

Environmental Management and Conservation (Amendment) Act 2010

REPUBLIC OF VANUATU

**ENVIRONMENTAL MANAGEMENT AND CONSERVATION (AMENDMENT)
ACT
NO. 28 OF 2010**

Arrangement of Sections

- 1 Amendment**
- 2 Commencement**

*Assent: 30/12/2010
Commencement: 24/01/2011*

**ENVIRONMENTAL MANAGEMENT AND CONSERVATION (AMENDMENT)
ACT NO. 28 OF 2010**

An Act to amend the Environmental Management and Conservation Act [CAP 283].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Environmental Management and Conservation Act [CAP 283] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE AMENDMENTS OF THE ENVIRONMENTAL MANAGEMENT AND CONSERVATION ACT [CAP 283]

1 Title of the Act

Delete “Environmental Management and Conservation Act”, substitute “Environmental Protection and Conservation Act”

2 References to Environmental Management and Conservation Act

A reference in any other Act or instrument to the “Environmental Management and Conservation Act” is taken to be a reference to the “Environmental Protection and Conservation Act”.

3 Section 2

Insert in their correct alphabetical position

““biodiversity significance” means the ranked significance of an area according to the specified biological diversity values to account for ecological concepts such as rarity, diversity, fragmentation, habitat condition, resilience, threats and ecosystem processes;

“business day” means every day of a week, excluding Saturday, Sunday and a public holiday as prescribed or declared by the President under the Public Holidays Act [CAP 114];

“climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

“community” means a social group of any size whose members reside in a specific locality, share government, and often have a common cultural and historical heritage including but not limited to a group of individuals, family group, tribe or village;

“conservation area” means an area of land or sea especially dedicated to the protection, maintenance and sustainable use of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means;

“EIA review committee” means the committee appointed by the Director in accordance with the regulations;

“endemic” means native to Vanuatu and not occurring naturally anywhere else;

“enforcement officer” means an officer of the Department of Environmental Protection and Conservation and any other person approved by the Director from time to time;

“management committee” means the entity that is responsible for the implementation, management and enforcement of the Community Conservation Area;

“management plan” means a comprehensive document that describes how, who, what, where, when and why a Community Conservation Area is managed;

“management rules” means the rules implemented for the purpose of managing the Community Conservation Area;

“preliminary environmental assessment” means the preliminary assessment process as provided under section 14, and "PEA" has a corresponding meaning;

“significant environmental impact” in relation to a project, proposal or development activity means an impact on the environment, either in the context of the setting of the proposed or in the context of the intensity of the proposed’s effect on the environment, and includes, but is not limited to:

- (a) the degree to which public health and safety is affected; or
- (b) the degree to which the unique characteristics of the geographic area is affected; or
- (c) the degree to which effects on the environment is likely to involve controversy; or
- (d) the degree to which unique or unknown risks are taken; or
- (e) the degree to which a precedent for future action is created; or
- (f) the potential for cumulative environmental impacts; or
- (g) the degree to which the natural functioning of the ecosystem is likely to be inhibited; or
- (h) the degree to which a cultural, traditional, natural, scientific or historic resource may be threatened; or
- (i) the potential threat to the existence of protected and endangered species or their critical habitat; or
- (j) the degree to which fish and wildlife resources of ecological, commercial, subsistence, and recreational importance are jeopardised; or
- (k) the extent to which one aspect of use of a resource may conflict or contrary with another aspect of use of that resource; or
- (l) the degree to which the adaptation to, and mitigation of climate change is affected;

“sustainable use” means the human use of biotic and abiotic resources that does not contribute to their long-term degradation, overuse or destruction;”

4 Section 2 (definition of environment)

(a) Paragraph (c)

After “organisms”, insert “including ecosystem services and processes”

(b) After paragraph (c)

Insert

“(ca) weather and climatic systems;”

(c) Paragraph (d)

Delete “(c)”, substitute “(ca)”

5 After section 5

Insert

“5A Application of the precautionary principle

(1) Notwithstanding the provisions of any other Act, all persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the environment, are to apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.

(2) For the purposes of this section, the precautionary principle is applied if, in the event of a threat or damage to the environment or human health exists in Vanuatu, a lack of full scientific certainty regarding the extent of adverse effects of the threat or damage is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of environmental damage or degradation.

