



# TOKELAU

## REVIEW OF NATURAL RESOURCE AND ENVIRONMENT RELATED LEGISLATION

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Secretariat of the Pacific Regional Environment Programme (SPREP)  
and  
EDO NSW

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## INTRODUCTORY NOTE

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The following review, prepared jointly by the Secretariat of the Pacific Regional Environmental Programme (SPREP) and the Environmental Defenders Office Ltd (EDO NSW), updates and builds on the reviews conducted in the early 2000s under the International Waters Project.

The review offers a brief overview of environmental legislation in force in each Pacific Island country identified and is current as of January 2018.

A number of sources were referenced for this update, including:

- Prior reviews prepared by SPREP;
- Pacific Islands Legal Information Institute – Paclii;
- ECOLEX - an information service on environmental law, operated jointly by FAO, IUCN and UNEP; and
- Government websites.

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This review is for information purposes only. It is not intended to be a complete source of information on the matters it deals with. Individuals and organisations should consult a local lawyer for legal advice on specific environmental matters.

If you have any feedback in relation to this review, please forward your comments to: [registry@sprep.org](mailto:registry@sprep.org).



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## TABLE OF KEY ENVIRONMENTAL LEGISLATION

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*Tokelau Islands Amendment Act 1967*

### **BIODIVERSITY CONSERVATION AND NATURAL RESOURCES**

*Biosecurity Rules 2003*

*Tokelau (Exclusive Economic Zone) Fishing Regulations 2012*

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### **WASTE MANAGEMENT AND POLLUTION**

*Health Rules 2003*

*Marine Pollution Rules 1998*

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*Shipping (Salvage) Rules 1992*

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*Biosecurity Rules 2003*

*Living with Change (LivC): An Integrated National Strategy for Enhancing the Resilience of Tokelau to Climate Change and Related Hazards 2017-2030*

*Tokelau Emergency Plan 2005*

*Tokelau Emergency Rules 2003*

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## CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

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### 1.1. Legal System

In 1889, Tokelau was made a British protectorate and in 1926, New Zealand took over the administration. In 2006 and 2007, referendums took place on the question of changing the status of the islands from a New Zealand territory to a free association with New Zealand. However, as the referendums were unsuccessful, it remains a non-self-governing territory of New Zealand, meaning all Tokelauans are New Zealand citizens. The Head of State is Queen Elizabeth II, represented by the New Zealand Governor General and Administrator. The people of Tokelau wish to become independent and are supported by the Government of New Zealand and the UN Special Committee on Decolonisation.

A New Zealand Government Official is the Administrator of Tokelau, who is responsible for the executive government of Tokelau. However, the New Zealand Minister of Foreign Affairs and Trade has the final say in major Tokelauan decisions where the NZ Government is responsible, such as approval of the annual budget.

Administrative and legislative powers of the Administrator of Tokelau are delegated to the three Taupulega (Village Council of Elders) of Tokelau as the highest authority. National issues that go beyond those undertaken by villages alone, are delegated to the General Fono. Article 3 of the *Constitution* defines General Fono as consisting of the Faipule (village leader) and Pulenuku (village mayor) of each village, along with one delegate for every 100 inhabitants of that village.

The laws of Tokelau are based on their Constitution and laws of the General Fono made under the Constitution.

### 1.2. The Constitution

#### *Constitution*

The *Constitution of Tokelau 1949* (as amended on multiple occasions) establishes Tokelau's sources of law and system of government. The preamble recognises the importance of resources to the people of Tokelau and their desire to maintain control over them.

Article 15 deals with land in Tokelau. All land in Tokelau is under the Taupulega's control subject to the Constitution or a Rule of the General Fono. Land is classified as either customary land or land that is not customary land which is called special land. The Constitution prohibits the transfer of land to a person who is not a Tokelauan. Land may only be used for a national purpose where there is an agreement between the Government of Tokelau and the relevant village. In addition, where land is required for a national or village purpose, the village must negotiate with the landowners about purchasing or using the land for that purpose. If the landowners do not consent to the use of their land, it can still be used for the national or village purpose provided that the landowners have first been paid adequate compensation.

