



Tuvalu

ENVIRONMENT PROTECTION ACT

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Tuvalu

ENVIRONMENT PROTECTION ACT

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Tuvalu

ENVIRONMENT PROTECTION ACT

AN ACT TO PROVIDE FOR THE PROTECTION AND MANAGEMENT OF THE ENVIRONMENT IN TUVALU AND RELATED PURPOSES.¹

Commencement [18 August 2008²]

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Environment Protection Act.

2 Interpretation

(1) In this Act, unless the context otherwise requires —

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

“**approval**” includes the granting of any consent, licence or permit required under this Act or any other administrative policy directive concerning any development;

“**building**” means any type of construction, whether on land or in the seas and includes temporary structures and structures for the housing or containment of livestock;

“**Competent Authority**” means any competent authority, National Competent Authority or approved authority (and any other designation provided for in a convention) which is required by a Convention to which this Act applies for the purposes of administering aspects of the convention in Tuvalu;

“**conservation**” includes protection, maintenance and preservation;

“**Convention**” and “**international convention**” includes all Conventions to which this Act applies, and any environment related forum, association, meeting, agency or programme of an international or regional agency in which Tuvalu is entitled to membership or participation;

“**Conventions to which this Act applies**” are the international environment related conventions listed in the Schedule;

“**Council**” and “**National Environment Council**” means the National Environment Council convened in accordance with section 14:

“**Department**” means the Department of Environment;

“**development**” means any enterprise or undertaking, for industrial or commercial purposes which includes —

- (a) the erection of a building or structure;
- (b) the carrying out of work, in, on, over or under land or sea;
- (c) the use of land, building, structure or work; and
- (d) the subdivision of land;

“**Director**” means the Director of the Department of Environment, and any person acting from time to time in the position of the Director;

“**discharge**”, includes depositing, allowing to escape, or failing to prevent from being discharged any waste or noise into the environment or permitting use of, visit to or occupation of land by people which it is beyond the facilities on the land to cope with;

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

“**environmental impact assessment**” means the study and evaluation of the potential effects that a development activity may have on the environment;

“**Environment Officer**” means any officer appointed or empowered under section 9;

“**Falekaupule**” means the traditional assembly in each island of Tuvalu which, subject to the Falekaupule Act,³ is composed in accordance with the Aganu of each island;

“**Aganu**” means the traditional local customs and usages of an island as given under the Falekaupule Act;

“**impact**”, concerning the use, development or protection of the environment, includes —

- (a) a positive or adverse impact;
- (b) a temporary or permanent impact;
- (c) a past, present or future impact;

- (d) an impact which is cumulative over time or in combination with other impacts regardless of its scale, intensity, duration or frequency; and
- (e) any spatial dimension of such impacts (whether local, regional or global);

“**land**” for the purpose of this Act includes:

- (a) all things growing on land;
- (b) buildings and other things permanently fixed to land; and
- (c) land covered by water, such as reefs and the seabed of the Exclusive Economic Zone or the continental shelf;

“**licence**” means a licence granted under this Act or any other law relevant to the management of the environment;

“**Minister**” means the Minister for Natural Resources and Environment, or such other Minister of the Crown charged by the Prime Minister with responsibility for the administration of this Act;

“**natural resources**” includes land, soil, minerals, water, air, plants and animals and their habitat (whether native or introduced);

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

“**officer**” includes an authorised employee of the Department of Environment, and any other person duly authorised by the Minister in accordance with this Act;

“**pollutant**” means any solid, liquid or gaseous substances or energy present in such concentration as may be, or tend to be, injurious to the environment or human health;

“**pollution**” means the introduction by man directly or indirectly of substances or energy into the environment which may result or likely to result in such deleterious effects or harm to living resources and ecosystems and hazards to human health including —

- (a) the detriment or degradation of the environment; or
- (b) the detriment of any beneficial use, and includes pollution as prescribed by regulations;

“**premises**” means residential, commercial, industrial or other premises of any kind and includes land or sea based, air or space launch or landing facility;

“**prescribed form**” means a form prescribed by regulations under this Act, or in the absence of any relevant regulations, a form approved for any purpose under this Act by the Minister;

“**Precautionary notice**” means a notice issued under section 12 of this Act;

“**seas**” for the purpose of this Act includes waters within Tuvalu's Exclusive Economic Zone, continental shelf and includes enclosed waters (whether saltwater or fresh water), and lagoons;

“**sustainable development**” means the management or the human use, development, conservation, protection, maintenance and enhancement of the natural, physical and cultural resources of Tuvalu in a way or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and to their health and safety while sustaining the potential of natural and physical resources to meet the needs of future generations;

“**waste**” includes matter —

- (a) in liquid, solid, gaseous or radioactive form (whether toxic or not) and which is discharged into the environment; or
 - (b) which is the by product of any process activity or development with no apparent value or beneficial function; or
 - (c) human excrement or faeces; or
 - (d) animal excrement or remains; or
 - (e) any other matter or thing which is prescribed by regulations made under this Act to be waste.
- (2) Where any power is given under this Act to regulate any matter, act or thing, then that power shall include a power to prohibit any matter, act or thing for the purpose of protecting the environment.

