



REPUBLIC OF NAURU

ENVIRONMENTAL MANAGEMENT AND CLIMATE CHANGE BILL 2020

No. of 2020

A Bill for an Act to make provision for the management and protection of the environment, climate change, the promotion of sustainable development, to facilitate compliance with the Republic's international and regional environment related obligations and for related purposes.

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short title

This Act may be cited as the *Environmental Management and Climate Change Act 2020*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Objective

The objective of this Act includes:

- (a) coordinating the role of the Government and the public in relation to all environmental management and protection decision making processes;
- (b) environment conservation while applying principles of sustainable use and development of natural resources;
- (c) promoting meaningful public and civil society involvement in relation to issues of environmental management and protection;
- (d) taking necessary measures to ensure that the Republic meets its international and regional obligations relating to the management or protection of the environment;
- (e) facilitating assessments and regulation of environmental impacts of any activity likely to affect it, prior to a proposed activity taking place;
- (f) taking any action necessary as will control or minimise pollution;
- (g) ensuring the proper collection, transportation and disposal of waste;
- (h) ensuring the protection of natural resources from pollution;
- (i) establishment of the Climate Change and Environment Protection Fund;
- (j) providing for arrangements and procedures including measures for accessing biological and genetic resources, their products and derivatives for scientific research, commercial and any other purposes and ensuring equitable sharing of benefits accruing therefrom;
- (k) formulating policies and issuing of guidelines;

- (l) promoting the understanding, management, conservation and protection of biological diversity; and
- (m) facilitating the implementation of necessary measures to strengthen the environmental resilience of the Republic to climate change.

4 **Application of the precautionary approach**

- (1) A person who has responsibilities, functions or powers under this Act shall apply the precautionary approach in the discharge or exercise of such responsibilities, functions and powers.
- (2) For the avoidance of doubt, the precautionary approach is applied where a certain activity relating to the environment has potential to cause harmful effects on the environment, human life and health, appropriate measures and activities for removal of the danger shall be undertaken prior to obtaining scientific evidence that the harmful effects have the potential to occur.

5 **Interpretation**

In this Act:

'activity' means the condition in which things are happening or being done;

'authorised officer' means a person appointed under Section 8;

'biological diversity or biodiversity' means the variability among living organisms from all sources including, inter alia, terrestrial, marine and aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

'biodiversity prospecting' means any activity undertaken to harvest or exploit all or any of the following:

- (a) samples of genetic resources;
- (b) samples of any derivatives of genetic resources;
- (c) the knowledge, innovation and customary practices of local communities associated with those genetic resources;
- (d) search for commercially valuable genetic resources and the collection of resources with an intention to commercialise resources;
- (e) academic or conservation research; or
- (f) commercial use of natural resources;

'Committee' means the Environmental Impact Assessment Committee established under Section 14;

'Department' means the Department responsible for Environment and Climate Change and any act required to be done by the Department is deemed to be authorised and directed by the Secretary;

'development' means foreign or local investment, enterprise or undertaking, industrial or commercial operation, scheme or change in land use, coastal areas and marine areas within Nauru's Exclusive Economic Zone and includes:

- (a) the construction, extension, renovation of a building or structure;
- (b) the carrying out of work, in, on, over or under land or sea;
- (c) the use of land, building, structure or work; and
- (d) the subdivision of land;

'environment' includes all natural and physical resources, the ecology, people and culture of the Republic and the social and economic relationships that exist between these elements;

'environmental impact' means an impact on the environment in the context of the proposed development or the effect of the development on the environment which includes the:

- (a) extent to which public health and safety are is affected or likely to be affected;
- (b) extent to which the unique characteristics of the geographic area are affected;
- (c) extent to which effects on the environment are likely to involve controversy;
- (d) extent to which unique or unknown risks will happen;
- (e) extent to which a precedent for future action is created;
- (f) potential for cumulative environmental impacts;
- (g) extent to which the natural functioning of the ecosystem is like to be inhibited;
- (h) extent that a cultural, traditional, natural, scientific or historic resource may be threatened;
- (i) potential threat to the existence of protected and endangered species or their critical habitat;

- (j) extent to which wildlife resources of ecological, commercial, subsistence and recreational importance are jeopardised; or
- (k) extent to which one aspect of use of a resource may conflict or contrary with another aspect of use of that resource;

'environmental impact assessment' means the identification, analysis, avoidance and mitigation of environmental and social impacts arising from any proposed development under Part 5 and the evaluation of the cost effectiveness and environmental consequences of alternative options to the proposed development;

'food security' exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life. Household food is the application of this concept to the family level, with individuals within households as the focus of concern;

'Government' means the Government of the Republic of Nauru;

'hazardous waste' means waste which is:

- (a) explosive;
- (b) oxidizing;
- (c) flammable;
- (d) irritant;
- (e) harmful;
- (f) toxic;
- (g) carcinogenic
- (h) has harmful effects on the environment and human health; or
- (i) a combination of any of the above;

'litter' means:

- (a) any solid or liquid material or combination of the same;
- (b) any other refuse, rubbish or waste material that is prescribed by Regulations;

'Minister' means the Minister who has administrative responsibility for Environment and Climate Change;

'natural resources' includes land, sand, coral rocks, soil, minerals, water, air and all plants and animals (and their habitats), whether native or introduced to the Republic and all natural materials or substances that can be exploited for economic gain;

'place' includes any land, building, facility, structure, aircraft, vehicle or vessel;

