

Inventory of Tonga's environment-related laws

By Graham Powell

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Acronyms

EEZ	Exclusive Economic Zone
EIA	environmental impact assessments
CBD	Convention on Biological Diversity
CITES	Convention on the Trade in
DofE	Department of Environment
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
IWP	International Waters Programme
LMOs	living modified organisms
MARPOL 73/78	International Convention for the Prevention of Pollution at Sea
SPREP	Secretariat of the Pacific Regional Environment Programme
TOP	Tongan paanga
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Program
WTO	World Trade Organisation



Figure 1 Location map of Tonga

1 Background

1.1 The International Waters Project (IWP)

The International Waters Project (IWP) is funded by the Global Environment Facility and executed by the Secretariat of the Pacific Regional Environment Programme (SPREP) in partnership with 14 Pacific Island countries. The objective of the project is to help participating countries improve the management of their environment and coastal resources by supporting pilot projects in each participating country. These pilot projects will assist countries (communities and governments) to identify and address the “root causes” of environmental degradation and to design and implement possible solutions at the local and national level. Community based activities may include “low tech” solutions to addressing environmental degradation, while national level activities may involve activities that have a broader or more strategic focus.

1.2 Objectives

In Tonga, IWP targets pilot projects that address waste management with a view to improving freshwater and marine resources. To facilitate the IWP in Tonga, the Government of Tonga, through the Department of Environment and the IWP Project Coordination Unit, based at SPREP, have commissioned this inventory of environment related legislation and institutions in Tonga.

The stated objectives are to:

- identify legislative and institutional arrangements for the management of environmental resources in Tonga; and
- assess identified legislation and institutions and draft proposed new legislation as appropriate.

2 Background references

This inventory of legislation has drawn extensively on the Tonga Environmental Legislation Review by Mere Pulea (now Mrs Justice Pulea). This review was completed in 1992 but remains of great use and relevance today (Pulea 1992).

Other references consulted during this inventory include the Profile of Institutional Elements of the Environment Sector in Tonga of Relevance to the IWP, originally prepared by Netatua Prescott in June 2003 (Prescott 2003).

3 Scope and methodology

3.1 Current and proposed legislation

This inventory of Tonga’s legislation includes both current laws and those that are at an advanced stage of formulation and drafting, but which have not yet been enacted. Current laws are called “Acts”. Proposed laws are termed “Bills”. Regulations that have been drafted but not promulgated are noted as “Draft” Regulations.

3.2 Assessing the relevance of laws to this inventory

It is common that legislative reviews applying to particular areas of the law require a subjective determination as to the relevance of particular laws, and therefore as to their inclusion in such an inventory. In this case however, the basic objectives of the IWP are clearly stated and are not difficult to apply in the context of this inventory.

These objectives centre the focus of this inventory on the following areas of the law.

- Improved management of the environment, with a particular focus on the management of coastal resources.
- Identification of “root causes” of environmental degradation.
- Implementation of solutions at local and national level.
- An emphasis on community involvement in environment management.
- Addressing problems associated with waste management and the effects on freshwater and marine resources

These form the principal basis of determining the relevance of any particular law to this inventory. As noted above, however, a primary objective of this inventory is to comprehensively consider all of Tonga’s laws and proposed laws with relevance to the environment. To achieve this, the full range of environment related laws have been considered and are noted in this report. To make this report readable and assist in its practical application the laws are included under a range of categories:

- matters relating to constitutional authority and jurisdiction;
- administrative arrangements affecting the management of the environment;
- environmental protection and management;
- protection of human health;
- natural resources;
- control of transboundary movements;
- recognition and protection of culture and traditional institutions and values;
- public awareness and participation (including the involvement of the private sector);
- other regulatory regimes; and
- regional and international cooperation and harmonisation of arrangements.

3.3 Key legislative matters identified in this inventory

The following information is provided in relation to each environment-related law:

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

The relevant provisions of each law are then stated. In most cases the individual sections are considered. In some cases the relevant parts of the law are noted and a number of sections considered in this manner.

3.4 Utilising and updating this inventory

The methodology outlined above permits the inventory to be easily kept current by making periodic changes, including:

- deleting any laws that have been repealed;
- adding any new laws; and
- noting any amendments made to a law, either as additions to, deletions from or changes made to the law.

If this inventory is periodically updated in this way, it will remain relevant and can be used for an extended period of time as:

- an up-to-date account of the current state of Tonga’s environment related laws;
- the basis of “country reports” to meetings of the parties to international environment conventions;
- a comprehensive review of environment-related laws in Tonga for the purposes of implementing international and regional environment conventions and programmes; and
- a tool to be used by consultants implementing aid-funded programmes or domestic law reform initiatives in Tonga relevant to the environment and natural resources.

4 Inventory of relevant legislation

4.1 *Matters relating to constitutional authority and jurisdiction*

THE ACT OF THE CONSTITUTION OF TONGA (CAP. 2)

Year Passed	1875
Date of Commencement	4 November 1875
Amended	1912, 1914, 1916, 1918, 1927, 1942, 1951, 1953, 1955, 1961, 1966, 1967, 1971, 1972, 1973, 1974, 1976, 1977, 1978, 1979, 1981, 1982, 1984, (consolidated in 1988)
Repealed the following laws	Nil

Objective

To make comprehensive provision for the constitutional authority of the Kingdom of Tonga and for the governance of the Kingdom.

Relevance to this review

Environment related issues do not feature prominently in this Constitution, but certain provisions have relevance in this context. There are detailed matters of legislative process that have particular relevance.

Substance of key provisions

Part I Makes provision for the declaration of certain basic rights and freedoms.

- Section 4 There shall be only one law for chiefs and commoners and for Tongans and non-Tongans.
- Section 6 The Sabbath Day is to be kept holy and no trade or business may be practiced on the Sabbath. Agreements made on the Sabbath are null and void and of no legal effect.
- Section 17 The King governs for the good of all people and the government is to be impartial.
- Section 18 Retrospective laws may not deprive rights that exist at the time they are made.
- Part II** Makes comprehensive provision for the government of the Kingdom, including provisions relating to the King and throne, the Privy Council, the Cabinet, the Legislative Assembly and the Judiciary.
- Section 39 The King may make treaties with Foreign States if they are in accordance with the laws of the Kingdom.
- Section 52 Each Cabinet Minister shall have an office in the capital of the Kingdom and must “satisfy himself” that the subordinates of his department faithfully perform their duties.
- Section 54 Governors of Ha’apai and Vava’u are to be appointed and hold seats in the Legislative Assembly.
- Section 55 Governors may not enact any law but are responsible for enforcing the laws in their districts.
- Section 56 The Legislative Assembly shall comprise both nobles and representatives and may enact laws. Bills must be read and voted for by a majority three times and are to be presented to the King. Upon receiving the sanction and signature of the King laws take effect upon publication.
- Section 80 The wording for enacting laws is provided to be: “Be it enacted by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:”.
- Section 81 Every law shall embrace only one subject that shall be expressed by its title. This is to “avoid confusion”.
- Part III** Makes detailed provision in relation to land.
- Section 104 All land is the property of the King. The King may grant hereditary estates to nobles and titular chiefs. No land may be sold by any person. Lands may be leased in accordance with the Constitution and mortgaged in accordance with the Land Act.
- Section 105 The term of leases is to be determined by Cabinet but no lease may exceed 99 years without the consent of His Majesty in Council. Cabinet determines rents for Government lands.
- Section 108 No lease of town lands may be given to religious bodies unless they have 30 adult members in that town. Church lands may not be used for any purpose other than religious purposes and may not be sub-let without the prior consent of Cabinet.
- Section 109 All beach frontage in the Kingdom belongs to the Crown from 50 feet above the high water mark. The Government may lease any portion of beach frontage for the purpose of erecting a store, jetty or wharf.
- Section 110 All leases are to be signed by the King or the Minister of Lands and no lease or transfer will be valid unless it is registered in the office of the Minister for Lands.
- Section 111 Detailed provision is made in relation to the law of succession and the rights of persons to inherit property.

Section 114 No lease, sub-lease or transfer of a lease is to be granted unless approved by Cabinet (if less than 99 years) or by the Privy Council. No consent shall be given to a lease by a widow of the land of her deceased husband.

INTERPRETATION ACT (CAP. 1)

Year Passed	1926
Date of Commencement	29 July 1926
Amended	1942, 1945, 1952, 1960, 1971, 1972, 1974, 1978 (3 amendments), 1985, 1986
Repealed the following laws	No laws repealed

Objective

To shorten and clarify the language used in Tonga’s laws.

Relevance to this review

This Act has relevance as it clarifies a number of jurisdictional matters.

Substance of key provisions

- Section 2 Some definitions to be given to words used in any law have possible relevance. These include “district”, “land”, “public officer” and “ship”.
- Section 10 Fines for breaches of rules are limited to TOP 1 unless a contrary provision is stipulated in the regulation making power under the relevant law.
- Section 11 There is a presumption that laws do not bind the Crown unless the intention for the Crown to be bound is expressly stated.
- Section 21 Where a person is charged with an offence and the English and Tongan versions of the provision of the law making the offence differ, the Tongan version shall be applied in determining guilt.
- Section 31 Offences under all laws apply to corporations, unless a contrary intention appears in the law. Monetary penalties may be imposed in the place of terms of imprisonment.
- Section 32 The “extent and boundaries” and “limits” of Tonga’s jurisdiction are defined to be the total area bounded by latitude 15° and 23.5° S and longitude 173° and 177° W, and they are bounded by the Proclamation made on 15 June 1972 affirming and proclaiming Teleki Tokelau and Teleki Tonga part of the Kingdom.
- Section 34 All Acts and laws are to be read and construed subject to the Constitution.

TERRITORIAL SEAS AND EXCLUSIVE ECONOMIC ZONE ACT 1978

This law was never brought in to effect and for this reason it was omitted from the 1988 Revised Edition of the Laws of Tonga.

CONTINENTAL SHELF ACT (CAP. 63)

Year Passed	1970
Date of Commencement	22 nd December 1970
Amended	No amendments
Repealed the following laws	Nil
Administered by the Office of the Prime Minister	

Objective

To make provision for the protection, exploration and exploitation of the continental shelf and for the prevention of pollution from activities on the continental shelf.

Relevance to this review

The management of the continental shelf has important environmental considerations. The provisions dealing with prevention of pollution have clear relevance.

Substance of key provisions

- Section 2 Applies the provisions of the Petroleum Mining Act and the Minerals Act to the area of the continental shelf. Areas of the continental shelf may be made “designated areas” by Order-in-Council.
- Section 3 The Prime Minister may make orders preventing ships from entering designated areas for the purpose of protecting installations.
- Section 4 The criminal and civil laws apply to any act that takes place on an installation in a designated area, or within 500 metres of such an installation.
- Section 5 No person may affect any part of the seabed in a designated area without the consent of the Prime Minister.
- Section 6 Prescribes offences for breaching this Act or any condition imposed by the Prime Minister under the Act. The penalty is a fine not exceeding TOP 2,000.
- Section 7 Makes it an offence to discharge oil from a pipeline or from the exploration of the seabed in a designated area (other than from a ship). For the purposes of this section “oil” includes crude oil, fuel oil, lubricating oil and heavy diesel oil.
- Section 8 Makes it an offence to break or injure (sic) any submarine cable or pipeline.
- Section 9 The Prime Minister may with the approval of His Majesty in Council enter into agreements or grant licences for the exploration of the seabed or subsoil of a designated area.
- Section 10 Offences committed against this Act shall be deemed to have been committed within the limits of the Kingdom. Proceedings may be taken against a company and officers of the company if the offence was committed with their consent or connivance.

GOVERNMENT ACT (CAP.3)

Year Passed	1903
Date of Commencement	8 July 1903
Amended	1913 (2 amendments), 1914, 1915, 1916 (2 amendments), 1917, 1923 (2 amendments), 1924, 1927, 1930, 1942, 1945, 1953, 1972, 1979, 1981, 1988 (2 amendments)
Repealed the following laws	Nil

Objective

To make provision for the government of the Kingdom.

Relevance to this review

This law vests an important power in District Officers to make regulations that may have relevance to environment matters.

Substance of key provisions

Section 26 A District Officer may make regulations for the governing of his village plantations and other necessary matters relating to the welfare of the people of his village. Such regulations shall not become law until sanctioned by the Cabinet and confirmed by the signature of the Prime Minister. It shall be lawful for the District Officer to enforce those regulations in his town and whoever shall infringe any regulations so confirmed shall on conviction be liable to a fine not exceeding TOP 1.

A small number of regulations have been made under this section, including:

- Niuatoputapu Regulations, 1957, focused on planting certain numbers of crops in relation to certain seasons of the year;
- Leimatu'a, Faletoa and Mataika (from Vava'u) Regulations, 1958, focused on pigs (very similar to Nukunuku District Regulations of 2004);
- Tu'anuku, Longomapu, Tefisi, Taoa and Vaimalo (from Vava'u) Regulations of 1958, focused on crops; and
- Nukunuku Regulations, 2004, to regulate the keeping of pigs and ensuring that they do not roam around the village destroying other people's property.

4.2 Administrative arrangements affecting the management of the environment

ENVIRONMENT MANAGEMENT BILL 2005

Year Drafted	2002 (approved for submission to Parliament in 2005)
Repealed the following laws	Nil
To be administered by the Department of Environment	

Objective

To establish the Department of Environment to ensure the protection and proper management of the environment and the promotion of sustainable development.

Relevance to this review

This will become the legislative foundation for environmental management in Tonga.

Substance of key provisions

Clause 2 The definition of “sustainable development” balances the needs of the present generation with those of future generations.

Clause 3 Provides for the appointment of a Minister of Environment who shall be responsible for the administration of this Act.

Clause 4 The Department of Environment is continued which, subject to any direction given by the Minister, shall be responsible for the implementation of this Act and any other law for which it is given responsibility.

Clause 5 Provides for the appointment of a Director of Environment and other staff of the Department.

Clause 6 The objectives of the Act are stated. These include:

- To coordinate the role of government in relation to environment management
- To promote meaningful public involvement in relation to issues of environmental management
- To ensure the observance of Tonga’s international obligations in this context
- To promote the concept of sustainable development
- To facilitate assessments of environmental impacts
- To promote understanding, management, conservation and protection of biological diversity.