3 Act to bind the Crown

This Act shall bind the Crown.

PART II - OBJECTIVES, FUNCTIONS AND POWERS

4 Objectives of the Act

- (1) The general objectives of this Act shall include —
- (a) to coordinate the role of government in relation to environmental protection and sustainable development;
 - (b) provide a mechanism for the development of environmental policy and law;
 - (c) to promote a clean and healthy environment for all Tuvaluans;
 - (d) to prevent, control, monitor and respond to pollution;
 - (e) to promote public awareness and involvement in environmental issues and the preservation of Iloga as it relates to the environment;

- (f) to facilitate compliance and implementation of obligations under any regional and international environmental or natural resource agreements or conventions to which the Government of Tuvalu has ratified or acceded to;
- (g) to facilitate sustainable development with respect to the management of the environment and natural resources;
- (h) to facilitate the assessment and regulation of environmental impacts of certain activities;
- (i) to promote the conservation and, where appropriate, sustainable use of biological diversity and the protection and conservation of natural resources, on the land, in air and in the sea;
- (j) to reduce the production of wastes, and to promote the environmentally sound management and disposal of all wastes.

5 Powers of the Minister

- (1) The Minister shall be responsible for the proper administration of this Act.
- (2) The Minister shall have power to do all things necessary or convenient to be done to attain or further the objects of this Act, and any environment related law which the Department is responsible for administering, including power to —
 - (a) give approvals or grant any licence or authority as provided by any law;
 - (b) approve appropriate representatives of the Department at meetings and forums related to any Convention listed in the Schedule, and any other meeting related to the work of the Department;
 - (c) approve any report required to be prepared by the Department on behalf of the Government;
 - (d) appoint advisory or technical committees;
 - (e) designate the Department or any other appropriate governmental agency to be the focal point for the purpose of any Convention to which this Act applies;
 - (f) set fees and charges in accordance with any power under this Act; and
 - (g) do any other related act or thing.

6 Delegation of functions and powers to the Director

- (1) In exercising any function or power under this Act the Minister may, in writing delegate to the Director, such functions and powers (either in part or in whole) as may be necessary or appropriate for the efficient and effective administration of that function or the exercise of that power.

- (2) Nothing shall prevent the exercise of any function or power by the Minister during the period of any delegation of that power under this section.

7 The Director of Environment

- (1) A Director of Environment shall be appointed as the head of the Department in accordance with laws relating to the appointment of public servants.
- (2) The Director shall be responsible, through the Permanent Secretary of the Ministry, to the Minister for the efficient and proper administration and management of the Department of Environment.
- (3) Subject to the direction of the Permanent Secretary of the Ministry, the Director shall have power to do all things necessary or convenient to be done in relation to the proper administration of the Department and the implementation of the provisions of this Act, and any other law relating to a function of the Department, including the power to —
 - (a) do any act or thing authorised by this Act or any other law;
 - (b) prepare reports as required by the Cabinet, the Minister or the Permanent Secretary, or which are required under any Convention listed in the Schedule;
 - (c) engage consultants, in compliance with the government's processes, for the purpose of assisting the Department to perform its functions;
 - (d) arrange for the investigation or monitoring of any activity that relates to a function of the Department;
 - (e) recommend to the Minister appropriate representatives of the Department at relevant meetings and conferences; and
 - (f) do any other related act or thing.

8 Delegation of powers by the Director

- (1) The Director may by notice in writing, delegate to any other officer of the Department of Environment, all or any of the Director's powers and functions under this Act, except this power of delegation.
- (2) Nothing shall prevent the exercise of any function or power by the Director during the period of any delegation of that power under this section.
- (3) The Director may delegate any power or responsibility under this section that is any function or power delegated to the Director under section 6, or which relates to the exercise of any such function or power.

PART III - POWERS OF ENFORCEMENT

9 Environment Officers

- (1) The Minister may appoint in writing any sufficiently qualified person to be an Environment Officer, including employees of the Department of Environment, police officers, quarantine officers, fisheries officers and public health inspectors.
- (2) The Minister, Director and all officers of the Department holding full time positions are deemed to be environment officers for the purposes of this Act.

10 Identification of Environment Officers

- (1) Each Environment Officer shall be furnished with an identification card which shall be produced —
 - (a) if practicable, on each occasion before the Officer proceeds to act pursuant to this Act; and
 - (b) if demanded by any person who is subjected to any exercise of a power by an environment officer in accordance with this Act.

