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**Tuvalu**

# **WASTE OPERATIONS AND SERVICES ACT**





Tuvalu

## WASTE OPERATIONS AND SERVICES ACT

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Tuvalu

# WASTE OPERATIONS AND SERVICES ACT

Act No. 1 of 2009

**AN ACT TO DEFINE THE ROLES AND RESPONSIBILITIES FOR WASTE MANAGEMENT IN TUVALU, AND TO MAKE PROVISION FOR THE COLLECTION AND DISPOSAL OF SOLID WASTES AND OTHER WASTES RELATED OPERATIONS AND SERVICES IN DESIGNATED AREAS OF TUVALU, AND FOR RELATED PURPOSES.**

ENACTED BY THE PARLIAMENT OF TUVALU  
3rd July, 2009

Commencement [1st July, 2009]

## PART 1

### PRELIMINARY

#### 1 Short title and commencement

This Act may be cited as the Wastes Operations and Services Act 2009, and it shall come into operation on a date to be appointed by the Minister by notice.

#### 2 Interpretation

- (1) In this Act, unless the context otherwise requires –
- “**this Act**” includes regulations made under this Act;
  - “**bulk wastes**” includes:
    - (a) vehicle bodies, or any part of them;
    - (b) vehicle engines, or any part of them;

- (c) tyres;
- (d) vehicle or marine batteries, or any of their component parts;
- (e) refrigerators, freezer units, stoves and cookers, washing machines, and similar household or commercial appliances;
- (f) paint tins and other containers; and
- (g) any other item to be disposed of which cannot be effectively disposed of by regular waste collection services provided to residential or commercial premises.

“**designated waste management operators**” includes:

- (a) each Kaupule in accordance with section 15(1); and
- (b) the Solid Wastes Agency in accordance with section 15(3);

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

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

“**Environment Officer**” means any officer appointed or empowered under section 9 of the Environment Protection Act 2008;

“**hazardous waste**” includes:

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

“**head of a designated waste management operator**” means the head of the Solid Wastes Agency, or the relevant Kaupule Secretary, as the case may be;

“**Kaupule**” means a Kaupule constituted under section 5 of the Falekaupule Act 1997;

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

“**Minister**” means the Minister for Home Affairs;

“**Ministry**” means the Ministry for Home Affairs;

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

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

“**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;

“**solid waste**” includes:

- (a) garbage, household refuse, rubbish, scraps and trade and industrial wastes, in solid or liquid form; and
- (b) any other matter or thing determined from time to time under section 9 to be waste for the purposes of this Act –

but does not include human wastes except in the form of sludge or any other form intended for final disposal as a waste product;

“**the Solid Wastes Agency**” and “**the Agency**” means the Solid Wastes Agency within the Ministry:

“**waste**” includes:

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

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

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

### 3 Act to bind the Crown

This Act shall bind the Crown

## PART II

### RESPONSIBILITIES FOR WASTE MANAGEMENT

#### 4 The regulation of wastes in Tuvalu

- (1) Subject to the provisions of this Act and the Environment Protection Act 2008, the responsibilities for the regulation of wastes in Tuvalu, and the regulatory control of waste management operations in accordance with the provisions of Part III, shall be exercised as provided for in this section.
- (2) The implementation of international conventions relating to the management of hazardous wastes shall be the responsibility of the Department of Environment in accordance with Part VII of the Environment Protection Act 2008.
- (3) Regulatory control over waste dumps and waste disposal sites shall be exercised by:
  - (a) the Department of Environment in accordance with environmental impact assessment procedures, and the imposition of standards in accordance with section 19(2)(g) of the Environment Protection Act 2008; and
  - (b) designated waste management operators in accordance with their functions and powers provided for in this Act, and any other law relating to the management of wastes..
- (4) The regulation of waste disposal at sea by the dumping and incineration of wastes shall be the responsibility of the Marine Department under the Marine Pollution Act 1991, and the Department of Environment in accordance with regulations made to implement the relevant international conventions.
- (5) Litter control measures shall be implemented and enforced in accordance with regulations made under the Environment Protection Act 2008.
- (6) The management of and regulatory control over medical wastes shall be the responsibility of the Ministry of Health.

#### 5 Waste management operations in Tuvalu

- (1) Waste management authorities designated under section 15 shall be responsible for the provision of waste collection services to residential and commercial premises in accordance with the provisions of Part IV.
- (2) The collection and disposal of wastes that cannot be managed by the provision of normal waste collection services to residential and commercial premises shall be undertaken by the Solid Wastes Agency in accordance with its functions and powers under this Act, and any other law relating to the management of wastes.



