

**PACIFIC LAW MATERIALS**

Vanuatu - Legislation

*Commencement: 10 March 2003*

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Assent 31 December 2002  
Commencement 10 March 2003

## REPUBLIC OF VANUATU

### ENVIRONMENTAL MANAGEMENT AND CONSERVATION ACT No. 12 OF 2002

An Act to provide for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities.

Be it enacted by the President and the Parliament of the Republic of Vanuatu as follows:-

## **PART 1 - PRELIMINARY**

### **1 Application of this Act**

This Act applies throughout Vanuatu, including its lands, air and waters.

### **2 Interpretation**

In this Act, unless the contrary intention appears:

**authorised officer** means a person appointed under section 5.

**biological diversity** means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems.

**biological resources** includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

**bioprospecting** means any activity undertaken to harvest or exploit all or any of the following:

- (a) samples of genetic resources;
- (b) samples of any derivatives of genetic resources;
- (c) the knowledge, innovations, and customary practices of local communities associated with those genetic resources;

for purposes of research, product development, conservation or industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives.

**conservation** includes the preservation and protection of natural resources and heritage.

**Council** means the Biodiversity Advisory Council established under section 29.

**Department** means the Department responsible for the environment.

**Director** means the Director of the Department.

**environment** means the components of the earth and includes all or any

of the following:

- (a) land and water;
- (b) layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms;
- (d) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (c).

**environmental impact assessment** means the environmental impact assessment process as provided in Part 3, and **EIA** has a corresponding meaning.

**Environmental Registry** means the registry established under section 6.

**foreign organism** includes all stages of any life form not endemic or normally found in Vanuatu.

**genetic material** means any material of plant, animal, microbial or other origin containing functional units of heredity.

**genetic resources** means genetic material of actual or potential value.

**land** includes land covered by water.

**Minister** means the Minister responsible for the environment.

**natural resources** includes all living and non-living, finite and renewable resources found within Vanuatu but does not include resources lawfully maintained for domestic or commercial purposes.

**person** includes any statutory body, company or association or body of persons corporate or unincorporate.

**project proponent** means the person whose signature appears, or is otherwise nominated, on any application form as being responsible for any project, proposal or development activity.

**regulation** means a regulation made under this Act.

**traditional knowledge** has the same meaning as indigenous knowledge in the Copyright and Related Rights Act No. 42 of 2000.

**water** means all or any of the following:

- (a) water flowing or situated upon the surface of any land;

- (b) water flowing or contained in:
- (i) any river, stream, creek or other natural course for water;  
or
  - (ii) any sea, lake, lagoon, bay, swamp, marsh or spring;
- whether or not it has been altered or artificially improved;
- (c) groundwater, including geothermal water;
  - (d) any estuarine or coastal sea water.

## **PART 2 - ADMINISTRATION**

### **Division 1 - Powers and Functions**

#### **3 Director appointed**

- (1) A Director of the Department is to be appointed under the Public Service Act No 11 of 1998.
- (2) The Director is accountable to the Public Service Commission for the efficient and effective administration of this Act.
- (3) The Director must advise and assist the Minister in all matters relating to this Act.

#### **4 Functions of the Director**

- (1) The Director is responsible for the development, co-ordination and, where appropriate, implementation of the Government's environmental policies and programs.
- (2) In carrying out the functions outlined in subsection (1), the Director must do the following:
  - (a) administer the Environmental Registry established under section 6;
  - (b) prepare State of the Environment Reports under section 7;
  - (c) prepare National Policies and National Plans under section 8;
  - (d) administer the Environmental Impact Assessment procedure under Part 3;
  - (e) prepare guidelines, standards, codes of practice and procedures;

- (f) prepare advice on international environmental treaties and instruments, including implementation strategies;
- (g) undertake environmental research, assessment, monitoring, and inspection generally;
- (h) undertake such other duties and responsibilities as may lawfully be required by the Minister.

(3) The Director may carry out any duty, function or responsibility under this Act in association with any other Government Ministry, Department, Agency, local government or municipal council.

## **5 Powers of the Director**

(1) The Director has the powers conferred by this Act, and such other powers as may be necessary or convenient for the performance of the Director's functions under this Act, including:

- (a) the appointment of persons not employed by the Department as authorised officers for the purpose of administering this Act; and
- (b) the establishment of committees for the purpose of ensuring better inter-departmental and inter-agency co-ordination on particular environmental matters.

