

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No. 64 of 2000.

*Environment Act 2000.*

**ARRANGEMENT OF SECTIONS.**

**PART 1. - PRELIMINARY.**

1. Compliance with Constitutional requirements.
2. Interpretation -
  - “activity”
  - “approval in principle”
  - “authorized person”
  - “beneficial value”
  - “carrying out an activity”
  - “Clean-up order”
  - “contaminant”
  - “contaminants licence or permit”
  - “contamination of the environment”
  - “Council”
  - “customary land”
  - “customary rights to the use of water or land”
  - “Director”
  - “domestic purposes”
  - “element”
  - “Emergency Authorization”
  - “Emergency Direction”
  - “environment”
  - “environment permit”
  - “Environmental Code of Practice”
  - “environmental harm”
  - “environmental impact assessment”
  - “environmental improvement plan”
  - “environmental management programme”
  - “environmental plan approval”
  - “Environment Protection Order”
  - “Environment Policy”
  - “governmental authority”
  - “hazardous contaminant”
  - “inception report”
  - “level 1 activity”
  - “level 2 activity”
  - “level 3 activity”
  - “litter”
  - “material environmental harm”
  - “matters of national importance”
  - “Operational Procedure”
  - “person”
  - “permit”
  - “premises”
  - “prescribed”
  - “proponent”
  - “protected area”
  - “repealed Acts”
  - “register”
  - “segment”
  - “trade”
  - “this Act”
  - “water”

“water-course”  
“water investigation permit”  
“water-source”  
“water-works”.

3. Application.

**PART II. - OBJECTS AND GENERAL ENVIRONMENTAL DUTY.**

4. Objects.
5. Matters of national importance.
6. How the object of this Act is to be achieved.
7. General environmental duty.
8. Duty to notify unlawful environmental harm.
9. Responsibility for environmental harm.
10. Unlawful environmental harm.
11. Causing serious environmental harm.
12. Causing material environmental harm.
13. Causing environmental harm.

**PART III. - ADMINISTRATION.**

14. Functions and Powers of the Minister.
15. Director of Environment.
16. Functions and powers of Director of Environment.
17. Establishment and appointment of Environment Council.
18. Objects of the Council.
19. Powers and Functions of the Council.
20. Leave of absence of members.
21. Vacation of office.
22. Vacancy not to affect Council’s powers or functions.
23. Council’s Quorum and procedures.
24. Working committees.
25. Immunity of Council members, etc.
26. Environment Consultative Group.
27. Functions of the Environment Consultative Group.
28. Proceedings of the Environment Consultative Group.
29. Provincial Environment Committees.

**PART IV. - ENVIRONMENT POLICIES.**

30. Preparation of policies.
31. Nature of policies.
32. Contents of policies.
33. Procedure for making policies.
34. Simplified procedure for making certain policies.
35. Interim policy.
36. Effect of environment policies.
37. Amendment and variation of Environment Policy.
38. Environmental Codes of Practice.
39. Provincial Environment Policies.
40. Warning Notice.

**PART V. - ENVIRONMENT PERMITS.**

***Division 1. - Interpretation.***

- 41. Carrying out of an activity.
- 42. Level 1,2 and 3 Activities.
- 43. Existing Activities.

***Division 2. - Obligation to have a Permit.***

- 44. Obligation to have a permit and rights of permit holders.
- 45. Notice to apply for a Permit.
- 46. Restraint on approval by other authorities.

***Division 3. - Environmental Impact Assessment.***

- 47. Interpretation -  
“preparatory work”.
- 48. Registration of Intention to carry out preparatory work.
- 49. Offence of failing to register intention to carry out preparatory work.
- 50. Notice to undertake Environmental Impact Assessment.
- 51. Environmental Impact Assessment.
- 52. Inception report.
- 53. Environmental Impact Statement.
- 54. Assessment.
- 55. Public Review and Submissions.
- 56. Acceptance of Environmental Impact Statement.
- 57. Referral to Council.
- 58. Council’s Recommendation.
- 59. Minister may grant Approval in principle.

***Division 4. - Applications.***

- 60. Application for a permit.
- 61. Acceptance of applications.
- 62. Applications in relation to Level 3 activities etc.
- 63. Procedures in relation to permit applications.
- 64. Dispensing with notification, referral and consultation requirements.
- 65. Criteria for grant and conditions of permit.
- 66. Conditions of Permits.
- 67. Procedures for the issue of permits.
- 68. Review of Director’s Decision
- 69. Stay of operation of original decision

***Division 5. - Administration.***

- 70. Procedure for administration of Permits.
- 71. Amendment.
- 72. Suspension or cancellation.
- 73. Offences in relation to Permits.

**PART VI. - ENVIRONMENTAL MANAGEMENT.**

- 74. Environmental audits and investigations.
- 75. Environmental improvement plans.
- 76. Emergency Authorizations.
- 77. Data Collection.

**PART VII. - WATER.**

*Division 1. - Interpretation.*

78. Interpretation.

*Division 2. - Rights in relation to water.*

79. Vesting of rights in State.  
80. Rights of the public to take water.  
81. Rights of owner, etc., of land near water course, etc.,  
82. Rights conferred by Permit relating to water use.  
83. Rights in Improvements.  
84. Transmission of water under permit, etc.,  
85. Acquisition of land.  
86. Notice to landholders of exercise of powers.

*Division 3. - Compensation.*

87. Compensation.

*Division 4. - Investigations.*

88. Official investigations.  
89. Water investigation permits.  
90. Rights conferred by water investigation permits.  
91. Assignment of water investigation permits.  
92. Surrender of water investigation permits.  
93. Cancellation of water investigation permits.  
94. Reports of investigations.

*Division 5. - Protection of water resources.*

95. Actions in case of drought.

**PART VIII. - FINANCIAL PROVISIONS.**

96. Charges.  
97. Environmental protection trust fund.  
98. Environmental levy.  
99. Environmental bonds.  
100. Miscellaneous Charges.

**PART IX. - ENFORCEMENT.**

*Division 1. - Orders and Directions.*

101. Environment protection orders.  
102. Offence of failing to comply with Environment Protection Order.  
103. Clean up Order.  
104. Offence of failing to comply with Clean up Order.  
105. Recovery of costs.  
106. Emergency Direction.  
107. Offence of failing to comply with Emergency Direction.  
108. Requirement for information.  
109. Review.

***Division 2. - Offences.***

- 110. Offence of interfering with monitoring equipment.
- 111. General Defence.
- 112. Notice of defence to charge of unlawful environmental harm.
- 113. Liability of permit holders.
- 114. Offence in relation to provision of information.
- 115. General Penalty.
- 116. Continuing Offences.
- 117. Proof of Intention.

***Division 3. - Appointment and powers of authorized officers.***

- 118. Appointment of analysts and authorized officers.
- 119. Protection of Director, authorized officers etc. from liability.
- 120. Powers of Authorized Officers.
- 121. Power to require name and address.
- 122. Power to require answers to questions.
- 123. Offences in relation to Authorized Officers.

***Division 4. - Proceedings.***

- 124. Institution of proceedings.
- 125. Service.
- 126. Liability of corporate officers.
- 127. Evidence.
- 128. Forfeiture of items on conviction.
- 129. Damages and recovery of costs on conviction.
- 130. Court may order action to minimise environmental harm.

**PART X. - MISCELLANEOUS.**

- 131. Register.
- 132. Operational Procedures.
- 133. Regulations.

**PART XI. - REPEAL, TRANSITIONAL AND SAVINGS.**

- 134. Repeal.
- 135. References to repealed Acts, etc.,
- 136. Approvals, permits, licences, etc., to continue in force.
- 137. Recovery of fees under *Water Resources Act (repealed)*.
- 138. Compensation under *Water Resources Act (repealed)*.
- 139. Actions, etc., not to abate.
- 140. Regulations to resolve difficulties with transitional provisions.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2000

AN ACT

entitled

*Environment Act 2000,*

Being an Act to provide for and give effect to the National Goals and Directive Principles and in particular -

- (a) to provide for protection of the environment in accordance with the Fourth National Goal and Directive Principle (**Natural Resources and Environment**) of the *Constitution*; and
- (b) to regulate the environmental impacts of development activities in order to promote sustainable development of the environment and the economic, social and physical well-being of people by safeguarding the life-supporting capacity of air, water, soil and ecosystems for present and future generations and avoiding, remedying and mitigating any adverse effects of activities on the environment; and
- (c) to provide for the protection of the environment from environmental harm; and
- (d) to provide for the management of national water resources and the responsibility for their management; and
- (e) to repeal various Acts,  
and for other related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State acting with, and in accordance with, the advice of the Minister.

## PART I. - PRELIMINARY.

### 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*Qualified rights*) of the *Constitution*, namely:-
- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
  - (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
  - (c) the right to privacy conferred by Section 49 of the *Constitution*; and
  - (d) the right to freedom of information conferred by Section 51 of the *Constitution*; and
  - (e) the right to freedom of movement conferred by Section 52 of the *Constitution*,
- is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purpose of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

- (3) For the purpose of Section 53(1) (*Protection from unjust deprivation of property*) of the *Constitution* -
- (a) purposes and the reason for which this Act permits -
    - (i) protection of the environment from environmental harm; and
    - (ii) control, prevention and minimisation of the contamination of the environment; and
  - (b) the purposes specified in Section 85(1),

are hereby declared to be public purposes and further required for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, that is so declared and so described for the purposes of Section 53 of the *Constitution*.

### 2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“activity” means an activity which results or is likely to result in a change to the environment;

“approval in principle” means an approval in principle by the Minister under Section 59;

“authorized person” means a person authorized for the purposes of this Act under Section 118;

“beneficial value” means a quality or characteristic of the environment or any element or segment of the environment, which -

- (a) is conducive to ecological health, public benefit, welfare, safety, health or aesthetic enjoyment and which requires protection from environmental harm; or
- (b) is declared in an Environment Policy or permit to be a beneficial value;

“carrying out an activity” has the meaning given in Section 41;

“Clean-up Order” means a Clean-up Order issued under Section 103;

“contaminant” means -

- (a) a gas, liquid, or solid; or
- (b) an odour; or
- (c) an organism (whether alive or dead), including a virus; or
- (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
- (e) a combination of contaminants,

which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous contaminant, ozone-depleting substance or any litter;

“contaminants licence or permit” means a permit or licence granted under the *Environmental Contaminants Act (repealed)*;

“contamination of the environment” means the release (whether by an act or omission) of a contaminant into the environment;

“Council” means the Environment Council appointed under Section 17;

“customary land” means customary land within the meaning of the *Land Act 1996*;

“customary rights to the use of water or land ” means rights to the use of water or land -

- (a) that are regulated by custom; and
- (b) that are being availed of at the time in question, or, in the normal course of land management, would be availed of in a customary manner within a reasonable period after that time;

“Director” means the Director of Environment under Section 15;

“domestic purposes”, in relation to water, includes household uses and use for watering trees, shrubs and plants and grass lawns, forming part of a garden surrounding a dwelling-house not being a garden having an area exceeding 0.5 ha or a garden used for commercial or business purposes;

“element”, in relation to the environment, means any of the principal constituent parts of the environment

including water, atmosphere, land, vegetation, climate, sound, odour, aesthetics, flora and fauna;  
“Emergency Authorization” means an Emergency Authorization under Section 76;  
“Emergency Direction” means an Emergency Direction under Section 106;  
“environment” includes -

- (a) ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (e) the social, economic, aesthetic and cultural conditions which affect the matters stated in Paragraphs (a) to (d) of this definition or which are affected by those matters;

“environment permit” means an environment permit issued under Part V and includes a permit, licence or approval which is deemed to be a permit under Section 139;

“environmental audit or investigation” means a periodic documented evaluation of an activity which provides information on compliance and determines ways in which the carrying out of the activity may be improved to protect the environment;

“Environmental Code of Practice” means an Environmental Code of Practice issued under Section 38;

“environmental harm” means any change to the environment, or any part of the environment, which has a detrimental effect on any beneficial value relating to the environment, and -

- (a) may be caused by an act or omission whether the harm -
  - (i) is a direct or indirect result of the act or omission; or
  - (ii) results from the act or omission alone or from the combined effects of the act or omission and any other act or omission; and
- (b) without in any way limiting the meaning of environmental harm, a person shall be deemed to have caused environmental harm if that person -
  - (i) causes or permits to be placed in or so that it may be released into the environment any contaminant which is prohibited by or under this Act or does not comply with any standard prescribed for that contaminant; or
  - (ii) causes or permits the release of any contaminant into the environment in contravention of this Act; or
  - (iii) uses any chemical substance or fuel the use of which is prohibited by or under this Act; or
  - (iv) contravenes any regulation dealing with the use of any ozone depleting substance, or the manufacture, assembly, operation, maintenance, removal, sale or disposal of goods, equipment, machinery, or plant containing or using an ozone-depleting substance; or
  - (v) places a contaminant in any position where it could reasonably be expected to gain access to waters in circumstances where if access was gained the contaminant would result in the waters being changed in a manner prohibited by this Act or which does not comply with any standard prescribed for that contaminant; or
  - (vi) causes or permits the temperature of the receiving waters to be raised or lowered by more than prescribed limits; or
  - (vii) establishes on land a site for the disposal of refuse, garbage, soil, rock or other solid or liquid waste so as to be obnoxious or unduly offensive to the senses of human beings or so as to interfere with any ground water in a manner prohibited by this Act or which does not comply with any standard prescribed for that contaminant;

“environmental impact assessment” means the process described in Section 51;

“environmental impact statement” means a statement under Section 53;

“environmental improvement plan” means a plan approved under Section 75 that details the steps which will be involved in a transition to a requirement of an Environment Policy or of this Act and that when carried out achieves compliance with this Act;

“environmental management programme” means a programme to manage all environmental risks of an activity, which programme shall include identification of risks, internal and external monitoring and reporting, contingency planning and plans for corrective action;

“environmental plan approval” means an approval of an environmental plan given under the *Environmental Planning Act (repealed)*;

“Environment Protection Order” means an Environment Protection Order issued under Section 101;

“Environment Policy” means an Environment Policy approved under Part IV but does not include a Provincial Environment Policy;

“existing permit holder” means the holder of a permit at any given point in time;

“governmental authority” includes a Minister, Departmental Head, head of a statutory authority or body, a member of a Provincial Government or Local-level Government, Provincial Government body, Local Government Council or Local Government Authority;

“hazardous contaminant” means a substance prescribed by regulation as a hazardous contaminant under Section 133(2);

“inception report” means a report prepared under Section 52;

“level 1 activity” means an activity prescribed by the Regulations to be a level 1 activity for the purposes of this Act;

“level 2 activity” means an activity prescribed by the Regulations to be a level 2 activity for the purposes of this Act;

“level 3 activity” means an activity prescribed by the Regulations to be a level 3 activity for the purposes of this Act;

“litter” includes any bottle, tin, carton, package, paper, glass or other refuse, rubbish or unwanted thing or any abandoned vehicle or part thereof;

“material environmental harm” means environmental harm -

- (a) that causes, or could reasonably be expected to cause, harm that is not trivial or negligible in nature, extent or context; or
- (b) that causes, or could reasonably be expected to cause, actual or potential loss or damage to property of an amount exceeding K10,000.00 but less than K100,000.00; or
- (c) that results in costs of more than K10,000.00 but less than K100,000.00 in taking appropriate action to prevent or minimise the harm, or rehabilitate or restore the environment to its condition before the harm occurred;

“matters of national importance” means the matters set out in Section 5;

“Operational Procedure” means an Operational Procedure issued by the Director under Section 132;

“person” means an individual or a corporation;

“permit” means an environment permit and includes a permit, licence or approval which is deemed to be an environment permit under Section 135;

“premises” includes -

- (a) any property or building or property and building together, any allotment, parcel or area of land held by lease or otherwise; and
- (b) in relation to any trade or industry - any machinery, plant or vehicle used in connection therewith; and
- (c) a ship and an aircraft;

“prescribed” means prescribed by the Regulations or an Environment Policy;

“proponent” means, in relation to a proposed activity, the person or body who intends to carry out that activity;

“repealed Acts” means the Acts repealed by Section 134;

“register” means the register required to be maintained under Section 131;

“segment”, in relation to the environment, means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality, or time or any combination thereof;

“serious environmental harm” means environmental harm -

- (a) that causes, or could reasonably be expected to cause, detriment to any beneficial value that is irreversible, of a high impact or widespread; or
- (b) that causes, or could reasonably be expected to cause, actual or potential harm to beneficial values relating to an area of high conservation value or special significance; or
- (c) that causes or would cause loss or damage to property of an amount exceeding K100,000.00; or
- (d) that results or would result in costs of more than K100,000.00 in taking appropriate action to prevent or minimise the harm, or rehabilitate or restore the environment to its condition before the harm occurred;

“trade” means any business or undertaking carried on by persons, whether of a commercial or other nature;

“this Act” includes the Regulations and any Environment Policy;

“water” means all water in the Country, including any river, stream, watercourse, reservoir, well, bore,

tank, dam, canal, channel, lake, lagoon, swamp, open drain, surface and underground water and coastal waters comprising the internal waters, territorial sea and the offshore seas as defined in the *National Seas Act* (Chapter 361) and other waters over which Papua New Guinea exercises or claims jurisdiction or sovereign rights, and includes the seabed and subsoil underlying those waters;

“water-course” includes every river, stream, passage and channel on or under the ground whether natural or not, through which water flows, whether continuously or intermittently;

“water investigation permit” means a permit issued under Section 89;

“water source” includes water course, lake and any other water sources, whether on the surface or underground;

“water-works” includes all man-made contrivances or structures for managing, reticulating, controlling or obtaining water.

