



# LEGAL PREPAREDNESS FOR REGIONAL AND INTERNATIONAL DISASTER ASSISTANCE IN THE PACIFIC **COUNTRY PROFILES**



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## Background

Pacific Island Countries are extremely vulnerable to climate change and natural hazards, which are major challenges for the development aspirations of the people of the Pacific and their environment. In fact, the region hosts five of the ten most at-risk countries in the world. As witnessed by recent destructive Tropical Cyclones and health emergencies in the region, some of these events transcend national boundaries or may overwhelm local coping capacities, requiring regional and international support. During such times, it is essential that regional and international assistance compliments domestic efforts and that local actors are firmly in the driver's seat. It is also important that if assistance is accepted, that certain legal facilities are granted to humanitarian partners so that they can provide timely and effective assistance. As such, it is critical that domestic laws and policies provide clear rules of the road to guide national and international humanitarian efforts.

This research report examines the legal preparedness for international disaster assistance across the 16 English-speaking member states of the Pacific Islands Forum, in addition to providing a comparative regional analysis. The Pacific Islands Forum now includes 18 members, with New Caledonia and French Polynesia becoming active full members in 2018.<sup>1</sup> These latter members are not part of this study. It provides an assessment of domestic disaster risk management arrangements against the *"Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance"* (IDRL guidelines) as promulgated by the International Federation of Red Cross and Red Crescent Societies and accepted by all United Nations member states as the key measurement in its assessment.

In addition to the country profiles the research also looks at trends, opportunities and challenges related to legislative frameworks for both international and regional cooperation. In summary the regional analysis concludes that

- Most Pacific countries have a disaster risk management legislative framework, however there are varying degrees of comprehensiveness and alignment to the IDRL Guidelines;
- Overall, coordination and management of international assistance tends to be a discretionary power and decision making on an ad hoc basis;
- Arrangements and procedures for country level disaster risk management arrangement and international assistance is not well documented and difficult to access for international/regional responders;
- It is suggested that Pacific countries should consider both aligning their disaster law frameworks (particularly as regards international assisting actors) within an easily understood regional framework;
- Overall, the research recognises that although disaster law in the Pacific is developing it is doing so in national silos. The current low level of regional cooperation and coordination in terms of national arrangements risks being a missed opportunity to develop a truly Pacific approach to regional response.

In addition to this hardcopy version, country and regional analysis can also be accessed through an online platform at [www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/](http://www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/)

1 The first Pacific Islands Forum Leaders Meeting at which the French Territories participated was in September 2018

Since the completion of this research, the world including the Pacific region, has been rocked by the impacts of the COVID 19 pandemic. The quick actions taken by Pacific governments and regional partners to establish the “Pacific Humanitarian Pathway on COVID-19” (PHP-C) is commendable. The pathway is a high-level political mechanism to support regional coordination and cooperation for medical and humanitarian assistance for both the pandemic and other emergencies that may arise during COVID across the Pacific. This present research will assist Pacific governments as they look at how to implement regional and other international commitments into their domestic frameworks. This report contains the country profiles for the 16 Pacific Island Forum member states included in this mapping. The report should be read together with the accompanying Regional Summary and Assessment Report.

## Methodology

The research was primarily undertaken as a desktop study utilising publicly available resources from the 16 states concerned. In addition, the research team made contact with relevant representatives from the 16 states by email, telephone, and, in some cases, through face to face meetings. These feedback processes were used to ensure the accuracy of the country studies. The research team would particularly like to thank those Pacific partners who took the time to review and comment on our work. Nevertheless, the nature of the task and the challenges around legal research in the Pacific (which is explored in more detail below in a disaster context) means that errors may remain. This is particularly true where the research team was unable to gain the level of feedback desired within the research timeframe. We would therefore welcome further feedback to fill gaps and clarify areas of confusion in the current report.

The work was lead by Professor W. John Hopkins and Finau Heuifanga Leveni who are the authors of this report. However, it would not have been possible without the efforts of Leticia Smith and Holly Faulkner (LLM students at the University of Canterbury) who worked as research assistants on the project. The authors wish to express their particular thanks to them both for their assistance in completing the project.

## Acknowledgements

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# The Commonwealth of Australia

## Overview

### Constitutional/Political Framework

The Commonwealth of Australia (Australia) is a federal state founded upon the 1901 constitution. This constitution created a federal “Dominion” within the British Empire from the six colonies of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. Today the Commonwealth includes the six original states plus the Northern Territory and the Australian Capital Territory (ACT), which operate devolved governments with similar powers to the states. Local government is a matter for each state/territory, however, although some distinctions exist, the system is relatively uniform across the country with a single tier of local government operating nationally.<sup>2</sup> Seven external federal territories complete the Commonwealth’s Territory. These operate as local government units under direct federal control. Norfolk Island, although formerly operating as a devolved territory, became part of New South Wales in 2015 after the Commonwealth Parliament, controversially, passed legislation to revoke its special status.<sup>3</sup>

All the states and the Commonwealth (federal) government operate Parliamentary forms of government. At the Commonwealth level, executive authority is formally held by the Federal Executive Council, which is chaired by the Governor General. This position exercises the functions of the Head of State (the UK Monarch, styled as the Queen of Australia). The Governor General thus formally appoints Ministers and other senior appointments, although in practice these appointments are made under advice from the Prime Minister (and other Ministers).<sup>4</sup> De facto executive power is exercised by the Cabinet. Ministers (both inside and outside Cabinet) are appointed from Parliament by the Prime Minister and hold their positions entirely at his or her discretion. Coalition governments (which are common due to a long-term alliance between two centre-right parties) can introduce a degree of complexity into this arrangement; as such, positions can be part of the coalition arrangement.

The Australian Parliament is bi-cameral. The House of Representatives is the senior house and the confidence of this house is required for a Prime Minister to hold office. It is directly elected through a constituency based preferential voting system. The Senate is elected on a state and territorial basis with 12 Senators appointed from each state and a further two from each of the two “internal” territories again using a preferential system. The Australian Senate is unusually powerful for an “upper” house having the ability to block both proposed legislation and financial bills. In the latter case, this can force a government to fall. In any event, the executive can call for an immediate dissolution of the Parliament if a bill is blocked by the Senate.

<sup>2</sup> The exception to this rule is the ACT, which has no local government. Local government functions are carried out by the ACT government itself.

<sup>3</sup> Norfolk Island Legislation Amendment Bill 2015.

<sup>4</sup> The Governor General is primarily a ceremonial figure. However, in 1975, Sir John Kerr, the then Governor General, intervened in a conflict between the government and the opposition and dismissed the Labour Prime Minister, Gough Whitlam. It seems unlikely that such an intervention, which remains highly controversial, would be acceptable today.

Each state has a unicameral Parliament from which the Premier of the state is elected as head of government. Each state retains a personal connection to the Australian monarch through the state governor, who exercises their responsibilities in the state. As with the Commonwealth Governor General, their power is largely ceremonial. State and Territory governments are formally responsible for disaster management planning. In addition, state responsibilities include policing, the fire service, spatial planning and a number of other matters core to effective DRM. The state/territory level is thus at the core of all aspects of the disaster cycle in Australia.

## The DRM Framework

Australia does not have a comprehensive legal and institutional framework for disaster prevention relief at the federal level. In particular, there are no clear legal mechanisms in place to manage the Commonwealth's response or define the Commonwealth's role in the management of a catastrophic disaster. The Commonwealth approach assumes that it will be "business as usual" at the federal level in the event of a disaster.<sup>5</sup> The regulation of international disaster relief and recovery assistance rates barely a mention in Commonwealth legislation. The only exception is within Customs legislation, where material brought in to assist the response and initial recovery can be imported without duty.

The lack of federal mechanisms is at least partially explained by the role of the states in Disaster Management. Responsibility for disaster management is primarily a state responsibility, in the first instance, and each state/territorial has its own legislative framework and accompanying strategy. Despite this, the arrangements for disaster response are relatively similar across the eight Australian internal jurisdictions.<sup>6</sup> Each State and Territory has disaster management legislation that provides for disaster planning at State, regional and local level, although the quality and detail of this framework varies dramatically across states.<sup>7</sup> When events require a coordinated and ongoing response, there is provision for a three-stage form of declaration of emergency by the State/Territory. These are "ALERT", "Emergency" and "Disaster". Once a formal declaration has been made, the functions and powers to be exercised by the emergency controllers charged with the responsibility of managing the response to the event are triggered. When a hazard event reaches the level of a state of Disaster or Emergency, a whole of government approach is mandated. Relevant Ministers and/or the State/Territory Disaster Controller are provided with broad powers to control access to the disaster site and to commandeer either private or State-owned resources and direct them to the relief effort.<sup>8</sup>

The role of the federal level is to provide support and assistance if required. The key Commonwealth agency in the field is Emergency Management Australia (EMA) which is responsible for national emergency management coordination.<sup>9</sup> It is responsible for planning and coordinating assistance to states and territories under the Commonwealth Government Disaster Response Plan (COMDISPLAN). Sitting within the Attorney General's department, its primary roles are to assist in maintaining commonwealth disaster response plans and coordinate the response of the Commonwealth Government to a hazard event in response to requests from the State or Territories for assistance.<sup>10</sup>

5 IFRC, Legal preparedness for international disaster response in Australia – law, policies and practices, March 2010, at 29.

6 For a discussion of the arrangements in ACT, Queensland, South Australia, Tasmania and Western Australia, see IFRC, above n 5, at 15–16.

7 The state with the largest and most sophisticated disaster law and policy framework is Queensland. By contrast, Victoria appears to have the least amount of regulation in the field.

8 IFRC, above n 5, at 13.

9 Emergency Management Australia *Commonwealth Government Disaster Response Plan (COMDISPLAN)* (Commonwealth of Australia, Canberra, 2002), [4.12] and [4.13].

10 Emergency Management Australia *This is EMA* (Commonwealth of Australia, Canberra, 2008).



The COMDISPLAN sets out a formal process by which the two levels of government operate during a potential disaster event. An incident that occurs within a State or Territory<sup>11</sup> is, in the first instance, to be managed by the relevant State or Territory government in accordance with its own legislation and policy and utilising its own emergency services and resources. When the effects of the incident are deemed by the State or Territory to be beyond its capacity, or when specific Commonwealth resources are required, a request is made to the Commonwealth for assistance utilising the formal process set out in COMDISPLAN.<sup>12</sup>

The request is made by the nominated officer in each State/Territory authorised to contact the EMA and seek Commonwealth assistance. The request is then passed to the Attorney General for approval. If approved, it is then passed to the relevant Commonwealth agency for ministerial approval and to provide the required assistance. Where the resources required to meet the needs of the affected jurisdiction cannot be located in Australia the EMA will liaise with the State or Territory government and the Department of Foreign Affairs and Trade (DFAT) to seek assistance from overseas.<sup>13</sup>

NGOs generally insist on remaining independent of Government agencies so in the rare event that NGO assistance arrives in Australia, their response may well be separate from the official response. This may lead to duplication, inefficiency and raise the need for appropriate coordination and control of the response.<sup>14</sup> International assistance from other national governments would be expected to accept the authority of the State agency in command of the emergency response.<sup>15</sup>

## Disaster Law Assessment

### 1 Does Australia have a clear legal framework for disaster risk management, which includes procedures relating to international disaster assistance?

The Australian system provides for a relatively comprehensive legal framework which revolves around State risk management legislation, however procedures around international disaster assistance are minimal. The core responsibility for disaster response lies with State and Territory governments but is complicated by the fact that these governments have no formal responsibility for international affairs (or authority to act internationally). A process for the Commonwealth government to request international assistance exists, although it does not preclude State governments also making such request. A number of state agreements explicitly envisage such arrangements with international actors' governments.<sup>16</sup>

Assessments on the need for assistance are provided by the State or Territory requested but do not need to include a request for international assistance. The request under COMDISPLAN request is one for Commonwealth assistance. This then becomes a request for international assistance when EMA and DFAT (and potentially the affected jurisdiction) accept that international assistance is required. This occurs when it is accepted that the relevant expertise/resources do not exist in Australia.<sup>17</sup> Much of this appears to be based upon custom and practice founded upon the existence of goodwill between agencies rather than a formal legal framework.

11 In practice, this is almost all of mainland Australia and a few offshore islands.

12 COMDISPLAN, s 4, "Execution", at 11 and 12. Version 1-1 (2008).

13 Ibid.

14 IFRC, above n 5, at 16-17.

15 Ibid, at 14.

16 Emergency Management Act 2005 (WA), s 11(3); Emergencies Act 2004 (ACT), ss 64 and 180; Northern Territory Emergency Services, Northern Territory All Hazards Emergency Management Arrangements (Northern Territory Counter Disaster Council, Darwin, 2007), [17].

17 COMDISPLAN, s 4 "Execution", at 11 and 12. Version 1-1 (2008).



The State Acts and disaster plans do not address the questions of what criteria will be used to determine if and when international assistance will be requested. Instead, COMDISPLAN is activated when an affected jurisdiction requests Commonwealth assistance. A State cannot (and need not) specifically direct a request for international assistance through the Commonwealth. If a State/Territory wants to request international assistance but is met with Commonwealth resistance, then the Commonwealth is able to refuse to make the request. If a request is deemed acceptance, neither the COMDISPLAN and State plans provide detail on how requests for international assistance should be made or to whom. In particular, there is no provision in Australian law for joint Australian/United Nations needs assessment nor specific provisions for providing assistance through the offices of the UN.<sup>18</sup>

The EMA is responsible for recording offers of assistance from overseas and for passing those offers to the affected jurisdiction and advising the offeree whether the assistance is required. When international assistance is forthcoming, DFAT and the EMA will put in place necessary arrangements to receive the international assistance and work with the State/Territory to move the assistance to the area of need. Procedures envisaged in COMDISPLAN for the receipt of international assistance do not cover all eventualities.<sup>19</sup> However, there are private agreements with a number of international NGOs to resolve this.<sup>20</sup> Nevertheless, it has been reported that the delivery of international post-disaster assistance can be delayed due to “procedural ambiguities frequently found in domestic legislation and policy on the initiation of international disaster assistance”.<sup>21</sup> One notable gap is that Australian law does not address the question of if, and when, assistance from foreign militaries will be accepted.<sup>22</sup>

In addition to the above generalist structure, Australia is party to a number of specific conventions related to astronauts, persons travelling on civil aviation, search and rescue missions for people in distress at sea and nuclear accidents. Regionally, Australia has an agreement with Indonesia to cooperate in “facilitating effective and rapid coordination of responses and relief measures in the event of a natural disaster or other such emergency”.<sup>23</sup>

## 2 Do Australia’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?

As States and Territories have no responsibility for foreign relations, COMDISPLAN envisages that requests for international assistance will be directed through the Commonwealth. International agencies are expected to work with the coordinating authorities and make their services available as part of overall disaster response. The exact nature of this authority varies depending upon the state concerned, but each will have a coordinator in place to manage the response to a disaster within their territory.<sup>24</sup> An international agency that refuses to work with the coordinating agency or agencies would not enjoy any legal protection and could well be refused access to a disaster-affected community. Despite the overarching responsibility for the Commonwealth in relation to international assistance envisaged by COMDISPLAN, a number of states and territories have

18 IFRC, above n 5, at 29.

19 IFRC, above n 5, at 23. COMDISPLAN, s 4.14 “Reception of International Physical system”, at 15: “EMA, in consultation with DFAT and border control agencies, is responsible for making arrangements to receive and register international physical assistance.”

20 See IFRC, above n 5, at 23 for more details.

21 David Fisher, *Law and legal issues in international disaster response: a desk study* (International Federation of Red Cross and Red Crescent Societies, Geneva, 2007), 89.

22 IFRC, above n 5, at 31.

23 *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation* opened for signature 13 November 2006, [2008] ATS 3, (entered into force 7 February 2008), [18].

24 IFRC, above n 5, at 25.



legislation, which envisages a direct relationship with such agencies.<sup>25</sup> In addition, other specific agreements (often involving state agencies) exist outside the COMDISPLAN framework.<sup>26</sup>

### **3 Do Australia's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

There do not appear to be specific laws and regulations setting out the responsibilities of different institutions in relation to international disaster assistance. Instead, international assistance is handled as part of the domestic response mechanism and the specific requirements of international disaster assistance are handled through ordinary Australian and state law.<sup>27</sup> The COMDISPLAN provides somewhat contradictory advice on this point. While stating that "It is unlikely that the legislative requirements of our stringent border control arrangements will be waived" it also states that "given the urgency of the situation, it is expected that border control agencies will manage the situation to ensure that assistance is able to get to the disaster scene as quickly as possible".<sup>28</sup> Beyond this the Australian governments are merely "encouraged" to grant visas, preferably without cost, to waive or expedite the process to obtain visas and permits, recognise foreign qualifications and facilitate freedom of access to the disaster area.<sup>29</sup>

### **4 Do Australia's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

No State or Territory disaster plan specifically addresses the need for international assistance. The default assumption appears to be that that Commonwealth and inter-state assistance alone will be sufficient. When international assistance is requested at the Commonwealth level, COMDISPLAN envisages that international assistance will be channelled through a single contact point (Emergency Management Australia) but in practice, international assistance can be arranged through a number of channels. There is therefore a potential for confusion and duplication.

There is no clear criterion on when international assistance will be sought nor when it will be terminated or how foreign assistance will be phased out. The only legal requirement is that "...EMA will liaise with State authorities to arrange debriefing" of international relief teams prior to their departure.<sup>30</sup> The Australian (Commonwealth) legislation does not define an "international recovery" or "disaster relief" period.

There are no specific provisions for the pre-positioning of stock or for the handling of unsolicited bi-lateral donations.

25 Emergency Management Act 2005 (WA), s 11(3); Emergencies Act 2004 (ACT), ss 64 and 180; Northern Territory Emergency Services, Northern Territory All Hazards Emergency Management Arrangements (Northern Territory Counter Disaster Council, Darwin, 2007), [17].

26 For example, see Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the United States of America and the Australian Participating Agencies, 2002.

27 COMDISPLAN, Annex E "Management of Physical Assistance from Overseas Countries", at 30: "The Australian Government responsibility for dealing with the international aspects of emergency and disaster relief rests with EMA and DFAT. Department of Immigration and Citizenship (DIAC), Australian Customs Service (Customs) and Department Agriculture, Fisheries and Forestry, Australian Quarantine and Inspection Service (AQIS) will also play a major role in regard to entry arrangements."

28 COMDISPLAN, Annex E "Management of Physical Assistance from Overseas Countries", at 30.

29 IFRC, above n 5, at 32.

30 COMDISPLAN, Appendix E [11].



## 5 Do Australia's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

There are no specific provisions in Australian law to grant legal facilities to assisting States. However, Australia does have Status of Forces agreements (SOFA) with six countries.<sup>31</sup> These cover rights of entry, status of personnel, recognition of qualifications and the importation of equipment.<sup>32</sup> All but one are bilateral.<sup>33</sup>

The Commonwealth Minister is empowered to grant a "Special Purpose Visa"<sup>34</sup>, which can be applied to the facilitation, and the receipt of, international disaster assistance. This visa can be granted by the Minister to named members of an international assistance team or to people who fall within a descriptive class.<sup>35</sup> Without a special purpose visa, international assistance teams will need to comply with normal migration requirements and appropriate visa requirements. A number of special purpose visas have been granted.<sup>36</sup>

Due to the Trans-Tasman Travel Arrangement, international teams travelling on NZ passports are permitted to enter Australia without obtaining a specific visa and are granted a "special category visa" on the presentation of their NZ passport at the Australian border.<sup>37</sup>

## 6 Do Australia's laws and regulations set out quality standards for international assisting actors?

Recognition of professional qualifications are generally a matter for State law rather than Commonwealth law.<sup>38</sup> Only the Australian Capital Territory provides specific provisions for international assistance and professional qualifications. Where foreign assistance is provided (in accordance with a cooperative agreement) these permit overseas qualifications to be recognised in the Territory without further need for certification or registration.<sup>39</sup> No other state or territory has enacted such provisions. In all other states, a person wishing to practice a particular trade or profession will need to comply with the requirements of each State or Territory, whether or not they are connected with an international disaster response team. For example, medical practitioners must be registered in the State or Territory in which they wish to practise their profession.<sup>40</sup>

Under the ACT legislation, when international assistance is being provided to the Territory by health professionals under a "cooperative agreement", overseas qualifications will be accepted without the need for further certification.<sup>41</sup> If the ACT Emergencies Act does not apply, then the territory's Ministry for Health may waive registration requirements for incoming health professionals if, in the opinion of the Minister, it is "in public interest to do so".<sup>42</sup> Other State and Territory legislation does provide for non-registered medical providers to provide assistance in exceptional circumstances. New South Wales, Northern Territory, Queensland and Tasmania all have provisions to this effect.<sup>43</sup> For example, NSW legislation provides that a "recognised

31 IFRC, above n 5, at 9.

32 Ibid.

33 The exception being the US agreement, which only applies to US forces on Australian territory. IFRC, above n 5, at 9.

34 Migration Act 1958 (Cth), s 33.

35 Migration Act 1958 (Cth), s 33(2).

36 IFRC, above n 5, at 32 and 33.

37 Migration Act 1958 (Cth), ss 32 and 42(2A).

38 IFRC, above n 5, at 33.

39 Emergencies Act 2004 (ACT), s 180.

40 Ibid, at 34.

41 Emergencies Act 2004 (ACT), s 180.

42 Health Professionals Act 2004 (ACT), s 130.

43 IFRC, above n 5, at 35.



foreign” doctor may give “... medical or surgical advice, service, attendance or operation ... in an emergency”<sup>44</sup> as if they were registered in NSW. However, this provision is slightly misleading as it only applies to medical practitioners recognised as such in New Zealand or another Australian jurisdiction.

In Victoria, standard procedures allow that a foreign health practitioner can be registered, if the relevant health registration board<sup>45</sup> is satisfied.<sup>46</sup> However, the Minister for Police and Emergency Services (as Emergency Coordinator) may waive the requirement for registration, if compliance by the Medical Board with the Health Professions Registration Act would hinder disaster operations.<sup>47</sup>

Other states provide alternative methods for allowing exceptions to the general rule that a medical practitioner must be registered in the state concerned to practice legally but these are not related to emergencies. In South Australia the Governor (on the advice of the relevant Minister) may make a proclamation exempting an individual from the requirement to register if, in the Governor’s opinion, “good reason exists for doing so in the particular circumstances of the case”.<sup>48</sup> Such an exemption may be subject to conditions.

In WA, general procedures exist to allow exceptions if “... registration of the applicant would enable an unmet area of need to be met and the applicant has suitable qualifications and experience to practice medicine in that area of need”.<sup>49</sup> This could be utilised in the event of a disaster event requiring international assistance because an “unmet area of need” (as determined by the Minister for Health) would be created by a disaster which exceeds the capacity of the relevant Australian agencies.<sup>50</sup>

Australia is party to a number of international treaties, which contain obligations relevant to the provision of international relief goods and equipment. The International Convention on the Simplification and Harmonization of Customs Procedures requires parties to give priority clearance to relief consignments and to allow them to be imported without duty.<sup>51</sup> In addition, the Convention on the Facilitation of International Maritime Traffic requires that Australia facilitate the “arrival and departure of vessels engaged in natural disaster relief work” and “the entry and clearance of person and cargo arriving” in those vessels.<sup>52</sup> The Civil Aviation Convention contains similar obligations around the entry, departure and transit of relief flights, and the early entry clearance for people and goods arriving on relief flights.<sup>53</sup> In addition, the Airport Act allows the

44 Medical Practice Act 1992 (NSW), s 112.

45 That is “(a) the Chinese Medicine Registration Board of Victoria established under Part 6 of the *Chinese Medicine Registration Act 2000*; (b) the Chiropractors Registration Board of Victoria established under Part 6 of the *Chiropractors Registration Act 1996*; (c) the Dental Practice Board of Victoria established under Part 6 of the *Dental Practice Act 1999*; (d) the Medical Practitioners Board of Victoria established under Part 6 of the *Medical Practice Act 1994*; (e) the Medical Radiation Practitioners Board of Victoria established under section 165 of ... [the *Health Professions Registration Act 2005*]; (f) the Nurses Board of Victoria established under Part 6 of the *Nurses Act 1993*; (g) the Optometrists Registration Board of Victoria established under Part 6 of the *Optometrists Registration Act 1996*; (h) the Osteopaths Registration Board of Victoria established under Part 6 of the *Osteopaths Registration Act 1996*; (i) the Pharmacy Board of Victoria established under Part 7 of the *Pharmacy Practice Act 2004*; (j) the Physiotherapists Registration Board of Victoria established under Part 6 of the *Physiotherapists Registration Act 1998*; (k) the Podiatrists Registration Board of Victoria established under Part 6 of the *Podiatrists Registration Act 1997*; (l) the Psychologists Registration Board of Victoria established under Part 6 of the *Psychologists Registration Act 2000*.” *Health Professions Registration Act 2005* (Vic), Schedule 1.

46 Medical Practice Act 2004 (SA), s 7(1) (c).

47 Ibid, s 7 (1) (c).

48 Ibid s 43 (4).

49 Medical Practitioners Act 2008 (WA), s 34(2) (4).

50 IFRC, above n 5, at 37.

51 *International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, [1975] ATS 12, (entered into force 25 September 1974) as amended by the *Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973*, opened for signature 26 June 1999, [2006] ATS 22 (entered into force 3 February 2006). See also IFRC, above n 5, at 8.

52 *Convention on Facilitation of International Maritime Traffic*, opened for signature 9 April 1965, [1986] ATS 12, (entered into force 5 March 1967). See also, IFRC, above n 5, at 8.

53 *Convention on International Civil Aviation*, opened for signature 7 December 1944, [1957] ATS 5 (entered into force 4 April 1947).



Minister to direct an airport to provide airport services for “defence-related purposes and for emergency or disaster relief”.<sup>54</sup>

However, in the absence of specific legislative provisions, there is no power vested in the Minister to waive or relax customs procedures to facilitate the receipt of international post-disaster assistance.<sup>55</sup>

Incoming emergency workers must comply with all quarantine requirements and COMDISPLAN assumes that the entry of goods, equipment and rescue dogs “... will be subject to normal Australian border control arrangements”.<sup>56</sup> The Australian Quarantine and Inspection Service (“Quarantine”) and the EMA provide Guidelines for Urban Search & Rescue Taskforces Entering or re-entering Australia.<sup>57</sup> These guidelines simply provide guidance for incoming urban search and rescue teams to prepare for the necessary Quarantine inspections and do not create an alternative process.

Medicines imported to Australia must be registered/listed with the Therapeutic Goods Administration.<sup>58</sup> However, the requirements for registration can be waived by the Minister in order to be “made available urgently in Australia in order to deal with an actual threat to public health caused by an emergency that has occurred”.<sup>59</sup> Such an exemption may be granted subject to specific conditions and the goods imported must still meet Australian standards<sup>60</sup> and those that remain unused must be disposed of.<sup>61</sup>

Registration of vehicles are a matter for States and Territories. In general, the regulatory frameworks allow for the recognition for foreign driver licenses and registrations.

The Radiocommunications Act 1992 (Cth) allows the Australian Communications Media Authority to exempt emergency organizations, from its licence and meet certain standards obligations. However, Australia is not a signatory to the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations and no Australian disaster or emergency management legislation makes particular mention of the emergency use of telecommunications devices.<sup>62</sup>

## **7 Do Australia’s laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

There is a limited legislative framework to provide some limited legal protection to people acting under the authority of the Commonwealth, State or Territory Government, the controller or pursuant to the terms of the relevant emergency act.<sup>63</sup> The nature of the protection varies across jurisdictions. In some cases, legislation bars claims for compensation while in others the claim is redirected to make the State (Crown) vicariously liable for the negligence, or improper conduct, of an emergency worker (or organization) taking part in disaster related operations.

54 Airports Act 1996 (Cth), s 250.

55 IFRC, above n 5, at 39–40.

56 COMDISPLAN, Annex E [3]; and IFRC, above n 5, at 38.

57 Australian Quarantine and Inspection Service, Australian Quarantine Guidelines: Urban Search & Rescue Taskforces Entering or Re-entering Australia (Commonwealth of Australia, Canberra, 2005).

58 Therapeutic Goods Act 1989 (Cth).

59 Ibid, s 18A.

60 Ibid, s 30F.

61 Ibid, s 30G.

62 IFRC, above n 5, at 41.

63 Foreign States Immunities Act 1985 (Cth) s 42A; Emergencies Act 2004 (ACT), s 198; State Emergency and Rescue Management Act 1989 (NSW), s 41; Disasters Act 1982 (NT), s 42; Disaster Management Act 2003 (Qld), s 144; Emergency Management Act 2004 (SA), s 32; Emergency Management Act 2006 (Tas) ss 55 and 58; Emergency Management Act 1986 (Vic), s 37 (though this section only applies to volunteer emergency workers, not paid staff); and Emergency Management Act 2005 (WA), s 100.



In Victoria, immunity is very limited and only covers volunteer emergency workers including international volunteers acting on behalf of agencies with authority under the State Disaster plan.<sup>64</sup> This does not extend to paid staff or international agencies acting on their own initiative.

The Australian legal framework assumes that international assistance is being delivered by organisations that are formally established in another country are charitable in nature and will operate as part of the formal disaster relief effort.

When this is not the case, then the international assisting body may need to register as a foreign corporation (and comply with the concomitant regulatory requirements) under the Corporations Act. Once registered foreign corporations have legal status and are subject to the normal provisions of Australian law. Such agencies will be subject to Australian tax law. A foreign not-for-profit agency may be eligible for tax exemptions.<sup>65</sup>

## **8 Do Australia's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

All states and territories have a legislative provision to provide for the control and coordination of disaster operations but there is "national focal point" with sole and clear responsibility for managing the Commonwealth's disaster response and by extension the international response to a disaster in Australia.<sup>66</sup>

Although COMDISPLAN commits the Department of Foreign Affairs and Trade (DFAT) and the EMA to put in place necessary arrangements to receive the international assistance and work with the State or Territory to move the assistance to the area of need it is not clear how this will be achieved.<sup>67</sup>

Procedures envisaged in COMDISPLAN for the receipt of international assistance are limited<sup>68</sup> but more importantly, the Director of EMA has no statutory authority to direct any of the relevant Commonwealth agencies, including Customs, Immigration or Quarantine.<sup>69</sup>

This creates the potential for significant confusion and delay around international assistance. For example, bringing in medications to a major airport could require the involvement of four agencies using four separate legislative instruments.<sup>70</sup>

64 Emergency Management Act 1986 (Vic), s 37.

65 Australian Taxation Office "Rules and Tests for Charity Tax Concessions Endorsement" <[www.ato.gov.au](http://www.ato.gov.au)>.

