articles if they present and unacceptable biosecurity risk to Tuvalu.

- Section 11 Pests and diseases may be designated as prohibited.
- Section 14 Articles may be exempted from biosecurity control if they pose no biosecurity risk.
- Part 3 Makes comprehensive provision for import and export permits.
- Section 19 Certain exemptions apply, including for goods in transit
- Section 21 Provision is made for export permits, and conditions may be imposed.
- Section 27 Prescribes the duties of importers and exporters to, inter alia, declare goods and make them available for inspection.
- Section 28 Duties are imposed on masters and captains to permit inspections and to file documents.
- Section 29 Restrictions are placed on the disposal at sea of garbage and ballast.
- Part 5 Prescribes the powers of biosecurity officers.
- Section 44 Powers to order destruction or reconsignment are given.
- Part 6 Makes comprehensive provision in relation to the internal control of pests.
- Section 53 The Minister, after receipt of appropriate scientific advice and with the authorisation of Cabinet, may in writing approve the release of beneficial organisms or biocontrol agents to control or eradicate particular pests or diseases in Tuvalu.
- Part 7 Makes comprehensive provision for the declaration of biosecurity emergencies, including the making of emergency regulations.
- Part 8 Makes comprehensive provision for the establishment of a National Biosecurity Service.
- Section 58 The office of Director of Biosecurity is established as a position in the public service.
- Section 59 Provides for the appointment of biosecurity officers.
- Part 9 General provision is made for the administration of the Act, including the need to consult broadly in relation to its implementation and any regulations made under it.

Section 66 Obliges a range of public officials, including environment officers to cooperate in the implementation of this Act.

Part 11 Makes provision for matters aimed at facilitating international cooperation.

Section 80 Regulation making powers are vested in the Minister.

### **PLANTS ACT (CAP. 39)**

*Year passed:* 1976

*Date of effect:* 1<sup>st</sup> March 1977

*Amended:* No amendments

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To provide for the protection of plants and the imposition of quarantine arrangements to control the importation of plants, and to prevent the introduction and spread of plant diseases.

#### Relevance to this Review

Effective quarantine arrangements are important aspects of a nation's environmental protection regime and are aimed at preventing the introduction of plant diseases and pests. This has particular relevance to the controls that may be exercised over trans-boundary movements into Tuvalu.

#### Substance of the relevant provisions

- Section 3 Quarantine Officers are appointed by the Minister. Powers of entry, search and examination are given to these officers.
- Section 4 The Minister may make orders prohibiting or regulating the importation of plants into Tuvalu. Offending plants may be seized and destroyed.
- Section 5 Ports of entry for plants are prescribed. Post officers must also give notification of the arrival of any plants in the mail.
- Section 6 Permits are required for the importation of plants. Certificates from the place of export are required to certify that the plant is free from diseases or pests. Packaging must be clean and new. Inspection must be undertaken before the plant is released.

- Section 7 Customs officers and post officers are given powers to seize plants and containers and wrappings in which plants are contained. These may be treated and fumigated.
- Section 8 The importation of earth is prohibited and it can be seized and disposed of.
- Section 9 Quarantine Officers are empowered to –
- enter and inspect vessels and aircraft
  - require passengers to make declarations concerning plants in their possession
  - search and examine baggage and personal effects
  - fumigate and treat baggage suspected of being infested with disease or pests
- Section 10 The Minister may make regulations dealing generally with the importation of plants.
- Section 11 The Minister may declare infected areas.
- Section 12 Quarantine officers are empowered to treat imported plants.
- Section 13 The Minister may make regulations dealing with the eradication of plant diseases.
- Section 18 Quarantine Officers may require a person possessing any imported plant to provide proof that the plant is not unlawful. If no such proof is provided then the plant may be destroyed.

### **IMPORTATION OF ANIMALS ACT (CAP. 43)**

*Year passed:* 1919

*Date of effect:* 17<sup>th</sup> July 1919 (in part) and 3<sup>rd</sup> June 1964

*Amended:* 1954, 1964, 1971 and 1972

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To regulate the importation of animals into Tuvalu.

#### Relevance to this Review

The controls applied to the importation of animals is an important aspect of the nation's environment protection regime and has particular relevance to the controls that may be placed on trans-boundary movements into Tuvalu.



Substance of the relevant provisions

- Section 3 The Minister may make regulations—
- (a) prescribing the ports and parts of ports at which imported animals may be landed;
  - (b) defining parts of ports;
  - (c) prohibiting or regulating the movement of imported animals into, in or out of a defined part of a port;
  - (d) prohibiting or regulating the landing of imported animals, or of any specified kind thereof, or of carcasses, fodder, litter, dung or other thing brought from any specified country or from any specified part thereof;
  - (e) prescribing and regulating the inspection and the examination and the mode, time and conditions of slaughter of imported animals in a defined part of a port;
  - (f) prescribing and regulating the seizure, detention, quarantine, isolation or destruction of any imported animal, carcase, fodder, litter or dung;
  - (g) prescribing and regulating the treatment of animals to which this Act or the regulations made under this Act apply;
  - (h) prescribing fees and charges for any services rendered in respect of animals to which this Act or the regulations made under this Act apply.

Section 4 Inspectors may be appointed by the Minister.

Section 6 Vessels may be detained.

Section 10 Importation of animals from certain countries may be prohibited.

Part III Comprehensive provision is made in relation to dogs.

**IMPORTATION OF ANIMALS REGULATIONS**

*Year made:* 1965

Main objects

To place prohibitions and controls of the importation of animals, manure and fodder, litter, fittings and other things which have come into contact with animals.

Relevance to this Review

As noted above the ability of a country to control the trans-boundary movement of animals into its jurisdiction is an important feature of its environment protection capacity.

Substance of the relevant provisions

Regulation 3 The importation of any animal, manure or any fodder, litter, fittings or other things that have come into contact with animals is absolutely prohibited unless it complies with these Regulations.

Regulation 7 Cattle, horses and mules may only be imported from New Zealand, Fiji, Tasmania, NSW, Victoria, South Australia or the United Kingdom.

Regulation 8 Cattle may be imported from the places named in regulation 7 and from the USA.

Regulation 10 Provision is made for the importation of dogs, cats, sheep, goats and swine.

Regulation 11 Provision is made for the importation of domestic animals.

Regulation 12 Provision is made for the importation of poultry.

Regulation 13 Provision is made for the importation of eggs for incubation.

### **DOGS ACT (CAP. 46)**

(Details are in 2.3.4)

Section 9 The Minister may make regulations dealing with keeping dogs being brought into Tuvalu in quarantine.

### **LIVESTOCK DISEASES ACT (CAP. 43A)**

*Year passed* – 1985 (Act No. 1 of 1985)

*Effective from* – Not stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

#### Main object

To control the spread of disease amongst livestock and to empower the isolation of infected areas and the destruction of infected animals.

#### Relevance to this Review

This laws extends other quarantine arrangements to permit the effective control of disease affecting livestock.

