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Tonga

WASTE MANAGEMENT ACT 2005

Act 11 of 2005



WASTE MANAGEMENT ACT 2005

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WASTE MANAGEMENT ACT 2005

Act 11 of 2005

AN ACT TO PROVIDE FOR THE COLLECTION AND DISPOSAL OF SOLID WASTES AND THE MANAGEMENT OF ALL WASTES IN THE KINGDOM

I assent,
‘ULUKALALA LAVAKA ATA,
10th January, 2006

[25th October, 2005]

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I – PRELIMINARY

1 Short title

This Act may be cited as the Waste Management Act 2005.

2 Interpretation

In this Act, unless the context otherwise requires —

“**the Authority**” means the Waste Authority Ltd;

“approved Authority” means —

- (a) in relation to the Tongatapu waste management service area, the Waste Authority Ltd; and
- (b) in relation to other waste management service areas, the Ministry of Health or other entity appointed in accordance with section 5(3);

“Board” means the Board of an approved Authority;

“Chief Executive Officer” means the Chief Executive Officer of an approved Authority;

“Department” means the Department of Environment;

“hazardous waste” includes any wastes which are, or which have the potential to be, toxic or poisonous, or which may cause injury or damage to human health or the environment;

“island of Tongatapu” means all islands listed in the Schedule;

“Minister” unless the context otherwise requires, means the Minister of Environment;

“waste” includes —

- (a) garbage, household refuse, rubbish, scraps and trade wastes; and
- (b) any other matter or thing determined from time to time by an approved Authority to be waste for the purposes of this Act in the waste management service area under its control; and

“waste management service area “includes”

- (a) the Tongatapu waste management service area designated under section 4(1); and
- (b) any other waste management service area designated in accordance with section 4.

3 Act binds the Crown

This Act shall bind the Crown.

PART II – WASTE MANAGEMENT SERVICE AREAS

4 Waste management service areas

- (1) The Island of Tongatapu is designated as the Tongatapu waste management service area.

- (2) Other waste management service areas, being islands or parts of islands, may be designated by the Minister, with advice from the Minister of Health from time to time.
- (3) The Minister may, with advice from the Minister of Health, revoke, alter or add to any waste management service area.

PART III – APPROVED WASTE MANAGEMENT AUTHORITY

5 Approved waste Authority

- (1) The Authority shall be the approved Authority for the Tongatapu waste management service area.
- (2) The Ministry of Health shall be the approved Authority for all areas of Tonga other than the island of Tongatapu, until waste management service areas are declared for those areas under section 4.
- (3) The Minister of Health may, with the consent of Cabinet, appoint any appropriate entity to be an approved Authority for any waste management service area, and may substitute any appropriate entity for an approved Authority.

6 Functions of an approved Authority

The functions of an approved Authority shall be to establish, improve, maintain, operate and manage the collection and disposal of all waste in the Kingdom, including, but not limited to —

- (a) the provision of commercial, industrial and residential waste collection services;
- (b) the provision of waste management facilities, including the identification, development and management of waste dump site areas;
- (c) ensuring the sound management of waste dump site areas and approved dumping and waste storage sites that incorporate comprehensive environmental management systems, including leachate containment and management measures;
- (d) the provision of appropriate waste treatment, storage and disposal facilities;

- (e) the provision of waste management services to aircraft and ships and the imposition of requirements to be observed by pilots and ship masters;
- (f) the promotion of recycling and the implementation of measures to minimise wastes having particular adverse implications for human health and the environment;
- (g) monitoring the effects of wastes on human health and the environment, and cooperating with public health and environment officers in the discharge of their responsibilities relating to regulating and monitoring wastes and monitoring waste management processes and facilities;
- (h) regulating persons involved in the transportation, storage and disposal of wastes in accordance with this Act and any regulations made under it;
- (i) the preparation, adoption and enforcement of rules, operating manuals, codes of practice and standards regulating activities associated with the management of wastes in Tonga;
- (j) implementing litter and waste control measures;
- (k) the preparation of reports and the compilation of statistics relevant to the management of wastes in Tonga, and the regular reporting of such matters in accordance with this Act;
- (l) raising public awareness of matters concerning the minimisation of the generation of wastes and the effective management of wastes; and
- (m) performing any other functions provided for by regulations made under this Act.