### 3. APPLICATION.

(1) This Act binds the State.

(2) The provisions of this Act may apply to projects to which the *Mining (Bougainville Copper Agreement) Act*, *Mining (Ok Tedi Agreement) Act* and *Petroleum (Gulf of Papua Agreement) Act* apply to the extent that those Acts provide for the application of this Act.

## PART II. - OBJECTS AND GENERAL ENVIRONMENTAL DUTY.

### 4. OBJECTS.

The objects of this Act are -

- (a) to promote the wise management of Papua New Guinea natural resources for the collective benefit of the whole nation and ensure renewable resources are replenished for future generations; and
- (b) to protect the environment while allowing for development in a way that improves the quality of life and maintains the ecological processes on which life depends; and
- (c) to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, and safeguard the life-supporting capacity of air, water, land and eco-systems; and
- (d) to ensure that proper weight is given to both long-term and short-term social, economic, environmental and equity considerations in deciding all matters relating to environmental management, protection, restoration and enhancement; and
- (e) to avoid, remedy or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, activities, products, substances and services that cause environmental harm; and
- (f) to require persons engaged in activities which have a harmful effect on the environment progressively to reduce or mitigate the impact of those effects as such reductions and mitigation become practicable through technology and economic developments; and
- (g) to allocate the costs of environmental protection and restoration equitably and in a manner that encourages responsible use of, and reduced harm to, the environment; and
- (h) to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by environmental harm are considered in decisions relating to the environment; and
- (i) to regulate activities which may have a harmful effect on the environment in an open and transparent manner and ensure that consultation occurs in relation to decisions under this Act with persons and bodies who are likely to be affected by them; and
- (j) to provide a means for carrying into effect obligations under any international treaty or convention relating to the environment to which Papua New Guinea is a party.

### 5. MATTERS OF NATIONAL IMPORTANCE.

All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-

- (a) the preservation of Papua New Guinea traditional social structures; and
- (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles; and

- (c) the protection of areas of significant biological diversity and the habitats of rare, unique or endangered species; and
- (d) the recognition of the role of land-owners in decision-making about the development of the resources on their land; and
- (e) responsible and sustainable economic development.

**6. HOW THE OBJECT OF THIS ACT IS TO BE ACHIEVED.**

- (1) The protection of Papua New Guinea's environment is to be achieved by a process of setting environmental objectives and providing the means to encourage and ensure their observance.
- (2) The process described in Subsection (1) is to be achieved by -
- (a) determining environmental objectives by researching the state of the environment and identifying the beneficial values which are important to the community of Papua New Guinea and which require protection from environmental harm in the formulation of Environment Policies through a process of consultation; and
  - (b) applying the environmental objectives to level 1 activities by means of Environmental Codes of Practice, Environment Protection Orders, Clean-up Orders and Emergency Directions; and
  - (c) applying the environmental objectives to level 2 and level 3 activities by means of conditions in environment permits, and the negotiation of environmental improvement plans and environmental management programmes; and
  - (d) requiring proposed activities involving matters of national importance to undergo a process of public and detailed consideration of environmental implications through a process of environmental impact assessment; and
  - (e) enforcement of the protection of beneficial values through preventative measures described above as well as through prosecutions for the offences of causing environmental harm.

**7. GENERAL ENVIRONMENTAL DUTY.**

(1) A person shall not carry out an activity that causes or is likely to cause an environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the environmental harm.

(2) In determining what measures are required under Subsection (1) regard shall be given to the following matters:-

- (a) the nature of the harm or potential harm; and
- (b) the sensitivity of the receiving environment; and
- (c) the current state of technical knowledge for the activity; and
- (d) the likelihood of successful application of the different measures that might be taken; and
- (e) the financial implications of the different measures as they would relate to the type of activity.

(3) Failure to comply with the general environmental duty does not constitute an offence or give rise of itself to a right to civil remedy, but compliance with the duty may be enforced by -

- (a) an Environment Protection Order; or
- (b) a Clean-up Order; or
- (c) an Emergency Direction.

(4) Where in a proceeding it is alleged that a person failed to comply with the general environmental duty by causing environmental harm, it will be a defence if the harm is caused in the course of complying with an Environmental Code of Practice or authorized to be caused under -

- (a) an Environment Policy; or
- (b) a condition of an environment permit; or
- (c) an approved environmental improvement plan; or
- (d) an Environment Protection Order; or
- (e) an Emergency Authorization.

**8. DUTY TO NOTIFY UNLAWFUL ENVIRONMENTAL HARM.**

(1) A person who becomes aware that unlawful serious environmental harm or unlawful material environmental harm is caused or threatened in the course of an activity carried out by that person, or over which that person has effective control, shall as soon as practicable give written notice to the Director of the circumstances in which the harm or risk of harm arose.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.  
Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(3) It is not reasonable excuse for a person to fail to give notice to the Director of the circumstances involving the harm on the ground that the notice, or the giving of the notice, might tend to incriminate the person.

(4) A notice given by a person under Subsection (1) is not admissible in evidence against that person, or any other person carrying out the relevant activity, in any legal proceedings.

(5) Subsection (4) does not prevent other evidence obtained because of the notice, or the giving of the notice, being admitted in any legal proceeding against the person.

#### **9. RESPONSIBILITY FOR ENVIRONMENTAL HARM.**

(1) Subject to Subsection (2), a person who causes environmental harm is responsible for the environmental harm.

(2) Where environmental harm is caused or threatened at any place used in connection with an industrial or commercial activity, the occupier or person who is in effective control of activities carried out at that place shall be responsible for the environmental harm or threatened environmental harm except where -

- (a) the environmental harm or threatened environmental harm occurs as a result of force majeure or accident; and
- (b) the occupier or person in effective control of activities at the place took all reasonable and practicable measures to prevent or minimise the harm.

#### **10. UNLAWFUL ENVIRONMENTAL HARM.**

(1) An act or omission that causes, or is reasonably likely to cause, environmental harm, is unlawful unless it is caused in the course of complying with an Environmental Code of Practice or permitted to be done under -

- (a) a condition of a permit; or
- (b) an Environment Policy; or
- (c) an Environment Protection Order; or
- (d) a Clean-up Order; or
- (e) an Emergency Direction; or
- (f) an Emergency Authorization.

(2) Subject to Section 112, it is a defence to a charge under Sections 11, 12 or 13 where the person charged establishes that -

- (a) the act or omission was lawful; and
- (b) the person complied with the general environmental duty either by complying with the relevant Environmental Code of Practice or in some other way.

#### **11. CAUSING SERIOUS ENVIRONMENTAL HARM.**

(1) A person who unlawfully causes a serious environmental harm is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K250,000.00; and
- (b) other than a Corporation - a fine not exceeding K125,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K15,000.00.

(2) In proceedings for an offence against Subsection (1), there is no requirement to prove that the person intended to cause the serious environmental harm.

#### **12. CAUSING MATERIAL ENVIRONMENTAL HARM.**

(1) A person who unlawfully causes a material environmental harm is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K5,000.00.

(2) In proceedings for an offence against Subsection (1), there is no requirement to prove that the person

intended to cause the material environmental harm.

**13. CAUSING ENVIRONMENTAL HARM.**

- (1) A person who unlawfully causes an environmental harm by -
- (a) noise, dust, odour or electro-magnetism or litter; or
  - (b) an unhealthy, offensive or unsightly condition because of a contaminant; or
  - (c) any other way prescribed by regulation, is guilty of an offence.

Penalty: A fine not exceeding K20,000.00.

Default penalty: A fine not exceeding K2,000.00.

(2) In proceedings for an offence against Subsection (1), there is no requirement to prove that the person intended to cause the unlawful environmental harm.

**PART III. - ADMINISTRATION.**

**14. FUNCTIONS AND POWERS OF THE MINISTER.**

- (1) The Minister has the following powers and functions: -
- (a) to appoint the members of the Environment Council in accordance with Section 17;
  - (b) to give approval in principle to proposed activities which involve matters of national significance in accordance with Section 59;
  - (c) to recommend Environment Policies for approval by the National Executive Council in accordance with Part IV;
  - (d) to make interim Environment Policies in accordance with Section 35;
  - (e) to approve Environmental Codes of Practice in accordance with Section 38;
  - (f) to fix charges in accordance with Section 96;
  - (g) such other powers and functions as are provided for in this Act, or any other Act or law.

(2) The Minister may, by instrument in writing, delegate all or any of his powers under this Act (except this power of delegation and the power to appoint Council members) to the Director.

**15. DIRECTOR OF ENVIRONMENT.**

There shall be a Director of Environment for the purposes of this Act who shall be the officer in charge of the Office responsible for environment and conservation matters.

**16. FUNCTIONS AND POWERS OF DIRECTOR OF ENVIRONMENT.**

- (1) The Director of Environment has the following powers and functions:-
- (a) to administer this Act;
  - (b) to issue permits in accordance with this Act;
  - (c) to ensure that environmental impact assessments are carried out in accordance with this Act;
  - (d) to undertake environmental audits and investigations;
  - (e) to enforce the provisions of this Act (including permit conditions) and institute proceedings for breach of this Act;
  - (f) to take appropriate measures in accordance with this Act for protecting, restoring and enhancing the environment;
  - (g) to prepare and submit reports to the Minister on permits issued and other matters for which the Director is responsible under this Act;
  - (h) such other powers and functions as are provided for in this Act, or any other Act or law.

(2) Subject to Subsection (3), the Director may in writing delegate all or any of his powers and functions under this Act (except this power of delegation and any power or function delegated to the Director by the Minister under Section 14(2)) to -

- (a) an appropriately qualified officer of the National Public Service; or
- (b) a Provincial Environmental Committee; or
- (c) a Provincial Administrator.

(3) The Director may only delegate a power or function in relation to a level 3 activity to an appropriately qualified officer of the Department responsible for environment and conservation matters.

**17. ESTABLISHMENT AND APPOINTMENT OF ENVIRONMENT COUNCIL.**

- (1) There shall be an Environment Council consisting of -
- (a) the Director of Environment, *ex-officio*, who shall be the Chairman; and

- (b) one person of good standing in the community with tertiary qualifications and professional expertise in the field of environmental chemistry or engineering, waste minimisation or management of environmental impacts; and
- (c) one person of good standing in the community with tertiary qualifications and professional expertise in the field of environmental policy or law; and
- (d) one person of good standing in the community with tertiary qualifications and professional expertise in the field of sustainable resource use and economic management; and
- (e) one person of good standing in the community with tertiary qualifications and professional expertise in the field of conservation, and maintenance of ecosystems and their bio-diversity; and
- (f) one person of good standing in the community with tertiary qualifications and professional expertise in the field of socio-economics and social impact assessment.

(2) The members referred to in Subsection (1)(b) to (f) inclusive shall be appointed by the National Executive Council by notice in the National Gazette from a list of not less than 10 persons submitted by a Committee comprised of -

- (a) the Departmental Head of the Department of Attorney-General, or his nominee; and
- (b) the Director of Environment; and
- (c) the President of the Papua New Guinea Council of Churches; and
- (d) the President of the Business Council of Papua New Guinea; and
- (e) a person nominated by the National Alliance of Non-Governmental Organizations.

(3) The list referred to in Subsection (2) is to be prepared after applications have been publicly invited by the Director from among citizens of Papua New Guinea, and the Director has convened a meeting of the Committee to consider the applications.

- (4) Members appointed under Subsection (1)(b) to (f) inclusive -
  - (a) shall be appointed for a period of three years; and
  - (b) are eligible for re-appointment.

(5) The Director shall in writing appoint an officer of the Department responsible for environment and conservation matters who is the head of the Division primarily responsible for the administration of this Act, to be his alternate on the Council, and in the event of the unavailability of the Director to perform his functions, duties and responsibilities, the alternate has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

## **18. OBJECTS OF THE COUNCIL.**

In carrying out its powers and functions under this Act, the Council shall pursue the following objectives:-

- (a) carrying into effect the objects of this Act;
- (b) management, development and protection of the nation's environment in such a way as to conserve, restore and enhance the environment for present and future generations;
- (c) maximising Papua New Guinean participation in the wise use and development of the environment.

## **19. POWERS AND FUNCTIONS OF THE COUNCIL.**

(1) The powers and functions of the Council are:-

- (a) to make recommendations and give advice to the Minister or the Director on any matter referred to it by the Minister or the Director; and
- (b) to provide advice to the Minister on the making of Environment Policies; and
- (c) to report to the Minister on any matter relating to -
  - (i) the administration of this Act; and
  - (ii) the amendment of this Act; and
  - (iii) the protection of the environment and the prevention, control, and minimisation of environmental harm; and
  - (iv) the management of water resources; and
- (d) to consider and make recommendations to the Minister on environmental impact assessments; and
- (e) to review decisions of the Director of Environment in accordance with Section 68 ; and
- (f) to approve terms of reference for environmental audits and investigations in accordance with Section 74; and
- (g) to establish a Working Committee in accordance with Section 24; and
- (h) to carry out such other functions as are required of it under this Act or any other law.

## **20. LEAVE OF ABSENCE OF MEMBERS.**

(1) The Chairman may grant leave of absence to a member of the Council on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman of the Council on such terms and conditions as the Minister determines.

**21. VACATION OF OFFICE.**

- (1) If a member of the Council, other than the Chairman -
- (a) dies; or
  - (b) becomes permanently incapable of performing his duties; or
  - (c) resigns his office by written notice to the Minister; or
  - (d) is absent, except with written consent of the Minister, from three consecutive meetings of the Council; or
  - (e) fails to comply with the provisions of the Regulations requiring disclosure of interest in a matter before the Council; or
  - (f) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

(2) Where an office becomes vacant under Subsection (1), the vacancy shall be filled in accordance with Section 17.

(3) The Minister may at any time, after consulting the Committee referred to in Section 17(2), by written notice advise a member, other than the Chairman, that he intends to terminate his appointment for inefficiency, incapacity or misbehaviour.

(4) Within 14 days of receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply and where necessary, terminate the appointment.

(5) Where the member referred to under Subsection (3) does not reply in accordance with Subsection (4), his appointment is terminated.

**22. VACANCY NOT TO AFFECT COUNCIL'S POWERS OR FUNCTIONS.**

The exercise or performance of a power or function of the Council is not invalidated by reason only of a vacancy in the membership of the Council.

**23. COUNCIL'S QUORUM AND PROCEDURES.**

(1) Subject to Section 68(3), the quorum for a meeting of the Council is three members, including the Director.

- (2) The Regulations may prescribe the procedures of the Council including -
- (a) the frequency and manner for calling meetings; and
  - (b) procedures for decisions of the Council, including decisions other than at formal meetings; and
  - (c) disclosure of interest by members of the Council; and
  - (d) keeping of records of the Council's meetings; and
  - (e) provision of reports to the Minister; and
  - (f) delegation of Council's powers and functions.

(3) Members of the Council shall be paid such fees and allowances in accordance with the *Boards (Fees and Allowances) Act* (Chapter 299).

**24. WORKING COMMITTEE.**

(1) Where the Minister or Director has referred to the Council a matter which he or the Council considers requires specialist advice, the Council may appoint, and set terms of reference for, a Working Committee of experts to provide advice to the Council in relation to the matter.

(2) The members of a Working Committee appointed under Subsection (1) may determine their own procedure and may be paid such fees and allowances in accordance with the *Boards (Fees and Allowances) Act* (Chapter 299) or as determined by Council.

**25. IMMUNITY OF COUNCIL MEMBERS, ETC.**

No action is maintainable against the Chairman or a member of the Council or of any Working Committee established by the Council for anything which is done by him in good faith without negligence while acting as Chairman or a member of the Council or a Working Committee.

**26. ENVIRONMENT CONSULTATIVE GROUP.**

(1) An Environment Consultative Group is hereby established.

