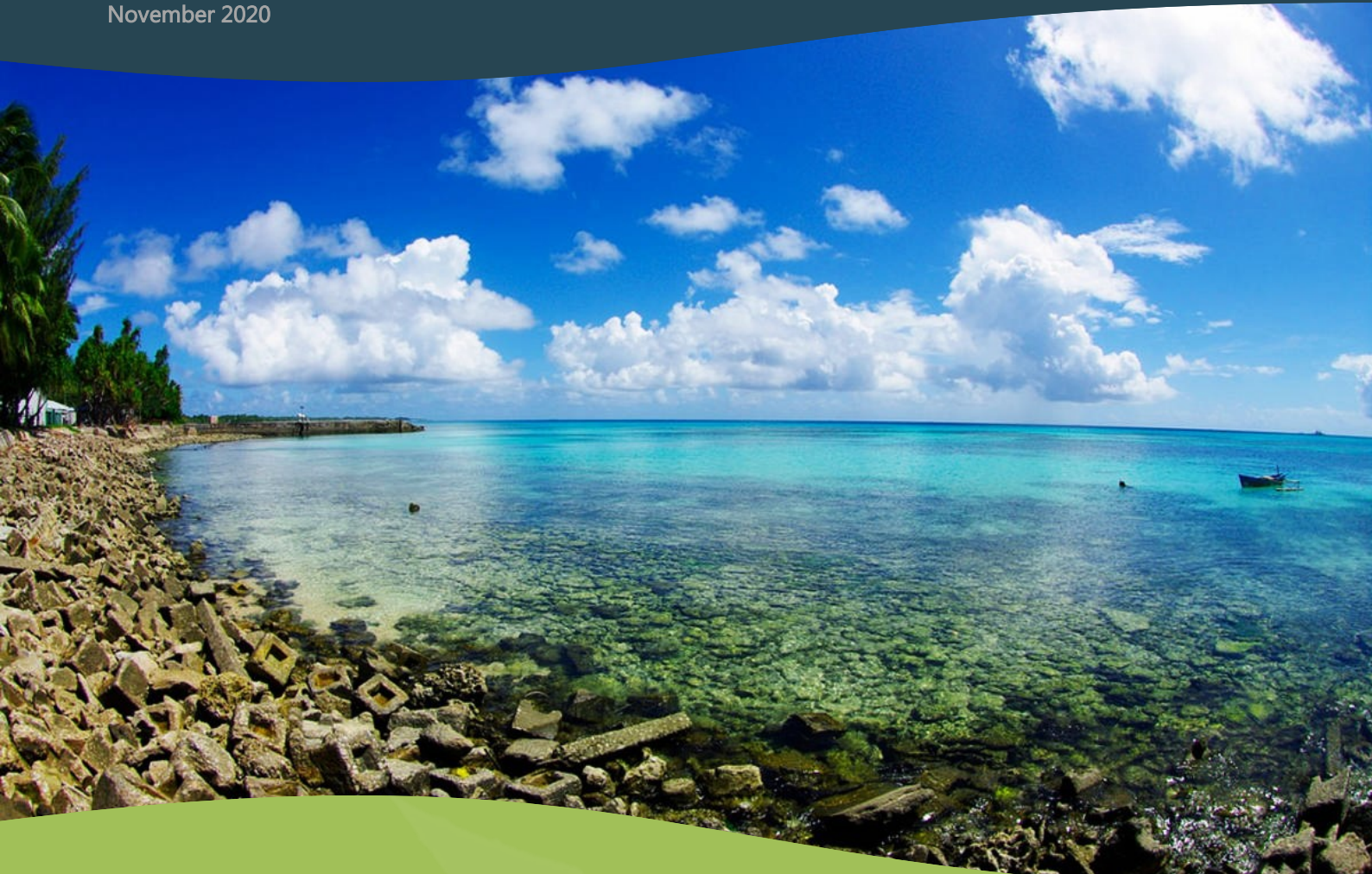




Assessment of Legislative Frameworks Governing Waste Management in Tuvalu



November 2020



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About this Report

Sources of Information



Publicly available online resources about waste management laws in the participating countries (e.g., PacLII, EcoLEX, SPREP, InforMEA and FAOLEX, as well as the websites of government departments and other agencies administering waste and other environmental laws in the participating countries)



Additional information on legislation or pipeline initiatives identified by in-country contacts



Qualitative information derived from interviews (remote and face-to-face) with in-country stakeholders.



An online survey sent to in-country participants requesting information on waste laws in their countries and their implementation, administration, and enforcement

In Tuvalu, interviews were conducted remotely with participants from government departments, agencies and contractors addressing issues of environmental protection, waste management, legal matters, as well as the private sector and NGOs.

Additional interviews were conducted with external consultants and SPREP staff working on specific programs relevant to the Waste Legislative Review.



Available online sources do not always contain the most up-to-date legislation or may be incomplete. Where possible, the UoM team drew on contacts with parliamentary libraries in the participating countries to source more recent legislation. However, it is not possible to say with certainty that all relevant legislation, or the most current versions, were identified in the desktop review.

For identifying proposed legislation, the UoM team relied on an online survey sent out to 110 in-country contacts in the participating countries (with a 21% response rate), as well as interviews with in-country contacts in the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Timor-Leste, the Kingdom of Tonga, Tuvalu, and Vanuatu.

Introduction

This assessment has been prepared by the *Secretariat of the Pacific Regional Environment Programme's* (SPREP) EU-funded PacWastePlus programme (PacWaste Plus or 'Programme'), drawing upon reporting developed by the University of Melbourne (UoM) on behalf of PacWastePlus for that programme's *Waste Legislative Review* project. The UoM team reviewed legislation relevant to waste management in 14 Pacific region countries and Timor-Leste. Separate assessments are provided for each of the PacWastePlus participating countries.

This assessment was designed to achieve a number of outcomes:

- Gain a working understanding of the legislative framework governing waste management in PacWastePlus participating countries
- Determine which countries have legislation that actively manages issues caused by the generation of waste streams that are the focus of the PacWastePlus programme activities (asbestos, e-waste, healthcare waste, recyclables, organics, bulky waste, disaster waste and wastewater) and plastic waste
- Understand strengths and weaknesses of the legislative frameworks to manage the waste issues and social and environmental problems caused by the generation of these wastes
- To provide some guidance on possible modifications to the legislative framework to improve waste management outcomes.

This assessment provides the broad findings of the research and investigation undertaken by the UoM team in relation to Tuvalu. It provides:

- A **stocktake of the existing legislative environment for waste management** in Tuvalu, focusing on the PacWastePlus priority waste streams of healthcare waste, asbestos, e-waste, recyclables, organics, disaster waste, bulky waste, and wastewater, as well as plastic waste, and including implementing legislation for the following multilateral environmental agreements (MEAs): Waigani, Basel, Stockholm, Rotterdam, and Minamata.
- A **stocktake of pipeline legislative initiatives** in Tuvalu, including an assessment of their impact and approximate timeframe for development.
- An **assessment of the legislative framework** and its relevance to the PacWastePlus programme focus waste streams and plastic waste
- An **assessment of the capacity** of Tuvalu's government to enact the instruments included in the legislative framework
- **Options for strengthening the legislative framework** for the Government of Tuvalu to deliver its desired waste management outcomes.

SECTION 1: LEGISLATIVE STOCKTAKE



This stocktake provides a detailed view of the legislative environment governing waste management currently in operation in Tuvalu

Legislative Summary

Legislation impacting waste governance

Tuvalu has had dedicated waste-related legislation in place since 2009. It appears that a dedicated Waste Management Act was enacted in 2017 but this legislation is not available online.

An analysis of the national waste situation has been undertaken in the *Integrated Waste Policy and Action Plan 2017-2026* with articulation of key strategic goals, actions, and targets. The intention of the policy's integrated approach is for a 'national or coordinated approach, focusing on the work across all relevant sectors and complementing current programs and activities in the waste sector'.

The following tables provide a stocktake of the existing legislative environment for waste management and governance Tuvalu. Each table includes hyperlinks (current as of the date of this report) to electronic versions of these instruments.

- **Table 1** details the legislation impacting waste governance in Tuvalu.
- **Table 2** lists the key policy instruments and reports.
- **Table 3** notes the departments with responsibilities for waste management.

Table 1: Legislation impacting waste governance in Tuvalu

LEGISLATION	REGULATIONS
<p>Waste Operations and Services Act 2009 Waste Management Act 2017 <i>N.B. The information below relates to the 2009 legislation. There are references in various reports to the 2017 legislation but the UoM team has been unable to locate a copy online. It is likely that the 2017 legislation significantly updates the earlier legislation.</i> The Waste Operations and Services Act 2009 outlines the roles and responsibilities for waste management in Tuvalu and provides for the collection and disposal of solid wastes and other waste-related operations and service in designated areas of Tuvalu. The Act defines specific categories of waste that need to be disposed in defined ways, including bulk waste, hazardous waste, and solid waste. Section 4 outlines the responsibilities of various departments and agencies for different types of waste, and other relevant Acts. Section 5(1) makes local councils (Kaupules) responsible for general residential and commercial waste management. The remaining sub-sections provide for support from other agencies (including the Solid Wastes Agency and Ministry of Health) where necessary. Section 6 gives the Solid Wastes Agency (SWA) responsibility for national waste management planning, including through a National Wastes Strategy. Section 7 relates to environmental and public health standards, to be monitored and enforced by the Department of Environment and of Health, respectively. Section 8 allows the SWA to undertake audits of waste generation and disposal. Part III (ss 9–13) outline general powers, including waste designation, levies, controls, registration and licencing, and requirements to provide information. Part IV (ss 14–30) relates to waste management operations, including designations, functions, and powers of waste management operators as well as fees and operating procedures. Section 37 allows for the making of regulations. Section 38 amends the Public Health Regulations 1926 to prevent incineration of rubbish.</p>	<p><u>Waste Management (Levy Deposit) Regulation 2019</u> These regulations are made under s 10(1) of the <i>Waste Management Act 2017</i>. The regulations establish a system of levies charged and refunds provided to encourage the recycling of certain imported goods. They also create offences for wrongfully collecting or disposing of waste, or interfering with work at the facility, as well as the dumping of waste. <u>Waste Management (Prohibition on the Importation of Single-Use Plastic) Regulation 2019</u> These regulations are made under s 11(1)(A) of the <i>Waste Management Act 2017</i>. Regulation 4 prohibits the importation of certain single-use plastics. Under r 4(2), contravention is an offence liable to a maximum \$5,000 fine or 2 months’ imprisonment for an individual, or maximum \$10,000 fine or 3 months’ imprisonment for a corporation.</p>
<p>Environment Protection Act (2008 Revised Edition), Cap 30.25 (as at 2008) Environment Protection (Waste Reform) Amendment Act 2017 <i>N.B. The information below relates to the 2008 legislation. There are references in various reports to the 2017 legislation but the UoM team has been unable to locate a copy online. It is likely that the 2017 legislation amends the earlier legislation considering the introduction of the Waste Management Act 2017.</i></p>	<p><u>Waste Management (Litter and Waste Control) Regulations 2018</u> These regulations are not available online.</p> <p><u>Environment Protection (Litter and Waste Control) Regulations 2013</u> These regulations may have been superseded by the Waste Management (Litter and Waste Control) Regulations 2018 but the UoM team is unable to confirm this as the latter are not available online.</p>

LEGISLATION

General environmental protection legislation for Tuvalu. An objective of the Act is to facilitate compliance and implementation of obligations under MEAS to which Tuvalu has ratified or acceded.

Part IV (ss 14–16) establish a National Environment Forum and Council to allow for the participation and education of the general community. Section 15(2) allows the Council to be designated as the competent or implementing authority of any Convention, while 15(3) makes the Council the competent authority where one has not been designated. Section 15(4) allows the Council to perform any function and exercise any power required in accordance with the relevant Convention. Tuvalu's National Action Plan to Reduce Releases of Unintentional Persistent Organic Pollutants 2018-2022 suggests the Council is yet to be established.

Part V (ss 16–17) details the environmental impact assessment (EIA) process.

Part VI (ss 19–23) relate to pollution control and waste management. Section 19 requires the Department to ensure proper regulation and control of pollution, littering and wastes, and lists related functions of the Department. Sections 21, 22 and 23 allows for the making of regulations related to pollution control, waste management and hazardous waste and substances, respectively.

Schedule 1 details a list of international conventions to which the Act applies. This includes the Waigani and Stockholm Conventions.

Ozone Layer Protection Act (2008 Revised Edition), Cap 30.30

Relevant prohibitions on the importation of plastic foam manufactured with substances controlled by the Montreal Ozone Protocol.

Public Health Act (2008 Revised Edition), Cap 28.36

Section 3(1) allows the Minister to make regulations regarding (a) latrines, dustbins and drains; (b) scavenging, cleaning and disinfecting; (c) the removal and disposal of night-soil and house refuse; (d) the abatement of nuisances injurious to public health; (h) securing the cleanliness and freedom from pollution of tanks, vats, cisterns and other receptacles for storing water; and (i) regulating or prohibiting the use of any rain, stream, well or other water supply and for the prevention of pollution thereof.

REGULATIONS

The 2013 regulations provide for controls on litter and wastes and establish related offences. The regulations also contain provisions on enforcement and on the powers of environmental officers to issue notices.

Environment Protection (Environmental Impact Assessment) Regulations 2014

These regulations outline the EIA process. Regulation 4 allows the Minister to determine whether a full EIA is required for a development having regard to the likely increased pollution and generation of wastes or hazardous substances. Schedule 1 highlights that major waste disposal plants may require an EIA. Regulation 12(3)(f) requires a full EIA to undertake an analysis of the environmental consequences of the development proposal, which may include an assessment of the implications of the use of potential environmental pollutants.

Ozone Depleting Substances (ODS) Regulations 2010

Regulations 7, 10 and 12 prohibit the import, export, and sale, respectively, of goods listed in Schedule IV, which includes plastic foam made using certain substances. Under regulation 11(ii), the manufacture of plastic foam using a controlled substance is prohibited. Part III (rr 14–24) details a permit system overseen by the Director of Environment. Part IV (rr 25–32) relates to enforcement and offences.

Public Health Regulations (as at 2008) amended by Waste Operations and Services Act 2009

Regulation 2 requires premises to be kept clean. Regulation 4 prohibits tins, bottles, or other receptacles capable of holding water to be allowed to remain on any premises. Regulation 10 prohibits the depositing of any empty tin, bottle or other receptacle in any street, road, or other public place. Regulation 11 requires owners to

LEGISLATION**REGULATIONS**

provide latrine accommodation approved by a sanitary inspector. Regulation 12 requires the cleaning of these latrines. Regulation 14 required the destruction by fire of garbage and rubbish but was repealed by s 38 of the *Wastes Operations and Services Act 2009*.

None identified.

None identified.

None identified.

None identified.

Pesticides Act (2008 Revised Edition), Cap 28.28

Section 7(1) prevents sale and use of any pesticide not registered under the Act.
Section 7(2) requires an import permit for import of any pesticide.
Section 10 provides for an import permit system.

Customs Revenue and Border Protection Act 2014

Lists goods which are prohibited from import in Sch 2. Under cl 14 this includes those goods for which importation is prohibited by any Tuvalu law in force. This would include plastics and hazardous wastes prohibited by regulations under the waste and environmental legislation described above.

Falekaupule Act/Local Government Act (2008 Revised Edition), Cap 4.08

The functions of the Falekaupule are listed in Schedule 3 of the Act. Under 8: Public Health the following responsibilities are listed:

- to establish, maintain and carry out services for the removal and destruction of, or otherwise dealing with, all kinds of rubbish, refuse or excreta and by by-laws to require householders to contribute to such services;
- to prohibit through by-laws activities detrimental to the sanitary condition of the Falekaupule area or any part of it.

Penal Code (2008 Revised Edition), Cap 10.20**Criminal Procedure Code (2008 Revised Edition), Cap 10.05 (enforcement)**

Under s 172 of the Penal Code, polluting or obstructing watercourses is a misdemeanour liable to a maximum \$400 fine or three months' imprisonment. All powers of arrest, detention, and powers of the court to enforce judgments and orders are provided for in the Criminal Procedure Code.