66 International Federation of Red Cross and Red Crescent Societies, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007), [8.1]; and IFRC, above n 5, at 21.

67 COMDISPLAN, s 4.14 and Annex E.

68 COMDISPLAN, s 4.14 "Reception of International Physical Assistance", at 15: "EMA, in consultation with DFAT and border control agencies, is responsible for making arrangements to receive and register international physical assistance. EMA will coordinate with the affected State to facilitate movement of the assistance to the affected area. An outline of these arrangements is given in ANNEX E."

69 IFRC, above n 5, at 23.

70 Gene Technology Act 2000 (Cth), s 72B; Gene Technology Act 2000 (Cth), s 72B; Therapeutic Goods Act 1989 (Cth), s 18A; Airports Act 1996 (Cth), s 250; and Defence Act 1903 (Cth), Part IIIA. See IFRC, above n 5, at 22.



## **9 Do Australia's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

There are no requirements that assisting agencies conform to particular standards of transparency or accountability.<sup>71</sup> Incoming agencies will be accountable to the normal standards of Australian law, if applicable.<sup>72</sup>

When international assistance is forthcoming, the Department of Foreign Affairs and Trade (DFAT) and the EMA will put in place necessary arrangements to receive the international assistance and work with the State or Territory to move the assistance to the area of need.<sup>73</sup>

## **10 Do Australia's laws and regulations outline procedures for international disaster assistance sent from and transiting through Australia?**

Procedures for international assistance originating in Australia are outlined in the Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN). This covers most aspects of international assistance provided by the Australian state. The plan includes provisions relating to activation (and deactivation), authorisation, physical and technical assistance, defence force assistance, provision of goods and services, logistics, finance, reporting requirements, overseas coordination and liaison with overseas authorities amongst other elements.<sup>74</sup>

In addition to AUSASSISTPLAN, specific agreements exist to regulate particular forms of international assistance<sup>75</sup>. The "Joint Statement on Disaster Relief Cooperation in the South Pacific" is a particular example of these. The FRANZ Arrangement as it is generally known is not a formal treaty but rather an informal agreement between France, Australia and NZ to "... maintain pragmatic, flexible arrangements to allow for a speedy response" to natural disasters in the Pacific region. The arrangement also commits the three states to "should exchange information to ensure the best use of their assets and other resources for relief operations after cyclones and other natural disasters in the region".<sup>76</sup>

As part of its Humanitarian Action Policy Australia has adopted the Principles and Good Practice of Humanitarian Donorship.<sup>77</sup>

71 IFRC, above n 5, at 26.

72 Corporations Act 2001 (Cth).

73 COMDISPLAN, s 4.14 and Annex E. See IFRC, above n 5, at 18.

74 Emergency Management Australia, Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN) (Commonwealth of Australia, Canberra, 2018).

75 For example, see Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the United States of America and the Australian Participating Agencies, 2002.

76 FRANZ Arrangement.

77 See: The Good Humanitarian Donorship Initiative <<https://www.ghdinitiative.org>>.





## Key Legislation

- Health Professionals Act 2004 (ACT), s 130
- Medical Practice Act 1992 (NSW), s 112
- Medical Practice Act 2004 (SA), s 43 (4)
- Medical Practitioners Act 2008 (WA), s 34(2)(4)
- Therapeutic Goods Act 1989 (Cth)
- Gene Technology Act 2000 (Cth), s 72B
- Airports Act 1996 (Cth), s 250
- Defence Act 1903 (Cth), Part IIIA
- Corporations Act 2001 (Cth)

## Key Policies

- Humanitarian Action Policy, AusAid, (Australian Government, 2005), 3; 13–14
- Australian Quarantine Guidelines: Urban Search & Rescue Taskforces Entering or Re-entering Australia, Australian Quarantine and Inspection Service (Commonwealth of Australia, Canberra, 2005)
- Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN), Emergency Management Australia (Commonwealth of Australia, Canberra, 2018)
- Commonwealth Government Disaster Response Plan (COMDISPLAN), Emergency Management Australia, (Commonwealth of Australia, Canberra, 2002)

## Key International Agreements

- Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation, opened for signature 13 November 2006, [2008] ATS 3, (entered into force 7 February 2008), [18]
- International Convention on the Simplification and Harmonization of Customs Procedures, opened for signature 18 May 1973, [1975] ATS 12, (entered into force 25 September 1974) as amended by the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, opened for signature 26 June 1999, [2006] ATS 22, (entered into force 3 February 2006)
- Convention on Facilitation of International Maritime Traffic, opened for signature 9 April 1965, [1986] ATS 12, (entered into force 5 March 1967)
- Convention on International Civil Aviation, opened for signature 7 December 1944, [1957] ATS 5, (entered into force 4 April 1947)

# Cook Islands



## Overview

### Constitutional/Political Framework

The Cook Islands are a self-governing territory within the Realm of New Zealand. The relationship is one of free association governed by the Cook Islands Constitution Act 1965 (a New Zealand statute) and the Joint Centenary Declaration of the Principles of the Relationship Between New Zealand and the Cook Islands 2001. The Cook Islands government is in charge of defence and foreign affairs but may request support from the government of New Zealand when required. Although a small number of states have explicitly recognised the Cook Islands as a sovereign state (including the Federated States of Micronesia) most continue to treat the Cook Islands as a self-governing territory within the Realm of New Zealand. Nevertheless, the Cook Islands is signatory to a number of treaties, including a number of relevance to Disaster Risk Reduction (and is recognised as having full treaty-making capacity by the UN Secretariat). It is also a full member of a range of international and UN agencies, including the FAO, WHO and UNESCO, and has established formal diplomatic ties with a number of states. Despite this international recognition, the Cook Islands is not a member of the United Nations and, if it were to accede to the UN, New Zealand has made it clear that this would lead to the end of the free association relationship.<sup>78</sup> Importantly this would mean that Cook Islanders would cease to be New Zealand citizens.

The Cook Islands is a unitary state with a unicameral Parliament bound by the Cook Islands Constitution Act.<sup>79</sup> The head of government is the Prime Minister, who appoints Ministers to exercise executive authority. Ministers are responsible to Parliament. There are ten local government administrative sub-divisions representing the ten inhabited outer islands of the archipelago (aside from Nassau, which is governed from Pukapuka). Rarotonga (the largest island) itself has a formally recognised structure called Puna (villages) of which there are ten. A series of village committees exist throughout the islands but they have limited formal legislative recognition (although the Nassau island committee has a formal role in advising the Pukapuka Council on matters concerning the island). The head of state is the Queen in Right of New Zealand<sup>80</sup> (the reigning UK Monarch) but her (largely ceremonial) role is exercised by the Queen's Representative to the Cook Islands. The Governor-General of New Zealand retains a nominal role in matters of Defence and International Affairs.

78 Neal Conan "Pacific News Minute: Cook Islands Bid for UN Membership on Hold" (11 August 2015) Hawai'i Public Radio <[hpr2.org](http://hpr2.org)>.

79 Although a second house, representing Cook Island Ariki (high chiefs), exists, it can also hear matters referred to it by Parliament and can only provide advice on such matters.

80 Cook Islands Constitution, art 2: "Her Majesty the Queen in Right of New Zealand shall be the Head of State of the Cook Islands."

## The DRM Framework

The 2007 Disaster Risk Management Act (DRMA), implemented in the wake of the devastating 2005 cyclone season, underpins the current structure for DRM in the Cook Islands. Under this act, ultimate responsibility for emergency management sits with the National Disaster Risk Management Council, which is responsible for the creation and oversight of the National Disaster Risk Management Plan 2017 (NDRMP) and any sub-plans (for outlying islands) that are deemed appropriate. Administration and “maintenance” of the plan(s) lies with Emergency Management Cook Islands (EMCI), within the Office of the Prime Minister (the NDMO). In the event of a State of Emergency/Disaster being declared or at the request of the Director of the EMCI, a Response Executive is created. This body, chaired by the National Controller (who is in fact the Police Commissioner),<sup>81</sup> and which includes the Director of the EMCI, is responsible for directing the immediate response to a national event. This body will operate from the National Emergency Operations Centre, which EMCI has the responsibility to establish and maintain. In addition to the above, a Disaster Recovery Coordinator is appointed by the Response Executive to coordinate recovery efforts. This individual is responsible to the Director for coordinating “all resources and services” in relation to recovery before, during and after an event. Their formal powers appear limited, however, outside the allocation “and administration of financial and material aid”.<sup>82</sup>

A sub-national DRM framework established through the Island Councils complements this national level. These bodies are responsible for the creation of Disaster Risk Management Committees under the chairmanship of the Island Council chair and include representatives appointed by the Director. The island councils are responsible for the appointment of a Disaster Coordinator for each island.<sup>83</sup> This individual is responsible for implementing the Disaster Risk Management plan for the island concerned, as approved by the island Disaster Risk Management Committee.

Alongside the legislative and institutional structure sits the policy planning framework. From 2009, this comprised the national Action Plan for Disaster Risk Management. A review of this structure in 2018, under the second Joint National Action Plan (JNAP II), led to the recognition of several fundamental problems with this structure.<sup>84</sup> Firstly, the structure is highly response focussed and lacks overall a whole of government/all hazard approach. Secondly, the requirement under the DRM Act for a State of Emergency/Disaster declaration (or equivalent request by the Director) means that smaller events are not sufficiently covered by the framework. These and other perceived weaknesses have been addressed in the 2018–2023 Strategic Roadmap for Emergency Management.<sup>85</sup>

## Disaster Law Assessment

### **1** Do the Cook Islands have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The Cook Islands has a clear legal framework for disaster risk management which is underpinned by the DRMA 2007 and the abovementioned associated documents. In addition to these documents is the National Disaster Risk Management Plan 2017 (NDRMP 2017) which is designed to help all agencies understand their role as measured across the full range of hazards and risks<sup>86</sup>.

81 DRM Act 2007 s12.

82 DRMA, s 13.

83 It is not clear how this works in Rarotonga, where no Island councils exist.

84 Cook Islands Government “JNAP II – Are We Resilient?” Joint National Action Plan for Disaster Risk Management and Climate Change Adaptation II, 2016–2020 (2016).

85 Cook Islands Government, Strategic Roadmap for Emergency Management in Cook Islands 2018–2023 (2018).

86 National Disaster Risk Management Plan 2017, at 8.



Damage assessments are outlined in the NDRMP 2017 which outlines three stages of damage assessments and the corresponding lead agency:

1. Immediate Situation Overview (EMCI, Police and Relevant Lead Agency);
2. Initial Damage Assessment (relevant Lead Agency); and
3. Sector Damage Assessment (each sector will lead its own sector damage assessment).<sup>87</sup>

The Plan goes on to state all assessments must be reported to the NEOC for analysis by the Planning Cluster before reporting to the Response Executive for decision on the plan of action for the disaster,<sup>88</sup> but there is no detail on the type of information that should be contained in the assessment or any agreed standard reporting process or template. In practice, however, the EMCI and stakeholders hold regular training sessions on the assessment forms which have been developed in partnership with the Cook Islands Red Cross Society. Further pre-cyclone season training sessions are held in December for all stakeholders to familiarise themselves with the assessment forms and how to complete them.

Provisions on International Assistance are not contained in the DRMA proper but can be found in the NDRMP 2017. These provisions on requesting international assistance will be detailed further in Question 4 below. These particular provisions were the direct result of the International Disaster Response Law (IDRL) in the Cook Islands report,<sup>89</sup> which provided a thorough analysis of international assistance in the Cook Islands including a number of recommendations on how to strengthen that facilitation of international assistance. Following the report, EMCI, together with relevant stakeholders, developed a Standard Operating Procedure for International Assistance which is now annexed to the NDRMP 2017.

## **2 Do the Cook Islands' laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The NDRMP 2017 sets out a clear focal point for coordinating international assistance. In fact, there is an entire cluster dedicated to the coordination and facilitation of international assistance for which the Ministry of Foreign Affairs is the cluster lead.<sup>90</sup> Once international assistance has been formally requested by the Response Executive and the Prime Minister in Cabinet, the SOPs for international assistance (which are annexed to the NDRMP 2017) will be activated.

## **3 Do the Cook Islands' laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The Cook Islands have a dedicated framework for international assistance. Annexed to the NDRMP 2017 are the Standard Operating Procedure for International Assistance during Disaster Relief and Initial Recovery Phase 2013 (SOPs). These SOPs outline the role of the International Assistance Focal Point (IAFP) which is to facilitate and coordinate international assistance and goes on to list a number of core functions and key responsibilities.<sup>91</sup> The manager for the IAFP

87 Ibid, at 41.

88 NDRMP 2017, at 41.

89 IFRC *International Disaster Response Law (IDRL) in the Cook Islands: A study on legal preparedness for facilitating and regulating international disaster assistance* (IFRC, Geneva, 2012).

90 NDRMP 2017, at 42.

91 Standard Operating Procedure for International Assistance during Disaster Relief and Initial Recovery Phase (SOPs) 2013, at 54



must be from EMCI and must work in collaboration with relevant international partners.<sup>92</sup> The IAFP may be staffed by representatives from its permanent members; being EMCI, the Ministry of Foreign Affairs and Immigration, and the Ministry of Finance and Economic Management. The responsibilities of each of these staff members is further outlined in the SOPs.<sup>93</sup>

The Cook Islands Red Cross Society (CIRCS) Act 2002 recognises the auxiliary role that the Red Cross plays to government authorities in disasters,<sup>94</sup> and this is again reiterated in the SOPs, which discuss the role of the International Red Cross and Red Crescent Movement in disaster relief and acknowledges the work of the CIRCS in partnership with the government. They also recognise the ability of the CIRCS to manage its own international assistance requests but requires that it advise the Cook Islands government.<sup>95</sup>

## **4** Do the Cook Islands' laws and regulations outline a process for requesting/terminating international assistance?

Requests for international assistance are outlined in the SOPs. The Response Executive makes a decision based on initial damage and needs assessments as to whether international assistance is needed. The final decision, however, rests with the Prime Minister, in consultation with Cabinet and the Response Executive.<sup>96</sup>

Once the Prime Minister approves to request international assistance, there are two methods of initiating international assistance:

- IAFP must immediately send out either general or specific request (depending on the information provided from the NEOC) for assistance to the international community.
- In case of any Foreign Government who requires a formal request from the Cook Islands Government, the request must be send under MFAI.<sup>97</sup>

CIRCS and local NGOs may also request assistance from overseas partners, however, they must provide the IAFP with information upon request.<sup>98</sup>

Of particular note is a provision within the SOPs for the IAFP in collaboration with the Response Executive to send out specific instruction to Cook Island diaspora, especially in New Zealand and Australia, on how they can best support disaster relief efforts, in particular, monetary assistance.<sup>99</sup>

The SOPs go on to detail the specifics of the request and what type of information should be included and outlines the process for ongoing communication and correspondence.<sup>100</sup>

While there are provisions for declining offers of assistance from international partners,<sup>101</sup> there appear to be no provisions for the termination of international assistance.

92 Ibid, at 55. The SOPs articulate the Pacific Humanitarian Team (PHT) but this has no longer operates the way it used to in terms of disaster response.

93 SOPs 2013, at 67.

94 Cook Islands Red Cross Society Act 2002, s11(a).

95 SOPs 2013, at 68.

96 Ibid, at 57.

97 Ibid, at 57.

98 Ibid, at 57.

99 Ibid, at 57.

100 Ibid, at 58.

101 Ibid, at 62.



## **5** Do the Cook Islands' laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

There are a number of laws giving specific immunities to international assisting actors.

The Customs Revenue and Border Protection Act 2012 provides the following facilities:

- Section 12 provides that the Comptroller of Customs, in consultation with the Minister of Transport and the Principal Immigration Officer, may designate any airport or port as a Customs place or port of entry. This allows greater flexibility in the importation of aid supplies.
- Section 148 of the Act allows for the temporary importation of goods. Subject to any conditions the Minister may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement or arrangement concluded by the Government of the Cook Islands. This implies that international disaster relief equipment and vehicles could be exempted from levy under this section if an "arrangement" is entered into.

The Diplomatic Privileges and Immunities Act 1968 confers certain privileges and immunities on personnel of international organisations, in line with the Vienna Convention on Diplomatic Relations. A list of the organisations the Cook Islands have given this immunity to are set out on page 45 of the Cook Islands IDRL Report.

The Customs Tariff Act 2012:

- Schedule 2 Part II lists all situations in which goods are given a concession to standard customs procedures when they are imported into the Cook Islands for certain purposes. This includes goods imported by Churches for specific purposes and goods for approved public projects.
- Under section 26 of the Customs Tariff Act, relief goods are exempted from any duty, and are described as "Donated goods under this provision [imported] within one year from the date of disaster sent to an approved organisation from overseas for the relief of victims of natural disaster".
- Section 27 specifically exempts relief goods coming in from CIRCS. This provision not only exempts relief goods coming in once the disaster has happened, but also pre-positioned relief goods for victims of disaster. In addition, any time that CIRCS needs any further exemption from tax on these goods, it can apply for an exemption or a variation of s 27 by the Minister.
- Section 27 also covers any disaster relief item that comes onto the country after a State of Disaster has been declared, making it free from Import levy so long as it is imported by an approved organisation and meets the requirements of that section. Approved organisations are usually identified by the Minister responsible for the management of the particular disaster. In practice, Customs usually requires a letter from the organisation sending the relief goods, as part of the verification process.<sup>102</sup>



The Value Added Tax Act 1997:

- First Schedule states that “A supply of donated goods or services by a non-profit body” are exempt supplies for the purposes of taxation.
- Second Schedule sets out that the following are exempt importations from tax (only exemptions relevant to international aid/assistance included here):

Goods imported:

- By or on behalf of any overseas government for its use in the Cook Islands whether in an office established by that overseas government or in any approved aid project; or
- By or on behalf of the United Nations, Pacific Forum Secretariat or the South Pacific Commission or any agency of those organisations for approved project in the Cook Islands; or
- For use in any approved aid project in the Cook Islands; or
- By a non-profit body as donation for use in any project in the Cook Islands

Goods which the Collector is satisfied are:

- Goods imported by an approved organisation, being gifts by persons resident abroad for the relief of victims of natural disasters

The Visiting Forces Act 1992–93 also extends privileges to members of visiting forces in the Cook Islands. This only applies to New Zealand’s visiting forces,<sup>103</sup> however, an order in Executive Council may be made to extend the privileges to other countries’ visiting forces.<sup>104</sup>

The Development Investment Act 1995–96 requires that any “foreign enterprise” register pursuant to the Act.<sup>105</sup> This includes if the foreign enterprise is part of an international disaster relief response in any commercial sense. However, if the foreign enterprise forms part of an international response primarily for charitable purposes of a nature approved by the Cabinet, then it may be exempted under s 2(2) of the Act.

The Disaster Risk Management Act 2007 provides the following immunities:

- (1) No action or proceedings shall be brought against the Crown, the Director, the National Controller, Disaster Coordinator, Disaster Recovery Coordinator or any officer or servant of them, or against any other person authorised to be engaged in Emergency Activity to recover damages for loss or damage to property or to the person in the exercise or performance of powers, duties, or obligations under this Act provided they were exercised in good faith.
- (2) No person shall be personally liable for any Emergency Activity done negligently or otherwise or neglected to be done in accordance with this Act.<sup>106</sup>

## **6** Do the Cook Islands’ laws and regulations set out quality standards for international assisting actors?

There appear to be no provisions within the Cook Islands regulatory framework which set out quality standards for international assisting actors.

103 Visiting Forces Act 1992–93, s 8.

104 Ibid, s 3.

105 Development Investment Act 1995–96, s 17.

106 NDRMA, s 27.

## **7 Do the Cook Islands' laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

The IAFP will give priority assistance to international responder's whose assistance has been accepted by the Response Executive (or in their absence the Director of EMCI and/or National Controller). Similarly, the border control agencies will give priority clearance to relief items sent from approved international responders and must make sure that approved international responders have the necessary information about what is needed at the border for prompt clearance.<sup>107</sup>

## **8 Do the Cook Islands' laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The Ministry of Foreign Affairs and Immigration heads the Cluster for International Assistance. As soon as a request for international assistance is made by the Prime Minister, the IAFP is activated, the idea being that this core group will facilitate international assistance into the country.<sup>108</sup> Specific provisions for the facilitation and coordination of the entry and departure of relief goods, equipment, including vehicles and aircraft are contained in the SOPs and outline the responsibilities of the IAFP in providing information for requirements for licenses and permissions, clearance of relief items from the airport and the harbour, collection points for relief items, and ministerial discretion to suspend some legal requirements.<sup>109</sup> Furthermore, a specific provision provides that the IAFP must "do what is needed to make sure relief items (goods and equipment including vehicles and aircraft) are processed in a fast and efficient manner at the border".<sup>110</sup>

## **9 Do the Cook Islands' laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The legislative and policy framework around disaster risk provide some limited but specific references to accountability and transparency. In particular, s 18 of the Disaster Risk Management Act 2007, provides that:

- (1) The Director shall ensure that regular audits are undertaken of all plans required under this Act.
- ...
- (4) All parties responsible for handling financial resources of any kind under this Act shall comply with the Ministry of Finance and Economic Management Act 1995-96 and the Cook Islands Financial Policies and Procedures Manual issued pursuant to Section 63 of that Act.

In addition, the Joint National Action Plan (JNAP) II provides for a financial strategy which aims to:

- Ensure that the national planning and budgetary processes and systems, and in particular the Medium Term Budgetary Framework are adhered to; and
- Ensure consistency with the aid management requirements stipulated by donors and other partners

107 SOPs 2013, at 65.

108 SOPs 2013, at 42.

109 SOPs 2013, at 64.

110 SOPs 2013, at 64.



More generally the nature of JNAP II's implementation through the national budget and external donors and partners requires that "accurate monitoring and reporting of implementation results and that transparency is maintained at all times".<sup>111</sup>

Aside from these general commitments, there are no specific anti-fraud measures applied to international assistance.

## **10** Do the Cook Islands' laws and regulations outline procedures for international disaster assistance sent from and transiting to the Cook Islands?

There appear to be no legislative frameworks or policies pertaining to international disaster assistance sent from, or transiting through, the Cook Islands.

### **Key Legislation**

- Disaster Risk Management Act 2007
- DRM Regulations 2010 – We are unable to source these regulations.
- Customs Tariff Act 2012
- Biosecurity Act 2008
- Cook Islands Red Cross Act 2002
- Civil Aviation Act 2002
- Customs Revenue and Border Protection Act 2012
- Customs Revenue and Border Protection Regulations 2012
- Entry Residence and Departure Act 1971 and Amendment Act's 1973, 2008
- Telecommunications Act 1989
- Value Added Tax Act 1997
- Visiting Forces Act 1992-3

### **Key Policy Documents**

- National Progress Report on the Implementation of the Hyogo Framework for Act 2009–2011
- National Progress Report on the Implementation of the Hyogo Framework for Action 2011–2013
- Joint National Plan for DRM and Climate Change Adaption 2011–2015
- Kaveinga Tapapa: Climate and Disaster Compatible Development Policy 2013–2016
- Statement made at the Third UN World Conference on DRR 2015
- Second Joint National Action Plan 2016–2020
- Statement by the Cook Islands Global Platform for DRR 2017
- Cook Islands: Sendai Framework data readiness review report 2017
- Strategic Roadmap for Emergency Management 2018–2023

111 JNAP II, at 38.



- Sendai Framework for Action 2015–2030
- Te Kaveinga: National Sustainable Action Plan
- National Disaster Risk Management Plan 2017
- Cook Islands IDRL Report 2012





## Federated States of Micronesia

### Overview of State/Institutional Framework

The Federated States of Micronesia (FSM) is a federal republic in free association with the United State of America and a member of the North Pacific Compact along with Palau and the Republic of the Marshall Islands. It is a large archipelago that comprises four states (Chuuk, Kosrae, Pohnpei and Yap). The division of powers is based upon a subsidiarity clause in the constitution whereby all power lies at the state level unless explicitly granted to the national level or when it is “indisputably” national in nature.<sup>112</sup> In addition, the free association model means that FSM has a quasi-federal relationship with the US. Defence matters are undertaken by the US which also operates the postal services. FSM also has no national banking system and uses the US dollar as its national currency.

The FSM constitution operates according to a modified US model, although at the national level the state operates a de facto parliamentary system through a unicameral Congress of 14 members. Congress comprises four members representing each of the states and 10 representing individual constituencies based upon population size. This body elects the President and Vice-President. The President appoints a cabinet which acts as the political executive in FSM. This comprises the Secretaries of the seven executive departments and the four “cabinet level” agencies. Currently, there are no political parties represented in the FSM government.

The FSM system is highly decentralised with a significant level of autonomy given to each state. This includes significant financial autonomy (states receive 50% of all state taxation). Their authority in development matters, climate change mitigation and Disaster Risk Management is particularly relevant to this study. In addition, each state has an individual relationship with the United States, including direct aid funding as part of the Compact agreement. The decentralisation of DRM responsibility means that organisational capacity varies between each state.

### Overview of DRM System

Although FSM has a national legislative framework for DRM by way of the Disaster Relief Assistance Act 1989 and the National Disaster Relief Plan 2016, much of the responsibility for disaster management lies at the state level. The role at the federal level has been described as “facilitative” in this field.<sup>113</sup> In the period 2015–2017 the four states developed Joint State Action Plans for Disaster Risk Management and Climate Change (JSAPs) which now provide the framework for inter-governmental co-operation in the field under the overall umbrella of the National Integrated Disaster Risk Management and Climate Change Policy (2013).<sup>114</sup>

112 Federated States of Micronesia Constitution, art VIII(1).

113 Centre for Excellence in Disaster Management and Humanitarian Assistance (CEDMHA), *Federated States of Micronesia: Disaster Management Reference Handbook 2016* (Centre for Excellence in Disaster Management and Humanitarian Assistance, Hawaii, 2016).

114 FSM Integrated Disaster Risk Management and Climate Change Policy, 2013; and Joint State Action Plans for Disaster Risk Management and Climate Change (Yap, 2015; Kosrae, 2015; Chuuk, 2017; and Pohnpei, 2017)

The national legislative framework for disaster risk management in FSM is provided by the Disaster Relief Assistance Act 1989. This places responsibility for national DRM co-ordination with the President and a designated government agency. Under the Disaster Response Plan 2016 this is the Office for Environment and Emergency Management (OEMM). Strategic oversight is provided by the National Disaster Council (NDC). This is chaired by the Director of the OEMM and comprises the heads of the various government agencies and departments. The NDC provides both political direction, in the form of the policy development in the field of DRM (including development of the Disaster Response Plan), and co-ordination in the event of a disaster. Primary decision-making responsibility in both instances lies with the President but usually acting under the advice of the NDC. For example, a state of disaster is declared by the President upon request by a state governor and with upon the advice of the NDC.

This primary role for the President is mirrored at the state level, where the elected Governor holds the primary decision-making power both in relation to disaster preparedness and response. Within each state the organisation of DR varies. Although the plan envisages a State Disaster Committee in each state, it is not clear that these exist in every state. These bodies, like the NDC, are responsible for planning for disasters and providing overall management of the response under the overall direction of the governor. These are chaired by the state-appointed Disaster Management Officer and comprise relevant state Secretaries and other heads of agencies. National and State Co-Ordination teams operate alongside the Disaster Committees to manage the provision of disaster relief and response, under the direction of the national or state Disaster Co-Ordination Officers (who are the managers of the relevant DM agency). Beneath the state level, local DM Committees are established. Given the continued dominance of traditional forms of customary governance throughout much of FSM these play a significant practical role in DRM. However, their specific role is not outlined in the national Disaster Plan beyond that they should be supported to develop DRM plans and provide response during events.

During disasters, operations are handled through National and State Emergency Operations Centres (NEOC and SEOCs). Alongside the formal DRM governance structures, an informal DRM “network” operates, coordinated by the International Organisation for Migration (IOM).<sup>115</sup> This comprises a number of international and national NGOs (including the Red Cross) as well as representatives from development partners.

## **1 Does FSM have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?**

The key legislation for disaster relief in FSM is the Disaster Relief Assistance Act (DRA Act) 1989. This is supplemented by the National Disaster Relief Plan 2016. However, this framework provides minimal guidance on procedures related to international assistance.

FSM has a formal relationship with the United States government and the Federal Emergency Management Agency (FEMA) for the provision of aid as part of the Compact Agreement.<sup>116</sup>

115 CEDMHA, above n 113, at 33.

116 FSM/US Compact 2008, Article X.



## 2 Do FSM's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The DRA Act formally provides that the President may request aid from the US Government and other overseas public and private entities. In addition, it provides that the President shall coordinate such foreign aid with assistance provided by the National Government.<sup>117</sup> In practice the National Disaster Response Plan (NDRP) provides that the National Disaster Committee (NDC) is responsible for "accessing international, regional and bi-lateral support arrangements for disaster response".<sup>118</sup> However, beyond these vague statements as to responsibility for requesting aid, the legislation and policy documents are largely silent on this subject.

## 3 Do FSM's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

The NDRP states that the President has various roles in disaster management, including:<sup>119</sup>

- Receiving advice from the National Disaster Council.
- Decision-making in relation to priorities, committing resources and accessing international assistance during disasters.

The DRA Act provides that in the event of a threatened or existing disaster, the President may provide immediate assistance from the Disaster Relief Fund, to save lives, preserve property and protect public health and safety.<sup>120</sup>

The National Disaster Committee (NDC) is responsible to the President for policy development and for the strategic management of planning and arrangements for disaster preparedness and response. It is also responsible for the overview of disaster events and for accessing international, regional and bi-lateral support arrangements for disaster response.<sup>121</sup>

The Disaster Response Plan outlines the functions of the NDC. These include:<sup>122</sup>

- Advising the President on strategic institutional, policy and funding issues necessary to provide for effective disaster preparedness and response in FSM.
- Manage relationships with international, regional and bi-lateral partners to coordinate and optimise external support for disaster management activities.
- Oversee the establishment of national disaster management operational arrangements.
- In the event of a disaster, provide management oversight of, and advice to the President on the response to the event.

## 4 Do FSM's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?

Beyond the ambiguous statements outlined above there are no formal processes for requesting or terminating international disaster assistance.

