



PARLIAMENT OF FIJI ISLANDS

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Legislature - ENVIRONMENT MANAGEMENT BILL 2004

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Full Text of the Bill: *ENVIRONMENT MANAGEMENT BILL 2004* Introduced on **Wednesday, July 28, 2004**

ENVIRONMENT MANAGEMENT BILL 2004

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BILL NO. 19 OF 2004

A BILL

FOR AN ACT FOR THE PROTECTION OF THE NATURAL RESOURCES AND FOR THE CONTROL AND MANAGEMENT OF DEVELOPMENTS, WASTE MANAGEMENT AND POLLUTION CONTROL AND FOR THE ESTABLISHMENT OF A NATIONAL ENVIRONMENT COUNCIL AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands:

PART 1: PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Environment Management Act 2004 and comes into force on a date appointed by the Minister by notice in the *Gazette*.

(2) The Minister may appoint different dates for the coming into force of different sections or Parts of this Act.

Interpretation

2. In this Act, unless the context otherwise requires:

"accredited" means accredited for the purposes of this Act in accordance with the prescribed procedures;

"approving authority", in respect of a development proposal, means a Ministry, department, statutory authority, local

authority or person authorised under a written law to approve the proposal;

"carrying capacity" means the optimum population of all forms of life that a habitat or land area can support indefinitely;

"Chairperson" means the Chairperson of the National Council;

"Chief Environmental Inspector" means the person mentioned under section 18;

"Chief Executive Officer" means the Chief Executive Officer of the Ministry responsible for Environment;

"coastal zone" means the area within 30 metres inland from the high water mark and includes areas from the high water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high water mark;

"commercial or industrial facility" means:

(a) a person (including Government) who engages in:

- (i) providing services; or
- (ii) manufacturing, production, processing, transportation, storage and packaging, mining, quarrying, sand extraction, coral mining, tourism, commerce, the preparation or processing of any agricultural produce or food or any other activity undertaken for financial gain,

including any such services or activity conducted at or in residential premises;

(b) the place, land or premises on, at or from which the activities mentioned in paragraph (a) are carried on;

"debt for nature swap" means any debt incurred by a facility on conservation of nature initiatives, that includes compensation to land and resource owners for giving away the right of use of a piece of land and the natural resources for conservation purposes;

"Department" means the Department responsible for Environment;

"development activity or undertaking" means any activity or undertaking likely to alter the physical nature of the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing;

"development proposal" means a proposal for a development activity or undertaking submitted to an approving authority for approval under any written law;

"Director" means the head of the Department;

"EIA Administrator" means the Environment Impact Assessment Administrator mentioned in section 12;

"emergency action" means actions that must be performed immediately, without time for normal planning, design, or review, in order to protect against catastrophic loss of property or life, or serious harm to the environment;

"environment" means:

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

"environmental audit" means an audit conducted under section 22;

"environmental impact assessment" or "EIA" means the environment impact assessment of a development proposal approved in accordance with Part 4;

"environmental impact assessment process" or "EIA process" means the environment impact assessment process undertaken in accordance with Part 4;

"environmental management committee" means a committee established under section 16;

"environment management unit" means a unit established under section 15;

"Environmental Register" means the Environmental Register established under section 17;

"Environmental Tribunal" means the Environmental Tribunal established by section 55;

"facility" means a commercial or industrial facility;

"foreshore" means the shore of the sea, channels or creeks, that is alternately covered and uncovered by the sea at

the highest or lowest tides;

"Fund" means the Environmental Trust Fund established by section 56;

"hazardous substance" means a substance which, due to its nature, condition and quantity is toxic and capable of posing an immediate or long term risk to human health and the environment;

"hazardous waste" means toxic, inflammable, corrosive, reactive, infective or explosive waste, and includes waste which is potentially hazardous to human health or the environment;

"improvement notice" means a notice issued under section 21;

"inspector" means a person designated or declared as such under section 18;

"land" includes messuages, tenements and hereditaments, corporeal and incorporeal, buildings and other fixtures, paths, passageways, watercourses, easements, plantations, gardens, mines, minerals and quarries, the foreshore and seabed and anything resting on the seabed;

"landowner" means the registered proprietor of any land, or of any estate or interest in it or proprietor of any lease or sublease and includes the *mataqali* or other division or subdivision of Fijians having a customary right to occupy and use any native lands;

"liquid waste" means any discarded or abandoned material which maintains the physical state of continuous volume relatively independent of pressure and which takes the shape of its container at ambient temperature;

"local authority" means:

- (a) for urban areas, the appropriate city or town council constituted under the Local Government Act (Cap. 125);
- (b) for rural areas, Rural Local Authorities and the Central Board of Health constituted under the Public Health Act (Cap. 111);

"National Chemical Management Plan" means a plan specifying an overview of existing legal instruments and non-regulatory mechanism for managing chemicals, including their implementation and enforcement;

"National Chemical Profile" means a document specifying a comprehensive overview and assessment of the existing national, legal, institutional, administrative and technical infrastructure related to the sound management of chemicals;

"National Council" or "Council" means the National Environment Council established by section 7;

"National Environment Strategy" means the strategy of that name formulated under section 24;

"National Report" means the National State of the Environment Report prepared under section 23;

"National Resource Management Plan" means the plan of that name formulated under section 25;

"natural resources" means the natural resources of the Fiji Islands set out in the Natural Resource Inventory, and "resources" has a corresponding meaning;

"Natural Resource Inventory" means the inventory of that name established under section 25;

"non-traditional development activity" means development activity requiring the substantial use of modern methods, including machinery and explosives, or materials, including plastics, electricity, petrochemicals, metals, concrete and milled timber;

"non-traditional structures" means permanent or quasi-permanent dwellings, buildings, walls, or shore protective works produced from non-traditional development activities;

"permit" means a permit issued under Part 5;

"packaging" means any product made of any material of any nature to be used for the containment, protection, handling, delivery and presentation of goods from raw materials to processed goods, from the producer to the user or the consumer and includes non-returnable items used for packaging purposes;

"packaging waste" means any packaging or packaging material discarded as waste;

"pollutant" means dredged spoil, solid or liquid waste, industrial, municipal or agricultural waste, incinerator residue, sewage, sewage sludge, garbage, chemical waste, hazardous waste, biological material, radioactive materials, wrecked or discarded equipment, oil or any oil residue and exhaust gases or other similar matter;

"pollution incident" means the introduction, either directly or indirectly, of a waste or pollutant into the environment, which results in harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of water, air or soil, reduction of amenities or the creation of a nuisance;

"prohibition notice" means a notice issued under section 21;

"proponent" means a person or body that proposes to carry out a development activity or undertaking, or is the owner or person having charge, management or control of the development activity or undertaking, and, where a Ministry, department or statutory authority proposes to carry out a development activity or undertaking, means that Ministry, department or authority;

"protected and endangered species" has the meaning given to it in the Protected and Endangered Species Act 2002;

"protecting the environment" means the establishment of measures to ensure the protection of human health, safety, property, legitimate uses of the environment, species of flora and fauna, ecosystems, aesthetic properties and cultural resources, or preventing nuisance or risk of harm to any such value, on a sustainable basis;

"resource management unit" means a unit mentioned in section 13;

"Scheduled Act" means an Act listed in Schedule 1 and includes any subsidiary legislation made under a Scheduled Act;

"scoping" means scoping of a development proposal under Part 4 to determine the scope of the EIA report in order to ensure that the report addresses all relevant issues and concerns arising out of the proposal;

"significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed developments effect on the environment, and includes, but is not limited to:

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

"special waste" means white goods discarded as waste including waste from chemical metal processing and pharmaceutical and agrochemical wastes;

"sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs, and implies using resources to improve the quality of human life within their carrying capacity;

"traditional land-use activities" means the use of customary or traditional methods, practices and materials to enhance the occupation or use of land granted through the customary land tenure system, but does not include those activities requiring the substantial use of machinery and explosives and other modern methods or plastics, electricity, petrochemicals, metals, concrete, and milled timber or other modern materials;

"traditional or customary structure" means any dwelling or other building constructed with traditional materials or a combination of traditional and modern materials or the use of traditional or customary methods or a combination of traditional or customary methods and modern methods, but does not include:

- (a) any permanent dwelling, building, sea wall or shore protection works produced by modern methods or from modern materials; or
- (b) a structure built on a significantly larger scale than those built historically;

"vessel" means a vessel of any type whatsoever operating in the marine environment and includes a hydrofoil, an air-cushion vehicle, a submersible, a floating craft, a hovercraft or a fixed or floating platform or a waterborne craft or any type whatsoever, whether self-propelled or not;

"waste" includes litter, garbage, refuse, excavated and dredged spoil, and other discarded materials including any derelict motor vehicles or parts, waste materials from residential, commercial or industrial facility and from community activities (excluding religious offerings), solid or dissolved material in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved materials in irrigation return flows or other common water pollutants;

"WPC Administrator" means the Waste and Pollution Control Administrator mentioned in section 14.