Table 2: Policies and reports impacting waste governance in Tuvalu

POLICY	DESCRIPTION
Annual Action Programme 2017 in Favour of Tuvalu (Commission Decision) and Annual Action Programme 2017 in Favour of Tuvalu (Annex)	Commission decision approving funding for a sustainable waste programme in Tuvalu. The annex contains detail on the context, a description of the action and its implementation (pp 18–23).
Infrastructure Strategy and Investment Plan 2016-2025	This plan prioritises the consolidation of Funafuti and outer island landfills. Considering waste management in the design and planning of infrastructure investments is identified as key to climate proofing and increasing resilience.
Integrated Waste Policy and Action Plan 2017 - 2026	<p>Part One discusses context, including the current waste management system and Part Two discusses the policy, with key strategic goals, actions, and targets.</p> <p>Compliance with international obligations is highlighted as a goal and purpose of the Policy and Plan. The Department of Environment is identified as having responsibility for the implementation of conventions in accordance with Part VII of the <i>Environment Protection Act (2008)</i>. A guiding principle of the policy on p 29 is adherence to regional and international conventions.</p>
National Action Plan to Combat Land Degradation and Drought 2006	Uncontrolled waste disposal is identified as a cause of land degradation. The prevention of land degradation through the promotion and support of proper solid waste management practices and the rehabilitation of degraded land through rehabilitating improper solid waste disposal sites are identified as priority activities.
National Action Plan to Reduce Releases of Unintentional Persistent Organic Pollutants 2018-2022	Includes a situational context, including policy and legislative framework, relating to POPs in Tuvalu.
National Biodiversity Strategy and Action Plan 2012-2016	Waste and pollution management are identified as a thematic area. Non-degradable waste as a biosecurity concern prioritised per island and priority themes, goals, objectives and actions for waste and pollution management are included.
National Environment Management Strategy 2015-2020	Waste management is identified as ‘one of the most pressing environment problems’. Waste management and pollution control is a thematic area of the policy. Goals, strategies, targets, and implementation of appropriately minimised and managed waste levels are discussed.
National Implementation Plan for the Stockholm Convention on Persistent Organic Pollutants 2008	Includes list of pollutants, and country baseline including institutional, policy and regulatory framework (from 2008), assessment of issues and action plan.
National Strategic Action Plan for Climate Change and Disaster Risk Management 2012-2016	Under Goal 5 Ensuring Energy Security and a Low Carbon Future for Tuvalu, Strategy 5.4 is to implement mitigation plans for the agriculture and waste management sectors to reduce greenhouse gas emissions. The Ministry of Public Utilities is identified as the lead agency.
<u>National Strategy for Sustainable Development 2016-2020</u>	Included among the goals of strategy are the upgrading of waste management infrastructure and operations, particularly on the outer islands, and the development of a national waste management policy.
<u>Sustainable and Integrated Water and Sanitation Policy 2012-2021</u>	Goal 1 is to provide a safe, reliable, affordable, and sustainable water supply. An identified risk factor is contamination by human waste. A strategy for its achievement is the implementation of measures to reduce the pollution of ground water.

REPORTS	DESCRIPTION
3R Progress Country Report (Draft) National Report to the Third International Conference on Small Island Developing States 2014	Draft document submitted to the Seventh Regional 3R Forum in Asia and the Pacific. Progress related to the 3R goals. A priority in Strategy 4 (to stop unregulated development and degradation of the environment especially on Funafuti) of Strategic Area 7 (Natural Resources) is to improve waste management on Funafuti with the development of an urban waste management plan.
Profile in the Solid Waste and Recycling Sector: Tuvalu 2018	Data on solid waste and recycling in Tuvalu.
Review of Natural Resource and Environment-Related Legislation: Tuvalu 2018	Overview of environment-related legislation in Tuvalu as of January 2018. Includes section on waste management and pollution.
Second National Communication to the UNFCCC 2015	Outlines national circumstances relating to various sectors, a greenhouse gas inventory, a vulnerability, and adaptation assessment as well as mitigation analysis. Waste management is included in the executive summary. Potential mitigation measures for the waste sector include the implementation of the Waste Management Strategy and improving solid waste disposal and domestic wastewater handling.
Solid Waste Management in the Pacific: Tuvalu Country Snapshot 2014	Asian Development Bank overview of solid waste management in Tuvalu as part of wider Pacific project.
Waste Policy Performance Review 2019	Tables under Section 2.1 'Current Progresses and Achievements' list the various goals, activities and their status. Section 2.3 highlights emerging issues of importance, including healthcare waste, asbestos and sewage. Key challenges identified in Section 2.4 include weak enforcement of laws, inadequate supporting resources, land difficulties, inadequate information and limited technical waste management capability. The creation of the <i>Waste Management Act 2017</i> is mentioned as an achievement.

Table 3: Government departments with waste responsibilities in Tuvalu

GOVERNMENT DEPARTMENTS	RESPONSIBILITIES
Department of Waste Management, Ministry of Home Affairs	Administers the <i>Waste Operations and Services Act 2009</i>
Ministry of Natural Resources and Environment	Natural Resources and Environment Ministry administers the <i>Environment Protection Act 2008</i> , the <i>Pesticides Act</i> and the <i>Ozone Layer Protection Act 2008</i>
Ministry of Home Affairs	Ministry of Home Affairs has responsibility for waste management
Ministry of Health	Ministry of Health has responsibility for sanitation and environmental health
Customs Revenue and Border Protection Service, Ministry of Finance and Economic Planning	Created by the <i>Customs Revenue and Border Protection Act 2014</i>
Ministry of Public Utilities & Infrastructure	Lead agency for implementation of policies and plans relating to provision of infrastructure.

Pipeline activities

The following sections provide details of identified pipeline legislative activities for waste management and governance in Tuvalu. Limited information was available on pipeline activities through the desktop review.

Tuvalu appears to have recently introduced new waste management legislation in the form of the *Waste Management Act 2017*, as well as a regulation that established a container deposit scheme to promote recycling.

Tuvalu is a party to the Stockholm, Minamata and Waigani Conventions. It only recently ratified the Minamata Convention and so is yet to develop specific implementing legislation. Tuvalu is also in the process of completing its accession to the Basel Convention.

According to news reports, the Department of Waste Management is presently working on a waste tax to reflect the cost of taking items at the end of their life from Tuvalu to a suitable recycling destination. This tax proposal is in addition to the Department's efforts to establish a recycling station, clean-up campaigns on islands and awareness and education programs with community and schools.

Table 4: Pipeline activities for Tuvalu

PIPELINE ACTIVITY	DESCRIPTION	TIMEFRAME
Implementation of new waste management legislation and container deposit scheme	<i>Waste Management Act 2017</i> in place and new 2019 regulation for implementation of a container deposit scheme.	Ongoing.
Accession to Basel Convention	Tuvalu finalising process for ratification of the Basel Hazardous Wastes Convention.	In progress.
Waste tax	Mechanism to internalise costs for items that need to be transported elsewhere for recycling.	<u>News reports</u> detailed this proposal from 31 May 2019.

Stocktake of Relevant Multilateral Environmental Agreements

The relevant Multilateral Environmental Agreements (MEAs) for the stocktake were the:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention);
- Minamata Convention on Mercury (Minamata Convention); and
- Convention to ban the Importation of Hazardous and Radioactive Wastes into Forum Island Countries and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific Region (Waigani Convention).

Table 5 provides details of the membership of Tuvalu to these MEAs.

Table 5: MEAs active in Tuvalu

MEA	IN EFFECT FOR COUNTRY	DESIGNATED NATIONAL AUTHORITY OR NATIONAL FOCAL POINT	IMPLEMENTING LEGISLATION
Basel Convention	Not party.		
Minamata Convention	Minamata Convention	5 Sep 2019	Mr. Soseala Saosaoa Tinilau Director Ministry of Public Works, Infrastructure, Environment, Labour, Meteorology & Disaster Government Office Building, Vaiaku, Funafuti, Tuvalu Phone: (688) 20060 Email: butchersn@gmail.com
Rotterdam Convention	Not party.		
Stockholm Convention	17 May 2004	Not specified	<u>Environment Protection Act (2008 Revised Edition), Cap 30.25</u> <u>Environment Protection (Litter and Waste Control) Regulations 2013</u> See also <u>National Implementation Plan for the Stockholm Convention on</u>

Persistent Organic
Pollutants 2008 and
National Action Plan to
Reduce Releases of
Unintentional Persistent
Organic Pollutants 2018-
2022.

**Waigani
Convention**

Waigani Convention 21 Oct 2001

Assistant Secretary
Ministry of Foreign Affairs,
Trade, Tourism,
Environment and Labour.
Government of Tuvalu
Funafuti
Tuvalu
Tel: +688 20 117
Email: ptuaga@gov.tv or
marx.prince@yahoo.com

Director of SWAT
Ministry of Home Affairs
Funafuti
Tuvalu
Tel: +688 20 164
Email: swat@gov.tv

SECTION 2: LEGISLATIVE ASSESSMENT



This qualitative assessment of Tuvalu's legislative environment has classified Tuvalu's waste-related laws on a scale of low-to-high against the criteria of relevance, coherence, effectiveness, efficiency, and impact.

Legislative Framework Assessment

Methodology

Approach and Criteria

This legislative assessment was undertaken utilising a qualitative approach.

Legislation in Tuvalu was evaluated against the following criteria that build on the OECD Development Assessment Committee (DAC) evaluation criteria 1990, as updated:



Relevance

defined as the extent to which legislation directly relates to, or provides coverage of, the priority waste streams of healthcare waste, asbestos, e-waste, plastic waste (including single-use plastics), recyclables, organic waste, bulky waste, disaster waste and wastewater.



Coherence

defined as the extent to which different elements of legislation and their administration fit together, or whether there are conflicts or lack of coordination between laws that undermine coherence.



Effectiveness

defined as the extent to which the legislation contains mechanisms necessary to achieve legislative objectives relating to the management of the priority waste streams.



Efficiency

defined as the extent to which the legislation makes provision for the allocation of responsibilities and resources (personnel, information, financial) to allow fulfilment of legislative requirements.



Impact

defined as the contribution the legislation makes to waste management and environmental protection from waste-related pollution.

Based on the evaluation of Tuvalu's legislation against the criteria, gaps in existing legislation relating to waste were identified. These gaps provide a basis for understanding what opportunities exist for Tuvalu to develop and/or implement additional legislative instruments to in achieving waste management and environmental outcomes.

Overview of the legal system

Tuvalu is one of the world's smallest independent nations. It comprises nine low-lying coral atolls with a total surface area of 26 square kilometres dispersed over 1.3 million square kilometres of the central Pacific. The population of Tuvalu is 11,052 (2020 Tuvalu Country Review estimate). The official languages are English and Tuvaluan.

Tuvalu was formerly known as the Ellice Islands when it was administered as a British Protectorate from 1892 to 1916 as part of the British Western Pacific Territories (BWPT). From 1916 until 1976 the Gilbert and Ellice Islands were under British colonial administration, although most were self-governing.

In 1975 the Ellice Islands became the separate British colony of Tuvalu with its own government and legislature, the House of Assembly. Tuvalu attained full independence in 1978, joining the Commonwealth in 1978 and the United Nations in 2000.

Tuvalu is a constitutional monarchy with a parliamentary democracy. The Head of Government is the Prime Minister, supported by a cabinet of Ministers. The legislative branch is unicameral and known as the House of Assembly / Fale I Fono. The court system includes both superior and inferior courts. Courts established by legislation include Land Courts, with jurisdiction to hear all customary land disputes, and Island Courts that have summary criminal and civil jurisdiction within the boundaries of the island on which they were established.

The *Falekaupule Act* (as amended to 2008) regulates the composition, operation, and functions of local governance. All islands are governed by a traditional council of elders: the Falekaupule. The Falekaupule is a law-making body with powers to make by-laws. The Kaupule is the executive arm of the Falekaupule. It is made up of six elected members, and a Pule Kaupule (Head Kaupule) is elected by the Falekaupule. The Kaupule generally administer island affairs on behalf of the Falekaupule and have powers to levy rates for operating costs and capital developments.

Tuvalu has a mixed legal system of English common law and local customary law. Sources of law are the Constitution (as the supreme law), Acts and subsidiary legislation, English statutes that are 'applied law' for Tuvalu, the common law of Tuvalu, judicial precedent, and customary law. Customary law has effect as part of the law of Tuvalu, except to the extent that it is inconsistent with an Act or an applied law and its subsidiary legislation.

Under s 75(1)(a) of the Constitution, the Governor-General, as the representative of the Head of State (the English Crown), assigns responsibilities for government business to various Ministers.

These include the following:

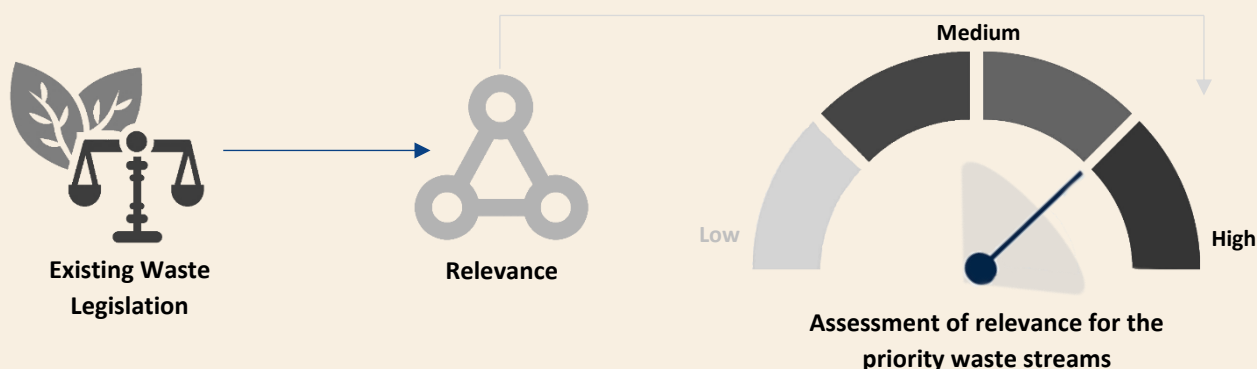
- The Ministry of Natural Resources and Environment has responsibility for environment;
- The Ministry of Home Affairs has responsibility for waste management; and
- The Ministry of Health has responsibility for sanitation and environmental health.

Legislative Assessment

This section contains a qualitative legislative assessment for Tuvalu against the evaluation criteria: Relevance, Coherence, Effectiveness, Efficiency, Impact. While ratings against the criteria are classified on a scale of low to high, the ratings reflect an assessment of the performance of Kiribati’s waste-related laws in their specific operating context.

A glossary of legal terms used in the report is provided in **Annex 1**.

Relevance



Tuvalu has had dedicated legislation for the management of waste in place since 2009. The current *Waste Management Act 2017* repealed the former *Waste Operations and Services Act 2009*. The 2017 law largely replicates the 2009 law, but it transfers some responsibilities that were formerly with the Department of Environment to the Department of Waste Management of the Ministry of Local Government and Agriculture (formerly under the Ministry of Home Affairs and Rural Development), including the management of hazardous waste, and removes references to ‘solid waste’. Under the *Waste Management Act*, the local Kaupule manages waste dumps and waste disposal as designated waste management operators for their respective areas (s 5).

Tuvalu’s legislation could cover most, if not all, priority waste streams through the wide definitions of ‘waste’ and ‘hazardous’ waste in the *Waste Management Act*. The legislation also has the potential to cover any waste stream specifically through a designation power in the *Waste Management Act* (s 9).

The legislation also provides specific coverage of priority waste streams. Regulations made under the *Waste Management Act* deal with litter control, a waste levy for an extensive range of products, and an import ban on single use plastics (including a broad definition of ‘plastic’).