- (3) Waste dumps and waste disposal sites shall be managed by:
  - (a) each Kaupule in their capacity as a designated waste management operator; or
  - (b) the Solid Wastes Agency, where the need exists for additional technical and operational capacity for the proper disposal of wastes.
- (4) The storage and disposal of hazardous wastes shall be undertaken by the Solid Wastes Agency and the designated waste management operators in accordance with its functions and powers under this Act.
- (5) The cleaning of streets and public areas, and the provision of waste disposal receptacle in public places, shall be the responsibility of a designated waste management operator.
- (6) The collection and disposal of medical wastes shall be the responsibility of the Ministry of Health.

## **6 Waste Management Planning**

- (1) The Solid Wastes Agency shall have principal responsibility for formulating and implementing a National Wastes Strategy, and the implementation of programs and projects in support of the Strategy.
- (2) The Solid Wastes Agency shall ensure that the National Wastes Strategy, and the programs and projects implementing the Strategy, make adequate arrangements in relation to:
  - (a) identifying the operational needs for effective waste management, and the implementation of these needs in a coordinated and planned manner;
  - (b) securing land and resources for the effective collection and disposal of wastes;
  - (c) applying and enforcing operational standards in relation to waste operations and service;
  - (d) maintaining appropriate levels of waste management services which are cost effective;
  - (e) minimising the generation of wastes within Tuvalu;
  - (f) promoting the recycling of wastes, and ensuring that recycling operations are undertaken in accordance with appropriate regulatory requirements;
  - (g) particular arrangements for the collection, transportation, storage and disposal of hazardous wastes;
  - (h) the recording of statistics in relation to waste management, and the effective application of such information in the waste planning processes; and

- (g) ensuring that adequate arrangements are made for the rehabilitation of areas used for the dumping and disposal of wastes after such operations have ceased.
- (3) The formulation of policies, strategies and programs shall be undertaken in collaboration with the designated waste management operators, and each Ministry and agency of government which has responsibilities in relation to the management of wastes in Tuvalu.
- (4) Nothing in this section affects the exercise of the regulatory powers specified in section 4, and all such approved policies, strategies and programs must take account of the relevant regulatory roles and responsibilities.

## **7 Environmental and Public Health Standards**

- (1) Environmental standards relating to waste management practices and facilities may be prescribed by the Minister for Environment, and the Department of Environment 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 designated waste management operators and their contractors, and to any other persons identified in the applicable standard who are involved in waste operations or the provision of waste services.
- (4) Any person to whom an approved standard applies who fails or refuses to comply with the standard commits an offence and shall be liable to a fine not exceeding \$1000.
- (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 a waste management operator and the person in breach.

## **8 Audit of waste generation and disposal**

- (1) The Solid Wastes Agency may undertake an audit of the wastes generated and disposed of in Tuvalu from time to time.

- (2) For the purposes of undertaking any audit under subsection (1), the designated officers of the Solid Wastes Agency may exercise any of the powers under section 33(2)(a)-(d) (inclusive).
- (3) The designated officers of the Solid Wastes Agency may require:
  - (a) any designated waste management operator;
  - (b) any holder of a licence issued under this Act; and
  - (c) any other person conducting any waste related operation or providing any waste services –to undertake or participate in any audit of wastes generated or disposed of during any period.
- (4) The provisions of section 13 shall apply to all persons to whom sub-section (3) applies.

## **PART III**

### **GENERAL POWERS IN RELATION TO WASTES**

#### **9 Designation of wastes**

- (1) Any object, substance or thing may be determined to be a waste or hazardous waste for the purpose of this Act –
  - (a) by Regulations made under this Act deeming any class or type of object, substance or thing to be waste or a hazardous waste; or
  - (b) by the service of a written notice on a person who appears to own or control the object, substance or thing declaring any particular object or thing to be waste or a hazardous waste.
- (2) A notice under sub-section (1) may be served under the authority of the head of the Solid Wastes Agency, or a Kaupule Secretary holding office under section 99 of the Falekaupule Act 1997.