Application and purposes

3. (1) Without prejudice to section 5 of the Penal Code, this Act extends to the exclusive economic zone within the

meaning of the Marine Spaces Act.

(2) The purposes of this Act are:

- (a) to apply the principles of sustainable use and development of natural resources; and
- (b) to identify matters of national importance for the Fiji Islands as set out in subsection (3).

(3) A person required to perform any function under this Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:

- (a) the preservation of the coastal environment, margins of wetlands, lakes and rivers;
- (b) the protection of outstanding natural landscapes and natural features;
- (c) the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna;
- (d) the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures; or
- (e) the right to life protected under the Constitution.

(4) A person performing a function under this Act relating to the use of natural resources must have regard to the following:

- (a) the traditional owners or guardians of resources;
- (b) the maintenance and enhancement of amenity values;
- (c) the intrinsic values of ecosystems;
- (d) the maintenance and enhancement of the heritage values of building and sites;
- (e) the maintenance and enhancement of the quality of the environment;
- (f) the finite characteristic of natural and physical resources.

Act binds Government

4. This Act binds the Government.

Non-derogation

5. This Act is in addition to and does not derogate from any other written law.

Contracting out

6. (1) This Act applies notwithstanding anything to the contrary contained in any contract or agreement.

(2) A contract or agreement that purports to exclude or limit the application of this Act or to exclude or limit the rights or entitlements of a person under this Act is, to that extent, void.

(3) A person who offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other persons rights, benefits or entitlements under this Act, commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

PART 2: ADMINISTRATION

National Environment Council

7. (1) This section establishes the National Environment Council comprising of:

- (a) the Chief Executive Officer, as Chairperson;
- (b) the Chief Executive Officers for the Ministries responsible for land, mineral resources, agriculture, fisheries or forests;
- (c) the Chief Executive Officer for the Ministry responsible for Fijian Affairs;
- (d) the General Manager of the Native Land Trust Board;
- (e) the Chief Executive Officer of the Fiji Islands Trade and Investment Bureau;
- (f) the President of the Local Government Association;
- (g) a member to represent the interests of non-governmental organisations;
- (h) 2 members, one to represent the interests of the general business community and one to represent the manufacturing industries; and
- (i) a member to represent the interests of the academic community.

(2) The Director shall act as the Secretary of the National Council.

(3) The Minister has the power to appoint persons mentioned in paragraphs (g), (h) and (i) of subsection (1) and such persons must not be public officers.

(4) In the absence of the Chairperson, the Chairperson may, in writing, designate a Chief Executive Officer of a Ministry who is a member to act as Chairperson.

Functions of the Council

8. (1) The functions of the Council are:

- (a) to approve the National Report;
- (b) to approve the National Environment Strategy;
- (c) to monitor and oversee the implementation of the National Environment Strategy;
- (d) to facilitate a forum for discussion of environmental issues;
- (e) to make resolutions on public and private sector efforts on environmental issues;
- (f) to ensure that commitments made at regional and international fora on environment and development are implemented;
- (g) to advise the Government on international and regional treaties, conventions and agreements relating to the environment; and
- (h) to perform any other functions conferred under this Act or any other written law.

(2) The National Council may appoint any technical committee necessary to advise it on matters affecting environmental protection and resource management.

(3) The Council may appoint a committee for coastal zone management to prepare a coastal zone management plan.

Term of office and remuneration

9. (1) A member of the National Council appointed under section 7(3) may be appointed for a period, not exceeding 2 years, specified in the instrument of appointment, and is eligible for re-appointment.

(2) A member of the Council or of an advisory committee, other than a public officer, is entitled to sitting allowances and other expenses to be fixed by the Minister after consulting the Higher Salaries Commission.

Meetings of the Council

10. (1) The National Council must meet at least 4 times a year.

(2) The Chairperson presides at all meetings of the Council, and if the Chairperson is absent for any reason, the acting Chairperson must preside at that meeting.

(3) At a meeting of the Council:

- (a) the Chairperson and two-thirds of the other members constitute a quorum;
- (b) questions arising must be determined by a majority vote of the members present; and
- (c) the Chairperson or the person presiding at a meeting has an ordinary vote and a casting vote.

(4) Subject to this Act, the Council may regulate its own procedures.

(5) The Council must keep proper records of its proceedings.

(6) The Council must prepare an annual report of its operations.

(7) The Minister must cause the annual report of the Council to be laid before each House of Parliament as soon as practicable after receiving it.

Functions, duties and powers of the Department

11. (1) In carrying out its functions, the Council may require the Department to carry out the following:

- (a) to coordinate the formulation and review of National Report;
- (b) to coordinate the formulation, review and implementation of the National Environment Strategy (including national environmental and resource management policies);
- (c) to implement and carry out the EIA process;
- (d) to design and implement policies and programmes on pollution and waste management, abatement and reduction;
- (e) to formulate, monitor and enforce environmental standards;
- (f) to co-ordinate conservation and management of natural resources;
- (g) to facilitate the establishment of environmental units in Ministries, departments, statutory authorities, local authorities or facilities;
- (h) to establish and maintain a register of accredited persons;
- (i) to provide technical advice on pollution control and abatement methods;
- (j) to implement treaties and conventions on environmental and resource management to which Fiji is a party;
- (k) to formulate and review a National Resource Management Plan.

(2) For the purposes of subsection (1), the Council may further require the Department to carry out the following duties:

- (a) to evaluate environmental and resource management implications of major economic and sectoral policies; and
- (b) to review environmental and resource data and environmental audit reports.

(3) For the purposes of carrying out the functions of the Council, the Department has the following powers:

- (a) to undertake periodic inspections of any Ministry, department, statutory authority, local authority or facility relating to environmental or resource management;
- (b) subject to the powers of the Director of Public Prosecutions, to initiate legal proceedings under this Act in a magistrates court; and
- (c) to appoint lay persons to prosecute offences under this Act or a Schedule Act in a magistrates court.

Environmental impact assessment unit

12. (1) The Department must have a unit responsible for environmental impact assessment consisting of the following public officers:

- (a) an Environmental Impact Assessment Administrator; and
- (b) other public officers.

(2) If, for any reason the EIA Administrator or person acting in that capacity, cannot perform any powers and functions under this Act or any other written law, the Director may perform those powers and functions.

(3) The unit must examine and process every development proposal which:

- (a) is referred to the EIA Administrator by an approving authority;
- (b) may come to the attention of the unit that may have a significant environmental or resource management impact; or
- (c) causes, or in the opinion of the Minister is likely to cause, public concern.

Resource management unit

13. (1) The Department must have a unit responsible for resource management.

