



REPUBLIC OF VANUATU

**ENVIRONMENTAL PROTECTION AND
CONSERVATION (AMENDMENT)
ACT NO. 24 OF 2017**

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REPUBLIC OF VANUATU

Assent: 02/01/2018
Commencement: 28/06/2019

ENVIRONMENTAL PROTECTION AND CONSERVATION (AMENDMENT) ACT NO. 24 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 14A;

“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 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), 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 (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 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 (4), 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 business 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.”

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(3), 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 Subsection 19 (3)

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 14A, may impose, if necessary, any conditions necessary to address any environmental, social or custom impacts.
- (4) In making a decision under section 14A, 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 14A;”

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.”