Clause 7 The functions of the Department are comprehensively stated, and include:

- liaising with other government departments;
- assisting government departments to meet their environmental obligations;
- advising the government on environment related matters;
- coordinating the government’s response to matters affecting the environment;
- preparing environment plans and policies and monitoring impacts on the environment;
- facilitating, conducting and participating in environmental research;
- promoting public awareness and education of environment related issues;
- facilitating the participation of NGOs in this context;
- carrying out all matters incidental to the observance of Tonga’s international environment obligations; and
- reviewing the environment-related laws in Tonga and assisting in their enforcement.

(Specific reference is made to the role of the Department in relation to climate change, ozone depletion, the movement of hazardous wastes, desertification and drought relief, preserving

wetlands, protecting endangered species, preserving the biological diversity and aspects of international waters.)

- Clause 8 The powers of the Minister are provided for.
- Clause 9 The powers of the Director are provided for.
- Clause 10 Provides for the appointment of environment officers.
- Clause 11 Prescribes the powers of environment officers.
- Part IV** Makes provision for the role of the Department in relation to Tonga's environment related international obligations.
- Clause 15 Provides for the appointment and roles of Environment Committees.
- Clause 16 Deals with monitoring environmental impacts.
- Clause 17 Provides a power for Environment Officers to issues Precautionary Notices.
- Clause 18 Provides a power for Environment Officer to issue notices to require that certain activities cease.
- Clause 19 Prescribes offences and penalties.
- Clause 20 A general regulation making power is provided for.
- Clause 21 There is also a power for the Minister to make emergency regulations.

DISTRICT AND TOWN OFFICERS ACT (CAP. 43)

Year Passed	1930
Date of Commencement	8 August 1930
Amended	1949, 1957 (2 amendments), 1958 (2 amendments), 1965, 1966, 1972, 1974, 1977, 1978, 1983, 1988
Repealed the following laws	Nil
Administered by the Office of the Prime Minister	

Objective

To provide for the appointment of District and Town Officers.

Relevance to this review

District and Town Officers may play a role in managing the environment in their respective areas.

Substance of key provisions

- Section 2 The Kingdom is divided into the districts specified in the Schedule.
- Section 3 The Minister for Lands is responsible for determining town boundaries.
- Section 4 Provision is made for the election of District Officers. District Officers are required to perform the functions listed in Schedule II and any other duties determined by the government.

Section 5 Provision is made for the election of Town Officers. Town Officers are required to perform the functions listed in Schedule III and any other duties assigned by the government.

Section 8 Provides that any breach of a provision of this Act or any regulation made under it may be punished by a fine not exceeding TOP 100. (In fact there is no regulation making power provided for in this Act).

Schedule II The duties of District Officers involve:

- Quarterly inspections of all towns and reporting on their sanitary condition
- Inspections of tax allotment every 6 months.
- Exercising the powers of inspectors under the Plant Quarantine Act.
- Inspecting business licences.
- Performing any other duties prescribed by law
- Reporting any breaches of the law to the Police
- Reporting to the Prime Minister (with copies provided to the Governors)
-

Schedule III The duties of Town Officers involve:

- Monthly reporting to the District Officer
- Inspection of tax allotment every 2 months
- Reporting any sudden deaths to the District Officer
- Announcing any fonos held under the Fono Act
- Assisting the District Officer

TOURIST ACT (CAP. 117)

Year Passed	1976
Date of Commencement	1 January 1977
Amended	1979
Repealed the following laws	Nil
Administered by the Tonga Visitors Bureau	

Objective

To control and regulate tourism by the establishment of an Advisory Board and by the introduction of a system of licensing tourist facilities.

Relevance to this review

While not directly empowered to enforce environment related issues, the Tonga Visitors Bureau has a vested interest in ensuring a clean and safe environment.

Substance of key provisions

Section 3 An advisory board known as the Tonga Tourist Board is established.

Section 4 The powers of the Minister include the responsibility for:

- Developing the tourist industry in a rational manner

- The preservation of the Tongan way of life, culture and language
- Ensuring that all tourist facilities and developments are planned for the improvement of amenities which are of benefit to the community as a whole
- Licensing and controlling accommodation, restaurants, travel agents, tour operators and other facilities
- Providing services and amenities for tourists and the public and to promote these
- Regulating and controlling the use and development of scenic attraction, recreational and sporting facilities both on land and sea
- Prescribing standards for accommodation, restaurants, tour operators etc.

Section 7 The Minister may grant licences under this Act and may impose conditions on any licence.

Part VII Establishes the Tonga Visitors Bureau.

Section 29 A general regulation making power is exercisable by the Minister with the consent of His Majesty in Council.

4.3 Environmental protection and management

4.3.1 General environment protection provisions

ENVIRONMENT MANAGEMENT BILL 2005

(Details are given in 4.2)

Clause 2 The definition of “sustainable development” balances the needs of the present generation with those of future generations.

Clause 6 The objectives of the Act are stated. These include:

- To coordinate the role of government in relation to environment management
- To promote meaningful public involvement in relation to issues of environmental management
- To ensure the observance of Tonga’s international obligations in this context
- To promote the concept of sustainable development
- To facilitate assessments of environmental impacts
- To promote understanding, management, conservation and protection of biological diversity.

Clause 7 The functions of the Department are comprehensively stated, and include

- Liaising with other government departments
- Assisting government departments to meet their environmental obligations
- Advising the government on environment related matters
- Coordinating the government’s response to matters affecting the environment
- Preparing environment plans and policies and monitoring impacts on the environment
- Facilitating, conducting and participating in environmental research
- Promoting public awareness and education of environment related issues
- Facilitating the participation of NGO’s in this context
- Doing all matters incidental to the observance of Tonga’s international environment obligations

- Reviewing the environment related laws in Tonga and assisting in their enforcement

Other provisions are noted in 4.2.

ENVIRONMENT IMPACT ASSESSMENT ACT 2003

Year Passed	2003
Date of Commencement	(Assent not ascertained)
Amended	No amendments
Repealed the following laws	Nil
Administered by the Department of Environment	

Objective

To provide for the application of environmental impact assessment to the planning of development projects within Tonga.

Relevance to this review

EIA is an important mechanism in effective environmental management.

Substance of key provisions

Section 2	Key definitions are “development activity”, “environment”, “major project” (listed in the Schedule), “natural resources” and “physical resources”.
Section 5	The responsibilities of the Minister to administer this Act may be delegated to the Director.
Part III	Makes comprehensive provision in relation to the assessment of environmental impacts.
Section 9	The Minister may determine that a project is to be a “major project”.
Section 13	An Environmental Assessment Committee is established.
Part IV	Prescribes a range of offences. Fines of up to TOP 20,000 and terms of imprisonment of up to 3 years may be imposed.
Section 24	The Minister with the consent of Cabinet may make regulations.

HEALTH SERVICES ACT 1991

(Details are given in 4.4)

Section 10 The Minister is empowered, inter alia, to provide a public health service charged with implementing the Public Health Act and other laws, and having specific responsibilities with respect to potable water, food hygiene, building standards, disease control, prevention of pollution, waste disposal and health and safety at work.

TOWN REGULATIONS ACT (CAP. 44)

Year Passed	1903
Date of Commencement	8 July 1903
Amended	1903, 1906, 1912, 1916 (2 amendments), 1922, 1930, 1933, 1944, 1965, 1974, 1981, 1988

Objective

To provide for good order in towns.

Relevance to this review

Many provisions of this old law have direct implications for the state of the environment in town areas.

Substance of key provisions

- Section 2 “Public place” is given a very broad definition.
- Section 3 Relatives of indigent persons may be prosecuted for failing to support and maintain their family member.
- Section 4 A male person over the age of 16 years may be prosecuted as a vagabond if he has no employment or has not planted sufficient food to feed himself.
- Section 5 It is an offence for a male person over the age of 16 years to fail to plant sufficient food to feed himself and his dependants.
- Section 6 Every male person must build a dwelling house on his allotment when he reaches the age of 21 years.
- Section 7 Houses must be inspected by the District Officer each year and he may order the owner to pull it down and re-build it if it is “in bad repair or badly drained or in a filthy condition or unfit to sleep in”.
- Section 8 Owners must cut, clean and sweep all growth (except cultivated plants) and the police must inspect all houses in this regard on the last Monday of February, April, June, August, October and December each year.
- Section 9 Throwing or leaving rubbish on government roads, public places, beaches or another person’s premises is an offence.
- Section 10 Live pigs and goats are prohibited in Nuku’alofa, Pangai and Neiafu.
- Section 11 It is an offence to fail to bury the carcass of a horse, cow, sheep, dog or other animal.
- Section 12 It is an offence to leave a dead animal on a public road, beach or other public place.
- Section 13 A traveller may drink a coconut found near a public road but it is an offence to take a coconut away without drinking it.
- Section 15 District Officers shall apportion the work of weeding common areas in a village amongst the residents of the village.
- Section 16 Members of every family must keep in order the cemetery of the village in which they reside.

ROADS ACT (CAP. 155)

Year Passed	1920
Date of Commencement	4 September 1920
Amended	1920, 1924, 1926, 1980
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To make provision in relation to public roads.

Relevance to this review

One aspect of this law concerns the obligation of landowners to keep roadsides clean and clear of vegetation.

Substance of key provisions

Section 9 Every occupier of lands adjoining or bordering a public road must keep the frontage cut and clean and cut down or lop away trees and shrubs overhanging the roadway. For a breach of this section a fine of 10 seniti for every tree not cut or every 18 metres of road frontage not cleared may be imposed.

4.3.2 Waste management issues

PUBLIC HEALTH ACT 1992

(Details are given in 4.4)

Section 15 The Minister may delegate any power conferred on him by this Act, except the power to make regulations.

Section 90 The waste management provisions of this law (Sections 91–97) relate only to towns, villages or areas which the Minister may from time to time determine by notice in the Gazette.

Section 91 The Minister shall make arrangements for the collection, transport and disposal of domestic, commercial and trade wastes.

Section 92 The Minister may make arrangements for the cleaning and efficient functioning of latrines, cesspits or any other receptacle for sewage and may charge the owner for these services.

Section 93 This section makes provision as follows:

- All owners and occupiers shall provide sufficient dustbins, with tight fitting lids, for the reception of garbage, and must keep them closed, clean and in good repair. They must be placed in an easily accessible position for collection.
- The Minister may provide dustbins to premises and these must be accepted and paid for.
- Waste must not be scattered near any premises nor heaped nor deposited around premises except in a dustbin.
- No person shall throw or deposit any garbage upon any roadway, vacant land, foreshore, or into any stream, creek, pond, well lake or the sea.
- Allowing garbage to accumulate is an offence.

- The Board's garbage collectors must collect garbage at least twice weekly, but need not collect garbage that is more than 5 metres from the roadside.
- Owners and occupiers must notify the Board if garbage is not collected for 4 days.
- Fines not exceeding TOP 50, and TOP 5 for each day the offence continues, may be imposed for any breach of this section.

Section 94 The Minister may by regulations specify:

- Types of solid or liquid waste which shall be considered toxic or hazardous to health
- Sites approved by the Minister as suitable for the storage or controlled disposal of toxic or hazardous wastes
- The types and specifications of containers to be used for the storage or disposal of toxic or hazardous wastes
- Other matters relating to the transportation, storage or controlled disposal of toxic or hazardous wastes

Fines not exceeding TOP 5,000 or terms of imprisonment not exceeding 3 years may be imposed for breaches of these regulations.

Section 95 The Minister may arrange for the cleaning of streets and other public places.

Section 96 The Minister may by regulations specify:

- Sites approved as suitable (for) the reception of waste
- Charges for the collection and reception of waste
- The manner and times at which waste is to be received at the approved site
- Other matters relating to the collection, transportation and reception of waste.

Wastes which may constitute a nuisance and danger to health must be placed in suitable containers for collection and transportation to an approved site.

Section 97 No person may extract materials from waste at an approved site without the permission of the Minister.

Section 98 No toxic or hazardous waste may be imported into the Kingdom. A fine not exceeding TOP 10,000 or a prison term not exceeding 5 years may be imposed.

Section 99 It is an offence to deposit any waste except in containers or at registered waste disposal sites except with the prior written agreement of the Minister.

Section 100 The above provisions apply to ships and aircraft where applicable.

Part VII Makes the following provisions in relation to sanitary facilities:

- Every owner of premises must provide sanitary facilities of a type approved by the Minister and suitable to the needs of the premises (Section 101)
- All plans for new or replacement facilities shall be subject to approval by the Minister (Section 102)
- The Minister shall specify standards relating to numbers, suitability for males and females, lighting and ventilation, and availability of sanitary facilities in all premises (Section 103)
- Every new dwelling, and dwellings under going major repair must have a least on flush toilet, a bath or shower, wash hand basin, kitchen sink and provision for washing clothes (Section 104)
- Public premises must have sufficient facilities (Section 105)
- Sections 106–116 make provision in relation to facilities at schools, urinals, drinking fountains, dangerous materials and facilities on ships and aircraft.

PUBLIC HEALTH (REFUSE DUMPING GROUNDS) REGULATIONS

(repealed by the Public Health Act 1992)

GARBAGE ACT (CAP. 101)

Year Passed	1949
Date of Commencement	16 November 1949
Amended	1962, 1977, 1980
Repealed the following laws	Nil
Administered by the Ministry of Health (the Principal Board of Health which appears to be no longer in existence)	

Objective

To provide for the collection of garbage.

Relevance to this review

This law provides for the collection and disposal of rubbish and wastes.

Substance of key provisions

- Section 2 “Garbage” is defined to include household refuse, empty tins, rubbish, refuse and trade waste, but not night soil.
- Section 3 This law applies to any town, village or area determined by the Board (which may no longer exist under the current Public Health Act).
- Section 4 The Board is responsible for the administration of this Act and may delegate its powers to a District Board of Health.
- Section 5 The Board shall undertake itself or contract for the removal, collection and disposal of garbage from houses, buildings and premises.
- Section 6 The fees in Schedule are payable for garbage collection services. (These seem to be fixed at between 50 seniti and TOP 2 per month).
- Section 8 All owners and occupiers shall provide sufficient garbage cans, with tight fitting lids, for the reception of garbage, and must keep them closed, clean and in good repair. They must be placed in an easily accessible position for collection.
- Section 9 The Board may provide garbage cans to premises and these must be accepted and paid for.
- Section 10 All garbage must be placed in the garbage cans.
- Section 11 No person shall throw or deposit any garbage upon any roadway, vacant land, foreshore, or into any stream or creek in any district to which the provisions of this law have been applied.
- Section 12 Allowing garbage to accumulate is an offence.
- Section 13 The Board’s garbage collectors must collect garbage at least twice weekly, but need not collect garbage which is more than 20 feet from the roadside.
- Section 14 Owners and occupiers must notify the Board if garbage is not collected for 4 days.