#### **10 Special waste related levies**

- (1) The Minister may make regulations which:
  - (a) impose special levies on particular goods which have adverse effects on the environment;
  - (b) impose additional charges on premises in commercial areas where services are provided by a designated waste management operator to maintain cleanliness of street, footpaths and public areas;

- (c) impose any other type of special levy relating to waste management services, or for the purpose of recovering costs incurred in the management of wastes; and
  - (d) provide for the payment, collection and use of special levies and additional charges.
- (2) Any levy imposed by regulations made under subsection (1) may be imposed, collected and recovered through court proceedings in accordance with the Regulations which impose the levy, or in the absence of any such provision by the head of the Solid Wastes Agency in the name of the Government of Tuvalu.

## 11 Controls over certain wastes

- (1) Regulations made under this Act may impose requirements in relation to certain wastes having adverse impacts on the environment or human health by –
- (a) imposing prohibitions in relation to the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes;
  - (b) regulating the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes, and imposing conditions in relation to them;
  - (c) requiring the lodging of a deposit in relation to certain objects, substances or things which may become wastes to ensure their appropriate disposal by recycling or otherwise; or
  - (d) imposing obligations on persons importing, exporting, using or manufacturing certain objects, substances or things which may become wastes in relation to their eventual disposal.
- (2) Regulations made under subsection (1) may prescribe any matter necessary for the protection of the environment or human health from objects, substances or things which may become wastes, and any matter concerning the administration of any scheme requiring the lodging of deposits or obligations to dispose of such objects, substances or things.
- (3) Regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$5,000 for individuals and \$10,000 for corporations or persons who commit this offence on more than one occasion, or imprisonment for terms not exceeding 3 months, or both.
- (4) All objects, substances or things prohibited under sub-section (1)(a) shall be deemed to be prohibited imports for the purposes of section 33 of the Customs Act (Cap. 55).

**12 Registration and licensing of private waste operators**

- (1) This section does not apply to the operations and services of designated waste management operators.
- (2) All landfill sites, waste dumps and waste disposal facilities in Tuvalu must be licensed by the Solid Wastes Agency, which may impose any conditions in relation to the operation of the site, dump or facility under the licence.
- (3) The registration and licensing of other waste management operations or services may be required in accordance with Regulations made under this Act.
- (4) The Minister may authorise a designated waste management operator to discharge the responsibilities of registering and licensing any facility or operation under this Act or Regulations made under this Act.
- (5) It shall be a condition of every licence issued under this section that the licensee shall comply with all legal requirements applying to development controls, environment protection and the health and safety of workers in the workplace.
- (6) Any person who operates a landfill site, a waste dump or any waste facility, or undertakes any waste management operation or service which is required to be licensed under subsection (2):
  - (a) without a licence issued by the Solid Wastes Agency; or
  - (b) in breach of any condition of a licence granted under this section —commits an offence and shall be liable to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 3 months, or both.

**13 Requirement to provide information etc.**

- (1) All holders of licences issued under this Act, and all persons conducting any waste related operation, business or activity must –
  - (a) provide all information, statistics and copies of records relating to any waste operation that is required to be provided by the Solid Wastes Agency from time to time; and
  - (b) file any returns required by the Solid Wastes Agency giving accurate information concerning any waste management related matter required to be provided in the returns.
- (2) Where any international waste related convention requires that any report be made, or that any information or data be collected and provided, the Minister may make a written request to any person to provide relevant information or data.
- (3) Any person to whom a written request has been made under this section who refuses or fails to comply with the request, commits an offence and shall be liable upon conviction to a fine not exceeding \$1000.

## PART IV

### WASTE MANAGEMENT OPERATIONS

#### 14 Designation of waste service areas

- (1) The waste service areas within Tuvalu for the purposes of this Act shall be the Falekaupule areas specified in Schedule 1 of the Falekaupule Act 1997.
- (2) Nothing in this section affects the functions and powers of the Solid Wastes Agency to provide certain waste management operations, services and programs on a nation-wide basis, or for the purposes of managing wastes which are beyond the capacity of Kaupule's to deal with in their capacities as designated waste management operators.

#### 15 Designated waste management operators

- (1) The designated waste management operator for each waste service area shall be the relevant Kaupule for that area.
- (2) The Kaupules may exercise their authority under this Act as designated waste management operators by making by-laws under the Falekaupule Act 1997 in relation to any matter provided for in this Part.
- (3) The Solid Wastes Agency shall be a designated waste management operator for the purposes of performing the functions specified in section 16(2), and as provided for in this Act and any other law related to the management and control of wastes.