(2) The Director must consult with the Public Service Commission and such local government or municipal council as is appropriate before appointing any authorised officer under paragraph (1)(a).

(3) The Director must consult with the Minister before establishing any committee under paragraph (1)(b).

(4) The powers, duties and responsibilities of any person appointed under paragraph (1)(a) or any committee established under paragraph (1)(b) must be stated in any instrument of appointment or establishment.

(5) The Director may delegate to officers of the Department and any authorised officers appointed under paragraph (1)(a), such powers and functions as he or she considers appropriate, with the exception of this power of delegation.

## **Division 2 - Instruments**

### **6 Establishment of Environmental Registry**

(1) The Director must establish, operate and maintain an Environmental Registry of all records relating to:

- (a) environmental impact assessment documentation provided under Part 3; and
  - (b) applications, permits and approvals required or issued under this Act; and
  - (c) regulations, standards, guidelines or codes of environmental practice established under this Act; and
  - (d) National State of the Environment Reports prepared under section 7; and
  - (e) National Policies and National Plans prepared under section 8; and
  - (f) Community Conservation Areas registered under section 37; and
  - (g) international environment and conservation treaties and instruments to which Vanuatu is a party; and
  - (h) such other matters as may be prescribed by regulation.
- (2) All material entered in the Environmental Registry must be lodged with the Department in a physical or electronic form, and be available for public inspection during normal working hours.
- (3) If the Director determines that any registered material is commercially or culturally sensitive, he or she may classify that material, including any part of any material, as confidential and stipulate the terms and conditions, if any, on which any person can access that material.
- (4) The Minister on the advice of the Director may, by order, prescribe a system of fees and charges for the purpose of recovering any operational costs arising from requests for copies of material held in the Environmental Registry.

## **7 Preparation of National State of the Environment Reports**

- (1) The Director must prepare and publish a National State of the Environment Report at least once every 10 years following the commencement of this Act.
- (2) A National State of the Environment Report must include all of the following:
- (a) an assessment of the state of all natural resources;
  - (b) a review of the current use of natural resources;
  - (c) an assessment of the quality of Vanuatu's environment;

- (d) an assessment of social and economic development trends and their likely impact upon the environment;
  - (e) a summary of government and private sector policies, programs and initiatives to address and monitor environmental management and conservation issues;
  - (f) such other matters as the Minister considers appropriate.
- (3) A National State of the Environment Report must be submitted to the Minister for approval, and a copy of any such report must be lodged in the Environmental Registry.

## **8 Development of National Policies and National Plans**

If the Minister determines that a National Policy or National Plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the National Policy or National Plan.

## **9 Purpose of National Policies and National Plans**

- (1) The purpose of a National Policy is:
- (a) to promote the environmentally sound and safe management and conservation of the natural resources of Vanuatu; and
  - (b) to provide for the co-ordination of related activities.
- (2) The purpose of a National Plan is:
- (a) to provide for the implementation of the National Policy; and
  - (b) to provide for the conservation and/or sustainable management and development of particular natural resources of Vanuatu.
- (3) A National Policy must include all of the following:
- (a) an evaluation of the current state of the particular matter that is the subject of the Policy;
  - (b) an evaluation of the social, human health, custom, economic and ecological considerations and issues in respect of that matter;
  - (c) a description of any relevant national priorities;
  - (d) an outline of the objectives to be achieved by the Policy;
  - (e) specific actions, initiatives or activities required to give effect to



- the objectives of the Policy - including any specific legal, financial and institutional aspects that need to be addressed;
- (f) mechanisms for monitoring and reviewing the implementation of the Policy.

- (4) A National Plan must contain details of all the operational matters that are necessary to implement the National Policy.
- (5) National Policies and National Plans must be developed through appropriate public consultation, and be submitted by the Director to the Minister for approval.
- (6) Once approved by the Minister, a National Policy or National Plan must be referred to the Council of Ministers for approval. A National Policy or National Plan takes effect on the date of its publication in the *Gazette*.