117 Disaster Relief Assistance Act 1989, s 705(6).

118 National Disaster Response Plan, 2016, at 16.

119 Ibid, at 13.

120 Disaster Relief Assistance Act 1989, s 705(7).

121 National Disaster Response Plan 2016, at 14.

122 Ibid, at 16.

## **5 Do FSM's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

There are no specific laws or regulations pertaining to international assisting actors generally, but FSM's relationship with the United States provides for a number of specific facilities for the US armed forces and officials, both specifically related to disasters and as a general consequence of the agreement. In addition, the US retains the ability to restrict access by foreign military to the FSM.<sup>123</sup>

## **6 Do FSM's laws and regulations set out quality standards for international assisting actors?**

The National Disaster Response plan provides for the development of SOPs for any "committee, team, working group or centre having a role under the Plan".<sup>124</sup> These SOPs must include "the membership, terms of reference and mode of activation and operation of the committee, team, working group or centre and are to be approved by the NDC or the relevant SDC".<sup>125</sup> These requirements apply to both international and domestic assisting actors.

In addition, international assistance agencies are expected to establish their support mechanisms within the framework of the Plan and "support the coordination processes of the National Disaster Coordination Team".<sup>126</sup>

## **7 Do FSM's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

There are no obvious regulations to establish eligibility requirements for international assisting actors or provide special facilities for such actors.

## **8 Do FSM's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

There is no formal provision for a specialised unit to expedite international disaster assistance in the FSM at either the state or federal levels.

## **9 Do FSM's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

Specific constitutional provisions apply to all foreign assistance. All monetary assistance received by the FSM government must be placed in a foreign assistance fund. In addition, states must receive assistance equally except in specific circumstance. These are defined as "... where a particular distribution is required by the terms or special nature of the assistance". Otherwise, "each state shall receive a share equal to the share of the national government and to the share of every other state".<sup>127</sup>

Beyond these general constitutional provisions, the DRP lays down specific requirements for

123 Compact Agreement, s 331.

124 National Disaster Response Plan 2016, at 7.

125 Ibid.

126 National Disaster Response Plan 2016, at 8.



Standard Operating Procedures around accountability. These state that the required SOPs for “any committee, team, working group or center” involved in DRM assistance (both domestic and international) must include provisions to “minimise the potential for losses and misappropriation of resources and funds during disaster operations” as well as including “accountability mechanisms”.<sup>128</sup>

Specific provisions apply to aid provided through the International Organisation for Migration. IOM maintains three prepositioned warehouses of supplies for post disaster response, including hygiene, shelter and water related materials. These supplies are only released in coordination with USAID following a US Presidential decree.<sup>129</sup>

## **10** Do FSM’s laws and regulations outline procedures for international disaster assistance sent from, and transiting through the Federated States of Micronesia?

There are no obvious provisions relating to assistance emanating from, or transiting through, the FSM.

### **Key Legislation**

- Climate Change Act 2013
- Constitution of the Federated States of Micronesia
- Disaster Relief Assistance Act 1989

### **Key Policies**

- Chuuk Joint State Action Plan for Disaster Risk Management and Climate Change, 2017
- Disaster Response Plan 2016
- Nation Wide Integrated Disaster Risk Management and Climate Change Policy, 2013
- Pohnpei Joint State Action Plan for Disaster Risk Management and Climate Change 2017
- Yap Joint State Action Plan for Disaster Risk Management and Climate Change 2016
- Yap Joint State Action Plan for Disaster Risk Management and Climate Change, 2017
- International Agreements
- United States Compact of Free Association with the Federated States of Micronesia, 2003

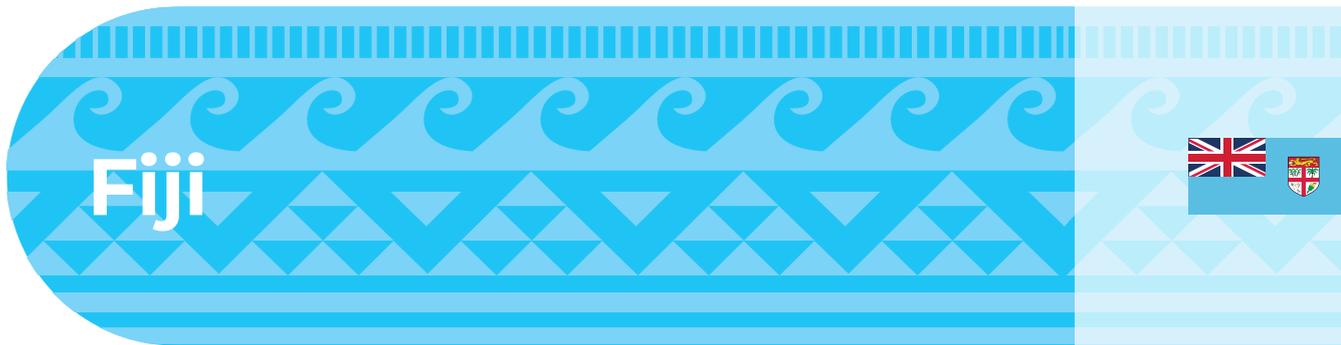
### **US Government Publications**

- Disaster Management Reference Handbook 2016

127 Constitution of Federated States of Micronesia, art XII, s 1(b).

128 Disaster Response Plan 2016, at 7.

129 CEDMHA, above n 113, at 35.



## Overview

### Constitutional/Political Framework

The Republic of Fiji is a parliamentary democracy established under the 2013 Constitution of Fiji (the 4th since independence in 1970).<sup>130</sup> The President, who is elected by simple majority in Parliament, is the Head of State. Executive authority is formally vested in the President but the position is largely ceremonial, although significant reserve powers remain in the hands of the President in the event of a constitutional crisis. Given Fiji's recent history, the position is of more significance than similar positions in other jurisdictions.<sup>131</sup>

The Fijian Parliament currently consists of 51 members elected every four years according to a single national constituency operating a proportional list system.<sup>132</sup> It is chaired by an independent Speaker who is appointed by, but not a member of, Parliament. The Head of Government is the Prime Minister, who is elected by and from Parliament and appointed by the President. The Prime Minister appoints a cabinet of Ministers from within Parliament at his or her discretion.

Fiji is divided into four Divisions administered by a centrally appointed Commissioner. Beneath this Divisional level, there operates two forms of local government. Rural areas are governed by a combination of traditional Provincial governments and rural governments. Each province has a provincial council which may make bylaws and impose rates and local taxes. However, these authorities, headed by the Roko Tui, (provincial chief), have a specific remit to protect the land and organise the interests of indigenous Fijians only. Tradition provincial government is also delivered through the tikina (sub-province) councils and then turaga ni-koro (village chieftains). Provincial councils are constituted and overseen by the iTaukei affairs section of Fijian central government. In rural areas a further level of general local authority operates under universal suffrage.<sup>133</sup>

In urban areas a single level of general purpose municipal authorities are elected through universal suffrage. Local government in Fiji has a relatively broad remit which is of significance to DRM as its remit covers any issue to "promote the health, welfare and convenience of the inhabitants of the municipality and to preserve the amenities or credit thereof". However, this autonomy comes with significant oversight from the Ministry of local government which must approve any local by-laws.<sup>134</sup>

<sup>130</sup> Although Fiji returned to democracy in 2014, in 2018 Freedom House classed the current system as only partially democratic.

<sup>131</sup> Fiji has experienced four coups d'état since independence.

<sup>132</sup> The Constitution provides for 50 members but this number is can change in relation to population changes.

<sup>133</sup> Commonwealth Local Government Forum "Country Profile: Fiji, 2017-18".

<sup>134</sup> Local Government Act (Fiji).

## The DRM Framework

Fiji's disaster management framework is founded upon the 1998 Natural Disaster Management Act 1998 (NDMA). This Act is complemented by the National Disaster Management Plan 1995 (NDMP). The NDMA establishes the National Disaster Management Council (NDC) which has overall responsibility for DRM. This comprises the Minister of Development and National Disaster Management as Chair,<sup>135</sup> the Secretaries of each Ministry, Directors of other key agencies (including state-owned enterprises) plus the Director of the Fiji Red Cross Society and the Fiji Council of Social Services representing civil society. The NDC operates through three committees; a Preparedness Committee responsible for community awareness activities; a Mitigation and Prevention Committee, which initiates and coordinates the implementation of disaster mitigation activities, and the Emergency Committee which has control during emergency operations. The NDMA also confers powers on Cabinet to make a declaration of natural disaster upon the advice of the NDC. The NDMA also establishes a National Disaster Management Office (NDMO) and the National Emergency Operation Centre (NEOC).

The NDMA provides for whichever Permanent Secretary is responsible for disaster management<sup>136</sup> to perform the role of the National Disaster Controller. This individual has the responsibility for coordination of the planning and execution of disaster response activities. This includes responsibility for the NDMP to ensure that it achieves its stated goal of coordinating all disaster related activities in Fiji and providing a system for prompt and appropriate disaster assistance as well as a rapid and durable recovery. During a Disaster event the NDC retains the overall strategic co-ordination role, but the Controller assumes control of response and recovery activities. In this the Controller is assisted by the Divisional Commissioners and District Officers who assume the position of controllers within their jurisdictions and under the authority of the National Controller.

A review of the Natural Disaster Management Act 1998 and Plan, led by the Now the Ministry of Infrastructure, Transport, Disaster Management and Meteorological Services, is currently being carried out in partnership with the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Building Safety and Resilience in the Pacific (BSRP) Project, with hopes to have it finalised later this year.

## Disaster Law Assessment

### **1 Does Fiji have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?**

The Natural Disaster Management Act (NDMA) 1998 and National Disaster Management Plan (NDMP) 1995 set out clear procedures relating to the request for international assistance.

Section 37(1) of the NDMA provides that the Chairman of the Council, after consultation with the Council, will advise Cabinet on the need to request international disaster assistance if it is established that the disaster is beyond national capacity to cope, or for any other reason they deem fit to do so. The NDMP states that international assistance will only be requested by the National Disaster Controller after an official appeal for international assistance is made and all requests will be based on identified needs by the National Disaster Controller or a recognised NGO.

<sup>135</sup> Currently, this is the Permanent Secretary for Infrastructure, Transport, Disaster Management and Meteorological Services.

<sup>136</sup> Now the Permanent Secretary for Rural and Maritime Development and National Disaster Management.



The NDMP clarifies that an appeal for international assistance, either to specific countries or in general, is made by the Prime Minister upon advice from the National Disaster Controller and when the impacts of a disaster go beyond the capabilities of local and national resources to cope. All assistance is based on a request from the government of Fiji or from a recognised NGO and all requests are made by the National Disaster Controller through the Ministry of Foreign Affairs.<sup>137</sup>

## **2 Do Fiji's laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

Section 3 of the NDMP stipulates that the Ministry of Foreign Affairs is to control and maintain procedures on international assistance arrangements, provide liaison channel for all overseas involvement together with the Ministry of Finance and Department of Regional Development, and process through diplomatic channels, offers of requests for overseas disaster assistance in addition to maintaining a Guideline on International arrangements concerning International Disaster Assistance.<sup>138</sup> Section 4 of the NDMP provides that for operational activities at the National level, during the emergency stage, all international assistance will be coordinated by the National Disaster Controller and requested by the Minister of Foreign Affairs.<sup>139</sup>

Fiji's National Emergency Operations Centre Standard Operating Procedures (SOPs) 2010 states that the National Disaster Controller is to manage the acquisition and distribution of international assistance provided towards the response to an emergency situation. In order to facilitate cooperation between the international community and the Government of Fiji, the National Disaster Controller will assign one of their staff as the point of contact for international agencies. This person will assist in the coordination of international assistance and provide information to the international community as required.<sup>140</sup>

## **3 Do Fiji's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

Both the NDMA and the NDMP canvas the roles and responsibilities of domestic actors involved in international disaster assistance, ranging from the Prime Minister, to government departments, civil servants and local NGOs, but particularly focussed on the NDMO as the focal point for disasters<sup>141</sup> and the NDMC at the strategic governance level for disasters<sup>142</sup>. For example, the NDMA states that the National Disaster Controller shall provide a briefing to donors who respond to a request for international assistance for disaster rehabilitation.<sup>143</sup> The NDMP also provides for the Fiji Red Cross Society to seek assistance from the International Federation of Red Cross and Red Crescent Societies for international relief when required<sup>144</sup> in accordance with the Red Cross Movement Fundamental Principles<sup>145</sup>.

There are no apparent responsibilities imposed upon assisting international actors, however, section 5 of the NDM Plan states that un-itemised and unsolicited relief items should not be accepted, other than by the National Disaster Controller.

137 Ibid, at 159.

138 NDMP, at 53.

139 Ibid, at 69.

140 DMP, at 163.

141 NDMA, Part 3, at 5.

142 NDMA, Part 2, at 3.

143 NDMA, s 37(2), at 13.

144 NDMP, at 58.

145 Fundamental Principles of the International Red Cross and Red Crescent Movement: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity, Universality.



Fiji



## **4 Do Fiji's laws and regulations outline a process for requesting/terminating international assistance?**

A natural disaster may be declared by Cabinet on the advice of the Council and must be announced publicly. In addition to section 37(1) mentioned above, the NDMA specifies that the National Disaster Controller may request the Minister of Foreign Affairs to call for foreign assistance in an emergency situation and the Controller and the Emergency Committee will coordinate all foreign assistance provided as a result.<sup>146</sup> In addition, NGO's may request international assistance from their respective international organisations.<sup>147</sup>

There are a number of references throughout the NDMP to the end of the "emergency phase" and the beginning of international relief for rehabilitation, however there is no definition as to how long the emergency phase lasts for and or how the beginning of the relief phase begins. There are no apparent procedures for terminating international assistance. There are provisions for the declaration of natural disaster which remains in force for a period not exceeding 30 days if it is not revoked sooner by public broadcast on television and radio and published in the Gazette.<sup>148</sup>

Un-itemised and unsolicited relief supplies are discouraged and will not be accepted without the approval of the National Controller.<sup>149</sup>

## **5 Do Fiji's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

Fiji's disaster regulatory frameworks provide for general wavier of customs and excise duties on official disaster relief goods, as contained in the NDMP<sup>150</sup> and the Fiji Customs Tariff Act (Revised) 2010<sup>151</sup>, however there appears to be no laws or regulations providing legal facilities to international assisting actors.

## **6 Do Fiji's laws and regulations set out quality standards for international assisting actors?**

It appears that the considerations for international assistance, including the oversight of international actors when they arrive in country and the standard and quality of their relief goods and equipment are not present in current regulatory frameworks.

## **7 Do Fiji's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

In addition to above, there appears to be no provisions in Fiji's current laws and policies outlining processes whereby international actors may receive legal facilities, processes such as the verification of medical certificates or licences, or evidence of official registration with recognised organisations, or basic background, identity and competency checks.

146 NDMA, s 32(1).

147 NDMA, s 32(2).

148 NDMA, ss 17-19, at 7.

149 National Disaster Management Plan (NDMP), at 86.

150 NDMP, at 47.

151 Customs Tariff Act (Revised) 2010, ss 10-11A.



## **8 Do Fiji’s laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The NDMA creates a degree of confusion as to who is responsible for ensuring efficient entry of international disaster assistance. It states that the National Disaster Co-Ordinator is charged with “managing the acquisition and distribution of international assistance provided in response to an emergency situation”.<sup>152</sup> However, the it also states that the National Disaster Controller and the Emergency Committee are responsible for co-ordinating all foreign assistance.<sup>153</sup> Under the NDMP the Department of Customs and Excise are required to: “Facilitate entry of all official disaster assistance commodities and waive customs and excise duties, where appropriate.” The National Humanitarian Policy for Disaster Risk Management 2017 outlines a number of actions around developing national guidelines for coordination of international humanitarian assistance at all levels including identifying the Fiji Cluster system as the Government-led humanitarian coordination mechanism in Fiji.<sup>154</sup>

However, beyond these general requirements, there appear to be no further specific processes to ensure the efficient entry of international assistance. In addition, there appears to be no specialised unit formally tasked with expediting international assistance.

## **9 Do Fiji’s laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

Under the NDMA, the responsible Ministry must ensure it sets money aside from within its annual budget to finance disaster management, including preparedness, prevention, mitigation, emergency response, rehabilitation, long-term recovery and related activities. Cabinet must be informed of the status of these budget allocations. The NDMP also provides that all goods donated by other governments or donor agencies will first go to the Controller of Government Supplies (COGS) where an inventory and proper records will be maintained. Distribution of those goods will be conducted under the purview of the National Disaster Controller.<sup>155</sup> Aside from the aforementioned provisions, there are no specific laws or regulations providing for transparency and accountability mechanisms in relation to international disaster relief.

## **10 Do Fiji’s laws and regulations outline procedures for international disaster assistance sent from and transitioning through Fiji?**

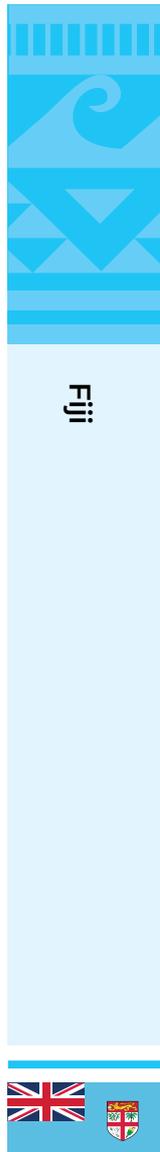
Fiji’s laws and regulations do not currently outline procedures for situations where Fiji would be used as a transit for the shipment of international disaster relief, although given the ongoing review of the current Disaster Act, this is an issue that may be addressed.

152 NDMA, s 14(i).

153 NDMA, s 32.

154 National Humanitarian Policy for Disaster Risk Management 2017, at 8.

155 NDMP, III-3.



**Key Legislation:**

- Natural Disaster Management Act 1998

**Key Policy:**

- Natural Disaster Management Plan 1995
- National Emergency Operations Centre Standard Operating Procedures 2010
- National Progress report on the implementation of the Hyogo Framework for Action 2013–2015
- National Tsunami Response Plan 2017
- Natural Disaster Risk Reduction Policy 2018–2030
- National Humanitarian Policy for Disaster Management 2017

Fiji



# Kiribati



## Overview

### Constitutional/Political Framework

Kiribati is a presidential republic operating a modified form of representative parliamentary democracy. The Kiribati constitution establishes a 43-member unicameral house of assembly (the Maneaba ni Maungatabu), 44 of whom are elected from 24 constituencies; namely 23 island councils in the Republic of Kiribati and one (1) Rabi Banaban Community in Fiji, except for the speaker who is elected by the members but is not a member. One member is elected by the Rabi Islands Council (based in Fiji) to represent the Banaban Community<sup>156</sup> there, while another member is elected separately to represent the people of Banaba Island. The Attorney General no longer sits in the Maneaba ni Maungatabu as an *ex-officio* member but is substituted by the Minister of Justice.

Executive authority is held by the President (Beretitenti) who is both head of state and head of government. The Beretitenti is elected by universal suffrage from a shortlist of three or four candidates provided by the Maneaba ni Maungatabu from amongst its members. Once appointed, the Beretitenti appoints a cabinet of up to twelve members including a Kauomanani-Beretitenti (or Vice President) from the Maneaba ni Maungatabu.<sup>157</sup> Although Kiribati has a number of political parties, their organisation is very loose. Local governments in Kiribati exhibit significant autonomy including in fields relating to DRM although in the event of an Emergency, the President can act directly, without reference to local authorities.<sup>158</sup> Since 2010, this discretion has been limited to acting “in accordance with an action plan of the Council dealing with disaster and emergencies”,<sup>159</sup> but the Disaster Risk Management & Climate Change (DRMCC) Act empowers the National Disaster Risk Management Council (NDRMC) to direct partner agency attention and resources to support the President’s discretion during emergencies.

The bulk of local governments are island councils (23) although Tarawa has three urban Councils. Island Councils in particular suffer from significant challenges around funding and capacity. For this reason, most functions outside Tarawa are provided by the national government, with local authorities merely administering the services. Alongside the democratic local government structure, traditional local authority still plays a prominent role. This is incorporated into the formal local government system through the male community elders (unimane) having a reserved (appointed) seat on local councils. Informally, the role of the unimane remains influential in local decision making.<sup>160</sup>

156 Strip mining by the UK, Australian and New Zealand government owned companies has led to the bulk of the island being made uninhabitable. The descendants of most Banaban islanders live on Rabi island (Fiji) where they were relocated in 1945.

157 Constitution of Kiribati, art 40. Despite this constitutional limit, the current cabinet of Kiribati comprises 12 members plus the President and Vice-President.

158 Local Government Act 1984, s 49.

159 Local Government Amendment Act 2006, s 23

160 Commonwealth Local Government Forum “Country Profile, Kiribati 2017-18” <[clgf.org.uk](http://clgf.org.uk)>.

## The DRM Framework

The legislative framework for disaster risk management in Kiribati is found in the National Disaster Act 1993 and, to a lesser extent, Article 16 of the Constitution. The latter provides for a state of a public emergency to be declared by the Beretitenti on the advice of the Cabinet. Such declarations can only stay in place for 30 days without approval from the Maneaba. During this period, significant authority is exercised by the Beretitenti to introduce regulations and exercise extra constitutional authority “that is reasonably justifiable in the circumstances of any situation arising or existing during the period for the purpose of dealing with the situation”.<sup>161</sup>

The National Disaster Act 1993 is the key legislative provision and provides for responsibility for response and recovery to lie with a Minister (currently the Beretitenti), acting under the advice of the National Disaster Council. The Act mandates and is complemented by the 2012 National Disaster Risk Management Plan.<sup>162</sup>

The National Disaster Council (NDRMC)<sup>163</sup> operates as the key executive body in the Kiribati model, comprising the chief executives (Secretaries) of all government departments in addition to the Kiribati Red Cross, the Director of the Kiribati Meteorological Office and the President of the Kiribati Association of NGOs. Outside of a disaster event, the NDRMC acts as an advisor to the responsible Minister and ensures that DRM policies are implemented by government and NGO agencies. The NDRMC also has a specific role in advising the Minister and Cabinet on declarations of emergency and providing advice on the need for external aid (and agreements to facilitate such aid).<sup>164</sup>

Island Disaster Committees (IDC’s) are responsible for coordination of DRM planning in each of the three islands and generally perform the responsibilities of the NDRMC at an island level. In the event that communication with Tarawa is disrupted, the IDCs take on all the responsibilities of the NDRMC.<sup>165</sup> A series of sub-committees are established under the NDRMP to plan for and manage specific elements of the disaster response and recovery.<sup>166</sup>

The National Disaster Management Office (which sits within the Office of the Beretitenti) is responsible for promoting and implementing DRM policy (as directed by the NDRMC) as well as reviewing the NDRMP on an annual basis and acting as secretariat to the NDRMC.<sup>167</sup>

In the event of a disaster the NDRMC retains its overall co-ordination role but management of the response passes to the Disaster Controller (currently designated as the Commissioner of Police) and an Emergency Operations Committee (established as a sub-committee of the NDRMC). This committee both responds to requests from the NDRMC (or Ministers) as to resource availability and determines “foreign resources requirements”.<sup>168</sup>

161 Kiribati Constitution, Article 16(5).

162 National Disaster Act, s 12.

163 National Disaster Risk Management Council. Although styled the National Disaster Council in the National Disaster Act, it is styled as the NDRMC in all recent policy documentation.

164 National Disaster Risk Management Plan (NDRMP) 2012, s 7.1

165 NDRMP, s 7.5.

166 For example, the Emergency Management Committee, Risk Reduction Committee, Exercise Management Committee.

167 NDRMP, s 6.

168 The plan is very comprehensive and bit is a long and complex document. It often conflates emergency and “normal” operations; however, it appears that the NDMP expects this committee also to meet quarterly and plan for these eventualities.

## Disaster Law Assessment

### 1 Does Kiribati have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

As set out above, the legal framework is based upon the National Disaster Act (NDA) and the National Disaster Risk Management Plan (NDRMP). Although the NDA is silent on the issue of international disaster assistance the NDRMP provides a limited set of procedures for its use and request. These place responsibilities for requests with the National Emergency Operations Committee (NEOC) and the NDRMC. As the NEOC is a sub-committee of the NDRMC the distinction may be unimportant. Although it is not entirely clear from the plan, it appears that the NDRMC has the responsibility for such requests in “normal” operations but is not entirely clear why such requests would be needed in such cases.

Although the NDRMC (and the NEOC) has the responsibility for co-ordinating and providing advice on the need for external aid to the responsible Minister responsible (currently the Beretitenti), the plan is somewhat vague on where exactly this responsibility for requesting external aid lies. The NDRMP states that, “the Government will determine when a disaster situation exceeds national coping capacities and seek international and/or regional assistance to address the needs of affected communities”.<sup>169</sup> It appears therefore that the request may be required to be a collective cabinet decision (although no legislation exists to this effect).

### 2 Do Kiribati’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The National Disaster Risk Management Plan sets out that the National Emergency Operations Office will serve as the operational focal point for all major operations occurring within Kiribati, and will coordinate all response actions including the deployment of specialised humanitarian personnel and materials. However, at the time of writing, the Emergency Operations Office has not yet been established.<sup>170</sup>

The NDRMP also requires that all relief supplies will be received by the National Disaster Risk Management Council, who will have overall control of supplies. In addition, the National Disaster Risk Management Council will determine the priority and quantities for distribution, and relief supplies that are brought into Kiribati will need to be stored in a weatherproof dry and secure area.<sup>171</sup>

The Plan also provides the following functional responsibilities, of relevance to the co-ordination of incoming international relief, in the event of a disaster:<sup>172</sup>

- The National Disaster Risk Management Council is to coordinate the disaster response, relief and recovery operations.
- The Disaster Controller is in control of all agencies and departments who are responding to assist in response, relief and recovery activities.
- The heads of individual agencies who are assisting in response, relief and recovery operations, are in command of their individual agencies or departments and under the control of the Disaster Controller.

None of these provide for an obvious single point of co-ordination in the absence of the planned NEOC.

169 NDRMP, at 77.

170 NDRMP, at 29 and 67.

171 NDRMP, at [4.4].

172 NDRMP, at 67.



### **3 Do Kiribati's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The Plan identifies the United Nations, international and local NGO's including the Kiribati Red Cross Society and the IFRC Societies as key actors in disaster response.<sup>173</sup>

It also specifies that the United Nations Office for the Coordination of Humanitarian Affairs coordinates the deployment of international specialised humanitarian personnel and materials to support government's response efforts on the ground in close collaboration with the Kiribati NDMO, particularly in situations where local capacity is overwhelmed, in response to a new or escalating humanitarian crisis.<sup>174</sup>

The NDRMP identifies that in order for successful international assistance, incoming support must be self-sufficient for the first 7-10 days of deployment (food and accommodation). Incoming support is required to operate under "a high level of local management and coordination". In addition, "it must be made clear that the Kiribati government and the National Disaster Risk Management Council are in charge of the overall coordination and operations".<sup>175</sup>

In addition, the Plan labels specific types of agencies that should be contacted if there are large numbers of fatalities (e.g. agencies capable of assisting in the identification of victims).<sup>176</sup>

### **4 Do Kiribati's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

As well as the information contained above, the NDRMP sets out that the National Disaster Risk Management Council must make the following considerations in advising the Government to request international assistance.<sup>177</sup>

- Requests for relief supplies and resources should only be made if that particular requirement is not available or functioning within Kiribati.
- When making requests – carefully consider what is needed urgently and could be delivered by aircraft as opposed to not so urgent relief supplies that could be delivered by ship.
- Types and quantities of relief materials should be as accurate as possible and sufficient to maintain supply until normal supplies are resumed.

### **5 Do Kiribati's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

The National Disaster Act 1989 sets out a number of specific legal immunities and responsibilities that apply to aid workers (both domestic and international). These include making any individual that obstructs a disaster worker, who discharging a responsibility in accordance with the National Disaster Plan, or in accordance with any regulations made under a state of public emergency, guilty of an offence.<sup>178</sup>

173 NDRMP, at 29.

174 NDRMP, at 29.

175 NDRMP, Part 3, at 45–46.

176 Ibid, at 45–46.

177 Ibid, at 45–46.

178 NDRMP, s 19.



In addition, immunity for liability applies to any “authorised volunteer worker of an agency” who is performing “a responsibility in accordance with the National Disaster Plan”. The only exception to this is where such loss or injury arises from “negligence or wilful misconduct.”<sup>179</sup>

## **6 Do Kiribati’s laws and regulations set out quality standards for international assisting actors?**

As mentioned above, the NDRMP sets out that all international assisting actors are to act under the coordination and control of the Kiribati Government and the National Disaster Risk Management Council.

Aside from this generic requirement there appear to be no specific quality standards for international assisting actors.

## **7 Do Kiribati’s laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

There are no eligibility requirements for the limited special legal status that applies to assisting actors. The National Disaster Act creates the offence of “obstructing a disaster worker” and provides immunity for “a member officer or authorised volunteer worker” when performing responsibilities under the National Disaster Plan but no further definition is provided.<sup>180</sup>

No other special legal facilities for international assisting actors appear to exist.

## **8 Do Kiribati’s laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The Plan identifies the importance of an operational airport and port in order to receive international assistance, and lays out procedural guidelines on what to do if either of these facilities are not operational.<sup>181</sup>

There do not appear to be any other regulations or legislation which provide for a specialist international disaster assistance.

## **9 Do Kiribati’s laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The National Disaster Act provides a limited degree of safeguards around international disaster relief and requires that “all donations, in money or any other form, which are made, either from within Kiribati or overseas, to assist in recovery from disaster, or for other disaster related needs, shall be utilised for these purposes only; and not be diverted for any other purpose without the authority of the Cabinet; and the specific agreement of the donor persons, agency or country”.<sup>182</sup> Beyond this requirement there are no obvious specific safeguards around international disaster management assistance.

179 NDRMP, s 20.

180 NDRMP, s 20.

181 NDRMP, Part 3, at 49

182 National Disaster Act, s 23.



## **10** Do Kiribati's laws and regulations outline procedures for international disaster assistance sent from and transiting through Kiribati?

There appear to be no specific laws, regulations or other policies regarding international relief transiting through, or emanating from, Kiribati.