#### 16 Functions of designated waste management operators

- (1) The functions of the Kaupules as designated waste management operators include responsibilities to —
  - (a) provide compulsory waste collection services to residential and commercial premises;
  - (b) provide waste management services to aircraft, ships and other vessels;
  - (c) provide other waste management services, including the collection and disposal of wastes from other waste service areas;
  - (d) cooperate with public health and environment officers in the discharge of their responsibilities relating to regulating and monitoring wastes, and monitoring waste management processes and facilities;
  - (e) prepare, adopt and enforce rules, operating manuals, codes of practice and standards relating to the wastes management services and facilities provided by or under the control of the operator;

- (f) implement litter and waste control measures, including programs aimed at promoting recycling of wastes, and minimising the generation of wastes;
  - (g) prepare reports and maintain statistical records relevant to the management of wastes in their waste service area, and the regularly report on such matters in accordance with this Act; and
  - (h) perform any other functions provided for by law.
- (2) The functions of the Solid Wastes Agency as a designated waste management operator include:
- (a) the management and operation of waste disposal facilities for hazardous wastes and other wastes not effectively dealt with at other dumping sites;
  - (b) programs for the collection and disposal of hazardous and bulk wastes;
  - (c) ensuring the proper management of landfill areas and approved dumping and waste storage sites that incorporate comprehensive environmental management systems, including leachate containment and management measures;
  - (d) the provision of other appropriate waste treatment, storage and disposal facilities;
  - (e) cooperating with public health and environment officers in the discharge of their responsibilities relating to regulating and monitoring wastes and monitoring waste management processes and facilities;
  - (f) the preparation of reports and the compilation of statistics relevant to the management of wastes in Tuvalu, and the regular reporting of such matters in accordance with this Act;
  - (g) raising public awareness of matters concerning the minimisation of the generation of wastes, the recycling of wastes and the effective management of wastes; and
  - (h) arranging for programs of public information concerning waste management issues with an aim to:
    - (i) minimise the generation of wastes;
    - (ii) ensure that wastes are stored and disposed of in a manner which minimises their harmful affects 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; and
    - (iv) the formulation and implementation of policies, programs and initiatives aimed to reduce the generation of wastes.

## 17 Powers of designated waste management operators

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

## 18 Performance of community obligations

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



**19 Operating subsidies for waste collection and disposal services**

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

**20 Fees and charges for waste management services**

- (1) Subject to subsections (7) and (8), all fees imposed under this section shall be set by:
  - (a) Regulations made under this Act; or
  - (b) By-laws made by Falekaupules under the authority of the Falekaupule Act 1997.
- (2) A compulsory garbage collection fee may be applied to all residential premises in a designated waste service area, and to all other premises to which the commercial waste collection fee does not apply.
- (3) A commercial waste collection fee may be applied to all commercial premises but a designated waste management operator may approve a zero rating to commercial premises which have made satisfactory arrangements for the proper management and disposal of the wastes generated at the premises.
- (4) The residential and commercial collection fees imposed under this section:
  - (a) may be set as annual charges or be imposed on any other basis; and
  - (b) may be set at different levels for particular areas, taking account of matters such as the ability of persons to pay the fees.
- (5) Additional or increased fees may be applied to premises or classes of premises which generate particular types of waste or greater quantities of wastes, or which are located in areas which necessitate particular waste collection measures to be applied.
- (6) Fees may be set and imposed under this section for:
  - (a) depositing wastes at landfill sites and approved dumps;
  - (b) the collection, storage or disposal of hazardous wastes; and
  - (c) any other waste service provided by a designated waste management operator, including for the collection and disposal of wastes from ships

and other vessels, and from places outside of the area of the designated waste management authority.

- (7) A fee for the collection, storage or disposal of a particular hazardous waste, or for the provision of any other service may be set by the head of a designated waste management operator, if no sufficient or appropriate fee has been set under this section.
- (8) The head of a designated waste management operator may determine for the purposes of this section:
  - (a) the status of any premises as residential or commercial;
  - (b) the charge to be applied to any premises which are both residential and commercial;
  - (c) the imposition of increased fees under subsection (5) to particular premises;
  - (d) whether a particular service is provided as part of the normal garbage or waste collection service, or is another service for which an additional charge is to be imposed.
- (9) A person obliged to pay a fee or charge imposed as a result of the exercise of a power under this section by a designated waste management operator may, by written notice, request a review of the decision by the Minister, and in determining such a request the Minister may:
  - (a) affirm the decision of the designated waste management operator; or
  - (b) amend the decision of the designated waste management operator in any appropriate manner; and
  - (c) may authorise the payment of a refund.
- (10) A request for a review under subsection (9) does not postpone the obligation to pay the fee or charge, and the Minister may decline to consider a request if the person making it has not paid the fee or charge.