#### **10 Variation of National Policy or Plan**

- (1) The Minister may instruct the Director to prepare a variation to any National Policy or National Plan.
- (2) A variation must be prepared, notified and consulted upon in accordance with this Act and the regulations.
- (3) A variation must be approved by the Council of Ministers, and takes effect on the date of its publication in the *Gazette*.

### **PART 3 - ENVIRONMENTAL IMPACT ASSESSMENT**

#### **Division 1 - Activities subject to EIA**

#### **11 All activities subject to this Act**

All projects, proposals or development activities that:

- (a) impact or are likely to impact on the environment of Vanuatu;  
and
- (b) require any license, permit or approval under any law;

must comply with the provisions of this Act.

#### **12 Activities that are subject to an EIA**

- (1) All projects, proposals or development activities that:
- (a) cause or are likely to cause significant environmental, social and/or custom impacts; or

- (b) cause impacts relating to the matters listed in subsection (2);

are subject to the EIA provisions of this Part.

(2) Without limiting subsection (1), all projects, proposals or development activities that will do or are likely to do all or any of the following are subject to the EIA provisions of this Part:

- (a) affect coastal dynamics or result in coastal erosion;
- (b) result in the pollution of water resources;
- (c) affect any protected, rare, threatened or endangered species, its habitat or nesting grounds;
- (d) result in the contamination of land;
- (e) endanger public health;
- (f) affect important custom resources;
- (g) affect protected or proposed protected areas;
- (h) affect air quality;
- (i) result in the unsustainable use of renewable resources;
- (j) result in the introduction of foreign organisms and species;
- (k) result in any other activity prescribed by regulation.

### **13 Activities not subject to an EIA**

The following projects, proposals or development activities are exempt from the requirements of this Part:

- (a) the construction of any single family residential building in an approved residential development area, however, such construction must be at least 30 metres from any river, stream, or from the line of mean high water spring tide of the sea;
- (b) any additions to an existing residential dwelling, being additions that are used only for residential purposes and are at least 30 metres from any river, stream, or from the line of mean high water spring tide;
- (c) the construction of traditional or custom structures fabricated from traditional materials, however, any natural rock, sand, coral, rubble or gravel that is used must not be taken from within 20 metres of

the line of mean high water spring tide;

- (d) emergency action to protect the lives and property of people where there is not enough time to follow the requirements of this Act;
- (e) any other activity prescribed by regulation.

#### **14 Preliminary assessment of applications**

(1) Subject to subsection (2), any Ministry, Department, Government Agency, local government or municipal council that receives an application for any project, proposal or development activity not exempted by section 13, must undertake, or have undertaken on its behalf, a preliminary EIA of that application to determine:

- (a) whether the project, proposal or development activity is likely to cause any environmental, social or custom impact; and
- (b) the significance of any identified impact; and
- (c) whether any proposed actions are likely to effectively mitigate, minimise, reduce or eliminate any identified significant impact.

(2) If any Ministry, Department, Government Agency, local government or municipal council is the project proponent, the person who receives the application must refer the application to the Director for an assessment of the need for an EIA under section 17.

(3) The Ministry, Department, Government Agency, local government or municipal council that received the application must, within 10 days after the preliminary determination is made, advise the Director in writing of the determination, and may process the application without further reference to this Act if the preliminary EIA determines that:

- (a) no significant environmental, social or custom impacts are likely to be caused by the project, proposal or development activity; or
- (b) the proposed actions will effectively mitigate, minimise, reduce or eliminate any identified significant impact.

(4) The Ministry, Department, Government Agency, local government or municipal council that received the application must, within 10 days after the preliminary determination is made, refer the application to the Director if the preliminary EIA determines that:

- (a) significant environmental, social or custom impacts are likely to be caused by the project, proposal or development activity; or
- (b) the proposed actions will not or are not likely to effectively

mitigate, minimise, reduce or eliminate any identified significant impact.

### **15 Director may require direct referral**

- (1) Despite section 14, the Director may, by written notice served on the relevant Ministry, Department, Government Agency, local government or municipal council, require the application for a project, proposal or development activity to be referred directly to the Director for an assessment of the need for an EIA.
- (2) However, the Director cannot require a direct referral unless he or she is:
  - (a) aware of significant impacts caused by similar projects, proposals or development activities inside or outside Vanuatu; and
  - (b) satisfied that a direct referral is more efficient having regard to the likely impact of the project, proposal or development activity.
- (3) The Director must inform the relevant Ministry, Department, Government Agency, local government or municipal council of the grounds for the referral in the written notice under subsection (1).