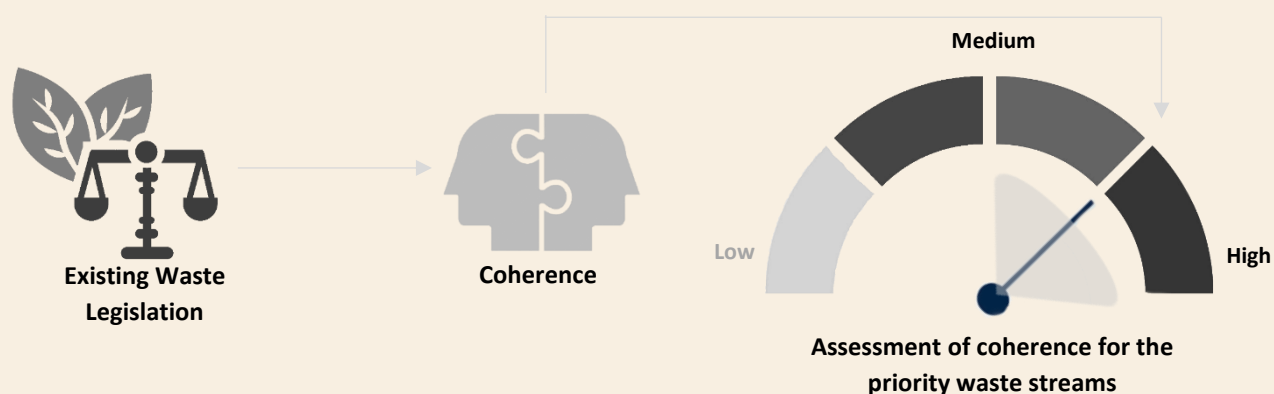
Legislation on waste management that preceded the *Waste Management Act* was limited to ‘solid waste’. That term was not included in the *Waste Management Act*, which covers ‘waste’ in general terms, although the specific types of waste identified in the definition of ‘waste’ are types that are typically associated with solid waste.

To determine relevance, consideration of the various legislative definitions has been assessed.

Table 6: Definitions of waste in Tuvalu’s legislation

Legislation	Definitions
<p><i>Waste Management Act 2017</i></p>	<p>‘waste’ includes: ‘garbage, household refuse, rubbish, scraps and trade wastes; bulk wastes; and any other matter or thing determined from time to time to be waste in accordance with this Act’.</p> <p>‘Hazardous waste’ is defined broadly to include:</p> <ol style="list-style-type: none"> 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 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’ <p>‘bulk waste’ includes vehicles or any part, including tyres and batteries; refrigerators, freezer units, stoves, and cookers, washing machines; paint tins; and ‘any other item to be disposed of which cannot be effectively disposed of by regular waste collection services provided to residential or commercial premises.’</p> <p>‘green waste’ means ‘biodegradable waste composed of garden wastes or other wastes from vegetation (such as grasses, plants and trees), but does not include domestic and commercial food waste’</p>
<p><i>Environment Protection Act</i></p>	<p>‘Waste’ in section 2 as ‘matter’:</p> <ol style="list-style-type: none"> 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. <p>Most references to waste were deleted from the <i>Environment Protection Act</i> by the <i>Waste Management Act</i>, so this latter definition now has limited significance.</p> <p>‘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:</p> <ol style="list-style-type: none"> a. the detriment or degradation of the environment; or <p>the detriment of any beneficial use, and includes pollution as prescribed by regulations’</p>
<p><i>Waste Management (Prohibition on the Importation of Single-Use Plastic) Regulation 2019</i></p>	<p>‘plastic’ as: ‘a synthetic material made from a wide range of organic polymers such as polyethylene, PVC, nylon, that can be moulded into shape while soft and then set into a rigid or slightly elastic form whether or not it is designed to degrade in a particular way’</p>

Coherence



Efforts to improve coherence of Tuvalu’s waste management legislation and its administration appear to have been a driver for the *Waste Management Act*. The ‘explanatory memorandum’ that justified the enactment of the legislation stated: ‘[m]ost regulatory roles under this Part [for regulation, planning and audit of waste] are vested in the Department of Waste Management to reflect its growing capacities to manage wastes and to enforce laws which relate to wastes.’

Enacted in 2017, the *Waste Management Act* centralised waste management in the Department of Waste Management, replacing the former Solid Waste Agency of Tuvalu (SWAT). Under the *Waste Management Act*, the Department of Waste Management, together with Kaupules (local governing bodies, s 16), are ‘designated waste management operators’ (s 2). The Department of Waste Management oversees the operational functions of the Kaupules, but both the Department and the Kaupules have a combination of regulatory and operational functions (ss 4-5). The Kaupules have general responsibilities for waste management operations, such as waste collection, while the Department of Waste Management has operational responsibility for specific forms of waste, including hazardous waste (s 16).

The *Waste Management Act* was particularly important for distinguishing between the responsibilities of different government departments for waste management and environmental protection. Direct responsibilities for hazardous waste were placed with the Department of Waste Management, including responsibility for international conventions concerning hazardous waste.

The Department of Environment and other government departments still have a degree of responsibility for waste matters:

- Where waste is causing pollution, for example, it appears from the *Environment Protection Act* that the polluting waste would be the responsibility of the Department of Environment (s 4).
- Environmental Impact Assessments falling under the responsibility of the Department of Environment also take account of waste generation (see *Environment Protection (Environmental Impact Assessment) Regulations 2014*)
- the Department of Waste Management has a role in overseeing waste management plans for ‘major developments’ under the *Waste Management Act*.
- The Department of Health has some responsibilities for wastes with public health relevance, such as healthcare waste, some aspects of organic waste, and wastewater, under legislation such as the *Public Health Act*.
- The Treasury Department has responsibility for financial aspects of the waste levy system, and the newly created Department of Climate Change and Disaster has responsibilities that could intersect with the management of disaster waste.

Each of these departments fall under the portfolios of different ministries, the names and nature of which have been recently revised following the national election in September 2019.

Some coordination among the different government departments and local government, as well as non-governmental stakeholders, can be facilitated by the Department of Waste Management through the National Waste Management Steering Committee. Requirements for coordination are also specifically addressed in the *Waste Management Act*.

Kaupules and the Department of Waste Management are required to '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' (s16).

Effectiveness



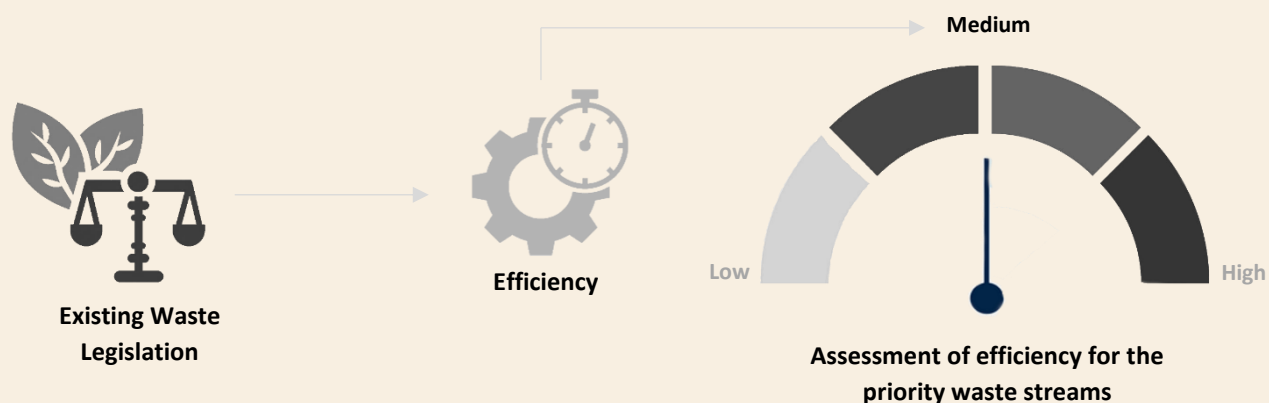
The *Waste Management Act* governs ‘waste management operations’ generally and wastes at ‘major developments’ (developments subject to an environmental impact assessment under the *Environment Protection Act*, s 2), as well as international conventions relevant to waste (s 4(2) and Part VI).

The *Waste Management Act* establishes a licensing and fees system for waste management operations by private waste operators, administered by a designated waste management operator (s 12). It specifically provides for the making of standards. Section 25(1) provides: ‘[f]or any purpose associated with its operations, a designated waste management operator may make and impose standards, rules, operating procedures, guidelines and codes of practice relevant to any aspect of its waste management functions.’

The *Waste Management Act* creates offences and grants certain powers to the Department of Waste Management and ‘enforcement officers’ (s 39(1)) in relation to offences. Regulations made under the *Waste Management Act* contain detailed provisions aimed at achieving legislative objectives.

The *Waste Management Act* requires the provision for waste audits, as well as the planning and reporting obligations, under the legislation (e.g., s 24, s 26).

Efficiency

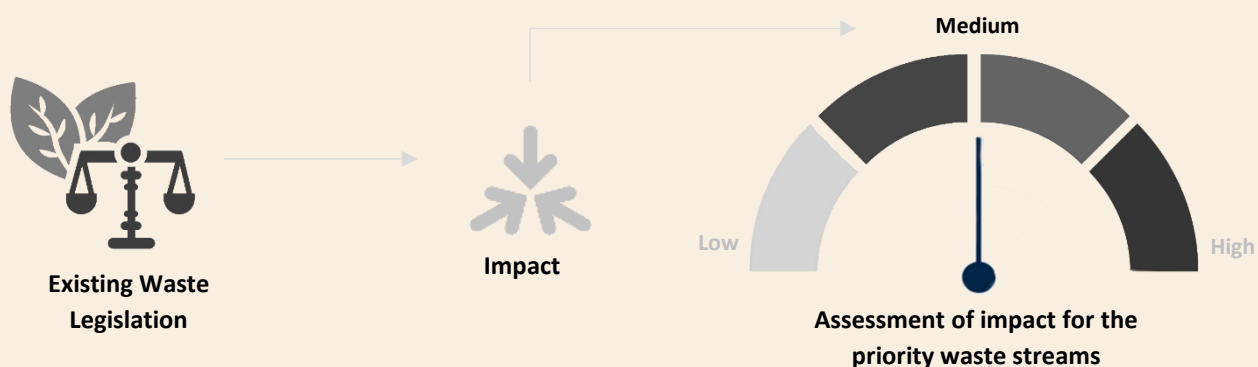


For the purposes of assessing ‘coherence’, the *Waste Management Act* expressly assigns functions to designated waste management operators: the Department of Waste Management and local governing bodies, Kaupules. The position of Director defined in the *Waste Management Act* is currently filled in an acting capacity but it is expected to be filled on a permanent basis in 2020.

The *Waste Management Act* creates ‘enforcement officers’ (s39(1)), which includes officers of the Department of Waste Management as well as police, environment and other officers with a range of powers associated with implementing and enforcing the Act. One of the two positions of Waste Regulatory Officer and Waste Law Enforcement Officer in the Department of Waste Management was filled at the time of completing this assessment.

The designated waste management operators are required to cooperate with officers acting under other laws (s 16), such as police, ‘Environment Officers’ appointed under the Environment Protection Act and public health officers. The *Waste Management Act* gives these different officers powers to inspect properties and order clean up (s 39). The Office of the Attorney-General has allocated responsibility for waste management laws to a specific Crown Counsel.

Impact



Given that many of the waste laws in Tuvalu have been in place for only two years or less (with the *Waste Management Act 2017* entering into force in December 2017, and significant regulations made under that Act entering into force in mid-2019), only a preliminary assessment can be made of the impact of the legislation on waste management and environmental protection from waste-related pollution.

There was dedicated waste legislation in place prior to the enactment of the *Waste Management Act* (the *Waste Operations and Services Act 2009*) and many of the mechanisms (such as permitting and offences) in the 2017 law have been carried over from the 2009 law. There were also detailed offences in the *Environment Protection Act*, which were repealed by the *Waste Management Act*. There have been fines and court action against individuals for such things as illegal waste dumping or litter on private property, but it was not able to obtain documentation that would have clarified under which laws and provisions they were taken and when they were initiated or finalised.

An element of the waste levy system that is likely to determine the impact of that law is the availability of foreign markets for recyclable waste. Specifically, the *Waste Management (Levy Deposit) Regulation* requires waste to be processed and packaged for shipping, but it also indicates that shipping arrangements are not yet in place. It states: 'The Department shall enter into a memorandum of understanding with regional and international shipping agents to enable the packed waste to be shipped for recycling' (r 9(2)). If there are no foreign markets for recyclable waste, and related arrangements for shipping, the impact of the waste levy system could be severely compromised.

SECTION 3: CAPACITY ASSESSMENT



This qualitative assessment of Tuvalu's capacity to engage in different aspects of waste governance is on a scale ranging from low to high. It considered drafting, enactment, implementation, ensuring compliance with, and enforcing its existing and proposed legislation relevant to waste management, as well as its capacity to comply with reporting obligations under relevant Multilateral Environmental Agreements (MEAs).

Methodology

Approach and Elements

This legislative capacity assessment was undertaken utilising a qualitative approach, evaluating the capacity of Tuvalu's to engage in different aspects of waste governance on a scale ranging from low to high.

The evaluation was made based on the following aspects of Tuvalu's waste management legislation/governance:



Drafting

Relating to processes for the drafting of new, modified, or additional legislation, including the availability of legal expertise, personnel and supporting technical knowledge or information.



Enactment

Relating to processes for enacting new, modified, or additional legislation, including the existence of appropriate powers to legislate on the topic and relevant obligations of the country under international conventions and agreements, such as MEAs, as well as trade and investment agreements.



Implementation

Capacity to carry out existing or proposed legislation, including the availability of appropriate personnel, information, powers, administrative delegations, and resources.



Compliance and Enforcement

Capacity to ensure those bound by obligations under legislation comply with those obligations, as well as the capacity to prosecute or otherwise act in response to breaches of legislative requirements, including the availability of enforcement personnel, powers, administrative delegations, tribunals for bringing enforcement actions and resources.



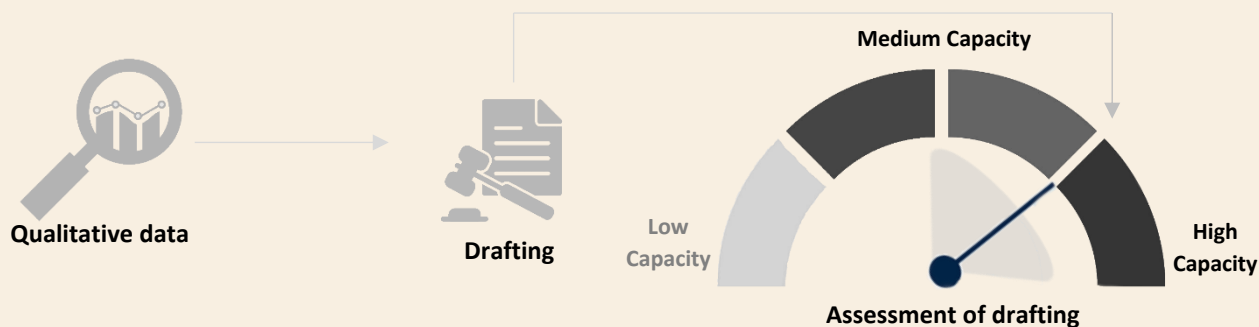
Reporting under relevant MEAs

Capacity to comply with reporting and other notification requirements specified under relevant MEAs to which the participating country is party, including availability of data, personnel, and resources to produce the required reports. The assessment of MEA reporting compliance adopted a coding approach that rated the countries' level of compliance based on several indicators.

Capacity Assessment

This section contains a qualitative assessment of Tuvalu's capacity with respect to drafting, enactment, implementation, ensuring compliance with, and enforcing its existing and proposed legislation relevant to waste management, as well as its capacity to comply with reporting obligations under the MEAs to which it is party.

Drafting



Tuvalu appears to have medium-to-high capacity and appropriate processes for drafting legislation for waste governance but have a limited number of legal personnel. The Office of the Attorney General is responsible for drafting laws for the whole of government, among several other functions, with a staff of only a small number of lawyers.

Several of the participating countries in the PacWastePlus project have manuals on the process and protocols for drafting legislation, available on government legal databases. The Office of the Attorney General (AG) undertakes the drafting of all legislation (primary and secondary).

The Office of the Attorney General described two pathways for legislative drafting:

- **For Cabinet proposed legislation**, the AG's Office plays the lead role but will work together with all relevant Departments and stakeholders. Consultations are undertaken with the relevant Departments, stakeholders and the public. Drafting instructions are prepared and the AG's Office drafts the Bill. The draft Bill is then submitted to Cabinet for approval and once approved, the Bill is tabled in Parliament for First Reading.
- **For legislation proposed by a Government Department to Cabinet**, that Department will take the lead role in formulating the Bill. The lead Government Department undertakes consultations with other relevant Departments, stakeholders and the public, and provides the AG's Office with drafting instructions. The AG's Office drafts the Bill for review by the leading Government Department. The responsible Permanent Secretary for the leading Government Department submits the Bill to Cabinet for approval. Once approved, the Bill is tabled in Parliament for First Reading.