Substance of relevant provisions

Section 4 The Minister has a general power to make regulation, including regulations which relate to –

- preventing the spread of disease and controlling the movement of livestock
- methods of disinfection
- seizure, detention and disposal of livestock
- destruction, burial and disposal or treatment of carcasses
- prohibiting the digging up of carcasses
- disinfection of clothes and persons
- payment of compensation

Section 5 Inspectors may be appointed and powers of inspection are provided for.

Part II Makes provision for the separation and treatment of livestock, including provision for –

- infected places and areas (section 9)
- Nothing affects other quarantine powers and arrangements (section 10)
- Duties and authorities of police officers (section 11)
- General powers of inspectors (section 11A)

**FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

Schedule 3 – FUNCTIONS OF FALEKAUPULE

1. Agriculture, Livestock and Fisheries

- (b) to control plant diseases, weeds and pests in accordance with the Plants Act;
- (c) to control or exterminate insect, animal or other pests detrimental to crops;
- (e) to regulate by bye-laws areas and methods of planting and types of crops and trees;
- (m) to prevent and control the outbreak or the prevalence of any disease among animals in accordance with the Quarantine Act.

**2.3.6 Hazardous substances**

**PESTICIDES ACT (CAP. 39A)**

*Year passed* – 1990

*Effective from* – 1<sup>st</sup> January 1991

*Amended* – No amendments

*Repealed the following laws* – No laws repealed

*Administered by*

Main objects

To control the importation and sale of pesticides.

Relevance to this Review

The regulation of pesticides is an important feature of sound environmental management.

Substance of relevant provisions

- Section 4 The position of Registrar of Pesticides is established.
- Section 5 A Pesticides Committee is established comprising the Public Health Officer and a representative of importers and users.
- Section 6 The Minister may appoint inspectors who are given powers of inspection and enforcement.
- Section 7 Only registered pesticides may be supplied, sold or offered for sale. No person may import a pesticide unless they hold an import permit. The Minister, on the advice of the Committee, may declare that substances be deemed to be pesticides.
- Section 8 Applications for registration of pesticides may be made to the Registrar. The Committee may accept the registration of a pesticide or decline the application if there is no need for it in Tuvalu, or if they regard it as an unacceptable hazard to the people or environment of Tuvalu.
- Section 9 A register of permitted imports and sellers must be maintained.
- Section 10 The importation of pesticides requires a permit.
- Section 11 Pesticides which are prohibited under this Act are deemed to be prohibited goods under the Customs Act. (But pesticides which are approved for import for scientific trial or controlled evaluation may be imported subject to conditions imposed on the import licence).
- Section 12 The Minister may make regulations for any necessary purpose, including regulating the transport, storage, distribution, sale, supply, use or disposal of pesticides.

**PETROLEUM ACT (CAP. 42)**

*Year passed:* 1965

*Date of effect:* 1<sup>st</sup> September 1968

*Amended:* 1971, 1972 and 1990

*Repealed the following laws: No laws repealed  
Administered by*

Main objects

To regulate the importation storage and sale of petrol.

Relevance to this Review

This law does not regulate petroleum as a natural resource but some aspects of it relate to storage and similar procedures which may protect the environment.

Substance of the relevant provisions

- Section 3      Regulates the mooring, storage and discharge of petrol.
- Section 5      Conditions apply to the keeping of petrol.
- Part III        Deals with all aspects of the storage of petrol.
- Section 7      Packaging and marking petrol products is provided for.
- Section 17     A general regulation making power is provided for. This includes regulations relating to the prevention of the escape or discharge of petroleum, or water mixed with any petroleum, from any vessel into inland or tidal water.

**MERCHANT SHIPPING ACT (CAP. 64A)**

(Details are in 2.3.2)

Substance of relevant provisions

- Section 59     Dangerous goods means the dangerous goods listed for the purposes of the IMDG Code.
- Section 60     The master or owner of a ship in Tuvalu may refuse to take on board any packages which are suspected to be dangerous goods. Such packages may be opened and inspected and they may be discharged, destroyed or rendered innocuous.
- Section 61     It is an offence to send dangerous goods on a ship, or to attempt to send them, unless that are clearly marked as such, and notice of them is given to the Harbour master and ships master.

Section 62 The packing, storing and carriage of dangerous goods by ship on a vessel must be in accordance with the requirements of the IMDG Code. Modifications of these requirements may be made for shipments within Tuvalu.

## **SHIPPING REGULATIONS 1958**

Regulation 35 Inflammable spirits (including petrol and aviation spirit) may only be carried below decks if special fire fighting equipment is on board.

### **2.4 Protection of human health**

#### **PUBLIC HEALTH ACT (CAP. 35)**

*Year passed:* 1926

*Date of effect:* 1<sup>st</sup> December 1926

*Amended:* 1971 (2 amendments) and 1974

*Repealed the following laws:* No laws repealed

*Administered by the Ministry of Health*

#### Main objects

To make provision in relation to matters of public health.

#### Relevance to this Review

Issues of public health are clearly relevant to the environment.

#### Substance of the relevant provisions

*Section 3* The Minister may make regulations for the purpose of protecting and advancing public health, and specifically relating to –

- latrines, dustbins and drains
- scavenging, cleaning and disinfecting
- removal and disposal of night-soil and house refuse
- abatement of nuisances injurious to public health
- preventing the spread of infectious diseases
- regulating the carrying on of any trade
- regulating the sale of milk
- protecting tanks, vats, cisterns and other water storage devices from pollution
- regulating the use of any rain, stream, well or water source and the prevention of water pollution
- common lodging houses
- bakehouses
- mosquitoes

- protection of food for sale
- manufacture of aerated waters for sale
- slaughter-houses
- laundries

## **PUBLIC HEALTH REGULATIONS 1926**

*Year passed:* 1926

*Date of effect:* 1<sup>st</sup> December 1926

*Amended:* 1971 (2 amendments), 1974

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To make regulations under the Public Health Act.

### Relevance to this Review

These Regulations apply matters related to the protection of human health.

### Substance of the relevant provisions

- Regulation 2     All premises and land must be kept clean.
- Regulation 3     No stagnant water may lie on land for more than 24 hours.
- Regulation 4     No tins and other things capable of holding water may be permitted to lie on land.
- Regulation 7     Guttering and downpipes must be kept clean and “efficient”.
- Regulation 10    No person may deposit or cause to be deposited any empty tin, bottle or other receptacle in any street, road or public place.
- Regulation 11    Every occupied house and building must have a latrine.
- Regulation 12    Latrines must be kept clean.
- Regulation 14    Rubbish must be burnt if possible, or put in tins ready for daily collection.
- Regulation 20    Any well or water supply that is injurious to health can be ordered to be closed.

**(Note:** First offenders may only be fined \$20 or imprisoned for 1 month)

## **FOOD SAFETY ACT 2006 (Act No. 8 of 2006)**

*Year passed:* 2006

*Date of effect:* 31<sup>st</sup> August 2006

*Amended:* No amendments

*Repealed the following laws:* Pure Food Act (Cap. 36)

*Administered by*

### Main objects

To promote public health and safety with regard to food, to regulate the preparation, sale and use of food, to assist consumers to make informed choices on food and to promote fair trading practices in relation to food.

### Relevance to this Review

This law has important implications for human health and for the rights of consumers.