### **16 Lead agency determined by Director**

- (1) If an application for the same project, proposal or development activity is required to be made to more than one Ministry, Department, Government Agency, local government or municipal council, the Director must be advised by each authority receiving an application and must determine which authority is to act as the co-ordinating lead agency for the purpose of undertaking the preliminary EIA.
- (2) Despite subsection (1), the Department must act as the lead agency if the Director so determines and undertake the preliminary EIA.

### **17 EIA determination**

- (1) The Director must determine the need for an EIA if:
  - (a) a referral is required under subsection 14(2); or
  - (b) a referral has been made under subsection 14(4); or
  - (c) a direct referral has been made under section 15.
- (2) The Director must advise the project proponent, in writing, of his or her decision on the need for an EIA within 21 days of receiving the application, unless a longer duration is agreed with the project proponent.

## **Division 2 - EIA Process**

## **18 Environmental Impact Assessment**

- (1) This section applies if the Director determines under section 17 that an EIA is required.
- (2) The EIA must be undertaken:
  - (a) in such manner as the Director determines as appropriate in the circumstances; and
  - (b) as required under section 19; and
  - (c) in accordance with the regulations; and
  - (d) in a manner consistent with any guidelines issued for this purpose by the Director.
- (3) The Director must:
  - (a) register the particulars of the project, proposal or development activity in the Environmental Registry; and
  - (b) notify the project proponent and any affected Ministry, Department, Government Agency, local government or municipal council concerning the registration of the project, proposal or development activity.
- (4) An EIA must be undertaken with the fullest practicable consultation with the project proponent and other relevant interested parties.

## **19 Terms of reference for EIA**

- (1) The Director must develop a terms of reference for any work that is to be undertaken for an EIA, including a description of the scope of work required.
- (2) In developing the terms of reference, the Director must give special consideration to the need for consultation, participation and involvement of custom landowners, chiefs and other interested parties, and may consult with the National Council of Chiefs for that purpose.
- (3) The Director must refer the terms of reference for the EIA to the project proponent for written comment within 15 days or such longer period as the Director specifies.
- (4) Within 30 days after receiving any written comments from the project proponent, the Director must make such revisions as are considered appropriate, and issue the final written terms of reference for the EIA to the project proponent. A copy of the terms of reference must be lodged in the

Environmental Registry at the same time.

(5) Unless otherwise agreed, all costs associated with the preparation of an EIA are the responsibility of the project proponent.

## **20 Public notice of EIA**

(1) The project proponent must give such public notice about the project, proposal or development activity as the Director determines is appropriate in the circumstances.

(2) Any requirement for public notice must be practical and be reasonably certain to reach any identified interested parties.

(3) If the public notice invites written submissions, it must specify:

- (a) the time period by which submissions must be received; and
- (b) the address to which submissions must be sent.

(4) If practicable, a copy of any public notice must be lodged by the project proponent in the Environmental Registry.

(5) Unless otherwise agreed, all costs associated with any public notice requirement are the responsibility of the project proponent.

## **21 Deficiencies in EIA Report**

After receiving and reviewing the EIA report, including any submissions made under section 20, the Director may, by notice in writing, require the project proponent to correct any deficiencies and/ or provide additional information in relation to the EIA report.

## **22 Review of EIA**

(1) Within 30 days after receiving the EIA report and any additional material required under section 21, the Director must review the report and make a recommendation on the project, proposal or development activity to the Minister.

(2) The Director's recommendation must include any draft terms and conditions by which the application for the project, proposal or development activity can proceed.

(3) The Director and the project proponent may, by agreement, extend any time limit under subsection (1).

## **23 Decision on application**

- (1) The Minister must consider the Director's recommendation and, within 21 days after receiving the recommendation, make a decision on the application for the project, proposal or development activity.
- (2) The Minister must do one of the following:
  - (a) approve the application with or without terms and conditions;
  - (b) refer the matter back to the Director for further assessment;
  - (c) reject the application.
- (3) The Director must advise the project proponent in writing of the Minister's decision within 14 days after the Director becomes aware of it.
- (4) If the Minister refers the matter back to the Director or rejects the application, the Minister must provide the Director with written reasons for the decision.