'pollution' means the direct or indirect introduction as a result of human activity of substances, vibrations, heat or noise into the air, water or land which may be harmful to human;

'Secretary' means the Secretary for the Department responsible for Environment and Climate Change;

'substance' means any solid, liquid or gas or a combination of one or more of the same;

'substantial development project' means any development activity listed under Schedule 2 or as may be determined by the Minister;

'sustainable development' means promoting development at a rate and in a way as to ensure that the quality of the environment and the supply of resources is maintained and, wherever practicable, enhanced to meet the needs of the present generation without compromising the needs of future generations;

'waste' means a substance that would cause or likely to cause an adverse effect if added to the environment and includes rubbish, slimes, fumes, smoke from mining or factories, other air emissions, or other industrial wastes, effluent, sludge, garbage, refuse, scrap, litter or other waste products of any kind;

'water' includes lake, lagoon, waterway, groundwater, coastal water and tank.

PART 2 – ADMINISTRATION

6 Authority of the Minister

The Minister has the authority to do all things necessary or convenient to attain or further the objectives of this Act.

7 Powers of the Secretary

(1) The Secretary has the power to do all things necessary or convenient for the implementation of this Act in his or her capacity as Head of the Department, including the power to:

- (a) do any act or thing authorised by this Act or any other written law;
- (b) oversee the ratification and coordinate the implementation of a treaty, convention or protocol;

- (c) facilitate partnerships with other countries and development partners on issues relating to environment management and protection;
- (d) review and determine environmental impact assessments;
- (e) prepare reports in relation to any environmental impact or the implementation, of the Republic's international and regional environmental obligations, as directed by the Minister or the Cabinet;
- (f) direct or instruct authorised officers on any duties or powers required to be performed;
- (g) engage consultants to assist the Department;
- (h) monitor any activity that has or is likely to have any environmental impact in any area of land or water;
- (i) advise the Minister and the Cabinet on all aspects of environmental management and conservation, including access and benefit sharing from genetic resources and associated traditional knowledge;
- (j) prepare and implement national environment management and protection plans and policies;
- (k) ensure and promote the use of sustainable technologies and renewable energy;
- (l) promote public awareness and education in relation to environmental management and protection issues;
- (m) collect information and establish record keeping, monitoring and reporting requirements as necessary to carry out the principles and objectives of this Act;
- (n) provide information and education to the public regarding the protection and improvement of the environment;
- (o) review, implement and enforce any written laws relating to the management and protection of the environment;
- (p) review and approve environmental impact assessments submitted in accordance with this Act or any other written law;
- (q) ensure observance of proper safeguards in the planning and execution of all substantial development projects, including those already in existence that have, or are likely to have significant environmental impacts;

- (r) prepare and disseminate state of the environment reports; and
 - (s) delegate in writing to an officer of the Department any power except the power of delegation.
- (2) Without limiting the generality of subsection (1), the powers of the Secretary in relation to the management of the environment shall include matters relating to:
- (a) climate change by providing guidance in the formulation and implementation of environmental and climate change policies, plans and programmes;
 - (b) ozone depleting substances;
 - (c) the movement or disposal of hazardous wastes and substances;
 - (d) desertification and drought relief;
 - (e) the management and protection of coastal areas;
 - (f) the conservation of endangered species;
 - (g) the preservation of biological diversity;
 - (h) waste management;
 - (i) promoting environmentally sound technologies and renewable energy;
 - (j) sustainable land use management;
 - (k) water management;
 - (l) natural disasters; and
 - (m) sanitation.
- (3) For the avoidance of doubt, this Act shall not affect the powers, functions and responsibilities of the Nauru Fisheries and Marine Resources Authority in relation to the implementation of the *Fisheries Act 1997* and the protection, conservation and management of fisheries and marine resources of the Republic required under other written laws.

8 Appointment of authorised officers

- (1) The Secretary shall be an authorised officer for the purposes of this Act.

- (2) The Minister may by Gazette notice appoint authorised officers.
- (3) An authorised officer appointed under this Section shall act under the directions or instructions of the Secretary.
- (4) An authorised officer appointed under this Section except a member of the Nauru Police Force shall be issued with an identification card duly signed by the Minister at the time of his or her appointment.
- (5) An authorised officer appointed under this Section shall produce his or her identification card on request.
- (6) Where an authorised officer fails to produce his or her identification card as required under subsection (5), he or she shall not exercise any powers under this Act.

9 Powers of authorised officers

- (1) Subject to subsection (2), an authorised officer may:
 - (a) at any reasonable time, enter any place to determine:
 - (i) the extent, if any, to which a substance may or is likely to cause an environmental impact;
 - (ii) the cause of any environmental impact that may or are likely to occur;
 - (iii) how an environmental impact may be prevented, eliminated or reduced; and
 - (iv) how the environment may be rehabilitated;
 - (b) enter and inspect any place at any reasonable time where the authorised officer reasonably believes that waste or hazardous waste can be found;
 - (c) enter and inspect any place at any reasonable time which the authorised officer reasonably believes a substance is likely to be released to the environment;
 - (d) enter and inspect any place at any reasonable time that the authorised officer reasonably believes is likely to contain documents related to:
 - (i) an activity or thing that is regulated under this Act; or
 - (ii) the release of a substance into the environment;