(3) Any decision making made under the terms of this Act must be guided by consideration of climate change adaptation and mitigation issues.”

6 After paragraph 6(1)(g)

Insert

“(ga) climate change database in joint coordination with the National Advisory Committee on Climate Change; and”

7 After paragraph 7(2)(e)

Insert

“(ea) a description of national climate change activities, impacts and issues;”

8 Paragraph 9(1)(a)

After “natural resources”, insert “and environment”

9 Paragraph 9(2)(b)

After “natural resources”, insert “and environment”

10 Paragraph 9(3)(b)

After “custom,” insert “climatic,”

11 Paragraph 12(2)(c)

After “affect any”, insert “endemic,”

12 After section 12

Insert

“12A. Foreshore development consents

(1) A person who has obtained the written consent of the Minister responsible for town and country planning, to undertake the development on the foreshore of the coast of any island under the Foreshore Development Act [CAP 90], must not commence any such development unless it is approved under the EIA provisions of this Act.

(2) A person who contravenes subsection (1) commits an offence as prescribed under section 24.”

13 Section 14

Repeal the section, substitute

“14. Preliminary environmental assessment of applications

(1) The project proponent for any project, proposal or development activity not exempted under section 13, must apply to the Director in the form set out in the regulations accompanied with the prescribed fee.

(2) Upon receiving an application under subsection (1) the Director is to undertake a preliminary environmental assessment (PEA) of that project, proposal or development activity, in order to screen the application and determine if there is a need for an EIA for the project, proposal or development activity.

(3) Any person who contravenes subsection (1) commits an offence prescribed under subsection 24(1).

(4) In determining whether an EIA is required for a project, proposal or development activity, the Director is to consider:

(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; and

(d) such other matters as the Director considers necessary or appropriate in the circumstances, or as required under this Act or prescribed by regulations.

(5) The Director must notify the project proponent, in writing, of his or her decision on the need for an EIA within 21 business days after receiving the application, unless a longer duration is agreed to with the project proponent.”

14 Sections 15, 16, and 17

Repeal the sections.

15 Subsection 18(1)

Delete “17”, substitute “14”

16 Subsection 19(3)

After “15”, insert “business”

17 Subsection 19(4)

After “30”, insert “business”

18 Section 22

Repeal the section, substitute

“22. Review of EIA Report and decision on application

(1) The Director must, within 30 business days after receiving an EIA report and any additional information required under section 21, request an EIA review committee to review the report.

(2) EIA review committee is to make a recommendation to the Director on the application for the project, proposal or development activity for which the EIA report derives from.

(3) The Director may, after receiving a recommendation from the review committee under subsection (2), do any of the following:

(a) approve the application with or without terms and conditions; or

(b) refer the matter back to the EIA review committee for further assessment; or

(c) reject the application.

(4) The Director must notify the project proponent of his or her decision in writing, within the 30 business days set out under subsection (1).

(5) The Director may extend the 30 business day period set out under subsection (1) to a longer period as he or she determines.

(6) An approval granted under paragraph (3)(a) is only valid for the specific project, proposal or development activity for which it is approved, and the approval must not be transferred or used for any other purpose other than the purpose for which it is approved.”

19 Section 23

Repeal the section.

20 Paragraph 24(1)(a)

Delete “an environmental impact assessment “, substitute “the EIA provisions of this Act”

21 Subsection 24(3)

Repeal the subsection, substitute

“(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 5 years or a fine not exceeding VT5,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT100,000,000; or

(c) in the case of an individual who has previously committed an offence against this section – by imprisonment for not more than 10 years or a fine not exceeding VT10,000,000, or both; or

(d) in the case of a body corporate that has previously committed an offence against this section – by a fine not exceeding VT200,000,000.

22 Section 25

Delete “23”, substitute “22”

23 Paragraph 26(1)(a)

Delete “23”, substitute “22”

24 Paragraph 26(2)(a)

Delete “order”, substitute “notice”

25 Paragraph 26(2)(b)

After “affected”, insert “at the project proponents’ cost”

26 Section 32

(a) Delete “VT 1,000,000”, substitute “VT50,000,000”

(b) Delete “2”, substitute “5”

27 Subsection 33(1)

After “Director”, insert

“and pay:

(a) an application fee of VT50,000; and

(b) a bioprospecting information bond of VT100,000.”