### **Division 3 - Miscellaneous**

#### **24 Activities without approval**

- (1) Subject to subsection (2), it is an offence for any person:
  - (a) to undertake any activity that is subject to an environmental impact assessment prior to receiving written approval under this Part; or
  - (b) to undertake any such activity where approval has been refused under the provisions of this Part.
- (2) A project proponent may undertake any activity necessary for the purpose of preparing the EIA report if:
  - (a) such activity has minimal impact on the environment; and
  - (b) the Director is advised, in writing, of the nature of any such activity at least one week in advance of its undertaking.
- (3) A person found guilty of an offence under subsection (1) is punishable on conviction to a fine of not more than 1,000,000 vatu or to imprisonment for a period of not more than 2 years, or both.

#### **25 Compliance with terms and/or conditions**

If an application is approved under section 23, the project proponent must comply with all terms and/or conditions of the approval.

#### **26 Directions**

- (1) The Director may issue a notice in writing if:
  - (a) a breach of a term or condition of an approval given under section 23 occurs; or
  - (b) an activity is undertaken contrary to the provisions of this Part.
- (2) The notice may require either or both of the following:
  - (a) the stopping of any specified activity for such period of time as is stated in the order;
  - (b) the restoration of any area affected.
- (3) An activity that is subject to a notice must not restart until the Director cancels the notice and notifies the project proponent in writing.

#### **27 Director may determine alternate process**

- (1) If the Director considers that an EIA is not appropriate in the circumstances, an alternate agreed process may be established consistent with the regulations.
- (2) If an alternate agreed process is not completed to the satisfaction of the Director, he or she may terminate the process and require the activity to be completed in accordance with this Part.

#### **28 Minister's approval no guarantee**

- (1) If the Minister approves a project, proposal or development activity, the approval is not to be interpreted as an approval for all requirements under the laws of Vanuatu.
- (2) A project proponent is responsible for ensuring that all approvals, permits, licences, agreements, authorities or permissions required under or by any other Act are obtained before proceeding with the approved project, proposal or development activity.

### **PART 4 - BIODIVERSITY and PROTECTED AREAS**

#### **Division 1 - Bioprospecting**

#### **29 Establishment of Biodiversity Advisory Council**

- (1) The Biodiversity Advisory Council is established.
- (2) The Director is the Chairperson of the Council, and the Department is to provide administrative support to the Council.



(3) The Minister, in consultation with the Director, may appoint up to 5 additional members to the Council, on merit and for such terms, not exceeding three years, as he or she determines, taking into account:

- (a) the scientific, custom and technical needs of the Council; and
- (b) the nature of the legal and commercial issues likely to be involved; and
- (c) the volume of relevant bioprospecting applications; and
- (d) any other relevant matters.

(4) The Council is to meet as the Director requires but must meet at least twice every year.

(5) The Council is to regulate its own procedures.

(6) Members of the Council may be reappointed for a further term or terms.

### **30 Other terms and conditions**

The Minister is to determine, on the recommendation of the Director, the other terms and conditions of appointment of the additional members of the Council.

### **31 Functions of the Council**

The Council is responsible for advising the Minister, through the Chairperson, on any matter relating to the implementation of the *Convention on Biological Diversity* and, in particular, on matters relating to commercial bioprospecting.

### **32 Bioprospecting to require permit**

A person who:

- (a) undertakes or attempts to undertake any biodiversity prospecting without a bioprospecting permit; or
- (b) exports or attempts to export any specimen obtained from biodiversity prospecting without a bioprospecting permit; or
- (c) imports or attempts to import any foreign organism that may have a significant adverse impact on Vanuatu's native flora or fauna without a bioprospecting permit; or
- (d) contravenes any law relating to the protection of Vanuatu's native flora and fauna;

is guilty of an offence punishable on conviction to a fine of not more than 1,000,000 vatu or to imprisonment for a period of not more than 2 years, or both.