### Substance of the relevant provisions

Part II Makes general provision in relation to pure food, including –

- labelling requirements (section 3)
- registration of food premises (section 4)
- training of food handlers (section 5)
- Health of food handlers (section 6)
- Expiration and “best before” dates (section 7)
- Obtaining food from closed areas (section 8)

Part III Prescribes certain prohibition, including –

- Food that is not suitable for consumption (section 10)
- Misleading or deceptive food (section 11)
- Food not complying with standards (section 12)
- Insanitary conditions (section 15)

Part IV Makes provision for food inspection, including –

- Appointment of food inspectors (section 23)
- Sampling (section 27)
- Appointment of analysts (section 28)

Section 37 Magistrates Courts have jurisdiction to hear cases under this Act.

## **PHARMACY AND POISONS ACT (CAP. 33)**

*Year passed:* 1949

*Date of effect:* 2<sup>nd</sup> August 1949



*Amended:* 1950, 1967, 1968, 1969, 1971 and 1974

*Repealed the following laws:* No laws repealed

*Administered by*

Main objects

To control pharmacy and the sale and distribution of drugs and poisons.

Relevance to this Review

The effective regulation of poisons has important implications for human health and the environment.

Substance of the relevant provisions

Part II The Minister may appoint inspectors, who may exercise powers prescribed in section 4

Part III Provides for the registration and regulation of pharmacists.

Part IV Makes comprehensive provision in relation to the regulation of the business of pharmacists.

Part V Controls the sale of medicines.

Part VI Controls the import and sale of poisons.

Section 38 Pharmacists are permitted to sell poisons.

Section 39 Licences may be granted for the sale of poisons.

Section 40 A register of premises licensed to sell poisons must be maintained.

Section 46 There is a general power to make regulations.

**DANGEROUS DRUGS ACT (CAP. 32)**

*Year passed* – 1948

*Effective from* – 20<sup>th</sup> October 1948

*Amended* – 1949, 1966, 1967, 1968, 1969, 1971 and 1974

*Laws repealed* – No laws repealed

*Administered by*

Main object

To regulate and prohibit dangerous drugs

Relevance to this Review

The effective regulation of dangerous drugs as significant health implications.

Substance of relevant provisions

- Section 3 Dangerous drugs must be dealt with only through approved ports.
- Part II This Part makes provision for the prohibition of raw opium, indian hemp and coca leaf, and for the such substances to be seized and destroyed.
- Part III The importation and exportation of prepared opium is prohibited.
- Part IV Deals with medicinal opium, morphine, cocaine and certain other drugs.
- Part V Makes provision in relation to dangerous drugs in transit and related matters.

**METHYLATED SPIRITS ACT (CAP. 33A)**

*Year passed* – 1984

*Effective from* – Not stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

Main object

To prohibit the drinking of methylated spirits and to control its importation, sale, possession and use.

Relevance to this Review

This is an important public health measure.

Substance of relevant provisions

- Part II Deals with the drinking of methylated spirits and the supply and preparation of methylated spirits for drinking.
- Part III Controls the importation and sale of methylated spirits.
- Part IV Provides for licences to be granted for methylated spirits.

Part VII Prescribes a range of offences related to methylated spirits, including offences relating to sale to minors, unsafe storage and failure to keep records.

### **FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

Section 36 A standing committee on health shall be established by each Kaupule.

Schedule 3 Item 8 of the Schedule prescribing the functions of Falekaupules lists the following matters relevant to public health –

- (a) to safeguard and promote public health, including preventing and dealing with any outbreak or the prevalence of any disease, in accordance with the Public Health Act;
- (b) to regulate by bye-laws the number of persons permitted to reside in a building or room of any particular size; construction or design;
- (c) to build, equip, and maintain, or grant sums of money towards the building, equipment or maintenance of any health centre or clinic or other medical institution approved by the Minister;
- (d) to build, equip and maintain; or grant sums of money towards the building, equipment or maintenance of any institution or settlement approved by the Minister for the aged, destitute or infirm or for orphans or lepers;
- (e) to exterminate and prevent the spread of mosquitoes, rats; bugs and other vermin,
- (f) to establish and operate ambulance services or to make grants towards such services approved by the Minister;
- (g) to establish, maintain and carry out services for the removal and destruction of, or otherwise dealing with, all kinds of rubbish, refuse or excreta and by bye-laws to require householders to contribute to such services;
- (h) to prohibit by bye-laws activities detrimental to the sanitary condition of the Falekaupule area or any part of it;
- (i) to provide, erect and maintain a public water supply, and impose water rates in accordance with the Water Supply Act;
- (j) to establish, maintain and control public wells, springs, bathing places, wash houses and swimming pools;
- (k) by bye-laws to regulate or prohibit the sinking of wells and provide for the closing of wells;
- (l) to prevent the pollution of any water, and by bye-laws to prevent access to any polluted source of water;
- (m) by bye-laws to regulate the production or preparation for sale and sale of foodstuffs, and to provide for the inspection of such foodstuffs and the places or premises used for their production, preparation or sale;

- (n) to establish, maintain and by bye-laws control cemeteries or burial grounds;
- (o) to provide for the cleaning and clearing of any public place.

## 2.5 Natural Resources

### 2.5.1 Land

#### NATIVE LANDS ACT (CAP. 22)

*Year passed:* 1956

*Date of effect:* 14<sup>th</sup> March 1957

*Amended:* 1959, 1967, 1968, 1969, 1971 (3 amendments), 1972, 1973, 1974, 1985, 1988, and 1989

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To make comprehensive provision in relation to native land and the registration of title to native lands

#### Relevance to this Review

Land is a principal natural resource and forms a critical background against which an assessment of the environment related laws can be undertaken.

#### Substance of the relevant provisions

- Section 2 “Native land” is defined as “land owned by a native or natives”.
- Section 4 Indefeasible title is given in relation to native lands registered with the Native Lands Commission. Power is vested the lands court to approve the alienation of native lands consistent with the provisions of this Act.
- Section 5 Native lands may not be alienated by sale, gift, lease or otherwise to any person who is not a native. Lands may be alienated to the Crown, Local Government Councils and registered cooperative societies.
- Section 6 A Lands Court is constituted.
- Part VI Provision is made for the lease of native lands. The following rules apply –
- No lease or sub-lease to a non-native is effective until approved under the Act (section 30).
  - The Minister’s approval is required (section 31).

- An inspection of the proposed lease by the court is required (section 31(2)) and the court must confirm a range of matters before Ministerial consent may be given.
- The Minister must be satisfied as to the fairness of the lease and its compliance with the Act (section 31(4)).
- Registration of the lease shall be directed by the Minister (section 31(5)).
- Section 32 states the requirements for natives to lease native lands. Under sections 34 and 35 there may be no assignment or transfer of a native lease unless approved by the Minister and the Court.

Section 43 A surveyor may enter lands for the purpose of surveying them and to assess if any damage is done to crops, plants, fences or other property. Provision is made in section 45 for the assessment of compensation.

Section 56 Complaints concerning unlawful occupation of lands may be made to the Registrar of the Court. Courts may order the payment of compensation and any removal costs associated with an unlawful occupation. Unlawful occupation of land is an offence.

