

REPUBLIC OF VANUATU

BILL FOR THE ENVIRONMENTAL PROTECTION AND CONSERVATION (AMENDMENT) ACT NO. OF 2018

Explanatory Note

This Bill amends the Environmental Protection and Conservation Act [CAP 283] (“the EPC Act”).

The EIA is a proactive planning and decision-making tool that has an important role to play in identifying impacts, assessing risks, and evaluating the costs and benefits of development projects before they are implemented. Without an EIA, proposed developments cannot proceed and the Director of Environment will advise the project proponent to apply for an environmental permit. Once the process of the application of an environmental permit is completed, an Environmental permit is issued to the project proponent.

In 2017, Parliament passed the Environmental Protection and Conservation (Amendment) Act No. 24 of 2017 (“the EPC Amendment Act”) to provide for the operation of the EIA, how EIA links to the work of other government agencies; the role of EIA in facilitating investment and development under the proposed National Sustainable Development Plan (NSDP); and how EIA in Vanuatu aligns with the equivalent environmental and social safeguards requirements for development partners.

However, the EPC Amendment Act has not yet been gazetted to take legal effect.

The amendments in this Bill are in addition to the EIA process as amended in 2017 and to address some issues discovered in the EIA Regulations. These amendments:

- (a) provide for the amendment and withdrawal of applications for an environmental permit; and
- (b) provide for the amendment of an environmental permit by the permit holder or the Director; and
- (c) provide for the transfer of an environmental permit; and
- (d) specify the circumstances in which the Director may cancel an Environmental permit; and
- (e) specify when an Environmental permit expires.

The Environmental Protection and Conservation (Amendment) Act No. 24 of 2017 will be gazetted at the same time with the Amendments made in this Bill.

Minister of Climate Change, Adaptation, Meteorology, Geo-Hazards, Environment and Energy



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ENVIRONMENTAL PROTECTION AND
CONSERVATION (AMENDMENT)
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An Act to amend the Environmental Protection and Conservation Act [CAP 283].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Environmental Protection 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 ENVIRONMENTAL PROTECTION AND CONSERVATION ACT [CAP 283]

1 Section 11 – (Definition of “environmental impact”)

Delete “contamination” substitute “the contamination”

2 Section 11- (Definition of “natural environment”)

Delete “atmosphere, climate” substitute “the atmosphere, the climate”

3 Section 11- (Definition of “project”)

Delete “and operation”, insert “, operation, decommissioning and post closure”

4 Subsection 13A(4)

Delete “the EIA”, substitute “an EIA”

5 Subsection 14(4)

Delete “In addition to”, substitute “Without limiting”

6 Section 14A

Repeal the section.

7 After section 14

Insert

“15 Amending an application

- (1) The project proponent may, before a final decision is made on a complete application, apply to amend the application.
- (2) An application made under subsection (1) must:
 - (a) include a detailed description of the proposed amendment; and
 - (b) include a detailed description of how the amendment will change or is likely to change the environmental, social and custom impacts of the project; and
 - (c) explain why the proposed amendment is necessary; and

- (d) include sufficient information to enable the Director to determine the application.
- (3) Upon receiving an application under subsection (1), the Director may:
- (a) accept the proposed amendment and decide the application as amended, observing any relevant timetable; or
 - (b) refuse to amend the application and require the project proponent to make a new application pursuant to section 14 if the proposed amendment is likely to:
 - (i) cause a negative environmental, social or custom impact; or
 - (ii) result in a change to the terms of reference for the EIA report and EMMP.

16 Withdrawing an application

- (1) The project proponent may, at any time, give written notice to the Director to withdraw his or her application for an environmental permit.
- (2) After receiving written notice under subsection (1), the Director must cease the EIA for the project.
- (3) The Director may require the project proponent to reimburse reasonable costs incurred by the Department in the EIA for the project to the date of withdrawal.
- (4) A dispute as to the reasonable cost under this section is to be resolved by an EIA review committee.