- (e) enter and inspect any place at any reasonable time that the authorised officer reasonably believes is or is required to be, the subject of a licence or permit granted under this Act;
 - (f) stop and inspect any vehicle at any reasonable time to determine whether it or the manner in which it is being operated complies with this Act;
 - (g) where the authorised officer reasonably believes that any substance, waste or hazardous waste has been discharged or is likely to be discharged which is causing or is likely to cause an environmental impact:
 - (i) require the person having the care, management or control of the substance, waste or hazardous waste to contain the substance, waste or hazardous waste in the place where it is found; or
 - (ii) remove the substance, waste or hazardous waste from the place where it is contained and issue a receipt for it;
 - (h) monitor the environmental impact of any activity, matter or substance, waste or hazardous waste;
 - (i) investigate the commission of any offence or the breach of any obligation in relation to the management or protection of the environment;
 - (j) monitor and ensure compliance with this Act;
 - (k) provide reports to the Secretary as may be required; or
 - (l) perform any other functions as may be prescribed.
- (2) An authorised officer shall not enter any residential premises except:
- (a) with the consent of the owner or lawful occupier of the residential premises; or
 - (b) under the authority of a warrant issued by a Resident Magistrate or a Judge.
- (3) For the purposes of subsections (1) and (2), an authorised officer may:
- (a) conduct any investigations as are necessary to monitor the environmental impact of any activity or matter or whether any provisions of this Act or any other written laws is or likely to be contravened;

- (b) take or remove samples of any substance, waste or hazardous waste for the purpose of analysis and testing pursuant to prescribed procedures;
 - (c) secure or take possession of any machinery, equipment, plant, animal or other thing for further investigation or as evidence for any contravention of this Act or any other written law;
 - (d) take photographs, measurements, make sketches or recordings in any form;
 - (e) require any person associated with the creation of an environmental impact to state his or her full name, address and occupation;
 - (f) require the production of any document, licence or permit relevant to the activity or matter under investigation;
 - (g) examine any document and may make or take copies of the document; and
 - (h) require from any person any assistance that is relevant to the investigation or monitoring activity.
- (4) On completion of an investigation, the authorised officer shall:
- (a) prepare a report on the investigation; and
 - (b) provide the report to the Secretary.
- (5) Where necessary, an authorised officer performing any duty or exercising any power may be accompanied by a police officer or any other person for the purposes of facilitating access, inspection or investigation.

PART 3 – REPORTING REQUIREMENTS

10 Annual report

- (1) The Secretary shall, as soon as practicable after the end of each financial year, provide an annual report to the Minister on:
- (a) the operations of the Department for that year; and
 - (b) any issues relevant to the management and protection of the environment.
- (2) The annual report shall be presented to the Cabinet by the Minister.

11 State of the Environment Report

- (1) The Secretary shall at least every 5 years, prepare a State of the Environment Report and provide the Report to the Minister.
- (2) The Report shall include:
 - (a) an assessment of the condition and trends, state of and threats to major environmental and natural resources;
 - (b) a review of the current use of natural resources;
 - (c) an assessment of social and economic development trends and their likely environmental impact;
 - (d) an identification and assessment of the significant trends in environmental values;
 - (e) a review of programs, activities and achievements of the Department, other Government Departments, statutory authorities and Instrumentalities of the Republic on the management and protection of the environment;
 - (f) an evaluation of the efficiency and effectiveness of environmental strategies implemented to achieve the objectives of this Act;
 - (g) the identification of activities that could be taken to improve the state of environment towards a more sustainable future; and
 - (h) any other additional matters the Secretary deems necessary.
- (3) The Minister shall table the Report in Parliament within 3 months of it being presented to him or her by the Secretary.

PART 4 – INTERNATIONAL AND REGIONAL ENVIRONMENTAL OBLIGATIONS

12 Conventions or Protocols to which this Part applies

- (1) This Part applies to the Conventions and Protocols listed under Schedule 1.
- (2) Schedule 1 may be amended by Regulations.

13 Implementation of the Conventions and Protocols

- (1) The Secretary shall:
 - (a) manage or participate in any project or part of a project, aimed at implementing any aspect of a Convention or Protocol;

- (b) advise on international and regional environmental Conventions and Protocols, including implementation strategies;
 - (c) recommend the enactment or amendment to any legislation to give effect to a Convention or Protocol;
 - (d) work in conjunction with relevant Government Departments and statutory authorities to implement any obligation under a Convention or Protocol;
 - (e) prepare and submit any report on a regular basis to the Minister and the Cabinet on the implementation of a Convention or Protocol;
 - (f) prepare and coordinate the preparation of any report required under a Convention or Protocol to ensure that the Republic meets its reporting obligations;
 - (g) liaise with regional and international organisations; and
 - (h) provide secretariat, administrative and technical support to any committee having the designated status of a competent national authority for a Convention or Protocol.
- (2) For the avoidance of doubt, this Part shall not:
- (a) apply to any Convention or Protocol relating to fisheries; or
 - (b) affect or restrict the role of any other Government department or statutory authority in relation to a Convention or Protocol to which this Part applies.

PART 5 – MONITORING OF SUBSTANTIAL DEVELOPMENT PROJECTS

14 Environmental Impact Assessment Committee

- (1) An Environmental Impact Assessment Committee is established.
- (2) This Committee shall consist of:
 - (a) the Director of Environment, who shall be the Chairperson;
 - (b) the Secretary for Climate Change and National Resilience, or his or her representative;
 - (c) the Director of Public Health or his or her representative;
 - (d) the Secretary for Finance or his or her representative;

- (e) a representative of the landowners to be nominated by the Nauru Lands Committee;
 - (f) a representative from the private sector;
 - (g) a representative of civil society;
 - (h) where necessary, the Chief Executive Officer or a person nominated by an instrumentality of the Republic which may have a similar or relevant activity which is being considered by the Committee; and
 - (i) such other person which the Minister may from time to time appoint.
- (3) The Committee shall co-opt any other persons it deems necessary for the performance of its functions.