11 Powers of Environment Officers

- (1) Subject to the provisions of subsections (2) and (3) an Environment Officer may enter —
 - (a) any land or building (other than a dwelling house) at any time;
 - (b) a dwelling house at a reasonable time during daylight hours; and
 - (c) vessels, ships, aircraft, vehicles or other form of conveyance at any time —
for the purposes of —
 - (i) monitoring the impact of any activity, matter or thing relating to the environment;
 - (ii) investigating the commission of any offence or the breach of any lawful obligation under a law relating to the protection or management of the environment;
 - (iii) enforcing this Act or any other law relating to the protection or management of the environment.
- (2) An Environment Officer shall not exercise the powers conferred by subsection (1)(a) or (b) except for the purpose of —
 - (a) ascertaining the nature and condition of the land, building, water or reef; or

- (b) investigating an alleged offence of which an environment officer has reasonable and probable grounds to believe that such entry will produce evidence.
- (3) The powers conferred by subsection (1)(a) and (b) shall not be exercised unless reasonable notice has been given to the owner or occupier of the land, building or dwelling house, or unless a search warrant has been obtained from a magistrate or island magistrate.
- (4) The provisions of the Penal Code (or any law which replaces the Penal Code) shall apply to the issuance of search warrants for the purposes of this section.
- (5) In the exercise of the powers conferred by this section, an Environment Officer may —
 - (a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing, or to determine whether any offence has been committed;
 - (b) take samples for the purpose of analysis and testing;
 - (c) take photographs or measurements;
 - (d) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence;
 - (e) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by law; and
 - (f) require from any person any assistance that is relevant to the investigation or monitoring activity; and
 - (g) seize any item used in the commission of an offence against this Act, or any law relating to the protection or management of the environment.
- (6) Any person who —
 - (a) hinders or obstructs an Environment Officer in the performance of his or her duties under this Act, or the exercise of a power under this Act;
 - (b) induces or incites any other person to hinder or obstruct an Environment Officer acting in accordance with this Act;
 - (c) by words or conduct falsely represents that he or she is an Environment Officer, or who otherwise impersonates an Environment Officer;
 - (d) fails to comply with a requirement made by an Environment Officer under subsection (5)(2)(d), (e) or (f); or
 - (e) provides false or misleading information to an Environment Officer — commits an offence, and shall be liable upon conviction to —
 - (i) a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 3 months, if the person is an individual; or

- (ii) a fine not exceeding \$5,000 if the offence is committed by a corporation.

12 Precautionary Notice

- (1) Where an Environment Officer suspects that an activity, matter or thing may be impacting upon the environment, the Officer may issue a notice requiring that any person apparently in control of or associated with the activity, matter or thing comply with any requirement specified in subsection (2).
- (2) A notice issued under subsection (1) may require all or any of the following —
 - (a) that information be provided in relation to the activity, matter or thing to satisfy the Director that the environment is not thereby being adversely impacted upon;
 - (b) that alternative activities or operating techniques be considered and employed to avoid or decrease the impact upon the environment;
 - (c) that improvements or alterations be made in relation to the activity, matter or thing to the satisfaction of the Director, to avoid or decrease the impact upon the environment; and
 - (d) any other requirement, as determined by the Director, to ensure that the activity, matter or thing does not adversely affect the environment.
- (3) Any person served with a notice under this section shall ensure that the requirements stated in the notice are complied with within the time stipulated, and shall satisfy the Director, prior to the expiration of that time, that the activity, matter or thing is not adversely affecting the environment.
- (4) Any person who, having been served with a Notice issued under this section —
 - (a) fails to comply with a requirement stated in the Notice; or
 - (b) fails to satisfy the Director that an activity, matter or thing is not or is no longer adversely impacting upon the environment within the time stipulated —commits an offence, and shall be liable upon conviction —
 - (i) where no adverse impact has been done to the environment, to a fine not exceeding \$1,000; or
 - (ii) where the environment has been adversely impacted upon, to a fine not exceeding \$25,000, or to imprisonment for a term not exceeding 6 months.

13 Notice to Cease Activity

- (1) A Notice may be issued under this section whether or not a Precautionary Notice has been served under section 12.
- (2) Where, after receiving advice from the Director, the Minister is of the opinion that there is occurring, or may occur, an act or activity which involves an immediate threat or risk to the environment, the Minister may issue a Notice under this section.
- (3) A Notice issued under this section shall —
 - (a) be directed to any person, organisation or body whom the Minister believes is carrying out the act or activity, or apparently has some control over it;
 - (b) specify the act or activity and the nature of its effect upon the environment; and
 - (c) require that the act or activity cease, or not be done, until the Minister is satisfied that the threat or risk no longer exists.
- (4) A Notice may be served under this section notwithstanding that any approval, licence or permit has been granted in relation to the activity.
- (5) The Minister and the Government shall not be liable in respect of any loss or damage arising from, or in any way connected with, the issuing of a Notice under this section.
- (6) Any person who —
 - (a) having been served with a Notice issued under this section, fails to comply with any of its terms;
 - (b) having been served with a Notice issued under this section, causes or permits any other person to act in breach of its requirements; or
 - (c) knowingly acts in breach of the requirements of a Notice given under this section, whether or not that person has been served with the Notice,—commits an offence and shall be liable upon conviction to a fine not exceeding \$25,000, or to a term of imprisonment not exceeding 1 year.
- (7) In addition to any other penalty imposed under this section, a court may order that any person convicted of an offence —
 - (a) do any act to reinstate the environment as far as practicable to its state prior to the commission of the offence;
 - (b) pay to the Government any sum representing the cost of reinstating the environment to its state prior to the commission of the offence; or
 - (c) pay any compensation to the Government, or to any other person affected by the offence, in respect of the damage caused to the environment.

