

LEGISLATION AND PESTICIDE CONTROL IN THE SOUTH PACIFIC

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INTRODUCTION

Pesticide control in any jurisdiction requires effective, enforceable legislation incorporating a system of registration. This is the first step towards preventing problems of contaminated waterways, health risks to users and the general public and excessive chemical use at the expense of traditional control methods.^[1] The legislation of five Pacific nations^[2] described below does provide for the registration of pesticides, although there are differences in both approach and content, but the difficulties of enforceability and lack of resources highlighted a decade ago remain.^[3] These issues require attention not only nationally but at regional and international levels as well.

In view of this, and aside from the initiatives of the legislators, an important feature of pesticide control in the region is the influence of the International Code of Conduct on the Distribution and Use of Pesticides (FAO Code). This initiative was developed by the Food and Agriculture Organization of the United Nations and has attracted wide support. Notwithstanding its lack of legal status, it is essential for those interested in the issue of pesticides in the Pacific to have some understanding of the Code and its guidelines, especially as it provides a useful framework for the evaluation of existing legislation.

In 1989, thirteen Pacific countries were represented at the ‘Workshop on the Implementation of the FAO International Code of Conduct on the Distribution and Use of Pesticides For the Pacific Island Countries’.^[4] This workshop, organised by the Food and Agricultural Organization of the United Nations, in co-operation with the South Pacific Commission, sought to provide participants with an understanding of the Code and their responsibility for its implementation. Since then a number of workshops have been held on the issue of pesticides, the latest being in Samoa in September 1998.

The FAO Conference Resolution 10/85, which was passed on 28th November 1985, recognised that:

... a voluntary International Code of Conduct, based on internationally agreed technical guidelines, would provide a practical framework for the control of pesticides, especially in countries that do not have adequate pesticide registration and control schemes.

The resultant Code defines pesticide as:

... any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport, or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.^[5]

Although voluntary, the Code is widely promoted and supported by regional governments and other organisations, including Agricultural Requisites Scheme for Asia and the Pacific, International Co-operation Centre of Agricultural Research for Development, the South Pacific Commission and the South Pacific Regional Environment Programme. It seeks to encourage an integrated approach to pesticide regulation by involving governments, regional organisations, industry, trade, users, environmental groups, international organisations and other interested bodies.

The Code places responsibilities on exporting nations to exchange information with importing nations and to monitor the quality of pesticides supplied, as well as to adhere to packaging and labelling standards. According to Clause 3.4.4 exporting nations should also directly, or through their pesticide industries:

... retain an active interest in following their products to the ultimate consumer, keeping track of ultimate users and the occurrence of any problems arising in the actual use of their products as a basis for determining the need for changes in labelling, directions for use, packaging, formulation or product availability.'

Industry is also expected to be largely self-regulating in terms of the distribution and trade in pesticides and should ensure that advertising is neither misleading nor encouraging of inappropriate use.

Importantly, as far as a review of existing national legislation is concerned, the Code is:

... designed to be used, within the context of national law, as a basis whereby government authorities, pesticide manufacturers, those engaged in trade and any citizens concerned may judge whether their proposed actions and the actions of others constitute acceptable practices. [\[6\]](#)

With this objective in mind, as well as the regulatory requirements set out in Articles 6 and 7 regarding availability restrictions, registering, classifying, packaging and labelling of pesticides, regional legislation can be examined. The legislation of Fiji, Vanuatu, Cook Islands, Niue and Tonga is now described and evaluated in terms of the Code, as summarised in the following table.

	Act	Registration	Labelling	Storage, Packaging, Handling	Penalties	FAO Compliance
Fiji	<i>Pesticides Act (Cap 157)</i>	No use, offer for sale or sale unless registered.	Prescribed	Prescribed	Cancellation of registration, fines	Further information should be required prior to registration
Vanuatu	<i>Pesticides (Control) Act, 1993</i>	Required for importation, manufacture, sale or delivery. Valid for 5 years.	Prescribed with detailed information required to be displayed.	Prescribed. Containers must be approved. Handling prohibited in some circumstances.	Fines, imprisonment and forfeiture.	Substantial compliance but effectiveness yet to be tested.
Cook Islands	<i>Pesticides Act, 1987.</i>	Emphasis on registration before importation.	Must be approved but details not specified in	Approval required but details lacking in the Act.	Fines or imprisonment.	Act fails to address many FAO Code issues.

			the Act.			
Niue	<i>Pesticides Act 1991</i>	Permits required for importation. Valid for up to 2 years.	Prescribed.	Prescribed.	Fines , forfeiture or disposal.	FAO guidelines satisfied.
Tonga	<i>Pesticides Act 1975</i>	Prescribed.	Details are prescribed including a cautionary statement.	Prescribed.	Cancellation, fines and /or imprisonment.	Largely compliant.

FIJI

In Fiji the *Pesticides Act* (Cap157), which came into effect on 1st April, 1972, regulates the registration and sale of pesticides. Unless a pesticide is registered pursuant to the Act it may not be used, offered for sale or sold in Fiji.^[7] Contravention of the Act is an statutory offence with penalties comprising cancellation of registration, a lump sum fine and, for a continuing offence, a further daily fine.⁸ The Act does not, however, prescribe who should apply for registration.