15 Functions of the Committee

The Committee shall:

- (a) assess and determine project briefs, environmental impact assessments and environment management plans submitted under Section 17;
- (b) approve or refuse any applications;
- (c) where an application is approved, impose any conditions as prescribed;
- (d) where an application is refused, provide written reasons for the refusal;
- (e) screening application for access to and utilisation of genetic resources and biological diversity; and
- (f) carry out any necessary public consultations in relation to a substantial development project.

16 Disclosure of interest

- (1) Where a member of the Committee has an interest of a financial or fiduciary nature that conflicts with his or her function or duty under this Act, he or she shall promptly disclose the nature of such interest at the meeting.
- (2) Any conflict of interest disclosed under subsection (1) shall be recorded in the minutes of a Committee meeting.
- (3) Where a member contravenes subsection (1), such member may be removed from the Committee.

17 Application for substantial development projects

- (1) A person intending on undertaking a substantial development project as set out under Schedule 2 shall apply to the Secretary in the prescribed form and provide proof of payment of the prescribed fee for approval of the project.
- (2) An application under subsection (1) shall include:
 - (a) a project brief;
 - (b) an environment management plan; and
 - (c) a pollution control and waste management plan.
- (3) An environment management plan under subsection (2)(b) shall contain details of:
 - (a) any environmental impacts that the project will or likely to cause;
 - (b) a justification for the use or commitment of depletable or non-renewable resources, if any to the project;
 - (c) a reconciliation of short-term uses and long-term productivity of affected resources;
 - (d) the proposed action to monitor and mitigate environmental impacts; and
 - (e) any other matters which are relevant to the project.

18 Consideration of application for substantial development project

- (1) On receipt of an application under Section 17, the Secretary shall consider the application and accompanying documents and whether the proposed development project falls under any of the categories in Schedule 2.
- (2) Where the Secretary deems an environmental impact assessment is required, the Department shall develop a terms of reference for the environmental impact assessment to be carried out by the applicant.

19 Environmental impact assessment report

- (1) The applicant shall cause an environmental impact assessment to be carried out and to be provided to the Secretary.
- (2) An environmental impact assessment report under subsection (1) shall contain details of:

- (a) any environmental impacts that the project will or likely to cause;
 - (b) a justification for the use or commitment of depletable or non-renewable resources, if any to the project;
 - (c) a reconciliation of short-term uses and long-term productivity of affected resources;
 - (d) the proposed action to monitor and mitigate environmental impact; and
 - (e) any other matters which are relevant to the project.
- (3) On receipt of the environmental impact assessment report, the Secretary shall refer the report and the application to the Environmental Impact Assessment Committee for its consideration.

20 Consideration by Committee

- (1) On referral of an application and environmental impact assessment report under this Part by the Secretary, the Committee shall:
- (a) review the application;
 - (b) consider the environmental impact assessment report;
 - (c) consider the environment management plan;
 - (d) consider the pollution and waste management plan; and
 - (e) conduct any necessary consultations with relevant stakeholders on the merits of the application.
- (2) The Committee shall make a decision on the application within 3 months of receipt of such application from the Secretary.

21 Applicant to be informed

The Secretary shall advise the applicant in writing of the decision of the Committee within 14 days of the determination of the application.

PART 6 – ACCESS AND BENEFIT SHARING OF GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

22 Application for biodiversity prospecting permit

A person intending to undertake biodiversity prospecting shall apply and submit to the Secretary for a permit in the prescribed form and provide proof of payment of the prescribed fee.

23 Referral of application to Committee

On receipt of an application under Section 22, the Secretary shall refer the application to the Environmental Impact Assessment Committee established under Section 14.

24 Functions of the Committee

For the purpose of this Part, the Committee shall:

- (a) determine any applications received under Section 22;
- (b) conduct consultations with relevant stakeholders on the merits of the application; and
- (c) assess the environmental impacts of the biodiversity prospecting intended to be undertaken.

25 Consideration of biodiversity prospecting application by Committee

- (1) Upon receipt of an application under Section 23, the Committee shall determine the application within 3 months of receipt of the application.
- (2) The Committee may:
 - (a) approve or refuse any applications;
 - (b) where an application is approved, impose any conditions as may be prescribed; or
 - (c) where an application is refused, provide reasons for the refusal.
- (3) The Cabinet may make regulations prescribing any other matters as may be relevant or necessary for the purpose of this Section.

26 Access permit

- (1) Where an application is approved by the Committee, the Secretary shall issue a permit in the prescribed form to the applicant.
- (2) A permit issued under subsection (1) shall contain:
 - (a) period of validity of the permit;
 - (b) species being sought;
 - (c) full description of the approved activities;

- (d) details of the location at which the activities may be carried out; and
 - (e) approved methods of collection, sampling and evaluation.
- (3) No person shall carry out any biodiversity prospecting activities without a permit issued under this Section.
 - (4) A person who contravenes this Section, commits an offence and upon conviction is liable to a fine not exceeding \$100,000.00 or to a term of imprisonment not exceeding 24 months or to both.
 - (5) Despite subsection (1), the permit holder shall enter into an access agreement with the Government, in consultation and with the approval of the relevant landowners.
 - (6) The agreement under subsection (5) shall include the terms and conditions of the resources to be taken or researched.