## **21 Remission of fees and charges**

- (1) The head of a designated waste management operator may authorise the remission of the compulsory residential garbage collection charge if:
  - (a) an application is made in writing for remission by either the owner or occupier of residential premises; and
  - (b) the head of a designated waste management operator is satisfied that the residential premises —
    - (i) have not been or will not be occupied for a continuous period of not less than 3 months; or
    - (ii) are not accessible to the garbage collection vehicles; or

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

## **22 Interest on unpaid dues**

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

## **23 Collection of fees and charges**

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

## **24 Operation Plans**

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

## **25 Operating procedures, Codes of Practice etc.**

- (1) For any purpose associated with its operations, a designated waste management operator 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), a designated waste management operator may impose rules prescribing:
  - (a) the size and nature of waste receptacles;
  - (b) the placing of wastes and waste receptacles so as to facilitate the collection of wastes;
  - (c) the provision of stands and requirements to ensure the effective containment of wastes;
  - (d) the separation of certain types of wastes;
  - (e) procedures to be observed when wastes are disposed of at waste dumps and waste disposal facilities; and
  - (f) any other matter to facilitate the orderly keeping, collection and disposal of wastes.
- (3) Designated waste management operators may display signs at their operational facilities and on their vehicles which give directions to be observed by all persons within the facilities, or in the vicinity of the vehicles, of a designated waste management operator.
- (4) Officers and contractors of designated waste management operators may give directions to any person within the areas and facilities of the designated waste management operator for the purpose of ensuring compliance with any 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 rule, 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 be liable upon conviction to a fine not exceeding \$500.

## **26 Reporting by waste management operators**

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

**27 Contracted waste services**

- (1) A designated waste management operator may enter into contractual arrangements for the provision of services necessary to discharge its functions and to perform its waste management activities related to the collection, transportation disposal and management of wastes.
- (2) Subject to subsection (3), a contractor engaged by a designated waste management operator in accordance with this section may be authorised to —
  - (a) collect fees on behalf of a designated waste management operator, and account for them to the designated waste operator;
  - (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 designated waste management operator.
- (3) It shall be a condition of every contract to which this section relates that the contractor shall comply with all legal requirements, applying to development controls, environment protection and the health and safety of workers in the workplace.

**28 Recycling of wastes**

- (1) Designated waste management operators 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 25.
- (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 Tuvalu's international obligations associated with the movement and management of wastes; and
  - (c) observe internationally accepted practices in relation to their waste related activities.
- (3) For the purposes of achieving compliance with subsection (2), Regulations made under this Act may require that persons or companies engaged in commercial activities associated with the recycling of wastes be registered or licensed, and such requirements may be administered by the Solid Wastes Agency.

**29 Indemnities for staff of designated waste management operators**

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

**30 Protection of assets of designated waste management operators**

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

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

**PART V****OFFENCES RELATING TO WASTES****31 Controls over certain wastes**

- (1) The Solid Wastes Agency, and a designated waste management operator, may serve written notice on any person requiring that any wastes owned, possessed or under the control of that person –
  - (a) be stored, transported or disposed of in any required manner;
  - (b) not be stored, transported or disposed of in any particular manner;
  - (c) be removed from a particular place and properly disposed of; or
  - (d) be made available for recycling in any manner stated in the notice.
- (2) A person who fails to comply with any notice given under subsection (1) commits an offence and shall be liable upon conviction to a fine:

- (a) not exceeding \$1000, in the case of an individual; or
- (b) not exceeding \$2000, in the case of a corporation, or an individual who has committed an offence against this section on a previous occasion.

### **32 Offences against designated waste management operators**

- (1) Any person who:
  - (a) damages, interferes with or removes any property or sign at a dump site or waste management facility operated by a designated waste management operator; or
  - (b) enters any dump site or waste management facility without the authority of the relevant designated waste management operator; or
  - (c) lights any fire at any dump site without the authority of the relevant designated waste management operator —commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.
- (2) Any person who impedes, hinders or obstructs:
  - (a) an officer of the Solid Wastes Agency or a designated waste management operator in the exercise of a function or power under this Act; or
  - (b) any contractor engaged by a designated waste management operator to undertake a waste management service —commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.
- (3) Any person who uses any rubbish bin provided by a designated waste management operator for the purposes of collecting and disposing of wastes, in any manner other than for that purpose, commits an offence and shall be liable upon conviction to a fine not exceeding \$100.