### **Key Legislation**

- Natural Disaster Act 1993
- Local Government (Amendment) Act 2006
- Kiribati Red Cross Society Act 1989
- Kiribati Red Cross Society Amendment Act 2010
- Biosecurity Act 2011

### **Key Policies**

- Joint Implementation Plan for Climate Change and Disaster Risk Management 2014-2023
- National Disaster Risk Management Plan 2012
- National Framework for Climate Change Adaption 2013



## Republic of the Marshall Islands (RMI)



### Overview

#### Constitutional/Political Framework

The Republic of the Marshall Islands (RMI) is a sovereign state which has operated under a free association agreement with the United States of America since independence in 1986.<sup>183</sup> This arrangement is similar to that which exists between the USA and both Palau and the Federated States of Micronesia. The current version of the agreement dates from 2003.<sup>184</sup> The agreement provides RMI with significant financial support, but places the defence of the RMI under the control of the USA. In addition, the USA military has exclusive rights to access to RMI territory. The USA also provides other services (such as postal and aviation services) in the RMI.<sup>185</sup> The US dollar is the local currency.

The RMI operates a parliamentary system of government under its Constitution of 1979. The President, who is head of state as well as head of government, is elected by the 33 senators by and from the Nitijela (the Parliament of the RMI). The President chooses ten cabinet Ministers again from among the members of the Nitijela while the Speaker must approve the appointments. The executive branch consists of the President and the Cabinet. The Nitijela is elected every four years by universal suffrage on the basis of 24 electoral districts which correspond to the inhabited islands. There are no official political parties in the Marshall Islands but informal groupings operate in Parliament.

Although legislative power lies with the Nitijela, the (Council of Iroij), comprising 12 tribal chiefs (Iroijilaplaps) representing a specific island or islands, provides advisory opinions on matters of custom. The RMI has a single tier of 34 municipal local governments. These are governed through a Municipal Council and an Executive Council elected by and from it. The Mayor, who chairs Executive Council, is the head of the Municipality.<sup>186</sup> Subject to the general limits provided by national legislation, each municipality is managed by its own constitution which can reflect local governance practices.<sup>187</sup> The powers of local government are potentially extensive as local governments are provided with a general power of competence to act except when in breach of national legislation.<sup>188</sup>

<sup>183</sup> Compact of Free Association 1986.

<sup>184</sup> Compact of Free Association Amendments Act 2003, 48 USC 1921. 117 Stat. 2720.

<sup>185</sup> Compact of Free Association, s 221.

<sup>186</sup> Local Government Act 1980.

<sup>187</sup> The Local Government Act contains a "Default Constitution" and it is unclear the extent to which individual municipalities diverge from this standard. Local Government Act 1980, sch 1.

<sup>188</sup> Constitution of the Marshall Islands, art IX, s 2.

## Disaster Risk Management Overview

The DRM system of the RMI is founded upon the Emergencies Act 1979 and the Disaster Assistance Act of 1987. This legislation is complemented by the National Disaster Management Plan (NDMP) 1997, the Standard Hazard Mitigation Plan (HMP) 2005 and the National Disaster Risk Management Arrangements document (2017) which together are the key documents guiding RMI's system of disaster management.

At a strategic level, the National Action Plan for Disaster Risk Management 2008–2018 (DRMNAP) outlines priority actions for risk reduction. The Joint National Action Plan for Disaster Risk Management and Climate Change (JNAP) was subsequently established in 2010 to 2011 to align with actions identified under the DRMNAP, as well as the subsequently developed 2011 National Climate Change Policy Framework. Together, these policies provide a comprehensive guide for the implementation of risk reduction measures relating to disaster and climate change.<sup>189</sup>

Responsibility for DRM lies with the Minister in Assistance to the President, however, in practice National Disaster Risk Management Committee (NDC) is the designated lead entity implementing both the NDMP and the HMP. The NDC is chaired by the Chief Secretary and comprises the Secretaries of each Ministry, key agencies and state-owned enterprises plus one representative each from both the private and NGO sectors. Other members can be co-opted onto the NDC at the discretion of the Minister. The NDC can provide advice on the need for a state of disaster or make a request for its declaration but the final decision lies with cabinet.<sup>190</sup>

During business as usual operations, the NDC is responsible for the provision of technical advice and support to facilitate the implementation of disaster management programmes and for ensuring that adequate and reliable disaster control and coordination mechanisms are in place. During a Disaster event, the NDC provides overall strategic co-ordination of the response under the Chief Secretary who is designated the National Disaster Controller.<sup>191</sup>

The Primary agency responsible for disaster management programmes and activities is the National Disaster Management Office (NDMO). This agency is also responsible for the National Emergency Operations Centre which will activate during a disaster event. The role of the NDMO during a disaster event, is unclear, however (aside from supporting the National Controller).<sup>192</sup>

Local governments are responsible for assisting the NDMO to develop specific programs for each island and for developing their own local and community DRM plans. To facilitate this process, the NDMO provides technical advice and serves at the focal point for the coordination of Government resource support.<sup>193</sup>

## Disaster Law Assessment

### **1** Does RMI have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The legal framework for disaster risk management within the Republic of the Marshall Islands is spread across a number of legal and policy documents. The development of the National Disaster Risk Management Arrangements 2017 is an attempt to streamline disaster risk

<sup>189</sup> Republic of Marshall Islands Country Preparedness Package, at 10.

<sup>190</sup> Disaster Assistance Act 1987. See NDRMA, 2017, s 6.8, at 65.

<sup>191</sup> NDRM Arrangements s 6.6.

<sup>192</sup> NDRMA 2017, 6.5, at 63.

<sup>193</sup> Republic of the Marshall Islands Country Preparedness Package, at 9.

management within RMI through the one harmonising instrument. Despite the unconventional array of documents (as opposed to a primary Act supported by a plan), there are a number of clear provisions with regard international disaster assistance, for example international disaster assistance may not be requested until there has been a state of emergency or a state of disaster declared by Cabinet. A state of disaster will expire after 30 days if not renewed by Cabinet,<sup>194</sup> and a state of emergency will expire after ten days if not renewed.<sup>195</sup> In addition, the Nitijela may also terminate a state of emergency. A request for international assistance will only be made when it is clear that the situation is outside of RMI's capability. The Central Control Group (CCG), within the Emergency Operations Centre (EOC) is to make this determination.

## **2 Do RMI's laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The National Disaster Management Committee (NDMC) is responsible for the coordination of disaster assessment and relief operations including the recommendation to Cabinet on the need for external relief assistance. The EOC is located in the Chief Secretary's Conference Room. The Chief Secretary, with the assistance of a CCG, will have responsibility for the coordination of resources in response to a hazard impact or major emergency situation. The EOC provides for the overall command, control and coordination of response to a national disaster; it coordinates all government, non-government, private, regional and donor assistance, and it manages the logistic arrangements of the immediate relief supplies.<sup>196</sup>

The Central Control Group (CCG) is responsible for liaising directly with international aid agencies and donors after the formal request has been made, to determine the type, quantity and distribution of assistance required. All departments that require aid must submit their request to the CCG. They must not directly contact the aid agencies and donors. The CCG is accountable to aid agencies/donors for ensuring that all relief assistance is distributed in accordance with guidelines governing the provision of the assistance, and for the preparation of a report on expenditure/distribution of assistance provided.<sup>197</sup>

Under the 1997 Plan, the CCG is to handle international assistance matters and have different discussions with different agencies. In practice, it is possible that the same letter of request would go at the same time to multiple partners. Additionally, in smaller scale events, assistance has been channelled directly to the ministries in the past (despite government's insistence that requests go through CSO and NDMO).<sup>199</sup>

## **3 Do RMI's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The Chief Secretary is responsible to Cabinet for ensuring that adequate disaster management measures exist at all times.<sup>200</sup> The Chief Secretary holds the position of Disaster Controller, who has overall disaster management responsibility.<sup>201</sup> The National Disaster Management Office (NDMO) is tasked with providing assistance and advice to departments, NGOs, and private

194 Disaster Assistance Act 1987, s 1005.

195 Emergencies Act 1979, s 1102(2).

196 National DRM Arrangements 2017, at 62.

197 Centre for Excellence in Disaster Management and Humanitarian Assistance (CEDMHA) *The Republic of the Marshall Islands: Disaster Management Reference Handbook 2016* (Centre for Excellence in Disaster Management and Humanitarian Assistance, Hawaii, 2016), at 39.

198 Country Preparedness Package, at 13.

199 *Ibid*, at 13.

200 CEDMHA, above n 197, at 30.

201 Country Preparedness Package, at 10.



industry on disaster management matters, developing and maintaining an EOC, and providing a focal point for regional disaster management activities.<sup>202</sup> The NDMO is responsible to the NDC for monitoring the requirement for disaster relief during the recovery period. It is essential that once the initial relief operations have been completed the continuity of relief efforts must be maintained with regular reporting to the NDC.<sup>203</sup>

The National Disaster Management Committee is primarily responsible for the provision of technical advice and resource support in facilitation of DRM. It is the lead agency for implementing the NDMP 1997 and the HMP 2005, and is directly accountable to Cabinet.<sup>204</sup> The Disaster Assistance Act 1987 sets out the composition of the NDMC<sup>205</sup> and their major functions which include coordination of disaster assessments and relief operations including recommendations on the need for external relief assistance.<sup>206</sup>

The Joint National Action Plan for Climate Change Adaption and Disaster Risk Management (JNAP) sets out the role of the Red Cross in disaster as an additional link to communities, and once fully established, it will be an effective supporting organisation for JNAP implementation and feedback on JNAP monitoring and evaluation.<sup>207</sup>

## **4 Do RMI's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

RMI may request that the United States President declare a state of emergency for it. If this happens, Federal Emergency Management Agency (FEMA) and USAID shall jointly assess the damage caused by the disaster and prepare a reconstruction plan including an estimate of the total amount of Federal resources needed.<sup>208</sup> RMI is also able to request disaster assistance from USAID in a declared state of emergency after utilising the national Disaster Assistance Emergency Fund, and requesting international assistance through the United Nations.<sup>209</sup>

In terms of the aid that is available from the United States, this is covered by the Compact of Free Association (CFA) agreement. This was established in 1986, and provides the Marshall Islands with economic assistance worth around \$45 million (USD) a year until the agreement expires in 2023. The use of the funds must be related to the specific areas detailed in the agreement. This agreement was amended in 2004 to include guidance on establishing the Disaster Assistance Emergency Fund and for accessing additional post disaster support from USAID. This additional finance is available once the President of the Republic of the Marshall Islands officially declares a national state of emergency in accordance with the laws of the Government of the Republic of the Marshall Islands. This requires that the disaster is deemed to be beyond the ability of the Government of the Republic of the Marshall Islands to respond (including taking into account the available resources of the Disaster Assistance Emergency Fund and the need to protect the sustainability of the Fund) or the Government of the Republic of the Marshall Islands has requested assistance through the United Nations designated representative for the coordination of disaster and humanitarian assistance.<sup>210</sup>

202 CEDMHA, above n 197, at 32.

203 National DRM Arrangements 2017, at 75.

204 Country Preparedness Package, at 9.

205 Disaster Assistance Act 1987, s 1008.

206 CEDMHA, above n 197, at 33.

207 Joint National Action Plan for Climate Change Adaption and DRM 2014–2018, at 29.

208 CEDMHA, above n 197, at 30.

209 Ibid, at 30.

210 GFDRR Country Note, at 10.



The Disaster Controller also has the authority to call for international assistance to support the response or relief efforts based on assessment reports received.<sup>211</sup> Requests to specific countries are then made by the Ministry of Foreign Affairs.<sup>212</sup>

## **5 Do RMI's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

In terms of immigration, emergency staff arriving from foreign countries will require immigration clearance. Assuming that partners operate through formal channels, the Chief Secretary's Office will liaise with the ministries of Foreign Affairs and Immigration to ensure any necessary exemptions/entry requirements for essential staff are observed.<sup>213</sup> Regarding customs, once there is a request submitted for international assistance, directors of customs and quarantine are to make necessary arrangements for the ongoing clearance of all donors' assistance which are provided for disaster relief purposes.<sup>214</sup> The Secretary of Finance, Banking and Postal Services is to consider approval of duty exemption for goods, which are purchased locally for the purpose of emergency relief requirement. The approval of duty exemption will only be considered following a letter of request from the Chair of the NDC.<sup>215</sup> In addition, the Ministry of Finance plays a leading role in facilitating disaster response efforts. The Ministry waives normal tendering procedures upon receipt of the statement of emergency. This is commonly accepted but not formally documented.<sup>216</sup>

Wide powers are given to Cabinet in time of disaster, including to "give due recognition to the license, certificate or other permit issued by any government evidencing that a person has met qualifications for professional, mechanical or other skills, and such persons may render aid involving that skill to meet a disaster".<sup>217</sup> The Act also sets out that an executive order or proclamation of state of disaster shall empower the disaster response and recovery aspects of the disaster plans applicable to the political subdivision or area in question, and authorise the deployment and use of any forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Chapter or to any other provision of law relating to disasters.<sup>218</sup>

## **6 Do RMI's laws and regulations set out quality standards for international assisting actors?**

The Disaster Assistance Act 1987 states that the Disaster Committee has wide discretion to do "such other things as may be necessary, incidental or appropriate for the implementation of this chapter",<sup>219</sup> and the Emergencies Act 1979 also grants wide ranging powers to Cabinet during a state of emergency to "promulgate whatever orders are necessary to assure the safety of life, health and property of the community".<sup>220</sup> Aside from these provisions, it is not apparent whether there are any provisions setting out minimum quality standards for international actors and the goods/services they provide.

211 National DRM Arrangements 2017, at 63.

212 Ibid, at 66.

213 Country Preparedness Package, at 9.

214 CEDMHA, above n 197, at 40.

215 National DRM Arrangements 2017, at 75.

216 GFDRR Country Note, at 16.

217 Disaster Assistance Act 1987, s 1007.

218 Ibid, s 1006(3).

219 Disaster Assistance Act 1987, s 1008.

220 Emergencies Act 1979.



## **7 Do RMI's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

The receipt of legal facilities for international actors is not specified in RMI's disaster risk management regulatory framework and is largely based on the discretion of the relevant Minister.

## **8 Do RMI's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The National Emergency Operations Centre (NEOC) has the responsibility to coordinate all government, non-government, private, regional and donor assistance; and manage the logistic arrangements of relief supplies.<sup>221</sup> Aside from these provisions, there appear to be no current laws or regulations establishing eligibility requirements for international actors wanting to receive legal facilities.

## **9 Do RMI's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

There are various provisions throughout the legislation and policy documents relating to the Disaster Assistance Fund. The RMI Disaster Management Reference Handbook 2016 (DRMH) states that the Chief Secretary is responsible for the management of all funds provided for disaster relief purposes, and prior authorisation for expenditure of such funds must be received.<sup>222</sup> Additionally, the Disaster Controller will be accountable to all aid agencies/donors for ensuring that all relief assistance is distributed in accordance with guidelines governing the provision of such assistance and for the preparation of a report on the expenditures and distribution of assistance provided by each agency.<sup>223</sup>

The National Action Plan for DRM states that the Ministry of Finance is to accept and process departmental activities on disaster expenditure; prepare to implement the necessary accounting procedures for USAID assistance; and maintain detailed records of disaster expenditures employing the same procedures as are required for USAID assistance.<sup>224</sup> The Plan also sets out specific funds available to the Republic of Marshall Islands in times of disaster/emergency.<sup>225</sup>

The Disaster Assistance Act 1987 establishes a specific Disaster Assistance Account within the National Treasury and under the control and supervision of the Ministry of Finance. Subject to this control, the contents of the account shall be made available and paid out by the Chief Secretary in consultation with the committee for the purposes set out in Act.<sup>226</sup>

221 National DRM Arrangements 2017, at 62.

222 CEDMHA, above n 197, at 40.

223 National DRM Arrangements 2017, at 66.

224 National Action Plan for DRM, at 16.

225 National Action Plan for DRM 2008–2018, at 42.

226 Public Health, Safety and Welfare Act [7 MIRC Ch.1] Chapter 10 (Disaster Assistance Act) 1987, s 1010.



## **10** Do RMI's laws and regulations outline procedures for international disaster assistance sent from and transiting through the Marshall Islands?

There are currently no apparent provisions within RMI's disaster risk management framework relating to international disaster assistance being sent from or transiting through RMI.

### **Key Legislation**

- Disaster Assistance Act 1987
- Emergencies Act 1979
- Marshall Islands Red Cross Society (Incorporation and Recognition) Act 2013

### **Key Policies**

- Hazard Mitigation Plan 2005 (not accessible online)
- Emergency Response Plan 2010 (not accessible online)
- Pacific Humanitarian Team: Country Preparedness Package 2017
- National Strategic Plan 2015–2017
- National Disaster Risk Management Arrangements 2017
- National Disaster Management Office Strategic Plan 2017–2019
- National Action Plan for Disaster Risk Management 2008–2018
- Hazard Mitigation Plan 1997
- Joint National Action Plan for Climate Change and Disaster Risk Management 2014–2018
- GFDRR Country Note 2015
- US CFE resource: The Republic of the Marshall Islands: Disaster Management Reference Handbook





# Nauru

## Overview

### Constitutional/Political Framework

The Republic of Nauru operates a Westminster-style parliamentary system government, as laid out in its Constitution of 1968. The President is elected by, and responsible to, the unicameral parliament and is both head of government and head of state. Nauru does not have formal political parties and candidates typically stand as independents. MPs are elected every three years by universal suffrage. At its first sitting, parliament chooses a speaker, a deputy speaker and chairs of committees before electing the President from among the remaining members. The President then appoints six Ministers to the cabinet which acts as the Executive branch of government. Ministers must be members of Parliament and are collectively responsible to it.<sup>227</sup>

Since the dissolution of the Nauru Island Council (NIC) in 1999, there has been no local government level in Nauru. Local government matters are now the responsibility of the national government.

### The DRM Framework

As part of Nauru's commitments to strengthening resilience under the Hyogo Framework for Action, the Sendai Framework and its Joint National Action Plan, the government reviewed its existing disaster management law with the support regional humanitarian partners. The result was the National Disaster Risk Management Act 2016 (enacted in 2017). This replaced the 2008 legislation. This Act is intended to be complemented by the National Disaster Risk Management Plan but this is not yet available. The status of the 2008 Plan is unclear but, given the new architecture and obligations found in the new Act, it appears to be largely obsolete, although there are currently plans for the NDRM Plan 2008 to be reviewed and updated.

The new law creates a more proactive approach that prioritises preparedness and risk reduction measures. It also sets up a new disaster management architecture in the country. This is headed by the National Disaster Risk Management Council (NDRMC) which is chaired by the responsible Minister (in practice, the President) and comprises Secretaries of governmental departments in addition to representatives from civil society.<sup>228</sup> This body has overall responsibility for disaster management and response. Two sub-committees (the Disaster Risk Reduction Committee and the Recovery Advisory Committee) are responsible for specific aspects of DRR. In addition, the Committee is responsible for establishing Community Disaster Management Committees which must comprise representatives from youth and women's groups as well as traditional and church leaders.<sup>229</sup> The NDMRC also provides advice to the President on the declaration of and termination of a State of Disaster.<sup>230</sup>

227 The Constitution of Nauru, arts 18 and 19.

228 National Disaster Management Act, s 16.

229 NDRM Act, s 19.

230 NDRM Act, s 26 and s 30.

The key management agency for disaster response is the Department of National Emergency Services (NES), whose Secretary is also the National Controller in the event of a disaster event. The NES, established under the act, comprises the key emergency agencies in Nauru and the Nauru Disaster Risk Management Office (NDRMO).<sup>231</sup> The NDRMA also provides for a National Emergency Operations Centre to be utilised in the event of a disaster and provide coordination of response and recovery activities.<sup>232</sup>

The 2016 Act also creates a new chapter on facilitation of international assistance based upon the IDRL Guidelines.

## Disaster Law Assessment

### 1 Does Nauru have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The Disaster Risk Management Act 2016, which repeals the Disaster Risk Management Act 2008, provides a clear framework for disaster risk management. The Act sets out the process for assessment of need for international assistance. This states that in consultation with Cabinet and Council, the Secretary is to make a determination, based on initial estimates, as to whether domestic response capacities are likely to be sufficient. If not, the Secretary may advise the Council that an immediate request be made for international assistance which must be formally submitted to the President for approval.<sup>233</sup>

Where a recommendation for international assistance is made, the Secretary must, in consultation with the Council, develop a preliminary list of goods, equipment and services required and make this list available to potential assisting international actors immediately upon the commencement of an international disaster relief period.<sup>234</sup> This list must be updated as new information is received.<sup>235</sup>

There are specific provisions in the DRM Act concerning requests for international disaster assistance. These state that the President of Nauru may make a request to specific international actors or make a general request to the international community as a whole. This request must be accompanied by information as to the extent and type of assistance required as well as information on the procedures required for international actors to make offers or provide assistance.<sup>236</sup>

### 2 Do Nauru's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The Act provides that, once international assisting actors have arrived in Nauru, the Department of National Emergency Services will serve as the focal point agency between the Government and the international actors.<sup>237</sup> The Secretary for the Department must inform assisting actors and relevant agencies of rights and responsibilities under this Act.<sup>238</sup>

231 NDRM Act, s 13. The Department brings together the Nauru Rescue and Fire Services, Nauru Ambulance Services, Nauru Life Guard Services, Nauru Meteorology Services and the NDRMO.

232 NDM Act, s 21.

233 DRM Act 2016, s 36(1).

234 Ibid, s 36(4).

235 Ibid, s 36(5).

236 Ibid, s 37.

237 DRM Act 2016, s 42(1).

238 Ibid, s 42(2).



### **3 Do Nauru's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The DRM Act requires that national authorities attempt to integrate the role of international actors into their planning and general mechanisms for coordinating disaster response and, "in particular, facilitate the work of international actors while balancing the urgent needs of affected communities and the necessary safeguards relating to public safety, health, coordination and oversight".<sup>239</sup>

The Secretary for the Department of National Emergency Services must inform international actors and relevant agencies of their rights and responsibilities under this Act.<sup>240</sup> The Act also states that no official of Nauru may prevent international actors from acting according to the principles for humanitarian assistance; and international actors must cooperate with any international or regional mechanisms for coordination that have been specifically approved for a particular operation by the Department.<sup>241</sup>

General responsibilities of assisting actors are outlined in Division 3 of the Act, which requires assisting actors comply with the principles of international assistance including, respect for the dignity of affected persons, ensuring an appropriate standard for goods and services as well as provisions regarding unsolicited goods, the disposal of unusable goods, non-functioning equipment and other waste.<sup>242</sup>

### **4 Do Nauru's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

Pursuant to the Act, a request for international assistance may be made by the President on the advice of the Secretary. The request may be made specifically to particular international actors or be a general request to the international community as a whole and must be accompanied by information on the type of assistance required and information on procedures for assisting international actors to make offers or provide assistance.<sup>243</sup>

The Act also says that assisting international actors may provide international disaster assistance only if they have made an offer that has been accepted.<sup>244</sup> These offers must be directed to the Department of Foreign Affairs and Trade through Nauruan diplomatic channels, they must indicate the type, amount and duration of assistance to be provided. In the event of a general request for assistance, formal offers do not need to be made, however assistance must comply with the terms of the general request and must inform the Secretary as to the type, amount and duration of assistance to be provided at least 24 hours in advance of their arrival.<sup>245</sup>

The Act states that the international disaster relief and initial recovery periods will both commence simultaneously upon the issuance of a request for international disaster assistance under s 37, or upon acceptance of an offer under s 38. The period may continue until terminated.<sup>246</sup> The termination of the international disaster relief period and international initial recovery period

239 Ibid, s 43(1).

240 Ibid, s 42(2).

241 Ibid, s 43(3)-(4).

242 Ibid, ss 45-49.

243 Ibid, s 37.

244 Ibid, s 38.

245 DRM Act 2016, s 38.

246 Ibid, s 39.

occurs if, based on updated needs assessments and other information and in consultation with assisting actors, the Council is satisfied that the need for disaster relief is coming to an end. The Council, through the Secretary, may advise the President to approve a termination date for both periods.<sup>247</sup> The announcement of the termination date must be made to actors no later than 20 days prior to the proposed date; and must include information about anticipated ongoing needs for goods and services related to the initial recovery assistance.<sup>248</sup> When the announcement is made, the Secretary must consult with assisting actors actively involved in disaster relief work in order to reduce any negative impact from the termination and to ensure adequate handover of responsibilities.<sup>249</sup>

The termination of the international disaster relief period and international initial recovery period occurs if, based on updated needs assessments and other information and in consultation with assisting actors, the Council is satisfied that the need for disaster relief is coming to an end. In these circumstances the Council, through the Secretary, may advise the President to approve a termination date for both periods.<sup>250</sup> The termination date must be announced to assisting actors no later than 40 days prior to the proposed date. Where an announcement is made, the Secretary must consult with assisting actors actively involved in initial recovery assistance work in order to reduce any negative impact from the termination, and to ensure an adequate handover of responsibilities.<sup>251</sup>

The Act strongly discourages the use of unsolicited donations. All international assisting actors are actively encouraged to persuade members of the public interested in contributing to international disaster relief to make financial donations where possible, or only donate those goods expressly requested by Nauru.<sup>252</sup>

## **5 Do Nauru's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

The Act sets out legal status and facilities for eligible actors, providing for entry into Nauru and visa requirements,<sup>253</sup> the registration of medical and health professionals,<sup>254</sup> the recognition of other foreign personal qualifications,<sup>255</sup> and provisions for foreign driving licenses.<sup>256</sup>

The Act further sets out that international actors have the legal capacity as may be relevant in providing international disaster relief/initial recovery assistance in accordance with the laws of Nauru, in particular the capacity to open bank accounts, enter into contracts, acquire and dispose of property, receive and disburse funds, instigate legal proceedings and engage and terminate locally engaged personnel.<sup>257</sup>

The supply of disaster relief/initial recovery assistance is exempt from service and similar taxes.<sup>258</sup>

247 Ibid, ss 40–41.

248 Ibid, s 40(2).

249 Ibid, s 40(3).

250 Ibid, ss 40–41.

251 Ibid, s 41(2)–(3).

252 Ibid, s 48.

253 DRM Act 2016, s 55.

254 Ibid, s 56.

255 Ibid, s 57.

256 Ibid, s 58.

257 Ibid, s 71.

258 Ibid, s 74.



## 6 Do Nauru's laws and regulations set out quality standards for international assisting actors?

Assisting actors must ensure that the goods and services they provide are appropriate to the needs and circumstances of persons affected by the disaster. Such assistance must conform to Sphere Project Minimum Standards in Humanitarian Response, and, where this is not possible, the assisting actors must inform the Secretary for National Emergency Services.<sup>259</sup>

Actors must also ensure that the medications provided must be transported in appropriate conditions at all times to ensure their quality. In addition, they must be at least 24 months from their expiry date upon arrival unless otherwise specifically agreed to by the Secretary for Health and Medical Services. All assisting actors must ensure that goods or equipment that they import, which are or become unusable, are destroyed, recycled or otherwise disposed of in a safe, environmentally sensitive and effective manner.<sup>260</sup>

The Customs Act 2014 applies to the importation of consignments of goods and equipment brought into Nauru.<sup>261</sup> Eligible actors must declare all goods and equipment being imported as exclusively for disaster relief, and pack, classify and mark their consignments in accordance with the requirements described in this subdivision.<sup>262</sup> Importation of medication must conform to all applicable Nauruan laws, must be appropriate to the needs of disaster affected persons, and must be legal for use in the country of origin as well as Nauru.<sup>263</sup> Subject to Customs Act 2014, Agricultural Quarantine Act 1999, Quarantine Act 1908, Food Safety Act 2005 and other relevant legislation, food imported to Nauru must not expire within six months of importation and be labelled in English.<sup>264</sup> Finally, vehicles may be imported to Nauru for the purposes of this Act.<sup>265</sup>

Goods that have been exempted from fees, duties, taxes or other charges for disaster relief, but have not been used can be retained by eligible actors that are non-profit entities and used or distributed by them for humanitarian, development or charitable purposes (in Nauru) or alternatively, "re-exported, donated or disposed of".<sup>266</sup>

The Council are in charge of monitoring compliance of international assisting actors with the Act, who are to report to the Council, at reasonable intervals, about the disaster relief/initial recovery assistance they provide.<sup>267</sup>

## 7 Do Nauru's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

Nauru's Act contains a number of provisions for legal facilities for international actors. These legal facilities are only available during the international disaster relief and initial recovery periods.<sup>268</sup> Assisting States, relevant intergovernmental organisations, including the UN and other regional organisations, and any other assisting actor the Secretary deems eligible may

259 Ibid, s 47.

260 Ibid, s 49.

261 Ibid, s 60.

262 Ibid, s 61.

263 Ibid, s 63.

264 DRM Act 2016, s 64.

265 Ibid, s 65.

266 Ibid, s 66.

267 Ibid, s 76.

266 Ibid, s 66.

267 Ibid, s 76.

268 Ibid, s 39(2).

receive legal facilities without a further application process.<sup>269</sup> A certificate must be provided to these international actors to facilitate access to the legal facilities, by the Secretary.<sup>270</sup>

Those not deemed eligible to receive legal facilities under the above criteria may apply for legal facilities as per the process in section 52 of the Act, if they are recognised as a legal person in a foreign country or under international law. This section provides that the eligibility of private businesses for legal facilities will be limited to assistance from which they make no profit or other commercial gain. If eligibility is granted, it will remain valid for two years and legal facilities are only valid during international disaster relief or initial recovery period.

All assisting actors seeking eligibility must submit certified copies evidencing their legal personality, name and contact details of authorised representative of the organisation and the address of its headquarters, if any, in Nauru and documentation of previous experience and current capacity in providing disaster relief. The Secretary of the National Emergency Service must respond to an application for legal facilities by either approving it and issuing a certificate, or giving notice that it has not been approved.<sup>272</sup>

## **8 Do Nauru’s laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

Under the NDRMA, the Department of National Emergency Services, as the focus point agency, is tasked with facilitating the processes around international disaster assistance. The Act specifies that in doing so it must promote “the effective facilitation, coordination and oversight of international disaster assistance”.<sup>273</sup> Section 43 also provides obligations upon international assisting actors to coordinate with national, international and regional mechanisms that have been specified by the DNES, while national government officials must not prevent such actors from acting “according to the principles for humanitarian assistance”. However, beyond these general legislative requirements, there are currently no specific provisions for the expediting of entry for international disaster assistance.