(2) The functions of the unit are:

- (a) to formulate and review the Natural Resource Inventory after consulting any interested person (including resource owners);
- (b) to formulate, implement, monitor and review the National Resource Management Plan in the prescribed manner;
- (c) to co-ordinate natural resource management activities;
- (d) to maintain a natural resource information database; and
- (e) to advise the person or body authorised under a written law to issue permits and approvals for resource use activities within the National Resource Management Plan.

(3) The responsibilities of the unit are:

- (a) to establish and maintain a coastal sensitivity atlas for disaster response planning and management;
- (b) to undertake periodic inspections of suspected resource management irregularities;
- (c) to provide education and awareness on resource management issues; and
- (d) to liaise with the public, business community, and non-governmental organisations in relation to resource management issues.

(4) The unit may carry out surveys and inspections, and collate geographic and natural resource information for the purpose of establishing the Natural Resource Inventory;

Waste management and pollution control unit

14. (1) The Department must have a unit responsible for the waste management and pollution control consisting of the following public officers:

- (a) Waste and Pollution Control Administrator; and
- (b) other public officers.

(2) If for any reason the WPC Administrator or person acting in that capacity cannot perform any powers and functions in this Act or any other written law, the Director may perform those powers and functions.

(3) The functions of the unit are:

- (a) to administer Part 5;
- (b) to formulate, implement, monitor the National Solid Waste Management Strategy;
- (c) to develop criteria and guidelines for landfill sites and dumps;
- (d) to develop standards for the management of sanitary landfill;
- (e) to formulate, implement and monitor strategies for minimization of packaging wastes, special wastes, liquid wastes and any other types of wastes; and
- (f) to establish the National Chemical Management Plan based on the National Chemical Profile.

Environmental management units

15. (1) The chief executive officer of a Ministry, department, statutory authority or local authority may, if required by the Department, establish a unit responsible for environmental management.

(2) A unit established under subsection (1) must consist of employees who can effectively undertake:

- (a) for a Ministry and department, processing of environmental impact assessments;
- (b) formulation and implementation of environmental and resource management policies and implementation programmes;
- (c) surveys and inspections and collation of geographic and natural resource information for the purpose of the Natural Resource Inventory;
- (d) education and awareness; and
- (e) any other duties, functions and responsibilities prescribed by the regulations.

(3) Without prejudice to subsection (1), an environmental management unit in an approving authority is responsible for:

- (a) scoping a development proposal if it is to be processed by the authority;
- (b) assisting the EIA Administrator in scoping a development proposal if it is to be processed by the EIA Administrator;
- (c) reviewing or assisting in reviewing a completed EIA report on the proposal and making comments and recommendations on any management plan, enhancement plan or protection plan in the report;
- (d) monitoring and, if necessary, enforcing any environmental or resource management conditions of an approved EIA report; and
- (e) processing any development proposal at the request of the EIA Administrator.

Environmental management committees

16. (1) A facility must, if required by the Department, establish a committee responsible for environmental management.

(2) The functions of an environmental management committee are:

- (a) to facilitate co-operation between the employer and the employees in relation to environmental management at the facility;
- (b) to investigate and report on any matter at the facility:
 - (i) which a member of the committee or a person at the facility considers is, or may constitute, a threat to the environment;
 - (ii) which has been brought to the attention of the employer as a threat to the environment;
- (c) to undertake education and awareness programme of environmental matters at the facility; and
- (d) to perform any other functions prescribed by the regulations.

(3) A committee must be comprised of both the management and employees.

(4) The employer in respect of a facility that fails to establish a committee under this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

Environmental Register

17. (1) The Department must establish and maintain an Environmental Register for the purposes of this Act into which prescribed matters must be recorded.

(2) A person is entitled to have access to any record or document in the Environmental Register.

Appointment of inspectors

18. (1) The Department must have the following public officers for the purposes of this Act, a Chief Environmental

Inspector and other inspectors.

(2) The Chief Executive Officer may appoint any other person or class of persons, other than a public officer, to be inspectors for the purposes of this Act, and such appointment must be notified in the *Gazette*.

(3) An inspector must carry an identification card while on inspection.

(4) A person who forges or counterfeits an identification card under subsection (3) or uses any forged, counterfeit or false identification card or impersonates the inspector named in an identification card commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

Powers of inspectors

19. (1) An inspector has the following powers:

- (a) to conduct any examination or inquiry, including the examination of any plant, substance or thing, to ascertain whether there has been compliance with or breach of this Act or any Scheduled Act;
- (b) to take or remove samples of any matter, substance or thing required for analysis in accordance with the prescribed procedures;
- (c) to take possession of any machinery, equipment, plant or other thing for further examination or testing or for use as evidence;
- (d) to take pictures, photographs or measurements or make sketches or recordings in any form;
- (e) to examine any document, in any form, and to make and take copies of such document;
- (f) to order that the operation of whole or part of a Ministry, department, statutory authority, local authority or facility be stopped for the purposes of inspection;
- (i) to interview any person for the purpose of inspection; and
- (h) to exercise any other powers conferred under this Act or any other written law.

(2) At the conclusion of an inspection, the inspector must:

- (a) prepare a report on the inspection; and
- (b) provide a copy of the report to the Ministry, department, statutory authority, local authority or facility.

(3) In exercising the powers under this Act, an inspector may be accompanied by a police officer, technical specialist or any other person for the purposes of inspection.

(4) If an inspector takes possession of a matter, substance, plant machinery or other item or things 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 things.

(5) Any document or information collected for the purposes of inspection must not be disclosed unless the document or information is disclosed:

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

(6) An inspector or any person assisting an inspector under subsection (3) is not personally liable for any act done in good faith in the exercise of any power under this section.

(7) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

(8) A person who knowingly or deliberately, conceals the location or existence of any matter, substance or plant machinery from an inspector commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

Powers of inspectors to enter and inspect

20. (1) For the purpose of this Act, an inspector may, at any reasonable time:

- (a) enter and inspect any facility in respect of which a permit or approval has been issued under this Act to determine whether any activity or undertaking is being carried out in contravention of the permit or approval or a condition of the permit or approval;
- (b) enter and inspect any facility where the inspector has reasonable grounds to believe waste or pollutants can be found;

- (c) enter and inspect any facility or place where the inspector has reasonable grounds to believe documents or information pertaining to an offence under this Act can be found;
- (d) if the inspector has reasonable grounds to believe that a vessel or aircraft is contravening or has contravened this Act, stop and inspect the aircraft or vessel;
- (e) require the production of any document or information required to be kept under this Act and any other document or information related to the purpose for which the inspector is exercising a power under this Act.

(2) An inspector may not enter a residential premises except:

- (a) with the consent of the owner or person in possession of the premises; or
- (b) pursuant to a warrant issued under subsection (3).

(3) If a magistrate is satisfied on affidavit evidence by an inspector that:

- (a) it is necessary to enter a residential premises for the purposes of this Act; and
- (b) the consent of the owner has not been or cannot be obtained;

the magistrate may issue a warrant authorising the inspector to enter and remain on the residential premises for the purposes of this Act.

(4) An inspector may seize anything found on the residential premises that may be used as evidence of the commission of an offence under this Act.

(5) An inspector who seizes anything from a person under subsection (4) must:

- (a) inform the person of the reason for the seizure;
- (b) give the person a receipt for the thing that has been seized; and
- (c) remove the item to a place of safekeeping and deal with it as if it were seized pursuant to a warrant under subsection (3).

(6) It is a condition of every approval or permit issued under this Act that the holder must permit inspectors to carry out inspections required or authorised by this Act of any facility or place, other than residential premises, to which the approval or permit relates.

(7) 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 inspector is exercising powers under this Act, must:

- (a) give the inspector any assistance to enable the inspector to exercise powers and functions under this Act; and
- (b) provide any document or information required by the inspector for the purpose of this Act.