7 Performance of community obligations

- (1) An approved Authority shall undertake community obligations at the direction of the Board, which may involve any activity aimed at keeping public areas clean and free of wastes, including —
 - (a) street and foreshore cleaning and other activities to maintain the cleanliness of public areas; and
 - (b) providing waste receptacles in public areas and other appropriate facilities for minimising and dealing with wastes on public roads and reserves, and other areas accessible to the public.
- (2) An approved Authority shall only be obliged to perform a community obligation under this section if the Government undertakes to pay to the approved Authority the agreed cost of providing the necessary services and undertaking the required activities.

8 Powers of an approved Authority

Subject to this Act and any regulations made under this Act, an Approved Authority shall have all the powers, rights and authorities necessary or expedient to enable them to exercise their functions, including, but not limited to the power to —

- (a) perform any responsibility and exercise any power vested in them by this Act or regulations made under this Act or any other enactment;
- (b) do anything necessary to ensure that wastes in Tonga are managed in an environmentally sound manner with minimum adverse effects to human health;
- (c) do anything necessary to assist other government agencies to ensure that Tonga is in compliance with its international obligations in relation to the management and movement of wastes;
- (d) undertake prosecutions for breaches of this Act, and to recover fines imposed and the costs arising from taking such legal proceedings;
- (e) take legal proceedings to prevent or restrain activities which are in breach of this Act; and
- (f) otherwise exercise the powers of a company and public enterprise under the laws of Tonga.

9 Powers of the Minister

For the purposes of implementing this Act, the Minister may —

- (a) exercise any of the powers conferred by this Act or any other law applying to the administration and operations of an approved Authority;
- (b) require that an approved Authority undertakes its activities in accordance with any government policy relevant to the protection of the environment; and
- (c) give directions to an approved Authority, not inconsistent with the provisions of this Act, to ensure that waste management requirements and practices in the area of responsibility of that approved Authority are implemented in accordance with principles and standards of sound environmental management.

PART IV – MANAGEMENT OF AN APPROVED AUTHORITY

10 Management of an Approved Authority

- (1) The provisions of this Part of the Act do not apply to the operations or administration of the Ministry of Health in its capacity as an approved Authority.
- (2) The Authority or any approved Authority is hereby a public enterprise for the purposes of the Public Enterprises Act 2002.
- (3) The Directors of an approved Authority shall be appointed by the Minister of Finance and hold office in accordance with the Public Enterprises Act 2002.

11 Staff of an approved Authority

- (1) The Board shall appoint a Chief Executive Officer in accordance with section 26 of the Public Enterprises Act 2002, and shall determine —
 - (a) procedures for the appointment and termination of staff, other than the Chief Executive Officer;
 - (b) the terms and conditions of employment of the staff;
 - (c) appropriate arrangements for disciplining staff; and
 - (d) financial and tendering procedures which are consistent with the procedures of the government.
- (2) Arrangements may be made for the secondment of public servants to an approved Authority.

12 Protection of assets of an approved Authority

- (1) No asset of an approved Authority shall be subject to distress or taken in execution of any judgment or legal proceedings against an approved Authority, its staff or its contractors, if the asset is —
 - (a) any building, plant, equipment or installation used at or situated at a waste dump site or waste treatment, dumping or storage site operated by the approved Authority;
 - (b) any vehicle or attachment to a vehicle used for the purposes of waste collection by or on behalf of an approved Authority; or
 - (c) any item of office equipment used at the premises of an approved Authority.

- (2) Nothing in this section shall affect —
 - (a) any legal rights or obligations arising from an approved Authority using any of the assets mentioned in subsection (1) as security for a loan; or
 - (b) the powers of a liquidator under the Companies Act 1995 in the event of the winding up of an approved Authority.

PART V – FEES AND CHARGES IMPOSED BY AN APPROVED AUTHORITY

13 Fees and charges

- (1) An approved Authority may levy and vary the following fees —
 - (a) an annual garbage collection fee which may apply to all residential premises in a waste management service area.
 - (b) the commercial waste collection fee which shall apply to all commercial premises with zero rating to commercial premises given satisfactory arrangements for proper management and disposal of wastes generated on the premises;
 - (c) for depositing wastes at waste dump sites and approved dumping grounds; and
 - (d) disposal of hazardous wastes.
- (2) The approved Authority may determine which premise is residential or commercial for the purpose of this Act.

