

REPUBLIC OF NAURU

ENVIRONMENTAL MANAGEMENT AND CLIMATE CHANGE BILL 2020

EXPLANATORY MEMORANDUM

The *Environmental Management and Climate Change Bill 2020* is a Bill for the *Environmental Management and Climate Change Act 2020*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Environmental Management and Climate Change Act 2020*.

Clause 2 sets out when the Bill's provisions will commence which is on certification by the Speaker.

Clause 3 provides for the objectives of the Bill which include:

- coordinating the role of Government in relation to all environmental management and decision making processes;
- environment conservation while applying principles of sustainable use and development of natural resources;
- promoting meaningful public and civil society involvement in relation to issues of environment management;
- taking necessary measures to ensure that the Government meets international obligations relating to the management or protection of the environment;
- facilitating assessments and regulation of the environmental impacts of any activity likely to affect it, prior to a proposed activity taking place;
- taking any action necessary as will control or minimise pollution;
- ensuring the proper collection, transportation and disposal of waste;
- ensuring the protection of natural resources from pollution;
- establishment of the Climate Change and Environment Protection Fund;
- 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 therefrom;
- formulating policies and issuing of guidelines;
- promoting the understanding, management, conservation and protection of biological diversity; and

- facilitating the implementation of necessary measures to strengthen the environmental resilience of the Republic and its environment to climate change.

The objectives focus on the purpose of the Bill and the role each person or office has in ensuring the management and protection of the environment.

Clause 4 provides for the international law approach known as the precautionary approach that is applied to all aspects in the implementation of this Bill. This approach means that if there is not sufficient scientific information available to determine whether something is or is not a danger to the environment or human health, then a decision should be made to not approve the importation or use of that thing until there is sufficient information available to make the determination.

Clause 5 defines certain key terms used in the Bill.

PART 2 – ADMINISTRATION

Clause 6 provides that the Minister has the power to do all things necessary or convenient to be done to attain or further the objectives of the Bill.

Clause 7 lists the general powers of the Secretary in relation to environmental protection and management and the implementation of the Bill. The Secretary has the power to do all things necessary or convenient to be done to attain or further the objectives of the Bill in the Secretary's capacity as the Head of Department including the power to:

- do any act or thing authorised by this Act or any other written law;
- oversee ratification and coordinate the implementation of a treaty, convention or protocol;
- facilitate partnerships with other countries and development partners on issues relating to environment management and protection;
- review and determine environmental impact assessments;
- prepare reports in relation to any environmental impact or the implementation, of the Republic's international environmental obligations, as directed by the Minister or Cabinet;
- direct or instruct authorised officers of any duties imposed upon such authorised officers;
- engage consultants to assist the Department;
- monitoring any activity that has or is likely to have any environmental impact in any area of land or water;
- 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;
- prepare and implement national environment management and protection plans and policies;
- ensure and promote the use of sustainable technologies and renewable energy;

- promote public awareness and education in relation to environmental management and protection of the environment;
- collect information and establish record keeping, monitoring and reporting requirements as necessary to carry out the principles and objectives of this Act;
- provide information and education to the public regarding the protection and improvement of the environment;
- review and approve environmental impact assessments;
- review, implement and enforce any written laws relating to the management and protection of the environment;
- 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;
- prepare and disseminate state of the environment reports;
- delegate in writing any power except the power of delegation.

Subclause (2) sets out the powers of the Secretary specifically in relation to the management of the environment which includes matters relating to climate change; ozone depletion; the movement or disposal of hazardous wastes and substances; desertification and drought relief; the management and protection of coastal areas; the conservation of endangered species; the preservation of biological diversity; waste management; promoting sound technologies and renewable energy, sustainable land use management, water management, natural disasters and sanitation.

Subclause (3) clarifies that this Bill does not affect the powers, functions and responsibilities of the Nauru Fisheries and Marine Resources Authority in the implementation of the *Fisheries Act 1997* and the protection, conservation and management of the fisheries and marine resources of the Republic.

Clause 8 provides for the appointment of authorised officers. Subclause (1) provides that the Secretary is an authorised officer.

Subclause (2) empowers the Minister to appoint authorised officers. Subclause (3) requires authorised officers to act under the directions or instructions of the Secretary.