Section 15 Penalties for breaches of this law are fines not exceeding TOP 10, and TOP 1 for each day the offence continues.

Note: As the Principal Board of Health was constituted under a repealed law, and because most of these provision have been re-stated and vested under different authority in the Public Health Act 1992 it may be argued that this law has been repealed by implication by virtue of section 16 of the Interpretation Act (Cap. 1).

HEALTH SERVICES ACT 1991

(Details are given in 4.4)

Section 10 The Minister is empowered, inter alia, to provide a public health service charged with implementing the Public Health Act and other laws, and having specific responsibilities with respect to ... waste disposal...

DRAFT ENVIRONMENT (LITTER AND DUMPING OF WASTES) REGULATIONS

Year drafted 2003

To be administered by the Department of Environment

Objective

To make provision for preventing littering and for dealing with the dumping of wastes, including hazardous and noxious wastes.

Relevance to this review

This will be a principal law in Tonga dealing with matters associated with littering, the disposal of rubbish and dealing with hazardous and noxious wastes.

Substance of key provisions

Regulation 2 Definitions are giving to “authorised dumping sites”, “hazardous wastes”, noxious wastes” and “public place”.

Regulation 3 It is an offence to litter a public place. A fine not exceeding TOP 100 may be imposed.

Regulation 4 Offences apply to the dumping of hazardous and noxious wastes. Fines not exceeding TOP 1,000 or terms of imprisonment not exceeding 3 months may be imposed. Environment Officers may require persons found dumping wastes to remove the waste to an authorised dumping ground or to deal with it in any other manner. It is an offence to fail to comply with such a direction and a fine not exceeding TOP 500 or a term of imprisonment not exceeding 3 months may be imposed.

Regulation 5 Every owner and occupier must keep their land and premises free from litter and wastes.

Regulation 6 Owners and occupiers have a duty to remove wastes and hazards from their land and premises.

Regulation 7 Restrictions apply to burning wastes and other activities.

Regulation 8 Environment Officers may issue notices to clean premises or remove wastes.

- Regulation 9 Environment Officers may issue Infringement Notices. Monetary penalties of TOP 20 and TOP 50 may be imposed, or offenders may be required to perform 3 hours or 6 hours of community work.
- Regulation 10 Environment Officers may order that wastes be cleared and disposed of and the costs of this must be paid by the person in breach of these Regulations.
- Regulation 11 Employers are liable for the acts of their employees whilst acting in the course of their employment.
- Regulation 13 Provision is made for monetary penalties levied under this law to be paid into a trust fund. These monies may be applied to any purpose consistent with the functions of the Department.

(Forms are prescribed)

HARBOURS ACT (CAP. 137)

Year Passed	1903
Date of Commencement	8 July 1903
Amended	1925, 1927, 1943, 1950, 1960, 1969, 1971, 1978, 1981, 1982, 1984, 1985 (2 amendments)
Repealed the following laws	Nil
Administered by the Prime Minister (and Ministry of Marine and Ports)	

Objective

To provide for the management of harbours and the levying of dues.

Relevance to this review

Some provisions of this Act deal with environmental issues within harbours.

Substance of key provisions

- Section 17 It is an offence to throw or cause to be thrown any rubbish, earth or refuse into any harbour without the permission of the harbour master. A fine not exceeding TOP 20 may be imposed.

PARKS AND RESERVES ACT (CAP. 89)

(Details are given in 4.3.6)

- Section 11 It is an offence to “deposit, throw or leave any rubbish or anything in a park or reserve except in a place or receptacle provided for the purpose”.

BIRDS [AND FISH] PRESERVATION ACT (CAP. 125)

(Details are given in 4.3.5)

- Section 7 The following activity is prohibited in a protected area without the consent of the Prime Minister:

- The discharge of any effluent, noxious liquid or substance
-

4.3.3 Protection of coastal resources

LAND ACT (CAP. 132)

Year Passed	1927
Date of Commencement	23 August 1927
Amended	1929, 1930, 1933, 1934, 1936, 1937, 1940, 1941, 1942, 1943, 1945, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1955, 1958, 1959, 1962, 1963, 1966, 1967, 1968, 1972, 1973, 1974, 1976, 1977, 1978, 1980 (3 amendments), 1982, 1983, 1984, 1986, 1987, 1988
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To make comprehensive provision in relation to lands.

Relevance to this review

Certain provisions regulate activities in coastal areas and control the taking of coastal resources.

Substance of key provisions

- Section 22 The King with the consent of the Privy Council may make regulations regulating the cutting, getting and removal of timber, sand, stone, metals and material on Crown land or any holding.
- Section 113 The foreshore is the property of the Crown and the Minister with the consent of the Cabinet may grant permits to erect stores or wharves or jetties on the foreshore, or to reside on any portion of the foreshore.
- Section 114 The Minister with the consent of Cabinet may grant permission, upon the payment of any royalty, to cut and remove stone from the foreshore not being part of a harbour. Cutting and removing stone without permission is an offence and a fine of up to TOP 10 may be imposed.

LAND (REMOVAL OF SAND) REGULATIONS 1936

Year Passed	1936
Date of Commencement	27 March 1936
Amended	1978, 1983
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

The regulate the removal of sand.

Relevance to this review

The practice of removing sand from foreshores in Tonga has been recognised as a significant problem.

Substance of key provisions

- Regulation 2 The taking or removal of sand from foreshores without a permit is prohibited.
- Regulation 3 The taking or removal of sand from Crown Lands and holdings without a permit is prohibited.
- Regulation 4 Penalties for breaches of these regulations are fine not exceeding TOP 100, and in default of payment a term of imprisonment not exceeding 3 months.

THE ACT OF THE CONSTITUTION OF TONGA (CAP. 2) (Details are given in 4.1)

- Section 109 All beach frontage in the Kingdom belongs to the Crown from 50 feet above the high water mark. The Government may lease any portion of beach frontage for the purpose of erecting a store, jetty or wharf.

PETROLEUM MINING REGULATIONS 1985 (CAP. 2) (Details are given in 4.5.3)

- Regulation 29 All explorers for petroleum must adopt all practical precautions to prevent pollution of the high seas or coastal waters by oil, mud or other fluids and substances which might contaminate the water or shoreline, or which might harm marine life. In the event of oil pollution all specified measures must be taken to remove the pollution and minimize the damage to the environment.

HARBOURS ACT (CAP. 137) (Details are given in 4.3.2)

- Section 24 No stones, coral, sand, earth or other material shall be removed from the beach or from any part of any harbour as ballast or for any other purpose without permission from the harbour master.

ENVIRONMENT MANAGEMENT BILL 2005 (Details are given in 4.2)

- Clause 7 The functions of the Department are comprehensively stated. These include specific reference to the role of the Department in relation to climate change, wetlands, biological diversity and aspects of international waters.

4.3.4 Marine pollution

MARINE POLLUTION ACT 2004

Year drafted	2002
Date of Commencement	Not ascertained
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Marine and Ports	

Objective

To provide for the prevention of and response to marine pollution and the dumping of wastes at sea, and to give effect to international marine pollution conventions.

Relevance to this review

This is intended to be the principal law applying in the context of marine pollution and the dumping of wastes at sea.

Substance of key provisions

Section 2 Relevant definitions include “discharge”, “dumping”, “garbage”, incineration at sea”, “marine pollution incident”, “non-indigenous harmful aquatic organisms and pathogens”, “noxious liquid substances”, “oil”, “oily mixture”, “pollutant”, “preventive measures”, “sewage”, “synthetic fishing nets” and “wastes and other matter”.

Eight international conventions are given the force of law in Tonga. These are the SPREP Convention (and its Pollution Emergency Protocol and Dumping Protocol), the London Convention, MARPOL 73/78, CLC 92, HNS Convention, OPRC Convention, FUND 92 and the INTERVENTION Convention).

Part II Comprehensive provision is made in relation to marine pollution prevention.

Part III Comprehensive provision is made in relation to marine pollution response.

Part IV Makes provision in relation to marine casualties.

Part V Deals with liability and compensation for oil pollution damage.

Part VI Regulates dumping and incineration of wastes at sea.

Section 57 A general regulation making power is exercisable by the Minister with the consent of Cabinet.

Section 58 Penalties for breaches of this Act are fines not exceeding TOP 10,000 and TOP 1,000 for every day that the offence continues.

PORTS AUTHORITY ACT 1998

Year Passed	1998
Date of Commencement	29 October 1998
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Marine and Ports (and the Ports Authority)	

Objective

To establish a Ports Authority to manage and operate certain ports in Tonga.

Relevance to this review

Provision is made in this law in relation to pollution within ports.

Substance of key provisions

Section 4 The Ports Authority is established.

Part III States the functions and powers of the Authority.

- Section 66 Provision is made in relation to dealing with dangerous goods in a port and extensive powers are given to the Authority to deal with such goods by Standing Order or Code of Practice.
- Section 42 It is an offence to throw, discharge or deposit harmful substances into any waters of a port, or to cause, suffer or allow this to be done. “Harmful substances” mean any substance that of introduced into the sea is liable to create hazards to human health, to harm living resources, to damage amenities or to interfere with other legitimate uses of the sea. A fine not exceeding TOP 25,000 may be imposed and an offender may be ordered to pay any expenses involved in clearing up the rubbish etc.
- Section 78 A general regulation making power may be exercised by the Minister with the consent of Cabinet.
- Section 79 The Board of the Authority may make Standing Orders or Codes of Practice in relation to a wide range of matters, including:
- Prohibiting the loading or discharging of dangerous goods.
 - Regulating the keeping clean of basins and other works and the waters of the port, and preventing oil, rubbish or other things being discharged or thrown into the waters.
 - Providing reception facilities as required by MARPOL 73/78.

PORTS MANAGEMENT ACT 2001

Year Passed	2001
Date of Commencement	21 September 2002
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry and Marine and Ports	

Objective

To provide for the management and certain harbours and wharves.

Relevance to this review

Provision is made in this Act in relation to pollution within ports.

Substance of key provisions

- Section 3 This Act applies to ports designated in the Schedule. It does not apply to ports designated in the Ports Authority Act 1998.
- Section 36 Provision is made in relation to dealing with dangerous goods in a port and extensive powers are given to the Minister in relation to such goods.
- Section 42 It is an offence to throw, discharge or deposit harmful substances into any waters of a port, or to cause, suffer or allow this to be done. “Harmful substances” mean any substance that of introduced into the sea is liable to create hazards to human health, to harm living resources, to damage amenities or to interfere with other legitimate uses of the sea. A fine not exceeding TOP 25,000 or a term of imprisonment not exceeding 2 years may be imposed. It is also an offence for a vessel to emit smoke and other pollutants to the atmosphere in excess of quantities

permitted by international conventions and standards. A fine not exceeding TOP 10,000 or a term of imprisonment not exceeding 1 year may be imposed. It is also an offence for a vessel to cause noise in the environment in excess of levels permitted by international conventions and standards. A fine not exceeding TOP 10,000 or a term of imprisonment not exceeding 1 year may be imposed.

CONTINENTAL SHELF ACT (CAP. 63)

(Details are given in 4.1)

Section 7 Makes it an offence to discharge oil from a pipeline or from the exploration of the sea bed in a designated area (other than from a ship). For the purposes of this section “oil” includes crude oil, fuel oil, lubricating oil and heavy diesel oil.

4.3.5 Wildlife protection

BIRDS [AND FISH] PRESERVATION ACT (CAP. 125)

Year Passed	1915
Date of Commencement	20 November 1915
Amended	1916, 1934, 1974, 1988 (2 amendments)
Repealed the following laws	Nil
Administered by the Prime Minister	

Objective

To make provision for the preservation of wild birds (the references to fish were deleted in 1989).

Relevance to this review

This is the principal law in Tonga relating to the protection of wildlife.

Substance of key provisions

- Section 2 “Protected areas” are the lands and waters specified in the Third Schedule. “Protected birds” are the birds mentioned in Schedule I.
- Section 3 It is an offence to kill, shoot, capture, take or destroy any protected bird during the period specified in Schedule I. A fine not exceeding TOP 20 may be imposed.
- Section 4 Schedule I may be amended by the Prime Minister with the consent of the Privy Council.
- Section 5 It is an offence to catch, buy, sell or offer for sale any protected bird during the period specified in Schedule 1. A fine not exceeding TOP 50 may be imposed.
- Section 6 The area specified in the Third Schedule is a protected area and this Schedule may be amended by the Prime Minister with the consent of the Privy Council.
- Section 7 No person may do any of the following in a protected area without the consent of the Prime Minister –
- Discharge or cause to be discharged any effluent, or noxious or toxic liquid or substance
 - Erect any harbour, wharf, pier or jetty or other building works
 - Cut, damage, remove or destroy any mangrove

- Erect any fish-fence or set any fish trap, or trawl for fish or engage in any commercial fishing
- Carry out any boring, drilling or dredging operations.

For offences against this section a fine not exceeding TOP 500 or a term of imprisonment not exceeding 6 months may be imposed.

Section 8 Powers to enforce this Act are given to police officers and fisheries officers.

4.3.6 Reserves

PARKS AND RESERVES ACT (CAP. 89)

Year Passed	1976
Date of Commencement	31 March 1977
Amended	1988
Repealed the following laws	Nil
Administered by the Parks and Reserves Authority	

Objective

To provide for the establishment of a Parks and Reserves Authority and for the establishment, preservation and administration of parks and reserves.

Relevance to this review

A regime for the declaration and effective management of parks and reserves is an important feature of a nation's environmental management capability and has particular implications for the preservation of biodiversity.

Substance of key provisions

Section 3 A Parks and Reserves Authority is established.

Section 4 The Authority with the consent of the Privy Council may declare any area of land or sea to be a park or reserve.