Improvement and prohibition notices

21. (1) If an inspector has reason to believe that a Ministry, department, statutory authority, local authority or facility is contravening or has contravened this Act or a Scheduled Act, the inspector may issue an improvement notice, in the prescribed form, to the Ministry, department, statutory authority, local authority or facility.

(2) If the Director has reason to believe that an immediate threat or risk to the environment is occurring or may occur in any activity or undertaking of a Ministry, department, statutory authority, local authority or facility, the Director may issue a prohibition notice, in the prescribed form, to stop operation of the activity or undertaking.

(3) The Director may cause the prohibition notice to be posted on the place or premises of and served on the Ministry, department, statutory authority, local authority or facility.

(4) A person who fails to comply with an improvement notice or a prohibition notice commits an offence.

(5) A person who removes, obliterates or interferes with a notice posted under subsection (3) commits an offence.

(6) A person who is aggrieved by a prohibition notice may, within 21 days after the notice is issued, appeal to the Tribunal.

Environmental audits

22. (1) A Ministry, department, statutory authority or local authority responsible for the management of any natural resource must, in the prescribed manner, implement a system of natural resource accounting designed to quantify in financial terms:

- (a) the resource capital administered by it;
- (b) any expenditure incurred during the audit period in relation to exploitation, extraction or use of the resource; and

(c) any resource loss that has resulted during the audit period.

(2) An environmental auditor must, within the prescribed period, undertake sustainable development assurance audits of a Ministry, department, statutory authority and local authority that are required to implement a system of natural resource accounting under subsection (1).

(3) The environmental auditor in undertaking a sustainable development assurance audit must:

- (a) verify that the natural resource accounts of the Ministry, department, statutory authority and local authority have been properly kept;
- (b) verify the evaluation of resource capital administered by the Ministry, department, statutory authority or local authority;
- (c) verify any expenditure that has been incurred during the audit period;
- (d) verify any resource loss that has resulted during the audit period;
- (e) determine whether the economic expenditure on resource use has been justified in terms of the net resource loss;
- (f) determine whether the exploitation or use of living, renewable and non-renewable resources is within the carrying capacity of the resources; and
- (g) provide an evaluation as to whether the Ministry, department, statutory authority or local authority has properly disbursed its annual budget in accordance with the Governments sustainable development policies.

(4) The environmental auditor must prepare and transmit to the Minister within 8 months after the completion of any sustainable development assurance audit, a report upon the examination and audit.

(5) The Minister must cause the report under subsection (4) to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(6) A sustainable development assurance audit must be undertaken by an accredited environmental auditor appointed by the Minister.

PART 3: ENVIRONMENT REPORTS AND PLANS

National State of the Environment Report

23. (1) The National State of the Environment Report, must be published at least every 5 years.

(2) A Ministry, department and statutory authority must provide any technical assistance and information required by the Department in the formulation and review of the National Report.

(3) The National Report must be formulated, prepared and reviewed in accordance with the prescribed procedures and must contain the prescribed matters.

(4) After consideration of any submissions, the Department must develop a draft of the proposed National Report and circulate it for public review.

(5) The National Report must be submitted to the Minister for tabling before each House of Parliament.

National Environment Strategy

24. (1) The National Environment Strategy must be formulated within 12 months after the approval of the National Report.

(2) The National Environment Strategy must contain the prescribed matters.

Natural Resource Inventory and National Resource Management Plan

25. (1) The Natural Resource Inventory and the National Resource Management Plan must:

- (a) for the Natural Resource Inventory, be formulated or reviewed before the National Report is formulated or reviewed;
- (b) for the National Resource Management Plan, be formulated or reviewed soon after the approval of the Natural Resource Inventory; and
- (c) be approved by the National Council.

(2) The Natural Resource Inventory and the National Resource Management Plan must be formulated and reviewed in the prescribed manner.

(3) The Natural Resource Inventory and the National Resource Management Plan must contain the prescribed information.

Right to access reports or plans

26. A person has the right to access any report or plan prepared under this Part.

PART 4: ENVIRONMENTAL IMPACT ASSESSMENT

Duties of approving authorities

27. (1) An approving authority must:

- (a) examine every development proposal received by it; and
- (b) determine whether the activity or undertaking in the development proposal is likely to cause significant environmental or resource management impact.

(2) In examining a development proposal, the approving authority must take into account:

- (a) the nature and scope of the activity or undertaking in the proposed development;
- (b) the significance of any environmental or resource management impact;
- (c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental or resource management impact; or
- (d) any public concern relating to the activity or undertaking.

(3) Any determination under subsection (1) must be submitted as soon as practicable to the EIA Administrator.

(4) If the approving authority determines that the activity or undertaking will cause a significant environmental or resource management impact, the development proposal must be subject to the EIA process and the approving authority must:

- (a) for a proposal set out in Part 1 of Schedule 2, send it to the Department for processing by the EIA Administrator;
- (b) for a proposal set out in Part 2 of Schedule 2, process the proposal; or
- (c) for a proposal set out in Part 3 of Schedule 2, send it to the EIA Administrator to determine whether an EIA is required.

(5) If a development proposal is subject to the EIA process, the approving authority must not approve the proposal or exercise any power, duty, function or responsibility that will permit the activity or undertaking to be carried out unless the EIA report has been approved.

(6) A Ministry, department, statutory authority or local authority that makes its own proposal for development activity or undertaking must refer the proposal to the EIA Administrator for processing under this Part.

(7) An approving authority must send a copy of the assessed EIA report to the EIA Administrator as soon as it has reviewed the report, with the results of the review.

(8) If the EIA Administrator has reason to believe that there is a public concern relating to the development proposal, the EIA Administrator may require the approving authority to submit the EIA report for consideration to take into account the public concern.

Environmental impact assessment process

28. (1) The environmental impact assessment process for a development proposal must be undertaken as follows:

- (a) screening in accordance with this Part;
- (b) scoping in accordance with this Part;
- (c) preparation of an assessment EIA report under this Part;
- (d) reviewing the report under this Part ;
- (e) decision on the report under this Part; and
- (f) in accordance with any other prescribed procedures.

(2) Scoping of a development proposal must be done within 30 days from the date the proposal is received by the EIA Administrator or the approving authority.

(3) Any terms of reference for the EIA study may, in accordance with the prescribed procedures, be prepared by the EIA Administrator, approving authority or a consultant.

(4) The EIA report must be prepared by an accredited consultant at the proponents cost.

(5) If an approving authority is involved in the preparation of an EIA report, the approving authority, the review and approval of EIA must be undertaken by the EIA Administrator or a consultant.

Contents of EIA reports

29. (1) An EIA report must be prepared in accordance with the terms of reference produced under section 28(3).

(2) The contents of an EIA report must include matters required by the terms of reference, mitigation measures and any other prescribed matter.

Reviewing EIA reports

30. (1) An EIA report must be reviewed:

- (a) by a review committee appointed by the EIA Administrator or the approving authority; or
- (b) independently by a consultant appointed by the EIA Administrator.

(2) When an EIA report is reviewed, the proponent may be required to invite public comments on the report at the proponents cost, in the manner prescribed by regulations.

(3) A member of the public may inspect and view an EIA report within 14 days after it is submitted to the EIA Administrator or the approving authority.

(4) A decision on an EIA report must be made within 14 days after the period in subsection (3) expires.

(5) The EIA Administrator or the approving authority may, for the purposes of reviewing an EIA report:

- (a) request any Ministry, department, statutory authority, local authority, proponent or other person to submit comments in writing on the report;
- (b) request copies of any other report, study or document mentioned in the EIA report for the purposes of review;
- (c) set up a technical advisory committee to provide advice on any matter contained in an EIA report;
- (d) require a proponent to carry out any further study or to submit additional document or information for the purpose of ensuring that the report is accurate.

Approval of EIA

31. (1) After reviewing an EIA report, the EIA Administrator or the approving authority may:

- (a) approve the report with or without conditions;
- (b) recommend any additional study on the report; or
- (c) not approve the report.