(2) The Regulations shall prescribe the membership of the Environment Consultative Group including causal members.

**27. FUNCTIONS OF THE ENVIRONMENT CONSULTATIVE GROUP.**

The functions of the Environment Consultative Group are -

- (a) to advise the Council on the making of Environment Policies in accordance with Section 33; and
- (b) where the Director has convened a meeting of the Consultative Group for that purpose - to advise the Director in relation to the assessment of environmental impact statements in accordance with Section 54; and
- (c) to provide advice in relation to any matter referred to it by the Minister, the Council or the Director.

**28. PROCEEDINGS OF THE ENVIRONMENT CONSULTATIVE GROUP.**

(1) The Council or the Director may, at any time as it or he thinks fit, convene a meeting of the Environment Consultative Group.

(2) The Regulations shall prescribe the manner of convening a meeting of the Environment Consultative Group and may provide for any matter in relation to the procedures of the Environment Consultative Group.

(3) The Members of the Environment Consultative Group shall be responsible for payment of their own fees or allowances for attending meetings.

**29. PROVINCIAL ENVIRONMENT COMMITTEES.**

(1) A Provincial law may provide for the establishment of a Provincial Environment Committee, and provide for the membership, powers, functions and procedures of the Committee.

(2) A Provincial law made under Subsection (1) may provide for the delegation of powers of the Provincial Government in relation to environment matters to the Committee.

**PART IV. - ENVIRONMENT POLICIES.**

**30. PREPARATION OF POLICIES.**

(1) The Minister, acting on the recommendation of the Council, may recommend Environment Policies to the National Executive Council, in accordance with the procedures set out in this Part.

(2) The National Executive Council, after considering the recommendation of the Minister, may make Environment Policies relating to the environment in accordance with the procedures set out in this Part.

**31. NATURE OF POLICIES.**

(1) An Environment Policy may be made in relation to the environment or anything that affects or may affect the environment, in accordance with this Part.

(2) Without limiting the generality of Subsection (1), an Environment Policy may apply to the whole country or to a segment or element of the environment and may be made in respect of any of the following matters:-

- (a) contaminant;
- (b) an industry or activity;
- (c) a technology or process;
- (d) a beneficial value;
- (e) loss of a beneficial value relating to the environment;
- (f) waste management or minimisation;
- (g) contamination control practice;
- (h) land, air or water quality;
- (i) noise;
- (j) litter;
- (k) management of surface and underground water; and
- (l) decommissioning and rehabilitation requirements.

**32. CONTENTS OF POLICIES.**

- (1) An Environment Policy shall -
  - (a) state whether the policy applies to the environment generally or to a matter referred to in Section 31; and
  - (b) specify the persons to whom the Environment Policy applies; and
  - (c) identify the boundaries of any area affected; and
  - (d) identify and declare the beneficial values and uses to be enhanced or protected under the Policy.
  
- (2) An Environment Policy may -
  - (a) state objectives to be achieved and maintained under the Policy; and
  - (b) state the indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of environment; and
  - (c) establish a programme by which the stated objectives are to be achieved and maintained including -
    - (i) the qualities and maximum quantities of any contaminant permitted to be released into the environment; and
    - (ii) the minimum standards to be complied with in installation or operation of vehicles, plant or equipment for control of contaminants or noise or odour from stated sources or places; and
    - (iii) measures designed to protect the environment or minimise the possibility of environmental harm; and
    - (iv) the means by which compliance with the measures and standards specified in the policy is to be achieved; and
  - (d) specifying whether or not a permit can be issued for a particular activity or what conditions should be included to ensure the permit is consistent with the Policy; and
  - (e) providing for programme performance assessment procedures; and
  - (f) referring to or incorporating wholly or partially and with or without modification, a standard or other document specified in the Policy, as in force at a specified time; and
  - (g) providing for its implementation through Environmental Codes of Practice or guidelines; and
  - (h) providing that a matter or thing is to be determined at the discretion of the Minister or Director; and
  - (i) making different provisions according to the matter or circumstances to which they are expressed to apply; and
  - (j) specifying the activities, including level 1, 2 or 3 activities, to which the Policy applies; and
  - (k) specify the extent to which the Environment Policy will or may affect existing permit holders; and
  - (l) fixing the means for enforcement of the Policy including declaration of all or some of the provisions of the policy as mandatory provisions, and fixing maximum penalties for breaches of the Policy not exceeding K100,000.00 and default penalties not exceeding K5,000.00.
  
- (3) An Environment Policy may provide for matters in relation to which a Regulation may be made under the Act.

**33. PROCEDURE FOR MAKING POLICIES.**

- (1) The Council may cause a draft Environment Policy to be prepared.
- (2) The Council shall give -

- (a) public notice of the draft Environment Policy -
  - (i) in the National Gazette; and
  - (ii) in a national or local newspaper that is distributed regularly throughout the country; and
  - (iii) in such other manner as the Council determines; and
- (b) written notice to existing permit holders who would or may be affected by the approval of the draft Environment Policy whether by being required to submit an environment improvement plan under Section 75 or otherwise; and
- (c) in such other manner as the Council determines,

stating where copies may be obtained or inspected and inviting submissions from governmental authorities, provincial and local-level governments, landowners, industry, interest groups and members of the public and stating a period of time (which shall be not less than 45 days nor more than six months) within which submissions may be made to the Council.

(3) Before making a recommendation to the Minister, the Council shall refer a draft Environment Policy to the Environment Consultative Group for its comments.

(4) Without in any way limiting the right of persons to make submissions under Subsection (2), an existing permit holder may within the period provided for submissions under Subsection (2), notify the Council that in the permit holder's opinion, the new requirements or standards are likely to affect the viability of the activities of the permit holder.

(5) The Council shall consider any comments received and all submissions made to it under Subsections (2) to (4) inclusive and (13).

(6) Prior to making a recommendation to the Minister, the Council shall provide a further draft of the Environment Policy, as revised by the Council, to each person who made a submission to the Council under Subsections (2) to (4) inclusive and (13).

(7) The Council shall allow a period of 28 days, after providing a further draft of the Environment Policy under Subsection (6), for the making of submissions by any of those persons who received such further draft.

(8) The Council shall consider any comments received and all submissions made to it under Subsections (3) to (7) inclusive and (13) in preparing a recommendation to the Minister for a final Environment Policy.

(9) The Council shall provide a copy of the final Environment Policy, at least 28 days prior to making the recommendation to the Minister, to each person who made a submission under Subsections (2) to (7) inclusive and (13).

(10) Within 21 days of receipt of the final Environment Policy, any person who received the Policy under Subsection (9) may notify the Council of any objection that person has to the final Environment Policy and the Council shall provide a summary to the Minister of any objections made under this subsection.

(11) The Minister, acting on the recommendation of the Council, may recommend a final Environment Policy to the National Executive Council.

(11) The National Executive Council, after considering the recommendation of the Minister, may approve a final Environment Policy.

- (13) Where an existing permit holder who carries out a level 3 activity gives a notice under Subsection (4) -
  - (a) prior to making a recommendation to the Minister under Subsection (8), the Council shall meet with the permit holder and discuss the content and effect of the draft Environmental Policy on the viability of the activities of the permit holder; and
  - (b) at any time during discussions under Paragraph (a), the permit holder may make written submissions to the Council on the effects of any requirements of a draft Environmental Policy on the viability of the activities of the permit holder or any other matter; and
  - (c) prior to making a recommendation to the Minister under Subsection (8), the Council shall allow a period of 90 days after expiry of the period for the making of submissions under Subsection (2) for the Council and the existing permit holder to conduct discussions under this subsection and if possible, to resolve the concerns of the existing permit holder as to the effect and content of the draft Environmental Policy; and
  - (d) where there is any outstanding objection from the existing permit holder, any recommendation to the Minister under Subsection (8) and to the National Executive Council under Subsection (10) shall be accompanied by a statement providing reasonable particulars of any such outstanding objection.

- (14) The Minister shall, as soon as practicable after the National Executive Council has approved an Environment Policy -
- (a) cause a copy of the Environment Policy to be published in the National Gazette declaring the Policy to be an authorized Environment Policy under this Act and fixing a date on which it will come into effect; and
  - (b) give public notice of the making of the policy in national or local newspapers that are distributed regularly throughout the country; and
  - (c) table the Environment Policy in Parliament as a subordinate legislative enactment; and
  - (d) give written notice to existing permit holders who would or may be affected by the approval of the draft Environment Policy whether by being required to submit an environmental improvement plan or otherwise.

**34. SIMPLIFIED PROCEDURE FOR MAKING CERTAIN POLICIES.**

- (1) Where the Minister, acting on the advice of the Council, and after consultation with persons and bodies likely to be affected, is satisfied that a draft Environment Policy refers to or incorporates, without substantial modification of the whole or part of a standard or other document prepared by a governmental authority or a body recognised by the Council for the purposes of this section and the draft Environment Policy will not require existing permit holders to submit an environmental improvement plan -
- (a) the procedure set out in Section 33 for making an Environment Policy will not apply in relation to the draft Policy; and
  - (b) the National Executive Council may approve the Policy on the recommendation of the Minister.
- (3) After the National Executive Council has approved a Policy under Subsection (1), the Minister shall -
- (a) cause the Policy to be tabled in Parliament; and
  - (b) give public notice of the making of the Policy -
    - (i) in the National Gazette; and
    - (ii) in national or local newspapers that are distributed regularly, throughout the country.

**35. INTERIM POLICY.**

- (1) Where the Minister, acting on the recommendation of the Council, is satisfied that it is necessary for proper administration of the Act that a draft Environment Policy should be brought into effect without delay and the draft Environment Policy will not require existing permit holders to submit an environmental improvement plan, the Minister may by notice in the National Gazette declare that the policy will come into effect for an interim period not exceeding 12 months on a day specified in the notice.
- (2) Where notice is published under Subsection (1), the Policy comes into effect on the day specified in the notice.
- (3) Minister shall as soon as practicable after publication of the notice under Subsection (1) -
- (a) prepare a report on the matter and submit copies of the Policy and the report to the National Executive Council; and
  - (b) give public notice of the making of the Policy in national or local newspapers that are distributed regularly throughout the country.
- (4) An interim policy made under this section ceases to operate where -
- (a) the Minister, acting on the recommendation of the Council, by notice in the National Gazette, revokes the operation of the Policy; or
  - (b) the National Executive Council disallows the Policy; or
  - (b) the policy has not been authorized by the National Executive Council in accordance with the procedure specified in Section 33 within a period of 12 months from the day on which it came into effect; or
  - (d) the Policy is superseded by another Policy that comes into effect in accordance with this section.

(5) Where a Policy ceases to be effective by virtue of Subsection 4(b) or (c), notice of the cessation shall be published in the National Gazette and in national or local newspapers that are distributed regularly throughout the country.

**36. EFFECT OF ENVIRONMENT POLICIES.**

On approval of an Environment Policy, all governmental authorities which may be required to issue approvals relating to a use of the environment or an element or segment of the environment which is affected by the policy must give effect to the Policy.

**37. AMENDMENT AND VARIATION OF ENVIRONMENT POLICY.**

(1) An amendment to an Environment Policy shall be made in accordance with the procedures for the preparation and approval of Policies set out in Section 33.

(2) The Minister may, without following the procedures set out in Section 33, by notice in the National Gazette, vary an Environment Policy -

- (a) to correct an error in the Policy; or
- (b) to make a change of form (not involving a change of substance) in the Policy; or
- (c) where the Policy itself or the Regulation provides that a variation of a specified type may be made to the Policy under this Subsection - make a variation of that type.

(3) An amendment or variation under this section comes into effect on the day fixed in the notice of the amendment or variation.

(4) The Minister shall give public notice of an amendment or variation under this section in a national newspaper that is distributed regularly throughout the country.

**38. ENVIRONMENTAL CODES OF PRACTICE.**

(1) The Minister or Director after consultation with relevant parties, may issue an Environmental Code of Practice stating ways of achieving compliance with the general environmental duty or any activity that causes or is likely to cause environmental harm.

(2) Compliance with an Environmental Code of Practice issued under Subsection (1) is voluntary except to the extent that compliance with any such Environmental Code of Practice has been made part of the conditions of an environment permit.

**39. PROVINCIAL ENVIRONMENT POLICIES.**

- (1) Subject to this Act, a Provincial Government may make a Provincial Environment Policy relating to -
- (a) noise; or
  - (b) litter, hygiene and sanitation; or
  - (c) such other matters as are within the law-making capacity of Provincial Governments under the *Organic Law on Provincial Governments and Local-level Governments*; or
  - (d) such other matters as are prescribed for the purposes of this section.

(2) A Provincial law may provide a process for making a Provincial Environment Policy which shall incorporate consultation with persons who are likely to be affected by the proposed Provincial Environment Policy.

(3) Before making a Provincial Environment Policy, the Provincial Government shall consult with the Environment Council.

(4) To the extent that a Provincial Environment Policy -

- (a) is inconsistent with this Act; or
- (b) is inconsistent with an Environment Policy or a Regulation under this Act; or
- (c) provides for less stringent standards applying to matters which are the subject of a Regulation or an Environment Policy,

the Provincial Environment Policy is invalid.

**40. WARNING NOTICE.**

(1) For the purposes of this Act, "Local Medical Authority" and "Health Inspector" have the same meaning as given to them under the *Public Health Act* (Chapter 226) and the *National Health Administration Act 1997*.

(2) The Director or his delegate, a Local Medical Authority, a Health Inspector, an authorized officer appointed under this Act, or a person authorized for the purpose of this section by a Provincial Administrator, may issue a Warning Notice to any person who fails to comply with a provision of an Environment Policy or a Provincial Environment Policy.

(3) A Warning Notice under Subsection (2) does not legally compel compliance, but shall be taken into account in the issue of an Environment Protection Order, an Emergency Direction or a Clean up Order, or in any proceedings for an offence against this Act.

(4) Nothing in this section shall empower a person who is entitled to serve a Warning Notice under Subsection (2) to enter on premises or exercise any other powers of an authorised officer unless that person is duly authorized under Section 118.

## **PART V. - ENVIRONMENT PERMITS.**

### *Division 1. - Interpretation.*

#### **41. CARRYING OUT OF AN ACTIVITY.**

- (1) For the purposes of this Part, a person carries out an activity where he carries out -
- (a) construction of works, land clearance, demolition, excavation or other works in relation to land or water; or
  - (b) installation, operation or maintenance of plant or equipment; or
  - (c) activities for the purpose of extracting or harvesting natural resources; or
  - (d) release of contaminants to air, land or water, in connection with any of the activities specified in Paragraphs (a), (b) or (c).

(2) A person carries out an activity if he has effective control over that activity at the site at which the activity is carried out, and where a person has such effective control, no other person is regarded as carrying out the activity.

#### **42. LEVEL 1, 2 AND 3 ACTIVITIES.**

- (1) Subject to Subsection (2), the Regulations shall prescribe activities to be level 1, 2 or 3 activities.

- (2) Activities that -
- (a) involve matters of national importance; or
  - (b) may result in serious environmental harm,

may be prescribed as level 3 activities.

#### **43. EXISTING ACTIVITIES.**

For the purposes of this Act, "existing activities" means those activities which -

- (a) were being carried on at the date of coming into operation of the Regulation defining level 1, level 2 and level 3 activities; and
- (b) since that date, have not changed their nature so as to involve the carrying out of a level 2 or level 3 activity that was not previously being carried out.

### *Division 2. - Obligation to have a permit.*

#### **44. OBLIGATION TO HAVE A PERMIT AND RIGHTS OF PERMIT HOLDERS.**

- (1) Subject to this section and Section 135, a person commits an offence where he carries out -
- (a) a level 2 or level 3 activity; or
  - (b) a change in process, or expansion of works or plant in relation to an existing activity such that a level 2 or level 3 activity is carried out,

without an environment permit.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K5,000.00.

(2) A person is not required to have a permit to carry out an existing activity or a level 1 activity unless the Director has served a notice under Section 45.

- (3) An environmental permit confers on the holder the right to carry out the activities specified in the permit

in accordance with the conditions imposed under the permit.

(4) A person, who interferes in any way with the exercise of a right conferred by an environmental permit or the holder thereof, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding one year, or both.

**45. NOTICE TO APPLY FOR A PERMIT.**

(1) The Director may, by notice published in the National Gazette and in a national or local newspapers distributed on a regular basis, require persons carrying out existing level 2 or 3 activities of a type specified in the notice without a permit to apply for permit within a period (being not less than 28 days) which is specified in the notice.

(2) Where -

(a) a level 1 activity is being carried out; or

(b) an existing activity is being carried out in respect of which an environmental plan approval, water use permit or contaminants licence or permit has not been issued under the repealed Acts,

and the Director is of the opinion that the activity involves a substantial risk of material environmental harm, he may by notice served on the site at which the activity is conducted, require the person carrying out the activity to apply for a permit within a period (being not less than 28 days) which is specified in the notice.