## **FORESHORE AND LAND RECLAMATION ACT (CAP. 26)**

*Year passed:* 1969

*Date of effect:* 10<sup>th</sup> June 1969

*Amended:* 1972, 1974 and 1978

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To declare ownership of the foreshore and to regulate reclamation projects.

### Relevance to this Review

The reclamation of foreshores and seabeds has important implications on the environment and for coastal management.

### Substance of the relevant provisions

Section 2 Defines “foreshore” to be “the shore of the sea or of channels or creeks that is alternatively covered and uncovered by the sea at the highest and lowest tides”. And defines “seabed” to be “the bed of all territorial and inland tidal waters.

Section 3 The foreshore is vested in the Crown but this is subject to public rights of navigation and fishing and of passing over the foreshore (and to other public

rights existing at the time of the vesting of this ownership). The extraction of sand, gravel, reef mud, coral, rock and other similar substances may only be undertaken under licence from the relevant islands council. Conditions can be applied to any licence.

- Section 4 The Minister may authorize reclamations. Procedures are prescribed for the reclamation of seabeds and foreshore lands. Public notification must be given. Objections may be lodged and an inquiry may be held into any objections.
- Section 5 These procedures do not apply to the construction of causeways or landing-places by government or Local Government Councils.
- Section 6 Approvals given under this Act operate to extinguish all private and public rights of navigation and fishing.
- Section 7 Procedures are applied to the consideration of compensation for the extinguishment of rights.
- Section 9 Reclaimed lands vest in the Crown (except if the reclamation is for a causeway or landing place by a local government council, in which case it will vest in the Council).
- Section 10 The Minister may enter into agreements for the sale, lease or grant of reclaimed lands.
- Section 11 These provisions do not apply to the filling in of foreshore lands by their owners. Any reclamation by landowners does not create any right or claim over the area.

## **FORESHORE LICENCE REGULATIONS 1979**

*Year made – 1979*

These Regulations provide for –

- Applications for licences to reclaim – regulation 2
- Powers of Island Council - regulation 3
- Form of licences - regulation 4
- Fees for licences - regulation 5
- Special provisions for government and local councils – regulation 6

## **CROWN ACQUISITION OF LANDS ACT (CAP. 24)**

*Year passed: 1954*

*Date of effect: 25<sup>th</sup> June 1954*

*Amended: 1968, 1972 and 1974*

*Repealed the following laws:* No laws repealed  
*Administered by*

Main objects

To make provision for the acquisition of lands by the Crown for public purposes.

Relevance to this Review

Lands may be acquired under this Act for any public purpose related to environment protection and the conservation of the natural resources of Tuvalu.

Substance of the relevant provisions

- Section 2 Defines “public purpose” to mean the following purposes –
- For exclusive government use or general public use
  - For townships, government stations or housing schemes
  - For any kind of sanitary improvement
  - For obtaining land contiguous to ports, railways, roads or other public works
  - Any other public purpose deemed by the Minister
- Section 3 The Minister may acquire lands for a public purpose either absolutely or for a term of years. Compensation is to be agreed upon or determined in accordance with this Act.
- Section 4 Powers are given to undertake preliminary investigations prior to the acquisition of land by the Minister.
- Section 5 Notice of intention to take lands must be given.
- Section 6 Upon the giving of notice the land must be yielded up to the Minister within 6 months, unless the Minister determines that the land is required urgently.
- Section 8 Provision is made for the determination of compensation in this and subsequent sections.

**NEGLECTED LANDS ACT (CAP. 23)**

*Year passed:* 1959

*Date of effect:* 25<sup>th</sup> June 1959

*Amended:* 1969, 1971 (2 amendments) and 1974

*Repealed the following laws:* Nil

*Administered by*

Main objects

This law provides for the purchase of neglected lands and regulates the sale of such lands to indigent natives.

Relevance to this Review

This law seeks to ensure the effective utilisation of Tuvalu's limited land resources.

Substance of the relevant provisions

Section 2 "Neglected lands" are defined to be any "land suitable for agricultural use which is not being fully and efficiently utilised for agricultural purposes".

"Indigent natives" are said to be any native who has insufficient land to support himself or his family.

Section 3 The Minister may arrange to purchase neglected land from its owner.

Section 4 Inquiries must be made as to the whereabouts of the owner. Compulsory acquisition of neglected lands is provided for.

Section 5 The Minister is empowered to issue a range of Forms to determine the status of neglected lands. Orders may be applied to neglected land to ensure that it is used by the owner.

Section 7 The owner may be required to satisfy the Minister as to compliance with an order made to utilise it, or to satisfy the Minister as to the reasons for non-compliance.

Section 8 Failure to satisfy the Minister may result in the acquisition of the land. Compensation is assessed by the land court.

Section 14 Acquired lands shall not cease to be native lands for the purposes of the Native Lands Act.

Section 15 Provision is made for the offering of neglected lands for sale to indigent natives.

Section 16 Acquired lands may be offered by private sale or for sale by auction.

**FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

## Schedule 3 – FUNCTIONS OF FALEKAUPULE



## 5. Land

- (a) to prevent and control erosion of land by the sea or other cause;
- (b) to provide for the fencing of land and for the maintenance and repair of such fencing;
- (c) to engage in and promote the reclamation of land from the sea on behalf of the Crown, in accordance with the Foreshore and Land Reclamation Act.

## 10. Communications and Public Utilities

- (a) to make, alter, divert and maintain roads, streets, parking areas, paths, culverts; causeways, bridges, drains and water-courses;
- (h) by bye-laws to prohibit, restrict or control the access of motor traffic to any road or parking area maintained by the Falekaupule and to impose speed limits in respect of any road maintained by the Falekaupule in accordance with the Traffic Act,
- (k) to provide by bye-laws that the owners or occupiers of any land or premises maintain, clear and keep free from vegetation and rubbish such land or premises and the roads, streets, paths or public places adjoining them;
- (l) to prevent damage or obstruction to any roads; streets, paths, or open spaces maintained by the Falekaupule.

## 12. Miscellaneous

- (e) to establish and manage, and by bye-laws to regulate, recreation grounds, open spaces and parks.

### **2.5.2 Fisheries**

#### **MARINE RESOURCES ACT 2006 (Act No. 3 of 2006)**

*Year passed* – 2006

*Effective from* – 31<sup>st</sup> August 2006)

*Amended* – No amendments

*Laws repealed* - Fisheries Act, Fisheries (Foreign Fishing Vessels) Regulations 1982 and Foreign Fishing Vessels Licensing Order (U.S. Treaty) Order 1987

*Administered by*

#### Main object

To ensure the long term conservation and sustainable use of the living marine resources for the benefit of the people of Tuvalu.

#### Relevance to this Review

This is a modern and comprehensive law relating to the sustainability and effective conservation of the fisheries resources of Tuvalu, whilst regulating their exploitation and giving effect to international agreements permitting access to the resources.