(2) If an EIA report is approved under subsection (1), the approval may be subject to the requirement of an environmental cash bond to be deposited into the Fund as a security to cover the probable cost of preventing or mitigating any environmental damage to the area and its surroundings.

(3) If the EIA Administrator or the approving authority reviews an EIA report, the EIA Administrator or the approving authority must within 7 days from the date of the decision on the report notify the proponent of the decision.

(4) A person who disagrees with a decision of the EIA Administrator or approving authority under subsection (1) may, within 21 days from the date of the decision, appeal to the Environmental Tribunal.

(5) An approved EIA is only valid for the specific activity or undertaking in the development proposal for which it was approved, and the approved EIA must not be transferred or used for any other purpose other than the purpose for which it was approved.

Environmental management and monitoring

32. (1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.

(2) The EIA Administrator or an approving authority, may conduct any inspection to determine compliance with subsection (1).

Development proposals that are subject to an EIA

33. (1) The EIA Administrator has the power to process the development proposal set out in Part 1 of Schedule 2.

(2) An approving authority has the power to process the development proposal set out in Part 2 of Schedule ;

(3) A development proposal set out in Part 3 of Schedule 2 does not require any EIA, subject to section 27(4)(c).

Public hearings

34. (1) The proponent of a development proposal is entitled to a public hearing within the vicinity of the area of the

proposed development, which must be attended by all interested parties.

(2) Where the Government is the proponent, the Ministry responsible for the development must establish a committee to be responsible for undertaking consultations with all interested parties.

Part 5: WASTE MANAGEMENT AND POLLUTION CONTROL

Permits to discharge waste or pollutants

35. (1) A facility must not:

- (a) discharge any waste or pollutant into the environment;
- (b) handle, store, process, or control any hazardous substance;
- (c) produce or generate any waste, pollutant or hazardous substance; or
- (d) engage in any activity that may have an adverse impact on human health or the environment,

unless the facility is issued with a permit under this Part.

(2) Notwithstanding section 5, if a provision of any written law is inconsistent with the provision of this Part, the provision of this Part prevails.

Power to issue permits

36. (1) The WPC Administrator may:

- (a) upon application and accompanied by the prescribed fee, grant with conditions or refuse to grant a permit under this Part; or
- (b) vary or suspend a permit or conditions of a permit.

(2) A permit issued under this Part may be issued for period of up to 3 years subject to annual inspections carried out by virtue of this Act.

Facilities without permits

37. (1) Where a facility not issued with a permit under this Part, causes damage to the environment through discharge of waste or pollutant from the facility, activity or undertaking, the facility is liable for inspections or remedial actions under this Part.

(2) If the WPC Administrator has reason to believe that a facility is operating without a permit, the Administrator may issue a notice to the facility requiring it to apply for and obtain a permit.

(3) A facility that fails to comply with the notice issued under subsection (2) commits an offence after the period specified in the notice expires, and is liable on conviction to a fine not exceeding \$100,000.

Power to inspect and issue notices

38. (1) If the WPC Administrator has reason to believe that a permit or a condition of the permit has been breached, the Administrator may, with a warrant issued by a magistrate, enter and remain on the facility for the purposes of inspecting, assessing and determining the nature and extent of the breach.

(2) If after inspection under subsection (1) the WPC Administrator is satisfied that the permit or a condition of the permit has been breached, the Administrator may:

- (a) if the breach is a minor one, require the facility to remedy the breach within a reasonable period; or
- (b) if the breach is a serious one, issue a fixed penalty notice and a remedial notice setting out steps necessary to remedy the breach.

(3) The Minister may prescribe the penalties for a fixed penalty notice.

(4) If the penalties specified in the fixed penalty notice are paid in full, the facility is indemnified from any further liability arising out of that particular breach except for any liability under the remedial notice.

(5) If the facility fails to carry out the remedial action to the satisfaction of the WPC Administrator, the Administrator may undertake the remedial action to be paid for by the owner of the facility and any amount expended by the Administrator is to be regarded as a debt recoverable in court.

(6) If, for any reason, the Administrator is unable to carry out remedial action, the Administrator may apply to the court for an order compelling the facility to carry out the remedial action at its own cost.

Order for stop work

39. (1) The WPC Administrator may:

- (a) in the case of an emergency situation, issue to a facility an order to stop work or operation for up to 72 hours; or
- (b) if a breach determined under this Part warrants an order for stop work or operation, apply to the court for an order to stop work or operation.

(2) For the purposes of subsection (1)(a), the WPC Administrator must as soon as practicable obtain a court order to extend the period of the order.

(3) If an order to stop work or operation is issued:

- (a) the permit (including conditions) is deemed to be suspended; and
- (b) the facility must be issued with a remedial notice.

(4) A facility may apply to the court to remove the order to stop work or operation, and the court may only grant the application if it is satisfied that:

- (a) the emergency or breach has ceased;
- (b) the facility has remedied the emergency or breach; or
- (c) the WPC Administrator is satisfied that the emergency or breach has been adequately controlled.

(5) If the court removes the order to stop work under subsection (4), the WPC Administrator may, upon application, re-instate the permit deemed to have been suspended under subsection (3)(a).

(6) In this section, emergency situation means any uncontrolled, unplanned or accidental release of waste or pollutant into the environment or any reasonable likelihood of release of waste or pollutant that may affect the environment, human life or health or the environment on which human health depends, and includes:

- (a) soil contamination and devaluation of land;
- (b) accidental spills of hazardous substances;
- (c) contamination of nearby watercourse;
- (d) contamination of aquifer (underground water) or drinking water when there are artesian wells in the affected area;
- (e) introduction of toxic substances;
- (f) any other incidents (including a failure, accidents, sabotage) that may cause environmental damage.

Environmental emergency declaration

40. (1) Notwithstanding section 39, if the Minister considers that an emergency has arisen in an area in relation to a pollution incident, the Minister may, with the approval of the Cabinet, declare an environmental emergency in that area, by order in the *Gazette*.

(2) As soon as an emergency is declared under subsection (1), the Minister must establish an inter-agency emergency committee to co-ordinate the remedial emergency action under the direction and control of the Chief Executive Officer.

(3) The Minister may make regulations (the Environment Emergency Regulations) which:

- (a) specify the conditions which apply to an emergency area declared under this section;
- (b) prescribe the signage to designate the area;
- (c) prescribe the method of securing the area;
- (d) prescribe the conditions for entry into the area and the activities which may and may not be conducted in the area;
- (e) regulate the use of the area for a specified period after the lifting of emergency situation; and
- (f) any other matter necessary for the purposes of such emergencies.

(4) Environment Emergency Regulations may confer on the Chief Executive Officer or other public officer or persons authorised by the Chief Executive Officer powers additional to those conferred by this Act, and in particular may:

- (a) empower the Chief Executive Officer to requisition the use of any conveyance or equipment which the WPC Administrator considers would be of assistance in preventing the pollution incident;
- (b) empower the Chief Executive Officer or any officer to enter upon any land at any time in order to ascertain the cause of the pollution incident;
- (c) prohibit or restrict the use of any facility to the extent specified;
- (d) prohibit or restrict, subject to conditions, the movement of persons or conveyances.

(5) Environmental Emergency Regulations must specify an expiry period.

Appeal

41. If a facility disputes any remedial action required to be carried out under this Part, the facility may appeal to the Tribunal.

PART 6: OFFENCES AND PENALTIES

Limitation period for offences

42. No proceedings for an offence under this Act may be commenced 3 years after:

- (a) the date on which the offence was committed; or
- (b) the date on which evidence of the offence first came to the attention of the Department,

whichever is the later.

Offence of undertaking unauthorised developments

43. (1) A person who carries out any development activity or undertaking which is subject to the EIA process without an approved EIA report, commits an offence and is liable upon conviction to a fine not exceeding \$750,000 or to a term of imprisonment not exceeding 10 years or both.