‘Pesticide’ is widely defined as ‘*any product intended for use or used for controlling a pest, or any adjuvant intended for use or used in connection with any such product.*’^[9]

Pursuant to the Act the Registrar of Pesticides is required to keep details of the chemical names, active ingredients and the name and place of business of the manufacturer of all registered pesticides.^[10] Such details must be published in the Gazette.^[11]

The Regulations made pursuant to the Act^[12] prescribe registration and labelling particulars for importers or persons formulating a pesticide, although the Director of Agriculture may waive such requirements if satisfied that a pesticide ‘*will be used solely for experimental purposes*’.^[13] Information concerning toxicological data and analysis methods must be furnished^[14] and a draft label must also be provided.^[15]

The Registrar has a discretion to register a pesticide with or without conditions and registration may also be refused^[16] or cancelled.^[17] An objection to the decision may be lodged with the Minister of Agriculture, Fisheries and Forests who may uphold or reject it.^[18]

If there is any change in the formulation of the pesticide a fresh application for registration must be made^[19] and the Registrar’s approval must be sought if the label is to be changed.^[20] The Registrar also has the power to require a change in any label.^[21]

Labels must state the trade name of the pesticide, its net weight or volume, recommended use and directions for use and its chemical composition. The label must also show, in English, Fijian and Hindustani,^[22] warnings with regard to storage and handling, procedure in case of accidental poisoning, details of the manufacturer and importer and the registered number of the pesticide.^[23] The Director of Agriculture has a discretion to waive any of these requirements.^[24] The Registrar also has wide discretionary powers to waive the registration procedures and the labelling requirements²⁶ in the case of pesticides used solely for experimental purposes.^[25]

Although pesticide inspectors may be appointed by the Minister,^[27] it would be appropriate to formalise their positions, particularly in view of their key roles in enforcement and monitoring of the legislation. Inspectors are provided with statutory powers of entry and seizure and may institute legal proceedings,^[28] but this range could usefully be widened to include general enforcement of the law and the carrying out of regular inspections.

The Act purports to give the Minister of Agriculture, Fisheries and Forests wide powers to prescribe the forms to be used for the purposes of carrying out the Act^[29] as well as prohibiting or controlling the use of any pesticide^[30] or '*prescribing any other matter which may be desirable or expedient for the better regulation and control of the sale of pesticides*'.^[31] The Director also has a discretion to waive the requirements of the regulations. It would be desirable, however, to make such decisions the collective responsibility of a statutory pesticides committee which could take into account the concerns of a larger section of the community.

The current Pesticides Committee, comprising the heads of various Government Agencies who give advice to the Registrar,^[32] requires formal legal recognition. It could also be strengthened by a provision requiring not only input from Heads of Departments, including Customs and the Environment Department (which would be upgraded pursuant to the proposed *Sustainable Development Bill*) but from other interest groups such as sellers and users as well.

The Act provides only a basic framework for pesticide control. Lack of resources for monitoring the use and sale of pesticides and for enforcing the legislation generally has been identified as a problem in Fiji Islands.^[33] It has been recommended not only that the establishment of the Pesticides Committee and the appointment of inspectors be formalised but also that distributors and dealers be licensed.^[34]

Other recommendations relate to the improvement of analytical facilities and improved liaison with Customs.^[35] The appeal process also needs to be revised to involve either a formally constituted body or to refer appellants to existing administrative appeals procedures. Fees could also be levied to recover some of the costs of administering the legislation.

The FAO Guidelines are used in Fiji to some extent and are important given the basic framework of the Act. For example, registration requirements comply with the Code and efforts are made to prevent the importation of very hazardous products. Information exchange takes place with the exporting countries of Australia and New Zealand. There does need, however, to be a tightening of the information required on applications for registration. Such information should include the results of efficacy trials, residue information, environmental effects and disposal methods. The public should also be able to access the information in the Register.

The storage, packaging and handling of pesticides should follow strict legislative requirements and should comply with FAO guidelines. In particular, storage requirements must be enforced to avoid contamination of foodstuffs. Industry should also be required to take responsibility for disposal of unused pesticides and containers and restrictions should be placed on any advertising of pesticides. Registration should also be for a specified period after which a review should take place to take into account further information that may become available regarding the use and handling of pesticides.

The Sustainable Development Bill, 1997, when passed by Parliament, may lead to amendments to the Pesticides Act. In particular the Bill seeks through a National Council for Sustainable Development to, amongst other things:

... utilise the legislative framework of line ministries, departments and statutory bodies, to promote and enhance environmental protection and resource management capabilities and activities within individual

ministries, departments and statutory bodies'.^[36]

The Bill also proposes the establishment of a Department of Environment which would be required to maintain a register of dangerous and hazardous substances^[37] and establish codes of practice, standards, guidelines and operational procedures.^[38] In Part V, the Bill is specifically concerned with pollution and waste management and Part VI is devoted solely to the management of wastes.