Section 5 The Authority with the consent of the Privy Council may make regulations which:

- Prescribe conditions and restrictions for the protection, preservation and maintenance of natural, historical, scientific and other valuable features of a park or reserve
- Prescribe fees for admission to parks and reserves and for any services rendered at them
- Provide for the employment of persons within parks and reserves
- Make other necessary provision

Section 6 The following powers are given to the Authority:

- To erect signs, fences, buildings, roads, paths gardens etc
- To enter into agreements and arrangements
- To apply appropriated funds to the management of parks and reserves
- To employ, engage and discipline employees
- To issue warnings and notices

- Section 7 Every park is to be administered for the benefit and enjoyment of the people of Tonga.
- Section 8 Every reserve shall be administered for the protection, preservation and maintenance of any valuable feature of the reserve.
- Section 9 Every marine reserve shall be administered for the protection, preservation and control of any aquatic form of life.
- Section 10 Every reserve shall be clearly demarcated or fenced and a plan of it shall be posted in the vicinity of the reserve.
- Section 11 Offences are prescribed and fines of up to TOP 500 or terms of imprisonment not exceeding 3 months may be imposed.
- Section 12 The Magistrates Court has jurisdiction to hear prosecutions taken under this Act.

LAND ACT (CAP. 132)

(Details are given in 4.3.3)

- Section 22 The King with the consent of the Privy Council may make regulations dealing with commons and public reserves “in cases not otherwise provided by law.”
- Section 138 The Minister shall with the consent of Cabinet reserve portions of Crown Land for roads, public ways, commons, cemeteries, school sites, playgrounds and for public health purposes. The Minister may grant leases of lands to trustees for cemeteries for Europeans.
- Section 140 All commons, cemeteries and government school sites as at the commencement of this Act are deemed to be Crown Land reserved for public purposes.

BIRDS [AND FISH] PRESERVATION ACT (CAP. 125)

(Details are given in 4.3.5)

- Section 2 “Protected area” means any area comprising land, water, or land and water as is specified in the Second Schedule.
- Section 6 The area noted in the Second Schedule is declared to be a protected area and the Schedule may be amended by the Prime Minister by Order made with the consent of the Privy Council.
- Section 7 The following activities are prohibited in a protected area without the consent of the Prime Minister:
- The discharge of any effluent, noxious liquid or substance
 - Erect any harbour, wharf of other building works
 - Cut, damage, remove or destroy any mangrove
 - Erect any fish fence or fish trap, or engage in trawling for fish or any commercial fishing
 - Carry out any drilling or dredging operation

TOURIST ACT (CAP. 117)

(Details are given in 4.2)

- Section 4 The powers of the Minister include the responsibility for:
- Developing the tourist industry in a rational manner
 - The preservation of the Tongan way of life, culture and language

- Ensuring that all tourist facilities and developments are planned for the improvement of amenities which are of benefit to the community as a whole
- Providing services and amenities for tourists and the public and to promote these
- Regulating and controlling the use and development of scenic attraction, recreational and sporting facilities both on land and sea

4.3.7 Animals

POUNDS AND ANIMALS ACT (CAP. 147)

Year Passed	1918
Date of Commencement	26 September 1918
Amended	1930, 1934, 1943, 1952, 1965, 1969, 1978, 1987
Repealed the following laws	Nil
Administered by Ministry of Police	

Objective

To amend and consolidate the law relating to pounds and animals.

Relevance to this review

This law makes quite comprehensive provision in relation to the treatment of animals, and for dealing with stray animals.

Substance of key provisions

Section 3 The Minister of Police with the consent of the Privy Council may authorise the establishment of pounds. (7 have been proclaimed for Tongatapu and 1 for 'Eua)

Section 4 The management of pounds is the responsibility of the Minister of Police.

Section 5 Owners of cultivated or pasture land may impound trespassing cattle.

Section 6 Cattle found on public highways may be impounded.

Section 9 The pound keeper commits an offence if food and water is not provided to impounded cattle.

Part II Deals with trespass by cattle and authorises the killing of pigs found at large.

Part III Makes provision in relation to cruelty to animals and provides for the following:

- It is an offence to cruelly beat, abuse, starve, overdrive, override, overload or otherwise ill-treat a domestic or confined animal or bird (Section 21)
- It is an offence for the owner of an animal to permit it to be ill-treated (Section 22)
- Injured animals may be destroyed on the authority of a medical officer (Section 23)

Section 24 Restrictions are placed on the sale or slaughter of horses.

DOGS ACT (CAP. 150)

Year Passed	1930
Date of Commencement	14 August 1930
Amended	1934, 1988

Repealed the following laws
Administered by the Police

Nil

Objective

To make a law relating to dogs.

Relevance to this review

This law has clear relevance in the context of controlling the impacts of dogs on the community.

Substance of key provisions

- Section 3 A magistrate may hear a complaint on summons alleging that a dog is dangerous to persons or property.
- Section 4 Owners are liable if their dog attacks another animal in public and thereby endangers any person.
- Section 5 A person may destroy a dog if its attacks that person, any other person or any domestic or farm animal.
- Section 6 A person may destroy a dog if it attacks or worries any domestic or farm animal.
- Section 7 Owners of dogs are liable for injuries caused by their dog.
- Section 8 The police are empowered to destroy a dog without a collar.
- Section 9 Proceedings under this Act may be taken by or on behalf of the Minister of Police or by an aggrieved or injured person. Proceedings are commenced by summons and are heard by a magistrate.

STALLIONS ACT (CAP. 149)

Year Passed	1953
Date of Commencement	27 January 1954
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Objective

To regulate the ownership of stallions.

Relevance to this review

This may be an out-dated law but it has clear application in the context of regulating animals under the law.

Substance of key provisions

- Section 2 No person may own, possess or care for a stallion over the age of 1 year without a permit.
- Section 3 A stallion tax is imposed.

Section 4 The penalties for a breach of this Act are fines not exceeding TOP 30 or terms of imprisonment not exceeding 3 months.

TOWN REGULATIONS ACT (CAP. 44)

(Details are given in 4.3.1)

Section 10 Live pigs and goats are prohibited in Nuku'alofa, Pangai and Neiafu.

Section 11 It is an offence to fail to bury the carcass of a horse, cow, sheep, dog or other animal.

Section 12 It is an offence to leave a dead animal on a public road, beach or other public place.

4.3.8 Quarantine arrangements and protection of agriculture

ANIMAL DISEASES ACT (CAP. 146)

Year Passed	1978
Date of Commencement	28 September 1979
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry and Agriculture and Forestry	

Objective

To provide for the control of animal diseases.

Relevance to this review

Animal quarantine has important environmental significance.

Substance of key provisions

Part II Makes comprehensive provision in relation to the importation of animals. These provisions include matters relating to:

- Quarantine grounds (Section 4)
- Ports of entry (Section 5)
- Restrictions on importation of animals (Section 6)
- Prohibitions on the importation and liberation of certain animals (Section 7)
- Seizure and disposal of certain animals and animal products (Section 9)
- Illegal introduction of animals (Section 10)
- Emergency restrictions on import (Section 11)
- Duties of the Post Office and Customs (Section 11)
- Control of animal importation and preventing the introduction of disease (Section 12)
- Offences against these provisions may incur fines not exceeding TOP 5,000 or terms of imprisonment not exceeding 3 months.

Part III Comprehensive provision is made in relation to disease control.

Section 28 Regulations may be made for preventing the spread of disease.

Part IV Provision is made for the appointment and powers of inspectors.

PLANT QUARANTINE ACT (CAP. 127)

Year Passed	1981
Date of Commencement	31 August 1982
Amended	1986, 1988, 1995
Repealed the following laws	The Diseases of Plants Act
Administered by the Ministry of Agriculture and Forestry	

Objective

To revise the law relating to the quarantine of plants.

Relevance to this review

Plant quarantine has important environmental implications.

Substance of key provisions

Section 3 The Minister is responsible for administering this Act and with the consent of the Privy Council may make regulations.

Section 5 The Minister may establish under regulations quarantine stations, temporary quarantine stations and checkpoints.

Section 6 Indemnities are given to the Government and its officers in the discharge of functions under this law.

Section 7 Regulations may prescribe fees.

Part II Deals with the appointment and powers of inspectors.

Part III Makes comprehensive provision in relation to the control of imports.

Part IV Makes comprehensive provision for domestic quarantine control.

Section 40 Provides for the issuing of export certificates.

Section 44 Fines not exceeding TOP 2,000 and terms of imprisonment not exceeding 1 year may be imposed for breaches of this Act.

PESTICIDES ACT 2003

Year Passed	2002
Date of Commencement	29 October 2002
Amended	No amendments
Repealed the following laws	Pesticides Act (Cap. 129)
Administered by the Ministry of Agriculture and Forestry	

Objective

To regulate the registration, manufacture, import, sale, storage, distribution, use and disposal of pesticides in Tonga.

Relevance to this review

The regulation of all matters associated with the use of pesticides has important environmental implications.

Substance of key provisions

- Section 3 A wide definition is given to the meaning of “pesticides”.
- Section 5 The office of Registrar of Pesticides is established.
- Section 6 The Registrar shall keep a register of pesticides and register all pesticides. The Registrar also has the power to issue licences under this Act for the manufacture, import, distribution or sale of pesticides.
- Section 7 A Pesticides Registration Committee is established.
- Section 12 The Registrar on the advice of the Committee may list any pesticide as a banned pesticide.
- Section 13 No person may manufacture, import, distribute or sell pesticides in Tonga unless they hold a licence issued by the Registrar.
- Section 14 No person may buy, obtain or use any restricted use pesticide unless they hold a restricted use permit issued by the Registrar.
- Section 16 The Registrar on the advice of the Committee may issue an experimental use permit to allow importation for the purposes of scientific research or to enable testing and development to be carried out.
- Section 17 Pesticide containers must be clearly and durably marked as prescribed.
- Section 18 No person may harvest any plant or crop, or slaughter any animal which has more than the prescribed amount of residue limit.
- Section 20 Staff of the Ministry may be designated by the Minister as inspectors.
- Section 21 The powers of inspectors are prescribed.
- Section 22 Employers must ensure that employees using pesticides shall comply with the requirements of this Act, and that they are provided with the prescribed protective clothing, and use the prescribed safety standards for the handling of pesticides.
- Section 23 It is an offence to breach this Act or any regulations. Fines not exceeding TOP 5,000 may be imposed for breaches of the Act, and not exceeding TOP 2,000 for breaches of the regulations. Terms of imprisonment may not exceed 2 years in relation to the Act and 1 year for the regulations.
- Section 26 A general regulation power may be exercised by the Minister with the consent of Cabinet.

NOXIOUS WEEDS ACT (CAP. 128)

Year Passed	1917
Date of Commencement	4 September 1917
Amended	1988 (2 amendments)
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Objective

To provide for the eradication of plants harmful to agriculture.

Relevance to this review

The eradication of noxious weeds has clear environmental implications.

Substance of key provisions

- Section 3 The Minister with the consent of the Privy Council may proclaim noxious weeds for the whole or any part of Tonga.
- Section 4 Any owner or occupier who fails to use every means to eradicate noxious weeds from their holding commits an offence and may be fined up to TOP 250.
- Section 5 Inspectors under the Plant Quarantine Act must report any noxious weeds.
(5 plants have been declared to be noxious weeds)

RHINOCEROUS BEETLE ACT (CAP. 131)

Year Passed	1912
Date of Commencement	21 September 1912
Amended	1913, 1916 (2 amendments), 1946, 1947, 1954, 1988
Repealed the following laws	Nil
Administered by the Office of the Prime Minister	

Objective

To provide for the prevention and eradication of the rhinoceros beetle and other pests.

Relevance to this review

This law deals with the eradication of pests and invasive species.

Substance of key provisions

- Section 2 The Prime Minister with the consent of Cabinet makes declare any insect to be a pest and any place to be a prohibited place.
- Section 3 It is an offence to bring into Tonga any rhinoceros beetle or other pest, or any thing which is harbouring such pests. The range of fines for a breach of this section is between TOP 10 and TOP 60.
- Section 4 Prohibitions are placed on importing plants, trees, shrubs, vegetables or food from other South Pacific Islands, unless it has been fumigated at the port of entry.
- Section 5 Powers of seizure are given.
- Section 6 Suspected articles may be seized.
- Section 7 Powers of search are given.
- Section 8 A power to order fumigation is provided for.
- Section 9 A power is given to the Privy Council to make any necessary Regulations.

4.4 Protection of human health

PUBLIC HEALTH ACT 1992

Year Passed	1992
Date of Commencement	18 May 1993
Amended	No amendments
Repealed the following laws	Public Health Act (Cap. 74) and all regulations except 4 regulations deemed to have been made under the new Act
Administered by the Ministry of Health	

Objective

To deal with public health service in Tonga.

Relevance to this review

Many aspects of this law have direct relevance to the management of the environment.

Substance of key provisions

Section 5	The Minister is given a general regulation making power.
Section 6	The Minister shall appoint a National Public Health Advisory Committee.
Section 7	The Minister appoints authorised officers under this Act. These include the Director of Health, the Chief Medical Officer (Public Health) and medical or health officers in charge of health districts.
Section 9	Powers are given to authorised officers.
Section 10	Authorised officers have the power to collect samples which may be analysed under section 11.
Section 15	The Minister may delegate his powers under this Act, except the power to make regulations.

Part II Prescribes a range of summary offences relating to:

- Unhealthy premises
- Keeping animals which constitute a nuisance
- Accumulating any material which is a nuisance
- Creating smoke, dust or noise
- Creating smells and odours
- Lighting, ventilation, overcrowding etc in factories and workshops
- Contamination of wells etc
- Fouling watercourses
- Overcrowding tents, vans, sheds etc
- Flush toilets which constitute a nuisance
- Dwellings with insufficient sanitary accommodation
- Impure food and unclean food preparation

- Cemeteries which are prejudicial to health
- Infestation by insects and rodents

Part III (A) Makes comprehensive provision in relation to food, food preparation and food premises. Regulations may be made under section 42 on a wide range of food related matters.

Part III (B) Makes further comprehensive provision in relation to food premises.

Part III (C) Makes further comprehensive provision in relation to food hygiene.

Part IV Deals with various aspects of premises, building approvals and site inspections.

Part V Deals with water supply control issues.

Part VI Deals with waste disposal issues.

Part VII Deals with sanitary facilities.

Part VIII (A) Makes provision in relation to controlling air pollution.

Part VIII (B) Makes provision in relation to controlling noise pollution.