### **33 Application for bioprospecting permit**

- (1) Any person wanting to undertake bioprospecting must apply in writing to the Director.
- (2) The application must be in such form as is approved by the Director and include the following:
  - (a) the name and particulars of the applicant, including that of any associate, affiliate or party that may benefit or share in the research or obtain any benefit from such research;
  - (b) a full and accurate description of the nature and extent of the research that is to be undertaken, and the area where such research will take place;
  - (c) a description of the nature of any biological resource or traditional knowledge that is to be investigated;
  - (d) a statement concerning the nature of the research to be undertaken, including an outline of the investigation and sampling methods to be used;
  - (e) an outline of the nature, duration and extent of any expected commercial research and development plan that may result from the biodiversity prospecting;
  - (f) a statement indicating whether any information in the application should be regarded as confidential;
  - (g) and such other matters as the Director considers appropriate in the circumstance.
- (3) If the Director is satisfied that the application is complete, he or she must refer the application to the Council for determination.

### **34 Determination of application**

- (1) The Council must meet within 21 days after receiving an application from the Director for the purpose of determining that application.
- (2) The Chairperson and at least 3 Council members must determine the application.
- (3) The Council must do one of the following:

- (a) approve the application with or without terms and conditions;
  - (b) refer the matter back to the Director for further assessment or additional information;
  - (c) reject the application.
- (4) The Director must advise the applicant in writing of the Council's decision within 14 days of the determination.
- (5) If the Council refers the matter back to the Director or rejects the application, the written advice must state the reason for this.
- (6) Before making its decision, the Council must satisfy itself that:
- (a) a legally binding and enforceable contract is concluded with custom landowners, or any owner of traditional knowledge, concerning:
    - (i) rights of access; and
    - (ii) rights of acquisition of any biological resource or traditional knowledge; and
    - (iii) appropriate fees, concessions or royalties that will be charged for any research, or the acquisition of any biological resource or traditional knowledge, or for any commercial benefit that may be obtained; and
  - (b) a research and investigation plan is completed by the applicant which outlines the nature of the research to be undertaken, the investigation and sampling method, and any specimens to be taken; and
  - (c) a monitoring and auditing system is established to verify all activities undertaken by the applicant; and
  - (d) any bond arrangements for damage or harm that may result from any non-compliance with the Government of Vanuatu are properly in place; and
  - (e) the decision is consistent with all other Acts.

## **DIVISION 2 - Community Conservation Areas**

### **35 Identification of sites having national biodiversity significance**

The Director may negotiate with custom landowners for the protection and registration of any site as a Community Conservation Area where he or she is satisfied that the site:

- (a) possesses unique genetic, cultural, geological or biological resources; or
- (b) constitutes the habitat of species of wild fauna or flora of unique national or international importance; or
- (c) merits protection under the *Convention Concerning the Protection of World Cultural and Natural Heritage*.

### **36 Director may provide assistance**

If custom landowners agree to establish a Community Conservation Area, the Director may consult with and provide assistance to the landowners, chiefs and other interested parties to do all or any of the following:

- (a) review and evaluate the nature of any proposed Community Conservation Area;
- (b) accurately identify the area to be included in any proposed Community Conservation Area;
- (c) verify rights and interests in land that is to be included in the proposed Community Conservation Area;
- (d) identify and evaluate the conservation, protection and management options proposed.

### **37 Registration of Community Conservation Areas**

(1) If custom landowners agree to the formal protection of areas of biodiversity significance, these areas may be registered by the Director as Community Conservation Areas.

(2) Before registering a Community Conservation Area, the Director must ensure that:

- (a) the objectives of the proposed Community Conservation Area are identified, and are in accordance with sound conservation practices; and
- (b) the boundaries of any proposed Community Conservation Area are accurately identified; and
- (c) consent and approval are obtained from all persons having rights

and interests in any land that is to be included in the proposed Community Conservation Area; and

- (d) an appropriate conservation, protection or management plan is developed for the area to ensure the achievement of identified conservation objectives.

(3) If the Director is satisfied that the requirements of subsection (2) have been met, he or she may register the proposed Community Conservation Area as a Community Conservation Area in the Environmental Registry, and issue a certificate of registration to the landowners.

### **38 Amendment to registered areas**

(1) A landowner may, at any time, apply in writing to the Director for a determination to do all or any of the following:

- (a) cancel the registration of a Community Conservation Area, or any part of such area;
- (b) amend any established conservation, protection or management plan;
- (c) modify any area of the registered Community Conservation Area.

(2) Upon receiving an application from a landowner, the Director must consult with the landowner and other interested parties before determining the application.