## **9 Do Nauru’s laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The Act provides that internationally donated funds are subject to audit by the Auditor General no later than six months after the termination of the international disaster relief period or three months after the termination of the international initial recovery period.<sup>274</sup>

The Act provides a process to follow if there is non-compliance with any of its provisions by an assisting actor.<sup>275</sup>

271 Ibid, s 52.

272 Ibid, s 53.

273 NDRMA, art 42(1)

274 DRM Act 2016, s 78.

275 Ibid, s 76.



## **10** Do Nauru's laws and regulations outline procedures for international disaster assistance sent from and transiting through Nauru?

The Act provides that where a disaster occurs in another country where international disaster assistance is required, the Government of Nauru may work with assisting international actors for the immediate transit or transshipment of personnel, goods or equipment across or through Nauru.<sup>276</sup> The laws of Nauru will apply in this circumstance.<sup>277</sup>

### **Key Legislation**

- Disaster Risk Management Act 2008 (repealed)
- National Disaster Risk Management Act 2016

### **Key Policies**

- National Disaster Risk Management Plan 2008
- Biodiversity Strategy and Action Plan 2010
- Framework for Climate Change Adaption and Disaster Risk Reduction 2015
- Other Documents
- UN Report on Climate Change Adaption and Migration in Nauru 2016

276 Ibid, s 79.

277 Ibid, s 80.

# New Zealand



## Overview

### Constitutional/Political Framework

New Zealand is a parliamentary democracy governed by an uncodified constitution. A very basic constitutional framework is provided by the Constitutional Act and the model is underpinned by a commitment to the Rule of Law, Parliamentary Sovereignty and The Treaty of Waitangi. In practice, these principles often conflict and are highly contested. No constitutional court exists to mediate such conflicts, although a Supreme Court heads up an independent judiciary, which plays a significant constitutional role.

The Head of Government is the Prime Minister, who is elected from and by Parliament. In practice, they are the leader of the largest party in the coalition (either formal or informal) able to command a majority in the single chamber Parliament (the House of Representatives). Ministers are appointed, and retain their positions, at the discretion of the Prime Minister although, in practice, these positions are often the subject of coalition agreements between the parties. New Zealand is a Constitutional monarchy with the British Monarch (as Queen of New Zealand) as its head of state. The Governor General (as the Queen's representative in New Zealand) acts in her stead for most activities, including by appointing all Ministers (including the Prime Minister), although this position is largely ceremonial.

Although New Zealand is a highly centralised unitary state, it operates a two-tier system of local government (regional and district/city). Both levels have a degree of authority around Civil Defence management, although the region's role is largely to provide coordination only. In the Wellington region, a semi-autonomous agency has been established to oversee both civil defence preparations and event response.<sup>278</sup> Alongside local governments, Māori iwi (tribal) organisations perform both disaster preparedness and response roles. The nature of these vary significantly depending upon the iwi concerned.

### The DRM Framework

New Zealand's current system of Civil Defence Emergency Management rests upon the Civil Defence and Emergency Management Act 2002 (CDEMA). It provides the framework for response to, and (to a limited extent) recovery from, natural disasters and other emergencies. The Act is complemented by the Civil Defence and Emergency Management Regulations 2003 (CDEMR), National Civil Defence Emergency Management Plan 2015 (NCDEMP), the Guide to the National Defence Emergency Management Plan 2015 (Guide to NCDEMP) and the National Disaster Resilience Strategy 2019.

<sup>278</sup> Wellington Region Emergency Management Office (WREMO)

<sup>279</sup> CDEMA, s 25(4).

<sup>280</sup> CDEMA, s 69.

Broadly speaking, control of responses to emergency situations is in the hands of the appropriate agency, up to the point where a state of emergency is declared. Once the event reaches a scale that requires a multi-agency response, the local mayor (or deputy)<sup>279</sup> or the Minister of Civil Defence may declare a local state of emergency.<sup>280</sup> In the absence of an elected official, the local state of emergency may be declared by a member of the local Civil Defence Emergency Management Group authorised to act.<sup>281</sup> Once a local emergency has been declared, the management of the emergency response passes to the local Civil Defence Emergency Management Group set up under CDEMA.<sup>282</sup>

The Director of the Ministry of Civil Defence & Emergency Management (MCDEM), holds powers to “direct and control” available government resources while a state of national emergency is in place.<sup>283</sup> The powers include the power to require information and entry into premises.<sup>284</sup> The Director may delegate some or all of these powers to a National Controller.<sup>285</sup>

The powers granted to the Minister of Civil Defence are extensive and defined relatively clearly under the Act. The powers do not override Acts of Parliament and the Common Law unless stated otherwise.<sup>286</sup> In addition, the CDEMA requires that Parliament meet within 7 days of a declaration of a national emergency.<sup>287</sup>

Emergencies are managed by local Civil Defence Emergency Management Groups, comprising representatives of the local authority, the police, the Fire Service and local healthcare providers under the direction of a Group Controller appointed by the CDEM Group itself.<sup>288</sup> CDEM Groups must also appoint a Recovery Manager and may appoint a Local Recovery Manager.<sup>289</sup> The Minister of Civil Defence may declare a state of national emergency if the emergency is of such extent or magnitude that it is likely to be beyond the resources of the CDEM Groups.<sup>290</sup> The only example, so far, of a national emergency is provided by the Canterbury earthquake sequence of 2010–2011. In contrast, there have been more than 150 local emergencies declared in the last 50 years.<sup>291</sup>

## Disaster Law Assessment

### **1** Does New Zealand have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

Provisions for international assistance are not in the CDEMA but are contained within both the NCDEMP and the Guide to NCDEMP. The NCDEMP states that the National Controller, or the Director, may recommend that international assistance be requested to support the response or recovery and that the Government will approve the use of international assistance through the government crisis management arrangements of the Officials’ Committee for Domestic and External Security Coordination (ODESC) system.<sup>292</sup> The ODESC system is used by central

279 CDEMA, s 25(4).

280 CDEMA, s 69.

281 CDEMA, s 25(1) and (5).

282 CDEMA, ss 27 and 28.

283 CDEMA, s 8(2)(h).

284 CDEMA, Part 5.

285 CDEMA, s 10.

286 CDEMA, s 6.

287 CDEMA, s 67.

288 CDEMA, s 26.

289 CDEMA, ss 29 and 30.

290 CDEMA s 66.

291 We are indebted to Steve Glassey for this datum.

292 NCDEMP, s 144.

government in the oversight and governance of national security issues, including during significant crises or security events where consequences of national significance warrant the coordination of all-of-government planning and prioritisation.<sup>293</sup> The objective of international assistance is to enhance New Zealand's response capacity and capability where required following a large-scale emergency.<sup>294</sup> There is no established threshold to necessitate a request for international assistance. The Guide to the NCDEMP implies it would be based upon a needs assessment, which would include determining whether the resource or service needed cannot be sourced within New Zealand, as part of a recommendation to the National Controller.<sup>295</sup>

Offers and requests for international assistance must be provided to the National Controller for consideration and agreement.<sup>296</sup> before acceptance. Further supplementary provisions on these processes are contained in the Guide to NCDEMP,<sup>297</sup> and will be detailed in Question 4 below.

## **2 Do New Zealand's laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

All international assistance, upon arrival to NZ, must be coordinated by the National Controller (who may request other agencies or officials to coordinate particular aspects of this assistance).<sup>298</sup> In addition, in emergencies where MCDEM is the lead agency, the Director or the National Controller may activate an international assistance function to work with relevant agencies to coordinate international assistance.<sup>299</sup>

This international assistance function:<sup>300</sup>

- Facilitates the communication and coordination of actions across agencies in respect of international assistance during an emergency in New Zealand; and
- Receives and collates offers of international assistance; and
- Receives and collates requests for international assistance; and
- When required, matches requests for international assistance with offers of assistance; and
- Communicates through the appropriate channels requests for, and acceptance of, international assistance.

The international assistance function is coordinated by the Ministry for Foreign Affairs & Trade (MFAT) and includes representatives from a number of agencies including MCDEM, other government ministries, the New Zealand Red Cross, and the Non-Governmental Organisations Disaster Relief Forum.<sup>301</sup>

With respect to bilateral arrangements, MCDEM, in cooperation with MFAT, is to maintain a database of government bilateral response arrangements,<sup>302</sup> while MFAT operates an Emergency Coordination Centre (ECC) to receive queries from, and provide information to, the international community. The ECC conveys offers/requests for assistance to/from foreign governments and international organisations.<sup>303</sup>

293 NCDEMP, s 13.

294 NCDEMP, s 145.

295 Guide to the NCDEMP, at 252-253

296 NCDEMP, s 149(1).

297 NCDEMP, s 149.

298 NCDEMP, s 146(g).

299 Guide to NCDEMP, s 147(1).

300 Ibid, s 147(2).

301 Ibid, s 147(3).

302 Ibid, at 252.

303 Guide to NCDEMP, at 252.



### 3 Do New Zealand's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

Appendix 3 of the Guide to NCDEMP sets out the agencies or clusters with roles and responsibilities in Civil Defence and Emergency Management within New Zealand.<sup>304</sup> Those specific bodies with roles and responsibilities relating to international disaster assistance are:

**Council of International Development (CID)**<sup>305</sup> – the national umbrella agency of international development organisations based in New Zealand. CID exists to support effective high-quality aid and development programmes, with the vision of achieving a sustainable world free from poverty and injustice and also facilitates the Non-Governmental Organisations Disaster Relief Forum (NDRF).

**Ministry of Civil Defence & Emergency Management (MCDEM)**<sup>306</sup> – is the lead agency responsible for coordinating the management of emergencies resulting from various hazards, using the arrangements in the NCDEMP and the functions and powers of the Director and the National Controller under the CDEMA. The Ministry may act as a support agency by coordinating the Civil Defence Emergency Management (CDEM) response to any emergency managed by a lead agency.

**Director** – is responsible for informing the Minister and the Officials Committee for Domestic and External Security Coordination (OCDESC) of assistance that is likely to be required for response and recovery operations.<sup>307</sup>

**National Controller** – may be delegated the functions and powers of the Director. These include:

- During a state of national emergency, to direct, control and coordinate for the purposes of CDEM, the use of resources made available under the Plan;
- During an emergency of national significance, to coordinate the national resources to support the local response; and
- During an emergency managed by a lead agency other than the MCDEM, coordinate the CDEM activities in support of the response to that emergency.<sup>308</sup>

The National Controller, or the Director, as a member of the ODESC, may recommend that international assistance be requested to support the response or recovery.<sup>309</sup> The Government will approve the use of international assistance through the government crisis management arrangements of the ODESC system.<sup>310</sup>

**Ministry of Foreign Affairs and Trade (MFAT)**<sup>311</sup> – is the Government's lead advisor and negotiator on foreign and trade policy, and diplomatic and consular issues. During an emergency the Ministry of Foreign Affairs and Trade has responsibilities relating to the welfare of foreign nationals, and matters relating to international assistance to New Zealand.

304 Ibid, at 295.

305 Ibid, at 300.

306 Ibid, at 306.

307 NCDEMP Plan 2015, s 16.

308 Ibid, s 17.

309 Ibid, s 144(2).

310 Ibid, s 124(3).

311 CDEM Guide 2015, at 308.



**New Zealand Defence Force**<sup>312</sup> – the Defence Act 1990 allows the Armed Forces to be made available for the performance of public services and assistance to the civil power in time of emergency, either in New Zealand or elsewhere. During an emergency in New Zealand, the New Zealand Defence Force is a support agency, and support in the form of resources and equipment can be provided.

**Non-Governmental Organisations Disaster Relief Forum (NDRF)**<sup>313</sup> – the CID facilitates the NDRF, an open forum for New Zealand-based NGOs that have an interest and involvement in international humanitarian response and emergency management issues.

**United Nations Disaster Assessment and Coordination (UNDAC)**<sup>314</sup> – is part of the international emergency response system for sudden-onset emergencies. It is designed to help the United Nations and governments of disaster-affected countries during the first phase of a sudden-onset emergency. UNDAC also assists in the coordination of incoming international relief at national level and/or at the site of the emergency.

**United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA)**<sup>315</sup> – is a United Nations body able to deploy resources at short notice if requested by New Zealand in response to a state of national emergency or an emergency of national significance.

**International Search and Rescue Advisory Group (ISRAG)**<sup>316</sup> – UNOCHA oversees the INSARAG which operates within guidelines encouraging teams to achieve and maintain globally accepted standards. Teams may be assessed and classified using these guidelines, focusing on Management, Search, Rescue, Medical and Canine capabilities. Policy and process requirements endorse border security and immigration controls. New Zealand Fire Service maintains three USAR teams to form one INSARAG heavy classified National Taskforce, and is the operational focal point for INSARAG. MFAT is the political focal point for INSARAG.

## **4 Do New Zealand’s laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

Requirements for requesting international assistance are outlined in the Guide to NCDEMP:<sup>317</sup>

- All requests must be provided to the National Controller for consideration.
- Any request must be accompanied by a recommendation about which country/partner/organisation will be sent the request.
- The Director or National Controller may discuss requests for international assistance with the NSC<sup>318</sup> before making a decision.
- Any requests to be made must be signed off by the National Controller with a recommendation about which country/partner/organisation will be sent the request. Requests are to be coordinated through the International Assistance Cell.

312 NCDEM Plan 2015, at 311.

313 Ibid, at 314.

314 Ibid, at 320.

315 Ibid, at 320.

316 Guide to NCDEM Plan, s 31.8.2.

317 Ibid, at s 31.

318 The National Security Committee of Cabinet (NSC) is the key decision-making body of executive government for coordinating and directing national responses to major crises or circumstances affecting national security (either domestic or international); and is chaired by the Prime Minister; and has power to act where the need for urgent action or operational or security considerations require it. NCDEM Plan 2015, s13 (3).



- MFAT operates an Emergency Coordination Centre. This receives queries from, and provides information to, the international community. It conveys offers/requests for assistance to/from foreign governments and international organisations.<sup>319</sup>

**The requirements for accepting offers of international assistance** are outlined in the Guide to NCDEMP as follows:<sup>320</sup>

- All offers of international assistance must be provided to National Controller for consideration.
- Some agencies have existing international response arrangements. These agencies must ensure that the International Assistance Cell, in the National Crisis Management Centre (NCMC), is aware of any offers of international assistance received from partners. Even when international arrangements exist between agencies, any offers of international assistance must be considered and agreed by the National Controller in advance of that acceptance.
- The Director of CDEM or National Controller may discuss offers received with NSC (via the ODESC system) before making a decision on any offers to be accepted.
- Any offers accepted to be signed off by National Controller.
- MFAT, through its Emergency Coordination Centre (ECC), will use existing lines of communication to foreign governments, partners and international organisations regarding agreed offers of assistance.

**Commencement and duration of state of emergency** provisions are contained in the CDEMA and states:

- A declaration of a state of emergency must specify the time and date on which the declaration is made.
- A state of emergency comes into force at the time and on the date that a declaration of the state of emergency is made.
- A state of emergency expires seven days after the time and date on which the state of emergency comes into force.
- Nothing prevents the **extension of a state of emergency**<sup>321</sup> or the **termination of a state of emergency**<sup>322</sup>.

### Transition from response to recovery

Part 5A of the CDEMA contains provisions pertaining to Transition Periods. These provisions outline procedures where the Minister may give notice of a national transition period;<sup>323</sup> on the notice of a local transition period;<sup>324</sup> on the commencement and duration of transition periods<sup>325</sup>; on the extension of transition periods<sup>326</sup>; on the termination of transition periods<sup>327</sup>; and on the content and publication of transition period notices and their extensions<sup>328</sup>.

319 Guide to NCDEMP, s 31.6.

320 Ibid, s 31.7.

321 CDEMA, s 71.

322 CDEMA, s 72.

323 CDEMA, s 94A.

324 CDEMA, s 94B.

325 CDEMA, s 94C.

326 CDEMA, s 94D.

327 CDEMA, s 94B.

328 CDEMA, s 94F.



## Unsolicited Bilateral Donations

As far as possible, the CDEM Group in charge of the particular emergency will not accept donated goods or services unless the Group needs those goods or services and they can be sent directly to the end user<sup>329</sup>.

The Donated Goods Management Planning Best Practice Guide 2006 sets out the following general principles for donated goods:

1. Encourage monetary donations.
2. Discourage unsolicited donated goods and services.
3. Establish a donations management system.
4. Encourage volunteers to affiliate with existing organisations.

## **5** Do New Zealand's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

The Guide to NCDEMP states the Director or the National Controller may activate an international assistance function to work with relevant agencies to coordinate international assistance.<sup>330</sup> However the NCDEMP does not outline provisions on the eligibility of international actors for legal facilities or on the legal status and facilities available for international actors.

## **6** Do New Zealand's laws and regulations set out quality standards for international assisting actors?

The Principles of International Assistance in the NCDEM Plan state the international assistance must ensure it is consistent with New Zealand laws and regulations; and be based on requests made by the New Zealand Government or be offers that have been accepted by the New Zealand Government.<sup>331</sup> The Plan does not set quality standards for international assisting actors.

### Provisions for the oversight of international actors

In terms of oversight for international actors, the principles provide that once international assistance arrives in New Zealand, it must be coordinated by the National Controller (who may request other agencies or officials to coordinate particular aspects of this assistance)<sup>332</sup>; and the Ministry of Foreign Affairs and Trade (with the assistance of the New Zealand Red Cross, the New Zealand Police, the Ministry of Health and the New Zealand Customs Service) keeps the international community informed of the safety and whereabouts of foreign nationals<sup>333</sup>.

There is also a provision under the Principles to ensure that once an international resource has been requested and mobilised, that it arrives in New Zealand<sup>334</sup>.

329 Donated Goods Management Planning – Best Practice Guide 2006, at 7.

330 CDEMA, s 31.4.

331 NCDEMP, s 146

332 NCDEMP s 146(g).

333 NCDEMP, s 146(i).

334 NCDEMP, s 146(h).



## **7 Do New Zealand's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

New Zealand's regulatory framework outlines general provisions for the coordination of international assistance as discussed under Question 2 above, however there appear to be no provisions outlining eligibility requirements for international actors to receive legal provisions, or an application process for such eligibility.

## **8 Do New Zealand's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The Ministry of Foreign Affairs and Trade (MFAT) operates an Emergency Coordination Centre (ECC) to coordinate the response from international assisting actors. The ECC receives queries from, and provides information to both the international community and international organisations (including NGOs). It conveys offers and requests for assistance to or from foreign governments and international organisations directly, via overseas MFAT postings and Foreign Missions, resident in (and accredited to) New Zealand. These channels are also used to provide New Zealand's response to offers of international assistance (to decline, accept or put on hold) from foreign governments and non-government organisations.<sup>335</sup>

The International Assistance Cell (IAC), within the ECC, (operated by MFAT detailed above under Question 2), provides the overarching management of international assistance and can include representation from the NZ Customs Service.<sup>336</sup> In this role it "monitors and records the arrival, movement and departure of approved international assistance".<sup>337</sup> However, there is no apparent specialised unit for expediting the practical entry of international disaster assistance into New Zealand.

## **9 Do New Zealand's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

New Zealand's regulatory framework does not appear to provide specific mechanisms to address anti-fraud measures, the handling of donations from overseas or transparency for international donations. The "normal" legislative framework would apply, particularly the Public Finance Act, which provides the overarching framework for the use of public funds in New Zealand.<sup>338</sup> In practice, all public sector expenditure in New Zealand must accord with generally accepted accounting practices (GAAP) as laid down by the External Standards Board (XSB) and the New Zealand Accounting Standards Board (NZASB).<sup>339</sup>

335 Guide to NCDEMP, s 31.7.1.

336 NCDEMP, s 17.

337 International Assistance Cell, Standard Operating Procedures.

338 Public Finance Act 1989.

339 Public Finance Act, s 26H.

340 Customs and Excise Act 2018, s 87.

## **10** Do New Zealand's laws and regulations outline procedures for international disaster assistance sent from and transiting through New Zealand?

The Customs and Excise Act 2018 provides for transshipment of items, but this is in general terms and is not specifically catered towards transshipment of disaster relief items.<sup>340</sup> Aside from this provision, there appears to be no specific procedures for international disaster either sent from New Zealand or transiting through New Zealand.

New Zealand has adopted the Principles and Good Practice of Humanitarian Donorship.

### **Key Legislation**

- Civil Defence Emergency Management Act 2002
- Fire and Emergency New Zealand Act 2017
- Earthquake Commission Act 1993
- Customs and Excise Act 2018

### **Key Policies**

- Guide to the National CDEM Plan 2015
- National Civil Defence Emergency Management Plan Order 2015
- National Civil Defence Emergency Management Fuel Plan 2012
- Tsunami Advisory and Warning Plan 2018
- Wellington Earthquake Initial Response Plan 2018
- Donated Goods Management Planning 2006



340 Customs and Excise Act 2018, s 87.



# Niue

## Overview

### Constitutional/Political Framework

Niue is a self-governing territory within the Realm of New Zealand. Niuean residents are New Zealand citizens and Niue has no currency of its own, instead using the NZ dollar. The relationship is one of free association governed by the Niue Constitution Act 1974 (a New Zealand statute) and the Statement of Partnership 2019–2023.<sup>341</sup> Section 6 of the Constitution Act place defence and foreign affairs in the hands of the New Zealand executive, although s 8 emphasises a cooperative relationship around implementation of international obligations and, by implication, foreign affairs generally. In practice, Niue operates a semi-autonomous foreign policy and has established diplomatic relationships with a number of states (a small number of whom have explicitly recognised Niue as a sovereign state). However, most continue to treat Niue as a self-governing territory within the Realm of New Zealand, in accordance with the formal position of the New Zealand government. Nevertheless, Niue is recognised as having full treaty-making capacity by the UN Secretariat and is a signatory to a number of treaties, including a number of relevance to Disaster Risk Reduction. Although Niue is not a member of the United Nations itself, it is a full member of several UN agencies, including the FAO, UNESCO and the WHO.

Niue operates a “Westminster” form parliamentary democracy with the British Monarch (in Right of New Zealand) as the head of state. There is no permanent Crown representative in Niue and the limited, ceremonial, duties are performed by the Governor-General of New Zealand and the Speaker of the 20-member Niue Assembly. The speaker is elected by the members of the Assembly but cannot be a member of it. The assembly is comprised of 14 members representing village constituencies and six representing the island as a whole. No political parties operate in Niue.

Practical executive authority is exercised by the Premier and their three-person cabinet.<sup>342</sup> The Premier is elected by and from the Niue Assembly by a simple majority. Cabinet Ministers are proposed by the Premier from amongst Niue Assembly members and are formally appointed by the speaker.<sup>343</sup> Each Ministry or Department is headed by a permanent Director or Director-General who operates under direction from the Minister as per the Westminster model. Niue operates a village system of local government with 14 local councils under the 1967 Niue Village Council Act. The role of the church in this system is significant. In some villages the Village Council and the Church Council are indistinguishable.

341 New Zealand – Niue Statement of Partnership 2019–2023 (2019).

342 Niue Constitution, s 2 (Niue Constitution Act 1974, Appendix 2).

343 Niue Constitution, ss 2 and 5 (Niue Constitution Act 1974, Appendix 2).

## The DRM Framework

DRM in Niue is underpinned by the Public Emergency Act 1979, the Public Emergency Regulations 2004, the National Disaster Relief Act 1980 and the 2010 Disaster Management Plan. The 1979 Act provides extensive powers to the Cabinet to create regulations once a Proclamation of Emergency has been declared. Such regulations will have the immediate force of law but must be agreed by the Assembly within 14 days if they are to have power beyond this period. The 2004 Regulations provide a more detailed framework but confirm Cabinet as the ultimate authority in terms of Disaster Risk Management.<sup>344</sup> In practice, management of DRM is conducted by the National Disaster Council (NDC) which comprises key Directors of Public Service Departments and Ministries under the chairmanship of the Secretary of government.<sup>345</sup> In the event of a disaster event, the Emergency Executive Group (a subset of the NDC) coordinates the response.<sup>346</sup>

In the event of a Disaster, the Disaster Controller has the primary responsibility for DRM leadership under the Act. Under the 2010 plan, the Chief of Police is expected to take on this role.<sup>347</sup> In 2013, Niue created a National Disaster Management Office. The exact role for this agency is unclear from the formal documentation available.

During a disaster event, the National Emergency Operations Centre (NEOC) operates as the hub of national response efforts and initial recovery efforts. It comprises the Disaster Controller, the EEG and key co-ordinators of operations, logistics, international assistance and communications. It is not clear from the plan how these operations are delivered in practice.

## Disaster Law Assessment

### 1 Does Niue have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

Niue lacks a detailed process for assessing and processing requests for international assistance, however a basic framework exists. The 2004 regulations provide a limited legal framework by requiring that “all relief supplies, equipment and other items brought into Niue for the [sic] Government distribution shall only be released upon written authorisation from the appropriate Minister”.

Beyond this, the 2010 NDP also implies that the NEOC should, as part of its planning responsibilities, play the key co-ordinating role as regards international assistance. This requires that the NEOC collate a register and “identify gaps in needs that cannot be met by Niue resources and communicate this to the Emergency Executive Group”. The EEG is then responsible for recommending to cabinet whether international assistance is required.

The plan also creates the position of International Assistance Co-ordinator (IAC) who is charged with “managing and co-ordinating the requests of, international assistance following a disaster”.<sup>348</sup> Such an individual must be given the approval of cabinet to make such assistance.<sup>349</sup> The plan

344 Public Emergency Regulations 2004, s 3.

345 Secretary to the Government (Chairman), Chief of Police (Deputy Chairman), Financial Secretary, the Government Solicitor, General Manager Broadcasting Corporation of Niue (BCN) and the Directors of Health, Public Works and Telecommunications.

346 National Disaster Plan 2010, at A-5.

347 The 2010 plan also makes the Police Emergency Management Officer (PEMO) responsible for developing plans for resilience and readiness. However, with the establishment of the Niue National Disaster Management Office (NDMO) 2013, this situation may have changed.

348 National Disaster Plan 2010, at B-12.

349 The plan suggests that a Cabinet Minister or the Niue High Commissioner to New Zealand could be given this role.



also states that the “key co-ordinators for implementing international assistance are contained within the NEOC”.<sup>350</sup> However, no further details are provided as to who these individuals are or how the process is to operate in practice.

## **2 Do Niue’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The NDP sets out that the EEG within the National Disaster Management Office is to coordinate international assistance.<sup>351</sup> The International Assistance Co-ordinator (IAC) is responsible for managing and co-ordinating the requests for, and receipt of, international assistance following a disaster.

## **3 Do Niue’s laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The National Disaster Plan sets out a brief schedule of responsibilities for the provision of international assistance. This is laid out below:<sup>352</sup>

EEG	Track internal requests for assistance that cannot be met with internal resources Recommend to Cabinet as to whether international assistance may be required Ensure that incoming international assistance and supplies are applied appropriately and transparently Provide information on relief and international assistance to Cabinet and other relevant organisations.
Cabinet	Request international assistance using appropriate channels (may be delegated to a Minister)
The Director’s Customs and Quarantine	Make necessary arrangements for the clearance of all donor assistance.
Police	Provide onshore security of international relief supplies until aid is able to be distributed.

## **4 Do Niue’s laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

The National Disaster Plan sets out a limited process for international assistance as outlined above. The key responsibility lies with the EEG which tracks requests for assistance that cannot be met with internal resources and recommends to Cabinet what international assistance is required. The EEG must also ensure that incoming international assistance and supplies are “applied appropriately and transparently” as well as “provide information on relief and international assistance to Cabinet and other relevant organisations”. Aside from this general responsibility, the exact processes for requesting or welcoming external assistance are not provided in the plan.

350 National Disaster Plan 2010, at B-5.

351 Ibid, at B-12.

352 Ibid, at B-12.

353 Ibid, at B-12.



Specific requests for international assistance must be made by Ministers during a declared emergency, although the NDP provides that this be delegated to a specific Minister (the IAC).<sup>354</sup> The NDP makes clear the IAC's role as the key person responsible for managing requests for, and receipt of, international assistance. The IAC responsibilities are:<sup>355</sup>

- Assist planning/intelligence in assessing gaps in meeting community needs.
- Request international assistance to meet gaps unable to be filled by Niue resources.
- Request an UNDAC assessment team.
- Request a SOPAC team to conduct a post-disaster impact assessment.

Beyond this the NDP provides that the Directors of Customs and Quarantine are to make "necessary arrangements" for the clearance of all donor assistance but gives no details as to what such arrangements are or how they should be implemented. According to the NDP, the police's role is limited to securing such relief supplies.

## **5 Do Niue's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

Niue has no specific legislation relating to legal facilities for assisting actors, however discretion exists for the Niuean government to provide exemptions from immigration, customs and some regulatory requirements as set out below.

The Immigration Act 2011 provides that a permit must be held in order for an individual to remain in Niue lawfully.<sup>356</sup> There are no specific provisions for international assisting actors to be exempt from such requirements. However the Act provides that the Chief Immigration Officer may grant any person a temporary permit.<sup>357</sup> The temporary permit that may apply to international assisting actors are work permits for persons intending to undertake employment or provide any services in Niue.<sup>358</sup> The application for a temporary permit must occur as the person immediately arrives in Niue.<sup>359</sup> As part of the free association agreement, NZ citizens (without Niuean heritage) are able to enter Niue for up to 30 days on a visitor permit. NZ citizens with Niuean heritage (as recorded on their passport) may enter without restriction.

The Visiting Forces Act 1939 and the Immigration Act 2011 provide that the armed forces of Commonwealth countries are exempt from standard immigration requirements.<sup>360</sup>

The Civil Aviation Act 1999 gives the Director the discretion to exempt a person, aircraft, aeronautical product, or aviation related service from a requirement contained in regulations contained in the Act if the Director considers it appropriate; and it is not specifically provided by the regulations that exemptions are not to be granted.<sup>361</sup>

The Customs Tariff Act 1982 provides that Cabinet is empowered to make exemptions for payment of duties or to substitute reduced rates of duties.<sup>362</sup>

354 Section 3(3), Public Emergency Regulations 2004. Strangely the plan also talks of delegating this role to NZ High Commissioner, which would appear to be *ultra vires* under the 2004 regulations.