Substance of relevant provisions

- Section 3 The principal objective of this Act is to ensure the long term conservation and sustainable use of the living marine resources. Other objectives are stated.
- Part II Prescribes matters relating to the administration of the fisheries in Tuvalu, including sections which provide –
- The exclusive authority over the fisheries and other aquatic resources is vested in the government (section 4)
  - Broad powers of administration and control are vested in the Minister (section 5)
  - Duties are given to the Fisheries Officer (section 6).
- Part III Provides for the conservation, management and sustainable use of the resources by providing for –
- The adoption of management measures based on the best scientific evidence and consistent with the UN Agreements on straddling and migratory fish stocks (section 7)
  - The preparation and application of fishery management plans by the Fisheries Officer (section 8)
  - The application of conservation and management measures (section 9)
  - The allocation of allowable fishing (section 10)
  - The protection of endangered species (section 11)
  - Records, returns and other information (section 12).
- Part IV Makes comprehensive provision in relation to permits and registrations.
- Part V Deals with domestic based and foreign fishing and related activities, including provision for –
- General requirements for foreign and domestic based fishing vessels (section 27)
  - Access agreements (section 28)
  - Fisheries Management Agreements (section 31)
  - Implementation of multi-lateral arrangements (section 32)
  - Transshipment (section 33)
  - Marine scientific research (section 34)
- Part VI Provision is made in relation to fishing by Tuvaluan vessels on the high seas and in foreign waters.
- Part VII Provision is made in relation to monitoring, control and surveillance, including –
- Appointment of authorised officers (section 46)

- Powers of authorised officers (section 47)
- Appointment of authorised observers (section 50)
- Duties of authorised observers (section 51)
- Transponders (section 54)

Section 58 Offences relate to use or possession of prohibited fishing gear.

Section 59 It is an offence to fish with poisons or explosives.

Section 60 Driftnet fishing activities are prohibited.

Section 61 The introduction of live fish is regulated.

Section 62 The export of live fish, fish products and marine resources is regulated.

Section 63 It is an offence to contaminate the fisheries waters.

Section 64 The trade in prohibited fish is illegal.

Section 93 Rewards may be paid out of any fine for information given which leads to the conviction of an offender under this Act.

Section 96 A general regulation making power is provided, and a wide range of specific regulations are indicated.

### **FISHERIES (TROCHUS) REGULATIONS 1990**

*Year made – 1990*

Under these regulations trochus niloticus may not be taken and Tuvalu is designated as a prohibited fishing area for this species.

### **FALEKAUPULE ACT 1997**

(Details are stated in 2.2)

#### **Schedule 3 – FUNCTIONS OF FALEKAUPULE**

##### **1. Agriculture, Livestock and Fisheries**

(n) to provide for the improvement and control of fishing and related industries in accordance with the Fisheries Act.

### 2.5.3 *Mining and Minerals*

#### **MINERAL DEVELOPMENT LICENSING ACT (CAP. 25)**

*Year passed:* 1977

*Date of effect:* 1<sup>st</sup> January 1978

*Amended:* No amendments

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To make provision for the grant of licences to search for and win minerals in Tuvalu.

#### Relevance to this Review

The extraction of minerals has important implications on the environment and requires the imposition of developmental controls.

#### Substance of the relevant provisions

- Section 2 “Mineral” is defined to mean “any substance, whether in solid, liquid or gaseous form, occurring naturally in or on earth, or in or under the seabed formed by or subject to a geological process, but does not include water”.
- Section 3 A licence under this law is required in relation to searching for or extracting minerals. This requirement does not apply to the taking of building materials. Prospectors and miners must be Tuvaluan or companies registered in Tuvalu.
- Section 7 Public officers may not be authorised to take minerals.
- Section 10 Provision is made for the granting of reconnaissance licences. They may not apply for longer than 2 years.
- Section 11 Gazettal of licences is required.
- Section 12 Periodic reporting requirements apply.
- Section 13 Certain rights to erect camps and temporary buildings and to make other operational arrangements are given.
- Section 14 Prospecting licences may be granted by the Minister over any area in Tuvalu.

- Section 15 Prospecting licences may be granted if the applicant has adequate financial capacity, is technically competent and has sufficient operational experience. Proper arrangements for the employment and training of Tuvaluans are required.
- Section 16 Terms and conditions can be imposed on prospecting licences.
- Section 19 Prospecting licences are valid for 3 years and may be renewed for two further periods of 2 years.
- Section 23 Full and accurate records must be kept and reporting requirements apply.
- Section 26 Minerals may only be removed under a prospecting licence for the purpose of analysis.
- Section 27 The holder of a prospecting licence may apply for the grant of a mining licence. Comprehensive provision is made in relation to mining licences in section 28-39.
- Part VI Provision is made in relation to mining leases, including provisions relating to –
- Applications for mining leases (section 27)
  - Terms and conditions of leases (section 29)
  - Duration and renewal of leases (section 32)
  - Rights conferred by mining leases (section 34)
  - Obligations of holders of mining leases (section 35)
  - Wasteful mining and treatment practices (section 36)
  - Export of radioactive materials (section 39)
- Section 42 The holder of any right under this law may not exercise it in relation to any burial area or land which is set aside for a government purpose. Any finds of historical or archaeological importance must be reported.
- Section 44 Provision is made for the payment of fair compensation to landowners and occupiers.
- Section 45 Holders of mining leases may be required to pay compensation for any interference with or damage to fishing activities from mining in the territorial sea, or in lagoon or inland waters.
- Section 47 Land may be compulsorily acquired to secure the development or utilisation of mineral resources, and such purposes are deemed to be public purposes under the Crown Acquisition of Lands Act.
- Section 55 The Minister may suspend or cancel any right given under this law.

Section 58 Regulations may be made, including those relating to protecting water resources, preventing pollution and protecting sea resources.

### **FORESHORE AND LAND RECLAMATION ACT (CAP. 26)**

(Details are stated in 2.5.1)

Section 3 The removal of sand, gravel, reef mud, coral, rock and other similar substances may only be taken from foreshore areas with the approval of the relevant island council.

#### **2.5.4 Water Resources**

### **WATER SUPPLY ACT (CAP. 40)**

*Year passed* – 1967

*Effective from* – 24<sup>th</sup> July 1967

*Amended* – 1971, 1972 (2 amendments) and 1975

*Laws repealed* – No laws repealed

*Administered by*

#### Main object

To make provision for water supplies.

#### Relevance to this Review

There a little provision made in the laws of Tuvalu dealing with its vulnerable water resources. The provisions of this law relate exclusively to matters of water supply. No provision is made in relation to issues of management, conservation or quality.

#### Substance of relevant provisions

Section 2 The Minister appoints the “Authority” for the purposes of this Act.

Section 3 The Authority may construct channels, feeders, catch-drains, reservoirs, aqueducts, pipes, filters, trenches etc as are necessary for providing adequate supplies of water.

Section 4 The Authority may enter and survey lands.

Section 5 The Authority may open up streets and lay pipes (and under section 7 it may erect public fountains, baths and washing places).

Section 8 The Authority must fix proper hydrants and fire plugs.

Section 9 In this one convoluted section a number of offences relating to polluting water are prescribed, including the following activities if they affect the water supply–

- Washing animals and clothes
- Casting dead animals and filth
- Baths in water for human consumption
- Causing sewers or drains to run into water supplies
- Any other thing which causes the water supply to be soiled, fouled, corrupted or injured

Section 10 The Minister may declare water catchments to be reserves. Offences are prescribed in relation to contaminating water in reserves.