Subclause (4) requires all authorised officers appointed, except police officers, to be issued with an identification card and should produce the same upon request. This is necessary to ensure that authorised officers are easily identifiable. Subclause (5) prevents an authorised officer from exercising any powers under this Bill unless he or she produces his or her identification card. For example, an authorised officer must show his or her identification card to an owner or lawful occupier of premises, upon request, before such authorised officer enters the premises, or to an individual in the performance of any other duties or functions under the Act.

Authorised officers are required to conduct themselves in a manner in accordance with their lawful powers and must conduct themselves in a manner which shows respect to all members of the public.

Clause 9 outlines the powers of authorised officers. Subclause (1) provides for authorised officers to:

- at any reasonable time, enter any place to ascertain the environmental impacts of a substance, the cause of any environmental impact, how an environment impact may be prevented, eliminated or reduced and how the environment may be rehabilitated;
- enter and inspect any place where the authorised officer reasonably believes waste can be found;
- enter and inspect any place at any reasonable time where the authorised officer reasonably believes a substance is likely to be released to the environment;
- enter and inspect any place at any reasonable time that the authorised officer reasonably believes contain documents relating to an activity or thing that is regulated under the Bill or the release of a substance into the environment;
- 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 Bill;
- 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 Bill;
- where the authorised officer reasonably believes that any substance has been discharged or is likely to be discharged which is causing or is likely to cause an environmental impact: require the person having the care, management or control of the substance to contain the substance in the place where it is found; or remove the substance from the place where it is contained and issue a receipt for it;
- monitor the environmental impact of an activity, matter or substance;
- investigate the commission of any offence or the breach of any obligation in relation to the management or protection of the environment;
- monitor and ensure compliance with the Bill;
- provide reports to the Secretary as may be required; and
- perform such other functions as may be prescribed.

Subclause (2) prevents an authorised officer from entering residential premises unless it is with the consent of the owner or lawful occupier or, under the authority of a warrant. This will ensure that homeowners and lawful occupiers are protected from unjustified intrusions of privacy and property.

Subclause (3) further outlines the powers of authorised officers specific to investigations. This subclause allows authorised officers to, inter alia, conduct investigations as are necessary to monitor the environmental impact of any activity or matter or whether any provisions of this Bill or any other written laws is or likely to be contravened; take or remove samples of any substance for analysis and testing pursuant to prescribed procedures; secure or

take possession of any machinery, equipment, plant or animal or thing for further investigation or as evidence; take photographs, measurements, make sketches or recordings in any form; require disclosure of full name, address and occupation by any person associated with the creation of an environmental impact; require the production of any document, licence or permit relevant to the activity or matter under investigation; examine any document and make or take copies of such documents; require assistance that is relevant to the investigation or monitoring activity from any other person.

Subclause (4) requires the authorised officer to prepare a report of his or her investigation to be provided to the Secretary. Subclause (5) provides that an authorised officer may be accompanied by a police officer or any other person when carrying out a duty or exercising a power, for the purposes of facilitating access, inspection or investigation.

PART 3 – REPORTING REQUIREMENTS

Clause 10 requires the Secretary to provide an annual report to the Minister relating to the operations of the Department for that year and any issues relevant to the management and protection of the environment. Subclause (2) requires that the annual report be submitted to the Cabinet as well by the Minister.

The annual report will better inform the Minister, the Government and the community on the state of Nauru's environment and on the effectiveness of different management approaches implemented for that year.

Clause 11 requires the Secretary to prepare a State of the Environment Report every 5 years and to provide such report to the Minister. Subclause (2) sets out the contents of the report which include:

- an assessment of the condition and trends, state and threats of major environmental and natural resources;
- a review of the current use of natural resources;
- an assessment of social and economic development trends and their likely environmental impact;
- an identification and assessment of the significant trends in environmental values;
- 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;
- an evaluation of the efficiency and effectiveness of environmental strategies implemented to achieve the objectives of this Bill;
- the identification of activities that could be taken to improve the state of environment towards a more sustainable future; and
- any other additional matters the Secretary deems necessary.

Subclause (3) requires the Minister to table the report in Parliament within 3 months of it being presented to him or her by the Secretary. This demonstrates the accountability of the Government to the Parliament and the people of Nauru.