PART IV - NATIONAL ENVIRONMENT FORUM AND COUNCIL AND ISLAND ENVIRONMENT COMMITTEES

14 The National Environment Forum and Council

- (1) The Minister may, from time to time, convene a National Environment Forum for the purposes of—
 - (a) considering any environment related matters of national importance;
 - (b) disseminating information about the programmes and activities of the Department and the representation of the national interest of Tuvalu at international meetings, conferences and forums; and
 - (c) ensuring that the general community has an opportunity to participate in the formulation of environment related policies and the implementation of environment related programmes and activities.
- (2) In accordance with directions given by the Minister, the Director shall convene meetings of the National Environment Council from time to time as required for the purposes of this Act.
- (3) Regulations made under this Act may make provision for—
 - (a) the appointment of members of the Forum and the Council;
 - (b) the procedures of the Forum and the Council;
 - (c) the functions, responsibilities and powers of the Forum and the Council; and
 - (d) the establishment of advisory and technical committees of the Council, and the functions and powers of such committees.

15 Council to provide advice and to act as competent authority

- (1) The National Environment Council shall provide advice to the Minister on matters relating to environmental protection and sustainable development within and, where relevant, outside of Tuvalu.
- (2) The Council may be designated by the Minister, or under any Act or Regulations made under this Act, as the competent authority or implementing authority for the purpose of any international convention to which this Act applies.
- (3) In the absence of any competent authority being designated for the purposes of any Convention to which this Act applies, the Council shall have authority to act as the competent authority as required by any Convention.
- (4) In its capacity as a competent authority, the Council may lawfully perform any function and exercise any power required to be performed or exercised in

accordance with the relevant Convention, and any law which seeks to give effect to the Convention in Tuvalu.

16 Island Environment Committees

- (1) In accordance with section 35 of the Falekaupule Act a Kaupule may establish an Island Environment Committee.
- (2) A committee established under subsection 1 may —
 - (a) identify priority areas of environmental concern and to convey information on such matters to the Department;
 - (b) participate in the programmes undertaken by the Department and propose matters for inclusion in the work programme of the Department;
 - (c) recommend to the Minister regulations to be made under this Act to provide for the proper protection and management of the environment in that island;
 - (d) provide representatives to the National Environment Forum.
- (3) An Island Environment Committee may perform such roles and responsibilities and exercise such powers —
 - (a) as are provided in any regulations made under this Act;
 - (b) as are delegated to the Committee by the Minister or the Director in accordance with this Act; or
 - (c) as may be vested in the Committee by the Cabinet from time to time.

PART V - ENVIRONMENTAL IMPACT ASSESSMENT

17 Monitoring of environmental impacts

- (1) The Director shall ensure that the Department monitors activities that are likely to have, or are having an environmental impact in any area of land or sea within the jurisdiction of Tuvalu.
- (2) To address any environmental impacts determined to be affecting the environment of Tuvalu —
 - (a) the Director may cause to be issued any precautionary notice under section 12;
 - (b) the Minister may issue a notice under section 13 to require that any activity cease; or
 - (c) the Minister may make orders to regulate such activities in accordance with any regulations or emergency regulations made under this Act.

18 Procedures for Environmental Impact Assessment

- (1) Regulations made under this Act may provide for any aspect of a system of environmental impact assessment to be applied in Tuvalu.
- (2) Without limiting the generality of subsection (1), regulations relating to environmental impact assessments may make provision for —
 - (a) the types of projects, developments and activities (including definitions of major projects) which, if undertaken within Tuvalu, shall require a prior environmental impact assessment, or such an assessment at any time during the course of the establishment or operation of a project, development or activity;
 - (b) the recognition of any assessments undertaken in other countries, and any conditions which may be applied to such recognition for the purposes of such assessments in Tuvalu;
 - (c) procedures for the assessment of environmental impacts, including any reports, scientific testing or analysis or any other matter to verify any aspect of an assessment;
 - (d) prescribed or approved forms and fees for any aspect of the assessment of environmental impacts, including applications, reports, assessments, findings and approvals;
 - (e) the powers of the Minister to determine, apply and enforce any procedures for the assessment of environmental impacts in relation to any type or specific project, development or activity;
 - (f) the establishment, composition, powers, functions and procedures of an Environment Impact Assessment Taskforce;
 - (g) the granting of approvals and the imposition of general or specific conditions;
 - (h) the enforcement of conditions which apply to approved projects, developments or activities; and
 - (i) offences for the breach of any requirements applying to the system of environmental impact assessment, and penalties for such offences being fines not exceeding \$10,000, and terms of imprisonment not exceeding 3 years.

PART VI - POLLUTION CONTROL AND WASTE MANAGEMENT**19 Roles of the Department in relation to pollution and wastes**

- (1) The Department shall ensure that there is proper regulation and control of pollution, littering, wastes (including hazardous wastes) in Tuvalu, and shall

take appropriate measures to minimise the impacts of pollution, litter and wastes on the environment.