In sections 12 – 16 provision is made for metering water supplies and levying charges for water supplied (including powers of disconnection).

Section 19 The Minister may make regulations. The specific regulations referred to relate to the operation of the water supply system and the imposition of charges for water supplied.

## **PUBLIC HEALTH ACT (CAP. 35)**

(Details are stated in 2.4)

Section 3 Regulations may be made to prevent the pollution of any rain, stream, well or other water supply.

## **2.6 Control of trans-boundary movements**

### **CUSTOMS ACT (CAP. 55)**

*Year passed* – 1963

*Effective from* – 1<sup>st</sup> July 1964

*Amended* – 1967, 1968, 1971 (2 amendments), 1972 (2 amendments) and 1974 (2 amendments).

*Laws repealed* – No laws repealed

*Administered by*

#### Main object

To provide for the collection of customs and the management of the revenue of customs.

#### Relevance to this Review

The powers under this Act to prohibit and restrict imports and exports is an important means by which the trans-boundary movement of certain goods and substances can be controlled.

Substance of relevant provisions

Section 33 The Minister may by Order prohibit the importation, carriage coastwise or exportation of any goods whatsoever. The prohibition may be for a period, or apply until it is revoked. It may be an absolute prohibition or be subject to conditions which may be specified in the Order. It may prohibit imports to or exports from specified places.

Section 34 The goods in Schedule 2 are prohibited or restricted imports. The Minister may amend Schedule 2 by Order.

Section 35 The goods in Schedule 3 are prohibited or restricted exports. The Minister may amend Schedule 3 by Order.

Section 267 The Minister may make regulations for the purpose of modifying this Act to apply to air cargo.

Section 268 The Minister has a general regulation making power.

Schedule 2 includes counterfeit and currency, food which is unfit for consumption, indecent and obscene publications, infected animals, phosphorus matches, goods which breach trademarks, opiates, goods unlawfully bearing Royal Arms, shaving brushes manufactured in certain Asian countries, fictitious stamps, automatic opening knives, imitation firearms, gaming machines and other goods prohibited by law

Restricted imports include alcohol, arms and ammunition, hard liquor, cannabis, earth and soil, tear gas, tobacco extracts, certain motor cycles and parts and other goods restricted by law.

Schedule 3 includes any goods which are prohibited from export by any law, or which are restricted exports under any law.

**MERCHANT SHIPPING ACT (CAP. 64A)**

(Details are in 2.3.2)

Substance of relevant provisions

Section 59 Dangerous goods means the dangerous goods listed for the purposes of the IMDG Code.



- Section 60 The master or owner of a ship in Tuvalu may refuse to take on board any packages which are suspected to be dangerous goods. Such packages may be opened and inspected and they may be discharged, destroyed or rendered innocuous.
- Section 61 It is an offence to send dangerous goods on a ship, or to attempt to send them, unless that are clearly marked as such, and notice of them is given to the Harbour master and ships master.
- Section 62 The packing, storing and carriage of dangerous goods by ship on a vessel must be in accordance with the requirements of the IMDG Code. Modifications of these requirements may be made for shipments within Tuvalu.

### **CARRIAGE OF GOODS BY SEA ACT (CAP. 87)**

*Year passed:* 1926

*Date of effect:* 31<sup>st</sup> March 1926

*Amended:* 1987

*Repealed the following laws:* No laws repealed

*Administered by*

#### Main objects

To give effect to laws relating to the carriage of goods by sea.

#### Relevance to this Review

This has implications in the context of trans-boundary movements.

#### Substance of the relevant provisions

Section 2 Applies the standard rules of the Bill of Lading appearing in the Schedule to the carriage of goods by sea under the laws of Tuvalu.

### **2.7 Recognition and protection of culture and traditional institutions and values**

### **THE CONSTITUTION OF TUVALU 1986 (CAP. 1)**

(Details are in 2.1.1)

*Preamble* The State of Tuvalu is based upon Christian principles, the rule of law and Tuvaluan custom and tradition.

*Principles* The rights of the people of Tuvalu, both present and future, to a full, free and happy life, and to moral, spiritual, personal and material welfare is affirmed as one given to them by God.

Whilst taking its place amongst the community of nations it is acknowledged that the stability of Tuvaluan society and the welfare of its people (both present and future) depends largely on the maintenance of Tuvaluan values, culture and traditions, including the vitality and the sense of identity of island communities.

In government and social affairs the guiding principles include “agreement, courtesy and the search for consensus, in accordance with traditional Tuvaluan procedures, rather than the alien ideas of confrontation and divisiveness” and “the need for mutual respect and cooperation between the different kinds of authorities concerned, including the central Government, the traditional authorities, local governments and authorities, and the religious authorities”.

## **LAWS OF TUVALU ACT (CAP. 1B)**

(Details are in 2.1.2)

Section 4 The constitution is the supreme law. The other laws of Tuvalu are –

- Every Act
- Customary law
- The common law of Tuvalu
- Every applied law

Section 5 Customary law comprises the customs and usages existing from time to time of the natives of Tuvalu. Customary law shall have effect as law in Tuvalu except to the extent that it is inconsistent with an Act or applied law, and subsidiary legislation made under them. Customary law is to be determined in accordance with the principles stated in Schedule 1 (Determination and Recognition of Customary Law).

## **TUVALU CULTURAL COUNCIL ACT 1991**

*Year passed* – 1991

*Effective from* – Not stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

### Main object

To establish the Tuvalu Cultural Council

### Relevance to this Review

The preservation of cultural practices is seen as of importance to protection of the social environment, and has particular significance in the context of the CBD.

### Substance of relevant provisions

Section 2 The Tuvalu Cultural Council is established.

Section 3 The functions of the Council shall of council be to -

- (a) maintain, co-ordinate, implement, promote and advise on a national cultural policy for Tuvalu promulgated from time to time by Cabinet; and
- (b) comply with such written directions as the Minister responsible for cultural affairs may from time to time give.

Section 10 The Minister may make regulations for the better carrying out of the provisions of this Act.

### **FALEKAUPULE ACT 1997**

(Details are in 2.2)

Section 2 "Aganu" means the traditional local customs and usages of an island. "Falekaupule" means the traditional assembly in each island of Tuvalu which, subject to this Act, is composed in accordance with the Aganu of each island

Section 53 In subsection (7) it is stated that nothing in the Laws of Tuvalu Act shall prevent a Kaupule, when making a bye-law on any topic, from incorporating, repealing, amending or re-stating any customary rules previously in force with regard to that topic

Section 54 The Falekaupule may withhold its approval of a proposed bye-law, in whole or in part, only on the grounds that it is prejudicial to public welfare or against the customs and traditions of the people.

### Schedule 3 – FUNCTIONS OF FALEKAUPULE

#### 12. Miscellaneous

(d) to protect and preserve the traditional culture of the Falekaupule area, and by bye-laws to prohibit or control the removal from it of any antique artefact.

## **TUPE FAKANA A FALEKAUPULE ACT 1999**

*Year passed* – 1999

*Effective from* – Not stated

*Amended* – No amendments

*Laws repealed* – No laws repealed

*Administered by*

### Main object

To make financial provision concerning the Falekaupule Trust Fund ("Tupe Fakanaa a Falekaupule") and the status of the Trust established by the Falekaupule Trust Fund Deed of 31st July, 1999.