VANUATU

The Pesticides (Control) Act No 11 of 1993 came into force on 16th March, 1998. It describes, in similar terms to the FAO Code, a pesticide as:-

... any substance or mixture of substances for preventing, repelling, destroying or controlling any pest, and shall include substances intended for use as an insect growth regulator, a biopesticide, a plant-growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.^[39]

The importation, manufacture, distribution, sale or delivery of any pesticide in Vanuatu is prohibited unless registration, packaging and labelling requirements have been satisfied.^[40] Pesticides in use prior to the coming into effect of the Act had three months to obtain registration.^[41]

A Pesticides Committee,^[42] which consists of three appointed persons and six ex-officio members including the Principal Environmental Officer and the Registrar of Pesticides,^[43] is set up by the Act. The Registrar is also the Principal Plant Protection Officer in the Department of Agriculture.^[44]

Meetings of the Committee are to be held at least once each year.^[45] Apart from administering the Act,^[46] the Committee has three functions. These are to assess and evaluate applications for the registration or importation of any pesticides,^[47] to determine conditions of use^[48] and to promote the efficient, prudent and safe use of pesticides.^[49]

Details of pesticides and their relevant manufacturers, suppliers and importers must be kept in the Register.^[50] Each listed pesticide must also be given a registration number.^[51]

Importers of pesticides must obtain a permit,^[52] a copy of which must be sent to the Director of Customs within seven days of issue.^[53] The Director must report annually to the Minister on the quantities of each pesticide imported^[54] and permit holders also have an obligation to furnish returns annually to the Committee.^[55] Special provisions apply for the importation of pesticides for research purposes.^[56]

The method of applying for registration or for a permit to import is prescribed.^[57] Applications on the prescribed forms together with an application fee must be made to the Committee^[58] and must contain details of the applicant, the manufacturer, producer and supplier of the pesticide.^[59] The trade name^[60] and chemical composition of the pesticide must also be provided^[61] together with a draft label^[62] and sample of the container in which the pesticide is to be sold or distributed.^[63]

As well as approving a pesticide, the Committee must approve its container or package provided that the same is satisfactory having regard to the safe and effective storage and handling of the pesticide.⁶⁴ The

common chemical name of the active ingredient or ingredients must be supplied^[65] as well as net weight, stability in storage, methods of use and expiry date.^[66] Uses, potency, shelf-life and effect as claimed by the manufacturer or producer must also be provided.^[67] Further technical information required includes toxicological data, antidotes and environmental impact,^[68] analysis methods used,^[69]

residues^[70] and reports of testing.^[71] Any other information may be required by the Committee.^[72] Some of this information is also required to be contained on the label to be approved^[73] as well as directions for use,^[74] warnings and precautionary symbols.^[75] Any changes to the label, package or composition of a pesticide must meet with the approval of the Committee.^[76]

Upon receipt of the information prescribed for the purposes of registration, the Committee may register the pesticide, conditionally register the pesticide or refuse the application.^[77] These options are also available to the committee when considering permits to import pesticides.⁷⁸ Refusal to register must be accompanied by stated reasons which are prescribed.^[79] These include 'the public interest'^[80] and/or if the Committee is of the opinion that the use is likely to give rise to '*an unacceptable hazard to the environment or users*'.^[81] The Committee may also require additional information to be attached and distributed with any registered pesticide.^[82]

Certificates of registration which are issued by the Committee are valid for up to five years and may be renewed for further periods not exceeding five years.^[83] This allows the Committee to effectively monitor pesticides and their use particularly where further technical information comes to light. When the Committee issues the certificate it must declare that the pesticide is approved and publish such approval in the Gazette.^[84] Registration may also be granted for limited marketing and restricted use of pesticides.^[85] Importers of restricted use pesticides must maintain a register of all imports as well as all persons supplied with such pesticides.^[86]

The Committee may cancel or suspend the registration of any pesticide where, in its opinion, its continued use is ineffective or gives rise to an unacceptable hazard^[87] and

it is necessary in the public interest to do so.^[88] Reasons must be stated if this action is taken^[89] and the pesticide then ceases to be approved.^[90]

The legislation prohibits handling or dealing with adulterated, decomposed or deteriorated pesticides or pesticides which are packed in deteriorated or damaged containers rendering them dangerous for use or storage.^[91] The Committee must approve storage facilities for pesticides which are kept in bulk^[92] and contamination of food, apparel and furnishings is to be avoided.^[93] Where pesticides have been used on food crops their harvesting or selling is restricted.^[94] The advertising of pesticides is also regulated by the Act.^[95]

Inspectors are to be appointed pursuant to the Act and their powers, including the power of entry, are prescribed in general terms.^[96] Specific provisions deal with the analysing of samples,^[97] seizure of articles^[98] and associated costs.^[99]

The penalty for contravention or failure to comply with the Act or regulations made pursuant to the Act is a fine not exceeding one million vatu, imprisonment for up to five years or both.^[100] Individuals, bodies corporate and partners may be liable although either lack of knowledge or the exercise of due diligence are defences.^[101] In addition to these penalties the Court may order that articles be seized and forfeited to the

Committee for disposal.^[102]

The Minister responsible for agriculture may make regulations prescribing matters required by the Act.^[103] In particular, matters pertaining to labelling,^[104] dealing with hazardous substances,^[105] disposal,^[106] establishing standards,^[107] and methods of use^[108] may be prescribed.