(2) If a person is found to be undertaking a development activity under subsection (1), the Director may apply to the court for an order to stop work.

(3) A person who contravenes:

- (a) any requirement under Part 4; or
- (b) a condition for the approval of a development proposal or an approved EIA report,

commits an offence and is liable upon conviction to the penalty provided in a fine not exceeding \$250,000 or to a term of imprisonment not exceeding 3 years or both.

Other offences

44. (1) A person who:

- (a) wilfully or deliberately, provides false or misleading information in a material particular if required under this Act;
- (b) wilfully or deliberately, fails to submit any report or provide any document or information if required under this Act;
- (c) wilfully or deliberately, submits any false or misleading report in respect of any test or inspection required under this Act;
- (d) for the purpose of procuring anything to be done or not to be done under this Act, whether for his or her own benefit or for the benefit of any other person, wilfully or deliberately, makes a statement that is false in a material particular;
- (e) hinders or obstructs any other person exercising or attempting to exercise powers or carrying out duties under this Act or any Scheduled Act;
- (f) fails to give all reasonable assistance to any other person exercising powers or carrying out duties, or attempting to do so, under this Act or any Scheduled Act;
- (g) contravenes a term or condition of an approval or permit issued under this Act; or
- (h) fails to comply with any notice, order, permit, requirement or condition imposed under this Act,

commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

(2) A person who obtains accreditation under this Act by making a false declaration commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

(3) A person who falsely holds himself out as being accredited under this Act commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

Pollution offences

45. (1) A person who, without lawful authority or reasonable excuse (the offender shall prove lawful authority or reasonable excuse), causes or contributes to the discharge of a waste or pollutant from any vessel, aircraft or facility commits an offence and is liable on conviction:

- (a) for a first offence, to a fine not exceeding \$250,000 and to a term of imprisonment not exceeding 3 years or both;
- (b) for a second or subsequent offence, to a fine not exceeding \$750,000 and to a term of imprisonment not

exceeding 10 years or both.

(2) A person who, knowingly or intentionally or with reckless disregard to human health, safety or the environment, causes a pollution incident that results in harm to human health or safety, or severe damage to the environment commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 and to life imprisonment or both.

(3) Where a body corporate is convicted under this section the maximum penalty is 5 times the fine specified for that offence.

General penalties

46. A person who commits an offence against this Act for which no penalty is provided is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

Other orders

47. (1) The court, 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, may, in addition to any penalty imposed, make an order:

- (a) prohibiting the person from doing any act or engaging in any activity or undertaking that may result in the continuation or repetition of the offence;
- (b) ordering work to stop temporarily or permanently, on any activity or undertaking on a development proposal;
- (c) ordering the restoration of the area on which any activity or undertaking on a development proposal is taking place, to as near to its original condition with the cost to be borne by the proponent;
- (d) carrying out of improvement or remediation work on the area with the cost to be borne by the proponent;
- (e) directing the person to pay into the Fund costs and other expenses associated with any inspection, audit or investigation undertaken in respect of the offence;
- (f) directing the person to pay into the Fund a refundable security for costs to ensure compliance with an order made under this section;
- (g) directing the seizure and forfeiture of any vessel, aircraft or thing used in the commission of an offence; or
- (h) 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 (a) or (b) of subsection (1) 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 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 shall become a debt recoverable in the court (including using the security for costs deposited in the Fund).

Employee protection

48. (1) No employer may:

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose a penalty on an employee; or
- (d) intimidate or coerce an employee,

only because the employee has reported a contravention of this Act.

(2) An employer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

Defence

49. It is a defence to a proceedings involving the discharge or emission of a waste or pollutant from a facility if the facility establishes that it took all reasonable measures to prevent the discharge or emission of the waste or pollutant.

Civil claims and damages

50. (1) A person who has suffered loss which includes contracting health-related problems as a result of any pollution

incident may institute a civil claim for damages in a court, which may include a claim for:

- (a) economic loss resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
- (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 section 47(2).

Liability of corporations and directors

51. If a corporation commits an offence under this Act, a director, officer, employee or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence also commits the offence, and is liable to the penalty prescribed for the offence, whether or not the corporation has been prosecuted or convicted.

Priority of penalty or damages in case of bankruptcy

52. Notwithstanding any other written law, if a corporation commits an offence under this Act, penalties or damages awarded under this Act have priority over any secured or preferred claim lodged in any action for bankruptcy against the corporation.

Evidence

53. (1) A report prepared and signed by an inspector or other person carrying out an inspection of a facility under this Act stating that:

- (a) the condition of the facility or its equipment; or
- (b) the environmental management or pollution prevention activity undertaken at the facility,

does not meet the requirements of this Act or the permits or conditions of permits issued under this Act, is evidence of the matters stated in the report.

(2) In a prosecution for an offence under this Act it is sufficient proof of the offence against an offender to establish that the offence was committed by an employee or agent of the offender, whether or not the employee or agent is identified or prosecuted for the offence.

(3) A certificate of an accredited analyst stating that he or she has analysed or examined a matter, substance or product and stating the result of the analysis or examination is evidence of the matters contained in the certificate and of the correctness of the result of the analysis or examination.

(4) Notwithstanding subsection (3), the party against whom a certificate of an analyst is produced may, with the leave of the court, require the attendance of the analyst for the purposes of cross-examination.

(5) No certificate of an analyst is to be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of the intention together with a copy of the certificate.

PART 7: MISCELLANEOUS

Institution of proceedings

54. (1) Any person may institute an action in a court to compel any Ministry, department or statutory authority to perform any duty imposed on it by this Act or a Scheduled Act.

(2) Where harm is caused by the emission of pollutant or waste from a vessel, facility or thing and the owner cannot be located or is not known, a charge for an offence or a claim under this Act may be initially instituted in the name of the vessel, facility or thing until the owner is identified.

Environmental Trust Fund

55. (1) This section establishes an Environmental Trust Fund, into which shall be paid:

- (a) money appropriated by Parliament;
- (b) any environmental bond;
- (c) any contribution or donation;
- (d) fines of fixed penalties; or
- (e) any other money required under this Act or any other written law to be paid into the Fund.

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

- (a) payment of any debt for nature swaps;
- (b) payment 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;
- (c) payment for environmental rehabilitation work;
- (d) payment for research programmes;
- (e) if necessary, payment for refund of environmental bonds and security of costs;
- (f) payment of rewards under this Act.

(3) The money standing to the credit of the Environmental Trust Fund may be paid out in accordance with the prescribed rules.

Environmental Tribunal

56. (1) This section establishes an Environmental Tribunal comprising of:

- (a) a legal practitioner qualified for appointment as a judge, as Chairperson, appointed by the Judicial Service Commission; and
- (b) 2 other members, appointed by the Minister.

(2) The Tribunal may hear and determine any appeal referred to it under this Act or any other written law.

(3) The Tribunal may confirm or dismiss the appeal.

(4) In hearing an appeal, the Tribunal may state a case to the High Court for its opinion.

(5) The Chairperson and members of the Tribunal are entitled to allowances fixed by the Minister after consulting the Higher Salaries Commission.

(6) The Chief Justice may make rules and procedures of the Tribunal.

Exemption from liability

57. Any person who, in good faith, performs any duty, function or responsibility or exercises any power or issues any notice or order or enforces a notice or order under this Act is not personally liable for such act.

Power to give directions

58. The Minister may give specific or general policy directions to the Council.

Power to delegate

59. The Council, Director or an Administrator may delegate his powers, functions and duties under this Act subject to sections 31A to 31C of the Interpretation Act.

Rewards

60. A person who provides information or evidence under this Act upon which a breach of a permit or order or condition of permit or order or a breach by a facility not issued with a permit under this Act is successfully established or upon which a person is convicted for an offence under this Act is entitled to be paid a reward determined by the National Council.