#### *Tokelau Act 1948 (NZ)*

The *Tokelau Act 1948 (NZ)* and subsequent amendments incorporates Tokelau as part of New Zealand and provides for its government.

Key provisions are as follows:

- Section 3A The General Fono may make rules as it thinks necessary for the peace, order, and good government of Tokelau. This includes the power to prescribe criminal offences in respect of the contravention of, or non-compliance with, any rules made under this section, and to prescribe penalties that may be imposed in respect of any such offence.
- Section 4 Confers on the New Zealand Governor-General the power to make regulations for the peace, order and good government of Tokelau.
- Section 6 New Zealand statutes only apply if expressly provided by statute as being in force in Tokelau.
- Section 4B The law of England as in 1840 is in force in Tokelau except to the extent it is excluded by another Tokelauan enactment or is inapplicable. Common law and equity are to be administered concurrently.

The *Tokelau Amendment Act 1963* vests a portion of the islet of Fenuafala in the native inhabitants of Fakaofu. The *Tokelau Amendment Act 1967* amends the *Tokelau Act 1948* and Part II deals with land issues. See comments under the heading “land use” below. The *Tokelau Amendment Act 1986* amends the *Tokelau Act* by making provision for civil and criminal jurisdiction. The Act gives the New Zealand High Court the jurisdiction necessary to administer Tokelau. The *Tokelau Amendment Act 1986* also gives the New Zealand Court of Appeal the jurisdiction to hear appeals from the High Court on matters relating to the administration of Tokelau. In addition, the *Tokelau Amendment Act 1986* addresses the role and function of Commissioners. The *Tokelau Amendment Act 1996* confers on the General Fono the power to make rules for Tokelau subject to disallowance by the Administrator.

### *Transfer of Powers Rules 2003*

The *Transfer of Powers Rules* substitutes all references to the Administrator with references to the Council of Faipule in the following regulations:

- *Tokelau Adoption Regulations*
- *Tokelau Animals Regulations*
- *Tokelau Births and Deaths Registration Regulations*
- *Tokelau Business Restriction Regulations*
- *Tokelau Census Regulations*
- *Tokelau Customs Regulations*
- *Tokelau Divorce Regulations*
- *Tokelau Immigration Regulations*
- *Tokelau Marriage Regulations*
- *Tokelau Plant Regulations*
- *Tokelau Post Office Regulations*

The *Transfer of Powers Rules* substitutes the reference to the Administrator with a reference to the Taupulega in the definition of “Inspector” in the *Tokelau Rhinoceros Beetle Regulations 1964*.

## 1.3. Local Government and Customary Law

The preamble of the Constitution clearly states that “the villages are the source of all authority in Tokelau”. The relevant provisions of the Constitution in relation to local government and customary law are as follows:

- Article 1 Tokelau comprises all the islands, internal waters, territorial seas, and other areas to which Tokelau is entitled at international law.

- Article 2 The villages must elect a Faipule and a Pulenuku.
- Article 3 The General Fono (Parliament) consists of the Faiupule and Pulenuku of each village, one delegate from each village for every 100 inhabitants.
- Article 5 The General Fono has executive powers to manage a range of matters in the interest of the nation including national resources and national health.
- Article 6 When the General Fono is not in session, the Council for the Ongoing Government (Executive Council) will conduct its executive business. The Council for the Ongoing Government is made up of the three Faipule and one General Fono delegate from each village, designated by the Taupulega.
- Article 7 The General Fono is also vested with law-making power subject to consideration from the Taupulega (Village Council of Elders).
- Article 8 The Constitution creates the judiciary for Tokelau consisting of the Commissioner's Court and Appeal Committee of each village, the High Court and the Court of Appeal.
- Article 12 Tokelau's sources of law, in descending order of priority, are:
- the Constitution;
  - General Fono Rules;
  - Village Rules;
  - the custom of Tokelau; and
  - the general principles of international law.

## ENVIRONMENTAL PLANNING AND ASSESSMENT

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### 2.1. National Environmental Law

Tokelau do not have a national overarching environmental law framework. Rather, environmental protections and management are haphazard and spread across a number of Acts, regulations and rules as outlined below.