27 Applicant to be informed

The Secretary shall advise the applicant in writing of the decision of the Committee within 14 days of the determination of the application.

28 Revocation or variation of permit

- (1) The Secretary may revoke a permit where:
 - (a) there has been a breach of any conditions of the permit;
 - (b) the activities have resulted in environmental impacts; or
 - (c) any information provided in the application is false in any material particular.
- (2) The Secretary may vary any condition of a permit where he or she deems necessary.

29 Application to export specimens

- (1) A specimen collected under a permit shall not be exported unless:
 - (a) the Secretary gives approval in the prescribed form; and
 - (b) export laws requirements are complied with.
- (2) The Secretary shall not issue an approval under subsection (1) unless requirements under this Act have been complied with.
- (3) Any Government department having lawful authority in relation to exports shall not allow the export of any specimen under this Part unless there is proof of a written approval from the Secretary.

- (4) Where a person fails to comply with this Section, the Department shall claim full right of the specimen to be exported out of the Republic.

PART 7 – POLLUTION CONTROL AND WASTE MANAGEMENT

30 Control of litter

- (1) All litter shall be placed:
- (a) in a contained manner;
 - (b) separate from vegetation material; and
 - (c) in a place where it will be collected for disposal.
- (2) A person who contravenes subsection (1), by discharging litter in an open or public place commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00 or to a term of imprisonment not exceeding 12 months or to both.

31 Business premises

- (1) A person who owns or occupies any business premises shall:
- (a) be responsible for litter of any kind generated at the business premises; and
 - (b) dispose of the litter at the landfill.
- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00 or to a term of imprisonment not exceeding 12 months or to both.

32 Liability of driver of a vehicle

- (1) No person in a vehicle shall throw out or deposit any litter of any kind onto a public road.
- (2) No driver of a motor vehicle shall allow a person in his or her vehicle to throw out or deposit any litter of any kind onto a public road.
- (3) A person who contravenes this Section, commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00 or to a term of imprisonment not exceeding 12 months or to both.

33 Disposal by burning

- (1) Any substance containing plastic or any hazardous material shall not be disposed of by burning.

- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00.

34 Excessive emissions from vehicles

- (1) No person shall drive a vehicle which emits excessive emissions.
- (2) An owner of a vehicle shall not allow another person to drive his or her vehicle which emits excessive emissions.
- (3) A person who contravenes this Section, commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00.
- (4) In this Section, '*excessive emissions*' means:
 - (a) for a diesel-fuelled vehicle when operated normally:
 - (i) visible smoke continuously for more than 5 seconds; or
 - (ii) a cloud of visible smoke which is larger than one metre in diameter at any point; and
 - (b) for a petrol-fuelled vehicle, when operated normally, any visible smoke.

35 Pollution of waters

- (1) No person shall cause or allow the discharge of any substance, waste or hazardous waste into a body of water that:
 - (a) results in a change in the physical, chemical or biological condition of the water;
 - (b) causes a visible change to the water or surface of the water;
 - (c) makes or is likely to make, the water detrimental to the health or safety of persons, property, animals or plants; or
 - (d) interferes with or is likely to interfere with, the exercise or enjoyment of any person's right in relation to the water.
- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (3) For the avoidance of doubt, this Section shall not affect the powers, functions and responsibilities of any other Government Department or statutory authority in relation to marine pollution, water sanitation and water resources.

36 Prohibition of discharge of hazardous wastes, chemicals, oil, into the environment

- (1) No person shall discharge any hazardous waste, chemical, oil or mixture containing oil onto any place.
- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (3) Where a person is convicted of an offence under this Section, the convicted person may, in addition to any other order imposed by the Court:
 - (a) pay the cost of the removal of substance and the restoration of the environment damaged or destroyed as a result of the discharge; and
 - (b) pay for reparation, restoration, restitution or compensation as may be determined by the Secretary.
- (4) A person convicted of an offence under this Section shall mitigate the environmental impact of the discharge by:
 - (a) cleaning up the discharge using the best available clean up methods; and
 - (b) complying with the directions as the Secretary may, from time to time, prescribe.
- (5) Where a person convicted of an offence under this Section fails to comply with subsection (4), the Secretary may apply to the Court for an order:
 - (a) to dispose of the convicted person's assets used for the discharge of hazardous waste, chemicals and oils to meet the costs of taking the necessary measures; and
 - (b) for any other remedial restoration measures.
- (6) For the avoidance of doubt, this Section shall not affect the powers, functions and responsibilities of any other Government Department or statutory authority in relation to marine pollution, water sanitation and water resources.

37 Management of hazardous chemicals and products containing hazardous chemicals

- (1) The Secretary, shall, in consultation with other relevant Government Departments and stakeholders, establish criteria for

the classification of hazardous chemicals and products containing hazardous chemicals.

- (2) For the purpose of this Section, the Cabinet may make regulations for the management of hazardous chemicals and products containing hazardous chemicals.

38 Designation of wastes

- (1) An object, substance or thing may be determined to be waste or hazardous waste for the purpose of this Act:
 - (a) as prescribed by regulations; or
 - (b) as determined by the Secretary by notice in the Gazette.
- (2) A determination made under this Section may apply to a particular object or thing or to a class or type of object, substance or thing.