A state of the environment report basically provides information about environmental and social conditions, trends and pressures for Nauru and the surrounding seas. Such report will form the basis for effective environmental and sustainable development planning by examining the current condition of the environmental indicators influenced by national, regional and global pressures.

PART 4 – INTERNATIONAL AND REGIONAL ENVIRONMENTAL OBLIGATIONS

Clause 12 lists through Schedule 1 the international environmental Conventions and Protocols to which the Republic is a party. The list in Schedule 1 may be amended by Regulations. There are a number of international and environmental Conventions and Protocols that Nauru is yet to be a party to. Once Nauru becomes a party to a Convention or Protocol, the list will be amended accordingly.

Clause 13 provides for the Secretary's functions in relation to the observance of the Republic's obligations under the Conventions and Protocols listed in Schedule 1. Subclause (1) provides that the Secretary shall:

- manage or participate in any project or part of a project, aimed at implementing any aspect of a Convention or Protocol;
- advise on international and regional environmental Conventions and Protocols, including implementation strategies;
- recommend the enactment or amendment to any legislation to give effect to a Convention or Protocol;
- work in conjunction with relevant Government Departments and statutory authorities to implement any obligation under a Convention or Protocol;
- prepare and submit any report on a regular basis to the Minister and the Cabinet on the implementation of a Convention or Protocol;
- prepare and coordinate the preparation of any report required under a Convention or Protocol to ensure that the Republic meets its reporting obligations;
- liaise with regional and international organisations; and
- provide secretariat, administrative and technical support to any committee having the designated status of a competent national authority for a Convention or Protocol.

Subclause (2) clarifies that this Part does not affect or restrict the role of any other Government department or statutory authority in relation to a Convention or Protocol. This ensures that there is no overlapping of functions and duplication of work amongst the different Departments and statutory authorities.

PART 5 – MONITORING OF SUBSTANTIAL DEVELOPMENT PROJECTS

Clause 14 relates to the Environmental Impact Assessment Committee. This Clause establishes an Environmental Assessment Committee that will be chaired by the Director of Environment and will consist of the following persons:

- Secretary for Climate Change and National Resilience, or his or her representative;
- Director of Public Health or his or her representative;
- Secretary for Finance or his or her representative;
- a representative of the landowners to be nominated by the Nauru Lands Committee;
- a representative from the private sector;
- a representative of civil society;
- 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
- such other person which the Minister may from time to time appoint.

The membership of this Committee takes into account the different needs of the Committee whether scientific, custom, technical and the commercial issues which may arise. Where necessary, the Committee may co-opt such persons for the performance of its functions. The relevant instrumentalities are included as part of the Committee. For example, if the activity under consideration is to do with marine works. In that case, the Secretary shall inform the Nauru Fisheries and Marine Resources Authority and Nauru Maritime and Ports Authority to be included in the Committee.

Clause 15 provides the functions of the Committee which includes the assessment and determination of applications under Clause 17 inclusive of environmental impact assessment reports and environment management plans; approving or refusing applications; imposing conditions where an application is approved and where an application is refused, providing reasons for the same; screening of application for access to and utilisation of genetic resources and biological diversity; and carry out any necessary public consultations in relation to a substantial development project.

Clause 16 requires a member of the Committee to disclose any conflict of interest whether financial or fiduciary in nature. Subclause (2) requires any conflict of interest to be recorded in the minutes of the Committee meeting. Subclause (3) provides that should a member fail to disclose interest, he or she may be removed from the Committee.

Clause 17 imposes a restriction on substantial development projects so that any substantial development project will need approval before it can commence. This ensures that any person desiring to undertake a substantial development project complies with our laws and provides all the necessary information required in order for an informed decision to be made in relation to any substantial development project.

Subclause (1) requires a person intending to undertake a substantial development project to apply to the Secretary in the prescribed form for approval of the project. The application form shall be accompanied by proof of payment of the prescribed fee. Projects deemed as substantial development projects are listed in Schedule 2.

Subclause (2) requires that an application under subclause (1) shall include a project brief, an environmental impact assessment as well as an environment management plan. The onus is on the person applying to ensure that the proposed project takes the environment into consideration and that there should be safeguards in place so that there will be no environmental impacts.

