

REPUBLIC OF VANUATU

BILL FOR THE
ENVIRONMENTAL PROTECTION AND CONSERVATION
(AMENDMENT)
ACT NO. OF 2017

Explanatory Note

This Bill amends the Environmental Protection and Conservation Act [CAP 283] and related matters.

Item 1 repeals section 1 and substitutes it with a new section 1 to provide for the Application to the Act.

Item 2 inserts in section 2, the new definitions of “environmental permit” and “principal consultant”.

Item 3 repeals the definitions of “preliminary environmental assessment”, “project proponent” and “significant environmental impact” in section 2. The definitions are inserted under section 11 of Part 3, as the terms are only used in and for the purposes of Part 3.

Item 4 amends the heading of Division 1 in Part 3 by deleting “Activities subject to EIA” and substitutes it with “Preliminary”.

Item 5 repeals section 11 and substitutes it with new sections 11 and 11A. Section 11 provides for new definitions used under Part 3.

Item 6 repeals sections 12 and 12A. Section 12 is repealed to give effect to the amendment made in item 5. Section 12A is repealed as it is no longer applicable under this Act.

Item 7 amends the heading of section 13 by deleting “Activities” and substitutes it with “Projects”. The heading is also amended by deleting “an”.

Item 8 amends section 13 by deleting “, proposals or development activity”.

Item 9 inserts after section 13, a new section 13A to provide for the costs of EIA.

Item 10 inserts after section 13A, the new title “Division 2 Application and granting of an environmental permit”.

Item 11 repeals section 14 and substitutes it with new sections 14 and 14A. Section 14 provides for the application for an environmental permit. Section 14A provides for the granting of an environmental permit.

Item 12 inserts after section 14A, the new title “Division 3- EIA Report and EMMP”.

Item 13 repeals section 18 and substitutes it with new sections 18 and 18A. Section 18 provides that this Division applies if the Director determines under subsection 14(3), that an EIA report and EMMP is required. Section 18A provides that if the Director determines that an EIA report and EMMP is required, the EIA report and EMMP must be prepared by a principal consultant.

Item 14 amends the heading of section 19 by inserting the words “report and EMMP” after the word “EIA”.

Item 15 amends subsections 19(3) and (4) by inserting the words “report and EMMP” after the word “EIA”.

Item 16 amends subsection 19(1) by inserting the words “report and EMMP” after the word “EIA”. The subsection is also amended by inserting the words “within 10 days of notifying the project proponent that an EIA and EMMP are required” after the word “must”.

Item 17 inserts after subsection 19(3), a new subsection (3A) to provide that if no comment is received within the period specified under subsection (3), it is deemed that the project proponent has no comment and the terms of reference is final.

Item 18 amends subsection 19(4) by inserting the words “report and EMMP” after the word “EIA”. The subsection is also amended by deleting “30” and substitutes it with “15”.

Item 19 repeals subsection 19(5), which is due to the amendment made in item 12.

Item 20 inserts after section 19, a new section 19A to provide for the consultation requirements for an EIA report and EMMP.

Item 21 repeals sections 20 and 21 and substitutes it with a new section 20 to provide for the deficiencies in EIA report and EMMP.

Item 22 repeals section 22 and substitutes it a new section 22, to provide for the review of an application.

Item 23 amends the heading of Division 3 in Part 3 by deleting “3” and substitutes it with “4”.

Item 24 repeals sections 24 and 25. Section 24 is repealed due to the amendment made in section 41. Section 25 is repealed due to the amendment made in section 22.

Item 25 repeals subsection 26(1) and substitutes it with a new subsection (1) to provide for the circumstances in which a Director may issue a notice in writing.

Item 26 amends subsection 26(2) by deleting “either or both” and substitutes it with “any or all”.

Item 27 repeals paragraph 26(2)(b) and substitutes it with a new paragraphs (b) and (c). Paragraph (b) provides for such actions as specified in the notice that are necessary to remedy the violation or breach. Paragraph (c) provides for the restoration of any area affected.

Item 28 repeals section 27 which is no longer a process that is applicable under this Act.

Item 29 amends the heading of section 28 by deleting “Minister” and substitutes it with “Director”.

Item 30 amends subsections 28(1) and (2) by deleting “, proposals or development activity”.