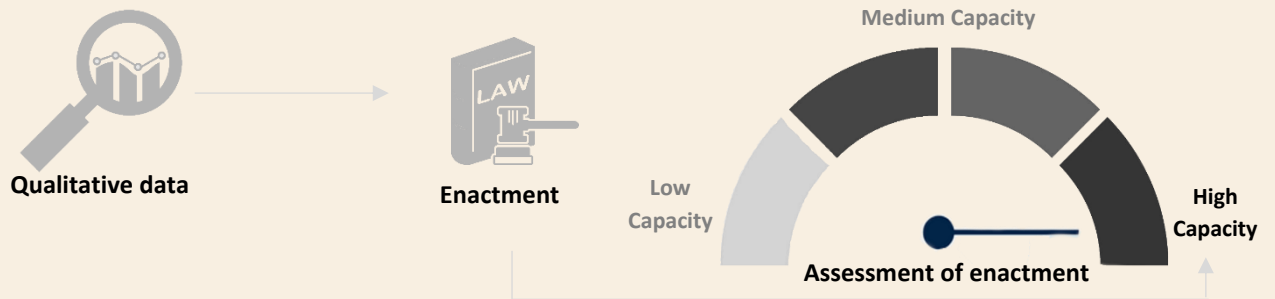
Tuvalu's current Attorney General has been in office since 2008. The Office of the Attorney General is staffed by Crown Counsels. In early 2020, a Crown Counsel was assigned responsibility for waste legislation, taking over from the Crown Counsel previously in that role. A legal consultant engaged by the relevant division of government had prepared drafting instructions for the Waste Management Bill.

Networks such as the Pacific Legislative Drafters' Technical Forum of Pacific Islands Forum Secretariat, and the Pacific Legal Policy Champions, facilitated by the Pacific Islands Law Officers' Network, have contributed to training and resources on legislative drafting in Pacific nations. Initiatives to build capacity for legislative drafting do not appear to have addressed the specific policy area of waste management.

Tuvalu introduced revised waste management legislation in 2017, including the *Waste Management Act*, and amendment to the *Environment Protection Act*, and reportedly, the *Waste Management (Litter and Waste Control) Regulations 2018*. In 2019, Tuvalu enacted two regulations under the *Waste Management Act* that created a levy deposit system for a wide range of products and a ban on a wide range of single-use plastics. All these laws drafted in recent years are comprehensive of the kinds of elements that are appropriate for dedicated waste laws and extensive in their scope, with a consultant lawyer reportedly engaged to prepare the drafting instructions for the AG's Office, and a Crown Counsel in the AG's Office assigned responsibility for waste management laws.

Any future drafting of waste-related laws would be assisted by improved access to the waste-related legislation online.

Enactment



Tuvalu is a constitutional monarchy with a parliamentary democracy and a mixed system of English common law and local customary law. The Parliament comprises one chamber known as the House of Assembly/Fale I Fono, with elected members representing 8 constituencies for the 9 islands. An election in September 2019 saw significant changes to the composition of Tuvalu’s Parliament, including the election of a new Prime Minister.



The Constitution is the supreme law. It includes a Bill of Rights, setting out relevant principles of human rights, including ‘the freedom of law’. Section 10 provides that ‘*[f]reedom based on law consists of the least restriction on the activities of individuals consistent with the public welfare and the maintenance and development of Tuvalu and Tuvaluan society in accordance with this Constitution and, in particular, in accordance with the Principles set out in the Preamble.*’



Under Tuvalu’s Constitution, Parliament may make laws, not inconsistent with the Constitution (s 84), including Acts that provide ‘for the delegation to any person or authority other than Parliament of power to make regulations and other subsidiary laws’ (s 85).



The Attorney General of Tuvalu, has observed an increasing centralisation of Tuvalu’s laws, stating in an ex officio capacity that: ‘In small societies like Tuvalu, where there may be increasing control from central government in relation to the role that custom and island life plays out daily, it may be fair to deduce that the future culture of Tuvalu may be shaped and influenced by written laws’ (Constitution-Building Forum, Melbourne, 2018).



Legislation goes through first, second and third readings in the Parliament before being presented to the British monarch’s representative, the Governor-General of Tuvalu, for assent.

Legislation enacted by Parliament is one of several sources of law described in the Laws of Tuvalu Act. Other sources of law are subsidiary legislation, English statutes that are ‘applied law’ for Tuvalu, the common law of Tuvalu, judicial precedent, and customary law.



The Falekaupule (the traditional council of elders for the nine islands) are consulted on proposed laws but, as decided in the case of *Nukufetau v Metia* [2012] TVHC 8 they cannot direct a Member of Parliament representing their island’s constituency to take a particular position on a draft law. The Falekaupule Act regulates the composition, operation, and functions of local governance, creating the Falekaupule as a law-making body with powers to make by-laws. The Kaupule is the executive arm of the Falekaupule, administering island affairs on behalf of the Falekaupule.

Tuvalu has general law-making powers under its legal system, as well as wide-ranging powers specific to waste under the *Waste Management Act* and other waste-related laws.

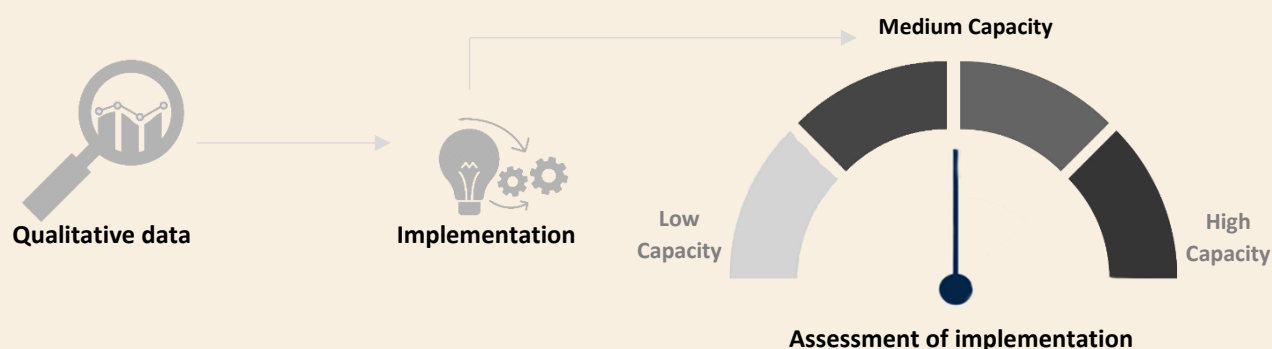
The *Waste Management Act* contains a range of powers to enact law and apply standards:

- There is a general power given to the Minister responsible for waste management (currently the Minister of Local Government and Agriculture and formerly the Ministry of Home Affairs and Rural Development) to make regulations. Acting on the advice of Cabinet, the Minister ‘may make Regulations for the proper management and regulation of wastes, and for the management and operations of the Department of Waste Management and other designated waste management operators, and for the effective implementation of this Act’ (s 46(1)). This includes the power to make regulations that prescribe offences (s 46(2)(m)), not exceeding \$10,000, or imprisonment for a period not exceeding 3 months, or both (s 46(3)).
- There are also a number of provisions that provide for the making of regulations on specific aspects of waste management, such as levies and other charges (s 10, s 20), ‘wastes having adverse impacts on the environment or human health’, including offences (s 11) and hazardous wastes (s 36) as well as registration and licensing of waste management operations (s 12, s 28). Under section 9, ‘[a]ny object, substance or thing may be determined to be a waste or hazardous waste for the purpose of this Act’ by regulations, approved standards, and other instruments under s 25, or by service of a written notice.

The *Waste Management Act* makes the Department of Waste Management and the Kaupules ‘designated waste management operators’ (s 2), with a combination of regulatory and operational functions (ss 4-5). Section 15 of the *Waste Management Act* specifies matters on which Kaupule can pass by-laws under the *Falekaupule Act* (spelt ‘by-laws’ under the *Waste Management Act* but spelt ‘bye-laws’ under the *Falekaupule Act*). By-laws approved by the *Falekaupule* are required to be published by the Attorney General on the Government noticeboard and in the *Gazette* (s 54) and can be inspected by the public at the Kaupule office (s 55).

Section 25 of the *Waste Management Act* allows for the making of standards and procedures ‘[f]or any purpose associated with its operations, a designated waste management operator may make and impose standards, rules, operating procedures, guidelines and codes of practice relevant to any aspect of its waste management functions.’

Implementation



Overall, Tuvalu has very good institutional structures to support implementation. The country has a well-developed waste management infrastructure, involving officers across several government departments with differentiated roles.

The *Waste Management Act* makes the Department of Waste Management and the local government Kaupules responsible for both regulatory and operational functions for waste management (ss 4-5, s16). The organisational structure of the Department of Waste Management reflects the extensive breadth of its functions, with a large proportion of the staff assigned to operational duties. There is also provision in the *Waste Management Act* for coordination within government, including with local Kaupules.

Under the *Waste Management Act*, the Department of Waste Management is responsible for the regulation of wastes in Tuvalu (s 4). At an operational level (s 16), it must manage waste disposal facilities for hazardous waste and other wastes not suitable for municipal disposal. It must also oversee the development and management of landfill sites. In addition, the Department has specific functions in providing support to Kaupules (s 15), thereby helping to ensure that the outer islands are properly supported in the provision of waste management services.

From a regulatory perspective, Kaupules must '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' (s 16). They must also 'implement litter and waste control measures, including programs aimed at promoting recycling of wastes, and minimising the generation of wastes'. In an operational capacity, the Kaupules must provide 'compulsory waste collection services to residential and commercial premises,' along with other waste management services, as well as preparing reports and statistical records.

The Director's position for the Department of Waste Management is currently filled in an acting capacity and is expected to be formally approved in 2020. There is one role for a Waste Regulatory Officer which is filled, and one role for a Waste Law Enforcement Officer, which is expected to be filled soon. These officers are expected to cooperate with officers in other departments, including public health and environment officers (s 16). The other government departments responsible for waste-related matters were set out in the Legislative Assessment Report. A National Waste Management Steering Committee has been created and that it meets to coordinate waste management across governmental departments.

The roles of operational officers in the Department of Waste Management include coordination with Kaupules and the private sector. There are also positions anticipated for Educational and Awareness Officers, although it is not known if these are currently filled.

The *Waste Management Act* contains several legal mechanisms to facilitate implementation, including licensing of waste management services, waste levy and deposit scheme, revenue, and public awareness programmes.

The *Waste Management Act*, all 'landfill sites, waste dumps and waste disposal facilities in Tuvalu must be licensed by the Department of Waste Management' (s 12). Private waste operators are defined as 'those operators who are not designated waste management operators' (s 2). The heading to this section refers to 'registration and licensing of private waste operators' but there is no distinction between government and private operators of waste disposal facilities in the wording of the provision itself. Elsewhere in the *Waste Management Act* (s 27), designated waste management operators are empowered to enter contractual arrangements necessary to discharge their functions. Commercial recycling services are subject to specific obligations under the Act (s 28).

The *Waste Management Act* states that 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'. Under section 13 of the *Waste Management Act*, licensees are required to provide information requested by the Department of Waste Management, including information relevant to commitments under international conventions, and to file returns (discussed further below).

The regulations made under the *Waste Management Act*, banning single-use plastics, and imposing a levy and partly refundable deposit on certain goods generating waste, represent two different approaches to implementation. The Waste Management (Prohibition on the Importation of Single-Use Plastic) Regulation 2019 is aimed at the immediate eradication of a particular type of waste. The Waste Management (Levy Deposit) Regulation 2019, by contrast, aims to internalise the economic cost of waste in the price of the product as a way of raising revenue to manage the particularly problematic waste generated from the levied products. It also aims to reduce waste through recycling and promote producer responsibility.

The waste levy and deposit scheme implemented by regulation is a legal mechanism that has the potential to make a significant contribution to the legislation's objectives of reducing and disposing of waste. It will require appropriate levels of staff, equipment, and training, as well as the negotiation and preparation of agreements with shipping companies and export markets. With its wide coverage of many forms of single-use plastic, the regulation banning the import, manufacture, sale and distribution of plastics such as shopping bags, beverage containers under 1.5 litres, plates, cups, and takeaway containers and cutlery are very broad and has significant potential to reduce plastic waste. It will also involve significant staffing and resources to implement.

The *Waste Management Act* provides for several forms of funding and fees for waste management services that aid implementation. License fees are payable and compulsory fees for residential and commercial waste collection are contemplated (s 20). In addition, the Act provides that the Government is to pay for cleaning of streets and public areas and waste bins in public areas (s 18) and subsidies 'shall be paid to designated waste management operators for their operations and waste services from money made available for such purposes in accordance with government financial and budgetary processes' (s 19). Proceeds from the levy deposit on certain products under the Waste Management (Levy Deposit) Regulation 2019 are paid into the annual budget and used for refunds on the returns of waste (50%) and distributed among the waste processors (25%) and the Department of Waste Management (25%) (r 24).

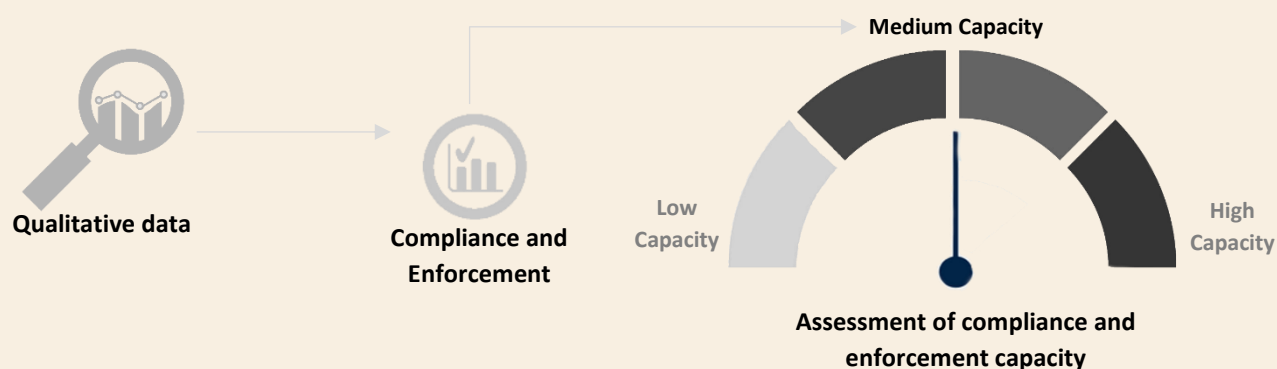
Public awareness campaigns can be another important aspect to implementation of waste management laws. They can help to reduce waste and promote recycling and proper disposal.

Under the *Waste Management Act*, functions of the Department of Waste Management include (s 16(2)):

- 'raising public awareness of matters concerning the minimisation of the generation of wastes, the recycling of wastes and the effective management of wastes';
- 'arranging for programs of public information concerning waste management issues with an aim to: minimising the generation of wastes; ensuring that wastes are stored and disposed of in a manner which minimises their harmful effects on human health and the environment; and promoting informed decision-making about waste related matters which may affect the health and well-being of the community'; 'formulating and implementing policies, programs and initiatives aimed to reduce the generation of wastes'.

Specific public awareness initiatives for the levy deposit are also anticipated in the relevant regulation (r 24) and public awareness efforts are also required of Kaupules.

Compliance and enforcement capacity



Tuvalu's waste management laws contain well-formulated mechanisms for compliance and enforcement. Clear and appropriate offences and penalties are supported by mechanisms aimed at facilitating compliance, including reporting and audit requirements and a process for notices of a breach and an opportunity to address non-compliance before a penalty is imposed. Caps on penalties appear to be appropriate. Limited personnel, including on the outer islands, compromise compliance and enforcement capacity meaning overall levels are assessed as medium.

The *Waste Management Act* provides for both systemic and specific monitoring through, for example, a regular national waste audit as well as planning and reporting requirements. It also provides for directions and notices of non-compliance to be given before enforcement action is taken.