Part IX Designates the Minister as the Port Health Authority and prescribes matters relating to inspections of aircraft and ships and the medical examination of passengers and other persons.

Part X Deals with notifiable diseases.

Part XI Prescribes matters relating to health and safety at work.

Part XII Regulates hairdressers and beauticians.

Part XIII Provides for the regulation of cemeteries and procedures for burials, burials at sea and cremation.

HEALTH SERVICES ACT 1991

Year Passed	1991
Date of Commencement	4 th February 1992
Amended	No amendments
Repealed the following laws	Medical Services Act 1929
Administered by the Ministry of Health	

Objective

To provide for a comprehensive health service for Tonga.

Relevance to this review

Reference is made in this law to the role of the Minister for Health in relation to a range of environment related matters.

Substance of key provisions

Section 10 The Minister is empowered, inter alia, to provide a public health service charged with implementing the Public Health Act and other laws, and having specific responsibilities with respect to potable water, food hygiene, building standards,

disease control, prevention of pollution, waste disposal and health and safety at work.

DRUGS AND POISONS ACT (CAP. 79)

Year Passed	1930
Date of Commencement	12 th August 1930
Amended	1931, 1933, 1975, 1977 (2 amendments), 1978, 1986
Repealed the following laws	Nil
Administered by the Ministry of Health	

Objective

To regulate the importation, exportation, manufacture, sale and use of drugs and poisons.

Relevance to this review

This law has important implications for human health.

Substance of key provisions

- Part I** Makes provision for regulating the sale of drugs and poisons.
- Part II** Makes provision for controlling the manufacture, import and export of certain drugs.
- Part III** Regulates the importation, possession, cultivation and use of indian hemp and coca leaf.
- Section 40 The King in Council may make regulations on a wide range of matters.

THERAPEUTIC GOODS ACT 2001

Year Passed	2001
Date of Commencement	21 September 2002
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Health	

Objective

To establish a system of regulation of therapeutic goods.

Relevance to this review

This law is not of major significance in this context but its relevance to human health is clear and it is noted here to indicate that Tonga has a modern and comprehensive law in the context of medicinal drugs.

Substance of key provisions

- Section 4 A National Drugs and Medical Supplies Committee is established.

- Part III** Makes comprehensive provision for the Tongan Registered List of Medicinal Drugs.
- Part IV** Regulates the import, export, manufacture and quality control of therapeutic goods.
- Section 17 Applies special import controls over narcotic drugs and psychotropic substances.
- Part VI** Comprehensive provision is made to regulate the supply of registered drugs.
- Section 35 A general regulation making power is exercisable by the Minister with the consent of Cabinet.

LAND ACT (CAP. 132)

(Details are given in 4.3.3)

Section 139 It is an offence to use a cemetery for any reason other than the burial of bodies. It is also an offence to conceal or bury a body of a deceased person in any place other than a cemetery.

4.5 Natural resources

4.5.1 Land

LAND ACT (CAP. 132)

(Details are given in 4.3.3)

- Section 3 All land in the Kingdom is the property of the Crown.
- Section 4 The interest of any landholder in any estate is a life interest subject to the prescribed conditions.
- Section 5 Every estate (tofia) and allotment (api) is hereditary according to the prescribed rules of succession.
- Section 6 Any disposition of land which purports to be a voluntary conveyance, an out-and-out sale or a devise by will is null and void.
- Section 7 Every male Tongan shall be entitled upon application to receive an allotment of 3.3387 hectares of land as a tax allotment, and 1618.7 square metres in a town as a town allotment.
- Section 10 Sets aside the Royal Estates.
- Section 11 The King may grant estates.
- Section 12 It is an offence to sell land and a term of imprisonment not exceeding 10 years may be imposed.
- Part II** Makes comprehensive provision in relation to the administration of lands in Tonga. The Minister of Lands is the representative of the Crown in relation to all land matters (Section 19). The King with the consent of the Privy Council may make regulations in relation to land administration matters (Section 22).
- Part III** Deals with Hereditary Estates.
- Part IV** Makes provision in relation to tax and town allotments. These may be leased under section 56. Tax allotment must be planted with 200 coconut trees planted in rows with the prescribed distance between each tree (Section 74).

- Part V** Deals with Tongan Leases. No land may be leased without the consent of Cabinet and no consent shall be given to the lease of land by a widow if the land belonged to her deceased husband.
- Part VI** Makes provision for the mortgage of interests in land.
- Part VII** Makes certain provision in relation to the foreshore (see 4.3.3).
- Part VIII** Makes comprehensive provision in relation to the registration of titles to interests in land.
- Part IX** Makes provision in relation to land for public purposes (see 4.3.6).
- Part X** Establishes and vests jurisdiction and powers in a Land Court.

4.5.2 Fisheries

FISHERIES MANAGEMENT ACT 2002

Year Passed	2002
Date of Commencement	12 February 2004
Amended	No amendments
Repealed the following laws	The Fisheries Act 1989
Administered by the Ministry of Fisheries	

Objective

To provide for the conservation, management and sustainable utilisation and development of the fisheries resource.

Relevance to this review

An effective regulatory regime applying to the fisheries resource has clear environmental aspects.

Substance of key provisions

Part II Makes comprehensive provision in relation to the fisheries conservation, management and sustainable utilisation and development, including:

- The responsibilities of the Minister (Section 3)
- Considerations to be applied in the exercise of powers (Section 4)
- The determination of the total allowable level of fishing (Section 5)
- The determination of participatory rights (Section 6)
- Fisheries management and development plans (Section 7)
- The establishment of a Fisheries Management Advisory Committee (Section 8) — there is no representation provided for the Department of Environment
- Special management areas (Section 13)
- The designation of coastal communities (Section 14)
- Regulation of fisheries in Special management areas (Section 15)
- Protection of certain species (Section 16)

Section 15 The Minister in consultation with the Fisheries Management Committee and the coastal community responsible for a Special Management Area may make regulations in relation to the conservation and management of the fisheries in that

- area. Licences applying to a Special Management Area may not be issued without prior consultation with the coastal community in that area.
- Section 17 Fishing with poisons and explosives is prohibited.
- Section 18 The possession and use of certain fishing gear is an offence.
- Section 19 The Minister with the consent of Cabinet may prohibit fishing and related activities in relation to fish species, sizes, ages, catch limits, places, vessels, fishing methods, gear and equipment, seasons and categories of persons. Fines of up to TOP 100,000 may be imposed.
- Part IV** Makes comprehensive provision for registration of fishing vessels and fishing licences.
- Section 24 Applies monitoring, control and surveillance requirements.
- Part V** Deals with fishing local fishing vessel licensing, commercial sport fishing, licensing of locally based foreign fishing vessels and scientific research and test fishing operations.
- Section 33 Regulates fish processing establishments.
- Section 35 Places controls over the export of fish.
- Part VII** Makes comprehensive provision in relation to the regulation of foreign fishing in Tonga's fisheries waters.
- Part VIII** Regulates Tongan vessels and citizens fishing on the high seas.
- Section 65 Deals with the illegal importation of fish.
- Section 67 Driftnet fishing activities are banned.
- Part X** Comprehensive provision is made in relation to the appointment and powers of authorised officers.
- Part XI** Provision is made in relation to the appointment and duties of observers.
- Part XII** Deals with the release, sale and forfeiture of seized vessels and property.
- Part XIII** Provision is made in relation to the jurisdiction of the courts and for certain matters of evidence and proof.
- Section 99 Requires that information provided in accordance with this law must be accurate and correct. A fine not exceeding TOP 250,000 may be imposed.
- Section 100 Obliges persons performing duties under this law to keep information confidential.
- Section 101 A general regulation making power is exercisable by the Minister. A wide range of specific matters for regulations is stated and many of these involve issues of conservation and resource management. A fine not exceeding TOP 250,000 may be prescribed in the regulations (although one "0" has been inadvertently omitted from the English version of the Act).
- Section 102 The Minister and the Secretary may delegate their powers under this Act.

AQUACULTURE MANAGEMENT ACT 2003

Year Passed	2003
Date of Commencement	18 November 2003
Amended	No amendments
Repealed the following laws	Nil

Objective

To provide for the management and development of aquaculture.

Relevance to this review

The regulation of aquaculture is an aspect of environmental management.

Substance of key provisions

Section 4 The Minister shall prepare and keep under regular review and aquaculture management plan.

Section 5 The Minister with the consent of Cabinet may declare areas to be aquaculture areas.

Section 6 The Minister with the consent of Cabinet may declare buffer zones.

Section 8 The Minister may designate a local community to be responsible for aquaculture areas and buffer zones.

Section 9 Potentially harmful activities within buffer zones and aquaculture areas must be authorised by the Minister.

Section 10 The Minister in consultation with the Aquaculture Advisory Committee may issue and publish Codes of Practice.

Section 11 Establishes an Aquaculture Advisory Committee.

Part III Makes comprehensive provision in relation to authorisations for aquaculture through the issue of Aquaculture Development Licences.

Part IV The following provisions relate to the protection of the environment:

- Licence holders must minimise environmental impacts (Section 26)
- The Minister may require that environmental impact assessments be undertaken (Section 27)
- Species of fish may be declared to be “exotic” (Section 29)
- Specific provisions apply to genetically modified fish (Section 29)
- Restrictions are placed on the import and introduction of live fish (Section 30)

Section 31 Provides for the appointment of aquaculture officers.

Section 33 A wide range of offences are prescribed and fines not exceeding TOP 100,000 and terms of imprisonment not exceeding 1 year may be imposed.

Part VI Provision is made for the imposition of administrative penalties.

Section 40 Notice must be given of an intention to use chemicals, piscicides, pharmaceuticals and bio-remediation products, and such substances may be restricted or prohibited.

Section 41 The Minister with the consent of Cabinet may make regulations, and a wide range of matters are specified.

Section 18 No person may fish in the harbour of Pangai, Lifuka with a drag or heavy net unless authorised by the harbour master.

4.5.3 Forestry resources

FORESTS ACT (CAP. 126)

Year Passed	1961
Date of Commencement	2 November 1961
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Objective

To provide for the setting aside of “forest areas” or reserved areas, the control and regulation of such areas and the regulation of forest produce.

Relevance to this review

The effective management of a nation’s forest resources has important environmental and resource management implications.

Substance of key provisions

Section 3 The King in Council may declare unalienated land to be a forest area or a reserved area.

Section 4 The Minister with the consent of Cabinet may make regulations to protect and manage the forest reserves and foster the growth of forest produce. Regulations may prohibit or regulate:

- The felling, burning and removal of forest produce
- Camping, building huts or livestock enclosures
- Depasturing livestock
- Cultivation of land
- Entering forest reserves
- Killing or taking animals, birds, insects and fish
- Causing fires
- Prescribing fees for taking forest produce
- Granting licences and permits
- Prescribing conditions for licences and permits
- Prescribing returns to be rendered under licences and permits
- Establishing nurseries
- Surveying and demarcating forest reserves
- Appointing forest guards

Section 6 The Minister with the consent of Cabinet may authorise the Director to issue licences. The Minister may impose conditions on licences. The area of land is to be stated and so are the types of forest produce which may be taken under the licence.

- Section 7 A District Officer with the approval of the Minister may demarcate unalienated village land as a forest area. These must be registered with the Ministry.
- Section 8 The Minister may require that village forest areas be managed in accordance with regulations to manage the forest produce.
- Section 9 Forest officers and police officers are given powers of interrogation, and seizure.
- Section 10 Offences are prescribed.
- Section 11 A wide range of powers are given to courts to make orders in relation to forest produce when convicting a person under this Act.
- Section 12 Penalties for breaches of this Act are fines not exceeding TOP 50 and terms of imprisonment not exceeding 12 months.

FOREST PRODUCE REGULATIONS 1979

Year Passed	1979
Date of Commencement	1 st August 1979
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Substance of key provisions

- Regulation 2 Export permits for forest produce must be obtained.
- Regulation 4 The Director may impose condition and directions in relation to an export permit.
- Regulation 6 Offences are prescribed in relation to the requirement to obtain export permits. Penalties for breaches are fines not exceeding TOP 50 or terms of imprisonment not exceeding 12 months.
- Regulation 8 Exports of wood carvings, handicrafts and bananas are exempted from these Regulations.

4.5.4 Mining and minerals

MINERALS ACT (CAP. 133)

Year Passed	1949
Date of Commencement	25 November 1949
Amended	1951, 1968, 1969, 1978
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To establish the ownership and provide for the control of minerals found within the Kingdom.

Relevance to this review

The issues of ownership and controls over the development of mineral resources are key aspects of a nation's environment management regime.

Substance of key provisions

Section 3	All minerals are deemed to be the property of the Crown. The Crown has the right to search, dig for and carry away all minerals.
Section 5	Exploration licences may be granted to give rights to enter land and geologically examine it up to a depth of 50 feet.
Section 6	Prospecting licences may be granted to give rights to mine, bore, quarry, dig, search for, win and work any minerals.
Section 7	Royalties and compensation are to be paid to landowners where minerals are found on lands that are not Crown Lands.
Section 8	On the expiration of a prospecting licence a mining lease may be granted in relation to the minerals which were subject to the licence. Lands may be compulsorily acquired under the provisions of the Lands Act.
Section 13	Restrictions apply to licences and leases and to the employment of management and labour for mining projects. Only Tongans and British subjects (or companies) may hold mining rights or be engaged at mining projects.
Section 15	Authorised government officers and police officers may enter and inspect lands which are subject to prospecting licences and mining leases.
Section 16	Penalties for breaches of this Act are limited to fines not exceeding TOP 100 or terms of imprisonment not exceeding 12 months.
Section 17	A general regulation making power is provided for.
Section 19	Penalties for breaches of Regulations and directions given to miners are limited to fines not exceeding TOP 200 or terms of imprisonment not exceeding 12 months. The licence or lease may be cancelled for a breach.
Section 20	This Act is to be read subject to the Petroleum Mining Act.

PETROLEUM MINING ACT (CAP. 134)

Year Passed	1969
Date of Commencement	30 January 1970
Amended	1976, 1978, 1980, 1985, 1988
Repealed the following laws	Deletes all reference to petroleum exploration and mining in the Minerals Act
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To make provision in relation to the exploration, prospecting and mining for petroleum.

Relevance to this review

The issues of ownership and controls over the development of petroleum resources are key aspects of a nation's environment management regime.