Subclause (3) requires an environmental impact assessment report to set out details of:

- any environmental impact that the project will or likely to cause;
- a justification for the use or commitment of depletable or non-renewable resources if any to the project;
- a reconciliation of short-term uses and long-term productivity of the affected resources;
- the proposed action to monitor and mitigate environmental impacts and the proposed plan to monitor environmental impacts arising out of the project; and
- such other relevant matters.

The additional requirements for persons intending to undertake a substantial development project is necessary to ensure the protection and conservation of environment.

Clause 18 relates to consideration of an application for a substantial development project. Subclause (1) allows the Secretary to consider each application received and accompanying documents to determine whether the proposed project is a type that will fall under any category under Schedule 2.

Subclause (2) allows the Department to develop a terms of reference should the Secretary deem that an environmental impact assessment is required.

Clause 19 relates to an environmental impact assessment report. Subclause (1) requires the applicant to cause the carrying out of an environmental impact assessment and provide the same to the Secretary.

Subclause (2) requires the following to be included in the environmental impact assessment:

- any environmental impact that the project will or likely to cause;
- a justification for the use or commitment of depletable or non-renewable resources if any to the project;

- a reconciliation of short-term uses and long-term productivity of the affected resources;
- the proposed action to monitor and mitigate environmental impacts and the proposed plan to monitor environmental impacts arising out of the project; and
- such other relevant matters.

Subclause (3) requires the Secretary to refer the report and application to the Committee for determination.

Clause 20 allows the Committee to do the following on the referral to it of an application and environmental impact assessment report by the Secretary:

- review the application;
- consider the environmental impact assessment report;
- consider the environment management plan;
- consider the pollution and waste management plan; and
- conduct any necessary consultations with relevant stakeholders on the merits of the application.

Subclause (2) requires the Committee to make a decision within 3 months of receipt of the application from the Secretary.

Clause 21 requires the Secretary to advise the applicant in writing of the Committee's decision within 14 days of such decision being made by the Committee.

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

Clause 22 requires a person intending to undertake biodiversity prospecting to apply and submit to the Secretary in the prescribed form for a permit to undertake such activity. The application form shall be accompanied by proof of payment of the prescribed fee.

Clause 23 allows the Secretary to refer an application received under Clause 22 to the Committee established under Clause 14 for determination.

Clause 24 sets out the functions of the Committee for the purpose of Part 6 of the Bill. The Committee shall determine applications received under Clause 22; conduct consultations with relevant stakeholders on the merits of the application; and assess the environmental impacts of the application.

Clause 25 provides that in making a determination on an application, the Committee shall also consider submissions received after any consultations. This is required so that an informed decision is made by the Committee. The Committee may approve or refuse an

application; where an application is approved, impose such conditions as may be prescribed; and where an application is refused, provide reasons for such refusal.

Subclause (3) allows for the Cabinet to make regulations to prescribe such other matters as may be relevant or necessary for the purpose of this Clause.

Clause 26 relates to access permits. Subclause (1) provides that the Secretary may issue a permit to an applicant in the prescribed form where the Committee approves such applicant's application.

Subclause (2) provides the details that need to be in the permit. This includes the validity of the permit, the species that are being sought, full description of approved activities, details of locations at which the activities may be carried out, approved methods of collection, sampling and evaluation.

Subclause (3) prohibits any biodiversity prospecting activities without a permit.

Subclause (4) states that any contravention of this Clause is an offence and person is liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 24 months or to both.

Subclause (5) requires a permit holder to enter into an access agreement with the Government in consultation and with the approval of the relevant landowners. Subclause (6) provides that the access agreement shall include the terms and conditions of the resources to be taken or researched.

Clause 27 requires the Secretary to advise the applicant in writing of the decision within 14 days of such decision being made by the Committee.

Clause 28 relates to the revocation or variation of permits. Subclause (1) allows the Secretary to either suspend or revoke a permit if there has been a breach of any conditions of such permit, the activities have resulted in environmental impacts; or any information provided in the application was false in any material particular. Subclause (2) allows the Secretary to vary any conditions of a permit where the Secretary deems necessary.