Under section 8, the Department of Waste Management '*has authority to undertake an audit of the wastes generated and disposed of in Tuvalu from time to time.*' This same requirement was contained in the old law governing waste management in Tuvalu since 2009. Although the *Waste Management Act* commenced at the end of 2017, it contains many of the provisions from the old law of 2009. As such, there is good timeframe over which to assess compliance. The levy deposit and single-use plastic ban are relatively new, commencing in 2019, but an early assessment of how they are working could help to ensure that any issues with compliance are addressed early in their implementation.

There are also several requirements in the *Waste Management Act* to provide information and to report on compliance which would help to identify cases of non-compliance and present an opportunity to proactively address breaches, for example:

- holders of waste management operation licences and others involved in waste management are required to provide information and returns to the Department of Waste Management (s 13).
- Information is also required in respect of compliance with international conventions (s 34).
- In the case of the local Kaupules, they are required to keep statistical information and to report on waste management in their areas on a regular basis (s 16).
- The Department of Waste Management is required to record statistics on waste management for the purposes of waste planning (s 6) and to prepare reports on waste management (s 16).
- Reports by designated waste management operators must also be prepared as requested by the Department of Environment or the Ministry of Health (s 26).

Several mechanisms in the *Waste Management Act* are designed to facilitate compliance before enforcement action is taken:

- section 25(4) allows for '*[o]fficers and contractors of designated waste management operators [to] give directions to any person within the areas and facilities of the designated waste management operator for the purpose of ensuring compliance with any, standard, rule, operating procedure, guideline, code of practice or sign made or displayed*'.
- Section 37(1) of the *Waste Management Act*, provides that the '*Department of Waste Management, and a designated waste management operator, may serve written notice on any person requiring that any wastes owned, possessed or under the control of that person:*
 - *be stored, transported, or disposed of in any required manner*
 - *not be stored, transported, or disposed of in any particular manner*
 - *be removed from a particular place and properly disposed of*
 - *be made available for recycling in any manner stated in the notice.*'

These mechanisms for warning people of the potential for enforcement action and promote corrective action without the need for enforcement action.

Enforcement of the *Waste Management Act* relies, in the first instance, on the clarity of offences and appropriateness of penalties, as well as powers and personnel to identify and deal with offences when they occur. Successful prosecution of offences in Tuvalu could be aided by the low threshold for proof. Avenues for people to hold the government to account for their duties under the *Waste Management Act*, and its regulations, are also an important aspect of enforcement in Tuvalu. Limited availability of legal representation, and some difficulties with public access to laws, as well as problems of public access to information about offences that have occurred, could undermine enforcement.

The *Waste Management Act* contains general and specific offences. The officers allowed to enforce the *Waste Management Act* include officers of the Department of Waste Management, as well as police officers, environment officers, public health officers and officers of Kaupules.

To enforce the Act, such officers may:

- enter upon any land
- enter private premises after notifying the owner of their intention to do so
- take samples of wastes, soil and water for testing and analysis
- require the production of records and information relevant to the management, storage, movement, and disposal of wastes
- 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
- order that certain items, substances or things be regarded as wastes, and be removed from land or premises and deposited at an approved dump or waste management or disposal facility (s 39(2)).

The *Waste Management Act* also empowers an enforcement officer to serve a ‘penalty notice’ for specified offences, where it might be an ‘effective deterrent to the person committing further offences’ (s42). Other offences are stipulated throughout the *Waste Management Act*, including:

- Unlicensed waste management operations with a fine not exceeding \$1000 or to imprisonment for a term not exceeding 3 months, or both (s 12)
- Failure to provide information on licensed waste management operations with a fine not exceeding \$1000 (s 13)
- Failure to comply with rule, operating procedure, guideline, or code of practice: fine not exceeding \$1,000 (s 25)
- Failure to segregate green waste with a fine not exceeding \$1,000 (s 28)
- Failure to develop waste management plan for major development with a fine not exceeding \$20,000, and \$2,000 for every day that the offence continues (s 31)
- Failure to provide information requested to comply with an international convention with a fine not exceeding \$1,000 (s 34)

There are other offences, such as pollution offences, customs offences, offences relevant to ozone depleting substances. Penalties for offences related to wastes having adverse impacts on the environment or human health cannot exceed \$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 (*Waste Management Act*, s 11). The *Waste Management Act* states that ‘offences against this Act may be undertaken by the Department of Waste Management, police officers, environment officers, authorised officers under laws relating to public health, and officers of Kaupules in their capacity as designated waste management operators.’ (s 40). Senior Magistrate’s Courts have jurisdiction to try offences under the Act (s 41). Regulations can provide that cases can be heard by an Island Court (s 41).

The standard of proof for offences is not high, allowing conviction based on evidence of a health risk or where they ‘may be’ harm done. Specifically, section 43 describes the requirements of evidence in terms of: ‘(a) evidence is given by a medical practitioner, or any health inspector, that a waste, chemical, substance or item is hazardous or is dangerous to human or animal health, or that any matter constitutes a health risk; or (b) evidence is given by an Environment Officer appointed under section 9 of the *Environment Protection Act* [Cap 30.25] that there has been, or may be, a harmful or adverse effect on the environment.’

There is only a small number of lawyers qualified to practise law in Tuvalu. A bachelor’s degree in law is a requirement for admission to legal practice in Tuvalu under the Legal Practitioners Act (s 7). The *People’s Lawyer Act* makes a qualified lawyer available for consultation and possible representation of a person charged with a criminal offence, and to provide advice in civil matters. Tuvalu has been represented by a volunteer lawyer in the South Pacific Lawyers’ Association. An absence of lawyers to provide legal advice, or to represent people charged with waste-related offences, is highly problematic for enforcement. It could amount to a breach of the freedoms guaranteed under the Constitution of Tuvalu, including ‘the freedom of law’ (s 10), discussed earlier, as well as the specific right to a fair hearing (s 22).

The *Waste Management Act* provides that the Department of Waste Management and Kaupules have both regulatory and operational functions.

The Act binds the Crown, as such, where acting in an operational capacity, both the Department of Waste Management and Kaupules could be liable for offences that apply to designated waste management operators:

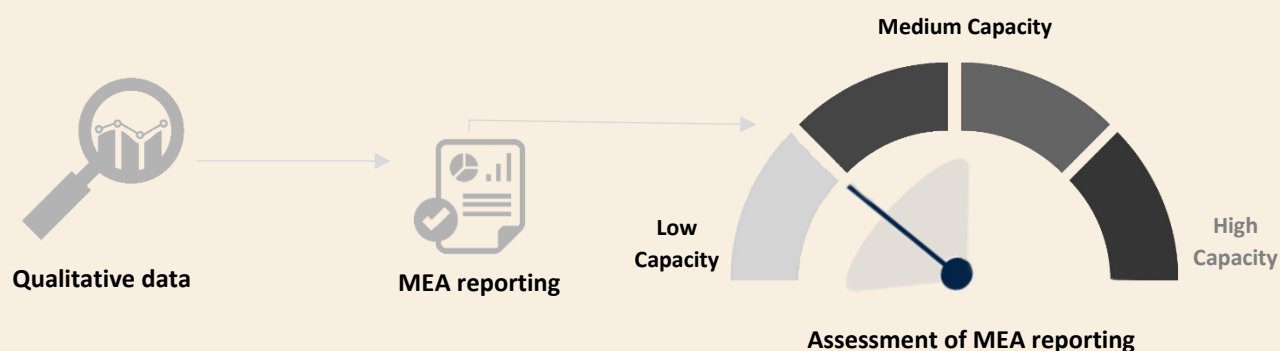
- Staff working for designated waste management operators are indemnified against liability (s 29)
- The Department of Waste Management is also empowered to give directions to Kaupules (s 15(4))
- a failure to comply with a direction can result in the withdrawal of support (including financial support) (s 15(5)).

Where acting in a regulatory capacity, it is not clear how people might seek a review of government action, whether by the Department of Waste Management or the Kaupules. It might be that there is the option of a review by the Chief Ombudsman under general channels for the review of government action. There is express provision in the *Waste Management Act* for a person charged a fee for waste collection services to seek a review of that fee (s 20).

Significantly, the Waste Management (Levy Deposit) Regulations 2019 stipulate offences for corruption and illegal practices. In particular, *'a person who knowingly misappropriates records of collected waste materials'* or engages in *'any related actions with the intention to manipulate the system for individual gain'* shall be liable to a maximum penalty of \$1000 (r 30).

During the desktop research, it was noted some difficulties associated with public access to current laws. The website of Tuvalu's laws (Tuvalu Legislation Online) includes a comprehensive collection of the legislation as it stood at the time of the 2008 Revised Edition, but the posting of laws made after that time is not complete. At the time of writing, there was no copy of the *Waste Management Act 2017*, *Waste Management (Litter and Waste Control) Regulation 2018*, nor the *Environment Protection (Waste Reform) Amendment Act 2017*, available online. The Office of the Attorney General maintains the legislation website and is in the process of updating it to make all laws publicly available, however, local Kaupule by-laws, or standards, such as those anticipated under s 25 of the *Waste Management Act*, will not necessarily be made available.

MEA reporting



Tuvalu is party to the Stockholm, Minamata and Waigani Conventions. The nation is also reportedly finalising its process for ratification of the Basel and Rotterdam Conventions. The notification, information sharing and reporting requirements established by these MEAs for parties are set out in **Annex 2**.

In the case of the Minamata Convention, Tuvalu only very recently became a party (from 5 September 2019) and hence only a preliminary assessment can be made regarding its level of reporting compliance for this Convention. Based on the evidence available, Tuvalu is assessed as having low-to-medium capacity to fulfil reporting requirements for relevant MEAs to which it is party. It is unclear whether joining additional conventions (i.e., the Basel and Rotterdam conventions as planned) will further strain this capacity or serve to improve it by giving Tuvalu greater access to capacity-building resources available under a range of international waste-related conventions.

Tuvalu has not consistently produced the required national reports under the relevant MEAs. Tuvalu has not submitted annual national reports under the Waigani Convention, or the Stockholm Convention. Tuvalu is yet to submit its first short-form national report under the Minamata Convention, which was due on 31 December 2019, but this is understandable given that the treaty has only been in effect for Tuvalu for a short time.

Tuvalu's record for fulfilling the notification requirement of the MEAs indicates that some concerted efforts have been made in this regard. Tuvalu submitted a National Implementation Plan (NIP) for the Stockholm Convention in 2009, including a strategy for meeting its reporting obligations. Tuvalu is also reported have produced an updated NIP, which has been verified by UNEP, although it has not yet received national endorsement or been submitted to the Stockholm Convention Secretariat.

In addition, competent authorities, and focal points, necessary for information sharing and transmission of notifications to treaty secretariats and other parties, have been designated for the Minamata and Waigani Conventions. In the case of the Stockholm Convention, the treaty secretariat's database records no information provided by Tuvalu regarding a national focal point. Tuvalu's initial Stockholm NIP stated that Tuvalu designated the director of its Department of Environment as its relevant Stockholm focal point.

The *Waste Management Act* specifically covers the Waigani Convention and provides that the Department of Waste Management has responsibility for the implementation of international conventions relating to the management of hazardous wastes to which Tuvalu is party:

- Holders of licences under the *Waste Management Act*, and all persons conducting any waste-related operation, business, or activity, are required to provide to the Department of Waste Management a range of information, statistics, records and returns relating to their operations and other waste management-related matters (s 13(1)).
- The Ministry responsible for waste management (which, since the 2019 election in Tuvalu, is reportedly the Ministry for Local Government and Agriculture but was formerly the Ministry of Home Affairs and Rural Development) also has a specific power to make a written request to any person to provide relevant information or data necessary for fulfilling reporting or information exchange requirements under an international waste-related convention (s 13(2)).
- A similar provision is made in section 34 where it is coupled with an offence if a person to whom an information request is submitted fails to comply.

These provisions provide the necessary information collection foundations for preparing reports under the Waigani Convention and potentially could supply relevant data relating to stockpiled POPs wastes and mercury wastes for the Stockholm and Minamata Convention reporting, although neither of these conventions is listed as a relevant convention under the *Waste Management Act*. The implementation of the Stockholm Convention is entrusted to the Department of Environment under the *Environment Protection Act*. This legislation contains a specific section on international conventions to which the Act applies, which are listed in a schedule. Currently, the Stockholm Convention is the only waste-related MEA listed in the schedule; an amendment (which can be affected through regulations made under the Act – see s 24(2)) would be necessary to add the Minamata Convention to this list. General objects of the Environment Protection Act include ‘to facilitate compliance and implementation of obligations under any regional and international environmental or natural resource agreements or conventions to which Tuvalu has ratified or acceded’ (s 4(1)(f)) and ‘to take action in relation to hazardous substances, to minimise their impacts, and to support other departments and agencies who are responsible for dealing with them when they become wastes’ (s 4(1)(j)).

Specified functions of the Department of Environment in respect of pollution and hazardous substances include:

- ‘Regulating hazardous substances, including the manufacture, sale, importation, storage and transboundary movement of such substances in accordance with international conventions applying in Tuvalu, or accepted international best practice’ (s 19(2)(e), *Environment Protection Act*).
- The Act also specifies roles of the Department in relation to a convention to which the Act applies, which include ‘preparing any necessary Report’, ‘sharing information and otherwise providing such cooperation as is required by any Convention’, and ‘doing any act or thing (in conjunction with any other relevant Department or agency of Government) to implement any obligation under a Convention’ (s 25(2)(e), (f) and (h)).
- The Department may be designated as the national focal point for a convention (as has occurred in the case of the Minamata Convention) and, as such, is required by section 25(4) to ‘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’.
- There is also a general obligation placed on other departments to assist with effective implementation of covered conventions in section 28.

Despite this extensive legislative framework, limited capacity for implementation by the responsible departments appears to have inhibited fulfilment of reporting, notification, and information exchange obligations under the relevant MEAs to which Tuvalu is party. Reports from the conference of the parties (COP) to the Waigani Convention evidence these problems, the report from the 9th Waigani COP, held in 2017, noted Tuvalu’s non-submission of its annual report and the lack of records of previous annual reports. Tuvalu has also previously requested assistance from the Waigani Secretariat so that it can submit timely reports.

Table 7: Compliance with MEA reporting requirements

Relevant MEAs party to	Comments
<i>Stockholm</i>	<p>No National Focal Point formally designated for information exchange (although initial NIP refers to the Director of Environment fulfilling this role).</p> <p>National Implementation Plan finalised July 2008 (submitted 2009) including strategy for meeting reporting obligations. Tuvalu is reported to have finalised an updated NIP that has been verified by UNEP but has not yet been transmitted to the Stockholm Convention Secretariat.</p> <p>No national reports submitted in first four reporting cycles.</p>
<i>Minimata</i>	<p>Focal point specified.</p> <p>No further notifications provided.</p> <p>First short form reports due 31 Dec 2019, not submitted.</p>
<i>Waigani</i>	<p>Competent authority and focal point designated (updated focal point to Solid Waste Agency).</p> <p>Report from 9th COP (2017), noted non-submission of annual report and no records of previous annual reports. Previously has requested assistance from the Secretariat so it can submit timely reports.</p>

SECTION 4: LEGISLATIVE OPPORTUNITIES



The opportunities identified in this section have been drawn from the findings of the legislative assessment and capacity assessment to provide guidance to Tuvalu on possible actions they may wish to take to strengthen the legislative frameworks governing waste management

Legislative models for waste governance

Waste management has become a pressing concern for the PacWastePlus participating countries. These nations are impacted by growing levels of hazardous and non-hazardous wastes, which cause environmental pollution, and may threaten human health. The mounting levels of waste place socio-economic burdens on these nations and may pose risks to important cultural values and customary land ownership that distinguish these countries and the region. Internationally, Goal 12 of the 2015 United Nations Sustainable Development Goals calls for ensuring sustainable consumption and production patterns.

Trends in waste governance across the participating countries

Waste is a particular problem for many Pacific region countries due to increasing imports of waste-producing items (such as electronic and consumer goods), limited in-country facilities for collection, treatment and storage of many wastes, and a reduced availability of suitable land for conventional waste disposal methods, such as landfills.

In several cases, participating countries have adopted innovative legislation and instruments to better manage and minimise waste, such as: dedicated legislation for waste management, measures to incentivise recovery and recycling, prohibitions on specific waste-generating items entering the country, and measures to promote waste minimisation and cost recovery. Several Pacific countries are also exploring new institutional arrangements, such as identifying lead agency responsibilities for coordination of waste management laws, arrangements for more effectively managing responsibilities across different levels of government, and/or approaches to increase private sector involvement in waste management through licencing regimes and partnerships for extended producer responsibility.