This legislation substantially complies with the FAO Code. It attempts to encourage an integrated approach to pesticide control by involving key government personnel on the Pesticides Committee although the input of industry or other interest groups is not statutorily guaranteed. Given the importance of the Customs Department in enforcing the legislation it is arguable that they should have a representative on the Committee.

The Act does set up a comprehensive process for registration and adequately regulates the use and availability of pesticides in Vanuatu. However, the effectiveness of the legislation is yet to be tested due to its recent adoption^[109] and there is no provision allowing the public to access information in the Register.

COOK ISLANDS

The Cook Islands Pesticides Act 1987 defines a pesticide in similar terms to the Vanuatu Act but includes *'any substances or mixture of substances declared by the Minister under section 4 to be a pesticide'*.^[110] In order to exercise this power the Minister must act on the recommendation of the Pesticides Board^[111] which is also the prescribed procedure where pesticides are exempted from the provisions of the Act.^[112]

A Register of Pesticides must be kept^[113] and pesticides must be registered before they can be imported.^[114] Rather than regulating the use, distribution or delivery of pesticides in the Cook Islands itself, the main thrust of the legislation is towards restricting their importation. Permits may be granted to importers after registration^[115] and the names of all pesticides for which a permit has been issued must be provided to the Collector of Customs by the Registrar.^[116] Customs officers are charged with the duty of assisting in the enforcement of the Act.^[117]

Representatives from the Ministries of Agriculture, Health and Conservation and a pesticides importer comprise the Pesticides Board. The Chairperson is the Secretary of Agriculture.^[118] Four functions and powers of the Board are prescribed. These are:

- the assessment and evaluation of applications for registration;
- the discretion to determine conditions of use;
- the discretion to cancel a registration; and
- the promotion of efficient, prudent and safe use of pesticides.^[119]

The Board, whose members may be remunerated,^[120] is required to prepare and submit an annual report which the Minister tables in Parliament.^[121]

Registration of pesticides is effected by application to the Board.^[122] The Board may register the pesticide for up to five years or refuse to register it.^[123] No provision is made for a review of the Register. Applicants must establish a need for the use of the pesticide in the Cook Islands^[124] and it would appear that the Board must refuse registration if the pesticide would, *'give rise to an unacceptable hazard to the Public or to the environment'*.^[125] Reasons for such a refusal must be given in writing.^[126] As well as

approving a pesticide, the Board must approve its container.^[127] At its discretion the Board may cancel or suspend a registration or register a pesticide previously rejected.^[128]

Separate provisions apply for restricted use pesticides^[129] and pesticides imported for scientific purposes.^[130] The Act allows twelve months exemption from registration for pesticides being sold prior to the commencement of the legislation.^[131]

Inspectors are to be appointed pursuant to the Act^[132] and their powers of entry, inspection and seizure of pesticides are prescribed in general terms.^[133] Identity cards are required to be issued to inspectors^[134] and these must be produced upon request.^[135]

It is an offence to either directly or indirectly import, sell, use or supply any pesticide in contravention of either the Act or any condition imposed by the Board.^[136] The prescribed penalty is a fine of up to one thousand dollars, twelve months imprisonment or both.^[137]

Regulations may be made to give full effect to the provisions of the Act and to set fees in respect of any applications.^[138] Other areas for regulation are not indicated.

As is the case in Fiji, this Act provides a bare framework for the control of pesticides. The importation of restricted pesticides and their distribution is severely limited although the criteria used to make such a classification are not indicative. The registration process for all pesticides fails in general to address the issues recommended by the FAO Code in terms of information made available to the Board. For example, specifics regarding the applicant, the brand name of the pesticide, manufacturer, supplier, chemical composition of the pesticide, environmental impact, expiry dates, storage arrangements and use are not prescribed. The Act is silent with regard to packaging and labelling details except to require that both have been approved by the Board prior to any sale.¹³⁹ No provision is made for restricting advertising or restricting the sale or harvesting of crops treated with pesticides and no provision is made for the public to access information contained in the Register. In the case of importers, the Registrar may require further information^[140] although this provides little guidance as to the nature of the details generally needed.

This legislation attempts to encourage an integrated approach to pesticide control by having key government personnel on the Pesticides Board although the input of industry or other interest groups is not statutorily guaranteed. Given the importance of sharing the responsibility for pesticide use as widely as possible, the range of people represented on the Board should be increased.

NIUE

The Niue Pesticides Act 1991 has adopted the FAO definition of 'pesticide' as well as including '*any substance or mixture of substances declared by Cabinet under section 3 to be a pesticide*'.^[141] In order to exercise this power, or if exempting a pesticide from the provisions of the Act,^[142] the Cabinet must act on the recommendation of a Pesticides Committee.^[143]

The Act sets up the Committee which consists of the Director of Agriculture, Forestry and Fisheries,^[144] the Director of Health,^[145] a Cabinet appointee representing importers and sellers^[146] and another representing users.^[147] Before pesticides may be imported to Niue^[148] or sold,^[149] a permit must be obtained from the Committee.