### Relevance to this Review

This law is of marginal relevance to the environment but it does provide a source of funds for the Kaupule to perform their many tasks on the islands of Tuvalu.

### Substance of relevant provisions

- Section 3 The purpose of this Act is
- (a) to support island development consistent with the purposes set out in the Trust Deed;
  - (b) to promote the development and maintenance of physical and social resources of the islands of Tuvalu; and
  - (c) to provide a dedicated revenue source for Falekaupu for island development in addition to its other sources of revenue.

Section 10 The Minister may make regulations to further the purposes of this Act.

## **COPYRIGHT ACT (CAP. 60)**

*Year passed:* 1917

*Date of effect:* 13<sup>th</sup> June 1917

*Amended:* 1918

*Repealed the following laws:* No laws repealed

*Administered by*

### Main objects

To make provision in relation to copyrights (but there are only four operative provisions).

### Relevance to this Review

In its current state this Act has little relevance but it is the only law in Tuvalu which recognises copyright in this jurisdiction.

Substance of the relevant provisions

- Section 2 It is an offence for persons to –
- (a) make for sale or hire any infringing copy of a work in which copyright subsists;
  - (b) sell or let for hire, or by way of trade expose or offer for sale or hire any infringing copy of any such work;
  - (c) distribute infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright;
  - (d) by way of trade exhibit in public any infringing copy of any such work;
  - (e) import for sale or hire any infringing copy of any such work

Penalties are fines of \$4 for each breach and may not exceed a total of \$100.

Restrictions are placed on the importation of printed copies.

- Section 3 Section 22 of the Copyright Act 1956 of England is deemed to form part of the Customs Act and the Minister is empowered to exercise the powers given to the Commissioners of Customs and Excise of the United Kingdom.

### 3. LEGISLATIVE OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS

#### *The Convention on Biological Diversity*

The legislative obligations under this Convention are non-specific but the following are matters about which consideration should be given to the enactment of appropriate laws –

- (a) the regulation and management of Tuvalu’s biological resources;
- (b) the regulation of any activity which may be detrimental to Tuvalu’s biological diversity;
- (c) the control and eradication of invasive species;
- (d) the recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Tuvalu’s biological diversity;
- (e) measures and facilities for in-situ and ex-situ conservation of Tuvalu’s biological diversity;
- (f) the declaration and management of protected areas, and the implementation of special measures to conserve Tuvalu’s biological diversity;
- (g) access to genetic resources within Tuvalu, and the equitable sharing of benefits arising from the development and exploitation of such resources;
- (h) access to and transfer of technologies relevant to Tuvalu’s biological diversity;
- (i) plans, strategies and measures for the rehabilitation and restoration of degraded eco-systems;
- (j) systems for the monitoring of and reporting on issues and matters relevant to or affecting Tuvalu’s biological diversity; and
- (k) any other appropriate measure to promote the conservation and sustainable use of Tuvalu’s biological diversity.

#### *Current state of Tuvalu’s laws*

It cannot be said that the current laws of Tuvalu make comprehensive provision in relation to any of these matters. The current laws that might be invoked in support of this Convention are wide-ranging and generally out of date. In many respects there are clear deficiencies. For example, while action may be taken to declare reserves under a number of laws, only one of these makes effective provision for the management of the reserves.

#### *Options*

A specific Part should be inserted into the proposed *Environment Protection Act* to deal in a general but all embracing manner with the issues noted above that apply in the context of this Convention. This could be titled “Protection of the Biodiversity” and would sit well with the other Parts of the proposed *Environment Protection Act* dealing with development controls, pollution control and the implementation of international environment related conventions. An appropriate definition of “biodiversity” should be formulated and inserted into the new Act.

### ***Cartagena Protocol***

This Protocol is almost unique in the detail of the legislative provision that it requires be made in domestic legislation. These matters include detailed arrangements in relation to the following matters –

- A designated competent authority and focal point in Tuvalu
- Regulation, Management and Control of LMO's
- Risk assessments based upon sound scientific analysis to determine effects on the environment and on the biological diversity, and to human health
- Notifications of and controls over transboundary movements of LMO's
- Public awareness and participation (including the involvement of the private sector)
- Capacity building
- Preservation of cultural and traditional values
- Regional and international cooperation and harmonisation of arrangements

#### *Current state of Tuvalu's laws*

No provision is currently made in any law to give effect to the rights and obligations flowing from the Protocol. However the matter is under consideration and a draft law shall be prepared in the near future.

#### *Options*

It is suggested that these matters be addressed by Regulations made under the proposed *Environment Protection Act*.

### ***Framework Convention on Climate Change***

This Convention is not based on the premise that domestic legislation in a country like Tuvalu is a fundamental instrument for achieving its objectives. No legislation exists in Tuvalu that is directly related to climate change issues.

#### *Options*

Given the importance of these matters to the people of Tuvalu a Part of the proposed new *Environment Protection Act* should be entitled "Responses to Climate Change" and appropriate provisions should be formulated. These could require the preparation and implementation of relevant policies and programs. The recently endorsed National Blueprint can serve as a useful guide in relation to these matters. A clear focus on protection of the land and water resources of Tuvalu is called for.

### ***Regional Seas Conventions***

Recent amendments to the Protocol to the SPREP Convention dealing with the dumping of wastes at sea may necessitate the inclusion of the following matters in relevant domestic laws in Tuvalu -

- Adoption of the Precautionary Principle
- Reverse listing approach – having a “White List” of relatively inert materials that may be considered for dumping, rather than a “Black List” of prohibited materials
- Standardisation of Annexes and their contents
- Adoption of the Polluter Pays Principle
- Standardisation of definitions
- Provision for prohibition of incineration of wastes at sea

Proposed amendments to the Protocol to the SPREP Convention dealing with responses to marine pollution incidents would necessitate the inclusion of a number of matters in relevant domestic laws in Tuvalu. The *SPREP Protocol* states the need for co-operation in combating pollution in cases of emergency and requires Parties to take all necessary measures to prevent, reduce and control marine pollution or the threat of pollution.

#### *Current state of Tuvalu’s laws*

The Marine Pollution Act deals effectively with the issues of dumping and incinerating wastes at sea.

#### *Options*

It is appropriate that the current marine pollution legislation applying in Tuvalu be reviewed to ensure that it makes appropriate provision to give full effect to the regional agreements and to the full range of applicable maritime conventions. Given the commendable legislative reforms that Tuvalu has adopted previously in this context, these matters are not high priority as is the case in nearly all other Pacific Island countries.

### ***Convention to Combat Desertification***

This Convention envisages that an enabling environment conducive to meeting its objectives shall be provided by strengthening existing legislation or enacting new laws. Nonetheless it is not clear as to how this may be given effect to in the context of a country like Tuvalu where the concept of desertification is not easily applied.

#### *Current state of Tuvalu’s laws*

There is no comprehensive law in Tuvalu dealing with issues of the ownership, management and protection of the water resource. The Falekaupule Act makes useful reference to drought management and relief.