### 2.2. Land Management, Zoning and Planning

#### *Tokelau Government Property Corporation Rules 2011*

This Act provides for a Tokelau body corporate which may acquire, hold and manage property vested in it for the Government of Tokelau. This includes land under "real property".

#### *Tokelau Islands Amendment Act 1967*

The *Tokelau Islands Amendment Act* permits the disposal of customary land between the Indigenous people of Tokelau but does not authorise alienation of land to non-Indigenous people. Under custom, land is passed through families by handing it down the generations. Generally, the head of a family group holds the land. However, some customary land is held in common.



## BIODIVERSITY CONSERVATION

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### 3.1. Conservation of Natural Resources, Protected Areas and Endangered Species

The Government of Tokelau has described the country as “generally low in plant, animal and marine biodiversity” within its National Strategic Plan (2010-2015). As a result, there is a large emphasis on fisheries regulation as it is Tokelau’s largest resource, and relatively limited laws around conservation areas and endangered species in comparison.

### 3.2. Marine and Coastal Resources

#### *Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977*

The *Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977* repeals the *Tokelau (Territorial Sea and Fishing Zone) Act 1976*. It defines what constitutes the territorial sea and the internal waters of Tokelau. This Act also establishes the exclusive economic zone (EEZ) of Tokelau.

Key provisions include:

- |            |   |
|------------|---|
| Section 6  | Prohibits foreign fishing in the territorial sea, where the owner, the master, and every crew member of the craft commit an offence in doing so and are each liable on conviction to a fine not exceeding \$250,000.  |
| Section 8  | The Governor-General may make regulations on a wide range of matters to control foreign fishing. For example, the regulations may provide for the total allowable catch for a species, the establishment of a licencing authority and conditions of licences. |
| Section 10 | Deems that the foreshore of Tokelau, the seabed and subsoil of the submarine areas of its internal waters, territorial sea and exclusive economic zone is and always has been vested in the Crown.  |

#### *Tokelau (Exclusive Economic Zone) Fishing Regulations 2012*

The *Tokelau (Exclusive Economic Zone) Fishing Regulations 2012* prohibits foreign fishing vessels from fishing in the EEZ unless a valid licence has been granted. Regulations 6-15 establishes licencing requirements and conditions.

Other substantive provisions of the Act include:

- |             |   |
|-------------|---|
| Reg. 30     | Subject to the requirements listed foreign fishing vessels may carry out certain activities in the EEZ, such as fisheries research, experimentation, and sport.   |
| Reg. 31     | It is an offence to put or release any “living organism, article or substance (other than fishing equipment or bait) that is likely to: <ul style="list-style-type: none"> <li>• to cause harm to any fish or marine mammal; or</li> <li>• to obstruct fishing equipment; or</li> <li>• to become a hazard to navigation”.</li> </ul> |
| Regs. 32-33 | It is an offence to tranship fish, aquatic life, or seaweed from a foreign fishing craft in the territorial sea or the EEZ. Section 3 defines aquatic life as any species of plant or   |

animal life that, at any stage in its life history, must inhabit water, whether living or dead; and includes seabirds (whether or not in the aquatic environment).

- Reg. 34. Driftnets are also prohibited on foreign fishing vessels in the EEZ or territorial sea.
- Regs. 36-39 Outlines other offences under the Regulations.
- Reg. 52 Requires the Administrator to establish and maintain the registers that the Administrator considers necessary in order to accurately record all:
- licences granted under these regulations;
  - vessel days purchased in accordance with these regulations, and the price paid for them;
  - access charges paid in accordance with these regulations, and the price paid for them;
  - fishing limits specified by the Administrator; and
  - other related or relevant matters under these regulations.
- Reg. 55 Provides that the *Tokelau (Exclusive Economic Zone) Fishing Regulations 1988* continues to apply to existing licences.