(3) The Regulation may provide that a special procedure applies to permit applications made in response to a notice under Subsections (1) and (2), including a process of notification and referral.

(4) A person commits an offence where he carries out an activity in respect of which a notice under Subsection (1) or (2) has been served without applying for a permit within the time specified in the notice.

Penalty: Where the person convicted of an offence is -

(a) a Corporation - a fine not exceeding K20,000.00; and

(b) other than a Corporation - a fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K2,000.00.

**46. RESTRAINT ON APPROVAL BY OTHER AUTHORITIES.**

(1) Other governmental authorities shall be restrained from issuing permits or licences for level 2 or level 3 activities (other than existing activities) which would authorize the holder to carry out an activity which would cause environmental harm where to do so would be a breach of this Act until an environment permit in relation to the activity has been granted in accordance with this Act.

(2) Subsection (1) does not apply to approvals under the *Investment Promotion Act 1992*.

(3) Where a person applies for another kind of approval in respect of a level 2 or 3 activity, under the provisions of other legislation, the other governmental authority shall refer the application to the Director.

**Division 3. - Environmental impact assessment.**

**47. INTERPRETATION.**

For the purposes of this Division -

“preparatory work” means -

(a) undertaking a feasibility study; or

(b) carrying out other studies relevant to environmental issues; or

(c) applying for approval under the *Investment Promotion Act 1992* to carry out an activity; or

(d) applying for an approval or a permit or licence under another Act,

in relation to a proposed activity.

**48. REGISTRATION OF INTENTION TO CARRY OUT PREPARATORY WORK.**

(1) A person who -

(a) proposes to carry out a level 2 or level 3 activity; or

(b) proposes to change the nature of a level 2 activity such that it becomes a level 3 activity,

shall, in writing, register that intention with the Director at least one month prior to commencing any preparatory work in relation to the proposed activity.

(2) The Regulation may prescribe categories of level 2 activities in respect of which registration under this section is not required.

**49. OFFENCE OF FAILING TO REGISTER INTENTION TO CARRY OUT PREPARATORY WORK.**

A person who carries out preparatory work in relation to a level 2 activity or level 3 activity without registering his

intention to carry out the work with the Director in accordance with Section 48 is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K20,000.00; and
- (b) other than a Corporation - a fine not exceeding K10,000.00.

**50. NOTICE TO UNDERTAKE ENVIRONMENTAL IMPACT ASSESSMENT.**

(1) Where the Director receives a notification of intention to carry out preparatory work in relation to a proposed level 3 activity, he shall serve a notice on the proponent named in the notification requiring the proponent to undertake an environmental impact assessment in relation to the proposed activity.

(2) Where a proposed level 2 activity -

- (a) involves an industrial or manufacturing process which has not previously been used in Papua New Guinea; or
- (b) is specifically the subject of obligations under any international treaty, convention or instrument to which Papua New Guinea has ratified; or
- (c) which poses a threat of serious environmental harm,

the Minister may, on recommendation of the Council, determine that the activity relates to matters of national importance and require the Director to serve a notice on the proponent requiring him to undertake environmental impact assessment in relation to the proposed activity.

(3) A notice under Subsection (1) or (2) must be served within the time fixed by the Director in the Operational Procedures.

(4) Where a notice has been served on a proponent under this section, an application for an environment permit may not be accepted in relation to the activity unless an environmental impact assessment has been completed, and the Minister has given an approval in principle to the activity.

**51. ENVIRONMENTAL IMPACT ASSESSMENT.**

(1) An environmental impact assessment shall involve the following:-

- (a) submission of an inception report in accordance with Section 52 setting out the issues to be covered in the environmental impact statement;
- (b) submission of an environmental impact statement in accordance with Section 53 setting out the physical and social environmental impacts which are likely to result from the carrying out of the activity
- (c) assessment and public review of the environmental impact statement in accordance with Sections 54 and 55;
- (d) acceptance of the environmental impact statement by the Director in accordance with Section 56;
- (e) referral of the environmental impact statement, assessment report and other material to the Council in accordance with Section 57;
- (f) recommendation by the Council to the Minister in accordance with Section 58;
- (g) where the Minister has received a recommendation from the Council under Section 59 - an approval in principle by the Minister.

(2) Subject to this Division, the Regulation may prescribe in further detail the process of undertaking environmental impact assessment.

**52. INCEPTION REPORT.**

(1) Prior to submitting an environmental impact statement, a proponent must submit an inception report listing the issues to be covered by the environmental impact statement.

(2) The Director may issue Operational Procedures in the form of guidelines for preparation of inception reports and an inception report shall comply with those guidelines.

(3) The Director shall, within 60 days of lodgement of an inception report -

- (a) where he is satisfied that the inception report lists all the relevant issues relating to the potential impacts of the proposed activity on the environment - approve the inception report; or
- (b) refer the inception report back to the proponent for amendment and re-submission.

(4) Where, within 60 days of the date of lodgement of the inception report, the Director has not approved the inception report or referred the inception report back to the proponent in accordance with Subsection (3), the inception report is deemed to be approved and the proponent may proceed with an environment impact statement in accordance with

the inception report.

(5) The Operational Procedures shall specify the manner by which the Director must respond in accordance with Subsection (3).

**53. ENVIRONMENTAL IMPACT STATEMENT.**

(1) An environmental impact statement must cover the issues set out in the approved inception report.

(2) Subject to this Act, the Operational Procedures shall provide for the form, content, timing and procedures for the preparation and submission of an environmental impact statement.

**54. ASSESSMENT.**

(1) On receipt of an environmental impact statement, the Director shall cause the statement to be assessed.

(2) Within 30 days of receipt of an environmental impact statement, the Director shall notify the proponent in writing of the period the Director will require to assess the environmental impact statement and to decide whether or not to accept the environmental impact statement under Section 56.

(3) At any time during the period notified to the proponent under Subsection (2), the Director may notify the proponent in writing that the Director requires a further period, such period and the reasons necessitating such period to be specified in the notice, in which to assess and make a decision regarding the environmental impact statement.

- (4) The Director may for the purposes of assessing a proposed activity under this section -
- (a) require any person to provide him with such information as is specified in that requirement; or
  - (b) call a conference of interested persons to discuss the application; or
  - (c) refer the environmental impact statement to the Environment Consultative Group; or
  - (d) appoint a committee to conduct a public inquiry and report its findings to the Director; or
  - (e) take any or all of the courses of action set out in Paragraphs (a) to (d) inclusive or take such other investigations and inquiries as he thinks fit.

(5) Where a Provincial Environment Committee has been established for any Province to which the environmental impact statement relates, the Director shall, before completing his assessment, refer the environmental impact statement to that committee for its comments.

**55. PUBLIC REVIEW AND SUBMISSIONS.**

- (1) The Director shall cause -
- (a) any information provided in compliance with a requirement under Section 54(2)(a) to (d) inclusive; or
  - (b) any environmental impact statement submitted under this Division, to be made available for public review and shall determine the period within which, the extent to which and the manner in which governmental authorities or persons may make submissions to the Director or the Council in respect of that information or report.

- (2) The Director may give directions to the proponent requiring the proponent to -
- (a) at his expense and to the satisfaction of the Director, make copies of any information or statement and advertise its availability for public review; and
  - (b) provide copies of that information or statement to such public authorities and persons and members of the public as the Director determines, at such price (if any) as the Director determines; and
  - (c) make a public presentation to persons who are likely to be affected by the carrying out of the activity.

(3) For the purposes of complying with this section, the Director may require the proponent to submit a proposed programme of public review for approval by him.

(4) The proponent may meet the cost of persons (including persons representing the Director) attending a public presentation in relation to the proposed activity, but the fact that a proponent has met such costs shall not place any obligation on a person to form a particular view of the proposal.

(5) Where any information relating to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment or information of a business or financial nature in relation to the proposed activity which is confidential to the applicant (in this section called "the confidential information") is contained in

any statement or report which is to be made available for public review under this section, the Director shall, before causing the statement or report to be made available for public review under Subsection (1), exclude the confidential information from that statement or report.

(6) The Director may, at any time prior to accepting the environmental impact statement, refer any issues raised during the assessment and public review of the environmental impact statement back to the proponent and require the statement to be amended to address those issues.

**56. ACCEPTANCE OF ENVIRONMENTAL IMPACT STATEMENT.**

- (1) Where the Director is satisfied that -
- (a) an environmental impact statement contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of a proposed activity; and
  - (b) all reasonable steps will be taken to minimise environmental harm which may result from the carrying out of the activity; and
  - (c) the activity will be carried out in a manner which is consistent with all relevant Environment Policies and the Regulation,

he shall accept the statement.

(2) A decision by the Director under this section shall be in writing and specify the reasons for the decision.

(4) Where the Director has not made a decision under this section within the period notified under Section 54(2), as extended (if at all) under Section 54(3), the Director shall be deemed to have refused the environmental impact statement (and the provisions of Section 68 apply in relation to such deemed refusal).

**57. REFERRAL TO COUNCIL.**

Where the Director has accepted an environmental impact statement, he shall within 14 days of the date of acceptance refer the environmental impact statement to the Council together with -

- (a) his assessment report; and
- (b) any public submissions and other information,

in relation to the proposed activity.

**58. COUNCIL'S RECOMMENDATION.**

(1) Subject to this section, where the Council has received a referral under Section 57, it shall consider the statement, assessment report and any public submissions, reports and other information on the proposed activity and shall within 90 days -

- (a) where it is satisfied that -
  - (i) the environmental impact statement contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of the proposed activity; and
  - (ii) all reasonable steps will be taken to minimise environmental harm which may result from the carrying out of the activity; and
  - (iii) the activity will be carried out in a manner which is consistent with all relevant Environment Policies and the Regulation,

accept the environmental impact statement and make a recommendation to the Minister to approve the proposed activity in principle and specify the conditions to which the proposed activity should be subject if it is approved; or

- (b) refuse to accept the environmental impact statement and advise the proponent to amend the statement and resubmit it to the Director.

(2) In making a recommendation to the Minister, the Council shall have regard to -

- (a) the objects of the Act; and
- (b) the matters of national importance; and
- (c) the general environmental duty; and
- (d) any relevant Environment Policy; and
- (e) any relevant environmental impact statement; and
- (f) any assessment or report prepared at the request of the Director; and
- (g) where a Provincial Environment Committee has considered the proposed activity, the views of that committee; and
- (h) any environmental harm which is likely to result from the proposed activity; and
- (i) the character, resilience and beneficial values of the receiving environment; and

- (j) any environmental improvement plan lodged by the applicant; and
- (k) any public submission made, and views expressed at a presentation, hearing or conference; and
- (l) the suitability of the applicant to hold a permit; and
- (m) best practice environmental management for the activity in question; and
- (n) any relevant obligations under any international treaty, convention or instrument to which Papua New Guinea is a party; and
- (o) public interest in the proposed activity.

(3) The Regulations may prescribe for further criteria to be applied by the Council in making a recommendation to the Minister.

(4) A decision by the Council under this section shall be in writing and specify the reasons for the decision.

(5) Where the Council has refused to accept an environmental impact statement, the Council shall, on written application of the proponent, allow the proponent to make representations to the Council concerning the proposed activity and shall, where satisfied as to the matters set out in Subsection (1)(a), accept the statement and make a recommendation in accordance with Subsections (1) and (2).

**59. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.**

(1) Subject to this section, where the Minister has received a recommendation from the Council under Section 58 in relation to the proposed activity, he shall within 28 days of such receipt, either -

- (a) issue an approval in principle for the activity; or
- (b) in any other circumstance - refuse to approve the activity.

(2) A decision of the Minister under Subsection (1)(a) or (b) shall be in writing and shall give reasons for the decision.

(3) Where the Minister refuses to approve the activity, he shall immediately require the Council to appoint a Working Committee to provide advice in accordance with Section 24.

(4) The Regulations may prescribe the form in which the Minister's decision shall be recorded and the process for making the decision available to the public.

***Division 4. - Applications.***

**60. APPLICATION FOR A PERMIT.**

(1) An application for a permit shall be made by the person or body who is carrying out or responsible for the activities conducted at the place named in the application.

(2) Where the applicant is a Corporation, the natural person signing the application on behalf of the Corporation must be the most senior person with overall supervision and management of the activities conducted at the place named in the application.

**61. ACCEPTANCE OF APPLICATIONS.**

Subject to Section 62, where the Director is satisfied that an application for a permit contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of the proposed activity, he may accept the application.

**62. APPLICATIONS IN RELATION TO LEVEL 3 ACTIVITIES ETC.**

- (1) Where an application for a permit relates to -
- (a) a level 3 activity (other than an existing activity); or
  - (b) a proposed level 2 activity in relation to which the Minister has made a determination of national significance under Section 50(2),

the application shall not be accepted until an environmental impact assessment has been conducted in relation to the proposed activities in accordance with Division 3 (Environmental Impact Assessment).

(2) Nothing in Subsection (1) prevents the Director from entering into discussions with an applicant for a permit concerning the information that will be required in order for the application to be accepted.

**63. PROCEDURES IN RELATION TO PERMIT APPLICATIONS.**

- (1) The Regulations shall prescribe -
- (a) the information to accompany a permit application; and

- (b) the process for obtaining further information in relation to a proposed activity; and
- (c) the fees associated with the application; and
- (d) the requirements for service of the application on other governmental authorities - including provincial government; and
- (e) when an application is deemed to have been lodged; and
- (f) procedures for public notification of applications or proposed permits; and
- (g) circumstances in which a conference may be called of interested parties to resolve issues relating to the application; and
- (h) subject to Section 64, the classes of activity in respect of which permits may be issued without the requirement for referral to other governmental authorities or instrumentalities or publication of the proposed permit; and
- (i) requirements for acceptance of an application by the Director.

(2) The Director may issue Operational Procedures in relation to any matter relating to an application for a permit or assessment of an application including fixing the form for the application.

**64. DISPENSING WITH NOTIFICATION, REFERRAL AND CONSULTATION REQUIREMENTS.**

The Regulation may provide for notification, referral and consultation requirements in relation to applications and proposed permits to be dispensed with where -

- (a) an environmental impact assessment has been undertaken in accordance with this Part and the Minister has approved the project in principle; or
- (b) the application relates solely to the issue of a permit for a level 2 activity that involves only the abstraction, damming or diversion of water in circumstances which do not pose any risk of material environmental harm; or
- (c) the application relates solely to the issue of a permit for a level 2 activity involving only the production, distribution, sale, storage or transportation (but not importation or exportation) of hazardous contaminants.

**65. CRITERIA FOR GRANT AND CONDITIONS OF PERMIT.**

- (1) Subject to this section and Section 66, the Director may grant a permit where he is satisfied that -
- (a) the activity which is the subject of the permit will be carried out in a manner which is consistent with all relevant Environmental Policies and the Regulations; and
  - (b) all reasonable steps will be taken to minimise any risk of environmental harm as a result of the activity; and
  - (c) the activity will not contravene any relevant environmental obligation under any international treaty, convention or instrument to which Papua New Guinea is a party and which has been ratified by the Parliament or any law of Papua New Guinea; and
  - (d) the applicant will abide by the conditions of the permit.

(2) In granting a permit under Subsection (1), the Director shall specify the conditions to which the permit is subject.

(3) In determining -

- (a) whether or not to grant a permit; and
- (b) the conditions to attach to the permit,

the Director shall have regard to -

- (c) the objects of this Act; and
- (d) the matters of national importance; and
- (e) the general environmental duty; and
- (f) any relevant Environment Policy; and
- (g) any relevant environmental impact statement, assessment, report, public submission or other information in relation to the proposed activity; and
- (h) any information provided with the application; and
- (i) where relevant, the Minister's approval in principle; and
- (j) any public submission made, or views expressed at a presentation, hearing or conference; and
- (k) the suitability of the applicant to hold a permit; and
- (l) the character, resilience and beneficial values of the receiving environment; and
- (m) best practice environmental management for the activity in question; and
- (n) public interest in the proposed activities.

**66. CONDITIONS OF PERMITS.**

- (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable , including but not limited to conditions containing requirements to do all or any of the following -
- (a) installation and operation of certain plant or equipment within a certain time;
  - (b) the taking of certain action to minimise the risk of environmental harm;
  - (c) at the cost of the permit holder, installation of monitoring equipment, carrying out a specified monitoring programme and reporting on its progress;
  - (d) preparation and carrying out an environmental management programme;
  - (e) provision of reports on any matter specified by the Director;
  - (f) submission for approval and carrying out of an Environmental Improvement Plan;
  - (g) undertaking an audit at periodic intervals;
  - (h) preparation and lodgement of a plan for emergency response in relation to accidental release of contaminants or risk of other emergency;
  - (i) provision of information reasonably required by the Director for the administration and enforcement of the Act;
  - (j) lodgement of an environmental bond consistent with requirements established under Section 103;
  - (k) conducting baseline studies or surveys and reporting the results prior to commencing operations;
  - (l) rehabilitation of the affected area.