28 After paragraph 33(2)(f)

Insert

“(fa) an undertaking that any preliminary information gathered during the bioprospecting, will be provided to the Director within 4 weeks after the bioprospecting is undertaken, and that a final report will be provided to the Director within 12 months after the bioprospecting is undertaken;

(fb) an endorsement from the community concerned indicating that the applicant had carried out consultations with that community;”

29 After subsection 33(2)

Insert

“(2A) The Director must consult with the custom landowners and community concerned regarding the application.”

30 After subsection 33(3)

Insert

“(4) Despite subsection (3), the Director may only refer the application to the Council for determination if the land owners and community concerned are in support of the application.”

31 Subsection 34(1)

After “21”, insert “business”

32 Subsection 34(4)

After “14”, insert “business”

33 After paragraph 34(6)(a)

Insert

“(aa) the relevant custom landowners and community have been consulted; and”

34 After section 34

Insert

“34A. Bioprospecting information bond

(1) A bioprospecting information bond is a bond deposited into the Environmental Trust Fund for the purposes of ensuring that all the information gathered from bioprospecting is provided to the Director.

(2) A bioprospecting information bond may be made in any of the following form:

(a) by cash; or

(b) as an indemnity; or

(c) as an insurance; or

(d) as a guarantee; or

(e) in any other form approved by the Director in any particular case with the consent of the Ministry of Finance and Economic Management.

(3) Money payable under a cash bond must be paid to the Ministry of Finance and Economic Management which is to be transferred into the Environmental Trust Fund.

(4) The nature and amount of a bioprospecting information bond is as agreed between the Director and the applicant, and the wording will be as settled in each case by the Department.

(5) A bioprospecting information bond is retained, and any indemnity or insurance or guarantee subsists until:

(a) in the case of an application that is approved under paragraph 34(3)(a) - the requirement to provide information to the Director under paragraph 33(2)(fa) is satisfied; or

(b) the Council rejects the application under paragraph 34(3)(c),

and the bond must then be returned in whole or in the case of an indemnity, insurance or guarantee, the bond is to be cancelled.”

35 In Division 2 before section 35

Insert

“34B. Definitions

In this Division:

applicant means the entity that applies for registration of a community conservation area and may include one or more of the following:

- (a) customary landowner;
- (b) customary resource steward;
- (c) recognized community leader;
- (d) village governing body;
- (e) chief;
- (f) family group;
- (g) tribe;
- (h) organisation or body;
- (i) private individual;
- (j) any other entity;

governing body means any entity that is recognised as having the right to make decisions on behalf of the populous whose composition may include but not limited to the paramount or high ranking chief, council of chiefs, village council, conservation area committee, or provincial office.”

36 Section 35

Delete “negotiate with custom land owners”, substitute “after acquiring the consent of the custom land owners, negotiate with the applicant”

37 After paragraph 35(b)

Insert

“(ba) provides critical ecosystem services such as (but not limited to) watershed management and climate mitigation; or”

38 Paragraph 35(c)

After “Heritage”, insert “and any other relevant International or Regional Conventions”

39 Section 36

Delete “custom landowners agree”, substitute “the applicant agrees”

40 Subsection 37(1)

Delete “custom landowners agree”, substitute “the applicant agrees”

41 Paragraph 37(2)(d)

Delete “conservation, protection or”

42 Subsection 37(3)

Delete “landowners”, substitute “applicant”

43 Subsection 38(1)

Delete “A landowner”, substitute “An applicant”

44 Paragraph 38(1)(b)

Delete “conservation, protection or”, substitute “Community Conservation Area”

45 Subsection 38(2)

(a) Delete “a landowner” (first occurring), substitute “the applicant”

(b) Delete “landowner” (second occurring), substitute “landowners, community concerned”

46 Subsection 38(4)

Delete “, a new certificate of registration must be issued and the Environmental Registry”, substitute “management plan, the Environmental Registry must be”

47 Subsection 39(1)

Repeal the subsection, substitute

“(1) A management committee is responsible for:

(a) the development, implementation and enforcement of the management plan established for a registered Community Conservation Area; and

(b) ensuring that procedures are followed for solving disputes over breaches of Community Conservation Area management rules under any alternative dispute resolution process provided for in the management plan; and

(c) providing annual reports to the Department.”