Regulations

61. (1) The Minister may make regulations to give effect to the provisions of this Act, and in particular:

- (a) to prescribe forms, fees and charges for the purposes of this Act;
- (b) to provide for procedures relating to taking of samples under this Act;
- (c) to regulate mediation and arbitration for the purposes of this Act;
- (d) to prescribe other procedures and rules for the Tribunal;
- (e) to prescribe minimum educational and professional requirements for any inspector, analyst, environmental auditor or laboratory required to perform any function under this Act;
- (f) to regulate the accreditation of environmental consultants, auditors, mediators, remediation experts, analysts and laboratories;
- (g) to regulate other matters relating to environmental audit;
- (h) to prescribe procedures for environmental impact assessment in respect of any particular class of development proposal and procedures for the preparation of, or criteria for, approval of an EIA report;
- (i) to prescribe the format or contents of any report or plan required under this Act;
- (j) to prescribe information to be contained in an order to stop work on any development activity or undertaking or an order to restore or improve an area;

(k) to amend Schedule 1 or Schedule 2.

(2) Any regulation made under this Act may prescribe penalties not exceeding \$10,000 or for a term of imprisonment not exceeding 2 years or both for an offence created under the regulation.

(3) The Minister may, after consulting the relevant Minister responsible for Fijian Affairs, land, mineral resources, agriculture, fisheries, or forestry, make regulations:

- (a) to provide procedures for formulation, implementation and review of the Natural Resource Inventory and the National Resource Management Plan;
- (b) to implement the National Resource Management Plan;
- (c) to establish a system of approval or permit required for any natural resource area under the National Resource Management Plan;
- (d) to establish enforcement mechanisms;
- (e) to establish guidelines, standards and procedures for the conservation, protection or rehabilitation of any land, river or marine area.

Guidelines

62. The Director, with the approval of the Minister, may issue written guidelines setting out:

- (a) criteria to be followed by the EIA Administrator or approving authorities in approving EIA reports;
- (b) procedures for processing development proposals in respect of environmental impact assessment, by approving authorities;
- (c) procedures for undertaking the monitoring of compliance with any conditions of an approval under Part 4;
- (d) any other purpose required to give effect to Part 4.

Transitional and savings

63. (1) For the purposes of section 6, this Act applies to any contract entered into before the commencement of this Act, to the extent that the contract is inconsistent with the requirements under this Act.

(2) The first National Report must be formulated and approved within 12 months of coming into force of this Act, and any other report or plan required for the purpose of this Act must be prepared as soon as practicable after the coming into force of this Act.

(3) For the purposes of Part 4, a proposed development that has been approved by an approving authority but the work on the proposal has yet to start, the proposal must be subject to the EIA process under Part 4.

(4) For the purposes of Part 5, an existing facility that is discharging any waste or pollutant must apply for a permit required under Part 5 within 12 months of the coming into force of this Act.

(5) Notwithstanding subsection (4), an existing facility that contravenes the requirement of this Act when this Act comes into force is subject to any enforcement provisions under this Act.

SCHEDULE 1 (Section 2)

ENVIRONMENTAL AND RESOURCE MANAGEMENT ACTS

1. Factories Act (Cap. 99)
2. Fisheries Act (Cap. 158)
3. Forest Decree 1992
4. Ionizing Radiations Act (Cap. 102)
5. Litter Decree
6. Marine Spaces Act (Cap. 158A)
7. Mining Act (Cap. 18)
8. Ozone Depleting Substances Act 1998
9. Petroleum Act (Cap. 190)
10. Public Health Act (Cap. 111)
11. Rivers and Streams Act (Cap. 136)
12. Quarries Act (Cap. 128)
13. Sewerage Act (Cap. 128)
14. Town Planning Act (Cap. 139)
15. Water Supply Act (Cap. 144)

SCHEDULE 2
(Section 27)

DEVELOPMENT PROPOSALS

PART 1: APPROVED BY EIA ADMINISTRATOR

1. The following development proposals are to be approved by the EIA Administrator:

- (a) a proposal that could result in erosion of any coast, coastline, beach or foreshore;
- (b) a proposal that could result in the pollution of any marine waters, ground water, freshwater body or other water resource;
- (c) a proposal that could result in the contamination or degradation of any agricultural area or land important for agriculture;
- (d) a proposal for construction of an airport;
- (e) a proposal for construction of a hotel or tourist resort;
- (f) a proposal for mining, reclaiming of minerals or reprocessing of tailings;
- (g) a proposal for construction of a dam, artificial lake, hydro-electric scheme or irrigation project;
- (h) a proposal for heavy industrial development or noxious industrial development;
- (i) a proposal for commercial logging or for a saw milling operation;
- (j) a proposal that could alter tidal action, wave action, currents or other natural processes of the sea, including but not limited to reclamation of the sea, mangrove areas, foreshore, rivers or creeks, or construction of a jetty, dock, wharf, pier or bridge;
- (k) a proposal that would introduce pollutants or properties to the air that are disagreeable or potentially harmful to people and wildlife;
- (l) a proposal that could jeopardize the continued existence of any protected, rare, threatened or endangered species or its critical habitat or nesting grounds;
- (m) a proposal that could deplete populations of migratory species including, but not limited to, birds, sea turtles, fish, marine mammals;
- (n) a proposal that could harm or destroy designated or proposed protected areas including, but not limited to, conservation areas, national parks, wildlife refuges, wildlife preserves, wildlife sanctuaries, mangrove conservation areas, forest reserves, fishing grounds (including reef fisheries), fish aggregation and spawning sites, fishing or gleaning areas, fish nursery areas, urban parks, recreational areas and any other category or area designated by a written law;
- (o) a proposal that could destroy or damage an ecosystem of national importance, including, but not limited to, a beach, coral reef, rock and gravel deposit, sand deposit, island, native forest, agricultural area, lagoon, sea-grass bed, mangrove swamp, natural pass or channel, natural lake or pond, a pelagic (open ocean) ecosystem or an estuary;
- (p) a proposal that would result in the introduction of genetically modified organisms or of non-native species that could compete with or destroy any native species;
- (q) a proposal for the construction of a landfill facility, composting plant, marine outfall or waste water treatment plant;
- (r) a proposal that involves dredging or excavating a river bed;
- (s) a proposal that is controversial from an environmental standpoint, or is not supported for environmental or resource management reasons by a significant number of representatives from the local community, local government, churches, villages and other groups;
- (t) a proposal that could lead to the depletion of non-renewable resources;
- (u) a proposal that could challenge or contravene established customary controls over the use of natural resources;
- (v) a proposal that could result in any trans-boundary movement of wastes that could have an impact on human health, the environment or natural resources in any neighbouring country;
- (w) a proposal financed by an international or local development finance institution and which requires an EIA as a condition of the finance;
- (x) a proposal for farming or agricultural method or system that could result in the contamination or degradation of any agricultural area or land important for agriculture.

PART 2: APPROVED BY APPROVING AUTHORITY

1. The following development proposals are to be approved by an approving authority:

- (a) a proposal that requires processing only because it could endanger or degrade public health or sanitation;
- (b) a proposal that requires processing only because it could harm or destroy important cultural resources including, but not limited to, archaeological sites, cemeteries, historic sites and landmarks;
- (c) a proposal for a residential subdivision of not more than 10 lots;
- (d) a proposal for civic or community development;
- (e) a proposal for general commercial development;
- (f) a proposal for general industrial development.