Substance of key provisions

- Section 3 The exploration and mining of petroleum is prohibited unless under an exploration licence or petroleum agreement. The penalty for breach is a fine not exceeding TOP 5,000 or a term of imprisonment not exceeding 2 years.
- Section 4 This makes provision for applications for licences or agreements.
- Section 7 More than one exploration licence may be issued for the same land, but no licence will be issued if the land is the subject of a petroleum agreement. Licences are valid for an initial period of 2 years.
- Section 12 A general regulation making power is provided for, and regulations may be specifically made in relation to:
- The prevention of fires
 - The establishment of safety areas around petroleum installations
 - The general safety, health, working conditions and welfare of workers
- Section 13 All references to petroleum exploration and mining are deleted from the Minerals Act.

(The Model Petroleum Agreement annexed to the Act imposes some conditions relevant to controlling and reducing the effects of pollution. Compensation must be paid to persons affected by pollution discharges and under clause 32 the pollution control measures stipulated by the Government must be implemented).

PETROLEUM MINING REGULATIONS 1985

Year Passed	1985 (G.S 107/85)
Date of Commencement	
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To make further provision in relation to the exploration and mining of petroleum.

Relevance to this review

These Regulations apply additional requirements to the activities of explorers and miners of petroleum.

Substance of key provisions

- Regulation 29 All explorers for petroleum must adopt all practical precautions to prevent pollution of the high seas or coastal waters by oil, mud or other fluids and substances which might contaminate the water or shoreline, or which might harm marine life. In the event of oil pollution all specified measures must be taken to remove the pollution and minimize the damage to the environment.
- Regulation 38 Companies are required to drain all waste oil, salt water and refuse from tanks, gasholders, boreholes and wells into proper receptacles which must be constructed and maintained for that purpose.

LAND (QUARRY) REGULATIONS 1985

Year Passed	1985
Date of Commencement	1985
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Lands, Survey and Natural Resources	

Objective

To regulate quarrying on lands which are tax allotments.

Relevance to this review

Activities associated with quarrying may have environmental implications.

Substance of key provisions

Regulation 2 No person may allow land which is a tax allotment to be used as a quarry.

Regulation 3 Quarrying and removal of stone from tax allotments is prohibited.

Regulation 4 A fine of TOP 100 applies to breaches of these Regulations.

CONTINENTAL SHELF ACT (CAP. 63)

(Details are given in 4.1)

Section 9 The Prime Minister may with the approval of His Majesty in Council enter into agreements or grant licences for the exploration of the seabed or subsoil or a designated area.

4.5.5 Water resources

WATER BOARD ACT 2000

Year Passed	2000
Date of Commencement	8 August 2001
Amended	No amendments
Repealed the following laws	Water Board Act (Cap. 92)
Administered by the Tonga Water Board	

Objective

To reconstitute and empower the Tonga Water Board.

Relevance to this review

This is the principal law applying to the administration of water supplies in Tonga.

Substance of key provisions

Section 3 The Tonga Water Board established under the repealed Act continues.

Part II	Deals with the composition, powers and functions of the Water Board.
Section 12	An operating plan must be prepared every three years.
Part IV	Provides for the general powers of the Board including the declaration and acquisition of water supply areas and various financial powers.
Section 21	A power to make by-laws relating to the procedures of the Board etc. is given to the Board.
Part VII	Makes comprehensive provision in relation to the supply of water. Some of the matters dealt with include: <ul style="list-style-type: none"> • The right to take water (Section 22) • Water restrictions (Section 32) • Powers to enter land (Section 39)
Section 58	It is an offence to take water from water works except in accordance with this Act.
Section 62	Authorised officers may remove trees and shrubs within 2 metres of the centre-line of any works after giving notice to the owner.
Section 64	Fines against this Act range from TOP 200 to TOP 1,000.
Section 65	His Majesty in Council may make regulations. A range of specific matters are listed.

HEALTH SERVICES ACT 1991

(Details are given in 4.4)

Section 10	The Minister is empowered, inter alia, to provide a public health service charged with implementing the Public Health Act and other laws, and having specific responsibilities with respect to potable water...
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PUBLIC HEALTH ACT 1992

(Details are given in 4.4)

Section 78	The Minister is responsible for determining which sources of water in Tonga are suitable for public water supply and for taking regular steps to ascertain the sufficiency and wholesomeness of water supplies.
Section 79	The Minister must ensure that all premises used for human habitation have a sufficient supply of water. It is the owner's responsibility to secure the supply.
Section 80	Authorised officers are required to periodically examine all sources of water, including wells, boreholes, rain water, cisterns and streams.
Section 81	Potable water supplies are to be certified by the Minister after their inspection.
Section 82	No person may use a source of water as a public water supply unless it is certified.
Section 83	The Minister is to advise Village water committees on all measures required to ensure that their water is safe for drinking.
Section 84	The Minister is to provide advice on the prevention of contamination of water.
Section 85	The Minister must advise a water supplier of water becomes unsafe and of the measures to be taken, including the closure of the supply.
Section 86	Provision is made in relation to piped water supplies.
Section 87	The Minister shall reject plans for premises if the water supply is to be unsatisfactory.

Section 89 The Ministry is to carry out regular sampling, including a physical and chemical analysis, examination for harmful micro-organisms and the radioactive content.

(Note: The Water Supply Regulations 1963 made under the repealed Act are saved by section 164 of the Public Health Act 1992 and are deemed to have been made under the new Act. They are included in the 1988 Revised Edition of the Laws of Tonga).

AQUACULTURE MANAGEMENT ACT 2003 (Details are given in 4.5.2)

Section 40 Notice must be given of an intention to use chemicals, piscicides, pharmaceuticals and bio-remediation products, and such substances may be restricted or prohibited.

Section 41 The Minister with the consent of Cabinet may make regulations, and a wide range of matters are specified. These include measures to be taken to minimise the escape of water and the pollution of land and water.

4.6 Control of transboundary movements

CUSTOMS AND EXCISE ACT (CAP. 67)

Year Passed	1983
Date of Commencement	31 July 1984
Amended	1987, 1988, 2002, 2003
Repealed the following laws	The Customs Regulation Act and the Customs Duties Act 1978.
Administered by the Revenue Services Department	

Main Objective

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

Relevance to this review

Customs laws have implications relating to transboundary movements.

Substance of the relevant provisions

Section 34 Prohibitions and restrictions can be applied to imports, carriage coastwise or exports of certain goods by the Commissioner. These can be applied as an absolute prohibition or conditions may be imposed on any import, carriage or export.

Section 35 The goods listed in Part I of Schedule II are prohibited or restricted imports.

Section 36 The goods listed in Part II of Schedule II are prohibited or restricted exports.

Part III Comprehensive provision is made in relation to the arrival and reporting of aircraft and ships and the removal and delivery of goods from them.

Part IV Comprehensive provision is made in relation to warehouses and to the warehousing of goods.

Part V Provision is made in relation to the export of goods.

Part VI Provides for the clearance of ships and aircraft.

Part VIII Deals with imports and exports by post.

Part X Deals with the prevention of smuggling.

Section 265 Provision is made for King to make wide-ranging regulations in Council.

QUARANTINE ACT (CAP. 77)

Year passed	1927
Date of effect	15 April 1928
Amended	1986, 1988
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Main Objective

To make comprehensive provision in relation to quarantine.

Relevance to this review

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

Substance of the relevant provisions

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

Section 7 Provision is made for the appointment of temporary officers.

Part III General quarantine provisions are made relating to:

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

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

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

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

Section 86 A general regulation making power is provided for, including regulations relating to:

- requiring notification to a quarantine officer of each case of a quarantinable disease which arises in Tonga or within any specified part of Tonga or within any quarantine area.
- prescribing the precautions to be taken to prevent the ingress to or egress from a vessel of rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease.

- prescribing the measures to be taken by the masters, owners or agents of vessels to destroy rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease which may exist on the vessels.
- prescribing and establishing and maintaining on vessels, or within any quarantine area, of conditions unfavourable to, and to the migration of, rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease, and fixing the time limit for the completion of any work necessary for the purpose of establishing such conditions, and empowering the Director of Health, in case of default by the master, owner or agent, to carry out any such work at the expense of the master, owner or agent.
- prescribing the precautions to be taken by masters of vessels in respect of the vessels and their crews, passengers and cargoes at infected places, and on the voyage from infected places, and on voyages between ports or places in the Islands, to prevent the introduction into the Islands or spread of quarantinable diseases.
- regulating the discharge from vessels of any water, ballast or refuse.
- regulating the sanitary condition of vessels in ports.
- providing for the granting of certificates by quarantine officers in relation to any vessels or goods examined or treated by them or under their supervision.
- prescribing the movements of any person subject to quarantine
- prescribing measures of disinfection, fumigation and other measures of quarantine which vessels, persons or goods subject to quarantine shall carry out or be subjected to.
- prescribing the conditions under which any prophylactic or curative vaccine or serum may be prepared and offered for sale.
- Regulating navigation by air for any purpose under this Act.
- requiring and prescribing reports from vessels by radiotelegraphy.
- regulating traffic within Tonga by land and sea, and prescribing measures of quarantine in relation to such traffic for the prevention of the occurrence or spread of communicable diseases.

ANIMAL DISEASES ACT (CAP. 146)

(Details are given in 4.3.8)

Part II Makes comprehensive provision in relation to the importation of animals. These provisions include matters relating to:

- Quarantine grounds (Section 4)
- Ports of entry (Section 5)
- Restrictions on importation of animals (Section 6)
- Prohibitions on the importation and liberation of certain animals (Section 7)
- Seizure and disposal of certain animals and animal products (Section 9)
- Illegal introduction of animals (Section 10)
- Emergency restrictions on import (Section 11)
- Duties of the Post Office and Customs (Section 11)
- Control of animal importation and preventing the introduction of disease (Section 12)
- Offences against these provisions may incur fines not exceeding TOP 5,000 or terms of imprisonment not exceeding 3 months.

PLANT QUARANTINE ACT 1995

(Details are given in 4.3.8)

Section 3 The Minister is responsible for administering this Act and with the consent of the Privy Council may make regulations.

Section 5 The Minister may establish under regulations quarantine stations, temporary quarantine stations and checkpoints.

Part II Deals with the appointment and powers of inspectors.

Part III Makes comprehensive provision in relation to the control of imports.

Part IV Makes comprehensive provision for domestic quarantine control.

Section 40 Provides for the issuing of export certificates.

FRUIT EXPORT ACT (CAP. 116)

Year Passed	1932
Date of Commencement	15 August 1932
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Agriculture and Forestry	

Objective

To regulate the export of fruit.

Relevance to this review

This Act clearly contemplates restrictions applying to the transboundary movement of fruit from Tonga.

Substance of key provisions

Section 2 “Fruit” means bananas and such other species of fruit and produce as the Prime Minister with the consent of Cabinet may declare to be fruit.

Section 3 The Prime Minister with the consent of Cabinet may make regulations governing the export of fruit, and in particular the way fruit is packed, the inspection of fruit, inspection fees, packing stations, standards of quality and the duties of inspectors.

Section 4 It is an offence to breach any regulation and a fine not exceeding TOP 100 may be imposed.

The Fruit Export Regulations of 1934 make comprehensive provision in relation to the packing and inspection of fruit for export.

The Export (Fruit and Vegetables) Regulations 1938 provide that exports of pineapples, papayas, water melons, kumaras, potatoes, cucumbers, tomatoes, cabbage, beans, marrows, egg-plants and avocado pears may be exported if they are inspected prior to export.

PUBLIC HEALTH ACT 1992

(Details are given in 4.4)

Section 98 No toxic or hazardous waste may be imported into the Kingdom. A fine not exceeding TOP 10,000 or a prison term not exceeding 5 years may be imposed.

DRUGS AND POISONS ACT (CAP. 79)

(Details are given in 4.4)

Part II Makes provision for controlling the manufacture, import and export of certain drugs.

Part III Regulates the importation, possession, cultivation and use of indian hemp and coca leaf.

AQUACULTURE MANAGEMENT ACT 2003

(Details are given in 4.5.2)

Part IV The following provisions relate to the protection of the environment –

- Species of fish may be declared to be “exotic” (Section 29)
- Specific provisions apply to genetically modified fish (Section 29)
- Restrictions are placed on the import and introduction of live fish (Section 30)

CARRIAGE OF GOODS BY SEA ACT (CAP. 141)

Year Passed	1927
Date of Commencement	12 August 1927
Amended	1930
Repealed the following laws	Nil

Objective

To declare the law with respect to the carriage of goods by sea

Relevance to this review

This law is of marginal relevance but has some implications in the context of regulating transboundary movements.

Substance of key provisions

Schedule I

Clause 3 Applies the standard rules of the Bill of Lading appearing in the Schedule to the carriage of goods by sea under the laws of Tonga.

MODEL BIOSECURITY BILL 2004

Note: A Model Biosecurity law has been prepared for Pacific Island nations by the Secretariat of the Pacific Community. The main features of this draft law are noted here and amendments can be made to this section if the Bill progresses in Tonga.

Main Objective

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

Relevance to this review

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

Substance of relevant provisions:

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

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

Section 3 The purposes of the law are stated to be:

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

There is no application of a precautionary principle.

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

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

Section 10 Articles may be designated as prohibited articles if they present an unacceptable biosecurity risk to Kiribati.

Section 11 Pests and diseases may be designated as prohibited.

Section 14 Articles may be exempted from biosecurity control if they pose no biosecurity risk.

Part 3 Makes comprehensive provision for import and export permits.

Section 19 Certain exemptions apply, including for goods in transit

Section 21 Provision is made for export permits, and conditions may be imposed.

Section 27 Prescribes the duties of importers and exporters to, inter alia, declare goods and make them available for inspection.

Section 28 Duties are imposed on masters and captains to permit inspections and to file documents.

Section 29 Restrictions are placed on the disposal at sea of garbage and ballast.

Part 5 Prescribes the powers of biosecurity officers.