(3) If the registration of the Community Conservation Area is cancelled, the Environmental Registry must be amended accordingly.

(4) If any amendment is made to a Community Conservation Area, a new certificate of registration must be issued and the Environmental Registry amended accordingly.

(5) Before modifying any Community Conservation Area, the Director must ensure that:

- (a) the boundaries of any area to be added to or removed from a registered Community Conservation Area are accurately identified; and
- (b) agreement is obtained from all persons having rights and interests in any land to be added to the registered Community Conservation Area.

### **39 Effect of registration**

- (1) The landowners, or the management committee formed by the landowners or Director for the purpose, is responsible for the development and implementation of any conservation, protection or management plan established for a registered Community Conservation Area.
- (2) The Director may provide technical or financial support to the landowners or any such management committee for the purpose of developing or implementing an appropriate conservation, protection or management plan.
- (3) If a registration is cancelled under sections 38 or 40, the Director must provide no further technical or financial support to the landowners.

#### **40 Deregistration if plan not implemented**

If the conservation, protection or management plan for a Community Conservation Area is not implemented within the time agreed with the Director at the time of registration, he or she may, by notice in writing, cancel the registration of that Community Conservation Area and must remove it from the Environmental Registry.

### **PART 5 - Offences**

#### **41 Offences**

A person who:

- (a) provides false or misleading information, including any false or misleading report, under any requirement of this Act; or
- (b) hinders or obstructs an officer or any person empowered to carry out any function or duty under this Act; or
- (c) fails to give all reasonable assistance to any officer or any person empowered to carry out any function or duty under this Act; or
- (d) contravenes a term or condition of an approval, permit or notice issued under this Act; or
- (e) contravenes or fails to comply with any regulation, direction or order made under this Act; or
- (f) contravenes any term or condition of a registered community conservation area;

is guilty of an offence punishable on conviction to a fine of not more than 1,000,000 vatu or to imprisonment for a period of not more than 2 years, or to both.

#### **42 Continuing offence**

Where an offence under this Act is committed or continues on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continues.

### **Part 6 - Miscellaneous**

#### **43 Appeal to the Supreme Court**

(1) A person may appeal to the Supreme Court against any decision made by the Minister or Director to do all or any of the following:

- (a) to require an EIA under section 17;
- (b) to reject an application under section 23 or section 34;
- (c) to impose terms and conditions on any approval given under section 23 or section 34;
- (d) to issue a direction under section 26;
- (e) to make a decision prescribed by the regulations as a decision in respect of which an appeal can be made.

(2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.

(3) The Supreme Court may:

- (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Minister, Director or Council as may be necessary to give effect to the Court's decision; or
- (b) refer the matter back to the Minister, Director or Council with directions to reconsider the whole or any specified part of the matter.

#### **44 Protection of officers etc**

An individual is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

#### **45 Regulations**

(1) The Minister may make regulations to give effect to the purposes and

provisions of this Act, including for all or any of the following:

- (a) to establish criteria for the licensing of environmental practitioners and environmental laboratories or analytical facilities;
- (b) to prescribe and promote standards, guidelines or codes of environmental practice to give effect to any requirement under this Act;
- (c) to establish alternate dispute resolution processes for resolving environmental disputes, including the prescribing of criteria for the appointment of qualified persons to act as a mediator, arbitrator or facilitator;
- (d) to provide for the variation of any environmental assessment procedure;
- (e) to prescribe fees and charges in respect of any application made or service provided under this Act - including for the purpose of expert review of applications;
- (f) to control the taking or use of specified species;
- (g) to provide for the registration of Community Conservation Areas;
- (h) to establish conditions or model agreements for bioprospecting.

(2) The Minister may make regulations with other Ministers, including for the purpose of any or all of the following:

- (a) regulating the environmental effects of:
  - (i) the importation and transportation of hazardous substances;
  - (ii) the proposed introduction of foreign organisms;
  - (iii) pests and weeds;
  - (iv) waste management;
  - (v) air and water pollution;
- (b) regulating the harvesting of marine resources;
- (c) providing for the containment, isolation, seizure, transportation, safe-keeping or disposal of any species of wild flora or fauna.



**46 Commencement**

This Act commences on the date of its publication in the Gazette.

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