- (2) Without limiting the generality of subsection (1), the functions of the Department in relation to pollution, litter and waste management shall include —
- (a) monitoring pollution and its effect on the environment;
 - (b) regulating polluters and controlling the activities of persons causing pollution;
 - (c) implementing systems of licensing for persons causing pollution or discharging pollutants and wastes into the environment;
 - (d) the maintenance of air and water quality;
 - (e) regulating hazardous wastes, including the disposal, storage and trans-boundary movement of such wastes (and other hazardous substances) in accordance with international conventions applying in Tuvalu, or accepted international best practice;
 - (f) regulating waste collection and disposal systems, including landfills and waste storage facilities;
 - (g) setting operational standards and applying guidelines for waste management operations within Tuvalu;
 - (h) regulating and licensing of businesses dealing with wastes, including recyclers;
 - (i) promoting composting, recycling and the efficient use of wastes;
 - (j) regulating the disposal and incineration of wastes in accordance with laws applying in Tuvalu, and the international obligations binding Tuvalu;
 - (k) raising public awareness and participation in relation to environment and conservation issues, and participating in public educational campaigns, programs and promotions dealing with waste management and pollution control; and
 - (l) providing administrative and technical support to the Council and any committee established under this Act, in relation to waste management and pollution control.

20 Relationship with Marine Pollution Act

Compliance with the requirements of this Act shall not absolve a person from separate compliance with any rights, obligations or authorities prescribed under the Marine Pollution Act.

21 Regulations dealing with pollution control

- (1) The Minister, with the consent of Cabinet, may make regulations as may be necessary or expedient for controlling pollution in Tuvalu.
- (2) Without limiting the generality of subsection (1), regulations may be made —
 - (a) to prescribe the duties and obligations of owners and occupiers of premises, buildings, lands, works, vessels and vehicles in relation to avoiding or minimising pollution;
 - (b) for the licensing of premises, buildings, structures or works to discharge wastes and pollutants, and all matters incidental to such licensing systems;
 - (c) for the issue and enforcement of pollution abatement notices, or notices requiring that polluting activities cease;
 - (d) to prescribe powers of environment officers in relation to pollution control;
 - (e) to require the installation and maintenance of anti-pollution devices;
 - (f) to control noise pollution; and
 - (g) to prescribe offences relating to pollution.

22 Regulations dealing with waste management

- (1) The Minister, with the consent of Cabinet, may make regulations as may be necessary or expedient for the management of wastes in Tuvalu.
- (2) Without limiting the generality of subsection (1), regulations may —
 - (a) provide for the effective management of wastes;
 - (b) prescribe litter and waste control measures;
 - (c) prohibit the importation, use or sale of any items which generate wastes, or restrict such items so that the generation of wastes is minimised;
 - (d) prescribe procedures for the collection of waste related information and for its dissemination so as to raise awareness of waste related matters and permit informed decision making to be made by all sections of the community in relation to the minimisation of the generation of wastes and the adverse effects of wastes on human health and the environment;
 - (e) provide for systems of registration and licensing of businesses dealing with waste management and disposal;
 - (f) promote or regulate the recycling of wastes;
 - (g) specify toxic and hazardous wastes and regulate the manner in which such wastes may be stored, transported and disposed of;

- (h) secure the observance and effective implementation of international conventions and obligations relating to wastes applicable in Tuvalu, or of general application within the South Pacific region; and
- (i) require the observance of approved standards, rules, operating procedures and codes of practices applying to agencies or businesses that operate waste management or disposal services.

23 Regulations dealing with hazardous wastes and substances

- (1) The Minister, with the consent of Cabinet, may make regulations as may be necessary or expedient for regulating and managing hazardous wastes and substances in Tuvalu.
- (2) Without limiting the generality of subsection (1), regulations may make provision for —
 - (a) the types of “hazardous wastes” and “hazardous chemicals” to be regulated under this Act, and appropriate definitions for them;
 - (b) planning requirements (including compliance, implementation and emergency planning) for government agencies and for companies and persons involved in the management of hazardous substances;
 - (c) the implementation of relevant international standards and practices related to the management of hazardous substances;
 - (d) the collection, evaluation and reporting of data;
 - (e) monitoring the effects of hazardous substances and the status of implementation of the applicable Conventions related to them;
 - (f) responsibilities to maintain registers of hazardous substances, and for information to be recorded in them;
 - (g) controls over imports and exports, including the tracking of shipments and other border control activities such as customs codes and identification measures;
 - (h) the imposition of requirements relating to containers, packaging and labelling for hazardous substances;
 - (i) licensing, permit and certification systems, including permits for the collection, transportation and disposal of hazardous wastes and substances;
 - (j) requirements relating to the sound management of hazardous substances, and the operation of waste management and disposal facilities;
 - (k) requirements for the provision of safety equipment and procedures, and for the training of employees working with hazardous substances;
 - (l) specific provisions relating to managing radioactive wastes and substances in Tuvalu's jurisdiction, including regulating or prohibiting