Many countries in the Pacific adopted applicable laws and institutional structures for managing wastes some time ago that may no longer serve current needs. Significant challenges remain in some nations in establishing a firm economic basis to underpin waste management within the relevant legal frameworks, and in dealing with longstanding waste management issues, such as the sorting of wastes and their diversion, where possible, from landfill.

Increasing attention is being directed to questions of how to promote effective implementation of existing laws and to the development of new legislation and regulation for waste management if this is required. This raises critical issues for resourcing of various components of the waste management cycle within each nation, as well as the possibilities for regionally harmonised approaches. A range of ancillary legislation beyond specific waste management laws may be important for facilitating implementation, and there is a need in some participating countries to develop more coherent cross-agency referral models.

Compliance with, and enforcement of, waste management laws is also vital to their effectiveness and impact. At the same time, these measures must be sensitive to the community context, realistic in terms of the available staffing and technical expertise in government departments and municipal organisations, and cognisant of the competing compliance priorities in the legal system. There is scope within the legislation of several participating countries to widen the range of compliance and enforcement measures beyond monetary penalties and criminal prosecutions.

In addition, there are opportunities to broaden the engagement with communities and the non-governmental sector, and to provide a legislative basis or more formal designation for measures such as community education, consultation, and partnerships in managing wastes, particularly those of a non-hazardous nature. The participation of the private sector, whether as waste collector contractors, operators of recycling companies, sewage transporters or tourism agents, is likewise important for effective waste management laws. Regulation needs to be carefully targeted but also to ensure transparency and accountability.

Key recommendations to increase national legislative and institutional capacity

Overall, the existing legislation of Tuvalu for waste governance was assessed as performing at a medium to medium-to-high level. The capacity of Tuvalu with respect to various aspects of administration of its waste legislative framework was assessed overall as medium to medium-to-high, with the greatest needs arising in respect of support for implementation, compliance, and enforcement of laws.

Opportunities for improving legislative instruments to support improved waste management

Tuvalu's laws on waste are highly relevant to the priority waste streams and contain detailed provisions that foster coherence and effectiveness. Tuvalu's comprehensive legislative regime for waste management, including its levy deposit scheme and the ban on plastics, might in some respects represent best practice that could be instructive for other nations in the Pacific region.

Tuvalu has a dedicated waste management legal model. The *Waste Management Act 2017* empowers the Kaupules (local governance bodies) to manage waste dumps and waste disposal as designated waste management operators for their respective areas. A number of regulations have been adopted under the Act, including: the imposition of a levy deposit system; prohibition on single-use plastics; and littering regulations. Tuvalu also has other legislation relevant to waste management including environmental management and public health legislation.

Tuvalu's efforts to centralise waste management in one government department, the Department of Waste Management, and to extend the coverage of the laws beyond solid waste to all waste, make a significant contribution to the efficiency of those laws. However, given the relatively recent introduction of the *Waste Management Act* in 2017, and the important regulations enacted under it in 2019, it is too early to reach firm conclusions on the efficiency and impact of the waste laws in Tuvalu.

Opportunities that Tuvalu might consider developing as part of its implementation of waste laws including the following:

- *Supporting implementation of levy deposit system*

There is an opportunity to support the implementation of the levy deposit system, particularly in its early stages, to assist its efficiency. Agreement with shipping companies and export markets for recyclable waste will be an important element in the regulation achieving its objective. Regional developments in this regard are assessed further in the Regional Solutions Assessment report.

- *Expansion of plastic ban*

Consideration could be given whether to expand the scope of the existing ban on plastics, or to prepare rules relevant to particular kinds of plastic within the definition.

- *Distinction between regulatory and operational functions*

The Department of Waste Management has functions that are both regulatory and operational (s 16(2)). The review of these functions could be more clearly delineated within the structure of the Department. A chart documenting specific powers and responsibilities, and corresponding offences, could be developed and used to assist with the delineation of functions and to raise awareness in the community about the requirements of the waste laws.

- *Designation of wastewater and other liquid wastes*

The definition of waste in the *Waste Management Act* is not limited to 'solid' waste but it provides examples of waste that might be associated with solid waste. To avoid any doubt, Tuvalu might consider formally designating wastewater and other liquid wastes as 'waste' covered by the *Waste Management Act*.

- *Specific rules or standards for some priority waste streams*

There is an opportunity to develop specific regulations or standards, under Section 9 of the *Waste Management Act*, for at least three priority waste streams: healthcare waste, asbestos waste, and disaster waste.

- Healthcare: there is an opportunity to develop and integrate healthcare waste management standards to be incorporated into the *Waste Management Act* and publicly presented.
- Asbestos: the development of specific regulations for the handling of asbestos waste and specific controls around the import of products containing asbestos.
- Disaster waste: There is an opportunity to designate disaster waste as a waste under the *Waste Management Act* (s 9) and make special provision for the management of disaster waste in either formal regulations or under the kinds of standards anticipated under s 25 of the *Waste Management Act*.

- *International conventions:*

The Tuvaluan government has approved the ratification of the Basel and Rotterdam Conventions and that the final stages to formalise that process require coordination with the Office of the Attorney General. Ratification of these Conventions would give rise to an obligation for Tuvalu to implement its new obligations via appropriate legislative and/or administrative measures.

- *Development of a legislative drafting manual*

Development of a legislative drafting manual if not already in place, based on models from other Pacific jurisdictions as appropriate, e.g., Tonga's Legislative Drafting Manual of 2019, with particular attention to expectations of consultants engaged to draft laws.

Recommendations to address legislative capacity needs

Tuvalu's comprehensive legislative regime for waste management, including its levy deposit scheme and the ban on plastics, might, in some respects, represent best practice that could be instructive for other nations in the Pacific region. If, adequate staff and resources are not available for implementation, compliance and enforcement across the different ministries and departments responsible for different aspects of those laws, the potential for those laws to have a significant impact on waste management in Tuvalu will be greatly compromised and their value as models for regulation in other nations diminished.

Capacity needs are identified as:

- **Governance**

- Capacity to engage consultants to assist with the drafting of any new designations, regulations, or standards, in consultation with stakeholders and the community, relevant to the priority waste streams, including wastewater; implementation of the *Waste Management Act*; or which become necessary while implementing the new regulations creating the levy deposit system and the ban on single-use plastics.
- Additional staff and increased resources, including for local government (Kaupules), to support the provision of waste management services, community awareness programs on waste reduction and recycling, and compliance and enforcement activities, particularly in the outer islands.

- **Transparency & Community Consultation**

- Additional staff and increased resources, including for local government (Kaupules), to support the provision of waste management services, community awareness programs on waste reduction and recycling, and compliance and enforcement activities, particularly in the outer islands.

- **Sustainable Funding**
 - Relevant to the implementation of the levy deposit system, appropriate levels of staff, equipment, and training to support the safe handling of levied waste, as well as the negotiation and preparation of agreements with shipping companies and consignees in identified export markets.
- **Enforcement**
 - Implementation of waste audit requirement to assess on-the-ground levels of compliance and to gain lessons on the implementation of waste-related laws, including early implementation of the levy deposit system/ plastic ban for any needed course correction. Enhanced access to information may also augment Tuvalu's reporting capacity under relevant MEAs.
 - Support for enforcement of the *Waste Management Act*, and associated regulations, including expert assistance, training, and equipment to enforcement officers in the Department of Waste Management and to the Office of the Attorney General to update and maintain Tuvalu's online legal database to include current laws and regulations relevant to waste.
 - Greater availability of legal representation enhanced public access to laws (including assistance with updates to Tuvalu's online legislative database), and enhanced public access to information about offences that have occurred. Tuvalu has online mechanisms to facilitate access to laws, namely the Tuvalu Legislation website, but resources are needed to ensure it is maintained and kept up to date. In addition, a website dedicated to the Department of Waste Management could be developed to include all relevant and up-to-date laws, including secondary laws and standards. Public access to laws is important for the drafting of new laws that reference existing laws and for implementation and compliance.

Annex 1: Glossary of legal terms

Table 8: Glossary of legal terms

Term	Definition
<i>Accession</i>	Accession is the act by which a country accepts the offer or the opportunity to become a party to a convention already signed by other states. It has the same legal effect as ratification.
<i>Acts</i>	Also called statutes or laws. An Act is a document stating the law that has been passed by the legislature (the law-making body of government).
<i>Acts as made</i>	Also called Acts as passed, Acts as enacted, and Sessional Acts. An 'Act as made' is an Act with its contents exactly as they were when passed by the legislature.
<i>Amending Acts</i>	Amending Acts are Acts that change one or more provisions of the Principal Act, often titled, for example, as the Environment Protection (Amendment) Act. Amending Acts must also be passed by Parliament. Where amendments have not been included in the Principal Act, the Principal Act and the Amending Acts must be read together.
<i>Bills</i>	Proposed Acts. Once passed by the legislature and enacted by any formalities required in the country (for example, signature, assent, publication, or notification in the official Gazette), a bill becomes an Act.
<i>Chapter</i>	Some countries consolidate all their Acts at the same time. For example, Tonga consolidated all its legislation (both Acts and Regulations) in 2016. Each Act in the Consolidation was given a Chapter number, so the front cover of an Act in this consolidation states e.g., Environment Management Act, Chapter 47.02, 2016 Revised Edition. The Act as made was the Environment Management Act, Act 27 of 2010. 'Chapter' is often abbreviated to Cap. An Act made after the Consolidation will not have a chapter number.
<i>Code</i>	<p>Several countries are former U.S. territories and arrange legislation into Codes. Such Codes contain all the Acts enacted by the legislature that are current (in force) at the time of the compilation of the Code.</p> <p>Codes are arranged by numbered topic. Each topic is called a Title. As each Principal Act is made it is assigned to a Title. The Act may become a chapter in that Title or only a single new section in an existing chapter, or it may amend an existing chapter or section.</p> <p>Example: in the Marshall Islands, all environmental Acts are contained in Title 35: Environment. Chapter 2 of this Title is the <i>Littering Act 1982</i>. This is abbreviated to 35 MIRC Ch 2 i.e., Title 35 (Environment), Marshall Islands Revised Code, Chapter 2.</p> <p>Once in the Code the section numbers in an Act change because the Code numbering is consecutive. So, what was section 1 in the Act as made becomes section 201 in the Code i.e.: Chapter 2, section 1. Sections are generally denoted in Codes by the symbol §, as in U.S. legislation.</p>
<i>Consolidated Acts</i>	Comprise the Act as made and all amendments up to the date of the consolidation. For example, a 2012 consolidation of an Act originally made in 1999 will include all amendments up until 2012. They may also be known as consolidations or compilations or noted 'as amended'.
<i>Executive</i>	The Executive or the Government, is the branch which implements laws through the making of regulations and administers and enforces the laws. The Executive is also generally the branch of government that signs and ratifies international conventions.

Term	Definition
<i>Judiciary</i>	Also, the Courts, the branch of government which interprets laws and formally determines legal disputes.
<i>Legislation</i>	The collective term for both principal (Acts) and subordinate laws (usually regulations).
<i>Legislature</i>	The Legislature or the Parliament, is the branch of government which makes laws.
<i>International conventions</i>	Are also known as international agreements, and treaties. Conventions come into effect on a certain date. This is not the date the Convention takes effect in a particular country. For the Convention to take effect in a particular country, the country must become a party to the Convention. Countries may sign a Convention – this does not make it a party. Countries may ratify or accede to a Convention – this makes it a party. Following ratification or accession, written instruments evidencing the country’s consent to be bound by the convention are deposited with the Depository – this is generally the Secretary-General of the United Nations, but also, for example, the South Pacific Forum Secretariat in the case of the Waigani Convention. Once these written instruments are deposited by enough parties, the convention takes or comes into effect in the country and the country becomes a party to the convention.
<i>Principal Acts</i>	Principal Acts contain the entirety of a topic, for example, the Environment Protection Act.
<i>Provisions</i>	Provisions are individual numbered clauses within legislation. The most used provision types are: <ul style="list-style-type: none"> • Articles in Constitutions – abbreviated to Art. or art. • Sections in Acts – abbreviated to s (or § in the case of Codes) • Regulations within a Regulation - abbreviated to r • Clauses in Schedules at the end of Acts or subordinate legislation
<i>Ratification</i>	Ratification is the act by which a country indicates its consent to be bound to a convention.

Term	Definition
<i>Subordinate legislation</i>	<p>Subordinate legislation is also called subsidiary legislation, delegated legislation, and statutory instruments. These are collective terms. Individual pieces of subordinate legislation are most called regulations, but other types of subordination legislation include:</p> <ul style="list-style-type: none"> • Rules • Ordinances • By-laws • Orders-in-council • Executive orders • Decrees • Decree-Laws (this terminology is used in Timor-Leste) <p>Acts (principal legislation) expressly authorise the making of subordinate legislation.</p> <p>Example: <i>Section 121 of the Marshall Islands National Environmental Protection Act 1984</i> authorises the Environment Protection Authority to make regulations regarding pollutants and discharge or hazardous waste.</p> <p>Subordinate legislation is made by a person or agency other than the legislature – usually the Government Ministry or Department responsible for implementing the Act. A regulation is usually on a specific topic and contains the practical machinery to implement one or more provisions of the Act.</p> <p>Example: regulations made under Section 121 of the Marshall Islands <i>National Environmental Protection Act 1984</i> include the <i>Solid Waste Regulation 1989</i>, the <i>Toilet Facilities and Sewage Disposal Regulation 1990</i>, and the <i>Public Water Supply Regulation 1994</i>.</p>

Annex 2: Acronyms

Table 9: Acronyms

ACRONYM	REFERRING TO
DAC	Development Assessment Committee
ECOLEX	ECOLEX is an information service on environmental law, operated jointly by FAO, IUCN, and UNEP
EIA	Environmental Impact Assessment
EU	European Union
FAOLEX	FAOLEX is a database of national legislation, policies and bilateral agreements on food, agriculture, and natural resources management.
ICI	Infrastructure Cook Islands
IEA	Island Environment Authority
INFORMEA	United Nations Information Portal on Multilateral Environmental Agreements
MEA	Multilateral Environmental Agreements
MOH	Ministry of Health
NES	National Environment Service
NIP	National Implementation Plan
NGO	Non-Government Organisation
NZPCO	New Zealand Parliamentary Council Office
OECD	The Organisation for Economic Co-operation and Development
PACLII	Pacific Islands Legal Information Institute
PILON	Pacific Islands Law Officers' Network
POPS	Persistent Organic Pollutants
SPREP	Secretariat of the Pacific Regional Environment Programme
UOM	University of Melbourne
UNEP	United Nations Environment Program

Annex 3: Priority Waste Definitions

The PacWastePlus definitions of the priority waste streams included in the programme are detailed below.

Please note, PacWastePlus programme's waste definitions *do not always directly correspond with definitions found in national legislation*.

For example, public health and water/sanitation legislation may reference 'sewage' within concepts of wastewater or broader definitions of solid waste. Where countries' legislation dealing with wastewater or other waste streams includes sewage in the legislative definitions of wastes, these references have been retained for this assessment. This ensures that of the assessment's reproduction of the legislative provisions are accurate, even though human wastes are not encompassed within the PacWastePlus definition of 'wastewater'.