2. For the purposes of this Part, civic or community development means development for purposes of:

- (a) a market;
- (b) a car park, taxi park or any other similar development;
- (c) a bus station;
- (d) a town park, swimming pool, library or any other similar development;
- (e) a fire station;
- (f) a police station, court house, prison or any other similar development;
- (g) an animal pound;
- (h) government offices;
- (i) recreational facilities provided by a local authority;
- (j) a parade ground or barracks for the Republic of the Fiji Military Forces or for the Fiji Islands Police Force;
- (k) a radio or telecommunication installation;
- (l) a library or reading room;
- (m) a church, cemetery or crematorium;
- (n) a school or other educational establishment and associated living accommodation;
- (o) an assembly room;
- (p) a kindergarten or creche;
- (q) a hospital or health care centre;
- (r) a social, private or sporting club registered under a written law;

"dam" means a barrier constructed to hold back water for the purpose of production of electricity, irrigation, controlling of flooding, catchments of piped water systems or waterways;

"general commercial development", "general industrial development", "heavy industrial development" and "noxious industrial development" have the meanings respectively given to those terms under the Town Planning Act.

PART 3: DEVELOPMENT PROPOSALS THAT MAY NOT REQUIRE THE EIA PROCESS OR AN EIA REPORT

1. Subject to section 27(4)(c), the following development proposals do not require the EIA process or an EIA report:

- (a) a proposal for the construction of a single family residential building in an approved residential development area, if the construction is at least 30 metres from any river, stream or the high water mark;
- (b) a proposal for an addition to an existing residential dwelling if the addition is to be used only for residential purposes and is at least 30 metres from any river, stream or the high watermark;
- (c) a proposal for the construction of a traditional or customary structure (including the Fijian villages within native reserves under the Fijian Affairs Act) made from traditional materials, or from natural rock, sand, coral, rubble, or gravel, if the construction or the customary structure is at least 30 metres from any river, stream or the high water mark;
- (d) subject to paragraph 2 and 3, a proposal for emergency action.

2. For the purposes of this Part, an emergency action referred to paragraph 1(d) is action that must be performed immediately, without time for normal planning, design or review, in order to protect against catastrophic loss of property or life, or serious harm to the environment.

3. A person or agency undertaking emergency action under this Part must make all reasonable efforts to consult with the Department and to incorporate in the emergency action measures that will reduce, mitigate or avoid adverse environmental effect.

*Attorney Generals Chambers
Level 7, Suvavou House
SUVA*

July 2004

ENVIRONMENT MANAGEMENT BILL 2004

EXPLANATORY NOTE

[This note is not part of the Bill and is intended only to indicate its general effect].

1.0 BACKGROUND

1.1 The concept of sustainable development means development which does not deplete natural resources or destroy the environment and has been gaining ground in recent years among developing countries. One of the main obstacles to sustainable development is that legislation on the various topics tends to be piecemeal and out of date.

1.2 A few years ago the Government, with the encouragement of the Asian Development Bank, began the process of producing a single coherent piece of legislation which would draw together and update various laws intended to protect the environment and to manage natural resources. The result was a draft Bill which contained 19 Parts and 22 Schedules and which sought to amend or to replace several existing Acts.

2.0 SCHEME OF THE BILL

2.1 The Bill contains 7 Parts.

2.2 Part 1 provides for the preliminary provisions of the Bill relating to the short title, commencement, interpretation and application and relationship of the Bill to other Acts.

National Environment Council

2.3 Part 2 deals with the administration of the Bill. Clause 7 of the Bill establishes the National Environment Council. The functions of the National Environment Council are set out in Clause 8 and include directing the formulation of a National Sustainable Development Policy and devising a strategy to implement the National State of the Environment Report. It specifies the role and functions of the Department of Environment. The Department will co-ordinate the formulation of policies and the implementation of programmes and standards. It also establishes other units and committees and their functions for the purpose of the Bill.

Environmental Register

2.4 It provides for the establishment of an Environmental Register. Clauses 18 to 21 provides for the appointment of inspectors and their powers and issuance of improvement and prohibition notices. Clause 22 provides for the environmental audit to be carried out by accredited environmental auditors to be appointed by the Minister. The purpose of such audit is to quantify in financial terms the resource managed by a department, statutory body, etc including expenditure relating to exploitation, extraction and resource loss.

National State of the Environment Report

2.5 Part 3 deals with environmental reports and plans. Clause 23 provides for the formulation, review and approval of a National State of the Environment Report which will summarise the main environmental and resource features of the Fiji Islands and the main issues concerning those features.

National Environment Strategy

2.6 The National Environment Strategy must be formulated and will set out matters to be prescribed by regulations.

Natural Resource Inventory and the National Resource Management Plan

2.7 Clause 25 provides for the formulation of the Natural Resource Inventory and the National Resource Management Plan. Plans and Reports will be open to public access.

Environment Impact Assessments

2.8 Part 4 deals with Environment Impact Assessments. Clause 27 provides for the duties of the approving authorities. Clause 28 outlines the processes that are undertaken in an EIA. Clause 29 states the contents of the EIA report. Clause 30 deal with reviewing an EIA report. At the conclusion of the review, Clause 31 outlines the options that are available to the EIA administrator on how to move on the report. Clause 32 deals with environmental management and monitoring of developments.

EIA Categories

2.9 Clause 33 defines development projects that require an Environment Impact Assessment. These are divided into three categories. The first category is those developments that are sent to the EIA Administrator. The second category is those developments that are to be dealt with by the approving authority. The third category is developments that will not need an EIA. Clause 34 provide for public hearings in an area with close proximity to the development. This allows citizens living close the development to have their concerns aired and considered.

Waste Management and Pollution Control

2.10 Part 5 deals Waste Management and Pollution Control. Clause 35 states that there must be a permit issued to a facility before a facility can operate.

Waste and Pollution Control (WPC) Administrator

2.11 The power to issue permits is given to the Waste and Pollution Control (WPC) Administrator. Clause 36 states that any facility that operates without a permit commits an offence. In clause 37, where the WPC Administrator has reason to believe that a permit or a condition of a permit has been breached. Clause 38 gives the WPC Administrator the powers to enter and inspect. Clause 39 gives the WPC Administrator discretions on issuance of stop work notices

to facilities. In emergency situations, stop work orders are issued immediately.

Environmental Emergency Declarations

2.12 Clause 40 deals with environmental emergency declarations. An inter-agency coordinating committee is established to deal with the emergency. Clause 41 deals with appeals against any action take under Part 5.

Offences and Penalties

2.13 Part 6 deals Offences and Penalties. Clause 42 deals with the limitation period for instituting proceedings. Clause 43 creates an offence for unauthorized developments. It also allows the Director to apply to the courts for a stop work order. Clause 44 covers other offences.

Pollution Offences

2.14 Pollution Offences are covered in Clause 45. Penalties are dealt with in Clause 46. Clause 47 covers other orders that are in addition to any penalty imposed on an offender. Clause 48 is the whistle blower provision that protects an employee from the employers victimization for reporting a breach. Clause 49 provides for a defence. Clause 50 allows a person to pursue a claim in court for the hardships brought on by the damage to the environment caused by a pollution incident. Clause 51 includes the liability of the directors and corporations where a corporation commits an offence. Clause 52 provides for the priority payment of damages in a case of bankruptcy. Clause 53 deals with evidence.

Miscellaneous

2.15 Part 7 deals with miscellaneous matters. It is provided in Clause 54 that any person may institute a court action to compel a government ministry or department or authority to perform a duty imposed by the Act. Clause 55 is the provision that establishes the Environmental Trust Fund. Clause 56 establishes the Environmental Tribunal that will deal with appeals arising out of this Act. Clause 57 deals with the exemption from liability where the person has the burden of proving that his or her actions were done in good faith. Clause 58 gives the Minister the power to give specific or general policy directions. Clause 59 is the delegation of powers. Clause 60 is the reward provision where the Council may reward an informant for information that has led to a successful prosecution. Clause 61 contains the powers given to the Minister to make regulations. Clause 62 empowers the director, with the approval of the Minister, to issue written guidelines. Clause 63 is the transitional provision.

3.0 RESPONSIBILITY

3.1 The Bill comes under the responsibility of the Minister for Local Government, Squatter Settlement, Housing and Environment.

Q. B. Bale
Attorney General &
Minister of Justice