- the importation of equipment and materials which may generate or become radioactive wastes;
- (m) obligations to minimise pollution from wastes and substances, and to minimise the consequences of any pollution incidents;
 - (n) reporting requirements in relation to pollution incidents, discharges, likely impacts on human health and the environment and other relevant matters (including protections for persons making such reports);
 - (o) all aspects of the enforcement framework by the Competent Authority under any applicable convention and other agencies, including the promotion of inter-agency cooperation and coordination;
 - (p) promoting cooperation in the taking of legal proceedings for breaches of legal requirements related to hazardous substances;
 - (q) powers of relevant agencies to obtain information;
 - (r) the provision of powers and facilities to monitor and verify compliance, and to order remedial or preventive action;
 - (s) the promotion and enforcement of environmentally sound management practices and the adoption of new environmentally sound technologies;
 - (t) the imposition of “user fees” and the “polluter pays” principles;
 - (u) controls over the incineration and dumping of hazardous wastes and substances;
 - (v) regulating and rehabilitating areas and buildings contaminated by hazardous substances;
 - (w) the effective involvement of community and industry representatives in planning and decision making processes;
 - (x) the provision of relevant information, education and training programmes; and
 - (y) facilitating the implementation of regional and sub-regional initiatives concerning the proper management of hazardous substances.

PART VII - INTERNATIONAL AND REGIONAL ENVIRONMENTAL OBLIGATIONS

24 Conventions to which this Act applies

- (1) Subject to subsection (2), the Conventions listed in the Schedule are the Conventions to which this Act applies.
- (2) The list of Conventions in the Schedule may be added to or deleted from by Regulations made under this Act.
- (3) In this Part, “Convention” means a Convention to which this Act applies.

25 Role of the department in relation to environmental conventions

- (1) Nothing in this section shall affect or restrict the role of any other Department or agency of Government in relation to a Convention to which this Act applies, and in particular the provisions of this Part do not apply to any Convention relating to the fisheries of Tuvalu which are the responsibility of the Department of Fisheries to implement.
- (2) The roles of the Department in relation to a Convention to which this Part applies shall include —
 - (a) making arrangements for the attendance at any meeting of the Parties of a Convention, and other relevant meetings, of a suitably qualified person to represent the interests of the Government of Tuvalu;
 - (b) liaising with relevant regional or international bodies to ensure that the representation of the Government of Tuvalu at any meeting concerning a Convention is informed and effective;
 - (c) accessing and utilising available funds and resources by preparing and submitting project proposals and undertaking programs to implement the Conventions;
 - (d) assisting any other Department and agency of Government, or the Councillor any Committee established under this Act, to implement any aspect of a Convention;
 - (e) preparing any necessary Report, and reporting on a regular basis to the Minister and Cabinet in relation to the implementation of any Convention;
 - (f) sharing information and otherwise providing such cooperation as is required by any Convention;
 - (g) recommending that any law of Tuvalu be amended or enacted in order to effectively implement any requirement of a Convention; and
 - (h) doing any other act or thing (in conjunction with any other relevant Department or agency of Government) to implement any obligation under a Convention.
- (3) In addition to the roles of the Department under this regulation, the Department may be designated by the Minister, or under any Act or regulations, as the focal point for the purposes of any Convention to which this Part applies.
- (4) As focal point, the Department shall perform such roles and duties as are necessary to implement any Convention to which this Act applies, and which may be vested in it by any Act or regulations making provision for any such Convention to be implemented in Tuvalu.

26 Requirement to provide assistance, information, data etc.

- (1) Where any Convention to which this Act applies requires that any report be made, or that any information or data be collected and provided, the Minister may make a written request to any person to provide relevant information or data.
- (2) Any person to whom a written request has been made under sub-section (1) who, without reasonable justification, refuses or fails to comply with the request, commits an offence and shall be liable upon conviction to a fine not exceeding \$500.

27 The precautionary principle

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

28 Other Departments to assist with implementation and enforcement

- (1) To effectively implement the Conventions to which this Act applies, all Departments and agencies of Government shall apply the regulatory powers under the laws that they are responsible for administering to regulate or prohibit any activity, matter or thing in accordance with any —
 - (a) decision made by the National Environment Council; or
 - (b) at the request of the Minister.
- (2) Action shall be taken in accordance with subsection (1) to —
 - (a) regulate any business activity that is in breach of a Convention to which this Act applies;
 - (b) control any trans-boundary movement of any controlled substance, item or thing; or (c) properly safeguard, store or dispose of any controlled substance, item or thing.

PART VIII - RESPONSES TO CLIMATE CHANGE

29 Policies and programmes to address climate change

- (1) In conjunction with other Departments, each Kaupule, and relevant international agencies, and through the involvement of the community, the Department shall formulate, apply and implement strategies and programs to —
 - (a) raise the level of understanding throughout the world about the implications of climate change, and activities which contribute to climate change, on Tuvalu and the future of its people;
 - (b) promote understanding amongst the people of Tuvalu about the causes and implications of climate change;
 - (c) address the effects of climate change within Tuvalu on its water resources, coastal areas, lands and land usage, food security, biodiversity, fisheries, economic welfare, public infrastructure and its vulnerability to natural disasters;
 - (d) implement programs and facilitate projects to protect its water resources, coastal areas, mangroves, lands, biodiversity, fisheries and public infrastructure, and to contribute to the health well-being and livelihoods of Tuvaluans; and
 - (e) participate in international conventions and forums with a view to obtaining the fullest possible assistance to address the implications of climate change and undertake adaptation initiatives.
- (2) Regulations made under this Act may provide for any matter associated with the response in Tuvalu to climate change, and to implement strategies and programs formulated in accordance with subsection (1), and may —
 - (a) provide for the protection and conservation of Tuvalu's fresh water resources;
 - (b) provide for matters concerning drought prevention and response; and
 - (c) provide for the protection, improvement and expansion of relevant public infrastructure.