Table 10: PacWastePlus programme definitions

Priority waste	Definition/understanding
<i>Asbestos</i>	Asbestos refers to six naturally occurring silicate minerals composing of long and thin fibrous crystals. These crystals contain many microscopic fibres that can be released into the atmosphere by abrasion and other processes. Asbestos has been used as a building material for many years. Natural disasters can increase the risk of exposure to asbestos found in damaged building materials.
<i>Healthcare waste</i>	Waste generated by health care facilities. Includes used needles and syringes, soiled dressings, body parts, diagnostic samples, blood, chemicals, pharmaceuticals, medical devices, and radioactive materials. It is essential that all medical waste materials are segregated at the point of generation, appropriately treated, and disposed of safely.
<i>E-waste</i>	Electronic waste or e-waste refers to discarded electrical or electronic devices. Used electronics which are destined for refurbishment, reuse, resale, material recovery, or disposal are also considered e-waste. Electronic scrap components, such as CPUs, contain potentially harmful materials such as lead, cadmium, beryllium, or brominated flame retardants.
<i>Organic waste</i>	Organic waste is waste that is biodegradable and has the potential to disintegrate. These wastes often include vegetable and fruit peelings, paper, and food waste. Organic waste is typically a significant proportion of a waste stream, and if managed through landfill creates leachate and harmful greenhouse gases. When processed appropriately, organic waste can add significant value to soil quality and potentially increase food production/soil water retention and help in elimination of invasive weeds.
<i>Disaster waste</i>	The generated waste during a natural disaster i.e., a sudden devastating event (cyclone, flood, earthquake, tsunami, fire etc) that seriously disrupts the functioning of a community or society and causes human, material, economic or environmental losses that exceed the community's or society's ability to cope using its own resources.
<i>Recyclables</i>	Recyclable wastes refer to wastes that can easily be recovered or made into other products. They typically include glass, paper, cardboard, metal, plastic, tyres, textiles, batteries, and electronics.
<i>Bulky waste</i>	Bulky waste (end-of-life vehicles, tyres, white goods, furniture, and other large household goods) describes waste items that are too large to be accepted by the regular waste collection service. It includes damaged furniture, abandoned vehicles and large appliances.
<i>Wastewater</i>	Wastewater refers to waterways impacted by solid wastes and related aspects, such as leachates from landfills or point source pollution from storm water drains.
<i>Plastic waste</i>	Plastic wastes may be recyclable wastes as discussed above. Plastic packaging and single-use plastics may also be a significant source of plastic waste.

Annex 4: Existing Legislation Addressing Waste Management

A summary of existing Cook Islands legislation related to waste management is provided in

Table 11.

Table 11: Legislation impacting waste governance in Tuvalu

Legislation	Regulations	Description
<p><u>Waste Operations and Services Act 2009 (repealed)</u></p> <p><u>Waste Management Act 2017 (copy on file)</u></p> <p><i>Note: Waste Operations and Services Act 2009 has been repealed but is in some cases referenced incorrectly as still being in force.</i></p>	<p><u>Waste Management (Levy Deposit) Regulation 2019</u></p> <p><u>Waste Management (Prohibition on the Importation of Single-Use Plastic) Regulation 2019</u></p> <p><u>Waste Management (Litter and Waste Control) Regulations 2018</u> (confirmed were made but no copy located and amendment of 2019 not available online)</p>	<p>Under the Waste Management (Levy Deposit) Regulation 2019, importers of certain imported goods must pay a ‘levy deposit’ which is added to the sale price and waste generated can be returned to a designated collection point for a 50% refund. Goods subject to the levy deposit include certain drinks and cooking oil in PET bottles or glass bottles and drinks in aluminium cans; lubricating oil; nappies; white goods; construction equipment; vehicles; motorbikes; and batteries (for vehicles, motorbikes, equipment, and solar panels) (sch 1). Refunds are not available on lubricating oil and nappies (sch 2).</p> <p>Tuvalu’s legislation includes several references to recycling and forms of waste that are recyclable. Under the <i>Waste Management Act</i>, for example, the Department of Waste Management must ensure that planning for waste management includes the promotion of recycling and the regulation of recycling operations (s 6(2), 16(2), s25(2)). In addition, regulations can be made that:</p> <ul style="list-style-type: none"> • provide for recycling (s 11) • Kaupules are responsible for promoting recycling (s 16(1)). • Section 28, titled ‘Recycling and Composting of Wastes’, also imposes obligations on persons or companies to ensure that commercial recycling of wastes is done in accordance with law, including international obligations and accepted practices. <p>Requirements under the Waste Management (Levy Deposit) Regulations are also specific to some recyclables, notably plastic (PET) bottles and other plastics as well as glass and aluminium. The Regulations provides for the recovery of recyclables from e-waste (described above), and from bulk waste (described below).</p> <p>Green waste must be ‘segregated from all other wastes’, including from plastic or other material, unless it aids composting (s 28(4)). The Waste Management (Levy Deposit) Regulations make specific provision for PET (polyethylene terephthalate) bottles. The Regulation bans the import, manufacture, sale and distribution of certain ‘single-use plastics’ such as: single-use plastic shopping bags; plastic water and beverage bottles less than 1.5 litres; water pouches and ice block bags; straws; plastic</p>

Legislation	Regulations	Description
		<p>and polystyrene plates, cups, and takeaway containers; cutlery; cling film for wrapping food; table sheeting; and flags (r 5(1)). In addition, the <i>Ozone Layer Protection Act 2008</i> bans the importation and manufacture of plastic foam.</p> <p>Consumer goods that end their operational life as bulky waste are subject to the levy deposit under the Waste Management (Levy Deposit) Regulation 2019. Items such as white goods, construction equipment, vehicles, motorbikes, and batteries (for vehicles, motorbikes, equipment, and solar panels) are subject to a levy that is passed on to consumers through the retail price and may be returned as waste for a 50% refund of the levy. Additionally, the <i>Ozone Layer Protection Act</i> is incidentally relevant to bulky waste that contains ozone depleting substances.</p>
<p><u><i>Environment Protection Act (2008 Revised Edition), Cap 30.25 (as at 2008)</i></u></p> <p><u><i>Environment Protection (Waste Reform) Amendment Act 2017 (not available online but see schedule of Waste Management Act for consequential amendments)</i></u></p>	<p><u>Environment Protection (Litter and Waste Control) Regulations 2013</u> (repealed by Waste Management Act 2017)</p> <p><u>Environment Protection (Environmental Impact Assessment) Regulations 2014</u></p>	<p>Recyclables are covered by the <i>Environment Protection Act</i>, which makes the Department of Environment responsible for ‘promoting composting, recycling, and the efficient use of wastes’ (s 19(2)).</p>
<p><u><i>Ozone Layer Protection Act (2008 Revised Edition), Cap 30.30</i></u></p>	<p><u>Ozone Depleting Substances (ODS) Regulations 2010</u></p>	<p>Consumer goods that end their operational life as bulky waste are subject to the levy deposit under the <i>Waste Management (Levy Deposit) Regulation 2019</i>. Items such as white goods, construction equipment, vehicles, motorbikes, and batteries (for vehicles, motorbikes, equipment, and solar panels) are subject to a levy that is passed on to consumers through the retail price and may be returned as waste for a 50% refund of the levy. Additionally, the <i>Ozone Layer Protection Act</i> is incidentally relevant to bulky waste that contains ozone depleting substances.</p>
<p><u><i>Public Health Act (2008 Revised Edition), Cap 28.36</i></u></p>	<p><u>Public Health Regulations (as at 2008) amended by Waste Operations and Services Act 2009 and Waste Management Act 2017</u></p>	<p>The <i>Public Health Act</i> is a brief law that provides for the making of regulations on a number of public health matters relevant to the priority waste streams. Many appear to have been retained since the law was first made in 1926 (s 3). It refers, for example, to such things as ‘latrines, dustbins and drains’, ‘scavenging, cleaning, and disinfecting’, ‘the removal and disposal of night-soil and house refuse’ and ‘the abatement of nuisances injurious to public health’.</p>
		<p>The Public Health Regulations cover a range of sanitary matters, including a prohibition on the depositing of ‘any empty tin, bottle, or other receptacle in any street, road, or other public place’ (r 10). As amended by the <i>Waste Management Act</i>, the</p>

Legislation	Regulations	Description
		<i>Public Health Regulations</i> also require ‘garbage and rubbish’ to be placed in tins and covered with fly-proof covers, put out for collection (r 14). Regulations made under the <i>Public Health Act</i> and administered by the MoH address the disinfection of ‘any boat, vessel or building or anything therein that has been exposed to infection’ (r 24). It does not address medical or healthcare waste.
<u><i>Pesticides Act (2008 Revised Edition), Cap 28.28</i></u>	None identified.	An act to control the importation and use of pesticides.
<u><i>Customs Revenue and Border Protection Act 2014</i></u>	None identified.	An Act to reform and modernize the law relating to customs controls and enforcement, and provide for revenue administration, border management, trade and travel facilitation, security, and related purposes.
<u><i>Falekaupule Act/Local Government Act (2008 Revised Edition), Cap 4.08</i></u>	Waste By-Laws (English language version not available).	The <i>Falekaupule Act</i> regulates the composition, operation, and functions of local governance. All islands are governed by a traditional council of elders, the Falekaupule, a law-making body with powers to make by-laws (referred to with the spelling ‘bye-laws’ in the legislation). The Kaupule is the executive arm of the Falekaupule, administering island affairs on behalf of the Falekaupule, for each of Tuvalu’s nine islands.
<u><i>Climate Change Resilience Act 2019</i></u>	None identified.	The <i>Climate Change Resilience Act 2019</i> is, as the name suggests, focussed on addressing issues related to climate change. One of the stated policy objectives could, however, have broader relevance to disasters. This objective, stated in section 6, is ‘to build the resilience of Tuvalu’s infrastructure, built environment and communities through effective adaptation and disaster preparedness actions’.
<u><i>Quarantine Act (2008 Revised Edition) Cap 28.44</i></u>	<u>Quarantine (Maritime and Aerial) Regulations (2008 Revised Edition) Cap 28.44.22</u>	In this Act quarantine has relation to measures for the inspection, exclusion, detention, observation, segregation, isolation, protection, treatment, sanitary regulation and disinfection of vessels, persons, goods, and things and having as their object the prevention of the introduction or spread of diseases or pests affecting man.

Additional legislation of relevance for the administration and enforcement of waste-related laws in Tuvalu includes:

- laws concerning the interpretation and enforcement of legislation and
- the jurisdiction of courts such as the Magistrates’ Court.

Annex 5: MEA Reporting

Reporting requirements under relevant MEAs

The relevant MEAs for the PacWastePlus project are:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention);
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention);
- Minamata Convention on Mercury (Minamata Convention); and
- Convention to ban the Importation of Hazardous and Radioactive Wastes into Forum Island Countries and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific Region (Waigani Convention).

These MEAs establish requirements for countries which are party to them to provide certain notifications, share information and produce national reports on their implementation of the conventions. Table 12 below summarises the key notification, information and reporting requirements for each of the relevant MEAs.

Based on the information summarised in Table 3, compliance with these requirements was coded on a five-point scale (with 0 as no data), as follows:

- **5** – high compliance, e.g., all or majority of national reports provided, relevant national authorities designated and updated, all necessary notifications and information provided.
- **4** – medium-to-high compliance, e.g., most national reports provided, relevant national authorities designated, most notifications and information provided.
- **3** – medium compliance, e.g., some national reports provided, some national authorities designated, some notifications and information provided.
- **2** – low-to-medium compliance, e.g., few national reports provided, national authorities not designated or updated, few relevant notifications and information provided.
- **1** – low compliance, e.g., no evidence of national reporting, national authorities not designated, no notifications or information provided.

In some cases, the assessment of reporting compliance was preliminary, for instance, because a particular MEA only recently came into effect for a particular country. An average compliance score was calculated overall based on individual scores for different MEAs for each participating country. This data suggests that participating countries' level of compliance with reporting, information sharing and notification requirements under relevant MEAs tends to increase based on the number of those MEAs to which they are party, although it is noted this is a correlation only.

This trend may arise because countries are able to transfer learning and capacity developed for reporting and information exchange under one treaty to another related treaty. It may also reflect the fact that joining particular MEAs gives countries access to capacity building resources and support under those treaties that has a positive effect for their reporting compliance across other treaties they are party to.

Table 12: Notification, information sharing and reporting requirements of MEAs

MEA	OBJECTIVE	NOTIFICATION REQUIREMENTS	INFORMATION SHARING	REPORTING
Basel Convention	<p>To protect, by strict control, human health and the environment against the adverse effects which may result from the generation, management and transboundary movement of hazardous wastes and other wastes (preamble).</p> <p>Ban Amendment (in force 5 Dec 2019) prohibits all transboundary movements of hazardous wastes from OECD countries to developing country parties.</p>	<p>Parties must notify Secretariat of wastes considered hazardous under national legislation and update as appropriate (Art. 3)</p> <p>Obligation to designate one or more competent authorities (which receive notifications of movements of hazardous wastes) and one focal point (responsible for transmitting decision on import bans) (Art 5.1).</p>	<p>Provision of information to other parties on import bans (Art.4 and Art. 13).</p>	<p>Obligation for annual national reports (Art. 13(3)).</p>
Stockholm Convention	<p>Mindful of the precautionary approach, to protect human health and the environment from persistent organic pollutants (Art. 1).</p>	<p>Notifications to Secretariat for registration of specific exemptions for import/ export (Art. 4)</p> <p>Obligation to designate national focal point for information exchange Art. 9(3) –</p>	<p>Obligation to develop and transmit to Conference of Parties a national implementation plan (NIP), and to review and update plan, as appropriate, on a periodic basis (Art. 7).</p>	<p>Article 15 requires periodic reporting on national implementation measures. At the 1st Conference of the Parties, it was decided that national reports should be submitted every four years).</p> <p>Four reporting cycles since convention entered into force (2006, 2010, 2014, 2018). Fourth report was required to be submitted by 31 Aug 2018.</p>

MEA	OBJECTIVE	NOTIFICATION REQUIREMENTS	INFORMATION SHARING	REPORTING
Rotterdam Convention	To promote shared responsibility and cooperative efforts among parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to parties (Art. 1).	<p>Parties must designate one or more national authorities authorised to act on the country's behalf in performance of the administrative functions required by the Convention. These details are to be notified to the Secretariat no later than the date of entry into force of the Convention for that party and any changes are to be notified 'forthwith' (Art. 4).</p> <p>Parties required to notify the Secretariat of new or existing 'final regulatory actions' banning or severely restricting a chemical e.g., pesticide or industrial chemical regulated by the Convention (Art. 5).</p> <p>Notifications of export of listed chemicals (Art. 13).</p>	Obligations in respect of chemicals listed in Annex III, include notifications to the Secretariat of the country's proposed response for future imports (e.g., decision to prohibit, allow, allow with conditions). Should be accompanied by details of legislative or administrative measures on which it is based (Art. 10).	No specific requirement for national reporting.
Minamata Convention	To protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds (Art. 1).	<p>Notifications regarding export of mercury (Art. 3).</p> <p>Requirement for designation of national focal point for information exchange and notifications under article 3 (Art. 17).</p>	Discretionary obligation, following an initial assessment, to develop implementation plan and transmit to Secretariat (Art. 21).	Obligation to report on measures taken for implementation (Art. 21). Pursuant to decision of COP MC-1/8 on the Timing and format of reporting by the parties (2017), reporting is on a biennial basis with short form every 2 years and long form every 4 years.

MEA	OBJECTIVE	NOTIFICATION REQUIREMENTS	INFORMATION SHARING	REPORTING
Waigani Convention	To prohibit the importation of hazardous and radioactive wastes into Pacific Island developing countries and to facilitate environmentally sound management of such wastes (preamble).	<p>Obligation to notify Secretariat of wastes considered/ defined as hazardous wastes under legislation beyond those listed in Annex I and inform of any significant changes (Art. 3).</p> <p>Must designate one competent authority and one focal point (Art. 5).</p> <p>Notifications of transboundary movements of hazardous wastes (Art. 6).</p>	<p>Obligation to forward to Secretariat information on any illegal hazardous wastes import activity in jurisdiction (Art. 4).</p> <p>Obligation to provide information to Secretariat on changes to competent authorities/ focal points or changes to national definitions of hazardous wastes (Art. 7).</p>	<p>Deadline for 1st biennial short report 31 Dec 2019, 1st long report 31 Dec 2021.</p> <p>Requirement to submit ‘such reports as COP may require’ regarding hazardous wastes generated in jurisdiction (Art. 4).</p> <p>At its Second Meeting in 2004, the COP agreed that Reporting and Transmission of Information forms should be filled out annually by parties and submitted to SPREP in its role as the Convention Secretariat. Parties were requested to begin reporting starting at the 2004 calendar year.</p>

Annex 6: Models and Concepts for Waste Management

There are a number of general models and concepts that inform contemporary waste management regulation and practice. These models often require quite significant supporting institutional and economic infrastructure that may not be in place or possible in many participating countries. Adopting these models may, therefore, be a long-term strategic goal rather than an immediate policy priority for nations.