Item 31 amends paragraphs 41(a), (b), (c) and (d) by inserting the words “or its Regulations” after the word “Act”.

Item 32 inserts after paragraph 41(1)(c), a new paragraph (ca) to provide for an additional offence provision.

Item 33 amends subsection 41(2) by inserting “(ca)” after “(c). This is due to the amendment made in item 33.

Item 34 inserts after subparagraph 42A(1)(i), a new paragraph (ia) to provide for an additional enforcement provision where an enforcement officer may seize or impound any vehicle, plant or object in any form used or believed to be used in breach of any Regulations, Direction, Notice or Order made under this Act or its Regulations.

Item 35 repeals paragraph 43(1)(a) and substitutes it with a new paragraph 43(1)(a) providing for the grant of an environmental permit.

Item 36 amends paragraphs 43(1)(b) and (c) by deleting “22” and substitutes it with “14C”.

Item 37 inserts after paragraph 44B(2)(e) a new paragraph (ea) to provide for any fees prescribed under this Act and its Regulations.

Item 38 amends paragraph 44B(2)(f) by inserting the words “or Regulations” after the word “Act”.

Item 39 inserts after section 44B, new sections 44C and 44D. Section 44C provides for proving matters relating to environmental impact. Section 44D provides for a transitional arrangement.

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



REPUBLIC OF VANUATU

**BILL FOR THE
ENVIRONMENTAL PROTECTION AND
CONSERVATION (AMENDMENT)
ACT NO. OF 2017**

Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE ENVIRONMENTAL PROTECTION AND CONSERVATION (AMENDMENT) ACT NO. OF 2017

An Act to amend the Environmental Protection and Conservation Act [CAP 283] and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

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 1

Repeal the section, substitute

“1 Application

This Act applies to the extent of Vanuatu’s territory in accordance with the Maritime Zones Act No. 6 of 2010.”

2 Section 2

Insert in its correct alphabetical position:

““environmental permit” means a permit granted under section 14B;

“principal consultant” means a consultant with the appropriate qualifications, experience and knowledge to prepare and manage the development of an EIA report and EMMP;”

3 Section 2 (Definition of “preliminary environmental assessment”, “project proponent” and “significant environmental impact”)

Repeal the definitions.

4 Part 3, Division 1 (Heading)

Delete “Activities subject to EIA”, substitute “Preliminary”

5 Section 11

Repeal the section, substitute

“11 Definitions

For the purposes of this Part:

“custom impact” means an impact on indigenous custom, culture and tradition, and includes the following:

- (a) affecting a taboo site; or
- (b) affecting sites declared as a national heritage under the Preservation of Sites and Artifacts Act [CAP 39];

“environmental impact” means an impact on the natural environment, and includes the following:

- (a) altering the physical geography of an area, which includes:
 - (i) changing the characteristics of a geographical area; or
 - (ii) affecting coastal or fluvial dynamics; or
 - (iii) causing erosion, or
- (b) generating pollution, which includes:
 - (i) polluting water resources; or
 - (ii) affecting air quality; or
 - (iii) contamination of land; or
 - (iv) generating hazardous waste; or
- (c) impacting on ecosystem functions and services, which includes:
 - (i) introducing or removing foreign organisms or species; or
 - (ii) affecting conservation areas or proposed conservation areas; or
 - (iii) affecting threatened or endemic species and their habitat; or
 - (iv) affecting mangroves;

“environmental, social or custom impact” includes the following impacts:

- (a) positive or negative; or
- (b) direct or indirect; or
- (c) primary or secondary; or
- (d) short, medium or long term; or

(e) permanent or temporary; or

(f) cumulative;

“Environmental Impact Assessment (EIA) report” means a detailed document prepared in accordance with terms of reference that describes:

(a) the project; and

(b) the likely environmental, social and custom impacts of the project; and

(c) the consequences and significance of those impacts; and

(d) ways to modify, mitigate and manage different aspects of the project so as to avoid or lessen negative impacts and enhance positive impacts;

“Environmental Management and Monitoring Plan (EMMP)” means a document describing how the impacts identified in the application for a permit will be mitigated, minimised, reduced or eliminated by the project proponent and includes an environmental monitoring and surveillance program of action to ensure compliance with any environmental permit granted by the Director;

“natural environment” includes landforms, land, soil, water resources, plants, animals, atmosphere, climate and the links between these elements;