14 Exemptions

- (1) The approved Authority may grant exemption with conditions from payment of fees and charges imposed under this Part of this Act.
- (2) Exemptions from residential garbage collection charge may be granted on —
 - (a) written application by the owner or occupier of the residential premise; and
 - (b) the approved Authority is satisfied that the residential premise –
 - (i) have not been or will not be occupied for a continuous period of 3 months; or
 - (ii) is not accessible to the garbage collection vehicles; or

- (iii) meet any other conditions or requirements approved by the Board as being grounds for the granting of remission.

15 Interest on unpaid dues

An approved Authority may charge interest at the prescribed rate per annum on any fees and charges not paid within 30 days of the date upon which payment is due.

16 Collection of fees and charges

- (1) All fees and charges payable to an approved Authority in accordance with this Part of this Act may be recovered by the approved Authority as a debt.
- (2) The garbage collection fee imposed on premises may be recovered in accordance with subsection (1) from the owner or occupier at the time the fee was incurred of the premises.
- (3) An approved Authority may, subject to any directions given by the Board, enter into arrangements for the collection of fees and charges by persons or organisations approved by the Board to be collection agents on behalf of the approved Authority.

PART VI PLANNING AND REPORTING BY AN APPROVED AUTHORITY

17 Operating plans

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

- (4) Upon approval of the Annual Operating Plan and Estimates of Revenue and Expenditure by a Board of an approved Authority the Chief Executive Officer shall immediately forward copies to the Minister of Finance and the Minister.
- (5) The approval Annual Estimates shall be sufficient authority for the Chief Executive Officer to approve the expenditure of moneys for the specified purposes up to an amount not exceeding the approved amounts for each purpose.
- (6) No expenditure shall exceed the amounts approved in the Annual Estimates unless the Board's consent has been given.

18 Reporting by an approved Authority

In addition to the reporting requirements imposed on an approved Authority under the Public Enterprise Act 2002 and the Companies Act 1995, an approved Authority shall —

- (a) prepare and submit reports relating to any aspect of waste management under its responsibility at the request of the Minister;
- (b) ensure that the Minister is immediately notified of any matter relating to waste management that comes to its notice which may adversely affect human health;
- (c) ensure that the Minister is immediately notified of any matter relating to waste management that comes to its notice which may adversely affect the environment; and
- (d) arrange for programmes of public information concerning waste management issues with an aim to —
 - (i) minimise the generation of wastes;
 - (ii) ensure that wastes are stored and disposed of in a manner which minimises their harmful effects on human health and the environment; and
 - (iii) permit informed decisions to be made about waste related matters which may affect the health and well-being of the community.

PART VII OPERATIONS OF AN APPROVED AUTHORITY

19 Contracting waste services

- (1) An approved Authority may enter into contractual arrangements for the provision of services necessary to discharge its functions and to perform its waste management activities, including activities related to —
 - (a) the management and operation of waste dump sites and approved waste dumps, waste storage and treatment facilities;
 - (b) the collection and transportation of wastes;
 - (c) any aspect of the administration of an approved Authority; and
 - (d) other waste related activities including the dissemination of information and the raising of public awareness.
- (2) The Ministry of Works may be engaged as a contractor by an approved Authority in accordance with subsection (1) and for all such purposes it shall have the same status as all other contractors and potential contractors.
- (3) Subject to subsection (4), a contractor engaged by an approved Authority in accordance with this section may be authorised to —
 - (a) collect fees on behalf of an approved Authority and account for them to the approved Authority;
 - (b) give any necessary direction or impose any necessary operational requirement, consistent with this Act and any regulation, rule, operating procedure or code of practice made under this Act; and
 - (c) take any other necessary action or do any other necessary thing in accordance with the contract made with the approved Authority.
- (4) No contractor to an approved Authority may be authorised to —
 - (a) exercise any power of registration or grant any licence in accordance with this Act; or
 - (b) do any other act or thing which is prescribed by regulations made under this Act as being beyond the power of a contractor.