- (2) In issuing a permit and fixing conditions, the Director shall ensure that the permit will require compliance with all relevant Environment Policies except where -
- (a) the activity which is the subject of the permit is an existing activity; and
  - (b) the applicant for the permit has submitted an environmental improvement plan and the plan has been approved by the Director; and
  - (c) the Director is satisfied that the environmental improvement plan contains measures and a programme of attainment that will ensure compliance with any Environment Policies and the Regulation within a reasonable time; and
  - (d) compliance with the approved environmental improvement plan is a condition of the permit.

(3) Operational Procedures may specify the manner and form of any information or report required to be submitted under a condition fixed in accordance with this section.

**67. PROCEDURES FOR THE ISSUE OF PERMITS.**

- (1) The Regulations may prescribe -
- (a) the amalgamation of applications; and
  - (b) the manner of fixing the form of permits; and
  - (c) the term or duration of permits; and
  - (d) the procedures for calculating, imposing, administering and providing financial assurances; and
  - (e) the procedure on refusal of a permit.
- (2) The Director may issue Operational Procedures in relation to any matter relating to the issue of a permit.

**68. REVIEW OF DIRECTOR'S DECISIONS.**

- (1) A person who is dissatisfied with a decision of the Director under this Act in relation to an application made by that person or in relation to an activity carried on by that person may apply for a review of the decision by the Council.
- (2) An application for review of a decision must be lodged with the Director within 21 days after the day on which the decision was notified to the person or to the public and the operation of the decision of the Director may be suspended on receipt of the application until the review is determined.
- (3) In determining an application for review under Subsection (1) -
- (a) the Council shall determine its own procedures; and
  - (b) the Director shall absent himself from consideration of the review; and
  - (c) another member of the Council shall act as the temporary Chairman during the absence of the Director and for the purposes of determining the review.
- (4) Where a person who was a party to a review before the Council is dissatisfied with a decision of the Council in relation to the review, he may appeal to the National Court on a question of law within 28 days of the Council's decision.

- (5) The Regulations shall prescribe -
- (a) the form in which an application for review shall be made; and
  - (b) the information to accompany the application; and
  - (c) requirements for service or notification of the review application; and
  - (d) other matters related to the review.

**69. STAY OF OPERATION OF ORIGINAL DECISION.**

(1) Where an application is made for review of a decision, and the operation of the decision of the Director is not suspended in accordance with Section 68(2), the applicant may apply to the National Court for a stay of operation of the decision.

(2) Where the Court is of the opinion that a stay of operation is necessary to preserve the effectiveness of the review, the Court may order that operation of the decision be stayed.

(3) A stay has effect for the period stated by the Court and may be subject to any conditions that the Court thinks fit.

(4) The period of a stay shall not extend past the time when the Council reviews the decision and any later period the Court may allow to enable the applicant to appeal against the Council's decision in relation to the review.

***Division 5. - Administration.***

**70. PROCEDURES FOR ADMINISTRATION OF PERMITS.**

The Regulations shall prescribe -

- (a) procedures for renewal of permits; and
- (b) procedures for transfer and surrender of permits; and
- (c) procedures for amendment of permits; and
- (d) annual fees in relation to permits; and
- (e) reporting by permit holders; and
- (f) the effect on the validity of a permit of failure to lodge an annual return or pay fees.

**71. AMENDMENT.**

Where a permit holder makes application to amend a permit the Director shall determine whether the proposed amendment is a major amendment or a minor amendment and -

- (a) where he determines that the amendment is a major amendment - may issue a notice to undertake an environmental impact assessment in accordance with Section 50; and
- (b) in any case - having regard to the criteria set out in Section 65(3), may grant an amendment of the permit where he is satisfied of the matters set out in Section 65(1).

**72. SUSPENSION OR CANCELLATION.**

(1) The Director may suspend or cancel a permit in accordance with this section.

(2) Where -

- (a) a permit holder has been convicted of an offence against this Act in relation to an activity for which the permit was granted (other than an offence for which the maximum fine imposed under this Act on a person other than a Corporation committing the offence is K50,000.00 or less); or
- (b) the permit was issued because of a materially false or misleading representation or declaration in writing; or
- (c) a permit holder has breached a condition of the permit; or
- (d) a permit holder has failed to perform an obligation required by this Act in relation to the activity carried out pursuant to the permit; or
- (e) a permit holder has failed to notify the Director of any occurrence of unlawful, serious or material environmental harm in accordance with Section 8(1) in relation to the activity carried out pursuant to the permit; or
- (f) on application by a person entitled to compensation under Section 87, the Director is satisfied that the permit holder has not paid compensation as agreed or determined under that section,

the Director may serve a notice on the permit holder requiring him to show cause within the stated time why the permit should not be suspended or cancelled.

(3) Where -

- (a) a notice under Subsection (2) has been served on the permit holder; and
- (b) the permit holder has failed to satisfy the Director that there are good reasons for the failure,

the Director may suspend the permit for a stated period or cancel the permit.

(4) The Director shall inform the permit holder of the decision by written notice and state the reasons for the decision.

(5) This section does not affect the operation of Section 95.

(6) The Regulation may make further provision for the circumstances in which a permit may be suspended, and the procedures which apply to suspension.

### **73. OFFENCES IN RELATION TO PERMITS.**

(1) A person, who carries out an activity in relation to which a permit has been issued while that permit is suspended or cancelled, is guilty of an offence.

Penalty: Where the person convicted of an offence is-

- (a) a Corporation - a fine not exceeding K250,000.00; and
- (b) other than a Corporation - a fine not exceeding K125,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K15,000.00.

(2) A person, who breaches a condition of a permit, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.

Default Penalty: A fine not exceeding K10,000.00.

## **PART VI. - ENVIRONMENTAL MANAGEMENT.**

### **74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.**

(1) The Director may -

- (a) engage a person to conduct; or
- (b) direct a person to commission in relation to an activity the person is carrying out,

an environmental audit or investigation and report on it to the Director within a specified time.

(2) Without limiting the generality of Subsection (1), an audit or investigation may include -

- (a) an audit of compliance with an Environment Policy, an environmental improvement plan or the conditions of a permit; and
- (b) a review of the design and conduct of an environmental monitoring programme; and
- (c) identification of the cause of any actual or potential risk of serious or material environmental harm and the steps that must be taken to prevent, minimise or mitigate the harm.

(3) The Council shall approve the terms of reference for the audit or investigation, and shall approve the auditor or investigator.

(4) A report of an environmental audit or investigation shall be accompanied by a statutory declaration signed by -

- (a) the permit holder; or

- (b) where the permit holder is a corporation - the most senior officer of the corporation who is resident in Papua New Guinea,
- certifying as to whether or not, in the opinion of that person, the audit or investigation -
- (c) has been completed in accordance with the terms of reference; or
  - (d) has not been completed in accordance with the terms of reference and the reasons for that opinion.
- (5) The Regulations may prescribe -
- (a) the circumstance in which the public should have access to the results of an audit or investigation; and
  - (b) the process for giving directions to undertake an audit or investigation; and
  - (c) the form of the declarations which are to accompany a report; and
  - (d) time limits for compliance; and
  - (e) acceptance of the report provided; and
  - (f) the action which may be taken on refusal of a report.
- (6) A person, who fails to comply with a direction in relation to an environmental audit or investigation, is guilty of an offence.
- Penalty: Where the person convicted of an offence is -
- (a) a Corporation - a fine not exceeding K100,000.00; and
  - (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.
- Default penalty: A fine not exceeding K10,000.00.
- (7) The contents of an audit report are not admissible in any proceedings as evidence against the person in respect of whom the audit was conducted.

## **75. ENVIRONMENTAL IMPROVEMENT PLANS.**

- (1) The Director may require a person to submit an environmental improvement plan setting out the steps by which it is proposed that an activity carried out by that person will achieve compliance with an Environment Policy, the Regulations or a standard or requirement imposed under this Act.
- (2) Where the Director is satisfied that -
- (a) a proposed environmental improvement plan will, if carried out, achieve compliance with all relevant Environment Policies, the Regulations and any other relevant standards or requirements imposed under this Act within a reasonable time; and
  - (b) the person submitting the plan will carry out the plan,
- he may approve the plan, subject to any conditions.
- (3) Where the Director is not satisfied with respect to the matters referred to in Subsection (2)(a) in relation to an existing permit holder, the Director and the permit holder shall meet and discuss the terms of the relevant environment improvement plan, and in conducting such discussions, the Director and the permit holder shall consider the terms of the relevant Environment Policy or Regulation.
- (4) Where the Director and a permit holder cannot agree as to the terms of the environmental improvement plan within 60 days of the commencement of discussions under Subsection (3), the Director shall be deemed to have rejected the environmental improvement plan in which case the proponent of the environmental improvement plan may apply for a review of that decision under Section 68.
- (5) Where an environmental improvement plan is rejected under Subsection (4), the Director shall allow the permit holder a further 28 days from -
- (a) where the permit holder did not appeal the rejection under Section 68, the date of rejection; and
  - (b) where the permit holder did appeal the rejection under Section 68 and the appeal was dismissed, the date of dismissal of the appeal,
- to submit a revised environmental improvement plan.
- (6) Subject to this section, the Regulation may prescribe -
- (a) the circumstances in which the Director may require a person, whether a permit holder or not, to lodge an environmental improvement plan; and
  - (b) the procedure for approval of an environmental improvement plan; and
  - (c) the provision of annual reports on the implementation of a plan; and
  - (d) payment of fees for approval of an environmental improvement plan; and

- (e) fixing of offences in relation to environmental improvement plans and penalties not exceeding K25,000.00 and default penalties not exceeding K2,500.00.

(7) Nothing in this section affects the fixing of a requirement to submit for approval and carry out an environmental improvement plan -

- (a) as a condition of a permit under Section 66; or
- (b) in relation to a permit which is saved pursuant to Section 136.

(8) Notwithstanding any provisions or requirements under this Act, where an Environment Policy or Regulation is made following the grant of an environment permit, nothing in that Environment Policy or Regulation shall be taken to limit or restrict in any way the carrying out of any activity in accordance with that permit or to amend the terms and conditions of that permit unless -

- (a) the Environment Policy or Regulation was made in accordance with Section 33; and
- (b) the permit holder is first required to submit an environmental improvement plan in accordance with Subsection (1); and
- (c) the process of consideration, discussion, approval or rejection of an environmental improvement plan is completed in accordance with this section.

#### **76. EMERGENCY AUTHORIZATIONS.**

(1) Notwithstanding any provisions of or requirements under this Act (including conditions attaching to a permit) the Director may give an Emergency Authorization authorizing an action which is likely to result in serious or material environmental harm where he is satisfied that -

- (a) it is necessary and reasonable to take the action because of an emergency; and
- (b) it is justified to take the action to protect life, property or the environment; and
- (c) there is no other practicable alternative to taking the action.

(2) An Emergency Authorization under Subsection (1) shall be in writing, and subject to such terms and conditions as the Director considers appropriate.

#### **77. DATA COLLECTION.**

(1) The Director may, and where he considers it necessary shall, arrange for the collection and storage of information and the compilation of related information and details concerning the environment or any element or segment of the environment.

(2) Subject to Subsection (3), the Director may, by written notice, require any person to provide any information within that person's possession relating to an activity within Section 41 or research carried out by such person that the Director considers relevant for the purposes of Subsection (1) or as prescribed.

- (3) A notice under Subsection (2) may not require the provision of -
- (a) any confidential information relating to a manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment; or
  - (b) any confidential business or financial information; or
  - (c) any information which is the subject of conditions relating to confidentiality under any other contract, permit, approval, tenement or licence.

(4) It is a defence to a prosecution for failure to comply with a notice under Subsection (2) if the person to whom the notice is directed satisfies the Court on the balance of probabilities that the person believed on reasonable grounds that the information sought by the notice was confidential information within the meaning of Subsection (3).

(5) A person, who fails to comply with a notice under Subsection (2) within the time specified in the notice, is guilty of an offence.

Penalty: A fine not exceeding K20,000.00.

Default penalty: A fine not exceeding K2,000.00.

- (6) A person may, on payment of the prescribed fee -

- (a) inspect and make copies of entries; or
- (b) receive from the Director a copy of,

information and details contained in the collection referred to in Subsection (1), other than entries, information or details which relate to confidential information or information which a person would reasonably consider to be confidential.

#### **PART VII. - WATER.**

***Division 1. - Interpretation.***

**78. INTERPRETATION.**

In this Part, unless the contrary intention appears, "permit" means a permit containing conditions that authorize the permit holder to -

- (a) dam a river or stream; or
- (b) divert water; or
- (c) release water or contaminants into any water; or
- (d) release water containing contaminants onto land or into ground in circumstances that result in -
  - (i) the contaminants; or
  - (ii) other contaminants emanating as a result of process from the contaminants, entering the water; or
- (e) being the occupier of land, to cause or permit contaminants emanating as a result of processes from matter previously placed on or released on to the land or into the ground, to enter water; or
- (f) take or use water; or
- (g) knowingly cause any contaminant to enter water.

***Division 2. - Rights in relation to water.***

**79. VESTING OF RIGHTS IN STATE.**

(1) Subject to this Act and to Subsections (2) and (3), the right to the use, flow and control of water is vested in the State.

(2) This Act does not affect customary rights to the use of water by the citizens resident in the area in which those customary rights are exercised.

- (3) This section does not apply to use of water for -
- (a) domestic purposes; and
  - (b) any prescribed purposes.

**80. RIGHTS OF THE PUBLIC TO TAKE WATER.**

- (1) A person may take water without charge for -
- (a) domestic purposes; or
  - (b) watering stock; or
  - (c) fire fighting,

from a watercourse or lake to which the public has free access by road or from an area of land reserved for the use of the public.

(2) A person taking water under Subsection (1), who places a permanent installation for taking water in, or on the land adjacent to, the watercourse or lake, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K50,000.00; and
- (b) other than a Corporation - a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

**81. RIGHTS OF OWNER, ETC., OF LAND NEAR WATER COURSE, ETC.,**

(1) Subject to this section, the owner or occupier of land abutting on the bank of a watercourse or lake -

- (a) may take water without charge from the watercourse or lake for -
  - (i) domestic purposes, and for watering the stock of himself or members of his family resident on the land and of his employees so resident; and
  - (ii) fire fighting purposes; and
- (b) shall have a right of access for himself, those members of his family and those employees and for his and their stock to the part of the bed and bank of the watercourse or lake adjoining the land of which he is the owner or occupier.

(2) The Director may, by written notice given to an owner or occupier referred to in Subsection (1), specify the maximum quantity of water that may be taken by the owner or occupier under Subsection 1 (a) during a period specified in the notice.

(3) The person to whom a notice is given under Subsection (2) who, during the period specified in the notice, takes from the watercourse or lake a quantity of water exceeding the quantity specified in the notice is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K50,000.00; and
- (b) other than a Corporation - a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

Default penalty: A fine not exceeding K5,000.00.

(4) A person taking water from a watercourse or lake under Subsection (1)(a)(i) may place a permanent installation for taking water in, or on the land adjacent to, the water course or lake but must not build any works obstructing the flow of the watercourse or lake.

(5) A person, who contravenes Subsection (4), is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(6) The right of access referred to in Subsection (1)(b) is subject to any rights granted under this Act or any other law.

(7) A person who has a right to pass over land abutting on the bank of a water course or lake, that is owned or occupied by another person, for the purpose of access to the watercourse or lake shall have, for the purpose of this section, the same rights as that other person, but must not place a permanent installation for taking water in or on the land adjacent to, the watercourse or lake.

(8) A person, who contravenes Subsection (7), is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K50,000.00; and
- (b) other than a Corporation - a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

## **82. RIGHTS CONFERRED BY PERMIT RELATING TO WATER USE.**

Subject to any prescribed conditions or conditions endorsed on it, a permit confers on the holder for the purposes for which it was granted and in the area of land specified in the permit -

- (a) the exclusive right of the construction or protection of works, subject to the right of the Director or a person authorized by him to enter and inspect the land and the works constructed on it under the permit; and
- (b) the right to construct, in accordance with the plan and the programme approved by the Director -
  - (i) works in accordance with that plan and works for purposes subsidiary to those works; and
  - (ii) on Government land, or land over which the State has easements permitting the construction of pipelines, tunnels, electricity transmission lines, roads for construction and maintenance purposes, helicopter landing pads and other necessary works; and
- (c) the right to flood such areas of land specified in the permit as areas that may be flooded; and
- (d) the right to operate and maintain the works constructed in pursuance of Paragraph (b) for -
  - (i) the generation and distribution of hydro electric power; or
  - (ii) the taking of water for the purpose specified in the permit at a rate not exceeding the maximum rate specified; and
- (e) the right to release water or contaminants in accordance with prescribed conditions and standards.

