

Environment Act 1999

REPUBLIC OF KIRIBATI

ENVIRONMENT ACT 1999

(No. 9 of 1999)

AN ACT TO PROVIDE FOR THE PROTECTION IMPROVEMENT AND CONSERVATION OF THE ENVIRONMENT OF THE REPUBLIC OF KIRIBATI AND FOR CONNECTED PURPOSES

Commencement:
1999

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Environment Act 1999 and shall come into operation on such date as the Minister may by notice appoint.

Interpretation

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

"approval" includes the granting of any consent, licence or permit required under this Act or any other administrative policy directive concerning any development:

"conservation" includes protection, maintenance and preservation:

"development" means any enterprise or undertaking, for industrial or commercial purposes which includes -

- (a) the erection of a building or structure;
- (b) the carrying out of work, in, on, over or under land or sea;
- (c) the use of land, building, structure or work; and
- (d) the subdivision of land;

"development consent" means a consent to carry out any development under Part III;

"discharge", includes depositing, allowing to escape, or failing to prevent from being discharged any waste or noise into the environment or permitting use of, visit to or occupation of land by people which it is beyond the facilities on the land to cope with;

"Division" means the Environment and Conservation Division of the Ministry;

"environment" includes all natural and social and cultural systems and their constituent parts, and the interactions of their constituent parts, including people, communities and economic, aesthetic, culture and social factors;

"environmental audit" means the assessment of compliance with any environmental requirements, standards or development consent conditions;

"Environmental Impact Assessment (EIA)" means the identification, analysis, avoidance and mitigation of environmental and social impacts arising from any proposed development under Part III and the evaluation of the cost effectiveness and environmental consequences of alternative options to the proposed development;

"Environment Impact Statement (EIS)" means a report presenting the results of an environmental impact assessment under Part III;

"Environmental Inspector" means a person appointed under section 5(2);

"impact", concerning the use, development or protection of the environment, includes -

(a) a positive or adverse impact;

(b) a temporary or permanent impact;

(c) a past, present or future impact.

(d) an impact which is cumulative over time or in combination with other impacts regardless of its scale, intensity, duration or frequency;

(e) an impact of high probability; and

(f) impact of low probability which has a potentially high impact;

(g) spatial dimension of such impacts, whether local, regional or global.

"Initial Environmental Report (IER)" means a brief report presenting the results of a preliminary environmental assessment of an existing or proposed development under Part III;

"land" includes land covered by water including the territorial sea, all things growing on land, and buildings and other things permanently fixed to land, but does not include minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily removed by underground or surface working;

"landowner", in respect of a registered interest, means the person in whose name the interest is registered, and concerning customary land, means the person or persons regarded as the owner or owners of the land according to existing customary usage;

"level", concerning pollution and noise, includes the volume or intensity of the pollution and noise;

"licence" means a licence granted under this Act;

"mitigation" includes -

(a) avoiding an impact by not taking a particular course of action as part of development;

(b) minimising an impact by limiting the scale of the action or changing the method of carrying out an action;

(c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment;

(d) reducing or eliminating an impact over time by conservation and maintenance action regarding development activities; or

(e) compensating for the impact by replacing or providing substitutes for the resources or environment;

"noise" includes sound and vibration;

"noise control equipment" means -

(a) any device used to prevent or limit the emission of noise; and
(b) any device used or able to be used for indicating or recording the emission of noise;

"occupier", concerning any premises, means a person who occupies or controls those premises or part thereof, whether or not that person owns the premises or that part;

"offensive noise" means noise made in or outside public premises, or outside private premises that, by reason of its level, nature, character or quality, or the time at which it is made is likely -

(a) to be harmful; or
(b) to interfere unreasonably with the peace, comfort or convenience of any person;

"plant" means any plant, equipment, apparatus, device machine or mechanism, and includes any vessel, dredge or crane, but does not include a motor vehicle;

"pollutant" means any solid, liquid or gaseous substances or energy present in such concentrating as may be, or tend to be, injurious to the environment or human health;

"pollution" means the introduction by man directly or indirectly of substances or energy into the environment which may result or likely to result in such deleterious effects or harm to living resources and ecosystems and hazards to human health including-

(a) the detriment or degradation of the environment; or
(b) the detriment of any beneficial use, and includes pollution as prescribed by regulations;