“Preliminary Environmental Assessment (PEA)” means an assessment of an application to determine if an EIA report and EMMP is required for the project;

“project” includes a project, proposal or development activity and may consist of a number of stages or phases such as design, site preparation, construction and operation;

“project proponent” means the person whose signature appears, or is otherwise nominated, on any application form as being responsible for any project;

“social impact” means an impact on the livelihood of people and the services the natural environment provides to people, and includes the following:

(a) requiring people to resettle; or

(b) the loss of assets or land; or

- (c) the loss of gardens; or
- (d) affecting health and safety; or
- (e) the unsustainable use of natural resources; or
- (f) using a resource in a way that may conflict with the existing use of that resource; or
- (g) affecting the ability of people to adapt to and mitigate the effects of climate change; or
- (h) generating noise; or
- (i) generating foul odour.

11A Projects subject to EIA

Any project that causes or is likely to cause environmental, social or custom impacts by virtue of its type, size or location must comply with this Part.”

6 Sections 12 and 12A

Repeal the sections.

7 Section 13 (Heading)

- (i) Delete “Activities”, substitute “Projects”
- (ii) Delete “an”

8 Section 13

Delete “, proposals or development activity”

9 After section 13

Insert

“13A Costs for EIA

- (1) A project proponent is responsible for all costs associated with an EIA.
- (2) Without limiting subsection (1), the project proponent is responsible for the following costs:
 - (a) costs associated with any site visit by the Department upon receiving an application; and

- (b) if applicable, costs associated with a consultant carrying out a PEA on behalf of the Director; and
 - (c) costs to prepare an EIA report; and
 - (d) costs to prepare an EMMP; and
 - (e) costs for consultation; and
 - (f) if applicable, costs for a consultant to review an EIA report and EMMP; and
 - (g) if applicable, costs to convene an EIA review committee and any work to be done by an EIA review committee.
- (3) Any dispute as to costs is to be resolved by the EIA review committee.
- (4) Any dispute associated with the cost of the EIA review committee is to be resolved by the Minister.”

10 After section 13A

Insert

“Division 2 - Application and granting of an environmental permit”

11 Section 14

Repeal the section, substitute

“14 Application for an environmental permit

- (1) The project proponent for any project not exempted under section 13, must apply to the Director for an environmental permit.
- (2) An application under subsection (1) must:
 - (a) be submitted to the Director in a form approved by the Director; and
 - (b) be accompanied by the prescribed application fee.
- (3) After receiving an application under subsection (1), the Director may require the project proponent to provide additional information about the project within a reasonable time.

- (4) In addition to subsection (3), the Director may require the project proponent to:
- (a) consult with people who are likely to be affected by the project and submit the results of the consultation to the Director; or
 - (b) submit an EIA report and EMMP.
- (5) If the project proponent fails to comply with a request made under subsection (3) or (4), within the reasonable time, the application will be taken to be withdrawn.
- (6) 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.

14A Granting of an environmental permit

- (1) The Director, upon receiving a complete application under section 14, is to decide whether to:
- (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 section (6); 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 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 in making a referral under subsection (3), must request the project proponent to confirm the referral 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, 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 (8) 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.”

12 At the end of section 14A

Add

“Division 3 - EIA Report and EMMP”

13 Section 18

Repeal the section, substitute

“18 Application

This division applies if the Director determines under subsection 14(4), that an EIA report and EMMP is required.

18A EIA Report and EMMP

- (1) If the Director determines under subsection 14(3) that an EIA report and EMMP is required, the EIA report and EMMP must be prepared by a principal consultant registered under the EIA Regulations.
- (2) An EIA report and EMMP must be prepared as follows:
- (a) according to the terms of reference approved under section 19; and
 - (b) according with the Regulations; and
 - (c) consistent with the guidelines issued by the Director; and
 - (d) in consultation with interested parties.
- (3) The project proponent must submit to the Director an EIA report and EMMP, accompanied by the prescribed fee.
- (4) The Regulations may prescribe the format and number of copies of an EIA report and EMMP to be submitted.”