355 National Disaster Plan 2010, at B-12.

356 Immigration Act 2011, s 7.

357 Ibid, s 14.

358 Ibid, s 14(7)(a).

359 Ibid, s 15.

360 Ibid, s 3A; and Visiting Forces Act 1939.

361 Civil Aviation Act 1999, s 11.

362 Customs Tariff Act 1982, s 8.



## **6 Do Niue's laws and regulations set out quality standards for international assisting actors?**

The Public Emergency Act 1979 provides that when a proclamation of emergency is in force, all relief supplies, equipment and other items brought into Niue for the Government distribution shall only be released upon written authorisation from the appropriate Minister.<sup>363</sup> However, beyond this political limit, no specific requirements for quality standards are provided in the disaster law framework.

## **7 Do Niue's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

As no specific legal facilities are provided for assisting actors, no eligibility requirements exist.

## **8 Do Niue's laws and regulations establish a specialized unit for expediting the entry of international disaster assistance?**

No specific agency is provided with the authority to undertake this task. The Strategic Roadmap for Emergency Management sets out emergency management as an integrated sector, with the Police, Airport Fire/Rescue, Community, and the National Disaster Management Office all operating out of the Joint Emergency Operations Centre.<sup>364</sup> The Strategic Roadmap aims to create a physical location for all primary response agencies alongside the National Emergency Operations Centre.<sup>365</sup> Given the role for the NEOC in the NDP it is assumed that this would operate as a single base for incoming assistance but such a role is not explicit.

## **9 Do Niue's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance? In particular the following will be assessed:**

The National Disaster Relief Fund Act 1980 provides a legal framework for donations and contributions received in a national disaster. These include contributions by foreign governments (and that of Niue), private organisations and individuals (both domestic and international) and returns from investments.<sup>366</sup>

These resources are to be placed in a hypothecated fund which can be used for the repair of damage suffered to public property during a national disaster and the immediate provision of financial and other assistance to victims of national disasters.<sup>367</sup> Expenditure requires the approval of the Financial Secretary.<sup>368</sup> The Fund must be regularly audited.<sup>369</sup>

The Public Emergency Act 1979 also provides that when a proclamation of emergency is in force, all relief supplies, equipment and other items brought into Niue for the Government distribution shall only be released upon written authorisation from the appropriate Minister.<sup>370</sup>

363 Public Emergency Act 1979, s 3(3).

364 Strategic Roadmap for Emergency Management in Niue 2015–2019, at 12.

365 Ibid, at 12–13.

366 National Disaster Relief Fund Act 1980, s 3(2).

367 National Disaster Relief Fund Act 1980, s 4.

368 Ibid, s 7.

369 Ibid, ss 8 and 9.

370 Public Emergency Act 1979, s 3(3).



## **10** Do Niue's laws and regulations outline procedures for international disaster assistance sent from and transiting through Niue?

The current regulatory framework does not explicitly provide for international assistance originating from or transiting through Niue.

### **Key Legislation**

- Public Emergency Act 1979
- Public Emergency Regulations 2004
- National Disaster Relief Fund Act 1980
- Immigration Act 2011
- Civil Aviation Act 1999
- Communications Act 1989
- Customs Tariff Act 1982
- Visiting Forces Act 1939

### **Key Policies**

- National Climate Change Policy 2009
- National Strategic Plan 2009–2013
- National Strategic Plan 2016–2026
- National Disaster Plan 2010
- Joint National Action Plan for Disaster Risk Management and Climate Change 2012
- Sustainable Coastal Development Policy 2008
- Strategic Roadmap for Emergency Management in Niue 2015–2019





# Palau

## Overview

### Constitutional/Political Framework

Palau is a democratic presidential republic governed under the Constitution of 1981 and follows a modified US form of constitutionalism. The President, who is both Head of State and the Head of Government, is directly elected every four years (as is the Vice-President, separately). They cannot serve more than two terms. The Palau Olbiil Era Kelulau (National Congress) is bi-cameral. The Senate is elected by universal suffrage nationwide from multi-member constituencies. The exact number of Senators changes regularly but is currently set at 13. The House of Delegates comprise one member elected from each from Palau's 16 States. All of the legislators serve 4-year terms and stand as independents as there are no organised political parties in Palau. Alongside the National Congress, The Council of Chiefs, comprising the highest traditional chiefs from each of the 16 States, sits as an advisory body to the President. The Council is consulted on matters concerning traditional laws and customs. A member of the Council cannot simultaneously be a member of the Olbiil Era Kelulau.

The cabinet comprises the heads of the eight Ministries (including the Vice-President) as set down in legislation. These Ministers are proposed by and serve at the will of the President but must be confirmed by the Senate. In accordance with the US model it emulates, Palau operates a strict separation of powers with Ministers barred from serving in the Olbiil Era Kelulau or the Council of Chiefs.

Palau is divided into 16 states representing the traditional island territories of the archipelago. These local government entities are free to draw up their own constitutions reflecting their own governance traditions although each has its own head of government (Governor) and an elected council.<sup>371</sup> Despite their name, Palau is not a federal entity and the states of Palau have very little formal authority aside from the ability to raise taxes and borrow funds (subject to the approval of the Olbiil Era Kelulau) outside that delegated by national legislation.

Palau is in free association with the United States and has been so since independence (in 1994).<sup>372</sup> The compact is similar to those that the United States had entered into with the Federated States of Micronesia and the Republic of the Marshall Islands and will not expire until 2044. The arrangement provides for significant financial support for Palau, but this element of the agreement is problematic. After negotiations in 2010 led to amendments to the compact, the US Congress took until 2017 to finally enact them. These financial aspects of the Compact are due to be re-negotiated in 2023. Although Palau is a sovereign state (and member of the United Nations), defence matters remain the responsibility of the United States. In addition, Palau utilises the US dollar as its currency.

371 Palau Constitution, article XI.

372 The Compact itself dates from 1982 and was formally enacted into US Law in 1986. "Compact of Free Association" between the United States and the Government of Palau, 100 Stat 3672.

## The DRM Framework

Outside the Presidential power to declare a State of Emergency, as defined in the constitution, Palau has no formal Disaster legislation.<sup>373</sup> Instead the Palau National Disaster Risk Management Framework 2010 (as amended in 2016) outlines the institutional arrangements to enable effective coordination and collaboration in preparing for, responding to, and recovering from the impact of any hazard to Palau. The Framework also provides for the coordination of, and guidance for, decision makers in the development of emergency response plans and procedures as well as disaster risk reduction strategies for government and non-government agencies that have mandated responsibilities for such activities.<sup>374</sup> The framework is given legal authority by an Executive Order.<sup>375</sup>

The Framework provides for a multi-level approach to emergency and disaster management. At the highest level, the Disaster Executive Council (DEC) provides overall strategic direction and oversight for disaster management and response as well as declaring States of Emergency. This body is chaired by the President (or alternatively Vice-President) and comprises the eight Ministers, a Council of Chiefs representative, the Chair of the Governor's Association, the President of the Senate and the Speaker of the House of Delegates.

Beneath the DEC, the National Emergency Committee (NEC) is responsible for disaster risk reduction policy and takes responsibility for the coordination of emergency response including providing advice to the DEC (particularly on Emergency Declarations). The NEC also requests and coordinates external assistance. The NEC, chaired by the Vice-President, comprises representatives from a wide range of government agencies plus Non-Governmental Organisations (NGOs). During a disaster event, the NEC will operate from the National Emergency Operations Centre (NEOC). The National Emergency Management Office (NEMO) provides administrative support for the NEC.

The lead agency in Disaster Response is NEMO, the head of whom takes the role of the Executive Director for Coordination in the event of a disaster event. Within the NEC is the Central Control Group (CCG). This entity is flexible and its members will be chosen by the NEMO Coordinator (as the Executive Director for Coordination) during the response phase of a disaster. The tier which represents on-site management of emergency or disaster events is the Incident Command Post (ICP). The management of incidents follows the National Incident Management System.<sup>376</sup>

## Disaster Law Assessment

### **1** Does Palau have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The Disaster Risk Management Framework 2016 (which updates the 2010 Disaster Risk Management Framework) outlines the disaster risk management system in Palau. The 2016 Framework is given full effect by Executive Order No 397.<sup>377</sup>

373 Constitution of the Republic of Palau, Article VIII (14).

374 National Disaster Risk Management Framework (NDRMF) 2010, at 15.

375 Executive Order No 397.

376 NDRMF 2010, at 21.

377 Republic of Palau: National Disaster Risk Management Framework 2010 (Amended 2016) at 16.



The Framework contains a section on International Assistance which outlines when a request for international assistance can be made and what that request should be based on. It also specifies that all requests for international assistance must first have the consent of the DEC and contains provisions around accountability for donor funds and a Presidential discretion to appeal directly to any foreign government.<sup>378</sup>

## **2 Do Palau's laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The Disaster Emergency Committee (DEC) is convened and chaired by the President and all Government Ministers are members of the DEC, whose role is to declare a national state of emergency, commit national resources for disaster management during a state of emergency, provide overall direction and strategic advice and request international assistance. The National Emergency Management Office (NEMO) provides secretariat support to the DEC.<sup>379</sup> The National Emergency Committee (NEC) is convened by the Vice President and is comprised of several ministries, bureaus, divisions and agencies. Its role is to implement and monitor all aspects of the Framework including to request and coordinate use of external assistance. The NEC operates from the National Emergency Operations Center (NEOC) in accordance with established Standard Operating Procedures (SOPs) for each type of disaster.<sup>380</sup> The NEMO is involved in all aspects of disaster management in Palau. NEMO acts in counsel and collaboration with the NEC. NEMO also performs day-to-day operations associated with disaster management and submits reports to the Vice President.<sup>381</sup> The NEC is tasked with implementing and monitoring all aspects of the Framework, including requesting and coordinating the use of external assistance upon direction of the DEC<sup>382</sup>.

## **3 Do Palau's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

As mentioned above, the NDRMF outlines the responsibilities of the various agencies in requesting international assistance and in coordinating that assistance. The Framework goes on to say that regional and international partner and donor organisations, in consideration of providing support to Palau in any aspect of disaster risk management, are mandated to follow the structures and systems established under the Framework.<sup>383</sup>

Once an official request for international assistance has been submitted, the Customs and Quarantine offices are to make the necessary arrangements for on-going clearance of all donor assistance provided for disaster relief purposes. The Customs and Quarantine offices are to consider approval of duty exemption for goods, which are purchased locally for the purpose of emergency and relief requirement. The approval of duty exemption will only be considered following a letter of request from the NEC.<sup>384</sup> The terms of reference for the NEMO Coordinator also imposes a responsibility to assist the CCG and assessment teams in the compilation of survey reports to support requests for disaster assistance from international organisations and donor agencies.<sup>385</sup>

378 NDRMF 2016, at 34.

379 Ibid, at 25.

380 Ibid, at 26.

381 Ibid, at 24.

382 Republic of Palau: National Disaster Risk Management Framework 2010 at 19.

383 NDRMF 2010, at 15.

384 NDRMF 2016, at 35.

385 Ibid, at 45.

## **4 Do Palau’s laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

The Framework dedicates a section to International Assistance and states that requests for international assistance will only be made when it has become clear that the situation at hand is beyond the national capabilities or when there are no national resources available from the Government, NGO or private agencies in Palau and with the approval of the DEC. The requests are made, on behalf of the Government of Palau, by the appropriate bureau under the Ministry of State, which typically will convene a meeting of diplomatic missions based in Palau as the first step in the process. The Chair of the NEC recommends to the DEC the need for international assistance based on assessment reports received. Activation of requests for assistance shall be liaised with the Ministry of State. However, the President, as Head of State, may make an appeal to any foreign government directly.<sup>386</sup>

When international assistance requirements are made known, based on the information provided by damage and need assessment reports relayed to them by the Chair of NEC, the Ministry of State will conduct direct consultations with donors. All government agencies, NGOs, private and community organisations should assist in compilation of damage and need assessment reports. Priority needs will be based on the immediate danger to community survival and welfare. Under no circumstances will the Government or non-government agencies make direct requests to aid agencies/distribution or diplomatic missions on behalf of the Government of Palau without the consent of the DEC.<sup>387</sup>

There appears to be no specific provisions for the termination of international assistance.

## **5 Do Palau’s laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

As mentioned previously, the Framework sets out the customs and quarantine procedures for ongoing clearance of international relief assistance and the requirements around these procedures. Unfortunately, these appear to be the extent of legal facilities for international actors and there is no mention of other facilities such as waivers and exemptions, special visas or recognition of qualifications and licences.

## **6 Do Palau’s laws and regulations set out quality standards for international assisting actors?**

The Framework mandates all regional and international partner and donor organisations who are considering providing support to Palau in disaster risk management to follow the structures and systems established under the Framework. However, it does not appear to set out quality standards for goods or services provided by international assisting actors.

386 Ibid, at 34.

387 Ibid, at 34.



## **7 Do Palau's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

Palau's disaster risk management legal frameworks do not appear to set out any eligibility requirements for international actors to receive legal facilities, aside from the provision mentioned above that any customs and quarantines exemptions be accompanied with a request from the NEC.<sup>388</sup>

## **8 Do Palau's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The Framework's provision for Customs and Quarantine procedures for international disaster relief appear to be the only mechanism for facilitating ongoing customs clearance. Under this provision, the National Disaster Coordinator is responsible for providing information on donor assistance to Customs and Quarantine officers to facilitate the exemption process. It does not specify that this action will "expedite" the process, but it is clear that the intent is to enable the process to work quickly and efficiently.<sup>389</sup> Customs authorities are required to "consider" duty exemption on goods purchased locally for the purposes of relief but only after a formal request from the NEC.<sup>390</sup>

## **9 Do Palau's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

Under the heading of "International Assistance", the Framework provides that the NEC and the CCG will also be accountable to the aid agencies/donors for ensuring that all relief assistance is distributed in accordance with guidelines governing the provision of such assistance and for the preparation of a report on expenditures and distribution of assistance provided by each agency/donor/diplomatic mission.<sup>391</sup>

A further section on "Financial Considerations" in the Framework outlines that the Director of Bureau of National Treasury is responsible to the NEC for the management of all funds provided for disaster relief purposes, and prior authorisation (from the NEC) is needed for expenditure of such funds.<sup>392</sup>

## **10 Do Palau's laws and regulations outline procedures for international disaster assistance sent from and transiting through Palau?**

Palau's regulatory frameworks for disaster risk management do not appear to make provision for cases where international assistance is sent from Palau to another country, or for cases where international assistance transits through Palau territory.

388 NDRMF 2016, at 34.

389 Ibid, at 37.

390 Ibid, at 38.

391 Ibid, at 33.

392 NDRMF 2016, at 38.

## Key Legislation

- The Constitution of the Republic of Palau
- Executive Order No 397
- Biosecurity Act 2014
- Public Health, Safety and Welfare – Title 34
- Super Typhoon Haiyan Emergency Funding Act, RPPL No. 9-16 2013
- The National Power Plant Emergency Act, RPPL 8-34 2011

## Key Policy Documents

- National Disaster Risk Management Framework 2019 (as amended 2016)





# Papua New Guinea

## Overview

### Constitutional/Political Framework

Papua New Guinea (PNG) operates a modified “Westminster” form of parliamentary democracy under a written constitution dating from independence in 1975. The constitution recognises the British Monarch (styled as the Queen of New Guinea) as the Head of State. In practice, the authority of the Head of State (which is almost exclusively ceremonial) is undertaken by the Governor General. This position is elected by Parliament by a two-thirds majority (although formally appointed by the British Monarch).

The head of government is the Prime Minister, appointed by the unicameral Parliament by simple majority. The Parliament is elected through 89 “open” and 22 provincial electorates. Although political parties are a feature of PNG politics, they are relatively weak with fluid membership and policies. Governing coalitions are therefore often unstable and reflect personal alliances.<sup>393</sup> Once appointed, the Prime Minister appoints Ministers to the National Executive Council (the cabinet) which operates as the political executive of the country. The portfolios and size of the NEC is within the discretion of the Prime Minister and currently comprises 34 members. Presently, national disaster responsibilities reside under the portfolio of the Minister for Defence i.e. the National Disaster Centre reports to the Minister of Defence.

Papua New Guinea is divided into twenty-two provinces and one National Capital District. In addition, the autonomous region of Bougainville operates under a special statute. Since 1995 the 22 “ordinary” Provinces have been governed by the Provincial Member of Parliament who is appointed as the Provincial Governor. When a provincial MP is appointed to a national ministry, another “open” constituency MP from within the Province is appointed governor. A similar model applies to the National Capital District (centred on Port Moresby), although the Governor acts alongside the National Capital District Commission which comprises other local MPs, representatives and officials.<sup>394</sup>

Under the 1997 agreement which concluded the Bougainville conflict, Bougainville is governed under its own constitution.<sup>395</sup> The Bougainville President is directly elected but the Executive Council is appointed partially by the President alone (six members) and partially through the President choosing from regional lists provided by regional Members of Parliament. A further member is appointed by female members of the Bougainville Parliament. Bougainville enjoys significant autonomy across a wide range of matters, including natural disasters.<sup>396</sup> The peace agreement (and the Bougainville Constitution) require a referendum on independence to be held before 2020. At the time of writing, this is scheduled for November 2019.

393 This has been reduced to some extent by the Organic Law on the Integrity of Political Parties and Candidates 2001.

394 National Capital District Commission Act 2001.

395 The Constitution of The Autonomous Region of Bougainville.

396 Ibid, s 46.

In both PNG and Bougainville, a level of local government operates below the province. This consists of elected councils. It is largely funded from national budget transfers. In both cases, traditional customary governance continues to play a significant role at the local level. In 2014, the O'Neil Government introduced District Development Authorities (DDAs). These sit between Provincial Government and the Local Levels Governments (LLGs). DDAs have responsibility, inter alia, for setting LLG budgets, local service delivery and infrastructure development.

## The DRM Framework

The DRM system in PNG is underpinned by the National Disaster Management Act (DMA) 1984. This was amended once in 1997 but is widely regarded as being in need of reform. It is currently under review. The Emergency Act 1979 provides for a declaration of National Emergency. Specific legislation is often enacted to give authority or extra “emergency” powers to particular agencies or areas.<sup>397</sup>

DRM policy is the responsibility of the Minister for Defence. The DMA establishes the National Disaster Committee (NDC) to operationalise Disaster Policy. This institution comprises the Heads of the Departments of Finance, Health, Defence, Provincial and Local Government Affairs<sup>398</sup> and Transport and Infrastructure,<sup>399</sup> in addition to the Police Commissioner, the Commander of the Defence Force and the Secretary Department of Prime Minister and NEC. The Head of the Department of Foreign Affairs participates when relevant matters are under discussion while the Committee also has the power to appoint any other relevant person to its membership.<sup>400</sup>

The Committee is obliged to meet at least two times a year and is responsible for both the National Emergency Plan and the guidelines for provincial disaster plans. In addition, it has overall responsibility for general preparedness provisions including public awareness of natural hazards and the stockpiling of relief supplies. In the event of a disaster event the NDC is responsible for advising the NEC on declarations of emergency, international relief requirements and taking decisions in relation to the provision of national funding for emergency relief.<sup>401</sup>

Alongside the NDC, the DMA provides for the creation of Provincial Disaster Committees. This is intended to provide a localised approach to DRR and DRM.<sup>402</sup> The membership of the Provincial Disaster Committee (PDC) mirrors that of the NDC and includes the Head of the Provincial Administration as Chairman, the Provincial Police Commander, the Provincial Works Manager (or City Engineer), the Provincial Health Officer, the Officer-In-Charge of Provincial Affairs, the Officer-In-Charge of Delegated Functions and the provincial Disaster Coordinator. The PDCs provide advice to the Governor to ensure that development plans for the province take into account hazards prone to the Province and to prepare contingency plans and supervise the state of preparedness for emergencies in the Province (including public awareness and staff training). Despite the requirements of the Act, PDCs do not appear to have been established nationally, with only four of 19 “ordinary” provinces reported having operational disaster management arrangements in 2016.<sup>403</sup> None of these plans have been tested.

397 See, for example, the Emergency (Southern Highlands Province) (Curfew) Act 2006, and the Emergency (Oro Province) (General Powers) Act 2007.

398 Since 1997.

399 Defined in the National Disaster Management Act 1984 (DMA) as “works and supply matters”.

400 DMA 1984, s 4.

401 Ibid, s 6.

402 Ibid, s 9.

403 Centre for Excellence in Disaster Management and Humanitarian Assistance (CEDMHA) *Papua New Guinea: Disaster Management Reference Handbook 2019* (Centre for Excellence in Disaster Management and Humanitarian Assistance, Hawaii, 2019), at 36.



The National Disaster Centre operates under a Director to coordinate disaster response and surveillance.<sup>404</sup> Outside a disaster event, its role is primarily risk management, awareness and training. In the event of a disaster it co-ordinates response operations. These two roles are undertaken by assistant directors. Research indicates that the NDC's role has been restricted through a lack of budget, staff and, at times, government support. PNG's defence force also plays a significant role in DRM in PNG. The National Executive Council, though the Head of State may require the Defence Force or a part of the Defence Force to assist an Emergency Controller during a National Emergency.<sup>405</sup> Additional staffing required by the National Disaster Centre are provided by the Defence Force.

In Bougainville, Disaster Management is the responsibility of the Minister for Community Government. A Disaster Coordination Office sits within this Department. It is not clear how Bougainville's autonomous government interacts with the national system around DRM, if at all.<sup>406</sup>

## Disaster Law Assessment

### **1 Does Papua New Guinea have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?**

Although PNG has both a Disaster Management Act 1984 and a Disaster Management Plan 1987<sup>407</sup>, both these documents are regarded as being out of date. In addition, the functions and responsibilities listed within them have not been effectively and efficiently deployed.<sup>408</sup>

Alongside the formal legal framework, there are significant number of various policy documents concerning PNG's approach to disaster mitigation, preparedness and response. These have often been written by NGOs (with government involvement). However, most of these contain similar information and none contain additional information not found in the Act or the Plan.

Guidance on international disaster assistance within both the policy and legal frameworks is minimal. The National Disaster Mitigation Policy document states that "donor agencies and international organisations assistance and support will be welcomed, and these will be sought through normal administrative channels and arrangements".<sup>409</sup> However, no details are provided on how this process will occur. It is not clear what "normal" administrative channels would comprise, particularly in a disaster response situation.

The Disaster Management Act states that the National Disaster Committee is to advise the National Emergency Centre if assistance is needed.<sup>410</sup> However, there is no obvious legal framework or process for assessing the need for international disaster assistance. There appears to be no established processes governing requests for international disaster assistance.

404 DMA 1984, s 15.

405 Emergency (Defence Force) Act 1994, s 3.

406 The UNDP has recognised that improving DRM planning in Bougainville is a priority. See United Nations Development Programme "Reducing risks and building community resilience in Autonomous Region of Bougainville" <<http://www.pg.undp.org>>.

407 The authors have been unable to source this document.

408 National Disaster Mitigation Policy (National Disaster Centre), at 1.

409 Ibid, at 1.

410 Disaster Management Act, s 6.

## **2 Do Papua New Guinea's laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The DMA establishes a National Disaster Centre to “co-ordinate all disaster situations”<sup>411</sup>, which becomes the national emergency operating centre, and coordinates relief operations in times of disasters that are not declared as a National Emergency.

In respect to the response, there is in each province a Provincial Disaster Committee. Under Section 19(1) of the Disaster Management Act 1984 the Provincial Disaster Committee can seek assistance from the National Disaster Committee for assistance. If there is no request for assistance forthcoming the situation remains a Provincial rather than national management issue.

Where a National Emergency is declared under Section 202 of the PNG Constitution, an Emergency Controller is appointed who takes charge of the disaster response. The Emergency Controller may seek the support of the PNG Defence Force (via the National Executive Council) and/or National Disaster Centre staff and facilities as considered necessary. The PNG Defence Force (PNGDF) cannot unilaterally mobilise itself to assist in a civil disaster. Under Section 202 of the PNG Constitution, the PNGDF has a role to assist civil authority in a disaster situation, but the Constitution includes a safeguard under Section 204 as follows:

- (1) The Defence Force or a part of the Defence Force may be called out to perform functions under Section 202(c)(ii) (functions of the Defence Force) only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

## **3 Do Papua New Guinea's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The Disaster Management Act does not specify details of where responsibility for international disaster assistance lies, the NDC is given authority which pertains to international assistance. In particular, it is this entity which advises the National Emergency Committee if assistance is needed.<sup>412</sup> In addition, the Act states that the Committee has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under the Act.<sup>413</sup>

The National Disaster Centre established by the Disaster Management Act provides the primary means by which disaster policies are to be managed and implemented within PNG which one assumes includes management of international assistance.<sup>414</sup>

411 Disaster Management Act 1984 (DMA), s 15.

412 DMA 1984, s 6.

413 DMA 1984, s 7.

414 DMA 1984, s 15.



## **4 Do Papua New Guinea's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

The National Disaster Center is the contact point for international and regional bilateral support, and for international and regional bilateral arrangements.

Only registered NGOs are permitted to be involved in any emergency or disaster in order to provide effective coordination and monitoring of short term and long-term responses. PNG's key disaster management partners are listed as:<sup>415</sup>

- PNG Red Cross Society
- OXFAM
- World Vision
- Salvation Army
- CARE
- Doctors without Borders

It has been identified in policy documents that communication between government and non-government agencies, donors, and external/internal development partners continues to be a challenge.<sup>416</sup> In order to ameliorate such difficulties, there exists a Disaster Management Team (DMT) which includes all donors, NGOs and relevant partners which meets monthly to discuss disaster management issues and as required in emergency situations. The DMT is co-chaired by the Director NDC and UN Delegate.

## **5 Do Papua New Guinea's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

There are currently no specific regulations providing for legal facilities for international assisting actors in PNG's disaster risk management regulatory framework. These matters are however under active consideration as part of a new Disaster Management Act

## **6 Do Papua New Guinea's laws and regulations set out quality standards for international assisting actors?**

There are no specific regulatory requirements for standards around international assisting actors, although some necessary guidelines exist informally. Any large humanitarian operation should bring its own operations team and airport operational equipment to run major air, transitional storage, and transshipment operations.<sup>417</sup>

415 CEDMHA, above n 403, at 37.

416 Global Logistics Cluster, World Food Programme *Papua New Guinea: Operational Logistics: Contingency Plan 2011* (February–March 2011), at 4.

417 CEDMHA, above n 403, at 50.

## **7** Do Papua New Guinea's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

An entry permit is required for all non-PNG citizens entering into PNG. A Special Exemption Visa applies to international assisting actors. This visa can be provided to persons who are employed by or working on projects funded by overseas aid agencies, volunteers working with volunteer agencies on community-based projects and those providing "emergency relief following a natural or national disaster".

Eligibility requirements and processes for these visas are slightly unclear beyond the fact that applicants are required to submit an "application form".<sup>418</sup> They are granted on a discretionary basis and the length of stay is variable. Extensions are possible, subject to approval of the PNG Immigration and Citizenship Authority. Entry Permit applications for persons engaged in emergency relief should be accompanied by a support letter from the National Disaster Centre.

## **8** Do Papua New Guinea's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

There are no such provisions under the current legislative and regulatory system framework operating in PNG. These matters are under review as part of the compilation of a new Disaster Management Act and Emergency (General Powers) Act.

Infrastructure capacity is a significant factor in PNG. Jackson International Airport in Port Moresby is the only airport that has the capacity for international emergency operations during a disaster although major airport upgrades have taken place at others and additional upgrades are planned. In addition, only six of the 22 ports are able to host significant emergency operations.<sup>419</sup>

## **9** Do Papua New Guinea's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

The Public Finances (Management) Act and the National Procurement Act 2018 apply to the management of international and local donations. Donations are deposited into a Trust Account managed by the Department of Finance and a full reconciliation of expenditure provided as necessary. The accounts are also audited by the PNG Auditor General. Purchasing must fully comply with the requirements of the above Acts

## **10** Do Papua New Guinea's laws and regulations outline procedures for international disaster assistance sent from and transiting through PNG?

There do not appear to be any regulatory frameworks around transiting aid or aid emanating from PNG.

418 PNG Immigration and Citizenship Authority "Visa: Conduct Business" <[www.ica.gov.pg](http://www.ica.gov.pg)>.

419 CEDMHA, above n 403, at 51.



## Key Legislation

- Disaster Management Act 1984
- Emergency (Bougainville) (General Powers) Act 1989
- Emergency (Defence Force) Act 1994
- Emergency (General Powers) Act 2018
- Emergency Act 1979

Note that the Disaster Management Act and the Emergency (General Powers) Act are under review and new/amended Acts are planned.

## Key Policies

- National Disaster Mitigation Policy (National Disaster Centre) 2010
- PNG National Disaster Management Plan 1987
- PNG Disaster Risk Reduction Framework 2018

## Key documents

- Global Logistics Cluster, WFP “PNG Operational Logistics Contingency Plan, Risk Profile and DRM” 2011
- United States Centre for Excellence “PNG Disaster Management Reference Handbook 2019”
- IOM Emergencies and Disaster Management Programme 2019



# Samoa



## Overview

### Constitutional/Political Framework

Samoa is a parliamentary democracy which operates in the context of the fa'amatai system of chiefly governance. The unicameral legislature is elected by universal suffrage but only matai may be elected to the Fono Aoa o le Malo (parliament). The constitution follows a traditional "Westminster" model whereby the Prime Minister is elected by the fono and formally appointed by the Head of State (O le Ao o le Malo). They then appoint a cabinet of 13 which is in turn formally appointed by the Head of State. In practice opposition to the government within the Fono is minimal given the nature of Samoan politics which strongly favours the majority party. Samoa has been governed by the Human Rights Protection Party since 1982 and has no official opposition (only two of the current 50 seats are held by opposition parties).<sup>420</sup>

Samoa is a unitary state divided into 51 constituencies, however, the key sub-national level of government entity is the village level. Although given legislative recognition by the Village Fono Act of 1990, the detailed structure of village government is not mandated in the constitution or legislation and is a matter for each village. The only exception to this is the existence of the Village Fono (or Council) specified in the Village Fono Act, and the position of pulenuu (government representative) recognised under the Internal Affairs Act 1995. This latter position is accountable to both the Village Fono and the Ministry of Internal Affairs.<sup>421</sup> Governance in Samoa is therefore a combination of traditional Samoan structures (particularly at the local level) and the Western model developed under the 1962 Constitution. Given that the Village Fono have no permanent staff (although national staff can be seconded to the village level), the ability of villages to deliver their responsibilities, which can include issues of direct relevance to Disaster Response (water supplies and public health in particular), are significantly compromised.