Clause 29 relates to an application to export specimens. Subclause (1) prevents the exportation of any specimen collected in accordance with a permit unless the Secretary gives approval in the prescribed form and export requirements under other written laws have been complied with.

Subclause (2) requires the Secretary to not give approval for export unless all conditions under the biodiversity prospecting permit have been complied with. Subclause (3) requires any Government department with lawful authority over exports to not allow the export of any specimen under this Part without the approval of the Secretary.

The biodiversity prospecting permit does not allow for exporting specimens. Additional approval by the Secretary is needed for export.

Subclause (4) provides that should a person fail to comply with this Clause, the Department can claim full right of the specimen to be exported out of the Republic.

PART 7 – POLLUTION CONTROL AND WASTE MANAGEMENT

Clause 30 requires all litter to be placed in a contained manner, separate from vegetation material and in a place where it will be collected for disposal. It is an offence for any person to discharge or throw litter in an open or public place. Penalty – fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or to both.

Clause 31 requires owners of business premises or occupiers of business premises to be responsible for such litter generated at such premises and dispose of the same at the rubbish dump. Penalty – fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months or to both.

Proper waste management practices by business owners and by all persons are necessary to keep the Republic clean and litter free.

Clause 32 prohibits a person in a vehicle from throwing out or depositing any litter of any such kind onto a public road. Subclause (2) requires drivers of vehicles to not allow a person in the vehicle to throw or deposit any litter.

Penalty – fine not exceeding \$5,000 or term of imprisonment not exceeding 12 months or to both.

Clause 33 prohibits the disposal of substances containing plastic or any hazardous material by burning. Subclause (2) is the offence provision. Penalty: a fine not exceeding \$5,000.00.

Clause 34 requires persons to not drive vehicles which emit excessive emissions. Owners of such vehicles are required to not allow anyone to drive their vehicles if such vehicles are emitting excessive emissions. Penalty – fine not exceeding \$5,000 or term of imprisonment not exceeding 12 months or both.

Subclause (2) also defines '*excessive emissions*' to mean:

- (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.

This Clause ensures drivers and owners of vehicles have their vehicles serviced and environmentally friendly to keep the air on the island less polluted.

Clause 35 relates to pollution of waters. The discharge of any substance, waste or hazardous waste into water that causes or results in changes in the physical, chemical or biological condition of the water or to the water or surface of the water, makes or likely to make the water detrimental to the health and safety of persons, property, animals or plants, or interferes with or likely to interfere with the exercise of enjoyment of any person's right in relation to the water is prohibited by this Clause.

Subclause (2) – penalty provision: fine not exceeding \$10,000 or imprisonment term not exceeding 24 months or to both.

Subclause (3) clarifies that for the avoidance of doubt, the powers, functions and responsibilities for any other Government department or statutory authority in relation to marine pollution, water sanitation and water resources will not be affected by this Clause.

Clause 36 prohibits the discharge of hazardous wastes, chemicals, oil etc. into the environment. Subclause (1) prohibits the discharge of any hazardous waste, chemical, oil or mixture containing oil onto any place.

Subclause (2) is the offence provision. Penalty: fine not exceeding \$10,000 or term of imprisonment not exceeding 24 months or to both.

Subclause (3) provides for additional penalties that the court may impose against a person convicted under this Clause. This includes payment of the cost of removal of any substance and the restoration of the environment damaged or destroyed as a result of the discharge; and payment for the reparation, restoration, restitution or compensation as may be determined by the Department. This is part and parcel of the 'polluter pays principle' where whoever pollutes, pays the price because of the pollution caused.

Subclause (4) requires a person convicted of an offence under this Clause to clean up any discharge using the best available clean up methods; and to comply with such other directions the Department may from time to time prescribed.

Subclause (5) allows the Secretary where a person convicted of an offence fails to comply with subclause (4), to apply to the Court for an order to dispose of such person's assets used to discharge hazardous waste, chemicals and oils to meet the costs of taking necessary measures to clean up discharge and other remedial restoration measures.

Subclause (6) clarifies that for the avoidance of doubt, the powers, functions and responsibilities for any other Government department or statutory authority in relation to marine pollution, water sanitation and water resources will not be affected by this Clause.