PART IX - PROTECTION OF THE BIODIVERSITY

30 Department's roles to protect Tuvalu's biodiversity

- (1) The Department shall formulate, apply and enforce policies and programs for the protection of the biodiversity in Tuvalu, and in particular for —
 - (a) the control and eradication of invasive species;

- (b) the protection and conservation of Tuvalu's endemic species;
 - (c) the recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Tuvalu's biological diversity;
 - (d) the declaration and management of protected areas, and the implementation of special measures to conserve Tuvalu's biological diversity;
 - (e) regulating access to genetic resources within Tuvalu, and the equitable sharing of benefits arising from the development and exploitation of such resources;
 - (f) promoting access to and transfer of technologies relevant to Tuvalu's biological diversity;
 - (g) implementing plans, strategies and measures for the rehabilitation and restoration of degraded eco-systems, and for the rehabilitation of degraded lands; and
 - (h) implementing systems for the monitoring of and reporting on issues and matters relevant to or affecting Tuvalu's biological diversity.
- (2) Regulations may be made under this Act in relation to any of the matters relevant to Tuvalu's biodiversity as provided for in subsection (1).

PART X - OFFENCES AND PENALTIES

31 Non compliance with environmental conditions

- (1) Any person who fails to comply with any condition of a licence, permit or approval granted under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a term of 1 year, and in the case of a corporation to a fine not exceeding \$10,000.

32 Supplying false information

- (1) Any person who knowingly supplies false information in any application made under this Act or when otherwise required to provide information under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term of 2 years, and in the case of a corporation to a fine not exceeding \$20,000.

33 Penalty for carrying out any activity or project without approval

- (1) Any person carrying out any activity or project, without any approval required under this Act, shall be liable upon conviction to a fine not exceeding \$500 or

imprisonment for a term not exceeding 1 month, and in the case of a corporation to a fine not exceeding \$1,000.

- (2) Upon conviction under subsection (1) of this section, the Court in addition to any penalty may order the offender to meet the costs of reinstating the site or area affected to its original condition.

34 Activity to cease forthwith

- (1) Where a person is charged with an offence under this Act, the activity for which that person is charged must cease immediately.
- (2) Any person who fails to comply with the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding \$500, and in the case of a corporation to a fine not exceeding \$1,000 for each day that non-compliance continues.

35 Review of licence due to conviction

- (1) Where a person is convicted of an offence under this Act, a magistrate may order the revocation of any licence, permit or approval held by the offender which is relevant to the offence which has been committed, or refer the matter back to the Minister for a review of the licence, permit or approval, or any application for such a licence, permit or approval.

36 Offences by corporations

- (1) Where a corporation is guilty of an offence under this Act, any officer, director, or agent of such corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to the offence and shall be liable upon conviction to the penalty provided for the offence.

37 General penalty for conviction

- (1) Any person who commits any offence against this Act for which no penalty is elsewhere prescribed shall be liable on conviction by a competent court as follows —
 - (a) in the case of a first offence to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years; and
 - (b) in the case of a second or subsequent offence, to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 10 years; and
 - (c) in addition the Court convicting such person may order such person within a time specified in the order to do any act that he or she had failed, refused or neglected to do, or to remove or stop any waste or

pollution of the environment caused by such person at such person's own cost and a person who does not duly comply with such an order commits an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 15 years.

PART XI - MISCELLANEOUS

38 Fees and forms

- (1) Where any service, approval, permission, certification or inspection is provided, performed or undertaken by the Department in relation to any of its functions, the Department may —
 - (a) impose a fee or charge that is fixed by any law, or by any regulation made under this Act; or
 - (b) where no law or regulation sets the fee or charge, impose a fee or charge that is determined by the Minister.
- (2) Notice of fees and charges set under subsection (1)(b) shall be published in the Gazette and may have retrospective effect so as to validate any fees and charges already incurred.
- (3) Nothing in this section shall prevent the Director from setting and imposing a charge in relation to the professional services provided by any officer of the Department, or for the performance of any inspection or the grant of any certification.
- (4) The Minister may approve any form of application, approval, authority, notice or certificate for any purpose associated with the implementation of this Act, if no relevant form is prescribed by regulations made under this Act.