### The DRM Framework

The Constitution of Samoa provides the broad framework within which Disaster Response law operates. This is found in Part X which deals with emergency powers. This provides the Head of State with the power to proclaim a state of emergency for a period of 30 days (and for subsequent 30-day periods) in specific circumstances (including natural disasters). Such a proclamation lies within the discretion of the Head of State after consultation with the Cabinet. During such an emergency, the Head of State has extensive discretion to enact Emergency Orders as "appear to him" to be necessary for "safeguarding the interests and maintaining the welfare of the community".<sup>422</sup> The Fono (Parliament) nevertheless have the power to revoke such Emergency Orders under Article 107(2).<sup>423</sup>

420 As per the Samoan general election of 2018.

421 The position dates back to colonial Samoa and is seen as a key point of contact between the two levels.

422 The Constitution of the Independent State of Samoa, Article 106.

423 Ibid, Article 107(2).

In practice, the disaster management framework of Samoa is based upon the current Disaster and Emergency Management Act 2007 (DEMA). The DEMO provides for the creation of a National Disaster Management Plan (NDMP), which has as its key objective the reduction of the impact of hazards upon Samoa. The plan itself must include:

- A comprehensive risk profile for all parts of Samoa;
- The implementation of measures to reduce disaster risk;
- Operational requirements for preparedness, response and recovery arrangement and the roles, responsibilities and organisation of government agencies, non-government agencies and district or village committees in these arrangements; and
- Procedures for approving and managing international assistance sought or offered in response to any needs arising in Samoa from disasters and emergencies.

The latest NDMP (2017–2020) builds upon previous plans and, alongside the National Action Plan for Disaster Risk Management (NAP, 2017–2021), aims to mainstream disaster risk management across all sectors.

The DEMO provides for a Minister to be responsible for Disaster Management policy and a Disaster Management Office to be responsible for its implementation. These positions are key to the operation of the DEMO, although formal authority for the National Disaster Management Plan lies with the National Disaster Council, chaired by the Prime Minister (with the Minister responsible for DRM sitting as Deputy Chair – traditionally the Minister of Natural Resources and the Environment (MNRE)). In practice the National Disaster Council mirrors the Cabinet. This body is responsible for approving the NDMP. In doing so, it acts according to the advice provided by the Disaster Advisory Committee (DAC).<sup>424</sup> This comprises all the Chief Executives of the Central Ministries plus the CEOs or representatives of key utilities and domestic NGOs (National Council of Churches and Red Cross). Development partners, international NGOs and other significant national and international representatives sit as Associate Members.<sup>425</sup>

The DAC itself operates through a series of DRR and preparedness sub-committees which implement the NDMP and provide feedback to the DAC on the issues within their remit. The committees reflect the organisation of the former Pacific Humanitarian Team clusters. In the event of a Disaster, this system is utilised through response and recovery sub-committees under the auspices of the DAC and the NDC.<sup>426</sup> The current NDMP also formally recognises the role of village Disaster and Climate Committees (DCCs). These are coordinated through the Ministry of Women, Community and Social Development who is tasked with informing the DAC of their activities. It is clear from the documentation how this coordination works.

Providing overall administration of the DRM system is the Disaster Management Office (DMO) which operates within the MNRE. This is headed by the Assistant CEO of the MNRE. This body provides the secretariat for the NDC and the DAC as well as supporting “plans and policies for disaster risk reduction, preparedness, response and recovery including the NDMP”.<sup>427</sup> The DMO is also responsible for the National Emergency Operations Centre (NEOC) which is the key response body in the event of a disaster. The NEOC is headed by the National Controller, a position that is taken by the chair of the DAC (and thus the chief executive of MNRE). The NEOC is the key coordinating mechanism during a disaster event. The DAC retains its operational role under the NEOC in such events.

424 Disaster and Emergency Management Act 2007.

425 IFRC, *International Disaster Response Law (IDRL) in Samoa: Strengthening Samoa's Legal Preparedness for the Facilitation and Regulation of Foreign Disaster Response* (IRFC, Geneva, 2016), Appendix 2.

426 The sub-committees are: First Response, Welfare, Internally Displaced Peoples, Utilities, Livelihoods, Recovery, Early Recovery, Housing.

427 NDMP 2017–2020, s 4.2.3, at 20

Disaster Law Assessment

## **1 Does Samoa have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?**

The National Disaster Management Plan sets out these procedures in paragraph 2.1.10 and paragraph 3.3. This states that international humanitarian “clusters” will work with an appropriate sector upon an official request from the Government through the Ministry of Foreign Affairs and Trade.

The Standard Operating Procedure for requesting international assistance is set out in Appendix 7 of the NDMP. The SOP is relatively comprehensive, and places this responsibility in the hands of MFAT.

## **2 Do Samoa’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

The request for international disaster assistance must come from MFAT as specified under the NDMP. Once a disaster has been declared, the NEOC will conduct an initial assessment through the NDMP sector approach. The assessment is then passed to the DAC and then to the NDC who will make the decision to request aid from international agencies and development partners. No specific criteria exist to determine when such a request is appropriate. The Disaster Management Office (operating as part of the NEOC) is to coordinate response activities and the implementation of the NDMP during disasters and emergencies (s 7(5) of the DEMA) and thus has responsibility for the coordination of such aid.

Specific requests from government agencies must go through the NEOC process and will be addressed by the NEOC Aid Coordination Committee. In addition, offers may be made by NGOs and international partners with a presence in Samoa. Although not outlined in the NDMP, such formal offers are accepted through a request to ensure records are kept of such assistance.<sup>428</sup>

In addition to the formal processes outlined above, it is recognised that aid programmes in Samoa can be adjusted to address response or recovery needs.

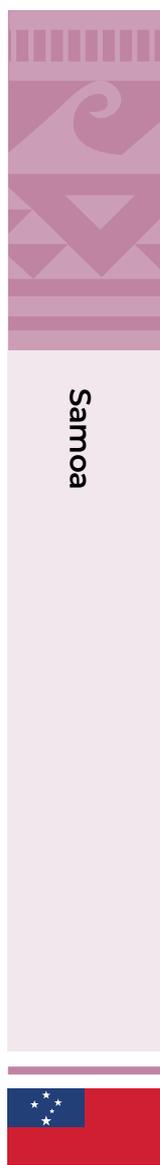
## **3 Do Samoa’s laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

Part 2 of the DEMA sets out the functions and responsibilities of the National Disaster Council, the DAC, the Ministry, and the NEOC.

Within the Ministry, the Disaster Management Office has specific roles in times of disaster/emergency (s 7(5) of the DEMA). These include:

- Assisting response agencies to prepare plans;
- Coordinate response activities and the implementation of the NDMP during disasters and emergencies;

428 IFRC, above n 425, at 45.



- Publicise the NDMP and liaise with communities and private industry representatives to raise awareness about disaster planning and the approved processes for responding to such disasters and emergencies.

Part 4 of the Act sets out the responsibilities of the Response agencies (as set out in the Act) in preparation for, and in times of, disaster.

The NDMP also sets out the roles of institutions in the Disaster Risk Management structure (the National Disaster Council; the DAC; the Disaster Management Office; and Communities) at 4.2.

## **4 Do Samoa's laws and regulations outline a process for requesting/terminating international assistance?**

The Standard Operation Procedures (SOPs) attached to the NDMP at Appendix 7, sets out the process for requesting/accepting international assistance outlined above. All aid must comply with the requirements of these SOPs.

There are no apparent processes for terminating international assistance.

## **5 Do Samoa's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

A number of Samoan Acts provide some of the legal facilities required but these remain uncoordinated. They exist across several acts and within the executive discretion of several Ministries and agencies.

For example, the Diplomatic Privileges and Immunities Act 1978 can provide diplomatic immunity to International Organisations through an Executive Order but only to the extent provided in the order (i.e. not full diplomatic immunity as applies to state diplomatic representatives). However, state diplomatic privileges only apply to the formal diplomatic mission. This is addressed during times of disaster with ad hoc arrangements when the existing diplomatic privileges do not extend to the individuals concerned.

Some International Organisations are covered by the Declared International Organisation Order 1998 which provides diplomatic privileges to all persons working for specifically listed organisations. Beyond this, only staff in recognised International Organisation missions specifically employed to operate in the field of disaster relief will be covered. The 2016 IFRC report on IDRL in Samoa recommended that the current system be simplified to cover all individuals who are authorised to enter Samoa for the purposes of disaster relief.

## **6 Do Samoa's laws and regulations set out quality standards for international assisting actors?**

The requirements of aid standards are found in the SOP (Appendix 7 of the NDMP). This sets out that resources provided by international assisting actors must be for resources either not readily available in Samoa or in limited supply, or where such resources are required to assist with the emergency relief and recovery efforts and responses.



## **7** Do Samoa's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

There is no formal eligibility requirement at present for legal facilities to be granted.

However, paragraph 3.3.2 states that the NEOC is responsible for providing information on donors' assistance to Customs and Agriculture & Fisheries personnel to facilitate the necessary arrangements for clearance of all donor assistance being provided for disaster relief purposes. Goods purchased locally with disaster relief funding are to be exempt of duty.

However, international assistance is not by definition exempt from Customs and Tax. The Minister of Revenue may provide an exemption to classes of goods under the Customs Tariff Act 1975 upon the advice of the Comptroller of Customs.<sup>429</sup> A general power of discretionary exception also exists under s337 of the 2014 Act.<sup>430</sup> In addition the Minister can specifically exempt goods supplied to an organisation covered by an inter-state (or UN) agreement. In addition, Cabinet-approved disaster relief agencies can also be granted immunity from import and excise duties, although in these cases VAGST of 15% continues to apply. In all cases, specific orders or approvals must be made for the exceptions to apply. VAGST can be avoided if the goods supplied are from a charitable organisation or via a formally agreed aid project.

When such legal exceptions do not apply it is current Samoan government practice to cover the costs of VAGST when the aid has been requested or approved by the DMO or NEOC.

## **8** Do Samoa's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The laws and regulations specify MFAT as the primary agency for all formal requests of international assistance. However, the responsibility for such assistance when it arrives is spread across several agencies. The NEOC plays the coordinating role but beyond this the legal framework is unclear.

## **9** Do Samoa's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

There are no specific laws surrounding accountability and transparency around financial aid in the event of a disaster. However, the Public Finance Management Act 2001 (PFMA 2001) has provisions for emergency expenditure under a State of Emergency. In relation to overseas aid provision, the practice has been to create a separate bank account to handle these payments.<sup>431</sup> During a proclaimed disaster or emergency, the DMO and NEOC have sole authority for the procurement of essential goods, services and equipment. A fast track process is operated by the Ministry of Finance. In such circumstances the Ministry of Finance controls all funds.

429 Customs Act 1975, s 60.

430 Customs Act 2014, s 337.

431 IFRC, above n 425, at 69.



All disaster relief accounts are audited and the reports placed before Parliament. It has become standard practice for the Ministry of Finance to make the report on disaster relief and expenditure publicly available post-event.<sup>432</sup> However, despite these mechanisms concerns remains around the delays which private businesses have in receiving payment through government channels for services rendered during the response and early recovery phase.<sup>433</sup>

Currently NGOs (with the exception of the Red Cross) do not operate to public auditing standards in relation to their relief efforts.

## **10** Do Samoa's laws and regulations outline procedures for international disaster assistance sent from and transiting through Samoa?

No, there does not appear to be provisions for the international disaster assistance sent from Samoa, although the Standard Operating Procedure in Appendix 7 of the NMDP would apply to transitioning aid.

### **Relevant Legislation**

- Disaster and Emergency Management Act 2007
- Planning and Urban Management Act 2004
- Fire and Emergency Service Act 2007

### **Policy/guidance documents**

- National Alert System SOP 2007
- National Tropical Cyclone Plan 2006
- National Tsunami Plan 2006
- National Disaster Management Plan 2017–2020
- Statement made at the global platform for DRR 2017
- Statement made at the third UN World Conference on DRR 2015
- Statement at Third International Conference on Small Island Developing States 2014
- Samoa National Action Plan for Disaster Risk Management 2017–2021

432 Ibid.

433 Ibid.

# Solomon Islands



## Overview

### Constitutional/Political Framework

The Solomon Islands is a Parliamentary democracy and Commonwealth Realm with the monarch of the United Kingdom as the head of state. In practice, the functions of the monarch are performed by the Governor-General which, although formally possessing a number of important reserve powers, is primarily a symbolic position. The constitution follows a traditional “Westminster” model, with the Prime Minister being elected by the 50-member unicameral Parliament. Cabinet Ministers (and the Deputy Prime Minister) are nominated by the Prime Minister. All Ministers (including the Prime Minister) are formally appointed by the Governor-General. The weakness of political parties in the Solomon Islands means that changes of government are frequent.

The nine provinces of the Solomon Islands exercise a significant level of autonomy within the system, to the extent that it is often describe as “quasi-federal”. Each province operates under a directly elected assembly and a provincial premier who is elected from it and responsible to it. Honiara has a separate system of local city government. Beneath the Provincial level a village level provides community governance. Although local and Provincial governments have significant responsibilities which are relevant to Disaster Risk Management, they suffer from chronic under funding, due to a lack of viable sources of revenue (particularly for the Provinces). In 2015/16 only 2.4% of government expenditure was undertaken by the Provincial/City governments.<sup>434</sup>

At the time of writing the 1978 Constitution (as amended) remains the basis of government in the Solomon Islands. However, a draft federal constitution was approved in 2018 and awaits adoption and implementation.

### The DRM Framework

The Solomon Islands system of DRM is founded upon the National Disaster Council Act 1989 which is supplemented by the National Disaster Management Plan (NDMP) 2018. This legislation provides from the creation of the National Disaster Council (NDC) and the National Disaster Management Office (NDMO) for the Solomon Islands. The Act also places responsibility for Disaster [Risk] Management within the responsibility of the Minister of Environment, Climate Change, Disaster Management and Meteorology.<sup>435</sup> The NDC comprises the Permanent Secretaries (PS) of each key Ministry with the remainder sitting as associate members. It is chaired by the PS of the Ministry responsible for DRM (The Ministry of the Environment). This council provides strategic oversight of DRM and provides advice to cabinet.

434 Commonwealth Local Government Forum “The Local Government System in Solomon Islands: Country Profile 2017–18” <clgf.org.uk>.

435 National Disaster Council Act, s 7.

Beneath the NDC sit three committees (comprising the Under Secretaries of the relevant Departments) which develop pre-disaster arrangements and provide management in the event of a disaster. The National Disaster Operation Committee (N-DOC) is chaired by the Director of the NDMO and is responsible for preparedness and response arrangements. During a disaster event, it coordinates the response alongside Provincial and local representatives. In particular the N-DOC is responsible for the National Emergency Operations Centre (NEOC) and the appointment of a Disaster Coordinator. The N-DOC is also responsible for creating Sector Committees to assist it in delivering its role.

The Recovery Co-ordination Committee (RCC) sits alongside N-DOC. This body, chaired by the Permanent Secretary (or Under Secretary) of the Ministry of Development Planning and Aid Coordination (MDPAC), mirrors the role of the N-DOC in relation to recovery, although UN and NGO representatives may also be included in its membership. In addition to planning for and managing recovery, the RCC is responsible for developing a funding plan for recovery, including re-allocation of sectoral budgets and co-ordination with international and sectoral partners. The national RCC is also responsible for creating sectoral and provincial RCC committees. A third NDC Climate and Risk Resilience Committee was established in the NDMP, which is to be responsible for addressing hazards and the reduction of disaster and climate risk within social and development planning processes and practices.<sup>436</sup>

Although the Solomon Islands NDMO is the key institution for the management of DRM at the state level, the Provinces play a significant role. Each Province operates a Provincial Disaster a Committee (PDC), chaired by the Provincial Secretary (the national representative in the Province) and operating through sub-committees which mirror the national structure. Local Ward and Village committees are expected to operate alongside these Provincial bodies. As at the national level these committees undertake a management role during a disaster event with PDC's operating under the overall direction of N-DOC.

## Disaster Law Assessment

### **1 Do the Solomon Islands have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?**

As stated above, the key DRM legislation in the Solomon Islands is the National Disaster Council Act 1989 which is supplemented by the National Disaster Management Plan 2018. These are further supplemented by legislation pertaining specifically to the provinces and climate change mitigation policy. Together these make up the legal framework for disaster risk management in the Solomon Islands.

This framework mostly pertains to DRM at a national and provincial level and makes limited reference to international disaster assistance in any detail. However, N-DOC is tasked with overall coordination of international assistance while the NEOC is given the responsibility for "external support issues for customs, exemptions, immigration etc through the Support/Admin Functional Team"<sup>437</sup>. It is unclear what tools and legal powers are available for these functions to be exercised.

436 This was established in the 2018 Plan (at 23), so is likely in the early stages of inception.

437 National Disaster Management Office, Solomon Islands Government "National Emergency Operation Centre (NEOC)" <[www.ndmo.gov.sb](http://www.ndmo.gov.sb)>.

## **2 Do Solomon Islands laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

Although the NDM Plan 2018 states that the arrangements set out in the Plan acknowledge and provide for the receipt of relief and recovery assistance from international partners and relief agencies during and following a disaster, very few details are given. According to the Plan, donor and relief agencies are expected to establish their support mechanisms in association with their sector of activity, and are required to work within the structures of the Plan.<sup>438</sup>

Overall coordination of international support during a disaster is to be exercised through the National Disaster Operations Committee and, following a disaster, through the Recovery Coordination Committee.<sup>439</sup> The point of reference for donors, consular and international partners is MFAT.<sup>440</sup>

The previous DRM Plan 2010 states that beyond the immediate response phase, the RRC is expected to maintain relationships with international partners and support agencies and development mechanisms for engagement on recovery issues following a disaster.<sup>441</sup> Following a disaster, they are to maintain engagement with international partners and support agencies for input to the Recovery Plan and funding proposal.<sup>442</sup>

In addition to overall oversight and coordination by the NEOC, the 2018 Plan states that, during a disaster event, the activities of donor, consular and international partners shall be coordinated through the donor coordination mechanism currently convened by the Manager of the UN Joint Presence Office.

The 2018 Plan sets out that operational coordination of external humanitarian support during a disaster will be exercised through the regional Pacific Humanitarian Team and its IASC Cluster arrangements.<sup>443</sup> The PHT will coordinate its connections through the N-DOC arrangements. Given that the PHT no longer exists it is not clear how this component of the plan will function.

The 2018 Plan establishes the Royal Solomon Islands Police Force as the civil/military focal point for foreign armed forces providing support to disaster situations.<sup>444</sup>

## **3 Do Solomon Islands laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The NDM Plan 2018 sets out the roles and responsibilities of the Minister, Cabinet, National Disaster Council, the Council Committees, and the National Disaster Management Office.<sup>445</sup>

The National Disaster Council is tasked with managing and coordinating international assistance, and the management of international, regional and bilateral support arrangements for DRM.<sup>446</sup>

438 NDM Plan 2018, at 19.

439 Ibid, at 49.

440 Ibid, at 51.

441 Ibid, at 53.

442 DRM Plan 2010, at 54.

443 Ibid, at 19.

444 Ibid, at 51.

445 NDM Plan 2018, at 22–31.

446 Ibid, at 24.



Broad responsibilities are established for all sectors generally, including clusters of agencies, the role of women, Partners, Red Cross, NGO's, Civil Society, and the private sector.<sup>447</sup>

Despite describing in relative detail the roles and responsibilities of these institutions, international disaster assistance is mentioned only briefly in the plan.

## **4 Do Solomon Islands laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

Overall responsibility is given to Cabinet for decision making in relation to resources and accessing international assistance during disasters.<sup>448</sup>

## **5 Do Solomon Islands laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

Although there are no specific legislative provisions dealing with international assisting actors, the Immigration Act 2012 does allow the Minister to exempt any person they see fit from the requirement to hold a visa to enter or stay in the Solomon Islands.<sup>449</sup>

There are no obvious elements in the legislative framework exempting aid items from either tax or customs duty.

However, the 2018 NDM Plan acknowledges the IDRL principles and states that their particular provisions (as regards immigration, entry conditions, customs and registrations) are to be included in SOP's as appropriate.<sup>450</sup>

## **6 Do Solomon Islands laws and regulations set out quality standards for international assisting actors?**

There are no obvious quality standards for international assisting actors contained in the Solomon Island's disaster risk management regulatory frameworks.

## **7 Do Solomon Islands laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

Given that there are no evident provisions for international assisting actors to receive specific legal facilities, no eligibility requirements exist. However, the discretion does exist for the Minister to provide a visa exemption to any person.<sup>451</sup>

447 Ibid, at 30–31.

448 NDM Plan 2018, at 23.

449 Immigration Act 2012, s 11(1).

450 NDM Plan 2018, at 19.

451 Immigration Act 2012, s 11(1).

## **8 Do Solomon Islands laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The NDM plan provides for the National Disaster Council and its committees to oversee international assistance. The Cabinet also has final decision-making responsibilities regarding international assistance.<sup>452</sup> The NEOC's "Support/Admin Functional Team" is tasked with handling the practicalities of international assistance, including customs exemptions and immigration.<sup>453</sup> However, the NDMP is vague on how this will be handled in practice and the extent to which the NEOC will be in position to address these issues. It simply states that the NEOC is to "manage donations, access funding through financial contingency warrants, maintain records, follow audit processes etc, and maintain external confidence through the Support/Admin Functional Team."<sup>454</sup>

## **9 Do Solomon Islands laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The National Disaster Council Act 1989 states there shall be a fund called the National Disaster Council Fund, which includes all 'moneys collected by way of donations, grants or contributions'. It goes on to state that all moneys of the Council not required for immediate use shall be invested in securities authorised under the provisions of any Act relating to trustees for the time being in force.<sup>456</sup>

The Act also requires that the Council shall keep proper accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year.<sup>457</sup>

At a provincial level, the Provincial Secretary is to ensure appropriate funds are made available for relief efforts as a result of a State of Disaster,<sup>458</sup> and is to fully account for all expenditure out of, and receipts into, the Provincial Fund.<sup>459</sup>

## **10 Do Solomon Islands laws and regulations outline procedures for international disaster assistance sent from and transiting through the Solomon Islands**

The Solomon Islands' regulatory frameworks for disaster risk management do not appear to make provision for cases where international assistance is sent from the Solomon Islands to another country, or for cases where international assistance transits through Solomon Islands territory.

452 NDM Plan 2018, at 23.

453 National Disaster Management Office, Solomon Islands Government <[www.ndmo.gov.sb](http://www.ndmo.gov.sb)>

454 NDM Plan 2018, at 49.

455 Ibid, s 17.

456 Ibid, s 18.

457 Ibid, s 19.

458 Provincial Government Act 1997, Guadalcanal Provincial Government (Emergency Response and Transfer of Power) Order 2014, s 3(a).

459 Ibid, s 4(d).



## Key Legislation

- National Disaster Council Act 1989
- Provincial Government Act 1997
- Emergency Powers Act 1999
- Biosecurity Act 2013
- Solomon Islands Independence Order 1978 (Assignment of Responsibility to the Minister for Environment Climate Change, Disaster Management and Meteorology 2011)

## Key Policies

- Solomon Islands National Disaster Management Plan 1997 (replaced by 2009 Plan)
- National Adaption Programmes of Action 2008
- National Disaster Risk Management Plan 2009 (replaced by 2018 Plan)
- Honiara Urban Resilience and Climate Action Plan 2016
- Solomon Islands Climate Change Policy 2012–2017
- National Disaster Management Plan 2018





## Overview

### Constitutional/Political Framework

The Kingdom of Tonga is a constitutional monarchy under His Majesty King Tupou VI. Until 2010 the constitution was, by and large, the same constitution King George Tupou granted in 1875, under which executive power resided with the monarch. The unicameral legislature is the Fale Alea which comprises 26 elected members, nine of whom are elected by and from among the country's 33 hereditary nobles, and 17 on the basis of universal suffrage. General elections take place every four years. The Head of Government is the Prime Minister, who is chosen by the Legislative Assembly and appointed by the monarch. The Prime Minister selects the cabinet who are then appointed by the monarch. The Prime Minister may nominate up to four members from outside the Assembly and on appointment they become members of the Assembly. This mechanism has been used to ensure that there is a woman in the cabinet if no women have been elected.<sup>460</sup>

Although there is no constitutional provision for local government Tonga is divided into five administrative divisions, 23 districts and 156 "towns". Each District and Town elects one officer by universal suffrage every four years.<sup>461</sup> This person acts as the state representative in the area and reports directly to the Minister of Internal Affairs, or the governor in the case of Ha'apai and Vava'u divisions.<sup>462</sup> In addition, the town officer is empowered to call a normal fono (a community meeting to discuss matters of priority) and also a "grand fono" where the Minister of Internal Affairs or other government officials may address the community. District and town officers are by law required to submit regular reports to the Ministry of Internal Affairs on village and district activities, and to organise village or provincial meetings. Salaries and any allowances for district officers and town officers are provided by the government.<sup>463</sup>

### The DRM Framework

Tonga's disaster management framework is couched in terms of "emergency management" rather than "disaster management". It uses an "All Hazards" or "Functional" approach to emergency management, where the focus is on the emergency support function to be performed, rather than the specific hazard being prepared for or responded to.<sup>464</sup> Its emergency management framework is based upon the current Emergency Management Act 2007 (EMA). This Act establishes the National Emergency Management Committee (NEMC), the National Emergency Management Office (NEMO) and the District Emergency Management Committees and Village Emergency Management Committees. The NEMC is responsible for policy and planning and is

460 Nexus Commonwealth Online "Tonga: Government" <[www.commonwealthofnations.org](http://www.commonwealthofnations.org)>.

461 District and Town Officers (Amendment) Act 2019.

462 District and Town Officers Act 1988 (Cap 43).

463 Commonwealth Local Government Forum "The Local Government System in Tonga: Country Profile 2017-18" <[clgf.org.uk](http://clgf.org.uk)>.

464 National Emergency Management Plan 2009, at 44.

chaired by the Minister responsible for emergency management and comprises of the Directors and Secretaries of the relevant ministries. The NEMO is responsible for the operational and administrative elements of the emergency management system and is tasked with implementing NEMC directives.

The EMA confers power on the Prime Minister to declare a state of emergency while Cabinet, (referred to in the NEMP as the National Disaster Council) has state executive oversight of matters that may affect national interest.

The Act also calls for the development of a National Disaster Management Plan (NEMP) and District Emergency Management Plans are required to both identify risk factors (at national and District level) and outline the key institutional and planning components of the emergency response.<sup>465</sup> The NDMP prioritizes the integration of disaster risk reduction and emergency response while seeking to mainstream disaster risk management.

## Disaster Law Assessment

### **1** Does Tonga have a clear legal framework for disaster risk management which includes procedures relating to international assistance?

The EMA and the NEMP are the guiding documents providing for Tonga's disaster risk management framework, however, following an emergency declaration, there are no prescribed timelines for requesting international assistance or indeed any information on what criteria such a request should be based upon. In practice, the Chairman of the NEMC will base a request for international assistance on the outcome of assessments undertaken to determine the needs of those affected, even if this means a possible delay in requesting international assistance as was the case in Tropical Cyclone Ian.<sup>466</sup>

Although not referred to in the NEMP, in emergencies, emergency management authorities revert back to the practice under the 1999 National Disaster Management Plan (NDMP) which stated that the decision to request international assistance was to be determined by the NEMC, who will submit its recommendation through its Chairman to Cabinet. Section 10(e) of the EMA directs the NEMC to "have in place arrangements with other nationals and relevant bodies to provide support to the Kingdom during major emergencies".

The Minister of Foreign Affairs (MFA) is responsible for requesting international assistance upon the direction of Cabinet and also for taking on the role of focal point for overseas emergency relief assistance and external relations. There is provision in the Tonga Fire and Emergency Services Act 2016 for international assistance in an emergency which states that a member of an international emergency service organisation who is present at an emergency within the Kingdom for the purpose of mitigating or responding to that emergency may be approved by the Commissioner to perform all or some of the functions that the Commissioner would have and be capable of exercising and performing under this Act.<sup>467</sup> Apart from this however there are no standard procedures, no specifically appointed authorities and no specific timelines governing the request of international assistance.

465 Kingdom of Tonga, National Emergency Management Plan, at 2.

466 IFRC *International Disaster Response Law (IDRL) in Tonga: A study on legal preparedness for facilitating and regulating international disaster assistance* (IFRC, Geneva, 2016), at 49.

467 Tonga Fire and Emergency Services Act 2015, s 55.

## **2 Do Tonga’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?**

As mentioned above, MFA acts as the focal point for overseas emergency relief assistance and external relations. However, there is no mechanism in place to ensure that requests for international assistance between the Government and lead agencies are complementary nor is there an information focal point to monitor and review the progress of deployment and distribution of relief goods and services although there are collaborative processes between relevant Ministries such as the Ministry of Finance and NEMO, however these are by and large ad hoc in nature.<sup>468</sup>

Under the 1999 NDMP, all international assistance protocols fell under the responsibility of a designated Central Control Group (CCG). All departments and organisations requiring assistance were to submit their needs to the CCG and the CCG were tasked with liaising directly with international aid agencies and donor countries. The CCG were also held accountable to overseas partners for reporting on expenditure and assistance provided by each agency or donor country. These provisions however, have not been mirrored in the NEMP.

## **3 Do Tonga’s laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The NEMP outlines the roles of the various national, district and village emergency management committees and the National Emergency Management Office. It canvasses procedures for domestic response however has very little mention of international assistance as detailed below.

The NEMP states that the NEMC must have arrangements in place with States and relevant agencies to provide support to Tonga during major emergencies<sup>469</sup> (even though what constitutes a major emergency is not defined); the Ministry of Foreign Affairs must act as the liaison between the NEMC and the diplomatic corps within Tonga and also act as Tonga’s representative externally, liaising with donor countries and aid agencies<sup>470</sup>. The NEMP further states that Initial National Situation Reports are to be provided at varying intervals to international actors such as UNOCHA, SOPAC and the diplomatic corps,<sup>471</sup> and also makes provision for Tonga Red Cross to seek assistance from the International Federation of Red Cross and Red Crescent Societies for international relief when required.<sup>472</sup>

## **4 Do Tonga’s laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

As stated above under Question 1, there is minimal reference in Tonga’s disaster management framework to international assistance. The Minister of Foreign Affairs is responsible for requesting international assistance upon the direction of Cabinet and in practice, Cabinet’s direction is based upon the outcome of detailed needs assessments by the relevant authorities. There are no specific provisions for the acceptance or refusal of international assistance although such discourse can be inferred as being a natural part of MFA’s function under s10(e) of the EMA.