48 Subsection 39(2)

(a) Delete “landowners or any such”

(b) Delete “or implementing an appropriate conservation, protection or”, substitute “, implementing or enforcing the”

49 Subsection 39(3)

Delete “must provide no”, substitute “is not obliged to provide”

50 Section 40

Repeal the section, substitute

“40. Deregistration if plan not implemented

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

51 Section 41

Repeal the section, substitute

“41. Offences

(1) 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 management plan for a registered community conservation area,

commits an offence.

(2) A person who contravenes paragraph (1)(a), (b), (c), (d), (e) or (f), is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 5 years or a fine not exceeding VT5,000,000 or both; or

(b) if the person is a body corporate – by a fine not exceeding VT50,000,000; or

(c) in the case of an individual who has previously committed an offence against this section – by imprisonment for not more than 10 years or a fine not exceeding VT10,000,000, or both; or

(d) in the case of a body corporate that has previously committed an offence against this section – by a fine not exceeding VT100,000,000.

(3) If a body corporate commits an offence under this Act, any officer, director or agent of the corporation who:

(a) authorised, assented to or participated in; or

(b) by his or her neglect or omission, contributed to,

the commission of the offence, is a party to and may be found guilty of the offence, and is to be liable to the penalty provided for the offence.”

52 After section 42

Insert

“42A. Enforcement provisions

(1) For the purposes of implementing, enforcing and ensuring compliance with the provisions of this Act and its regulations, an enforcement officer may:

(a) enter any land; and

- (b) enter private premises after notifying the owner of his or her intention to do so; and
- (c) examine any plant, facility, substance or thing; and
- (d) take or remove samples of any matter, substance or thing required for testing and analysis; and
- (e) take possession of any machinery, equipment, plant or other thing for further examination or testing or for use as evidence; and
- (f) take pictures, photographs or measurements or make sketches or recordings in any form; and
- (g) require the production of records and information relevant to the requirements of this Act and its regulations, and to make and take copies of such records and information; and
- (h) order that the operation of whole or part of a Ministry, department, statutory authority, local authority, plant or facility be stopped for the purposes of inspection; and
- (i) interview any person for the purposes of inspection; and
- (j) exercise any other powers conferred to him or her under this Act or any other Act.

(2) If an enforcement officer takes possession of a matter, substance, plant machinery or other item or thing from a Ministry, department, statutory authority, local authority or facility, the Ministry, department, statutory authority, local authority or facility may request the Director to make a decision for the return of the matter, substance, plant machinery or other item or thing.

(3) Any document or information collected under paragraph (1)(g) must not be disclosed unless the document or information is disclosed:

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

(4) A civil or criminal liability action is not to be taken against an enforcement officer or observer in respect of anything done or omitted to be done by the officer in good faith in the execution or purported execution of his or her powers and duties under this section.

(5) An employee of a Ministry, department, statutory authority or local authority or the owner, occupier or employer of a facility in respect of which an enforcement officer is exercising powers under this Act, must:

(a) give the enforcement officer any assistance to enable the enforcement officer to exercise powers and functions under this Act; and

(b) provide any document or information required by the enforcement officer for the purpose of this Act.

(6) A person who knowingly or deliberately, conceals the location or existence of any matter, substance, plant machinery, document or information from an enforcement officer, is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT250,000, or both.

(7) A person who fails to comply with a request or direction of an enforcement officer under this section is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT250,000, or both.

(8) For the purposes of this section, unless the context otherwise provides:

facility includes a building or place that provides a particular service or is used for a particular industry;

plant includes any machinery, equipment, tool or any of its components.

42B. Activity to cease

(1) If a person is charged with an offence under this Act, the activity for which that person is charged must cease immediately.

(2) A person who fails to comply with subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by a fine not exceeding VT5,000,000; or

(b) if the person is a body corporate – by a fine not exceeding VT10,000,000.