14 Section 19 (Heading)

After “EIA”, insert “report and EMMP”

15 Subsections 19 (3) and (4)

After “EIA”, insert “report and EMMP”

16 Subsection 19(1)

(a) After “EIA”, insert “report and EMMP”

(b) After “must”, insert “within 10 business days of notifying the project proponent that an EIA report and EMMP are required,”

17 After subsection 19(3)

Insert

“(3A) If no comment is received within the period specified under subsection (3), the terms of reference is final.”

18 Subsection 19(4)

(a) After “EIA”, insert “report and EMMP”

(b) Delete “30”, substitute “15”

19 Subsection 19(5)

Repeal the subsection.

20 After section 19

Insert

“19A Consultation requirements for an EIA report and EMMP

A principal consultant in preparing an EIA report and EMMP must consult, in the manner prescribed under the EIA Regulations, with persons who are likely to be affected by the project and any other relevant authority.”

21 Sections 20 and 21

Repeal the sections, substitute

“20 Deficiencies in EIA Report and EMMP

(1) After receiving and reviewing the EIA report and EMMP, the Director may, by notice in writing, require the project proponent to:

(a) correct any deficiencies in the EIA Report and EMMP; and

(b) pay the prescribed resubmission fee,

within a reasonable time.

- (2) If the project proponent fails to correct any deficiencies under subsection (1) within the reasonable time, the application is deemed to have been withdrawn.”

22 Section 22

Repeal the section, substitute

“22 Review of application

- (1) If the Director determines that an EIA report and EMMP is required, an EIA Review Committee must be appointed to review the application.
- (2) The EIA Review Committee is to provide in writing the recommendations to the Director on the application.
- (3) The Director, in making a decision under section 14B, may impose, if necessary, any conditions necessary to address any environmental, social or custom impacts.
- (4) In making a decision under subsection (3), the Director must ensure that the decision is consistent with the written recommendation of the EIA Review Committee.”

23 Part 3, Division 3 (Heading)

Delete “3”, substitute “4”

24 Sections 24 and 25

Repeal the sections.

25 Subsection 26(1)

Repeal the subsection, substitute

- “(1) The Director may issue a notice in writing if:
- (a) an activity for which an environmental permit is required is undertaken without an environmental permit; or
- (b) a breach of a term or condition of an environmental permit occurs.”

26 Subsection 26(2)

Delete “either or both”, substitute “any or all”

27 Paragraph 26(2)(b)

Repeal the paragraph, substitute

- “(b) such actions as specified in the notice necessary to remedy the violation or breach to be taken;
- (c) the restoration of any area affected.”

28 Section 27

Repeal the section.

29 Section 28 (Heading)

Delete “Minister”, substitute “Director”

30 Subsection 28(1) and (2)

Delete “, proposals or development activity”

31 Paragraphs 41(1)(a),(b),(c) and (d)

After “Act”, insert “or its Regulations”

32 After paragraph 41(1)(c)

Insert

- “(ca) carries out an activity without the relevant permit or approval required under this Act or its Regulations;”

33 Subsection 41(2)

After “(c),”, insert “(ca),”

34 After paragraph 42A(1)(i)

Insert

- “(ia) seize or impound any vehicle, plant or object in any form used or believed to be used to breach any Regulations, Direction, Notice or Order made under this Act or Regulations; and”

35 Paragraph 43(1)(a)

Repeal the paragraph, substitute

- “(a) to grant an environmental permit under section 14C;”

36 Paragraphs 43(1)(b) and (c)

Delete “22”, substitute “14C”

37 After paragraph 44B(2)(e)

Insert

“(ea) any fees prescribed under this Act and its Regulations;

38 Paragraph 44B(2)(f)

After “Act”, insert “or Regulations”

39 After section 44B

Insert

“44C Proving matters relating to environmental impact

- (1) In any prosecution under this Act and its Regulations, if evidence is given by an enforcement officer that there has been, or may be, a harmful or adverse effect on the environment, the Court is to accept that evidence as prima facie evidence of the matters alleged.
- (2) If a prosecution relates to chemical or other similar substance, the Court may have regard to any information disclosed on the packaging of the chemical or substance to determine whether there is a danger to health or to the public.
- (3) This section does not limit or affect the manner in which any matter may be proved to the satisfaction of a Court.

44D Transitional arrangement

For applications made immediately before the commencement of this Act, the Director is to make a decision on those applications in accordance with the provisions and processes that existed immediately before the commencement of this Act.”