## **83. RIGHTS IN IMPROVEMENTS.**

(1) The permit holder shall within three months before the date of expiry, or surrender of a permit, by written notice inform the Director of his intention to take down and remove any equipment or fixtures erected on Government land under the permit for Director's approval.

(2) Where the Director does not allow the taking and removal referred to in Subsection (1), he shall pay to the permit holder such sum in full payment as the Director determines, and the Consolidated Revenue Fund is appropriated accordingly.

## **84. TRANSMISSION OF WATER UNDER PERMIT, ETC.,**

(1) An applicant or intending applicant for a permit may enter into an agreement with the owners of land intervening between the land for the benefit of which the works the subject of the permit are to be used and the point from which the water is to be taken from or released to a water source, to allow the construction, maintenance and use of a

channel, pipeline or other method of conveying water or waste from that point to the last-mentioned land.

(2) Where an agreement referred to in Subsection (1) has been entered into, the land the subject from time to time of the agreement, (whether ascertained or not), shall be deemed to be land in which the applicant or intending applicant has rights in land to which Section 82 applies.

(3) An agreement under this section is of no force or effect until -  
(a) the permit in relation to which it was entered into is granted; and  
(b) the assent of the Director is given,  
and, subject to anything to the contrary contained in the agreement, runs with the permit.

(4) The provisions of Parts XVI. and XX of the *Land Act* do not apply to or in relation to any agreement referred to in this section.

#### **85. ACQUISITION OF LAND.**

(1) The following are declared to be public purposes for purposes of Section 53(1) (*protection from unjust deprivation of property*) of the *Constitution* and of the *Land Act*:-

- (a) conducting of official investigations under Section 88; and
- (b) construction of waterworks for the use, flow or control of water; and
- (c) construction of works for the generation of hydro-electric power; and
- (d) conveyance of water or electricity; and
- (e) accommodation of officers, agents and employees of a permit holder in connection with purposes specified in this section; and
- (f) release of contaminants from operations connected with purposes specified in this section.

(2) Where a claimant proves to the satisfaction of a Court of competent jurisdiction under the *Land Act* that damage has been sustained by reason of severance of the land acquired from adjoining land of the claimant, or land in which he is interested, the Court may order that the adjoining land or a portion of it shall also be acquired.

(3) Where land has been acquired for a purpose specified under Subsection (1) and has been made available to a permit holder for the purposes of his permit under this Act, the amount of compensation paid by the State in respect of the land is a debt due and payable by the holder to the State.

(4) Payment of the amount due under Subsection (3) on written demand being served on the permit holder is a condition applying to a permit for purposes of Section 72.

#### **86. NOTICE TO LANDHOLDERS OF EXERCISE OF POWERS.**

(1) Subject to Section 120, where a person owns or is entitled to occupy land, another person shall not in relation to that land, exercise any of the powers conferred on him by this Part or by a permit unless he has given not less than 14 days' written notice to the first mentioned person, including where the land is occupied under a licence under an Act of the National Parliament, to the holder of that licence.

(2) It is sufficient compliance with Subsection (1) where, in respect of customary land, written notice is given to the landowners and the Local-level Government body in the area where the land is situated.

#### ***Division 3. - Compensation.***

#### **87. COMPENSATION.**

(1) Subject to this section, the holder of a permit is liable to pay compensation to the owners and occupiers of, and any person with customary rights in, any private land in relation to their several interests, in respect of entry on the land, or occupation of the land by the holder.

- (2) Subject to this section, compensation shall be paid for -
- (a) the deprivation of the use and enjoyment of the surface of the land or any part of it, or of rights to water customarily associated with the land, except where there has been a reservation in favour of the State of the right to that use and enjoyment; and
  - (b) damage to the surface of the land or any part of it or improvements on it, or to any flora or fauna, caused by the carrying on of operations under a permit; and
  - (c) rights of way and easements; and
  - (d) any damage consequential on the holder's use or occupation of the land, or use or control of water or a water source on or in the land.

(3) Where private land, or improvements on it, adjoining or in the vicinity of land occupied under a permit, is or are damaged or depreciated in value -

- (a) by any operations carried on by or on behalf of the permit holder; or
- (b) by reason of a right of way acquired by the permit holder,

the owners and occupiers of, and any person with customary rights in, that private land or those improvements shall be entitled in respect of their several interests to compensation for loss or damage sustained and the amount of compensation shall be ascertained in accordance with this section.

(4) A permit holder may agree with any person entitled to compensation under this section the amount and form of compensation and the time for payment.

- (5) An agreement under Subsection (4) shall be -
- (a) by instrument signed by the parties to it or their agents; and
  - (b) lodged with the Director.

(6) Where the permit holder and any person entitled to compensation under this section have not reached agreement on the amount and form of compensation and the time for payment, within 90 days of the permit holder giving notice in writing to that person seeking to open negotiations on these issues, either party may, by notice to the Director, apply to the Director to determine each of these matters.

(7) The Director shall determine each matter referred to him under Subsection (6) within 90 days of the date of the notice from the party referring the matter, and in determining such matters, the Director may seek the advice of the Council in order to assist the Director to make a determination within the 90 day period.

(8) Where the Director considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction for the damage sustained by the claimant, the Director may make an order -

- (a) as to the compensation payable in respect of a specified period; and
- (b) in respect of the whole or a part of the total claim for compensation; and
- (c) as to the period and the manner in which any outstanding claim for compensation is to be determined.

(9) The Director may, at any time, require that the person from whom compensation is sought gives such security as the Director thinks fit for payment of compensation for which that person may become liable before commencing or continuing, as the case may be, any operations under this Act.

(10) Where, after the Director has determined an amount of compensation under this section, it is proved that further loss or damage, not being loss or damage in respect of which compensation has already been determined or ordered, has been sustained, the Director may, with the advice of the Council if the Director so requires, determine the further loss or damage and order that further compensation be paid by the holder of the permit to the person entitled to the further compensation.

(11) Where the Director has determined the amount of compensation or further compensation under this section, payment of the amount is a condition applying to a permit for the purposes of Section 72.

- (12) In determining the amount of compensation payable under this section, the Director may -
- (a) consider and seek an opinion from the Council as to the detriment to any beneficial value in relation to the environment or a part of the environment; and
  - (b) take into consideration the amount of compensation that the owner or occupiers of, or the person interested in, the land or any of them or their predecessors in title has or have already received for the damage or loss for which compensation is being determined and deduct that amount from the amount to which they or any of them respectively would otherwise be entitled.

(13) Where either party is aggrieved by a determination of the Director, they may appeal to the National Court.

(14) A person, who fails to pay the compensation within the time determined in accordance with Subsection (8), is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K5,000.00.

***Division 4. - Investigations.***

**88. OFFICIAL INVESTIGATIONS.**

(1) The Director may, by instrument, authorize a person, by himself or by his assistants, employees, agents, servants or contractors, with or without vehicles and machinery -

- (a) to enter on land for the purpose of exercising the rights vested by this Act in the State to the use, flow and control of water and carrying out investigations into water resources and of taking measures -
  - (i) for conserving water, regulating the flow of water and preventing the contamination of water; or
  - (ii) for protecting the bed and banks of any water course or lake or shore and removing obstructions from the bed or banks; or
  - (iii) for removing or destroying any works affecting the use, flow or control of water not authorized by or under this Act or not authorized, before the commencement date by or under any other Act; and
- (b) to enter on land within a protected area and carry out such works relating to the use, flow and control of water,

as are specified in the instrument.

(2) A person, who obstructs or hinders a person to whom authority is given under this section, or his assistant, employee, agent, servant or contractor in the course of carrying out or preparing to carry out the things he is authorized to do, is guilty of an offence.

Penalty: A fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

**89. WATER INVESTIGATION PERMITS.**

- (1) An application for a water investigation permit -
  - (a) in the form specified in the Operational Procedures; and
  - (b) accompanied by the prescribed fee,

may be made to the Director.

- (2) Subject to this Act, a water investigation permit may be granted by the Director.
- (3) A water investigation permit may be granted for a period not exceeding one year and may be extended.
- (4) A water investigation permit is subject to such conditions -
  - (a) as are prescribed; and
  - (b) as are endorsed on the permit.

**90. RIGHTS CONFERRED BY WATER INVESTIGATION PERMITS.**

Subject to Section 89(4), a water investigation permit confers on the holder for the purpose of carrying out the investigations in the area of land specified in the permit -

- (a) the right to carry out investigations into the water resources in the area, except for the right of a person authorized in writing by the Director to carry out investigations into the water resources in the area on behalf of the State; and
- (b) the right to make surveys, to take levels, to carry out pumping tests, to test-drill and to collect soil or geological samples in the area; and
- (c) the right to install and to inspect, operate and maintain gauges, instruments and appliances in the area; and
- (d) the right to do such other things as are reasonably necessary for, or incidental to, the carrying out of the investigation,

but does not confer the right to authorize the doing of any act prejudicing any customary rights to the customary use of water.

**91. ASSIGNMENT OF WATER INVESTIGATION PERMITS.**

A water investigation permit shall not be assigned without the written consent of the Director.

**92. SURRENDER OF WATER INVESTIGATION PERMITS.**

A holder of a water investigation permit may at any time, by written notice to the Director, surrender his permit.

**93. CANCELLATION OF WATER INVESTIGATION PERMITS.**

A water investigation permit shall be liable to be cancelled -

- (a) where any of the conditions specified in or applying to or in relation to the permit are not complied with by the holder; or
- (b) where any of the provisions of this Act that apply to or in relation to the permit or the holder are not complied with by the holder.

**94. REPORTS OF INVESTIGATIONS.**

(1) The holder of a water investigation permit may at any time, and shall in any case within six months after its expiry or revocation, furnish to the Director a report of the investigations of water resources carried out under the permit giving details of the hydrological, geographical, geological and geophysical information collected.

(2) The report submitted under Subsection (1) may form part of the data compiled by the Director under Section 77 and shall be used only for purposes related to the conservation of water resources and administration of this Act.

(3) Where information in a report forms part of the data referred to in Subsection (1), the Director shall where possible arrange it in such a manner as to prevent any particulars from being identifiable as particulars relating to a specific undertaking.

*Division 5. - Protection of water resources.*

**95. ACTIONS IN CASE OF DROUGHT.**

(1) Where after receiving a report from the Council, the Director considers that there has been or is likely to be drought conditions resulting in -

- (a) a reduction or alteration in the flow or supply of water in a water source (which is having or is likely to have a detrimental effect on the environment); or
- (b) a significant alteration of a water course (which is having or is likely to have a detrimental effect on the environment),

he may, by notice in the National Gazette, declare that this Division shall apply in respect of the period and the water source or part of the water source specified in the notice or until earlier revoked by notice published in the National Gazette.

(2) Where a notice has been published under Subsection (1), the Director may, by written notice to the holder of a permit in the specified area -

- (a) require the holder of the permit to operate water works or allow contaminants to be released into water for a reduced period; or
- (b) suspend the operation of conditions in the permit relating to the taking of or release into water, during the period of, and subject to such conditions as are endorsed on, the notice.

(3) The conditions endorsed on a notice under Subsection (2) shall restrict water use to the extent only of ensuring that water is available for supplying the minimum essential need of users in the following descending order of priority of purpose:-

- (a) domestic purposes; and
- (b) watering stock; and
- (c) irrigation; and
- (d) industrial purposes or generation of hydro electric power.

(4) A person, who acts in contravention of a notice under this section, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K50,000.00; and
- (b) other than a Corporation - a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

Default penalty: A fine not exceeding K5,000.00.

## **PART VIII. - FINANCIAL PROVISIONS.**

### **96. CHARGES.**

The Minister may, acting on the recommendation of the Council and after consultation with the Minister responsible for financial matters, by notice in the National Gazette, fix charges for -

- (a) the consumptive or non-consumptive use of water; and
- (b) the use of water, air and land as a carrier following the release of contaminants, in relation to use of that segment of the environment generally or to a particular use in a specified area.

### **97. ENVIRONMENTAL PROTECTION TRUST FUND.**

(1) The Regulations may provide for the establishment, operation and management of the Environmental Protection Trust Fund for the purpose of providing funding for the office in the event that the office becomes a statutory authority or is otherwise corporatized.

(2) Where the Environmental Protection Trust Fund is established as provided by Subsection (1), all charges and levies under Sections 96, 98 and 100 shall be paid into it.

### **98. ENVIRONMENTAL LEVY.**

Upon the establishment of the Environmental Protection Trust Fund, the Regulations may provide for the imposition, collection, payment into the Environmental Protection Trust Fund and application of an Environmental Levy.

### **99. ENVIRONMENTAL BONDS.**

(1) Subject to this section, the Director may require -

- (a) a person carrying out an existing activity; or
- (b) by the conditions of a permit, a person carrying out an activity which is the subject of the permit, to lodge with the Director an environmental bond supported by a bank guarantee, insurance policy or other security approved by the Director, the discharge of which is conditional upon the person -
- (c) not committing any contravention of this Act, any Environment Policies or the Regulation of a specified kind during a specified period; or
- (d) taking specified action within a specified period to achieve compliance with this Act, any Environment Policies and the Regulation.

(2) The Regulation may provide for -

- (a) the circumstances in which an environmental bond may be imposed; and
- (b) the calculation of the amount of an environmental bond; and
- (c) the circumstances in which the Director may forfeit an environmental bond, and the amount which may be forfeited; and
- (d) the procedures for forfeiture.

### **100. MISCELLANEOUS CHARGES.**

The Director may fix fees in relation to any matter or thing required to be done or provided by the Director under this Act, including but not limited to the provision of any report, document, environment impact statement, permit or other information.

## **PART IX. - ENFORCEMENT.**

### *Division 1. - Orders and Directions.*

### **101. ENVIRONMENT PROTECTION ORDERS.**

(1) Where the Director is satisfied that a process, activity or use that is being carried on, or is proposed to be carried on -

- (a) has caused, or is likely to cause, environmental harm; or
- (b) constitutes, or is likely to constitute, a breach of this Act, a mandatory provision of an Environment Policy or the Regulation; or
- (c) has caused, or is likely to cause, a failure to comply with -
  - (i) any standard prescribed under this Act; or
  - (ii) an Environment Policy; or
  - (iii) a condition of a permit,

he may issue an Environment Protection Order for the purpose of -

- (d) restraining or preventing the commission of an offence; or
  - (e) securing compliance with -
    - (i) the general environmental duty; or
    - (ii) an Environment Policy; or
    - (iii) any other requirement under this Act; or
    - (iv) a condition of a permit.
- (2) An Environment Protection Order shall be in the form of a written notice -
- (a) specifying the person to whom it is issued, by reference to the person's name, or the premises of which the person is the occupier; and
  - (b) stating the purpose for which the Order is issued, and specifying the environmental harm which it is aimed at minimising; and
  - (c) where the notice relates to a provision of this Act, an Environment Policy or the Regulation, specifying the relevant provision of this Act or the Policy or Regulation ; and
  - (d) served on the person to whom it is issued.
- (3) An Environment Protection Order may impose any reasonable requirement required for the purpose of securing compliance with the Order including requirements that the person -
- (a) discontinue, or not commence, a specified activity, process or use either indefinitely or for a specified period or until further notice from the Director; or
  - (b) take specified action, including but not limited to the installation, alteration, maintenance, or operation of any apparatus, plan or structures as may be specified in the Order; or
  - (c) not carry out a specified activity, process or use except at certain times or on certain conditions, or in a manner specified in the Order; or
  - (d) supply to the Director plans, specifications and other information as is specified in the order showing how the process, activity or use will be carried out, modified or controlled; or
  - (e) comply with -
    - (i) any provisions of the Regulation or any relevant Environment Policy; or
    - (ii) any condition of a permit; or
  - (f) provide monitoring equipment and carry out a monitoring programme as specified in the Order; or
  - (g) comply with any requirement specified for the purpose of enforcing an environmental improvement plan.
- (4) The Director may, by written notice, vary or revoke an Environment Protection Order.
- (5) A person to whom an Environment Protection Order is issued shall comply with the Order.
- (6) The Director shall not issue an Environment Protection Order, in relation to an activity carried out under a permit, to a person carrying out the activity in accordance with the terms and conditions of the permit.