Five functions and powers of the Committee are prescribed. These are:

- the assessment and evaluation of applications for the importation or sale of any pesticide;
- determination of any conditions relating to importation or sale;
- suspension or revocation of permits;
- promotion of efficient, prudent and safe use of pesticides by the public; and
- advising Cabinet and the Minister.

Permits to import, in the prescribed form,^[150] may only be obtained by lodging an application with the Director.^[151] Applications must contain details of the applicant and the manufacturer or distributor of the pesticide.^[152] The brand name, chemical composition, formulation and a draft label must be provided together with information regarding storage and use of the pesticide.^[153]

Upon receipt of the information prescribed for the importation of the pesticide, the Committee may approve the application with or without conditions, defer the application until further information is provided or decline the application.¹⁵⁴ Conditions which the committee may impose include the quantity to be imported, the length of time for which the permit is valid (but not longer than two years), handling methods and storage requirements.^[155]

Permits, in the prescribed form,^[156] must also be obtained to sell or distribute pesticides.^[157] Applications for permits must give particulars of the applicant, the brand name of the pesticide, from whom the pesticide is to be obtained, storage arrangements, the label to be used, and the normal use of the pesticide.^[158] The Committee then deals with the application in the same manner as an application for an import permit.^[159] Conditions which may be imposed on the seller or distributor include the length of time the permit is valid, handling methods, provision of adequate storage facilities and labelling details.^[160] The particulars which are required on the labels are not prescribed by the Act.

The Committee may revoke or suspend any permit after giving the holder a reasonable chance to be heard.^[161] Revocation is an option for the Committee when the permit holder has been convicted of an offence under the Act.^[162] Suspension may be ordered when there is a prosecution pending in the High Court against the permit holder and the Committee is satisfied that the continued selling or importation constitutes *'a danger to the health or safety of any person'*.^[163] Either revocation or suspension are options when the Committee becomes aware of facts not known when a permit was issued and those facts satisfy the Committee that normal use of the pesticide would give rise to *'an unacceptable hazard to any person, any animal or to the environment'*.^[164]

The Director must keep and maintain a register of importers and sellers of pesticides.^[165] Details of permit holders, issue and expiry dates of the permits, brand names, purpose for which the pesticide is ordinarily used, any conditions attached to the permits and any further particulars may be required by the Committee.¹⁶⁶ The Comptroller of Customs must be satisfied that importers hold current permits.^[167]

Inspectors are not appointed pursuant to the Act although the Director or any person acting under the authority of the Director has powers to enter premises, search, seize and remove material without a warrant.¹⁶⁸ These powers may only be exercised in the presence of a constable and during normal business hours.^[169]

Four offences are prescribed by the Act. These are:

- importing without a permit;

- importing in contravention of a condition attached to a permit;
- selling or distributing without a permit and;
- selling or distributing in contravention of a condition attached to a permit.^[170]

The penalty for any of these offences is a fine of up to \$200 for the first offence and a fine of up to \$1,000 for a second or subsequent offence.¹⁷¹ In addition to this penalty, the High Court may order the forfeiture or disposal of any pesticide in respect of the offence.^[172]

The Cabinet may make regulations for the purpose of carrying out the provisions of the Act.^[173] In particular, matters pertaining to application forms for permits, fees payable, terms and conditions attaching to permits, standards in relation to storage and handling, usage and penalties for breach of regulations may be prescribed.¹⁷⁴ Penalties may not exceed a fine of \$200.^[175]

Although importers and sellers, government personnel and users are represented on the Pesticides Committee, it would strengthen this integrated approach to involve an environmental officer and a representative from customs. The latter is pivotal in enforcing the restrictions on pesticide imports. It is also desirable to make the register available for public inspection to facilitate the dissemination of information.

In terms of regulating the distribution of pesticides, the principles of the FAO Code have been satisfied. Limiting the validity of permits to no more than two years is also to be commended as this allows for a regular review of the status of each pesticide regionally and internationally. However, the Act is silent as regards advertising of pesticides and disposal practices and it would have been helpful to have prescribed that labels should adhere to FAO guidelines.

TONGA

The Pesticides Act 1975 of Tonga defines pesticide as '*a chemical (excluding fertilizer) used for or represented as a means of preventing, destroying, repelling, mitigating, or controlling directly or indirectly any insect, mite, tick, fungus, bacterium virus, nematode, weed slug, snail, rodent, fish or mollusc...*'.^[176]

A system of registration of pesticides is set up by the Act. The Register of Pesticides is administered by the Director of Agriculture, Forests and Fisheries.^[177] It is to comprise details of the trade names, chemical names and chemical compositions of pesticides as well as details of manufacturers and importers.^[178] Each listed pesticide must also be given a registered number.¹⁷⁹ Pesticides which are not entered in the Register cannot be sold, distributed, imported or used in Tonga.^[180] There is no express provision allowing the public to inspect the register.