PART 8 – CLIMATE CHANGE

39 Addressing climate change

- (1) The Secretary, in conjunction with other Government Departments, relevant international and regional agencies and all stakeholders shall formulate and implement strategies and programs to:
 - (a) facilitate and implement projects to protect water resources, coastal areas, land, biological diversity, fisheries and public infrastructure;
 - (b) put in place strategies and action plans to address a global warming, rising sea level and other effects of climate change;
 - (c) address the environmental impacts of climate change on water resources, coastal areas, lands and land usage, food security, biological diversity, fisheries, economic welfare, public infrastructure and its vulnerability to natural disasters; and
 - (d) participate in international and regional meetings and forums with a view to obtaining the fullest possible assistance to address the implications of climate change and undertake adaptation initiatives.
- (2) For the purposes of this Section, the Cabinet may make regulations relating to climate change and in particular, subsection (1) which may include:
 - (a) the management, protection and conservation of fresh water resources;
 - (b) matters concerning drought prevention and response;

- (c) critical environmental restoration activities; and
- (d) the protection, improvement and expansion of relevant public infrastructure.

PART 9 – CLIMATE CHANGE AND ENVIRONMENT PROTECTION FUND

40 Climate Change and Environment Protection Fund

- (1) A Climate Change and Environment Protection Fund is established for:
 - (a) the protection and conservation of the reef and foreshore;
 - (b) the preservation and protection of flora and fauna;
 - (c) the prevention of coastal erosion and maintenance of high-water mark;
 - (d) food security;
 - (e) health;
 - (f) soil conservation;
 - (g) critical environmental restoration activities;
 - (h) the management of sensitive and fragile ecosystems;
 - (i) the protection from pollution of and removal of pollution from land, water and air; and
 - (j) other purposes consistent with the provisions of this Act and as prescribed by regulations.
- (2) The Climate Change and Environment Protection Fund shall consist of:
 - (a) any compensation, expenses or costs awarded by the Court in relation to any offence under this Act which shall be paid into the Fund;
 - (b) grants, donations or contributions from international organisations;
 - (c) any amount appropriated for the Fund from the Treasury Fund; and
 - (d) any environment related levies or taxes imposed by any written law.

41 Withdrawal from Climate Change and Environment Protection Fund

- (1) No withdrawal shall be made or authorised from the Fund unless:
 - (a) the withdrawal is for any of the purpose for which the Fund is established; and
 - (b) the purpose of the withdrawal has been authorised by the Cabinet in consultation with the Minister.
- (2) The Secretary and the Secretary for Finance are authorised co-signatories of the Fund.

42 Audit of Climate Change and Environment Protection Fund

- (1) The Secretary shall:
 - (a) keep proper accounts and records of all transactions and affairs of the Fund;
 - (b) ensure that all monies received are properly brought to account;
 - (c) all payments out of the Fund are correctly made and properly authorised; and
 - (d) adequate control is maintained over its assets and liabilities.
- (2) The Secretary shall, within 2 months after the end of each financial year, submit:
 - (a) to the Cabinet an annual report in respect of that financial year containing:
 - (i) a report on the operations of the Fund; and
 - (ii) any other information as the Cabinet may direct in writing;
 - (b) to the Auditor General the accounts of the Fund for the financial year.
- (3) The Auditor General shall:
 - (a) audit the accounts of the Fund; and
 - (b) within three months after receipt by him or her of the accounts, submit his or her opinion on the accounts to the Cabinet.
- (4) The Minister shall submit the audit report on the Fund as part of the annual report under Section 10 in Parliament as soon as practicable on receipt of the report.

PART 10 – ENFORCEMENT

43 Precautionary Notice

- (1) Where an authorised officer reasonably suspects that an activity or matter may have environmental impact, he or she may issue a notice in the prescribed form to a person in control of or associated with the activity or matter to comply with any requirements under subsection (2).
- (2) A notice issued under subsection (1) may require any of the following:
 - (a) that information be provided in relation to the activity or matter to satisfy the Secretary that there is no environmental impact;
 - (b) that alternative activities or operating techniques be considered and employed to avoid or decrease the environmental impact;
 - (c) that improvements or alterations be made in relation to the activity or matter to the satisfaction of the Secretary, to avoid or decrease the environmental impact; and
 - (d) any other requirement, as determined by the Secretary, to ensure that the activity or matter does not have an environmental impact.
- (3) A person served with a notice under this Section shall:
 - (a) comply with the requirements including the specified period to rectify the activity or matter; and
 - (b) satisfy the Secretary that the activity or matter has no environmental impact.

44 Notice to Cease

- (1) A Notice to Cease an act or activity may be issued whether or not a Precautionary Notice has been served under Section 43.
- (2) Where the Secretary deems that an act or activity is happening or likely to happen which involves an immediate threat or risk to the environment, he or she shall recommend to the Minister to issue a Notice under this Section.
- (3) A Notice issued under this Section shall:
 - (a) be in the prescribed form;
 - (b) specify the act or activity and the nature of its environmental impact; and

(c) require that the act or activity cease or not be done, until the Minister is satisfied that the environmental impact no longer exists.

(4) A Notice may be served under this Section despite any permit issued in relation to the act or activity.

45 Notice to Improve

(1) An authorised officer may issue a Notice to Improve to a person that he or she has reasonable cause to believe is contravening or has contravened this Act.

(2) A Notice under subsection (1) shall be in the prescribed form.

46 Prohibition Notice

Where the Secretary deems that an act or activity, is or likely to have an environmental impact, he or she may issue to any person a Prohibition Notice in the prescribed form to cease the act or activity.