17 Granting of an environmental permit

- (1) The Director, upon receiving a complete application under section 14, may:
 - (a) grant an environmental permit with or without conditions; or
 - (b) refuse to grant an environmental permit.
- (2) The Director, in making a decision under subsection (1), must consider the following:

- (a) the results of any consultation undertaken by the project proponent; and
 - (b) written comments under subsection (7); and
 - (c) whether the project is likely to cause any environmental, social or custom impact; and
 - (d) the significance of any environmental, social or custom impact; and
 - (e) whether any proposed actions are likely to effectively mitigate, minimise, reduce or eliminate any identified significant impact; and
 - (f) whether any residual impacts will remain after measures to mitigate, minimise, reduce or eliminate any significant impact have been implemented; and
 - (g) whether the project is controversial; and
 - (h) the degree to which a precedent for future action is created; and
 - (i) the potential for cumulative impacts; and
 - (j) the degree to which unique or unknown risks are taken; and
 - (k) such other matters as the Director considers necessary or appropriate in the circumstances, or as required under this Act or prescribed by its Regulations.
- (3) The Director, in making a decision under subsection (1), must comply with the process set out under this section.
- (4) The Director is to carry out a PEA of the project or in writing authorise a consultant registered under the Regulations to carry out a PEA on his or her behalf.
- (5) The Director must, in making an authorisation under subsection (4), request the consultant to confirm the authorisation in writing within a reasonable time.

- (6) If the project proponent fails to provide confirmation within a reasonable time, the complete application is deemed to have been withdrawn.
- (7) The Director may seek comments on the complete application from any Ministry, Department, Provincial Government Council, Municipal Council, Statutory Authority, Non-Government Organisation or any person who in the opinion of the Director has a direct interest in the subject matter of the complete application.
- (8) The Director is to consider the recommendations made by the EIA review committee under section 22.
- (9) The Director is to notify the project proponent, in writing, of his or her decision within 30 working days after receiving the complete application.
- (10) The Director in making a decision, if necessary, may extend the timeframe prescribed in subsection (9) and must advise the project proponent in writing and provide reasons for the extension of time.
- (11) If the Director refuses to grant an environmental permit under paragraph (1)(b), he or she must provide the reasons for refusing to grant the environmental permit.

17A Expiry of an environmental permit

- (1) If the holder of the environmental permit fails to substantially commence development of the project within 12 months of the date the environmental permit was granted, the environmental permit will be invalid and a new application must be submitted.
- (2) Despite subsection (1), within 12 months of the date the environmental permit was granted, the holder of the environmental permit may apply to the Director for an extension of time in which to substantially commence development of the project.
- (3) An application made under subsection (2) must:
 - (a) include a detailed explanation of why development of the project has not substantially commenced; and
 - (b) include a schedule outlining the proposed timing for development of the project; and

- (c) include a detailed description of any changes to the surrounding natural, social and custom environment at the project location and surrounding areas that have occurred since the environmental permit was granted; and
 - (d) be accompanied by the prescribed fee.
- (4) The Director, upon receiving an application under subsection (2), may:
 - (a) extend the time in which development of the project must substantially commence, by not more than 12 months; or
 - (b) refuse to extend the time in which development of the project must substantially commence.
- (5) If the Director refuses to grant an application for extension under subsection (2), he or she must notify the applicant of the reasons within 21 working days after making the decision.
- (6) The Director prior to making a decision under subsection (4), may:
 - (a) seek comments on the application from any Ministry, Department, Provincial Government or Municipality, Statutory Authority, Non-Government Organisation or any person who in the opinion of the Director has a direct interest in the subject matter of the application; or
 - (b) require the applicant to provide additional information about the application; or
 - (c) authorise a consultant to review the application and make a recommendation about the application.
- (7) If the environmental permit was granted following the submission of an EIA report and EMMP, before making a decision under subsection (4), the Director must convene an EIA review committee to consider the application.
- (8) An extension granted under subsection (4) is final and any subsequent application made under this section in relation to the project is invalid.

- (9) A decision made under this section may be subject to an appeal under section 43.”

8 Subsection 18A(1)

Delete “EIA” (third occurring)

9 Paragraph 18A(2)(b)

Delete “according with”, substitute “as prescribed under”

10 Subsection 19(2)

Delete “National Council of Chiefs”, substitute “Malvatumauri Council of Chiefs”

11 Section 19A

Repeal the section

12 Subsection 22(1)

After “the” (second occurring), insert “complete”

13 Subsection 22(2)

After “the” (fourth occurring) insert “complete”

14 At the end of section 22

Add

“Division 4- Environmental permits

“23 Application to amend environmental permit

- (1) The holder of an environmental permit may apply to the Director to amend his or her environmental permit.
- (2) An application made under subsection (1) must:
- (a) be submitted to the Director in a form approved by the Director;
and
 - (b) include sufficient information to enable the Director to determine the application including any plans, maps and specifications as the Director may require; and
 - (c) be accompanied by the prescribed fee.