### **33 Enforcement provisions**

- (1) The powers provided for under subsection (2) may be exercised by:
  - (a) officers of the Solid Wastes Agency designated for the purposes of this section by the head of the Solid Wastes Agency;
  - (b) police officers;
  - (c) environment officers;
  - (d) authorised officers under any law relating to public health;
  - (e) officers of designated waste management operators and their contractors; and

- (f) any other person approved by the Solid Wastes Agency from time to time.
- (2) For the purposes of implementing and enforcing the provisions of this Act, and monitoring and containing the effects of wastes on human health and the environment, the persons referred to in subsection (1) may:
- (a) enter upon any land;
  - (b) enter private premises after notifying the owner of their intention to do so;
  - (c) take samples of wastes, soil and water for testing and analysis;
  - (d) require the production of records and information relevant to the management, storage, movement and disposal of wastes; 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 effects 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 be liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both.

### **34 Prosecutions under this Act**

- (1) Prosecutions for offences against this Act may be undertaken by the Solid Wastes Agency, police officers, environment officers, authorised officers under laws relating to public health, and officers of designated waste management operators.
- (2) In addition to imposing a fine for any offence against this Act, the court may order that the offender is to pay to the relevant designated waste management operator, the costs of the prosecution and of removing and disposing of any waste to which the offence relates.
- (3) Where any prosecution is taken by or on behalf of a Kaupule under this Act, or any litter and waste control regulations made under the Environment Protection Act 2008 –
  - (a) any fine imposed by a court shall be payable to the Kaupule; and
  - (b) the Kaupule may recover any fine as a debt owed to it, by civil proceedings taken by the Kaupule against the offender.

### **35 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 (Cap. 2)*.
- (3) Regulations made under this Act, and any litter and waste control regulation made under the Environment Protection 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 (Cap. 3)*, and in such cases the jurisdiction of the Island Court shall be increased to impose any fine up to the maximum fine provided in the regulations for such offences.

## PART VI

### MISCELLANEOUS PROVISIONS

#### **36 Protection of persons performing duties under this Act**

Any person who lawfully exercises any power or performs any function under the authority of this Act shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

#### **37 Regulations**

- (1) The Minister may make Regulations for the proper management and regulation of wastes and for the management and operations of the Solid Wastes Agency and other designated waste management operators, and for the effective implementation of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made which —
  - (a) provide for the effective management of wastes;
  - (b) prescribe litter and waste control measures, and standards;
  - (c) regulate and control all aspects of the collection, disposal and treatment of sanitary wastes, including septic sludges and other such wastes, including provisions for:
    - (i) setting fees for the collection, disposal and treatment of sanitary wastes;
    - (ii) standards of construction and approved types of disposal and treatment systems;

- (iii) maintenance obligations in relation to septic tanks and other systems for the collection, storage and treatment of such wastes;
  - (iv) obligations to dispose of septic sludges only at approved facilities, and only by using approved arrangements; and
  - (v) any other matter related to the effective management of sanitary waste, and the provision of sanitation operations and services;
- (d) provide for any other power or procedure for the enforcement of this Act, and any law relating to the management and control of wastes, including arrangement for on the spot fines;
  - (e) prescribe procedures for the collection and dissemination of waste related information to raise awareness of waste related matters and permit informed decision making in relation to the minimisation of the generation of wastes and the adverse affects of wastes on human health and the environment;
  - (f) provide for systems of registration and licensing in accordance with this Act, and for the payment of licence fees;
  - (g) promote or regulate the recycling of wastes;
  - (h) specify toxic, noxious and hazardous wastes, and impose regulation measures or prohibitions in relation to their management and disposal;
  - (i) define any other category or type of wastes, and provide for the effective management and control;
  - (j) provide for the determination of any particular object, substance or thing to be waste, or a type of waste, for the purposes of this Act, and which apply certain presumptions and other aids for the determination of such matters by courts; and
  - (k) ensure the observance of approved standards, rules, operating procedures and codes of practices in force in accordance with this Act.
- (3) Regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$10,000, or imprisonment for a period not exceeding 3 months, or both.

### **38 Consequential amendments to other laws**

Regulation 14 of the Public Health Regulations 1926 is amended by deleting the words “garbage and rubbish which can readily be destroyed by fire shall be so destroyed; and all other”.