42C Additional Court Orders

(1) The Court may, when convicting a person for an offence under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any penalty imposed, make an order:

(a) to prohibit the person from doing any act or engaging in any activity or undertaking that may result in the continuation or repetition of the offence; or

(b) directing work to stop temporarily or permanently, on any activity or undertaking on a proposed development; or

- (c) directing the person to undertake the restoration of the area on which any activity is taking place, to as near to its original condition with the cost to be borne by the proponent; or
- (d) directing the person to carry out improvement or remediation work on the area, with the cost to be borne by the proponent; or
- (e) directing the person to pay into the Trust Fund, costs and other expenses associated with any inspection, audit or investigation undertaken in respect of the offence; or
- (f) directing the person to pay into the Trust Fund, a refundable security for costs to ensure compliance with an order made under this section; or
- (g) directing the person to pay a specified amount into the Trust Fund for the purposes of restoring the area on which the activity is taking place, to as near to its original condition; or
- (h) directing the seizure and forfeiture of any vessel, aircraft or thing used in the commission of an offence; or
- (i) directing the person to carry out a specified environmental audit of the activities the person has carried out; or
- (j) requiring the person to comply with any other condition the court considers appropriate in the circumstances.

(2) If a person is convicted of an offence under this Act, the Court may when sentencing the offender and on the application by a person aggrieved, order the convicted person to pay to the person aggrieved:

- (a) compensation for loss or damage to property or income proved to have been suffered by that person as a result of the commission of the offence; or
- (b) the cost of any preventative or remedial action proved to have been reasonably taken or caused to be taken by that person as a result of the act or omission that constituted the offence.

(3) An order under paragraph (1)(a) or (b) is enforceable as if it were an injunction.

(4) An order under this section relating to payment of money is enforceable as if it were a judgment debt and recoverable in a court.

(5) If a person fails to comply with a Court order made under this section relating to restoration, improvement or remedial action of an area, the Department may undertake the restoration, improvement or remediation of the area, and the cost is to become a debt recoverable in the court (including using the security for costs deposited in the Fund).

42D. Civil claims and damages

(1) A person who has suffered loss which includes contracting health-related problems as a

result of any activity that is found to be in breach of this Act, may institute a civil claim for damages in Court, which may include a claim for any or all of the following:

- (a) economic loss resulting from the activity or from activities undertaken to prevent, mitigate, manage, clean up or remedy any damage to the environment;
- (b) loss of earnings arising from damage to any natural resource;
- (c) loss to or of any natural environment or resource;
- (d) costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

(2) A claim under this section may be set off against any compensation paid under subsection 42C(2).”

53 Subsection 43(1)

After “Minister”, insert “, Council”

54 Paragraph 43(1)(a)

Delete “17”, substitute “14”

55 Paragraph 43(1)(b) and (c)

Delete “23” (wherever occurring), substitute “22”

56 After section 44

Insert

“44A. Penalty notice

- (1) An enforcement officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under any provision of this Act or the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) Payments made under this section are to be made at the Ministry of Finance and Economic Management which is then to be transferred into the Environmental Trust Fund.
- (4) A penalty notice may be served personally or by post.

(5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(7) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(8) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

44B. Environmental Trust Fund

(1) The Environmental Trust Fund is established.

(2) There is to be paid into the Trust Fund:

(a) money appropriated by Parliament; or

(b) any environmental bond; or

(c) any contribution or donation; or

(d) fines of fixed penalties; or

(e) any environmental protection fee; or

(f) any other money required under this Act or any other written law to be paid into the Trust Fund.

(3) The Department is to administer the Trust Fund for the following purposes:

(a) to pay for necessary expenses incurred in the negotiation, monitoring (including the retention of technical experts), investigation or analysis of any matter or the undertaking of any environmental monitoring or audit programme; and

- (b) to pay for environmental rehabilitation work; and
- (c) to pay for research programmes; and
- (d) for the management of community conservation areas; and
- (e) if necessary, to pay for refund of environmental bonds and security of costs; and
- (f) as required for the protection and conservation of the environment.”

57 Paragraph 45(2)(b)

Delete “marine”, substitute “natural”

58 After paragraph 45(2)(b)

Insert

“(ba) upholding obligations under the United Nations Framework Convention on Climate Change for climate change adaptation and mitigation;”