- (3) After receiving an application under subsection (1), the Director, may require the applicant to provide additional information about the application within a reasonable time.
- (4) If the applicant fails to comply with a request made under subsection (3), within the reasonable time, the application will be taken to be withdrawn.
- (5) To avoid doubt, once additional information requested under subsection (3) is provided to the Director, the information forms part of the application and the application is considered to be a complete application.
- (6) The Director, upon receiving a complete application may:
 - (a) amend the environmental permit; or
 - (b) refuse to amend the environmental permit; or
 - (c) refuse to amend the environmental permit and require the applicant to make a new application for an environmental permit pursuant to section 14.
- (7) The Director, in making a decision under subsection (6) must comply with the process set out under this section and considers the matters listed under section 17.
- (8) The Director may seek comments on the complete application from any Ministry, Department, Provincial Government or Municipality, Statutory Authority, Non-Government Organisation or any person who in the opinion of the Director has a direct interest in the subject matter of the application.
- (9) The Director may refer the complete application to a consultant to review and make a recommendation about the complete application.
- (10) The Director, in making a referral under subsection (9), must request the applicant to confirm the referral in writing within a reasonable time.
- (11) If the applicant fails to provide confirmation within a reasonable time, the complete application is deemed to have been withdrawn.
- (12) If the environmental permit was granted following the submission of an EIA report and EMMP, before making a decision under subsection (6), the

Director must convene an EIA review committee to consider the complete application.

- (13) The Director is to notify the applicant, in writing, of his or her decision within 15 working days after receiving the complete application.
- (14) The Director in making a decision, if necessary, may extend the timeframe in subsection (13), and must advise the applicant in writing and provide reasons for the extension of time.
- (15) If the Director refuses to amend the environmental permit or amends the environmental permit in a way other than that applied for, the notification given under subsection (13) must include the reasons for the decision.

24 Transfer of environmental permit

- (1) If a person who is issued with an environmental permit under subsection 17A(1) intends to transfer the environmental permit to another person, the environmental permit holder and the person the permit is intended to be transferred to, must make a joint application in writing to the Director to transfer the environmental permit.
- (2) An application made under subsection (1), must:
 - (a) contain details about the transferor and transferee; and
 - (b) contain evidence of a change of ownership of the project; and
 - (c) be accompanied by the prescribed fee.
- (3) The Director, within 21 working days of receiving an application to transfer the environmental permit, must grant the application.
- (4) The Director in granting an application under subsection (3), will re-issue the environmental permit with the name and details of the transferee.
- (5) To avoid doubt, in transferring an environmental permit, the Director may only change the name on the environmental permit and not the description of the project or any other terms and conditions of the environmental permit.

25 Director to amend environmental permit

- (1) The Director may amend an environmental permit, by giving notice in writing to the holder of the environmental permit, if:
- (a) there is an error or mistake in the environmental permit; or
 - (b) the Director obtains new information that was not known to the Director at the time the environmental permit was granted; or
 - (c) there is a significant change in the circumstances relevant to the project; or
 - (d) the environmental, social or custom impacts of the project are of such significance that revised or new conditions are required; or
 - (e) the project has resulted in unforeseen or unintended environmental, social or custom impacts; or
 - (f) a review of the environmental permit has identified that the permit must be amended; or
 - (g) it is necessary to amend the environmental permit to respond to a problem or breach of the permit; or
 - (h) it is necessary to amend the environmental permit to comply with any other Act; or
 - (i) it is subject to any circumstances prescribed by the Regulations.
- (2) Prior to amending an environmental permit under subsection (1), the Director may obtain the advice of:
- (a) a consultant registered under the Regulations; or
 - (b) an EIA review committee.
- (3) If the Director obtains an advice under paragraph 2(a) or (b) he or she must, in writing, inform the holder of the environmental permit.

25A Director may cancel environmental permit

- (1) The Director may cancel an environmental permit and require the area to be restored if satisfied that:

- (a) an environmental permit was influenced by false or misleading information or by deceit on behalf of the holder of an environmental permit; or
 - (b) the environmental conditions of the site have changed to such an extent as to render the environmental permit inappropriate; or
 - (c) the holder of the environmental permit has repeatedly or significantly breached the permit; or
 - (d) the holder of the environmental permit fails to comply with any direction issued under section 26.
- (2) The cost of restoration undertaken under subsection (1) is to be met by the holder of the environmental permit.
- (3) Prior to cancelling an environmental permit under subsection (1), the Director may obtain the advice of:
- (a) a consultant registered under the Regulations; or
 - (b) an EIA review committee.
- (4) If the Director obtains an advice under paragraph (3) (a) or (b) he or she must, in writing, inform the holder of the environmental permit and give the holder of the environmental permit the opportunity to be heard.”

15 Section 28

Repeal the section.

16 Paragraph 43(1)(a)

Delete “14A” substitute, “17”

17 Paragraph 44B(2)(ea)

After “;”, insert, “or”