20 Operating procedures and codes of practice

- (1) For any purpose associated with its operations, an approved Authority may make and impose rules, operating procedures, guidelines and codes of practice relevant to any aspect of its waste management functions.
- (2) Without limiting the generality of subsection (1), an approved Authority may impose rules prescribing —

- (a) the size and nature of waste receptacles;
 - (b) the placing of wastes and waste receptacles so as to facilitate the collection of wastes;
 - (c) the provision of stands and requirements to ensure the effective containment of wastes;
 - (d) the separation of certain types of wastes; and
 - (e) any other matter to facilitate the orderly keeping and collection of wastes.
- (3) An approved Authority may display signs at its operational facilities and on its vehicles which give directions to be observed by all persons within the facilities, or in the vicinity of the vehicles, of an approved Authority.
- (4) Officers and contractors of an approved Authority may give directions to any person within the areas and facilities of an approved Authority for the purpose of ensuring compliance with any rule, operating procedure, guideline, code of practice or sign made or displayed in accordance with this section.
- (5) Any person who fails or refuses to comply with any rules, operating procedure, guideline, code of practice or sign made or displayed in accordance with this section, or with any direction given under subsection (4), commits an offence and shall upon conviction be liable to a fine not exceeding \$1000.

21 Recycling of wastes

- (1) An approved Authority shall promote the recycling of wastes and for this purpose rules, operating procedures, guidelines, codes of practice, signs and directions may be made, displayed or given in accordance with section 20.
- (2) Persons or companies engaged in commercial activities associated with the recycling of wastes shall —
- (a) comply with all requirements imposed under this section;
 - (b) ensure that no aspect of their activities gives rise to a breach of Tonga's international obligations associated with the movement and management of wastes; and
 - (c) observe internationally accepted practices in relation to their waste related activities.
- (3) For the purposes of achieving compliance with subsection (2), regulations made under this Act may require that persons or companies engaged in commercial activities associated with the recycling of wastes be registered or licensed, and such requirements may be administered by the

Department or by an approved Authority in accordance with the regulations.

PART – VIII REGULATION OF WASTES AND WASTE RELATED ACTIVITIES

22 Environmental and Public Health Standards

- (1) Environmental standards relating to waste management practices and facilities may be prescribed by the Minister, and the Department shall be responsible for the monitoring and enforcement of the approved standards.
- (2) Public health standards relating to waste management practices and facilities may be prescribed by the Minister of Health, and the Ministry of Health shall be responsible for the monitoring and enforcement of the approved standards.
- (3) Standards imposed under this section may be applied to an approved Authority and its contractors and to any other persons identified in the applicable standard.
- (4) Any person to whom an approved standard applies who fails or refuses to comply with the standard commits an offence and shall upon conviction be liable to a fine not exceeding \$2,000.
- (5) In addition to any fine imposed under subsection (4), the failure to observe or comply with an approved standard shall be grounds for —
 - (a) suspending or revoking any registration or licence applying to the person in breach;
 - (b) refusing any subsequent registration or licence sought by the person in breach; and
 - (c) terminating any contract between an approved Authority and the person in breach.

23 Registration and licensing

- (1) All waste dump sites require approval from the Minister of Lands and Natural Resources and are required to be licensed by the Minister under this Act.
- (2) The Minister may require the registration and licensing of other waste management facilities and operators in accordance with regulations made under this Act.

- (3) Any person who operates a waste dump site without a license issued by the Minister or in breach of any condition of such a license commits an offence and shall upon conviction be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or both.

PART IX – OFFENCES RELATING TO WASTES

24 Waste related offences

- (1) A person who imports into the Kingdom any toxic or hazardous wastes, except in compliance with international obligations applying to Tonga, commits an offence and shall upon conviction be liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 25 years, or both.
- (2) Any person who arranges for the movement of toxic or hazardous wastes into, out of or within the Kingdom, or for their storage or disposal so as to cause a breach of an international obligation applying to Tonga commits an offence and shall upon conviction be liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 25 years, or both.
- (3) Any person who deposits or dumps wastes at a place other than an approved waste dump site so as to cause pollution to a public area or to land belonging to the Government or to another person commits an offence and shall upon conviction be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or both.
- (4) Any person who drops or throws or deposits any waste on a roadway, vacant land or foreshore, or into any stream, creek, pool, well, lake or the sea commits an offence and shall upon conviction be liable to a fine not exceeding \$1,000.
- (5) Any person who impedes, hinders or obstructs —
 - (a) an officer of an approved Authority in the exercise of a function or power under this Act; or
 - (b) any contractor engaged by an approved Authority to undertake a waste management service,commits an offence and shall upon conviction be liable to a fine not exceeding \$1000.