**102. OFFENCE OF FAILING TO COMPLY WITH ENVIRONMENT PROTECTION ORDER.**

A person, who fails to comply with an Environment Protection Order issued under Section 101, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K250,000.00; and
- (b) other than a Corporation - a fine not exceeding K125,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K15,000.00.

**103. CLEAN-UP ORDER.**

- (1) Where the Director is satisfied that a person has caused environmental harm by a contravention of -
- (a) this Act or any of the repealed Acts; or
  - (b) an Environment Policy; or
  - (c) an Environment Protection Order; or
  - (d) an Emergency Direction; or
  - (e) the Regulation; or
  - (f) a condition of an environment permit,

he may issue a Clean-up Order under which officers or other persons authorized by the Director may take specified action to minimise or restore any resulting environmental damage.

- (2) A Clean-up Order shall -
  - (a) be in writing; and
  - (b) specify the person alleged to have caused the environmental harm; and
  - (c) specify the contravention alleged to have caused the environmental harm; and
  - (d) include authorization for action to be taken to prevent or mitigate further environmental harm.
- (3) A Clean-up Order must be served on the person alleged to have caused the environmental harm, as soon as practicable after it has been issued.
- (4) A person served with a Clean-up Order shall take all reasonable steps to comply with the requirements of the Order.
- (5) The Director may, by notice in writing, vary or revoke a Clean-up Order.
- (6) A Clean-up Order may authorize an authorized officer to -
  - (a) enter premises, other than a residence, without a warrant; and
  - (b) seize evidence of the commission of an offence.
- (7) The Director shall not issue a Clean-up Order, in relation to environmental harm, to a person who caused such environmental harm by carrying out an activity in accordance with the terms and conditions of a permit.

**104. OFFENCE OF FAILING TO COMPLY WITH CLEAN-UP ORDER.**

A person, who fails to comply with a Clean-up Order issued under Section 103, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K250,000.00; and
- (b) other than a Corporation - a fine not exceeding K125,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K15,000.00.

**105. RECOVERY OF COSTS.**

(1) Where the requirements of a Clean-up Order are not complied with, the Director may take any action required by the Order.

(2) Where a person has failed to take action to comply with a Clean-up Order, and the Director has taken action under Subsection (1), the Director may recover the reasonable costs and expenses incurred in taking that action from the person who failed to comply with the Order.

(3) Costs recoverable under this section are a civil debt due to the State and an action may be instituted to recover the debt.

(4) The Director shall notify a person who is liable to pay an amount under this section of the amount that is due and fix a date for payment not being less than 28 days after the day on which the notice is given, and where the amount is not paid by that date, the person is liable to pay interest at the prescribed rate per annum on the amount which is unpaid.

**106. EMERGENCY DIRECTION.**

(1) The Director, or an authorized officer, may orally issue an Emergency Direction where he is of the opinion that urgent action is required to prevent or minimise serious or material environmental harm.

(2) An Emergency Direction shall take effect for a period of 72 hours and, unless it is earlier confirmed by an Environment Protection Order, the Emergency Direction shall immediately lapse after expiry of that period.

(3) An Emergency Direction that is issued orally shall be reduced to writing and recorded in the Register within 72 hours.

**107. OFFENCE OF FAILING TO COMPLY WITH EMERGENCY DIRECTION.**

A person, who fails to comply with an Emergency Direction issued under Section 106, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and

- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.

Default penalty: A fine not exceeding K10,000.00.

**108. REQUIREMENT FOR INFORMATION.**

(1) The Director or an authorized officer may give a written notice requiring a person, including the owner or occupier of any premises or site, to provide to the Director for inspection any documents, reports, books, plans, maps or other records (including monitoring records) relating to -

- (a) information required to be kept in accordance with this Act or the conditions of a permit; or  
(b) the carrying out of any activity which is likely to cause material or serious environmental harm; or  
(c) the presence on or release of any contaminant from or at any premises or site; or  
(d) the emission of noise.

(2) A notice under Subsection (1) shall -

- (a) be in a form fixed by the Director in the Operational Procedures; and  
(b) state the person to whom it is issued; and  
(c) state the information that is required; and  
(d) state the time within which the information is to be provided; and  
(e) state why the information is required; and  
(f) state the procedure by which review of or appeal from the notice may be made.

(3) A notice may be given to any person the Director believes on reasonable grounds has knowledge of a matter, or has possession or control of a document dealing with a matter, for which the information is required.

(4) A person, who fails to comply with a request under Subsection (1) within a reasonable time, is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and  
(b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K10,000.00.

**109. REVIEW.**

- (1) A person who is served with -  
(a) an Environment Protection Order; or  
(b) a Clean-up Order; or  
(c) a notice to provide information under Section 108,

may apply for review of the decision under Section 68 and shall have the right to appeal to the National Court as referred to in Section 68(4).

(2) Where an application for review is made under Section 68, the applicant may apply to the Court for a stay of operation of the decision under Section 69.

***Division 2. - Offences.***

**110. OFFENCE OF INTERFERING WITH MONITORING EQUIPMENT**

A person, who interferes with monitoring equipment used under this Act or by a person who holds a permit under this Act, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

**111. GENERAL DEFENCE.**

(1) It is a defence to any offence against this Act, a mandatory provision of an Environment Policy or the Regulation for the person charged to prove that -

- (a) the action to which the charge relates occurred in an emergency to prevent danger to life or limb other than an emergency arising from the negligent act or omission of the person charged; and  
(b) as soon as reasonably practicable, after that action, the person notified the Director in writing of the particulars of the action and the reasons for which it was taken.

(2) A person who intends to rely on this defence may only do so where he notifies the Director in writing of his intention to do so within seven days of service of the proceedings relating to the charge.

**112. NOTICE OF DEFENCE TO CHARGE OF UNLAWFUL ENVIRONMENTAL HARM.**

(1) A person who intends to rely on the defence set out in Section 10(2) shall give written notice of intention to the Director at least 14 days prior to the day on which the charge is heard.

(2) A person who fails to comply with Subsection (1) shall not be permitted to rely on the defence at his trial.

**113. LIABILITY OF PERMIT HOLDERS.**

A permit holder is not liable to a penalty under this Act with respect to any act which causes or might reasonably be expected to cause environmental harm where the permit holder proves that he complied with -

- (a) the conditions attaching to the permit authorizing the act or acts which are the subject of the charge; or
- (b) the requirements of any Environment Protection Order, Clean-up Order or Emergency Direction relating to the act or acts which are the subject of the charge.

**114. OFFENCES IN RELATION TO PROVISION OF INFORMATION.**

A person who knowingly gives any information that is false or misleading in any material particular in connection with -

- (a) a permit application or any information provided in connection with an application for a permit; or
- (b) an application for variation, amendment, renewal, transfer or surrender of a permit; or
- (c) any report or other information required to be provided to the Director under this Act, an Environment Policy, the Regulation or a provision of a permit; or
- (d) an inception report or environmental impact statement; or
- (e) a submission or representation made in the course of public review of an environmental impact statement or a permit application; or
- (f) a submission to the Council; or
- (g) an application for approval of an environmental improvement plan; or
- (h) an environmental audit or investigation; or
- (i) a representation to the Director giving reasons why a permit should not be cancelled or suspended; or
- (j) any other information required to be provided under this Act,

is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K100,000.00; and
- (b) other than a Corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.

**115. GENERAL PENALTY.**

A person, who fails to comply with a requirement under this Act applicable to him in respect of which a specific penalty is not provided, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

**116. CONTINUING OFFENCES.**

Subject to this Act, where an offence against a provision of this Act, a mandatory provision of an Environment Policy or the Regulation is committed by a person by reason of a continuing act or omission, the person is liable to -

- (a) the penalty provided in respect of that offence; and
- (b) the additional penalty for each day on which the act or omission continues of an amount provided for that offence or, where no additional penalty is provided, an additional penalty of not more than one-fifth of the maximum penalty for that offence.

**117. PROOF OF INTENTION.**

Subject to any express provision in this Act to the contrary, it shall not be necessary to prove any intention or other state of mind in order to establish the commission of an offence against this Act.

**Division 3. - Appointment and powers of authorized officers.**

**118. APPOINTMENT OF ANALYSTS AND AUTHORIZED OFFICERS.**

- (1) The Director may by notice in the National Gazette appoint –
- (a) an appropriately qualified officer of the National Public Service; or
  - (b) a person included in a class of persons declared by the Regulation to be an approved class of persons for this section,

as he considers necessary to be authorized officer and analyst for the purposes of the Act and may, in writing, revoke any such appointment.

(2) An appointment under Subsection (1) may specify limitations on the powers of the authorized officer or analyst with respect to particular classes of activity or particular provisions of this Act.

(3) The Director shall, in making an appointment under Subsection (1) and fixing any limitations on the powers of the authorized officer or analyst, ensure that the person has the necessary expertise or experience to carry out the duties which will be required of that person.

(4) The Director shall provide each authorized officer with a written identity card identifying that authorized officer and the authorized officer shall produce that identity card to any person on demand when the authorized officer is carrying out or is about to carry out any of his powers under this Act.

- (5) The Regulation may prescribe matters in relation to the appointment of authorized officers, including –
- (a) qualifications for appointment of authorized officers and analysts to carry out particular duties; and
  - (b) any restrictions on the powers of authorized officers and analysts; and
  - (c) procedures for the issue of identity cards and withdrawal of authorized officer's powers.

**119. PROTECTION OF DIRECTOR, AUTHORIZED OFFICERS ETC. FROM LIABILITY.**

The Director, a person acting under his direction or delegation, an authorized officer, or analyst does not incur any civil liability for any thing done or omitted to be done honestly and without negligence in the course of exercising his powers or carrying out his duties and functions under this Act.

**120. POWERS OF AUTHORIZED OFFICERS.**

(1) Subject to this Act, an authorized officer may at any time enter upon and inspect any premises on which a level 1, 2 or 3 activity is being carried out –

- (a) at which he believes on reasonable grounds that any unlawful environmental harm is occurring; or
- (b) from which he believes on reasonable grounds, that environmental contaminants are being released or on which he believes on reasonable grounds, contaminants are being deposited, stored or kept in contravention of this Act; or
- (c) from which unreasonable levels of noises are being emitted.

(2) Where the premises referred to in Subsection (1) consist of a private dwelling-house, an authorized officer shall not enter other than at a reasonable time unless he has previously obtained the permission of the owner or occupier of the private dwelling-house, or under a search warrant obtained under the *Search Act* (Chapter 341).

(3) Where the premises referred to in Subsection (1) consist of a place where commercial activities are being conducted, an authorized officer shall not enter without providing reasonable notice to the person carrying out the activities unless the Director determines that, in all the circumstances, it is inappropriate to give notice.

- (4) An authorized officer exercising his power under Subsection (1) may –
- (a) examine and inspect any machinery, equipment or works used for or in connection with the industry or trade or the release of contaminants or emission of noise; and
  - (b) take and remove samples of any material that is being or likely to be, or is of a kind that is, used in connection with the industry or trade conducted on the premises, or which he believes to contain a contaminant; and
  - (c) take and remove samples, and examine and test any samples to ascertain whether any of the provisions of or requirements made under this Act, an Environment Policy or the Regulation, or the conditions, limitations or restrictions of any permit, are being complied with; and
  - (d) make such measurements and tests, and take such photographs, as he considers necessary for the purposes of carrying out his duties and functions under this Act; and

- (e) seize evidence, including any records or documents relating to the exercise of the power under Subsection (1) in which case the authorized officer shall provide the owner or occupier with a reasonable opportunity to obtain copies of any records, documents or other evidence seized.

**121. POWER TO REQUIRE NAME AND ADDRESS.**

(1) An authorized officer may require a person to state the person's name and address where the authorized officer -

- (a) finds the person committing an offence against the Act; or
- (b) has reasonable grounds to suspect that the person has committed an offence against the Act.

(2) A person, who fails to comply with a request by an authorized officer under Subsection (1), is guilty of an offence unless the person has a reasonable excuse.

Penalty: A fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

**122. POWER TO REQUIRE ANSWERS TO QUESTIONS.**

(1) Where an authorized officer has reasonable grounds to believe that -

- (a) an offence against the Act has been committed; and
- (b) a person may be able to give information about the offence,

the authorized officer may require the person to answer questions about the offence.

(2) A person, who fails to comply with a requirement by an authorized officer under Subsection (1), is guilty of an offence unless the person has a reasonable excuse.

Penalty: A fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

**123. OFFENCES IN RELATION TO AUTHORIZED OFFICERS.**

A person who -

- (a) hinders or obstructs an authorized officer in the execution of his duties; or
- (b) fails to comply with a lawful requirement made by an authorized officer; or
- (c) refuses an authorized officer entry to premises which the authorized officer may lawfully enter; or
- (d) impersonates an authorized officer,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

***Division 4. - Proceedings.***

**124. INSTITUTION OF PROCEEDINGS.**

(1) An offence against this Act shall be prosecuted -

- (a) before a Principal Magistrate where the offence provides for a maximum monetary penalty of K20,000.00 or less in the case of a person other than a Corporation; or
- (b) in the District Court where the offence provides for a maximum monetary penalty, in the case of a person other than a Corporation, of K50,000.00; or
- (c) in the National Court in any other case.

(2) The Director or an authorized officer may, after consultation with the Public Prosecutor, lay an information and institute prosecutions for offences under this Act.

**125. SERVICE.**

The service of an order, notice or other document under this Act may be effected -

- (a) by delivering it personally; or
- (b) by leaving it at the person's place of residence or business premises with someone apparently over the age of 16 years; or
- (c) where the person is the holder of a permit -
  - (i) by posting it to the last known address provided by the permit holder to the Director; or
  - (ii) by transmitting it by facsimile to the last facsimile number provided by the permit holder to the Director; or
- (d) in the case of a Corporation by serving it at or posting it to its registered office.

**126. LIABILITY OF CORPORATE OFFICERS.**

(1) In this section, "executive officer" means a person who is -

- (a) a member of the governing body of a Corporation; or

- (b) a senior manager of the Corporation responsible for those activities of the Corporation which are governed by this Act.
- (2) A Corporation's executive officers and directors shall ensure that the corporation complies with this Act.
- (3) Where a Corporation commits an offence against a provision of this Act, each director and executive officer of the Corporation who has -
- (a) aided, abetted, counselled or procured the contravention; or
  - (b) been knowingly concerned in, or party to, the contravention,
- is also, subject to Subsection (4), guilty of an offence of failing to ensure the Corporation complying with this Act.
- (4) It is a defence to a charge under Subsection (1) for an executive officer or director to prove that -
- (a) he was not in a position to influence and control the conduct of the Corporation in relation to the offence; or
  - (b) if the person was in a position to influence and control the conduct of the Corporation in relation to the offence - the person took reasonable steps to attempt to ensure the Corporation complied with the provision.

**127. EVIDENCE.**

- (1) This section applies to any proceeding under this Act.
- (2) An -
- (a) authorized officer who makes a technical assessment for the purposes of this Act, or who records monitoring data, or other technical information; or
  - (b) analyst who conducts an analysis for the purposes of this Act,
- shall prepare, sign and date a certificate, report or statement of his analysis, assessment or recording and deliver it to the Director.
- (3) In any proceedings, a certificate executed by the Director certifying a matter relating to -
- (a) a permit issued under this Act; or
  - (b) the appointment or non-appointment of a person; or
  - (c) a delegation of powers or functions under this Act (other than a delegation of powers or functions by the Minister); or
  - (d) a notice, order, requirement, direction, declaration or determination of the Director; or
  - (e) any other decision of the Director; or
  - (f) the receipt or non-receipt of any notice, report or other information required to be provided to the Director under this Act,
- constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (4) In any proceedings, an extract of the Register certified by the Director and containing -
- (a) a decision or approval of the Minister; or
  - (b) a recommendation, referral or decision of the Council,
- constitutes proof, in the absence of proof to the contrary, of the decision, approval, recommendation or referral, as the case may be.
- (5) In any proceedings under this Act where a party intends to rely on the contents of a certificate of analysis, or an authorized officer's report or statement, it shall serve on the person against whom the proceedings are to be brought, with and in the same manner as the summons relevant to that action, a copy of the certificate, report or statement, as the case may be.
- (6) Where in any proceedings for an offence against this Act a certificate of analysis or authorized officer's report or statement has been served in accordance with Subsection (5), that certificate, report or statement, as the case may be, shall be admissible in evidence, unless the defendant not later than five days immediately before the date set down for the hearing serves notice in writing upon the informant or prosecutor that he requires that analyst or authorized officer to be called to give evidence.
- (7) A certificate, report or statement admitted in evidence under this section is sufficient evidence of the matters contained therein.
- (8) Any instrument, equipment or installation that is used by an authorized person or analyst is taken to be accurate in the absence of evidence to the contrary.

(9) In a proceeding in which the Director applies to recover the costs and expenses incurred by it, a certificate by the Director stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.