Section 44	Powers to order destruction or reconsignment are given.
Part 6	Makes comprehensive provision in relation to the internal control of pests.
Section 53	The Minister, after receipt of appropriate scientific advice and with the authorisation of Cabinet, may in writing approve the release of beneficial organisms or biocontrol agents to control or eradicate particular pests or diseases in Kiribati.
Part 7	Makes comprehensive provision for the declaration of biosecurity emergencies, including the making of emergency regulations.
Part 8	Makes comprehensive provision for the establishment of a National Biosecurity Service.
Section 58	The office of Director of Biosecurity is established as a position in the public service.
Section 59	Provides for the appointment of biosecurity officers.
Part 9	General provision is made for the administration of the Act, including the need to consult broadly in relation to its implementation and any regulations made under it.
Section 66	Obliges a range of public officials, including environment officers to cooperate in the implementation of this Act.
Part 11	Makes provision for matters aimed at facilitating international cooperation.
Section 80	Regulation making powers are vested in the Minister.

4.7 Recognition and protection of culture and traditional institutions and values

PRESERVATION OF OBJECTIVES OF ARCHAEOLOGICAL INTEREST ACT (CAP. 90)

Year Passed	1969
Date of Commencement	31 March 1970
Amended	No amendments
Repealed the following laws	Nil
Administered by the Committee on Tongan Traditions	

Objective

To provide for the preservation of objects of archaeological interest.

Relevance to this review

The need to preserve and protect the natural environment including habitats and sites of significance is an important feature of environmental management.

Substance of key provisions

Section 3	No person may search for objects of archaeological interest unless authorized by a permit issued by the Committee. A permit must have the approval of landowners and of the Cabinet. Both excavations and surface activities are covered by this requirement.
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Section 4	The Committee may impose conditions on any permit that it grants. The purpose of a condition is to protect a site or object from “injury, removal or dispersion”.
Section 5	The Committee must be notified without delay of the discovery of any objects of archaeological interest.
Section 6	No object of interest may be removed from Tonga without a permit issued by the Committee with the approval of Cabinet.
Section 7	Powers of inspection are given to the Committee. These may be exercised particularly before an object is removed from Tonga.
Section 8	This is a general offence provision imposing fines of up to TOP 100 or terms of imprisonment not exceeding 6 months.
Section 9	This provides for a general regulation making power.

POLYNESIAN HERITAGE TRUST ACT (CAP. 91)

Year Passed	1984
Date of Commencement	31 October 1984
Amended	1986
Repealed the following laws	Nil

Objective

To provide for the incorporation of the Polynesian Heritage Trust.

Relevance to this review

This law has clear implications for the preservation of culture but its actual status is not so clear.

Substance of key provisions

Section 3 Deems the objectives of the Trust to be charitable purposes.

Section 4 The Polynesian Heritage Trust is incorporated.

Subsequent provisions formalise the nature, purpose and operations of the Trust.

The objectives of the Trust are stated in the Trust Deed to be the fostering, promotion and assertion of the values, heritage and culture of Polynesia for all persons by:

- Providing and stimulating education and training programmes
- Publishing and promoting Polynesian culture
- Providing scholarships and endowments

TOURIST ACT (CAP 117)

(Details are given in 4.2)

Section 4 The powers of the Minister include the responsibility for:

- The preservation of the Tongan way of life, culture and language
- Ensuring that all tourist facilities and developments are planned for the improvement of amenities which are of benefit to the community as a whole
-

4.8 Public awareness and participation (including the private sector)

FONOS ACT (CAP. 50)

Year Passed	1924
Date of Commencement	30 July 1924
Amended	1944, 1988 (2 amendments)
Repealed the following laws	Nil

Objective

To make provision in relation to Great Fonos, Noble's Fonos and Ordinary Fonos.

Relevance to this review

The legal obligation of all citizens over the age of 16 years to attend fonos makes this Act a unique means by which the participation of the community in important national and local issues can be achieved.

Substance of key provisions

Section 2	The "districts" are the localities of Tongatapu, 'Eua, Nomuka, the Ha'apai group, the Vava'u group, Niuafu'ou and Niuatoputapu (including Tafahi).
Section 3	The Prime Minister, Speaker of the Legislative Assembly, any Minister, Governor or government representative may summon the people of a town, district or part of a district by proclamation to attend a great fono in a district.
Section 4	Nobles and a matapule ma'u tofia may cause persons residing on a hereditary estate to attend a noble's fono.
Section 5	A District Officer of any town may summon persons to attend an ordinary fono in a town.
Section 6	A proclamation summoning persons to attend a fono must be given at least 2 days before the fono is held.
Section 7	Fines of between TOP 1 and TOP 3 apply to persons not attending fonos.
Section 8	Certain person are exempted from the requirement to attend a fono, including police and prisons officers, "dispensers, dressers and students of the medical department", students and tutors, government officials, the sick and infirm and persons facing grave and real emergency.
Section 15	The Prime Minister with the approval of Cabinet may make rules for the purposes of this Act.

ENVIRONMENT MANAGEMENT BILL 2005

(Details are given in 4.2)

Clause 6 The Objectives of the Act are stated. These include:

- To promote meaningful public involvement in relation to issues of environmental management
- To promote understanding, management, conservation and protection of biological diversity.

Clause 7 The functions of the Department are comprehensively stated, and include:

- Preparing environment plans and policies and monitoring impacts on the environment
- Facilitating, conducting and participating in environmental research
- Promoting public awareness and education of environment related issues
- Facilitating the participation of NGO's in this context

Clause 15 Provides for the appointment and roles of Environment Committees.

4.9 Other regulatory regimes

4.9.1 Physical planning

LAND ACT (CAP. 132)

(Details are given in 4.3.3)

Section 19 The Minister may authorise all surveys and order the opening of new roads. Roads may be ordered to be closed with the consent of Cabinet.

Section 23 The Minister may define land holdings and boundaries.

Section 24 Surveys of land boundaries may be required.

TOURIST ACT (CAP. 117)

(Details are given in 4.2)

Section 4 The powers of the Minister include the responsibility for:

- Developing the tourist industry in a rational manner
- The preservation of the Tongan way of life, culture and language
- Ensuring that all tourist facilities and developments are planned for the improvement of amenities which are of benefit to the community as a whole
- Licensing and controlling accommodation, restaurants, travel agents, tour operators and other facilities
- Providing services and amenities for tourists and the public and for promoting these
- Regulating and controlling the use and development of scenic attraction, recreational and sporting facilities both on land and sea
- Prescribing standards for accommodation, restaurants, tour operators etc.

4.9.2 Building control

BUILDING CONTROL AND STANDARDS ACT 2002

Year Passed	2002
Date of Commencement	4 March 2004
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Works	

Objective

To control and standardise building practice.

Relevance to this review

The proper regulation of building standards has implications for sound environmental management.

Substance of key provisions

- Section 4 A Building Control Authority is established.
- Section 5 The Director of Works is appointed as the Building Controller.
- Section 10 Every person intending to erect a building must obtain a building permit.
- Section 11 Certain exemptions are given from the need to obtain a permit, including traditional Tongan buildings.
- Section 12 Stop work notices may be issued.
- Section 14 Demolition notices may be issued.
- Section 19 Regulations may be made including the prescribing of a National Building Code.

PUBLIC HEALTH ACT 1992

(Details are given in 4.4)

- Section 71 No person may erect or alter any premises without the permission of the Minister.
- Section 72 The Minister shall require a detailed plan of any premises to be constructed, extended or altered. These must indicate the purpose of the premises.
- Section 73 The requirements to be shown in the plans are specified.
- Section 74 All authorised officers are empowered to inspect building sites.
- Section 75 The Minister may seek a court order requiring the repair, alteration, re-building or demolition of dilapidated, dangerous or unhealthy premises.
- Section 77 These provisions do not apply to dwelling houses built out of traditional Tongan materials.
- Section 87 The Minister shall reject plans for premises if the water supply is to be unsatisfactory.

(Note: The Public Health (Building) Regulations were repealed by the Public Health Act 1992).

HEALTH SERVICES ACT 1991

(Details are given in 4.4)

- Section 10 The Minister is empowered, inter alia, to provide a public health service charged with implementing the Public Health Act and other laws, and having specific responsibilities with respect ... building standards, disease control, prevention of pollution, waste disposal...

TOWN REGULATIONS ACT (CAP. 44)

(Details are given in 4.3.1)

- Section 6 Every male person must build a dwelling house on his allotment when he reaches the age of 21 years.

- Section 7 Houses must be inspected by the District Officer each year and he may order the owner to pull it down and re-build it if it is “in bad repair or badly drained or in a filthy condition or unfit to sleep in”.
- Section 8 House owners must cut, clean and sweep all growth (except cultivated plants) and the police must inspect all houses in this regard on the last Monday of February, April, June, August, October and December each year.

4.9.3 Business and commerce

BUSINESS LICENCES ACT 2002

Year Passed	2002
Date of Commencement	23 December 2002
Amended	No amendments
Repealed the following laws	The Licences Act (Cap. 47)
Administered by the Ministry of Labour, Commerce and Industries	

Objective

To provide for the licensing of business activities.

Relevance to this review

Laws of this type permit the application of environmental policies and international obligations through the designation of prohibited or regulated commercial activities.

Substance of key provisions

- Section 3 “Business activities” do not include the sale of fish, agricultural products and native articles.
- Section 4 All businesses must be licensed under the Act.
- Section 5 A business licence will not be issued to a person carrying on a prohibited activity or to a foreign investor who does not have a valid foreign investment certificate.
- Section 9 Conditions may be applied to any licence issued under this Act.
- Section 10 Licences are valid for 1 year and must be renewed by the 31st December of each year.
- Section 13 Licences are not transferable.
- Section 14 Unlicensed businesses may be fined up to TOP 1,000.
- Section 21 The prohibited activities in Schedule 1 may be amended by the Minister by Order in Council. (The current prohibited activities are the storage, disposal or transport of nuclear or toxic wastes, pornography, prohibited exports, imports or items of production, prostitution, export of endangered species and production of weapons).

FOREIGN INVESTMENT ACT 2002

Year Passed	2002
Date of Commencement	14 April 2003
Amended	No amendments

Repealed the following laws	Nil
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Objective

To make provision in relation to foreign investment in Tonga.

Relevance to this review

This law provides a basis for regulating the business activities of foreign investors and can prevent them from engaging in certain activities which have implications for the management of the environment.

Substance of key provisions

Section 3	No foreign investor may engage in a prohibited activity under the Business Licences Act 2002.
Section 4	The Minister shall establish a reserved list of business activities which are reserved for Tongan nationals. A restricted list of business may specify business activities which may only be undertaken by foreign investors in accordance with conditions that are imposed.
Section 14	Offences are prescribed and fines not exceeding TOP 10,000 may be imposed for any breach.
Section 15	A general regulation making power is given to the Minister with the consent of Cabinet. Regulations may add to, delete from and vary the reserved and restricted lists of business activities.

CONSUMER PROTECTION ACT 2000

Year Passed	2000
Date of Commencement	7 November 2000
Amended	No amendments
Repealed the following laws	Nil
Administered by the Ministry of Labour, Commerce and Industries	

Main Objective

To provide for consumer protection and the establishment of fair trading practices.

Relevance to this review

Aspects of this law deal with human health issues and the rights of consumers in relation to product information.

Substance of the relevant provisions

Part II Comprehensive provision is made for the administration of the Act, including the establishment of a Consumer Affairs Division and the appointment of a Director and other officers. Investigators may be appointed by the Minister. Extensive powers are given in relation to entering premises, obtaining information and to dealing with the information sought and obtained. Provision is made for keeping certain information confidential.

Part III Comprehensive provision is made for consumer protection. This includes approved quality standards, product recalls, prohibitions on refusals to sell goods, hoarding of goods, the issuing of receipts, misleading and deceptive conduct, misleading conduct in relation to services and after-sales service and exclusive dealing, monopolisation and price discrimination.

Part IV Provision is made for enforcement and remedies. Fines not exceeding TOP 3,000 for first offences and TOP 7,000 for subsequent offence may be imposed. Terms of imprisonment may not exceed 2 years.

Section 36 A general regulation making power is provided for.

INDUSTRIAL DEVELOPMENT INCENTIVES ACT (CAP. 114)

Year Passed	1978
Date of Commencement	29 February 1980
Amended	1982, 1983, 1988
Repealed the following laws	Nil
Administered by the Ministry of Labour, Commerce and Industries	

Objective

To actively encourage entrepreneurship for the establishment and growth of industries and tourism through a system of granting relief from certain taxes and duties.

Relevance to this review

While not directly relevant to environment issues the application of this law may have environmental implications which arise through the promotion of certain industries and commercial establishments.

Substance of key provisions

Section 3 Defines “industrial enterprise” to be the engaging in any processing industry, manufacturing industry or assembly industry. “Prime Facilities” include accommodation, cruising vessels and tourist attractions.

Section 4 Person wishing to establish industrial enterprises or prime facilities may apply to the Minister for approval under this Act.

Section 5 A development licence may be issued to an approved enterprise.

Section 6 No licence may be transferred without the approval of the Minister.

Part III A range of development incentives may apply to approved enterprises. These include tax holidays, exemptions from the payment of withholding tax, depreciation allowances, carrying forward losses. Moratoriums on the payment of tax, exemptions from customs duty, partial exemptions from ports and services tax, exemptions from export levies, the right to repatriate funds and other protections.

4.10 Regional and international conventions and agreements

4.10.1 *Regional and international cooperation and harmonisation of arrangements*

ENVIRONMENT MANAGEMENT BILL 2005

(Details are given in 4.2)

Clause 6 The Objectives of the Act are stated. These include:

- To ensure the observance of Tonga's international obligations in this context
- To promote the concept of sustainable development
- To promote understanding, management, conservation and protection of biological diversity.

Clause 7 The functions of the Department are comprehensively stated. These include:

- Doing all matters incidental to the observance of Tonga's international environment obligations
- Reviewing the environment related laws in Tonga and assisting in their enforcement

Specific reference is made to the role of the Department in relation to climate change, ozone depletion, the movement of hazardous wastes, desertification and drought relief, preserving wetlands, protecting endangered species, preserving the biological diversity and aspects of international waters.

Part IV Makes provision for the role of the Department in relation to Tonga's environment related international obligations.

Specific international environment-related Conventions are noted in the Schedule as being the source of the obligations that the Act intends to ensure are observed and implemented.

4.10.2 *Laws to implement international obligations*

BIOSAFETY (CONTROL OF LIVING MODIFIED ORGANISMS) BILL 2005

Year drafted 2004

To be administered by the Department of Environment

Clause 3 The precautionary approach is to be applied in the implementation of this law.

Clause 4 The powers of the Minister are provided for.

Clause 5 A National Biosafety Advisory Committee is established.