### *Options*

The formulation of comprehensive water resources legislation would be extremely advantageous. This should be a priority for legislative reform and could be done as regulations under the proposed new *Environment Protection Act*.

### ***The Vienna Convention and Montreal Protocol on Ozone Depleting Substances***

There is a clear obligation under the Protocol to enact legislation to impose a regulatory regime in relation to ozone depleting substances. The following are matters about which legislative provision is required to give effect to Tuvalu's obligations in relation to ozone depleting substances -

1. Prohibitions on Importation
2. Prohibitions on the Importation of Certain Goods
3. Exemptions in relation to imports
4. Prohibitions on Exportation
5. Prohibitions on Manufacture
6. Prohibitions on Sales
7. Exemptions in relation to sales
8. General Principles to be applied in relation to permits
9. Quarantine and pre-shipment permits
10. Medical permits
11. Base year permits
12. General provisions in relation to permits
13. Goods for which no permit may apply
14. Environment Officers
15. Powers of Environment Officers
16. Seizure of substances and goods
17. Forfeiture of seized substances and goods
18. Call-up of substances and goods
19. Offences and penalties

### *Current state of Tuvalu's laws*

There is no law in Tuvalu currently giving effect to these matters.

### *Options*

The deadlines for making appropriate legislative arrangements make these matters deserving of a degree of priority. A draft Ozone Layer Protection Act shall be prepared during the course of this Review. An order prohibiting and regulating the import and export of ozone depleting substances under the Customs Act shall also be prepared for consideration by the appropriate authorities. This shall address some important aspects of the Convention and Protocol while the Act progresses through the legislative processes.

***Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes***

The *Basel Convention* regulates the movement of hazardous wastes and other wastes on a global basis. The Convention sets down the criteria for assessing hazardous wastes in the respective annexes.

The annexes are divided into:

- categories of wastes to be controlled;
- categories of wastes requiring special consideration;
- list of hazardous characteristics;
- the manner of disposal operations is also specified;
- information to be provided on notification;
- information to be provided on the movement document;
- arbitration.

The Parties are obliged to prohibit the export of hazardous wastes or other wastes if the State of import does not consent to the specific import or has prohibited the import of such wastes. The Convention prescribes measures to apply to the proposed import or export of wastes. Parties are required to implement their own national legislation regulating hazardous wastes and to inform the Basel Secretariat of such information. A competent authority and a focal point must be designated.

Under the *Waigani Convention* each Party must ban the importation of all hazardous wastes and radioactive wastes from outside the Convention area. They must also prohibit the dumping of hazardous wastes and radioactive wastes at sea. The Parties are to cooperate to ensure that no illegal import of hazardous wastes and radioactive wastes from a non-Party enters areas under the jurisdiction of a Party.

The scope of the *Waigani Convention* includes radioactive wastes and domestically prohibited goods. It prohibits the import of hazardous wastes into its Convention Area.

*Current state of Tuvalu's laws*

There are no laws in Tuvalu which effectively deal with the issue of trans-boundary movements of hazardous wastes through Tuvalu's maritime waters. The *Marine Pollution Act* does prohibit the dumping of such wastes in Tuvalu.

*Options*

The movement of wastes into and through Tuvalu could otherwise be dealt with by prescribing wastes to be prohibited substances under the proposed Biosecurity law and the Customs Act. At some time consideration might be given to enacting a comprehensive law dealing with hazardous wastes and substances and to implement the provisions of the *Basel Convention* and the *Waigani Convention* in a comprehensive way.

### ***CITES (International trade in endangered species)***

Appropriate legislation is a clear requirement of this Convention to give full effect to its objects. In fact Parties have an obligation to provide biennial reports on legislative and other measures taken. A regulatory system requiring the granting of permits for certain species and the keeping of records of trade is a key feature of the obligations under this Convention.

#### *Current state of Tuvalu's laws*

Some provision is made for the protection of wildlife under the *Wildlife Conservation Act*. This focuses on the protection of certain species (either fully or partially) and the declaration of sanctuaries. There are no operative provisions relating to trade in any wildlife species.

Declarations may be made of prohibited or restricted imports and exports under the *Customs Act*.

#### *Options*

Sections 33, 34 and 35 of the *Customs Act* could be usefully applied to declaring certain species to be prohibited or restricted exports. However it would be advisable to enact legislation dealing specifically with the licensing and border control issues contemplated by this Convention.

### ***Stockholm Convention***

A new law will be needed to implement the provisions of this Convention. These include provisions relating to the following –

- (a) Definitions or words and terms used in the law. These will need to reflect the administrative entities in Tuvalu, and will also need to be harmonised with the definitions in the Convention and with related laws in Tuvalu. The 12 identified POPs must be listed and provision should be made for the list to be added to. The concept of “environmentally sound disposal” is important.
- (b) The adoption of the precautionary approach.  
“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. (Principle 15 – ***Rio Declaration***)
- (c) Measures to reduce or eliminate releases from intentional production and use. These must include all necessary prohibitions, restrictions and administrative measures to give effect to Article 3. The production and use of endrin and toxaphene must be banned. Production of aldrin, dieldrin and heptachlor must be prohibited. The applications of DDT in Tuvalu should be considered and appropriate provision made in the law.

- (d) Provision for the registration of exemptions, if applicable, under Article 4. These may apply to the use of remaining supplies of aldrin, dieldrin and heptachlor, but it is preferable to simply ban them outright.
- (e) Measures to reduce or eliminate releases from unintentional production. The action plan and necessary strategies should be formulated under the auspices of the law. The requirements of Article 5 must be met. Other provisions might reflect the need to promote the development and use of substitutes and the application of best available techniques.
- (f) Measures to reduce or eliminate releases from stockpiles and wastes. The law should make provision for the identification of stockpiles and wastes as required under Article 6. Appropriate management arrangements and other measures should be prescribed.
- (g) The implementation plan required under Article 7 must be given some legislative backing. Certain matters relating to its implementation should also be supported by the provisions of the law. Equipment containing PCB's must be phased out by 2025 but this should be assessed in Tuvalu and appropriate arrangements made under the law to meet this objective before the deadline under the Convention. Issues relating to the release of dioxins, furans, hexachlorobenzene and PCB's through combustion or industrial production should be considered in the plan and appropriate provision reflected in the law.
- (h) Provision should be made for the designation of the focal point in Tuvalu and for the discharge of its reporting and other functions. The need to be able to access and report on information and data should be provided for in the proposed new *Environment Protection Act*.
- (i) Reference might be made to the development, endorsement and implementation of public awareness and education programs. Appropriate arrangements might be made for public participation in addressing POPS Training issues may or may not have a place in the applicable legislation.
- (j) The promotion of research, development and monitoring capacities might be provided for. Any particular monitoring processes might be given some firm legal basis. Cooperation at national, regional and international level should be referred to and promoted.

### *Options*

The requirements of this Convention could be met in regulations made under the proposed new Environment Protection Act, or these matters could be covered in a comprehensive law dealing with hazardous wastes and substances. In this way a single law could seek to implement the *Basel Convention*, the *Waigani Convention*, the *Stockholm Convention* and the *Rotterdam Convention*.