25 Enforcement provisions

- (1) The powers provided for under subsection (2) may be exercised by police officers, environment officers, authorised officers under the Public Health

Act 1992 and officers of an approved Authority and its contractors who are authorised by a Chief Executive Officer.

- (2) For the purposes of implementing and enforcing the provisions of this Act, and monitoring and containing the effects of wastes on human health and the environment, the persons referred to in subsection (1) may —
 - (a) enter upon any land;
 - (b) enter private premises at all reasonable times where it is believed on all reasonable grounds that there has been any contravention of this Act, after notifying the owner of their intention to do so;
 - (c) take samples of wastes, soil and water for testing and analysis;
 - (d) require the production of records and information relevant to the management, storage, movement and disposal of waste; and
 - (e) order that certain wastes or materials apparently containing or affected by wastes be contained, removed or otherwise dealt with so as to minimise their adverse affects on human health or the environment.
- (3) Any person who refuses or fails to comply with an order given under subsection (2)(e) commits an offence and shall upon conviction be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or both.

26 Prosecutions under this Act

- (1) Prosecutions for offences against this Act may be undertaken by police officers, environment officers, authorised officers under the Public Health Act 1992 and officers of an approved Authority who are authorised by a Chief Executive Officer.
- (2) Where prosecutions are undertaken by an approved Authority the costs or any part of the costs of any legal practitioner retained by an approved Authority for that purpose may be ordered by a court to be paid to the approved Authority.

PART X – MISCELLANEOUS PROVISIONS

27 Regulations

The Minister may, with the consent of Cabinet, make regulations for the implementation of this Act, including but not limited to, regulations which provide for all or any of the following —

- (a) the proper and efficient administration and management of an approved Authority;
- (b) additional functions and powers of an approved Authority;
- (c) the provision of community obligations by an approved Authority and the payments to be made for these;
- (d) the imposition and collection of waste related fees and charges and interest rates on unpaid fees and the raising of revenues for waste related purposes;
- (e) special levies on particular goods the disposal of which is likely to have adverse effects on the environment;
- (f) additional charges on premises in commercial areas where services are provided by an approved Authority to maintain cleanliness of streets, footpaths and public areas;
- (g) any other type of special levy relating to waste management services, or for the purpose of raising revenues for the effective management of wastes;
- (h) the payment, collection and use of special levies and additional charges; and
- (i) the effective management of wastes in waste management service areas;
- (j) prescribing offences and imposing penalties being fines not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both.

28 Relationship with other Acts

Notwithstanding the provisions of the Business Licenses Act 2002, an approved Authority and its contractors may engage in activities associated with the storage, disposal and transport of toxic wastes, if such activities comply with the requirements of this Act.

29 Savings and transitional provisions

- (1) The Minister of Health may, on behalf of the Ministry of Health in its capacity as an approved Authority —
 - (a) fix fees and charges in accordance with section 13, which shall be subject to the consent of Cabinet and be published in the Gazette upon approval;
 - (b) exercise the powers of a Chief Executive Officer as provided for in sections 13 and 14;

- (c) make and impose rules, operating procedures, guidelines and codes of practice in accordance with section 20;
 - (d) otherwise exercise any power of a Board or Chief Executive Officer for the management of wastes in the waste service under the control of the Ministry of Health;
 - (e) delegate the power to review a decision made by the Minister of Health under this Act to an appropriate person to be exercised in accordance with this Act; and
 - (f) delegate any other power of an approved Authority to an appropriate person.
- (2) The environmental impact approval given for the Tapuhia waste dump site prior to the commencement of this Act and the Environmental Impact Assessment Act 2003 shall be sufficient environmental impact approval for all lawful purposes.

Passed by the Legislative Assembly this 19 day of October, 2005.

SCHEDULE

Fafa

Nukunukumotu

Pangaimotu

Tongatapu, excluding the island of 'Eua