47 Power to issue environmental offence fixed penalty notice

(1) An authorised officer may issue an environmental offence fixed penalty notice on a person who contravenes this Act.

(2) The Cabinet may make regulations prescribing the:

(a) offences for which fixed penalties shall be imposed;

(b) penalties for each corresponding prescribed fixed penalty offences;

(c) fixed penalty notice which a police officer or an authorised officer may serve to the person who is alleged to have contravened this Act or regulations;

(d) time frame for payment of the prescribed penalty;

(e) prosecution procedure and additional penalties to be imposed by the court;

(f) procedure for dealing with fixed penalty notice; and

(g) any other matters for the effective enforcement of fixed penalty notices.

PART 11 – OFFENCES

48 Non-compliance with conditions of permit

A person who fails to comply with any condition of a permit issued under this Act, commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 24 months or to both.

49 Offences against authorised officers

A person who:

- (a) hinders or obstructs an authorised officer in the performance of his or her duties or the exercise of any powers prescribed under this Act;
- (b) induces or incites any other person to hinder or obstruct an authorised officer acting in accordance with this Act;
- (c) by words or conduct falsely represents that he or she is an authorised officer or who otherwise impersonates an authorised officer;
- (d) fails to state or wrongly states his or her name or address to an authorised officer in the course of the duties of the authorised officer under this Act;
- (e) refuses to give access to records to an authorised officer in accordance with this Act;
- (f) refuses to give assistance to an authorised officer in accordance with this Act; or
- (g) provides false or misleading information to an authorised officer,

commits an offence and upon conviction is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or to both.

50 Offences in breach of prescribed notices

A person who, having been served a Notice under Section 43, 44, 45 or 46:

- (a) fails to comply with a requirement stated in the Notice; or
- (b) fails to satisfy the Secretary that an activity or matter is not or no longer has an environmental impact within the specified period,

commits an offence, and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 24 months or to both.

51 Offences by corporation

- (1) Where an offence has been committed under this Act by a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons or was purporting to act in the capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he or she proves that:
 - (a) the offence was committed without his or her consent or collusion; and
 - (b) he or she exercised all necessary diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.
- (2) Upon conviction, the court may impose:
 - (a) in the case of a corporation, firm, society or other body of persons, a fine not exceeding \$200,000; and
 - (b) in the case of a Director, manager, secretary or officer or a partner of the corporation, firm, society or other body of persons, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 24 months or to both.

52 Additional order

In addition to a penalty imposed under this Act, the court may order the person convicted to:

- (a) do any act to reinstate the environment as far as practicable to its state prior to the commission of the offence;
- (b) pay to the Government any sum representing the cost of remedial works required to mitigate the environmental impact; or
- (c) pay any compensation to the Government or to any other person affected by the offence, in respect of the damage caused to the environment.

PART 12 – MISCELLANEOUS

53 Appeal to Minister

- (1) Any person aggrieved by a decision of the Committee may appeal against the decision to the Minister no later than 30 days of receipt of the decision.
- (2) The Minister may confirm, set aside or vary the decision of the Committee or make any other order as he or she deems necessary.

54 Application of this Act to phosphate mining

- (1) This Act shall not apply to phosphate mining in the Republic.
- (2) Despite subsection (1), the Cabinet may require the Secretary to:
 - (a) engage such persons to carry out an assessment for any environmental impacts of phosphate mining; and
 - (b) assess the economic impacts of any restrictions on the basis of environmental impacts on phosphate mining.

55 Application of this Act for domestic buildings

- (1) This Act shall not apply to any buildings constructed solely for residential purposes, the health and sanitary requirements for which are provided for under the *Public Health Act*.
- (2) The Minister in consultation with the Cabinet may by order, declare such other classes or categories of buildings to be exempt from the requirements of this Act.
- (3) A person who intends to construct a building may apply to the Secretary for exemption and providing reasons for such exemption.

56 Non-disclosure of documents

Any document or information collected for the purposes of an examination or inspection shall not be disclosed unless the document or information is to be disclosed:

- (a) for official purposes;
- (b) with the consent of the person who provided the document or information or to whom the information relates;
- (c) in a court or tribunal; or
- (d) in the public interest.

57 Return of seized items

Where an authorised officer takes possession of a substance, plant, machinery or any other item or thing from any person or entity, the person or entity may request the Secretary in writing for the return of the substance, plant, machinery or other item or thing.

58 Licence and permit conditions

It is a condition of any licence or permit issued under this Act that the holder shall allow authorised officers to carry out inspections required or authorised by this Act of any place, other than residential premises, to which the licence or permit relates.

59 Emergency orders

(1) The Minister may make an emergency order where he or she deems that a situation poses a serious threat or risk to the environment that immediately requires the making of an order for the protection of the environment.

(2) An emergency order made under subsection (1) shall:

(a) be consistent with the *National Disaster Risk Management Act 2016*; and

(b) continue to have effect until revocation by the Minister.

60 Protection from liability

The Government, Minister, Secretary, Department, Committee and authorised officers shall not be liable for any loss or damage arising from or be subject to any criminal prosecution and civil claims for the performance of a function or duty or exercise of a power in good faith under this Act or any other written law.

61 Jurisdiction of the court

The District Court has jurisdiction to hear and determine all offences under this Act and, has the power to impose penalties for offences under this Act.