Clause 37 relates to the management of hazardous chemicals and products containing hazardous chemicals. Subclause (1) allows the Department, in conjunction with other relevant Government Departments and stakeholders to establish criteria for the classification of hazardous chemicals and products containing hazardous chemicals.

Subclause (2) allows the Cabinet to make regulations for the management of hazardous chemicals and products containing hazardous chemicals.

Clause 38 allows the designation of wastes whether by regulations or as determined by the Secretary by notice in the Gazette and may be applied to a particular object or thing or to a class or type of object, substance or thing.

PART 8 – CLIMATE CHANGE

Clause 39 addresses climate change. This Clause allows the Department to facilitate and implement strategies, projects and programs that will help the Republic to take measures of adapting to impacts of climate change and to proactively work with regional and international communities in protecting the earth's climate system.

Subclause (2) authorises the Cabinet to make regulations including for any matter associated with the response to climate change and to implement strategies and programs to provide for the protection and conservation of Nauru's fresh water resources, matters concerning drought prevention and response and the protection, improvement and expansion of relevant public infrastructure.

PART 9 – CLIMATE CHANGE AND ENVIRONMENT PROTECTION FUND

Clause 40 establishes the Climate Change and Environment Protection Fund which will be used for:

- the protection and conservation of the reef and foreshore;
- the preservation and protection of flora and fauna;
- the prevention of coastal erosion and maintenance of high-water mark;
- food security;
- health;
- soil conservation;
- critical environmental restoration activities;
- the management of sensitive and fragile ecosystems;

- the protection from pollution of and removal of pollution from land, water and air; and
- other purposes consistent with the provisions of this Act and as prescribed by regulations.

Subclause (2) provides that the Fund shall consist of any compensation, expenses or costs awarded by the court, grants, donations or contributions from international organisations, as well as any amounts appropriated for the Fund from the Treasury Fund; any environment related levies and taxes as imposed by any written law.

Clause 41 prevents the withdrawal of money from the Fund unless it is for the purpose for which it is established and such purpose has been authorised by the Cabinet. The Secretary and the Secretary for Finance will be co-signatories of the Fund.

Clause 42 requires the accounts of the Fund to be kept and recorded; audited and annual reports to be submitted as well. This Clause is necessary for checks and balances for governance, along with a transparent and efficient system; as well auditing financial records of the Fund.

PART 10 – ENFORCEMENT

Clause 43 empowers authorised officers in subclause (1) to issue precautionary notices to persons where there is reasonable suspicion that an environmental impact may be happening. An environmental impact would be as a result of any activity, matter or thing. Such a notice would require the person to prove that the environment is not being damaged or to change their activities or operations to avoid such damage.

Subclause (2) sets out what a notice may require such as: information to be provided in relation to the activity, matter or thing to satisfy the Secretary that the environment is not being adversely impacted; alternative activities or operating techniques be considered and used to avoid or decrease the impacts on the environment; that improvements or alterations be made in relation to the activity, matter or thing to the satisfaction of the Secretary to avoid or decrease the impact on the environment; and any other requirement the Secretary may determine.

Subclause (3) requires a person served with a notice under this Clause to comply with the requirements of the notice and to satisfy the Secretary that the activity, matter or thing is not adversely affecting the environment.

Clause 44 gives the Secretary to issue a notice to cease an act or activity on any person whose act or activity involves an immediate threat or risk to the environment requiring such person to stop the activity that the person is undertaking.

Subclause (3) provides that the notice shall specify the act or activity and the nature of its impact on the environment; and require that the act or activity ceases or not be done until the Minister is satisfied that the threat or risk no longer exists.

Subclause (4) allows for a notice to be served despite a permit issued for such act or activity.

Clause 45 allows the issuance by an authorised officer of a notice to improve where there is reason to believe that a person carrying out a particular activity is contravening or has contravened this Bill. Such notice shall be issued in the prescribed form. The form will be prescribed by regulations.

Clause 46 authorises the Secretary to issue a prohibition notice to any person where the Secretary deems that an act or activity is likely to have an environmental impact.