**128. FORFEITURE OF ITEMS ON CONVICTION.**

(1) Subject to Subsection (2), where a Court convicts a person of an offence under this Act, the Court may in addition to imposing the penalty prescribed, order the forfeiture of any property including machinery or equipment retained as evidence and the forfeited thing becomes the property of the State and may be disposed of as directed by the Director in accordance with the *Public Finances (Management) Act 1995*.

(2) A Court shall not order the forfeiture of any property unless it has first made reasonable enquiries to ascertain the ownership of any property retained as evidence and shall not order the forfeiture of that property unless it is satisfied that -

- (a) the owner of the property cannot be found; or
- (b) the person convicted is the owner of the property and it was used in the commission of the offence.

**129. DAMAGES AND RECOVERY OF COSTS ON CONVICTION.**

(1) Where a person is convicted of an offence against this Act and as a direct consequence of the commission of that offence any other person (including the State) has suffered damage or injury or has incurred expenses, that other person may make application to the Court for an award of damages in respect of that damage or injury or expenses, and the Court may make an order accordingly.

(2) An application to the Court under Subsection (1) may be made at the conclusion of the prosecution for the offence, or to the same Court at a later time.

(3) In an action under this section, the Court may order the defendant to -

- (a) pay to the Director the reasonable costs and expenses incurred in taking any sample or conducting any test, inspection, measurement or analysis during investigation of the offence; and
- (b) pay to the Director the costs of prosecuting the matter, where it considers that it would be just in the circumstances to make that order; and
- (c) pay an amount of compensation to any persons (including the State) who, because of the commission of the offence, suffered loss of income, loss or damage to property or incurred costs; and
- (d) lodge a bond or equivalent security; and
- (e) take stated action to rehabilitate or restore the environment,

as it thinks fit.

(4) Nothing in this Act shall affect the right which a person may have at law to restrain, or obtain damages in respect of, environmental harm.

**130. COURT MAY ORDER ACTION TO MINIMISE ENVIRONMENTAL HARM.**

(1) Where a person is convicted of an offence against this Act, the Court by which he is convicted may, in addition to imposing a penalty for the offence, order that the person so convicted take such action within such time as the Court specifies to prevent the continuation or recurrence of the offence.

(2) The Court by which the order under Subsection (1) was made, may revoke or vary that order on an application by either party to the action.

(3) A person, who fails to comply with an order made or varied under this section, is guilty of an offence. Penalty: Where the person convicted of an offence is -

- (a) a Corporation - a fine not exceeding K250,000.00; and
- (b) other than a Corporation - a fine not exceeding K125,000.00 or imprisonment for a term not exceeding five years, or both.

**PART X. - MISCELLANEOUS.**

**131. REGISTER.**

(1) The Director shall keep a register containing a copy of all notifications, applications, decisions and approvals taken under this Act including but not limited to -

- (a) each registration of intention to carry out preparatory work received under Section 48; and
- (b) each notice to undertake environmental impact assessment served under Section 50; and
- (c) each inception report and environmental impact statement submitted under Sections 52 and 53; and
- (d) each direction given by the Director in relation to a programme of public review of an environmental impact statement under Section 55; and
- (e) each representation and submission received in response to public review of an environmental impact statement; and
- (f) each assessment of an environmental impact statement undertaken by the Director (but not including any confidential information withheld from public review by the Director under Section 55); and
- (g) each referral of an environmental impact assessment to the Council under Section 57; and
- (h) each Council recommendation under Section 58 in relation to a proposed activity; and
- (i) each approval in principle, or refusal to approve an activity by the Minister, under Section 59; and
- (j) such information as the Director considers appropriate in relation to permits, including each application for a permit, each application for transfer, renewal, amendment or surrender of a permit, and a copy of each permit and the conditions endorsed on it; and
- (k) each notice issued by the Director requiring a person to apply for a permit under Section 45; and
- (l) each decision by the Council in relation to an application for review of a decision by the Director under Section 68; and
- (m) each decision by the Director in relation to suspension or cancellation of a permit under Section 72; and
- (n) each direction by the Director in relation to conduct or commissioning of an environmental audit or investigation, and the terms of reference for an audit or investigation and approval of the auditor or investigator by the Council under Section 74; and
- (o) each environmental improvement plan approved by the Director under Section 75; and
- (p) each monitoring and management report submitted by a permit holder under the conditions of a permit; and
- (q) each emergency authorization issued by the Director under Section 76; and
- (r) each Environmental Protection Order, Clean-up Order and Emergency Direction issued under Division IX.1; and
- (s) each requirement for information under Section 108; and
- (t) copies of information for offences against this Act,

in connection with every proposed activity.

(2) The register shall be made available for inspection by any person at all reasonable times.

(3) Any person may be entitled to search for, request and obtain copies of any entry in the register subject to payment of fees fixed by the Director under Section 100.

(4) The production of a copy or an extract from the register, certified by the Director to be a true copy of the register or a true extract from the register, is evidence of the matters contained in it.

(5) Notwithstanding the provisions of this Act, where the Director is of the opinion that -

- (a) — information or data contained in an environmental impact statement; or
- (b) — the assessment of an environmental impact statement,

is of a nature that it is in the public interest that it should not be divulged, the Director may withhold any part from that environmental impact statement, or assessment, from public inspection.

(6) Where the Director withholds any information under Subsection (5), the document or statement from which the information has been withheld shall be endorsed with a notice that the Director has exercised his power under that subsection, and the reason for that exercise.

(7) A person, who discloses or uses any information provided under this Act, for purposes other than in accordance with this Act, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

### **132. OPERATIONAL PROCEDURES.**

The Director may issue Operational Procedures consistent with this Act for the purposes of achieving the objectives of this Act, including but not limited to -

(a) setting out the form in which any information is to be provided, notification given or application made; and

(b) setting out the procedure for making any decision required to be made by the Director, under this Act, an Environment Policy or the Regulation.

### **133. REGULATIONS.**

(1) The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K100,000.00 or imprisonment for a term not exceeding two years for offences against the Regulations.

(2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants -

- (a) restrictions on and conditions applying to the importation, exportation, manufacture, labelling, packaging, advertising, distribution, sale, storage and transportation of hazardous contaminants; and
- (b) offences in relation to all aspects of dealing with a particular contaminant, and requirements for reporting, notification and the holding of permits; and
- (c) the registration of contaminants and hazardous contaminants and the removal from the register of such contaminants; and
- (d) standards or criteria for determining when a matter or thing is poisonous, noxious, impure, detrimental to health, or within any other description referred to in this Act; and
- (e) prohibiting or regulating the release to the environment of any contaminant; and
- (f) prohibiting or regulating the use of any specified contaminants, aerosols or other equipment relating to the release of contaminants; and
- (g) prohibiting the use of a particular contaminant for a particular purpose or in specified cases or circumstances; and
- (h) restrictions or conditions as to the purposes for which or the means by which a contaminant may be used; and
- (i) regulating or prohibiting the burning of specified substances in the open; and
- (j) air or water quality standards; and
- (k) maximum permissible concentration, levels or amounts of contaminants in any segment or element of the environment; and
- (l) the standards for matter that can safely be released to the water, atmosphere or land surface; and
- (m) prohibiting or regulating the amount or proportion of any segment of the environment that may be removed or otherwise taken for human consumption or use having regard to the amount, concentration or level of contaminant contained in them; and
- (n) prohibiting or regulating the use of any packaging, equipment, facility, vehicle or ship capable of causing pollution or litter, or regulating the construction or operation of any of them so as to prevent or minimize release of contaminants (including litter); and
- (o) requiring payment of a deposit at the time of purchase of any material packaged or contained in any class of packaging or container and regulating the amounts, terms and conditions of deposits; and
- (p) the design, function or operation of any machinery, equipment, facility or vehicle in order to regulate or control the movement, storage, disposal or release of contaminants; and
- (q) requiring the giving of special warnings or alerts relating to the movement or release of contaminants; and
- (r) regulating the establishment of new sites and the management of old sites for the release of contaminants; and
- (s) further defining litter and receptacles to contain litter for the purposes of this Act and prescribing offences in relation to litter; and
- (t) prohibiting or regulating particular activities having regard to the danger of exposure to and contact with contaminants; and
- (u) prohibiting or regulating the trade in or disposal of any contaminant; and

- (v) prohibiting or regulating the employment or conditions of employment of any person in work that involves the handling by that person of, or exposure of that person to, any contaminant; and
- (w) the protection of -
  - (i) persons from injury or illness or from the risks of injury or illness; and
  - (ii) flora and fauna from damage or the risks of damage, arising out of or in the course of the handling, use or disposal of contaminants; and
- (x) the requirements in relation to -
  - (i) buildings and other premises where a contaminant or substance likely to cause litter is manufactured, treated, stored, sold, handled or used; and
  - (ii) vehicles in which a contaminant is conveyed; and
- (y) the granting of certificates of competency in relation to the handling or use of contaminants, and prohibiting the handling or use of, or any work or operation in connection with, contaminants, or that may lead to exposure to contaminants, except by or under the supervision of a person holding such a certificate; and
- (z) the suppression of dust or smoke; and
- (za) giving effect to any international convention to which the State is a party or agreement between the State and any country or countries relating to the control of contaminants and the protection of the environment; and
- (zb) penalties of fines not exceeding K100,000.00 (and default penalties not exceeding K10,000.00) or imprisonment for a term not exceeding two years, or both, for offences against the provisions of the Regulations.

(3) Without limiting the generality of Subsection (1), but subject to this Act, the Regulations may prescribe, in relation to noise -

- (a) standards or levels for emission of various types of noise and the procedure by which they are to be tested or ascertained; and
- (b) prohibiting the use of any equipment, facility, instrument, device, vehicle or ship capable of emitting noise that does not meet a prescribed standard, and regulating the construction, installation or operation of any of them so as to prevent or minimise the emission of noise; and
- (c) providing for the delegation of power to Provincial Governments and Local-level Governments to make laws or rules consistent with this Act, to deal with noise in their respective areas; and
- (d) making provision for officers of other governmental authorities including Provincial Governments and Local-level Governments, to enforce provisions of this Act in relation to noise; and
- (e) the circumstances in which emission of noise amounts to unreasonable noise under this Act; and
- (f) issue of noise abatement notices; and
- (g) offences in relation to noise emission; and
- (h) penalties of fines not exceeding K20,000.00 (and default penalties not exceeding K2,000.00) or imprisonment for a term not exceeding one year, or both, for offences against the provisions of the Regulations.

(4) Where a Regulation would or might have the effect of requiring existing permit holders to submit an environmental improvement plan in accordance with Section 75, the National Executive Council may only advise the Head of State to make the Regulation after the process required by Section 33 has been complied with as if the Regulation were an Environment Policy.

#### PART XI. - REPEAL, TRANSITIONAL AND SAVINGS.

#### 134. REPEAL.

The following Acts are hereby repealed:-

- (a) *Environmental Planning Act* (Chapter 370); and
- (b) *Environmental Contaminants Act* (Chapter 368); and
- (c) *Environmental Contaminants (Amendment) Act 1994*; and
- (d) *Water Resources Act* (Chapter 205).

#### 135. REFERENCES TO REPEALED ACTS, ETC.,

(1) A reference in any Act, or in any Regulation, instrument or other document, made before the coming into operation of this section or Act to any of the Acts repealed by Section 134 or any provision thereof, shall, unless the

contrary intention appears, be read and construed as a reference to this Act or the corresponding provision, if any, of this Act.

(2) A reference in any Act, or in any Regulation, instrument or other document, made before the commencement of this section or Act to -

- (a) an approval granted under the *Environmental Planning Act* (repealed); or
- (b) a permit or licence granted under the *Environmental Contaminants Act* (repealed); or
- (c) a water use permit issued under the *Water Resources Act* (repealed),

which is deemed to be a permit under this Act by virtue of Section 136(1) shall, unless the contrary intention appears, be read and construed as a reference to an environment permit for the purposes of this Act.

### 136. APPROVALS PERMITS, LICENCES, ETC., TO CONTINUE IN FORCE.

(1) Subject to this section -

- (a) an approval granted under the *Environmental Planning Act* (repealed); and
- (b) a permit and a licence granted under the *Environmental Contaminants Act* (repealed); and
- (c) a permit (including a water investigation permit) issued under the *Water Resources Act* (repealed),

valid and in force immediately before the coming into operation of this Act, shall -

- (d) continue, on that coming into operation, to have full force and effect for the term for which they were granted or until they sooner expire or are revoked according to law as if the Act under which they were granted had not been repealed; and
- (e) be deemed to be corresponding permits for the purposes of this Act and may be dealt with in accordance with the provisions of this Act as if they had been issued under this Act.

(2) Where, prior to the expiry of a permit, licence or approval referred to in Subsection (1), the holder has applied for a permit under this Act, the permit, licence or approval granted under the repealed Act shall continue to have full force and effect until the application for a permit has been determined in accordance with Sections 60 to 69 inclusive.

(3) Where, immediately before the coming into operation of this Act -

- (a) a person was lawfully carrying on an activity pursuant to a permit, licence or approval under the repealed Acts which is deemed to be a permit by virtue of Subsection (1); and
- (b) the activity would constitute an offence under this Act,

the person is entitled, subject to this section and to the permit, to carry on the activity and the carrying on of the activity does not constitute an offence.

(4) Where the Director is of the opinion that any term or condition of any -

- (a) approval granted under the *Environmental Planning Act* (repealed); or
- (b) permit and licence granted under the *Environmental Contaminants Act* (repealed); or
- (c) permits issued under the *Water Resources Act* (repealed),

is at variance with the provisions of this Act, any Environment Policy or the Regulations, he may, where authorized under an Environment Policy or Regulation approved under Section 33, by written notice -

- (d) advise the holder of the permit, licence or approval as the case may be, of the term or condition that is unacceptable; and
- (e) specify the variation in the term or condition required to ensure compliance with this Act; and
- (f) require the holder of the permit, licence or approval to submit, within a specified period, an environmental improvement plan stating how the activities which are covered by the permit, licence or approval will be brought into compliance with this Act; and
- (g) indicate that unless an environmental improvement plan is submitted in a form which is acceptable to the Director within the specified time, the permit, licence or approval as the case may be, shall cease to have effect from the date specified.

(5) Where the Director has served a notice under Subsection (2) and the holder of the permit, licence or approval has failed to submit an environmental improvement plan in a form acceptable to the Director within the time specified, the Director may cancel or suspend the permit.

(6) A water investigation permit valid and in force immediately before the coming into operation of this Act shall, on the coming into operation of this Act, be deemed to be a water investigation permit for the purposes of this Act and may be dealt with as if they had been issued under this Act.

(7) Where the term of any permit, licence or approval which is saved by virtue of this section -

- (a) has, on the coming into operation of this Act, a remaining duration which

- is longer than the maximum duration for which a permit may be granted under this Act; or  
(b) has no specified duration,

the Director may amend the permit, licence or approval for the purpose of specifying a duration for the permit, licence or approval which is in accordance with the provisions of this Act and the Regulations.

**137. RECOVERY OF FEES UNDER WATER RESOURCES ACT (REPEALED).**

An amount payable as a fee for the use of water, or for the discharge of wastes under the *Water Resources Act (repealed)* in respect of any water use permit saved under Section 136 shall be deemed to be a charge imposed by the Minister under Section 96 of this Act and shall be recoverable as if it had been imposed under this Act.

**138. COMPENSATION UNDER WATER RESOURCES ACT (REPEALED).**

Compensation paid, or agreed or required to be paid under the *Water Resources Act (repealed)* shall be treated as compensation paid, or required or agreed to be paid under this Act and all compensation agreements lodged in accordance with the provisions of the *Water Resources Act (repealed)* shall be deemed to have been lodged in accordance with the provisions of this Act.

**139. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any appeal, action, arbitration or proceeding, was pending, or any cause of action was pending or existed in respect of any licence, permit or approval granted, renewed or continued in existence under an Act repealed by Section 134, such action, arbitration or proceeding or cause of action does not abate and is not affected by the coming into operation of this Act, but it may be prosecuted, continued and enforced as if this Act has not been made.

**140. REGULATIONS TO RESOLVE DIFFICULTIES WITH TRANSITIONAL PROVISIONS.**

Where difficulty arises in respect of the transitional provisions in this Part, the Head of State, acting on advice, may, by Regulation -

- (a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act from the provisions of the Acts repealed by Section 134; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions, and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effects as if they had been enacted by way of an amendment of this Part, and on publication of the Regulation in the National Gazette, this Part shall be amended accordingly.

I hereby certify that the above is a fair print of the *Environment Act 2000* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Environment Act 2000* was made by the National Parliament on 29 November 2000.

Speaker of the National Parliament.