### 3.3. Biosafety

#### *Biosecurity Rules 2003*

The purposes of the *Biosecurity Rules* are:

- to control the introduction and spread of exotic pests and diseases and other organisms, in order to protect the environment and the agricultural production of Tokelau;
- to control the pests and diseases already present in Tokelau that have a restricted distribution;
- to provide for facilities for biosecurity services for the import and export of animals and plants, animal products and plant products, and other goods safely into and out of Tokelau;
- to provide for the containment and eradication of new incursions; and
- to support international cooperation in the prevention of the movement of pests and diseases.

The *Biosecurity Rules* allow for the appointment of biosecurity officers with a range of powers, such as entering land, examining items and disposing of or destroying goods that present a biosecurity risk to Tokelau. The rules also set out the duties of other officials, owners, captains and passengers of conveyances.

These rules establish a system of import permits regulating all goods and organisms arriving in Tokelau. Permit conditions may be specified by the Director of Biosecurity. The Schedules list the plants, plant pests, environment pests, animals that may and may not be imported into Tokelau.

With the introduction of the *Biosecurity Rules*, the *Tokelau Plant Regulations 1989*, *Tokelau Animal Regulations 1991* and *Tokelau Islands Rhinoceros Beetle Regulations 1964* were repealed in 2007.

## WASTE MANAGEMENT AND POLLUTION

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### 4.1. Waste

#### *Health Rules 2003*

The *Health Rules* contain rules around refuse disposal and sewage disposal.

Rule 4 requires that all combustible refuse shall be burned at such place and in accordance with such directions as the Pulemaku may give. This includes burning of plant and animal matter to prevent the spread of vermin, odour, or the spread of disease.

Rule 5 requires each village to designate facilities and methods acceptable for the disposal of human excreta, in consultation with the Director of Health and in the interests of public health and protection of the environment. Within six months of designation, the Director of Health and the Pulemaku will conduct a joint inspection of all existing facilities and methods and give written notice on whether the facility and method complies with the designated standard or not. In the event of non-compliance, the written notice should also outline the steps that must be taken to bring the facility or method up to the designated requirement. The person responsible for the facility must take the steps necessary to upgrade the facility or method, failing which, he/she commits an offence and the Taupulega may upgrade the facility or method at the cost of the facility owner.

#### *National Waste Management Strategic Plan 2007*

In 2007 a National Waste Management Strategic Plan was endorsed and a memorandum of understanding around waste reduction with Samoa was signed. This enabled recyclable and solid waste from Tokelau to be transported to Samoa. Initiatives under the Plan include waste champions for the day to day management of waste, recycling arrangements, Community Resource Centres and raising awareness in general through education.

#### *Tokelau National Strategic Plan (2010-2015)*

Within the Strategic Plan, there are four policy outcome areas, including infrastructure development to improve the standard of living, human development to improve health, and economic, cultural and environmental sustainability.

Of relevance to solid waste management is policy outcome area 2 in relation to water and sanitation. The villages continue to pursue its water and sanitation program in terms of building proper toilets and water tanks for every house in the village. Strategies identified include the following:

- develop a national water and sanitation policy which villages can adapt and include in their village maintenance plans.
- increase nationwide awareness on water conservation and hygiene and possibly revive traditional methods for water conservation.
- monitor reserve capacity and quality and report monthly.
- ensure that Tokelau Building Code includes quality requirements for water tanks.
- implement Hazard Analytical Critical Control Point Plan.
- ensure that HR Development Plan includes requirements for trained and qualified personnel in this area.

Within the Strategic Plan, policy outcome area 4 addresses waste management, referring to issues of waste dumping on land or at sea, causing contamination in waters and impacting fish species. This has been identified as a serious environmental problem for Tokelau since at least 1995, including issues such

as pollution of freshwater, pollution of the coastal water, and spillage of hazardous waste and chemicals and oil in Tokelauan waters.

Under waste management, the government identified the following objectives:

- To keep Tokelau clean and as much as possible free from solid waste.
- To improve public awareness of the environmental, economic and social impact of waste.
- To plan for a decrease in the importation of packaged goods.