468 IFRC, above n 466, at 52.

469 NEMP, at 15 and 49.

470 NEMP, at 56.

471 NEMP, at 61.

472 NEMP, at 56.



The EMA makes reference to a State of Emergency, which must be declared by the Prime Minister and lasts for a period of 28 days unless extended.<sup>473</sup> In addition both the EMA and the NEMP reference a “recovery” phase (which the NERC is charged with managing). However there is no definition of when the “recovery” phase begins, how it is terminated or how it relates to the initial disaster relief phase. There are also no references in existing legal frameworks dealing with agreements on pre-positioning of relief stock or on unsolicited goods although the NEMC could exercise its authority under s10(e) of the EMA.

## **5 Do Tonga’s laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

Legal facilities for some international actors can be found across a number of Acts and Regulations, however these are not coordinated and are not specific to disaster personnel. For example, a foreign driver’s license is recognised in Tongan law, however, local registry is mandatory and comes at a cost and there are no exemptions for emergency purposes for registration or waiver of fees.<sup>474</sup> The Traffic Act provides for special defences for drivers charged with speeding in certain emergency circumstances. The defence does not expressly cover international actors in emergency situations.<sup>475</sup>

The International Organisations (Immunities and Privileges of Certain Officers) Act 1967 and the Special Missions Privileges and Immunities Act 1877 extend privileges and immunities to special missions of states and international organisations according to relevant international conventions.

The Customs Division of the Ministry of Revenue Services developed a set of Standard Operating Procedures (SOPs)<sup>476</sup> to grant customs clearance free of all customs duties, excise taxes and charges for relief consignments. There is currently no provision in Tongan law for managing unused humanitarian goods.<sup>477</sup> Goods that have not cleared customs and which are stored in customs warehouses are subject to a 6-week time limit. Upon expiry of the six weeks, the goods are sold at a public auction<sup>478</sup>. Consignments that have cleared customs are subject to a 2-year limit on storage at customs warehouses before disposal procedures are engaged.<sup>479</sup>

## **6 Do Tonga’s laws and regulations set out quality standards for international assisting actors?**

Broadly speaking, there are no specific statutory provisions for emergency review of foreign qualifications. However exceptions exist to the recognition of medical qualifications as regulated by the Medical and Dental Practice Act 2001, the Nurses Act 2001 and the Pharmacy Act 2001. For example, under the Pharmacy Act 2001, the Minister may exempt (in writing) members of short-term visiting specialist health teams or individual pharmacists, or assistant pharmacists, from the requirements of the Act.<sup>480</sup> In practice however, this is usually only applied to scheduled visiting teams rather than teams arriving for emergency purposes.

There are no provisions for the oversight of international actors, although Cabinet has general executive oversight of matters that may affect national interest.

473 EMA, s 32.

474 IFRC, above n 466, at 102.

475 Ibid, at 93.

476 Tonga Customs Procedures Applicable to Relief Consignment 2013.

477 IFRC, above n 466, at 68.

478 Customs and Excise Management Regulations 2008, s 105(1).

479 Ibid, s 105(2).

480 Pharmacy Act, s 10.



## **7 Do Tonga's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

Apart from what is contained in Question 5 above, there appears to be no provisions for the application for eligibility of international actors for legal facilities.

## **8 Do Tonga's laws and regulations establish a specialized unit for expediting the entry of international disaster assistance?**

There appear to be no relevant provisions establishing a specialised unit for expediting the entry of international disaster assistance into Tonga. Tonga's IDRL report 2015 recommends the establishment of a Single Window International Facilitation Team (SWIFT) for this purpose, including the application process for eligibility.<sup>481</sup>

## **9 Do Tonga's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The Emergency Fund Act 2008 directs the Minister for Finance and National Planning (in consultation with Cabinet and NEMC) to determine the criteria for the allocation of the emergency funds for relief and reconstruction, however these criteria have yet to be developed.<sup>482</sup> In addition to this, although not specific to disasters, a number of provisions provide for financial safeguards and accountability mechanisms:

- The Minister and CEO of the Ministry of Finance and National Planning (MFNP) have principal responsibilities to receive and disburse international grants made to the government.<sup>483</sup>
- The Public Finance Management (PFM) Act 2002 also provides a safeguard against diversion and misappropriation of funds through the established procurement regulations and internal and external audit procedures.<sup>484</sup>
- The Auditor General is empowered under the Public Audit Act to audit the transactions, books, accounts and financial records of Ministries and Government agencies.<sup>486</sup>

## **10 Do Tonga's laws and regulations outline procedures for international disaster assistance sent from, and transiting through Tonga?**

There appear to be no specific provisions governing procedures for international disaster assistance sent from, and transiting through Tonga's borders, although a recommendation was made by Tonga's IDRL report for the need for such provisions to cover issues such as facilitation for transit; transit facilities period; entitlement to transit facilities; disaster transit via; goods and equipment in transit and trans-shipment; and transport for transit and trans-shipment.<sup>486</sup>

481 IFRC, above n 466, at 56.

482 Ibid, at 90.

483 Ibid, at 90.

484 Ibid, at 90.

485 Ibid, at 91.

486 Ibid, at 95.



**Key Legislation:**

- Emergency Fund 2008
- Emergency Management Act 2007
- Tonga Fire and Emergency Services Act 2014
- Public Finance Management Act
- Public Procurement Regulations 2015

**Key Policies:**

- National Disaster Management Plan and Emergency Procedures
- Standard Operating Procedures for the National Emergency Coordination Centre.
- National Emergency Management Plan
- National Tsunami Plan
- International Disaster Response Law (IDRL) in Tonga
- Climate Financing & Risk Governance Assessment
- National action plan on climate change adaption and disaster risk management 2010–2015
- Tonga's Joint National Action Plan II 2018–2028
- Tonga Strategic Development Framework II 2015–2025
- MEIDECC commissioned desktop review (led to policy for new Emergency Management Act)



# Tuvalu



## Overview

### Constitutional/Political Framework

Tuvalu, formerly the Ellice Islands, is a parliamentary democracy and Commonwealth realm. The Constitution of Tuvalu is the supreme law of Tuvalu and sets out both fundamental rights and freedoms as well as the basic structure of the government. The Head of State is the UK Monarch (styled as the Queen of Tuvalu). The functions of the Monarch are exercised by the Governor General who is appointed on the advice of the Prime Minister. By convention, this advice is always followed. Tuvalu's parliament, the Palamene o Tuvalu, is unicameral and has 16 members,<sup>487</sup> with elections held every four years. There are no formal political parties in Tuvalu and election campaigns are largely based on personal reputation in addition to relationships and family ties. The members of parliament elect the Prime Minister (who is the head of government) and the Speaker of Parliament through a simple majority. The Prime Minister appoints Ministers to the Cabinet from within the Palamene, although the total number cannot exceed more than half of the legislature's total membership.<sup>488</sup> The Prime Minister, Speaker and Ministers are all formally appointed by the Governor General.

Although the role of the Governor General in this context is largely ceremonial, their Reserve Powers are still of relevance in Tuvalu. In 2013, the intervention of the then Governor General led directly to the resolution of the constitutional crisis that emerged when the Prime Minister (Willy Telavi) refused to call a by-election for the constituency of Nukufetau and then refused to recall Parliament. The resulting intervention saw the dismissal of the Prime Minister (through a Parliamentary vote of no confidence) and his replacement with an opposition member who had the confidence of the majority of the house (Enele Sopoaga).

Local government in Tuvalu is island based with eight island councils governing the eight inhabited islands.<sup>489</sup> Each island Council (Kaupule) has six members elected for a maximum for two four-year terms and elects the Council President (Pule Kaupule).<sup>490</sup> Alongside the kaupule sits the Falekaupule, the traditional assembly of elders also known as te sina o fenua (literally: "grey-hairs of the land"). Each Falekaupule has its own high-chief, or ulu-aliki, and several sub-chiefs (alikus). The kaupule retains the executive powers of local governance but must report to the falekaupule quarterly. No formal process is established for these assemblies.<sup>491</sup>

487 Electoral Amendment Act 2019.

488 Tuvalu Constitution Amendment 2006.

489 Nanumea, Nanumaga, Nui, Vaitupu, Nukufetau, Funafuti, Nukulaelae and Niutao (which has responsibility for uninhabited Niulakita).

490 Falekaupule Act 1997.

491 Commonwealth Local Government Forum "The Local Government System in Tuvalu: Country Profile 2017-18" <[clgf.org.uk](http://clgf.org.uk)>.

## The DRM Framework

Tuvalu's disaster management framework is based upon the National Disaster Management Act (NDMA) 2007 and the National Disaster Management Plan (NDMP) 1997. The NDMA establishes the National Disaster Committee (NDC) whose function is to advise the Minister responsible for disasters on all matters pertaining to the disaster, including coordination and the implementation of strategies and policies. On paper, the NDC is chaired by the Minister, however, in practice is usually chaired by the Secretary General and is made up of relevant Secretaries and Directors, an NGO representative and a representative from the traditional elders.<sup>492</sup> The Act further establishes the National Disaster Management Office (NDMO), tasked with implementing the directives of the NDC, a National Disaster Preparedness Working Group within the NDMO and an Island Disaster Committee (IDC) on each island.

The National Disaster Plan 1997 is also established by the NDMA and sets out the organisational structure for disaster management. In times of disaster, a National Activation System comes into effect during which the Secretary to Government or a suitable delegate becomes the Disaster Controller working under the NDC. The NGOs, the IDC on which the disaster occurred and other relevant government bodies all come under the direction of the Disaster Controller. The National Disaster Controller may also call on other IDCs to provide resources or information to assist in the response.<sup>493</sup>

## Disaster Law Assessment

### 1 Does Tuvalu have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

As mentioned above, the National Disaster Management Plan 1997 and the National Disaster Management Act 2008 make up the legal framework for disaster risk management.

The NDMP states that in a disaster within Tuvalu where the local community or national government does not have the capacity to effectively respond, they may request international assistance.<sup>494</sup> Specific provisions for International Assistance are further contained in the NDMP where Cabinet will, at the recommendation of the NDC, determine what international assistance will be required, and through the Minister for Foreign Affairs, issue a formal request for international assistance.<sup>495</sup> This provision, however, is only referenced in the Recovery phase of the Plan and not in the Response phase. Although, under the NDMA, a function of the NDC is to advise the Minister on the need for aid to counter the effects of a disaster and on any agreement proposed for the government to enter into to obtain such aid.<sup>496</sup> In addition, the NDMO's main functions include dealing with disaster related affairs at both national and international levels.<sup>497</sup>

### 2 Do Tuvalu's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

Under the current framework, the Secretary for Foreign Affairs is tasked with liaising and negotiating with international bodies for external assistance,<sup>498</sup> while the NDMO is responsible for carrying out disaster management; carrying out tasks and responsibilities handed down by

492 National Disaster Management Act, s 9.

493 National Disaster Plan 1997, at 5

494 NDMP, at 2.

495 Ibid, s 5.2.

496 Ibid, s 8(d).

497 NDMA, s 12(iv).

498 NDMP, s 2.5.10.

the Minister and the Committee; advising the Committee; and dealing with all the disaster related affairs at the national and international level.<sup>499</sup> Aside from these references, there appear to be no specific provisions appointing a focal point or outlining the process for the coordination of international disaster assistance.

### **3 Do Tuvalu's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The National Disaster Plan sets out the functions of various bodies and individuals as they relate to disaster assistance at a national level with some mention of interaction with international disaster assistance but even this is minimal. For example, the Secretary for Finance and Economic Planning is responsible for controlling emergency relief funding, including that provided by external donors and relief agencies<sup>500</sup> and the NDC is responsible for identifying and managing international support requirements during post recovery; identifying elements of the recovery and relief programme that can be supported by NGOs; and coordinating recovery and relief operations.<sup>501</sup> There is no mention in the legal framework on the obligations of international actors.

### **4 Do Tuvalu's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

Section 5.2 of the National Disaster Management Plan outlines the process by which Tuvalu may request international assistance. Cabinet will, at the recommendation of the NDC, determine what international assistance will be required, and through the Minister for Foreign Affairs, issue a formal request for international assistance.<sup>502</sup> There appear to be no provisions for terminating international assistance.

Both the NDMA and the NDMP make reference to a response and recovery phase, although neither, provide details when one phase ends and the other begins. They also make no mention of the prepositioning of relief items or the management of unsolicited goods.

### **5 Do Tuvalu's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

While there are no specific provisions dealing with international assisting actors, the NDMA grants broad powers to the Minister during a state of emergency to make actions which may be necessary,<sup>503</sup> prescribes it an offence to interfere with anyone performing a role under the NDMP<sup>504</sup> and grants immunity from liability due to actions undertaken in good faith during a state of emergency.<sup>505</sup> The Visiting Forces Act and the Customs Revenue and Border Patrol Act also prescribe various exemptions for visiting military.<sup>506</sup>

There are no specific provisions exempting aid items from either tax or customs duty.

499 NDMP, s 12.

500 NDMP, p.10.

501 NDMP, p.14.

502 NDMP, p.14.

503 NDMA 2008, s 28.

504 NDMA, s 30.

505 NDMA, s 31.

506 Sections 29, 30 and 32 of the Visiting Forces Act provides for exemptions from customs requirements, import taxes and vehicle licensing and registration requirements, while section 6 of the Customs Revenue and Border Patrol Act exempts crafts from certain provisions of the NDMA when responding to a public emergency.



## **6 Do Tuvalu's laws and regulations set out quality standards for international assisting actors?**

There are no obvious quality standards for international assisting actors contained in Tuvalu's disaster risk management regulatory frameworks.

## **7 Do Tuvalu's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

Given that there are no evident provisions for international assisting actors to receive specific legal facilities, no eligibility requirements exist. However, the discretion does exist for the Minister to make provisions where necessary.<sup>507</sup>

## **8 Do Tuvalu's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

The NDMP provides for Cabinet to request international assistance upon the advice of the NDC, however there is no provision for a specialised unit to then facilitate or expedite the entry of the international disaster assistance.

## **9 Do Tuvalu's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The NDMA provides that all donations to assist in recovery from a disaster must be used for that purpose only unless otherwise authorised by the Minister.<sup>508</sup> Section 38 of the NDMA further provides that the misuse of such donations will incur a penalty. The nature of the penalty is not stated.

More recent developments in Tuvalu have seen the establishment of the Tuvalu Climate Change and Disaster Survival Fund under the Climate Change and Disaster Survival Fund Act 2015, which aims to provide services to the people of Tuvalu in combating the devastating impact of climate change and natural disasters and to allow the Government and people of Tuvalu to effectively respond to future climate change impacts and natural disasters.<sup>509</sup> All donations from foreign governments, foreign organisations, and individuals are to be placed into the Tuvalu Survival Fund.<sup>510</sup> The Act provides that the fund is to be audited regularly and defines the specific circumstances in which the fund can be used.<sup>511</sup>

507 NDMA, s 8.

508 NDMP, s 36.

509 Climate Change and Disaster Survival Fund Act 2015, s 7.

510 Tuvalu Survival Fund, s 12.

511 Ibid, ss 13, 15 and 16.



## **10** Do Tuvalu's laws and regulations outline procedures for international disaster assistance sent from, and transiting through Tuvalu?

Tuvalu has no legislation or regulations relating to international assistance sent from, or transiting through, Tuvalu.

### **Key Legislation**

- National Disaster Management Act 2008
- National Disaster Management (Compensation Amendment) Act 2014
- Climate Change and Disaster Survival Fund Act 2015
- Customs Revenue and Border Protection Act 2014
- Red Cross Society Act 1981
- Visiting Forces Act 1984

### **Key Policies**

- Te Kaniva: Tuvalu National Climate Change Policy 2012<sup>512</sup>
- National Disaster Management Plan 1997
- National Strategic Action Plan for Climate Change and Disaster Risk Management 2012–2016
- Review of current and planned adaption 2011



512 Tuvalu is currently in the process of finalising the new National Climate Change Policy which will be called "Vaka Fenua".



# Vanuatu

## Overview

### Constitutional/Political Framework

The Republic of Vanuatu is a Parliamentary democracy with a President as head of state. The President, who exercises primarily ceremonial powers, is elected for a five-year term by a two-thirds majority of an electoral college consisting of Members of Parliament and the Presidents of the Provincial Councils. The Prime Minister, who is the Head of Government, is elected by a majority vote of Parliament.<sup>513</sup> The Prime Minister, in turn, appoints the Council of Ministers which acts as the executive branch.<sup>514</sup> The Parliament of Vanuatu is unicameral and has 52 members elected by popular vote for a term of four years. The Malvatu Mauri (national Council of Chiefs) is elected by district councils of chiefs and advises the government on all matters concerning Ni-Vanuatu culture and language.

Vanuatu is divided into six provinces each headed by a President elected by and from the directly elected Provincial council.<sup>515</sup> Provinces are responsible for a variety of local services including primary and pre-school education, primary healthcare, regional planning, roads and tourism.<sup>516</sup> Three municipal authorities are responsible for these matters within the urban centres.<sup>517</sup> These are headed by Mayors, who are appointed by the directly elected municipal councils. In both cases a provincial secretary/town clerk is appointed by the Public Service Commission to manage the local administration and assist the President/Mayor.

The provincial government is advised by the local Council of Chiefs in Ni-Vanuatu culture and language. The Provincial President is a member of the Electoral College that elects the President of Vanuatu.

### The DRM Framework

The regulatory framework for disaster risk reduction and disaster risk management in Vanuatu is provided by the National Disaster Act 2000 and the Meteorology, Geological Hazards and Climate Change Act 2016. The Meteorology Act sets out the framework for forecasting and hazards. It establishes the National Advisory Board (NAB) for disaster risk reduction which is tasked with advising on the development of strategies and policies for disaster preparedness and risk reduction.<sup>518</sup>

513 The Parliament must be quorate (three-quarters of members present).

514 Vira Isno "About Vanuatu Parliament" (15 January 2015) Republic of Vanuatu Parliament <[www.parliament.gov.vu](http://www.parliament.gov.vu)>.

515 Malampa, Penama, Sanma, Shefa, Tafea and Torba. Provincial Councils also have central appointed members to ensure representation of youth, women, provincial chiefs and the disabled community.

516 Decentralisation Act 2013.

517 Municipalities Act 1988.

518 Vanuatu Country Preparedness Package 2017, at 8.

The Disaster Act establishes the National Disaster Committee (NDC) and the National Disaster Management Office (NDMO). The NDMO is tasked with coordinating disaster response, developing a National Disaster Plan and National Disaster Support Plans and managing the National Disaster Emergency Centre. The NDC comprises the Chief Executives of key government departments and is tasked with advising the responsible Minister on all matters relating to disasters.<sup>519</sup> It also acts to provide oversight of the NDMO in the implementation disaster policies and strategies. Under the Act, the NDC has the function of developing strategies and policies, however in practice, this is undertaken by the NDMO. Under the Disaster Act, the President may declare a State of Emergency upon the advice of the Council of Ministers.<sup>520</sup>

The National Disaster Act 2000 underwent review in 2016 in the wake of Tropical Cyclone Pam. Comprehensive recommendations for amendments have been submitted to the State Law Office and a new Disaster Risk Management Bill 2018 is expected to be before Parliament this year (2019).

## Disaster Law Assessment

### **1** Does Vanuatu have a clear legal framework for disaster risk management which includes procedures relating to international disaster assistance?

The National Disaster Act 2000 sets out the circumstances in which a declaration of emergency may be made, which is essentially if the President, on the advice of the Council of Ministers is satisfied that the disaster constitutes a significant danger and exceeds the national response capacity.<sup>521</sup> The Act provides that the National Disaster Operations Centre is to coordinate requests for aid.<sup>522</sup> This is echoed by the National Disaster Plan 2010 which states that requests for international assistance will only be lodged when it becomes clear that the situation is beyond National capabilities.

As outlined in the Act, the process for requesting international assistance is determined by the NDC, through the Minister for Internal Affairs and in consultation with Ministry for Foreign Affairs and the Aid Coordination Office (within Prime Minister's Office). After ongoing consultation between the various offices, a request from Foreign Affairs will be made for international assistance based on the Damage and Needs Assessment report by the NDC. The section further outlines that a multi-sector, multi-agency approach should be taken in supporting the NDC to compile the Damage and Needs Assessment report and prohibits any requests for international assistance from any Government agency or NGO to aid agencies or diplomatic missions without the consent of the NDC.

### **2** Do Vanuatu's laws and regulations clearly set out a focal point for coordinating international disaster assistance?

The National Disaster Act states that the National Disaster Operations Centre will coordinate requests for aid, this is further emphasised in the Standard Operating Procedure for the NDMO which adds that the Operations Centre will be the focal point for control and coordination of the response. The National Disaster Plan 2010 also provides that the Ministry of Foreign Affairs in coordination with the Aid Coordination Office will communicate with international agencies on assistance requested (as outlined above).

519 Director General of Internal Affairs (Chair), Secretary of the Development Committee of Officials, Director General of MOH, Police Commissioner, Director General of MOFEM, Director General MOPUI, Director General MOE, Director Aid Coordination and Planning and Director Provincial Affairs, Director Secretariat (NDMO).

520 International Disaster Response Laws, Rule and Principles (IDRL) in Vanuatu 2011, at 12.

521 National Disaster Act 2000, s 13(b).

522 Ibid, s 8(c).



The NDMO is also the lead for the National Logistics Cluster which plays an important coordination role during emergencies. Vanuatu's current Cluster system is still an informal construct, however, its formal establishment is included in the recommendations for the review of the National Disaster Act.

### **3 Do Vanuatu's laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?**

The National Disaster Act 2000 establishes the role of the NDC to advise the Minister on the need for aid,<sup>523</sup> and to advise the minister on the declaration of states of emergencies.<sup>524</sup> Section 6 of the Act gives the NDMO the responsibility to ensure that aid for disasters is used for the purpose for which it was provided while section 8(c) provides for the National Disaster Operations Center to coordinate requests for aid.

The National Disaster Plan 2010 further articulates responsibilities regarding international assistance. The Plan establishes a Central Control Group (CCG), who is responsible to the Chairperson of the NDC for the implementation and management of disaster response operations and is further mandated to identify and manage international relief assistance.<sup>525</sup> The CCG is also accountable to donors and aid agencies for ensure all relief is distributed in accordance with guidelines governing the provision of aid and for the preparation of a report on expenditure/distribution of assistance provided by each donor/agency.<sup>526</sup> The Director of Customs and Quarantine has an obligation to make the necessary arrangements for the ongoing clearance of all donor assistances providing for "disaster relief purposes", once an official request for international assistance has been submitted. The CCG is responsible for providing this information on donor assistance to Customs and Quarantine to facilitate this process including details on type, quantity, source, means of transportation, arrival point and estimated time of arrival.<sup>527</sup>

The NDMO Standard Operating Procedures 2013 also set out the obligations of the National Emergency Operations Centre<sup>528</sup> and the NDMO director<sup>529</sup> with regards international assistance which are variations of the general provisions mentioned above. The Government of Vanuatu also has agreements with France, Australia and NZ to provide assistance, particularly logistics, in the event of a major disaster<sup>530</sup> and with the Melanesia Spearhead Group, headquartered in Vanuatu, for the deployment of relief assistance when requested.<sup>531</sup>

There appear to be no requirements imposed upon international agencies providing aid.

523 NDA 2000, s4(2)(c).

524 Ibid, s4(2)(d).

525 National Disaster Plan 2010, at 26.

526 Ibid, at 29.

527 Ibid, at 29.

528 NDMO SOP 2013, at 31. Coordinate the response and recovery and included personnel from government and the Vanuatu Humanitarian Team i.e. Red Cross, NGO's, UN Agencies; donors, private sector etc. Control and direct the allocation of aid provided by government, bi-lateral, multilateral and non-governmental agencies. Coordinate requests for assistance

529 NDMO SOP 2013, at 11. Liaise and coordinate donor and external support relief assistance to disaster victims in Vanuatu. Develop a Donor Protocol for response to emergencies.

530 Vanuatu Country Preparedness Package, at 19. This grouping of foreign countries is referred to as FRANZ partners. FRANZ partners have a rotating chair between the three countries and meet twice a year, including at the start of the cyclone season in November to discuss the assets in the region and other operational considerations. Assistance from FRANZ partners may be requested by the Government of Vanuatu in writing. FRANZ partners have emergency response funds that can be released at the discretion of the respective High Commissioners.

531

## **4 Do Vanuatu's laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?**

The National Disaster Act states that the National Disaster Operations Centre will coordinate requests for aid. The National Disaster Plan provides that the Ministry of Foreign Affairs in coordination with the Aid Coordination Office will communicate with international agencies on assistance requested (as outlined above).

While there are a number of provisions contained in the various instruments outlines above outlining the processes for requesting international assistance, there appear to be no provisions for the termination of international assistance. In addition, there appear to be no provisions for unsolicited goods despite this being a major problem in the aftermath of Tropical Cyclone Pam.<sup>532</sup> Again, as mentioned above, provisions outlining a process for requesting and terminating offers of international disaster assistance and for unsolicited goods are contained in the draft recommendations for the updated National Disaster Act. In the meantime, the NDMO is promoting a coordinated information campaign to discourage unsolicited goods and encourage cash-based donations<sup>533</sup> to the Red Cross and other partner agencies with a presence within Vanuatu.<sup>534</sup>

In addition, the National Disaster Plan makes it clear that goods subject to biosecurity and quarantine will undergo standard scrutiny.<sup>535</sup> The NDMO has the right to refuse entry of donated relief items before they depart the country of donation.<sup>536</sup>

## **5 Do Vanuatu's laws and regulations provide for necessary legal facilities to be provided to international assisting actors?**

Vanuatu's regulatory frameworks currently make no provisions for legal facilities for international assisting actors. In practice, international actors simply enter Vanuatu on a Visitor's Visa and are supported by their local counterparts. Recommendations on these provisions have been made during the review of the current Act.

The Cyclone Support Plan sets out that the NDMO is to create a list of endorsed relief items. This list is to be publicised widely, and only these items will be eligible for import duty exemption.<sup>537</sup> It is unclear how such exemptions are handled.

532 The Challenges of Unsolicited Bilateral Donations in Pacific Humanitarian Responses, at 8.

533 Country Preparedness Package, at 29.

534 Cyclone Support Plan 2017–2018, at 26.

535 National Disaster Plan, at 29.

536 Cyclone Support Plan, at 27.



## **6 Do Vanuatu's laws and regulations set out quality standards for international assisting actors?**

There are minimal provisions regarding the oversight of international actors during a disaster response. These simply name the authority tasked with coordination rather than ensuring international actors are complying with humanitarian obligations. There are also minimal provisions regarding facilitating international relief goods and equipment, and for specialised equipment such as medications, transport and telecommunications, the current framework is silent. The Food Security and Agriculture Cluster has developed guidelines for standard relief assistance package.<sup>538</sup>

## **7 Does Vanuatu's laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?**

There are currently few provisions in Vanuatu's laws and regulations which provide legal facilities for international assisting actors and this eligibility requirements for international assisting actors are similarly sparse. International assisting actors currently enter Vanuatu on a Visitor's Visa and are further facilitated via their local counterparts or their specific cluster.

The National Disaster Act states that it is an offence to obstruct disaster operations and that a person must not obstruct or hinder an emergency services officer, a volunteer or police officer in the carrying out of operations under the Act could also apply to international actors.<sup>539</sup>

## **8 Do Vanuatu's laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?**

Vanuatu's regulatory frameworks do not establish a specialised unit for expediting the entry of international disaster assistance. The Cyclone Support Plan provides that Customs will implement a rapid process for import clearance of relief items during a State of Emergency. Under this plan NDC is also expected to provide guidance to Customs on disaster locations and what it regards as relief items, to ensure that fast tracking and exemptions can be applied to these items and locations.<sup>540</sup>

## **9 Do Vanuatu's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?**

The National Disaster Plan provides that the NDMO is responsible to the NDC for management of all funds. The NDMO SOP's outline a number of obligations that will apply to the National Disaster Committee Office in this role. These include ensuring correct financial documentation of all purchases, the registration of all incoming donor pledges and donations and monitoring and evaluation in line with funding agreements.<sup>541</sup> The SOP's also provide templates for a Donations/

537 Cyclone Support Plan, at 26.

538 Country Preparedness Package, at 29. See: National Disaster Management Office "Food Security & Agriculture Cluster (FSAC)" Government of the Republic of Vanuatu <[www.ndmo.gov.vu](http://www.ndmo.gov.vu)> for the guidelines.

539 National Disaster Act 2000, s 19.

540 Cyclone Support Plan, at 25.

541 NDMO SOP 2013, at 42.

Appeals log and a Relief Supplies Distribution/Receipt form requiring detailed information such as the item concerned, quantity, destination, transport, and who the item was received by.<sup>542</sup>

The Department of Finance and Treasury (within the Ministry of Finance and Economic Management) has overall responsibility for processing all payments as instructed by the NDMO.<sup>543</sup> A financial report, prepared by the Director to NDC is to be attached to any report at the end of all disaster operations to justify the level of government commitment.<sup>544</sup>

## **10** Do Vanuatu's laws and regulations outline procedures for international disaster assistance sent from, and transiting through Vanuatu?

There are currently no provisions in Vanuatu's legal frameworks to facilitate the speedy transit or transshipment of international disaster assistance from or across Vanuatu's national territory, in order to reach a disaster in another country.

### **Key Legislation**

- Bill for the Disaster Risk Management Act 2018 (not referred to in this report as it has not been adopted)
- Meteorology, Geological Hazards and Climate Change Act 2016
- National Disaster Act 2000
- Red Cross Society Act 1982

### **Key Policies**

- The Vanuatu National Disaster Management Office Standard Operating Procedures 2013
- Country Preparedness Package 2017
- National Disaster Plan 2010
- Priorities for Disaster Risk Reduction and Disaster Risk Management 2006–2015
- Policy on Climate Change and Disaster Induced Displacement 2018
- National Adaption Programme for Action 2007
- National Adaption Programme for Action 2006–2016
- Maewo Response and Recovery Action Plan 2018–2020
- Education on Natural Disaster Preparedness for Sustainable Development 2008
- Cyclone Support Plan 2016–2017
- Climate Change and Disaster Risk Reduction Policy 2016–2030

542 NDMO SOP 2013, Annex 2.

543 Country Preparedness Package, at 11.

544 National Disaster Plan 2010, at 30.





# The Fundamental Principles of the International Red Cross and Red Crescent Movement

**Humanity** / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** / It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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