Clause 6 The functions of the National Biosafety Advisory Committee are provided for.

Clause 7 Island Divisional Biosafety Advisory Committees may be appointed by the Minister.

Clause 8 The role of the Department of Environment is stated.

Clause 9 The powers of the Director of Environment are provided for.

Clause 10 It is confirmed that other statutory powers which may apply or be exercised in this context are not to be affected by any provision of this law.

Part III Procedures relating to the importation of LMO's are comprehensively provided for. These matters cover:

- Notifications of transboundary movements
- Approvals for imports
- Scientific risk assessments
- Confidential information
- Exemptions from the procedure
- Review of decisions

Part IV Other regulatory requirements are provided for, including:

- Exportation of Living Modified Organisms
- Transit of Living Modified Organisms
- Use for food, feed and for processing
- Contained use
- Unintentional releases and transboundary movements
- Illegal releases and transboundary movements

Clause 23 Offences and penalties are provided for.

Clause 24 Powers are given to deal with organisms contravening this Act.

Clause 25 Some consequential amendments are made to other Acts.

Clause 26 A general regulation making power is provided for.

Clause 27 Indemnities are given to person enforcing this Act.

Clause 28 The provisions of this Act will bind the Crown.

DRAFT ENVIRONMENT (OZONE LAYER PROTECTION) REGULATIONS 2005

Year drafted 2004

To be administered by the Department of Environment

Objective

To regulate the use of ozone depleting substances and to implement the provisions of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol in the Kingdom of Tonga.

Relevance to this review

This law has clear significance for the environment and aims to give effect to Tonga's international obligations relating to ozone depleting substances.

Substance of key provisions

Regulation 1 The objectives of these Regulations are stated and the application of the precautionary approach is required in the implementation of these provisions.

Part II The following prohibitions relating to Controlled Substances are provided for:

- Prohibitions on Importation
- Prohibitions on the Importation of Certain Goods
- Exemptions in relation to imports
- Prohibitions on Exportation

- Prohibitions on Manufacture
- Prohibitions on Sales
- Exemptions in relation to sales

Part III Permits are required in relation to certain ozone depleting substances. The following provisions are made:

- General Principles to be applied in relation to permits
- Quarantine and pre-shipment permits
- Medical permits
- Base year permits
- General provisions in relation to permits
- Goods for which no permit may apply

Part IV Provision is made in relation to matters of enforcement and offences are prescribed. These matters include:

- Additional powers of Environment Officers
- The seizure of substances and goods
- Forfeiture of seized substances and goods
- Call-up of substances and goods
- Offences and penalties
- Updating the text of Vienna Convention

Note: This law has also been prepared in the form of a draft Bill and enabling Regulations and may proceed in this format.

5 Legislative obligations under international conventions

5.1 Relevant convention and protocols

The following are the relevant conventions, protocols and regional agreements applying in the region and are considered in this context:

- The Convention on Biological Diversity
- Cartagena Protocol
- World Heritage Convention
- Framework Convention on Climate Change
- Regional Seas Conventions
- Convention to Combat Desertification
- The Vienna Convention and Montreal Protocol on Ozone Depleting Substances
- Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes
- CITES (Convention on International Trade in Endangered Species)
- WTO and GATT
- PICTA and PACER (Pacific trade agreements)

- Stockholm Convention

The task here is not to review these international documents in detail or to determine the full scope of their application to Tonga. Where there are clear obligations to give effect to their provisions in the domestic laws of Tonga then this is noted, and some explanation of the nature and extent of the obligation is given. It is important to note the areas where it appears that the current laws are deficient in this regard. The nature of the required remedial action is suggested.

The Convention on Biological Diversity

The legislative obligations under this Convention are non-specific but consideration should be given to the enactment of appropriate laws in relation to the following general matters relevant to this Convention:

1. the regulation and management of Tonga's biological resources;
2. the regulation of any activity which may be detrimental to Tonga's biological diversity;
3. the control and eradication of invasive species;
4. the recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Tonga's biological diversity;
5. measures and facilities for in-situ and ex-situ conservation of Tonga's biological diversity;
6. the declaration and management of protected areas, and the implementation of special measures to conserve Tonga's biological diversity;
7. access to genetic resources within Tonga, and the equitable sharing of benefits arising from the development and exploitation of such resources;
8. access to and transfer of technologies relevant to Tonga's biological diversity;
9. plans, strategies and measures for the rehabilitation and restoration of degraded ecosystems;
10. systems for the monitoring of and reporting on issues and matters relevant to or affecting Tonga's biological diversity; and
11. any other appropriate measure to promote the conservation and sustainable use of Tonga's biological diversity.

Current state of Tonga's laws

Some laws in Tonga which have relevance to the matters arising under this Convention are generally out-dated and unlikely to be of optimum effectiveness. These include the Parks and Reserves Act 1976, the Plants Quarantine Act 1981, the Birds Preservation Act 1915 and the Rhinoceros Beetle Act 1912. On the other hand there is a very recent Environment Impact Assessment Act and the prospect of a large degree of flexibility in the making of regulations under the Environment Management Bill. There are also very recent and effective laws relating to the management of Tonga's fisheries.

Options

The range issues that may require laws in order to give effect to this Convention highlight the need for the early enacted of the Environment Management Bill. This Convention is noted in that draft Bill and clear processes will come into being for giving effect to the obligations that arise under it, and for implementing its provisions in the interests of sound environmental management in Tonga. The enactment of the Environment Management Bill remains the best option for Tonga in this context.

Cartagena Protocol

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

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

Current state of Tonga's laws

A draft Biosafety (Control of Living Modified Organisms) Bill was prepared in Tonga in 2004 and is being assessed by other relevant Departments. It was drafted in full consultation with all relevant stakeholders so there should be no reason for reservations to be expressed about its provisions.

Options

The requirements of the Cartagena Protocol are addressed in the recently drafted Bill. If the Environment Management Bill is enacted during 2005 as is proposed then the Biosafety Bill could be re-drafted as Regulations with little difficulty. This may speed up the process of its finalisation.

Convention Concerning the Protection of the World Cultural and Natural Heritage

The objective of this Convention is to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods.

The key provisions of this Convention relate to the following matters:

1. Each Party recognises that the duty of identification, protection, conservation and transmission to future generations of the cultural and natural heritage belongs primarily to the State.
2. Parties are to integrate the protection of their heritage into comprehensive planning programmes, to set up services for the protection of their heritage, to develop scientific and technical studies and to take necessary legal, scientific, administrative and financial steps to protect their heritage.
3. Parties undertake to assist each other in the protection of the cultural and natural heritage.
4. A World Heritage Committee is established to which each Party shall submit a list of its national heritage and which will publish a "World Heritage List" and a "List of World Heritage in Danger".
5. Any Party may request assistance for property forming part of its listed heritage, and such assistance may be granted by the Fund in the form of studies, provision of experts, training of staff, supply of equipment, loans or subsidies.

Current state of Tonga's laws

The laws of Tonga may assist in the implementation of this Convention if it became a matter of priority. The Parks and Reserves Act might provide a basis for the management of listed areas but it is unlikely to be adequate in every respect.

Options

The enactment of the Environment Management Bill which is proposed for 2005 would provide a degree of flexibility for the fundamental aspects of this Convention to be addressed in regulations made under the new Act.

Framework Convention on Climate Change

This Convention is not based on the premise that domestic legislation in a country like Tonga is a fundamental instrument for achieving its objectives. No legislation exists in Tonga that is directly related to climate change issues and none appears to be under consideration.

Regional Seas Conventions

Proposed amendments to the Protocol to the SPREP Convention dealing with the dumping of wastes at sea may necessitate the inclusion of the following matters in relevant domestic laws in Tonga:

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

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

Current state of Tonga's laws

The Marine Pollution Act was recently passed in Tonga, thereby filling a significant gap in Tonga's environment related laws. A great deal has been achieved by the passing of this law. A range of international and regional conventions have been incorporated into Tonga's laws and an effective regime dealing with marine pollution and pollution responses can now be put in place with a sound legislative basis. This law includes provisions which deal effectively with the issues of dumping and incinerating of wastes at sea.

Options

Consideration should be given to ensure that the provisions of the Marine Pollution Act comply with the amendments that are proposed for the SPREP Protocols relating to dumping wastes at sea and to marine pollution responses. Some amendments may be needed to be made to this recently enacted law in due course.

Convention to Combat Desertification

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

Current state of Tonga's laws

There is no comprehensive law in Tonga dealing with issues of the ownership, management and protection of the water resource. Provision is made in relation to pollution of water in a range of laws and responsibilities and powers are vested in a number of government agencies.

Options

The formulation of comprehensive water resources legislation would be extremely advantageous. This could formalise the current arrangements and need not significantly alter the current distribution of responsibilities relating to water testing and pollution control responsibilities. It could formalise the setting, monitoring of water standards, and the reporting on them. It could also clearly address issues associated with the impact of wastes on Tonga's water resource.

The Vienna Convention and Montreal Protocol on Ozone Depleting Substances

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

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

Current state of Tonga's laws

The necessary provisions have been drafted for Tonga. These have been done both in the form of a Bill for an Act and as draft Regulations. The making of Regulations is dependant upon the enactment of the Environment Management Bill which is likely to proceed to Parliament sometime in 2005. The progress of this Bill will determine whether the option of making provision for the matters required under the Montreal Protocol under a stand-alone Act will be favoured.

Options

It is of little consequence whether the necessary legislative provision is made as a stand-alone Act or as regulations made under the Environment Management Act. As both forms have been drafted for Tonga there is no further legislative action that is warranted.

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

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

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

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

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

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

Current state of Tonga's laws

There are no laws in Tonga which effectively deal with the issue of transboundary movements of hazardous wastes through Tonga's maritime waters. It does not appear likely that the Territorial Seas and Exclusive Economic Zone Act will be brought into effect. For this reason specific legislation would be required to give effect to these matters.

Options

This deficiency should be addressed by a stand-alone Act which would need to be drafted. The issues of dumping and incinerating wastes at sea which are noted above are relevant in this context also. The Marine Pollution Act 2004 effectively deals with these issues.

The movement of wastes into and through Tonga could otherwise be dealt with by prescribing wastes to be prohibited substances under the proposed Biosecurity law and under the Customs and Excise Act.

Convention on the International Trade in Endangered Species (CITES)

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

Current state of Tonga's laws

Tonga's laws dealing with the protection of wildlife are limited to one out-dated law restricted only to the protection of birds. On the other hand there are a range of laws identified in this Inventory which effectively implement procedures for controlling transboundary movements and business activities. The Business Licences Act specifically prohibits activities that would be in breach of this Convention.

Options

While there is a need to review and up-date Tonga's laws in the context of wildlife protection it must be noted that there is a very effective regime of control over the trade in endangered species enshrined in Tonga's commercial and business related laws. This could be further strengthened by using the laws relating to controlling transboundary movements. The import and export of endangered species could be prescribed and prohibited under the Customs and Excise Act.

World Trade Organization and the General Agreement on Tariffs and Trade

The purpose of this Report is not to review such compliance issues or to advocate matters associated with the concept of free trade.

It is suggested that none of the legislative amendments advocated in this Section or the accompanying Analysis of Legislation can be construed as problematic in this context, but it is left to others to make the final analysis.

Pacific Island Countries Trade Agreement and Pacific Agreement for Closer Economic Relations

Similarly it is not the purpose of this Report to review issues associated with regional trade arrangements or proposals. None of the legislative amendments advocated in this Section or the accompanying Analysis of Legislation should impact on such obligations. Indeed all such proposals are necessary to give effect to Tonga's clear obligations to effectively protect the environment of the region and to increase its capacity to respond to threats to the safety of the environment.

Stockholm Convention

A new law would be required to implement the provisions of this Convention in Tonga. These include provisions relating to the following:

1. Definitions or words and terms used in the law. These will need to reflect the administrative entities in Tonga, and will also need to be harmonised with the definitions in the Convention and with related laws in Tonga. The 12 identified POPs must be listed and provision should be made for the list to be added to. The concept of “environmentally sound disposal” is important.
2. The adoption of the precautionary approach.
3. “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. (Principle 15 – *Rio Declaration*)
4. Measures to reduce or eliminate releases from intentional production and use. These must include all necessary prohibitions, restrictions and administrative measures to give effect to Article 3. The production and use of endrin and toxaphene must be banned. Production of aldrin, dieldrin and heptachlor must be prohibited. The applications of DDT in Tonga should be considered and appropriate provision made in the law.
5. Provision for the registration of exemptions, if applicable, under Article 4. These may apply to the use of remaining supplies of aldrin, dieldrin and heptachlor, but it is preferable to simply ban them outright.
6. Measures to reduce or eliminate releases from unintentional production. The action plan and necessary strategies should be formulated under the auspices of the law. The requirements of Article 5 must be met. Other provisions might reflect the need to promote the development and use of substitutes and the application of best available techniques.
7. Measures to reduce or eliminate releases from stockpiles and wastes. The law should make provision for the identification of stockpiles and wastes as required under Article 6. Appropriate management arrangements and other measures should be prescribed.
8. The implementation plan required under Article 7 must be given some legislative backing. Certain matters relating to its implementation should also be supported by the provisions of the law. Equipment containing PCB’s must be phased out by 2025 but this should be assessed in Tonga and appropriate arrangements made under the law to meet this objective before the deadline under the Convention. Issues relating to the release of dioxins, furans, hexachlorobenzene and PCB’s through combustion or industrial production should be considered in the plan and appropriate provision reflected in the law.
9. Provision should be made for the designation of the focal point in Tonga and for the discharge of its reporting and other functions. The need to be able to access and report on information and data should be provided for, if this is not to be part of amendments to the Environment Act in a more general way.
10. Reference might be made to the development, endorsement and implementation of public awareness and education programs. Appropriate arrangements might be made for public participation in addressing POPs (possibly through a designated committee if such an amendment is to be made to the Environment Act). Training issues may or may not have a place in the applicable legislation.
11. The promotion of research, development and monitoring capacities might be provided for. Any particular monitoring processes might be given some firm legal

basis. Cooperation at national, regional and international level should be referred to and promoted.

Current state of Tonga's laws

A new law dealing with the matters noted above will be required in Tonga to give effect to the Convention. Processes leading toward this have recently begun in Tonga and there is no reason to doubt that an effective law will be drafted in due course.

References

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