## 4.2. Pollution

### Marine Water Pollution

#### *Marine Pollution Rules 1998*

The purpose of the *Marine Pollution Rules 1998* is “to provide for the operation of prescribed principles of the *Maritime Transport Act 1994* (NZ) in Tokelau in order to comply with New Zealand’s treaty obligations in respect of Tokelau under the *Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986* and the *International Convention for the Prevention of Pollution from Ships 1973*, as modified by the Protocol of 1978.”

The Rules implement a number provisions of the *Maritime Transport Act 1994* (NZ) as law in Tokelau, including under:

- |                  |   |
|------------------|---|
| Part 19          | Protection of marine environment from harmful substances.   |
| Section 226      | Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf.   |
| Section 227      | Duty to report discharge or escape of harmful substances.   |
| Section 228      | Notice of pollution incidents.  |
| Section 233      | Rectification of hazardous conditions.  |
| Sections 237-239 | Establishes offences in respect of discharge or escape of harmful substances into sea or seabed, including: <ul style="list-style-type: none"> <li>• Discharge or escape of harmful substances from ship into sea or seabed.</li> <li>• Failure to report discharge of harmful substance into sea or seabed.</li> <li>• Failure to notify pollution incidents.</li> </ul> |
| Part 21          | Protection of marine environment beyond New Zealand continental waters from dumping, incineration, and storing of wastes (excluding section 267).   |
| Section 299      | Duty to notify if unable to contain and clean up marine oil spills.   |
| Sections 315-317 | Establishes offences in respect of marine oil spill contingency plans.  |
| Section 344      | Establishes civil liability to the Crown and marine agencies for costs of cleaning up pollution.  |

### *Shipping (Salvage) Rules 1992*

The *Shipping (Salvage) Rules 1992* confer responsibilities upon the Faipule to assist wrecked, stranded or distressed vessels in Tokelau to preserve the vessel and the lives of persons and property on it. The rules outline offences and rules where a vessel is involved in an accident, referring to the wrecking, stranding, or distress of a vessel. Responsibilities and powers are defined for the Faipule and police officer in such circumstances, including control over property on the vessel. Section 11 also enables the Administrator to require an owner to remove a vessel if it is sunk, stranded, or abandoned on or near the reef or in any inland water of Tokelau. The rules also confer the power to regulate sea traffic upon the Pulemuku of each atoll.

## **OTHER**

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### **5.1. Disaster Risk Management**

#### *Biosecurity Rules 2003*

Rule 14 of the Biosecurity Rules enables the Director of Biosecurity to declare a state of biosecurity emergency in the case of identified urgent need. The Director is also able to give directions in a state of biosecurity emergency, including compensation for loss if goods must be destroyed.

#### *Tokelau Emergency Rules 2003*

The *Tokelau Emergency Rules 2003* provide that “the Ulu o Tokelau shall advise the outside world if Tokelau is affected by an emergency”, including where there is a serious threat to the environment of Tokelau, or where an emergency or sudden disaster endangers life or property on an island of Tokelau. In these circumstances, the Faipule in consultation with the Taupulega, may give such orders and take such actions affecting persons and property as are reasonably necessary to deal with the situation.

#### *Tokelau Emergency Plan 2005*

Under the Tokelau Emergency Plan (TEP) each village has a plan relating to disaster risk reduction, however, it only covers cyclones. Actions under these plans include the construction and maintenance of seawalls.

#### *Living with Change (LivC): An Integrated National Strategy for Enhancing the Resilience of Tokelau to Climate Change and Related Hazards 2017-2030*

In April 2017 the Office of the Council for the Ongoing Government established an integrated national strategy (and implementation plan) dealing with resilience to climate change and related issues. The vision is to foster a “vibrant, innovative, climate-resilient, and ready Tokelau, with healthy communities, ecosystems, and an economy, that are all resilient in the face of change”.

The strategy includes three inter-related strategic Climate Resilient Investment Pathways (CRIPs):

- Mitigation: Decarbonisation Development
- Adaptation: Strengthened Integrated Risk Reduction and Adaptation to enhance climate change and disaster resilience; and
- Human Development: Capacity Building, Education, Training, Public Awareness & Outreach.