39 Regulations

- (1) The Minister, with the consent of Cabinet, may make regulations as provided for in this Act, or which may be necessary or expedient for giving effect to this Act and for its due administration.
- (2) Without limiting the generality of subsection (1), regulations may be made, *inter alia*:
 - (a) to clarify or add to any definition in section 2 or in any Convention to which this Act applies, or to provide any definition for any term used in any regulations;
 - (b) providing for additional powers of the Minister and the Director to implement this Act, and to meet its objectives;

- (c) providing for the appointment of additional officers to implement regulations made under this Act, and for additional powers of officers;
 - (d) relating to the Forum and Council as provided for in section 14;
 - (e) to vest roles, responsibilities and powers in Island Environment Committees established in accordance with section 16;
 - (f) relating to the procedures and powers for undertaking monitoring of the environment, and for recording or reporting on such monitoring;
 - (g) for any aspect of the assessment of environmental impacts in accordance with Part V;
 - (h) relating to the control of pollution and the regulation of wastes (including hazardous wastes and substances) in accordance with Part VI;
 - (i) providing for the regulation or prohibition of the importation of goods or products that may contribute to the increase in waste;
 - (j) to implement any Convention to which this Act applies, and to meet the obligations under any such Convention, or to enjoy the rights arising from such Conventions;
 - (k) to vest powers in any officer, person, governmental agency or other body in relation to the implementation of any Convention to which this Act applies;
 - (l) to provide for the functions and powers of competent authorities for the purposes of any Convention to which this Act applies, which may be stated as general powers of competent authorities, or as specific powers in relation to any of the Conventions;
 - (m) to clarify the application of the precautionary principle, and to require its specific application in relation to any procedure, matter or thing;
 - (n) to effectively respond to any matter arising from changes to climate or sea levels in accordance with Part VIII;
 - (o) to protect the biodiversity in accordance with Part IX;
 - (p) providing for the regulation or prohibition of the trade in wildlife;
 - (q) providing for the protection, preservation and management of historic areas;
 - (r) providing for the rehabilitation of any contaminated, polluted or degraded land;
 - (s) prescribing any necessary forms, and imposing any fees; and
 - (t) to prescribe offences and impose penalties for breaches of any regulations, being fines not exceeding \$25,000, or terms of imprisonment not exceeding 3 years
- (3) In relation to all regulations made under this Act the provisions of section 41 (2) of the Interpretation and General Provisions Act do not apply, and the

penalties which may be prescribed for offences committed against the regulations may be set at any level up to the maximum penalties provided for under this subsection (2)(t).

40 Emergency regulations

- (1) Where a situation arises that in the opinion of the Minister poses a threat or risk to the environment that requires the immediate making of Regulations in order to protect the environment of Tuvalu, the Minister may make Emergency Regulations in accordance with this section.
- (2) All emergency regulations made under this section —
 - (a) shall be consistent with section 39(2) or any other provision of this Act under which regulations may be made;
 - (b) shall take effect immediately upon its making by the Minister;
 - (c) shall be referred to the Cabinet for ratification as soon as is practicable; and
 - (d) shall continue to have full force and effect unless ratification by Cabinet is declined.
- (3) An emergency regulation made in accordance with this section shall take effect notwithstanding that notice of it has not been published by exhibition in accordance with section 25(1) of the Interpretation and General Provisions Act.

41 Environment Officers not personally liable

- (1) The Minister, Director, all environment officers and other officers of the Department shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise in good faith of any power under this Act or any other law, or for any omission to act.

42 Jurisdiction of the courts to try offences

- (1) Notwithstanding any provision of the Magistrates' Courts Act (Cap. 2) to the contrary, the trial of all cases involving offences under this Act or any regulations made under this Act may be heard by the Senior Magistrate's Courts which may impose any punishment up to the full penalty prescribed under this Act or regulations.
- (2) Nothing in subsection (1) affects the jurisdiction of a Magistrate's Court to hear and determine any case involving an offence against this Act which falls within its jurisdiction as provided for in the Magistrates' Courts Act.⁴

- (3) Regulations made under this Act may provide for any offence under the regulations to be heard and determined by an Island Court in accordance with the Island Courts Act.⁵

SCHEDULE**LIST OF INTERNATIONAL CONVENTIONS**

1. United Nations Framework Convention on Climate Change
(Adopted at New York on 9 May 1992)
2. The Kyoto Protocol to the United Nations Framework Convention on Climate Change.
(Adopted at Kyoto on 11 December 1997)
3. Vienna Convention for the Protection of the Ozone Layer
(Adopted at Vienna on 22 March 1985)
4. Montreal Protocol on Substances that deplete the Ozone Layer
(Adopted at Montreal on 16 September 1987)
5. Convention on Biological Diversity
(Adopted June 1994)
6. Cartagena Protocol to the Convention on Biological Diversity
(Adopted at Montreal on 29 January 2000)
7. United Nations Convention to Combat Desertification
(Adopted at Paris on 23 November 1972)
8. Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific region.
(Adopted at Waigani, PNG on 16 September 1995)
9. Convention for the Protection of the Natural Resources and Environment of the South Pacific Region
(Adopted at Noumea, New Caledonia on 24 November 1986) and the —
 - Protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region
 - Protocol for the Prevention of Pollution of the South Pacific Region by Dumping
10. Agreement Establishing the South Pacific Regional Environment Program (SPREP Convention)
11. Stockholm Convention on Persistent Organic Pollutants
(Adopted at Stockholm on 23 May 2001)

12. Convention on International Trade in Endangered Species of Wild Fauna and Flora

(Adopted at Washington on 3 March 1973)

ENDNOTES

¹ Act 2 of 2008

² LN 5/2008

³ Cap. 4.08

⁴ Cap. 7.36

⁵ Cap. 7.32