The Waste Hierarchy

The generally accepted model for waste management that appears in the strategies of a number of countries in the Pacific region, is the 'waste hierarchy' model.

The aims of the hierarchy are:

- To generate as little waste as possible in the first place; and
- To extract the maximum practical benefit from the waste that is still produced.

The waste hierarchy suggests that as a priority order in waste management legislation and policy, governments should pursue waste avoidance, reduction (prevention or minimisation), re-use, recycling, and other recovery (e.g., waste-to-energy) (see Figure 1). The hierarchy dictates that the last option is disposal for end-of-life products.



Figure 1: Waste hierarchy (Creative Commons Licence BY-SA 3.0)

The Circular Economy

The 'circular economy' is also increasingly regarded as relevant to waste management legislation and policy. A 'circular economy' is one that values resources by keeping products and materials in use for as long as possible. This contrasts with a linear economy – take, make and dispose – approach. In waste management, this means placing a value on re-use and recycling, with the aim of zero waste.

Related to the circular economy are producer responsibility approaches, where producers are required, to design and make products that are recoverable, or recyclable, and accept the return of waste produced by their products. Producer responsibility can be encouraged by importing countries via legislative mechanisms, such as levies on imported products that can be recycled at the end of their operational life.

Environmental Models

These newer policy models sit alongside other general environmental models for managing waste safely and preventing waste pollution. These models may adopt tools such as EIA for waste generating activities, permitting, or licensing of waste management facilities, regulation of waste collection and offences for harmful actions with respect to waste such as littering or dumping, as well as incentives to segregate and separate wastes. Few of the participating countries, however, have extensive testing, monitoring, and tracking measures in their waste management legislation to support the successful operation of these models. Effective compliance and enforcement of standards are also necessary.

The model used to formulate the waste management legislative framework will necessarily influence the efforts and input needed to manage not only waste, but the legislation and the government's required management:

- Different types of legislative models can be adopted to give effect to different types of policy objectives. In turn these different models require differing levels of institutional support and administrative arrangements to make them work.
- Operation, regulation, and enforcement are distinct functions that can be divided among different agencies. Sometimes these roles are divided among public and private bodies, but in some cases, they are all the responsibility of government or semi-public entities. All these functions may involve the community in different ways, such as providing information to the community and involving the community in enforcement activities.

Table 13 summarises, in general terms, different kinds of legislative models for waste management, the overall policy objectives they relate to, and the key institutional underpinning required for their administration and operation, as well as examples drawn from the waste-related laws of the participating countries.

Table 14 describes how the existing and pipeline waste management legislation of participating countries maps against these general models.

Table 13: Legislative models and institutional requirements

LEGISLATIVE MODEL	RELATED POLICY GOAL(S)	INSTITUTIONAL REQUIREMENTS	EXAMPLES
<p>Dedicated waste management legislation</p> <ul style="list-style-type: none"> • Definitions of waste streams /other waste as prescribed by regulation • Designation of responsibilities for waste management • Standards/protocols for collection, treatment, storage/ disposal • Waste licencing/ permitting of waste operators (OHS/safe handling) • Audit and monitoring provisions • Sustainable financing mechanisms, e.g., levies/ charges • Enforcement provisions and incentive-based regulation 	<ul style="list-style-type: none"> • Waste reduction / prevention • Re-use, Recycling, Recovery • Identification and achievement of waste reduction targets • Safe handling, storage, and disposal • Minimising harm to environment and people • Sustainable financing (e.g., user-pays / polluter-pays; extended producer responsibility) • Incentivising behavioural change, including re-use, and recycling • Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> • Clear designations of responsibility • Inter-agency cooperative approach • Cooperation between different levels of government • Supporting ‘soft’ law instruments • Staffing / resourcing for implementation, monitoring and enforcement • Ongoing access to information; technical and policy setting • Support for storage, recovery, and disposal • Community / private sector consultation 	<ul style="list-style-type: none"> • <i>Waste Management Acts</i> in Samoa, Tonga, Tuvalu, and Vanuatu • Proposed Solid and Hazardous waste legislation in Cook Islands
<p>Regulation of specific waste streams under environment protection legislation e.g., solid waste, bulky waste, organic waste, recyclables, plastics, disaster waste, wastewater [EPAct]</p> <ul style="list-style-type: none"> • Definitions of waste streams • Provisions re storage, collection, segregation, and disposal of waste • Technical standards/ specialist implementation • Enforcement provisions 	<ul style="list-style-type: none"> • Effective / efficient waste management • Minimising harm to environment and people • Sustainable financing • Comprehensive Waste Collection • Improvement of waste sorting and diversion from landfill • Recycling; Recovery • Minimising waste pollution and human health risks • Hazard reduction and climate change adaptation 	<ul style="list-style-type: none"> • Clear designations of responsibility • Inter-agency cooperative approach • Supporting ‘soft’ law instruments • Staffing / resourcing for implementation, monitoring and enforcement • Ongoing access to information • Support for secure storage, recovery and disposal • Community / private sector consultation 	<ul style="list-style-type: none"> • <i>Solid Waste Management Regulations</i> in Yap State (the FSM), Palau and the RMI • <i>Environment Management (Waste Disposal and Recycling) Regulations</i> in Fiji • Proposed <i>Waste Management Bill 2016</i> to amend <i>Environment Act</i> in Solomon Islands
<p>Regulation of hazardous waste e.g., healthcare waste, asbestos, e-waste, wastewater [Haz waste]</p> <ul style="list-style-type: none"> • Identification of hazard sources • Separation and diversion from landfill • Registering, tracking, and monitoring • Staff training and capacity building 	<ul style="list-style-type: none"> • Effective / efficient waste management • Waste segregation • Safe handling, regulated storage, and out of country disposal, as necessary • Minimising pollution harm to environment and people • Utilisation of best practice technologies, with implementation guidelines, e.g., healthcare waste incineration 	<ul style="list-style-type: none"> • Clear designations of responsibility • Inter-agency cooperative approach • Cooperation between different levels of government (local operational to national) • Supporting ‘soft’ law instruments • Staffing / resourcing for implementation, monitoring and enforcement 	<ul style="list-style-type: none"> • <i>Hazardous Wastes and Chemicals Act</i> in Tonga • <i>Solid Waste Management Regulations</i> in Palau and the RMI • Healthcare waste management plans in Samoa, PNG • Asbestos disposal guidelines - PNG • Regulations / guidelines under OHS legislation in Fiji, Samoa, and Niue.

LEGISLATIVE MODEL	RELATED POLICY GOAL(S)	INSTITUTIONAL REQUIREMENTS	EXAMPLES
<ul style="list-style-type: none"> Licensing/permitting (OHS, regulated handling and disposal) Targeted fee/ charges basis to reflect risk management requirements Compliance with MEA obligations 	<ul style="list-style-type: none"> Building capacity to deal with disasters/ pandemics 	<ul style="list-style-type: none"> Ongoing access to information Support for secure storage, recovery, and environmentally sustainable disposal 	<ul style="list-style-type: none"> Specific part in dedicated waste legislation in Tuvalu <i>Ozone Layer Protection Act 2010 [2014]</i> in Vanuatu
<p>Sustainable waste-financing systems [Sus fin/CDL]</p> <p>Examples include:</p> <ul style="list-style-type: none"> Container deposit system; recycling /re-use deposit fees Levy on items at customs point e.g., beverage containers/cans, lead acid batteries, PET bottles Advance disposal fee at customs point Scaled landfill fees i.e., higher for recyclables Separate, dedicated fund with regulations. for management and distribution of funds; independent audit functions 	<ul style="list-style-type: none"> Waste reduction / prevention Re-use, Recycling, Recovery Effective / efficient waste management Supporting waste segregation Minimising waste pollution Sustainable financing (e.g., user-pays / polluter-pays; extended producer responsibility) Incentivising behavioural change e.g., through % of amount paid to consumers as refund after use; % paid to support recycling of items Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> Inter-agency cooperative approach and cooperation b/n national and provincial/ local government Reservation of fund from consolidated revenue with transparency and independent oversight Staffing / resourcing for implementation at customs point; monitoring and compliance Ongoing access to information Support for storage, re-use, recovery, and disposal (e.g., export fees) Community / private sector consultation Public education - communications expertise and resources 	<ul style="list-style-type: none"> Container deposit schemes in the FSM (except Chuuk), Fiji, Kiribati, Palau Waste levy and select refund scheme on wide range of products in Tuvalu, including but not limited to waste that can be recycled/ recovered Cook Islands – advance disposal fee RMI - Waste Fund
<p>Prohibition on import of certain items [Ban]</p> <ul style="list-style-type: none"> Most commonly in the context of plastics e.g., single-use plastic bags, Styrofoam containers, disposable straws/cutlery. May take form of levy rather than outright prohibition Applicable to other high risk, waste-generating products, or chemicals e.g., asbestos sheeting, POPs; biosecurity 	<ul style="list-style-type: none"> Waste reduction / prevention Effective / efficient waste management Minimising waste pollution, health, and environmental risks Meeting International waste management obligations Supporting in-country industries such as tourism and hospitality Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> Clear designations of responsibility and authorisations Inter-agency cooperative approach Supporting 'soft' law instruments Staffing / resourcing for implementation at customs point; in-country monitoring and compliance Ongoing access to information Storage at customs point, as necessary, and disposal Community / private sector consultation/ education - communications expertise and resources 	<ul style="list-style-type: none"> Various prohibitions enacted in the FSM, Fiji, Kiribati, Niue, Palau, PNG, RMI, Samoa, Tonga, Tuvalu, and Vanuatu. Proposed in the Cook Islands for single-use plastics. 'Zero' plastic initiative in Timor-Leste.

LEGISLATIVE MODEL	RELATED POLICY GOAL(S)	INSTITUTIONAL REQUIREMENTS	EXAMPLES
<ul style="list-style-type: none"> Typically combined with in-country prohibition on manufacture, sale, and distribution <p>Development control / impact assessment regimes / licences [EIA]</p> <ul style="list-style-type: none"> Waste regulation as component of environmental legislation with regulations. for project EIA to inform development consents and pollution /discharge controls to minimise env. impacts. Broad powers to impose waste-relevant conditions on project and operational (pollution control) licences/permits Supporting regulations - specific regulations for identified wastes/ risk contexts Testing, monitoring & reporting requirements, offence provisions 	<ul style="list-style-type: none"> Waste reduction / prevention Effective / efficient waste management Safe handling, storage, and disposal Minimising waste pollution, health and environmental risks including siting of landfills Implement strategic planning objectives e.g., spatial controls to divert wastewater from environmentally sensitive areas Polluter-pays and targeted discharge licences/fees Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> Clear designations of responsibility and authorisations Inter-agency and intergovernmental cooperative approach Technical expertise to set standards, and evaluation of EIAs and pollution controls Staffing / resourcing for implementation, testing/monitoring, and enforcement Capacity building/OHS for operational staff e.g., at landfills to control pollution Ongoing access to information including technical and scientific standards and BAT Community / private sector consultation/ joint development of codes of practice 	<ul style="list-style-type: none"> Environmental and / or planning legislation in Fiji, Kiribati, Niue, Samoa, PNG, Solomon Islands, RMI Coverage of major developments in Tuvalu <i>Waste Management Act</i> Solomon Islands Water Authority (Catchment Areas) Regulation restricts introduction of pollutant or wastes into catchment areas.
<p>Compliance and enforcement/ changing behaviour [Comp/enforce]</p> <ul style="list-style-type: none"> Civil and criminal offences, and administrative penalties Compliance tools e.g., littering spot fines, clean up notices, reputational penalties e.g., non-compliance notices Offence hierarchy and graded penalties (individuals vs corporations; single vs recurring offences); negotiated penalties Identified role for courts/tribunals and case reporting Community awareness programs 	<ul style="list-style-type: none"> Waste reduction / prevention Effective / efficient waste management Minimising pollution, health, and environmental risks Waste Financing (e.g., user-pays / polluter-pays) where e.g., fines revert to waste management Incentivising behavioural change in industry and community Supporting new regulatory models e.g., prohibitions on single use plastics Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> Clear designations of responsibility for enforcement, and delegations of powers as necessary e.g., to police, municipal officers Inter-agency and intergovernmental cooperative approach, including with legal officials for prosecutions/ civil actions Enhanced staffing/resourcing for monitoring, compliance and enforcement Interagency training and capacity building programs Ongoing access to information 	<p>All participating countries, e.g.</p> <ul style="list-style-type: none"> RMI - EPA cease and desist orders; imposition of civil penalties; institution of civil proceedings; and any other action authorised under 'any other law'. Littering offences and offences under related legislation e.g., Nauru, Vanuatu Kiribati - Duty to clean-up environment PNG - Duty to prevent significant environmental harm and offences Samoa - community involvement in waste management, including

LEGISLATIVE MODEL	RELATED POLICY GOAL(S)	INSTITUTIONAL REQUIREMENTS	EXAMPLES
<p>Recovery of waste costs from private sector/polluter [Private/polluter]</p> <ul style="list-style-type: none"> • Packages of measures under legislation and ‘soft law’ • Tourism: Information and education; re-useable items; ‘green fee’ as arrival or departure tax; industry responsibility to reduce waste • Extended producer responsibility requirements / standards in legislation and ‘soft law’ • Consumer awareness programs e.g., packaging 	<ul style="list-style-type: none"> • Waste reduction / prevention • Effective / efficient waste management • Minimising waste pollution and reducing environmental and health risks • Sustainable financing (e.g., user-pays / polluter-pays) • Incentivising behavioural change in industry, consumers and community • Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> • Integration with traditional/ community-based authorities, esp. in rural areas • Community / private sector consultation and compliance partnerships (soft law) • Clear designations of responsibility and cooperation between public and private sector • Monitoring and facilitation of compliance directed at ‘consumers’ • Government procurement regulations/ guidelines • Management and distribution of funds, with transparency and audit regulations. • Community / private sector consultation and partnerships • Public education - communications expertise and resources 	<p>making of by-laws and community programs and initiatives</p> <ul style="list-style-type: none"> • Palau – responsible tourism measures • PNG – mining contractor responsibility to take back their waste • RMI - Majuro Atoll Waste Company (re tourist input) • Nauru – natural disaster assistance • Samoa -<i>Tourism Development Act 2012</i> (minimise waste) • Tuvalu - Tourism departure fee • Cook Islands – advance disposal fee
<p>Information provision, planning and reporting on waste issues [Planning/reporting]</p> <ul style="list-style-type: none"> • Provisions in legislation for publicly available waste management information • Strategic/priority and target-setting in legislation or regulation • Mandatory reporting by government agencies and waste industry on key targets and operations • Waste audits and reporting • Requirements for public consultation/ education 	<ul style="list-style-type: none"> • Waste reduction / prevention • Efficient and effective waste management • Incentivising behavioural change in industry, consumers, and community • Supporting cultural values in terrestrial and marine environments 	<ul style="list-style-type: none"> • Designations of responsibility for planning and reporting • Inter-agency and intergovernmental cooperative approach • Staffing/resourcing/training for community and industry programs • Ongoing access to information • Community and industry consultation 	<ul style="list-style-type: none"> • Examples of State of the Environment reports in FSM and Palau • Vanuatu – National Statistics Office waste reporting • Tuvalu waste audits

Table 14: Legislative models in participating countries' waste laws

MODEL	COOK ISLANDS	FSM	FIJI	KIRIBATI	NAURU	NIUE	PALAU	PNG	RMI	SAMOA	SOLOMON ISLANDS	TIMOR-LESTE	TONGA	TUVALU	VANUATU
DEDICATED WASTE MANAGEMENT LEGISLATION															
REGULATION OF SPECIFIC WASTE STREAMS UNDER ENVIRONMENT PROTECTION LEGISLATION.															
REGULATION OF HAZARDOUS															
SUSTAINABLE WASTE-FINANCING SYSTEMS															
PROHIBITION/LEVY ON IMPORT OF CERTAIN ITEMS															
DEVELOPMENT CONTROL / IMPACT ASSESSMENT REGIMES / LICENCES															
COMPLIANCE AND ENFORCEMENT/ CHANGING BEHAVIOUR															
RECOVERY OF WASTE COSTS FROM PRIVATE SECTOR/POLLUTER															
INFORMATION PROVISION, PLANNING AND REPORTING ON WASTE ISSUES															

Not present in existing legislation

Present in existing legislation

Present in pipeline legislation



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