62 Regulations

(1) The Cabinet may make Regulations to give effect to this Act including the conservation and sustainable management of the environment.

(2) Without limiting subsection (1), Regulations may be made to:

(a) prescribe offences;

- (b) provide for additional powers of authorised officers, including power to seize and forfeit property used in relation to environmental impacts or the breach of any law relating to environmental management and protection;
- (c) provide for the implementation of any obligation under a Convention or Protocol to which Part 4 applies;
- (d) prescribe requirements and procedures for the assessment of environmental impacts arising from any development of a nature prescribed by Regulations and any matter incidental to the requirements and procedures;
- (e) protect wildlife, plant life and any other part of the biological diversity of the Republic and declare reserves or conservation areas and the management of reserves and conservation areas;
- (f) regulate or prohibit trade and commerce in connection with wildlife, including rare and endangered species;
- (g) regulate or prohibit the pollution of the air, water or land and the depositing or dumping of litter, rubbish or any substance of a dangerous, noxious or offensive nature;
- (h) establish procedures and related purposes for the control of pollution of the environment by smell;
- (i) control noise pollution;
- (j) control air pollution;
- (k) prescribe measures and related purposes for the discharge of sewage into the waters;
- (l) prescribe measures and related purposes that the operator of a plant shall undertake for the treatment of sewage before it is discharged into the water;
- (m) prescribe additional provisions relating to waste management which shall provide for:
 - (i) categories of waste;
 - (ii) containment of waste;
 - (iii) storage of waste;
 - (iv) transportation of waste;
 - (v) collection of waste; and

- (vi) disposal of waste;
- (n) provide for the managing of landfill sites and otherwise providing for the administration, management and regulation of waste management processes, facilities and services;
- (o) provide for the preservation and control of soil erosion and siltation and the taking of gravel, sand soil, rock, coral or like material;
- (p) prescribe forms and fees for applications, licence or permits under this Act or any other written law relating to the management of the environment or for the provision of advisory, inspection or other services by the Department;
- (q) provide for regulating or prohibiting the importation, use or dumping of non-recyclable materials or products;
- (r) establish any Committees as may be necessary to perform delegated functions on matters relating to the management and protection of the environment;
- (s) prescribe requirements of the context of research and biodiversity prospecting; and
- (t) establish one or more Funds for climate change and environmental protection related purposes and prescribe any matter relevant to the management of the Funds and the application of monies held in them.

SCHEDULE 1

[Part 4; Section 12]

CONVENTIONS AND PROTOCOLS TO WHICH PART 4 APPLIES

Convention	Abbreviation	Date of signing, ratification or accession
1.1 Convention Concerning the Protection of the World Cultural and Natural Heritage (Adopted at Paris on 23 November 1972)	WHC	
1.2 Vienna Convention for the Protection of the Ozone Layer (Adopted at Vienna on 22 March 1985)		Accession 11/12/2001
1.2 Montreal Protocol on Substances that Deplete the Ozone Layer (Adopted at Montreal on 16 September 1987)	Montreal Protocol	Accession 11/12/2001
1.3 Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal (Basel Convention) (Adopted at Basel on 22 March 1989)	Basel Convention	Accession 11/12/2001
1.4 United Nations Framework Convention on Climate Change (Adopted at New York on 9 May 1992)	UNFCCC	Accession 8/16/2001
1.5 Paris Agreement (Adopted at Paris on 15 December 2015)		Ratification 4/22/2016
1.6 Convention on Biological Diversity (Adopted at Rio de Janeiro on 5 June 1992)	CBD	Ratification 11/11/1993
1.7 Cartagena Protocol to the Convention on Biological Diversity (Adopted at Montreal on 29 January 2000)	Biosafety Protocol	Accession 11/12/2001
1.8 United Nations Convention of Combat Desertification (Adopted at Paris on 17 June 1994)	UNCCD	Ratification 22/09/19

1.9 Stockholm Convention on Persistent Organic Pollutants (Adopted at Stockholm on 22 May 2001)		Ratification 5/9/2002
1.10 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters 1972 (Adopted at London on 13 November 1972)	London Convention	Accession 26/07/1982
2.1 Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Trans boundary Movement and Management of Hazardous Waste within the South Pacific Region (Adopted at Waigani, Papua New Guinea on 16 September 1995)	Waigani Convention	Signature 16/09/1995
2.2 <i>Convention</i> for the Protection of Natural Resources and Environment of the South Pacific Region (1986)	Noumea Convention	Ratified 28/08/1995

SCHEDULE 2

[Part 5; Section 17]

SUBSTANTIAL DEVELOPMENT PROJECTS

The following activities are deemed substantial development projects:

- (a) electricity generating stations;
- (b) marinas comprising pontoons, jetties, piers, dry storage, moorings vessels primarily for pleasure or recreation;
- (c) sand or gravel extraction from any beach within 50 metres of the high tide mark;
- (d) liquid, chemical, oil or petroleum refineries, storage or waste processing works, landfill;
- (e) filling stations;
- (f) farms for the propagation of marine, estuarine or freshwater organisms;
- (g) pre-mix bitumen works;
- (h) rubber or plastics works;
- (i) the removal of trees or natural vegetation of any area in excess of 10 square metres x 10 square metres;
- (j) construction of roads, wharfs, barrages, embankments or levees which affect the flow of tidal waters;
- (k) tourism or recreational resorts, buildings or facilities;
- (l) research activities;
- (m) biodiversity prospecting; and
- (n) other development projects as may be prescribed by the Cabinet.