The method of applying for registration is prescribed^[181] as is the application fee.^[182] Applications must contain details of the importer and the manufacturer or distributor.^[183] The brand name,^[184] chemical composition,^[185] intended use, rates of application^[186] and a proposed label^[187] must also be submitted. The Registrar may require further relevant information.¹⁸⁸ Labels must show certain information including '*the word POISON, and an appropriate cautionary statement where the pesticide contains a chemical listed as a poison under the New Zealand Poisons Regulations...*'.^[189] This information as well as directions for use (including recommended uses in Tonga),^[190] minimum time from application to harvesting or consumption^[191] and first aid details^[192] must also appear on the label in Tonga.^[193] Further details relating to the product's brand name,^[194] the manufacturer and importer,^[195] the nature of

the chemical components,^[196] its formulation,^[197] restrictions of use or safety precautions,^[198] disposal methods^[199] and registration details^[200] are also required.

Upon receipt of the information prescribed for the purpose of registration, the Registrar has a discretion to either register the pesticide with or without conditions or refuse the application.^[201] Failure to comply with any condition is an offence.^[202] Reasons for a refusal must be stated upon request.²⁰³ If the pesticide is registered, certain details relating to it must be published in the Gazette.^[204]

The Registrar may require that the label of any pesticide container be changed at any time^[205] and no change to an approved label may be made without the Registrar's approval in writing.^[206] Labelling requirements may, however, be waived if the Registrar is satisfied that an adequate label will be used but compliance is not practicable or the pesticide will be used solely for research purposes.^[207] Failure to comply with any condition imposed pursuant to the Registrar's discretion in this regard is an offence.^[208] Changes in the formulation of any registered pesticide also require prior application to the Registrar.^[209]

Registrations remain valid unless cancelled by the Registrar.^[210] The registration holder must be given written notice of the cancellation and such notice must be published in the Gazette not less than three months prior to the proposed cancellation date.^[211] This time requirement may be waived when, in the opinion of the Registrar, special circumstances exist.²¹² Where registration is refused or cancelled, an objection may be lodged.^[213]

The penalty for contravention of the Act or regulations made pursuant to the Act,^[214] is cancellation of any registration held, a fine not exceeding \$100, imprisonment for one year or both.^[215] Continuing offences may attract further fines of up to \$10 each day.^[216]

This Act does not set up a pesticides committee or other forum to allow for interested and affected members of the community, industry and government to participate in and take responsibility for the control of pesticides. Instead, the Registrar has a wide discretion in terms of the distribution and availability generally of these substances as well as an onerous responsibility.

The Act does anticipate a close relationship with regulators in New Zealand although presumably the Customs Department plays a vital role in preventing the importation of pesticides that do not comply with the labelling requirements. This role requires legislative support. Enforcement and monitoring of the legislation also require formal support not only by the creation of a Pesticides Committee but by the appointment of inspectors and the licensing of distributors and dealers. The Register also needs to be periodically reviewed.

FAO guidelines also target the repackaging, storage and advertising of pesticides. The labelling guidelines are however largely satisfied by the legislation although these may be waived at the discretion of the Registrar in certain circumstances. Information required on applications for registration should be expanded and prescribed rather than left to the discretion of the Registrar. Such information should include, for example, disposal methods, environmental effects and antidotes.

CONCLUSION

Whilst legislation alone cannot solve possible problems associated with the use, availability and distribution of pesticides, the following observations follow from this review:

1. Enforcement of the Acts remains an issue of concern in all jurisdictions.
2. Information required prior to registration could be standardised to ensure that the issues raised by the FAO Code are addressed.
3. Packaging, labelling, storage and disposal requirements could be standardised to comply with the FAO Code.
4. Registers need to be reviewed periodically and should be available for public inspection.
5. Responsibility for pesticide control should be widely shared within the community through representation on formally constituted pesticides committees. Administrative discretion should be limited and should be exercised only after advice by appropriate committees or bodies.
6. The role of customs departments in each country is vital for the enforcement of the legislation and its role may need strengthening.
7. Inspectors are also essential for enforcing the legislation and their role must be formally recognised and supported with adequate resources.
8. Enforcement of legislation requires amongst other things, *'the establishment of appropriate educational, advisory, extension and health-care services'*.^[217] Unless affected persons have a broad understanding of the FAO Code and the relevant pesticides legislation these initiatives may be ignored, either deliberately or inadvertently.
9. Advertising should be restricted to ensure that only registered pesticides are advertised and that any statements made conform to information approved by the appropriate government authority.

The importance of the FAO Code in the region as a benchmark for the evaluation of existing legislation regulating pesticides and as a code of practice where such legislation is lacking is obvious. Pesticide control requires not only that initiatives be taken at national levels but that co-operation between importing and exporting nations be strengthened. In other words, an integrated approach to the issue involves all sectors of the community at local, national, regional and international levels. Regional organisations also provide forums for monitoring the efforts of importing and exporting nations in meeting the objectives of the Code.

Every community member has a stake in the successful monitoring and control of pesticide use, storage and disposal. An integrated approach to this issue will not succeed, however, without *'co-ordinated efforts to disseminate educational materials of all types to pesticide users, farmers, farmers' organizations, agricultural workers, unions and other interested parties.'*^[218] Governments and industry must act to provide the resources needed to meet these broad FAO Code objectives.