Clause 47 empowers authorised officers to issue environmental offence fixed penalty notices to persons who are suspected of committing an offence under the Bill. Subclause (2) allows the Cabinet to make regulations for the purposes of the Clause. The regulations may prescribe the:

- fixed penalty offences;
- penalties;
- notice the police or authorised officers may serve on the alleged offender;
- time frame for payment of the prescribed penalty;
- prosecution procedure and additional penalties to be imposed by the Court;
- procedure for fixed penalty notice;
- any other matters for the effective enforcement of fixed penalty notices.

PART 11 – OFFENCES

Clause 48 provides that a person who fails to comply with any permit condition 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.

Clause 49 is the offence provision relating to authorised officers. Offences against authorised officers include hindering or obstructing authorised officers in the performance of duties under the Bill, inducing or inciting others to hinder or obstruct an authorised officer, impersonating authorised officer, giving wrong information, refusing assistance to an authorised officer; providing false or misleading information to an authorised officer.

Penalty: fine not exceeding \$5,000.00 or term of imprisonment not exceeding 12 months or to both.

Clause 50 provides that it is an offence if any person fails to comply with Notices issued under Clauses 43, 44, 45 or 46 as well as failing to satisfy the Secretary that any activity or

matter no longer has an environmental impact within the time stipulated. Penalty: fine not exceeding \$10,000.00 and term of imprisonment not exceeding 24 months or to both.

Clause 51 provides for an offence provision for any act committed by a body corporate and those managing the corporations. The provision allows the Corporation to be charged for any offences committed. In addition to the corporation being charged, those in the management control of the corporations can also be charged. If found guilty, the Corporation can be fined up to \$200,000. The management employees are liable to a fine of not more than \$20,000 or to a term of imprisonment of not more than 24 months or to both.

Clause 52 provides that the court in addition to any other penalty imposed under this Clause may order the convicted person to do any act to reinstate the environment as far as practicable to its state prior to the commission of the offence; pay to the Government any sum representing the cost of remedial works required to mitigate the environmental impact; or 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

Clause 53 is the provision allowing appeals to be made to the Minister where a person is aggrieved by a decision of the Committee. Such person may appeal to the Minister within 30 days of receiving the decision.

Subclause (2) empowers the Minister to confirm, set aside or vary the decision of the Committee or to make such other order as the Minister deems necessary.

Clause 54 recognises phosphate is and has been the economic backbone of the Republic. It is important that the livelihood of the nation and the people is considered by the Cabinet. Therefore, this Bill will not apply to phosphate mining.

Clause 55 provides for the application of the Bill to domestic buildings. The requirements of the Bill do not apply to buildings constructed for residential purposes.

Subclause (2) allows the Minister in consultation with the Cabinet to by order, declare such classes or categories of buildings to be exempted from the requirements of the Bill. Subclause (3) provides that a person intending to construct a building may apply to the Secretary for an exemption and to provide reasons for seeking such an exemption.

Clause 56 prevents the disclosure of any information or document obtained during an examination or inspection. Such information or document may only be disclosed for official purposes, with the consent of the person who provided the document or information or to whom the information relates, in a court or tribunal or in the public interest.

Clause 57 provides that the Secretary may decide on the return of seized items obtained by the authorised officer on the application of any person or entity to whom the seized items belong.

Clause 58 requires holders of licences or permits granted under this Bill to allow authorised officers to inspect any place to which such licences or permits relates. This however does not apply to residential premises.

Clause 59 empowers the Minister to issue emergency orders in cases of emergency where the damage to the Republic's environment and its biological diversity is significantly adverse. Any emergency order made shall be consistent with this Bill and the *National Disaster Risk Management Act 2016* and shall continue to have effect until revoked by the Minister.

Clause 60 provides for indemnities from personal liabilities for the various personnel, namely the Government, Minister, Secretary, Department, Committee and authorised officers who exercise powers and functions under this Act, from any criminal prosecutions and civil claims provided they carried out their functions and exercised their powers in good faith.

Clause 61 provides that the District Court can hear and determine all offences under the Bill.

Clause 62 is the regulation making power for the Cabinet. This clause provides for an extensive and non-exhaustive list of regulations the Cabinet may make. Such regulations include those in relation to many aspects of environmental management and the implementation of relevant international Conventions or Protocols which can be addressed in accordance with Government's priorities and when the Department has the capacity to effectively undertake.