ENDNOTES

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[1] See, for example, IUCN, *Environment: Fiji - The National State of the Environment Report*, IUCN, 1992 p 117

[2] Fiji, Vanuatu, Cook Islands, Niue, and Tonga

[3]. Mowbray, DL, *Pesticide Use in the South Pacific*, 1988, UNEP, 236.

[4]. The country delegates were from American Samoa, Cook Islands, Fiji Islands, Guam, Marshall Islands, New Caledonia, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Wallis and

Futuna and Samoa.

[5]. FAO Code Article 2.

[6]. FAO Code Article 1.6.

[7]. Section 4.

[8]. Section 10.

[9]. Section 2.

[10]. Section 3(1).

[11]. Section 6.

[12]. Section 12.

[13]. Regulation 3(3).

[14]. Regulation 3(a), (b).

[15]. Regulation 4.

[16]. Section 5.

[17]. Section 7.

[18]. Section 8.

[19]. Section 5 (3).

[20]. Section 5(4).

[21]. Section 5(2).

[22]. Regulation 4(2).

[23]. Regulation 4(1).

[24]. Regulation 4(3).

[25]. Regulation 4(3).

[26]. Regulation 3(3).

[27]. Section 11.

[28]. Section 11(1).

[29]. Section 123(a).

[30]. Section 12(b).

[31]. Section 12 (c).

[32]. SPC & FAO, *Workshop on the Implementation of the FAO International Code of Conduct on the Distribution and Use of Pesticides for the Pacific Island Countries*, 1989, 46-47.

[33]. SPC & FAO, *Op Cit*, 47; Watts, M, *Poisons in Paradise - Pesticides in the Pacific*, Greenpeace, undated, 16.

[34]. Lunn, DW, *Report on a Mission to Evaluate and Assess the Pesticides Registration and Control Scheme in the Republic of Fiji*, 1989, FAO, Bangkok, cited in IUCN, *Environment: Fiji - The National State of the Environment Report*, 1992, IUCN, 116

[35]. *Ibid*.

[36]. Proposed section 897(b).

[37]. Proposed section 13(2)(i).

[38]. Proposed section 13(3)(g).

[39]. Section 1.

[40]. Sections 8, 21(2).

[41]. Section 35.

[42]. Section 2.

[43]. Section 4.

- [44]. Section 3(2).
- [45]. Section 5(1).
- [46]. Section 6(1)(d).
- [47]. Section 6(1)(a).
- [48]. Section 6(1)(b).
- [49]. Section 6(1)(c).
- [50]. Section 17(1).
- [51]. Section 17(2).
- [52]. Sections 9(b),21.
- [53]. Section 21(3).
- [54]. Section 21(4).
- [55]. Section 22.
- [56]. Section 23.
- [57]. Section 10.
- [58]. Section 10(1), (2).
- [59]. Section 10 (3)(a), (b).
- [60]. Section 10(3)(c).
- [61]. Section 10 (3) (h).
- [62]. Section 10(3)(e), 16.
- [63]. Section 10(3)(f).
- [64]. Section 20.
- [65]. Section 10(3)(d).
- [66]. Section 10 (3)(h).
- [67]. Section 10(3)(g).
- [68]. Section 10(3)(i).
- [69]. Section 10(3)(j).
- [70]. Section 10(3)(k).
- [71]. Section 10(3)(l).
- [72]. Section 10(3)(m).
- [73]. Section 16.
- [74]. Section 16 (1)(d).
- [75]. Section 16 (1)(e).
- [76]. Section 16(2), 19.
- [77]. Section 11.
- [78]. Section 21(1).
- [79]. Sections 11(c), (2).
- [80]. Section 11(2)(c).
- [81]. Section 11 (2)(b).
- [82]. Section 13.
- [83]. Section 12.
- [84]. Section 18.
- [85]. Section 14.
- [86]. Section 15.
- [87]. Section 24(1)(a).

- [\[88\]](#). Section 24(1)(b).
- [\[89\]](#). Section 24(2).
- [\[90\]](#). Section 24(3).
- [\[91\]](#). Section 25.
- [\[92\]](#). Section 28.
- [\[93\]](#). Section 26.
- [\[94\]](#). Section 29.
- [\[95\]](#). Section 27.
- [\[96\]](#). Section 30.
- [\[97\]](#). Section 31.
- [\[98\]](#). Sections 32, 33.
- [\[99\]](#). Section 34.
- [\[100\]](#). Section 36 (1).
- [\[101\]](#). Section 36(2).
- [\[102\]](#). Section 37.
- [\[103\]](#). Section 38.
- [\[104\]](#). Section 38(1)(i).
- [\[105\]](#). Section 38(1)(ii).
- [\[106\]](#). Sections 38(1)(iii), (vii).
- [\[107\]](#). Section 38(1)(iv).
- [\[108\]](#). Section 38(1)(vi).
- [\[109\]](#). Swua, B, *Vanuatu Country Paper*, Pesticide Management Workshop, Apia, Samoa, 7th-14th September, 1998, unpublished.
- [\[110\]](#). Section 2.
- [\[111\]](#). Section 4.
- [\[112\]](#). Section 9.
- [\[113\]](#). Section 15.
- [\[114\]](#). Sections 10, 14.
- [\[115\]](#). Section 14.
- [\[116\]](#). Section 16(3).
- [\[117\]](#). Section 16(1).
- [\[118\]](#). Section 5.
- [\[119\]](#). Section 6.
- [\[120\]](#). Section 7.
- [\[121\]](#). Section 8.
- [\[122\]](#). Section 11.
- [\[123\]](#). Section 12(1).
- [\[124\]](#). Section 12(3).
- [\[125\]](#). Section 12 (3).
- [\[126\]](#). Section 12(4).
- [\[127\]](#). Section 17.
- [\[128\]](#). Section 12(2).
- [\[129\]](#). Section 13.
- [\[130\]](#). Section 18.

- [\[131\]](#). Section 19.
- [\[132\]](#). Section 21.
- [\[133\]](#). Section 22.
- [\[134\]](#). Section 21(3).
- [\[135\]](#). Section 22(2).
- [\[136\]](#). Section 23.
- [\[137\]](#). Section 24.
- [\[138\]](#). Section 25.
- [\[139\]](#). Section 17.
- [\[140\]](#). Section 14(2)(b).
- [\[141\]](#). Section 2.
- [\[142\]](#). Section 6.
- [\[143\]](#). Section 3.
- [\[144\]](#). Sections 4(2), 2.
- [\[145\]](#). Section 4(2)(b).
- [\[146\]](#). Section 4(2)(c).
- [\[147\]](#). Section 4(2)(d).
- [\[148\]](#). Section 7.
- [\[149\]](#). Section 9.
- [\[150\]](#). Section 8(5).
- [\[151\]](#). Section 8.
- [\[152\]](#). Section 8(2)(a).
- [\[153\]](#). Section 8(2).
- [\[154\]](#). Section 8(3).
- [\[155\]](#). Section 8(4).
- [\[156\]](#). Section 10(5).
- [\[157\]](#). Section 9.
- [\[158\]](#). Section 10(2).
- [\[159\]](#). Section 10(3).
- [\[160\]](#). Section 10(4).
- [\[161\]](#). Section 13.
- [\[162\]](#). Section 13 (1)(a).
- [\[163\]](#). Section 13(b).
- [\[164\]](#). Section 13(1)(c).
- [\[165\]](#). Section 11(1).
- [\[166\]](#). Section 11(2).
- [\[167\]](#). Section 12.
- [\[168\]](#). Section 14.
- [\[169\]](#). *Ibid.*
- [\[170\]](#). Section 15.
- [\[171\]](#). *Ibid.*
- [\[172\]](#). Section 15(2).
- [\[173\]](#). Section 16(1).
- [\[174\]](#). Section 16(2).

- [\[175\]](#). Section 16(f).
- [\[176\]](#). Section 2.
- [\[177\]](#). Section 3.
- [\[178\]](#). Section 3(1).
- [\[179\]](#). Section 3(2).
- [\[180\]](#). Section 4.
- [\[181\]](#). Section 5(1).
- [\[182\]](#). Section 5(3).
- [\[183\]](#). Section 5(2)(a).
- [\[184\]](#). Section 5(2)(b).
- [\[185\]](#). Section 5(2)(b), (c).
- [\[186\]](#). Section 5(2)(c).
- [\[187\]](#). Section 5(2)(d).
- [\[188\]](#). Section 5(2)(e).
- [\[189\]](#). Section 10(1)(a).
- [\[190\]](#). Section 10(1)(e).
- [\[191\]](#). Section 10(1)(f).
- [\[192\]](#). Section 10(1)(g).
- [\[193\]](#). Sections 10(1)(a),(e),.(2).
- [\[194\]](#). Section 10(1)(b).
- [\[195\]](#). Section 10(1)(i).
- [\[196\]](#). Section 10(1)(b).
- [\[197\]](#). Section 10(1)(c).
- [\[198\]](#). Section 10(1)(d).
- [\[199\]](#). Section 10(1)(h).
- [\[200\]](#). Section 10(1)(j).
- [\[201\]](#). Section 6(1).
- [\[202\]](#). Section 10(4).
- [\[203\]](#). Section 6(1)(b).
- [\[204\]](#). Section 7.
- [\[205\]](#). Section 6(2).
- [\[206\]](#). Section 6(4).
- [\[207\]](#). Section 10(3).
- [\[208\]](#). Section 10(4).
- [\[209\]](#). Section 6(3).
- [\[210\]](#). Section 8(1).
- [\[211\]](#). Section 8(1), (2).
- [\[212\]](#). Section 8(2).
- [\[213\]](#). Section 9.
- [\[214\]](#). Section 12.
- [\[215\]](#). Section 11.
- [\[216\]](#). Section 11.
- [\[217\]](#). FAO Code Article 6.1.1.
- [\[218\]](#). FAO Code Article 3.6.

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