"premises" means residential, commercial, industrial or other premises of any kind and includes land or sea based air or space launch or landing facility;

"prescribed development" means development as set out under section 13;

"public authority" means -

(a) any Ministry or a department of Government, a local government council, or an Urban or Town Council, or statutory body; or
(b) in relation to development consent, the Ministry or government body by whom or on whose behalf the proposal is to be carried out, or any other Ministry or government body whose consent is required to enable the development to be carried out;

"sustainable development" means the management or the human use, development, conservation, protection, maintenance and enhancement of the natural, physical and cultural resources of Kiribati in a way or at a rate, which enables people and communities to provide for their social economic and cultural well-being and to their health and safety while -

(a) sustaining the potential of natural and physical resources to meet the needs of future generations;

(b) using, developing or protecting renewable natural and physical resources so that their ability to yield long-term benefits is not endangered;

(c) using, developing or protecting non-renewable natural resources so as to lead to an orderly and practical transition to adequate substitutes including renewable resources;

(d) safeguarding the life-supporting capacity of air, water, soil and ecosystem; and
(e) avoiding, remedying or mitigating any adverse effects of development on the environment;

(f) preserving endangered, rare and threatened species that may be considered ecologically and in terms of heritage of special value to Kiribati and global diversity, as the Minister, acting in accordance with the advice of the Cabinet may from time to time

by order in writing declare to be such as the Minister, acting in accordance with the advice of Cabinet may from time to time by order in writing declare to be such.

"trade" includes commercial undertaking;

"vessel" includes any ship, lighter, barge, oil rig, boat, canoe, raft, house boat, jet ski, or vessel of any description;

"waste" includes matter -

- (a) whether liquid, solid, gaseous or radioactive, whether toxic or not, which is discharged into the environment; or
- (b) which is the by product of any process activity or development with no apparent value or beneficial function; or
- (c) human excrement or faeces; or
- (d) animal excrement or remains; or
- (e) which is prescribed by regulation to be waste.

Objects of the Act

3. The objects of this Act shall be -

- (a) to provide for and establish integrated systems of development control, environmental impact assessment and pollution control;
- (b) to prevent, control and monitor pollution;
- (c) to reduce risks to human health and prevent the degradation of the environment by all practical means, including the following -
 - (i) regulating the discharge of pollutants to the air, water or land;
 - (ii) regulating the transport, collection, treatment, storage and disposal of wastes;
 - (iii) promoting recycling, re-use, reduction, composting and recovery of materials in an economically viable manner; and
 - (iv) to comply with and give effect to regional and international conventions and obligations relating to the environment;
- (d) protecting and conserving the natural resources threatened by human activities, particularly those resources of national and ecological significance as may be classified under the categories of terrestrial vegetation, coral, fish and marine life.

Effect of this Act on other Acts

4. (1) To the extent of any inconsistency between this Act, and any other Act, the Acts shall be construed so far as is possible so that the objects of this Act are fulfilled.

(2) Compliance with the requirements of this Act shall not absolve a person from separate compliance with any other law of Kiribati in so far as it is not inconsistent with this Act.

PART II ADMINISTRATION

Administration of the Act

5. (1) The Minister, acting in accordance with the advice of the Cabinet shall be responsible for the due administration and implementation of this Act.

(2) The Beretitenti, acting in accordance with the advice of the Public Service Commission may appoint Environmental Inspectors for the purposes of this Act.

Functions of the Minister

6. (1) The Minister, acting in accordance with the advice of the Cabinet shall have the following functions -

- (a) overall management and control of the Environmental and Conservation Division of the Ministry;
- (b) protect, restore and enhance the quality of the environment of Kiribati, balanced against the need to promote sustainable development;
- (c) develop, establish and administer systems of prevention and control of pollution in both the industrial and non-industrial sectors;
- (d) develop national standards to promote sustainable development and to monitor those standards through environmental auditing;
- (e) assist in developing legislation for systems of environmental planning at national, provincial and local level, and the development of national, provincial and local environment plans;
- (f) collaborate with relevant public authorities in assisting in the conservation and management of areas of national and international significance;
- (g) promote the participation of the community in environmental decision-making;
- (h) ensure freedom of and access to information on environmental matters, and in particular to ensure that the community has access to relevant information about hazardous substances arising from, or stored, used or sold by any industry or public authority, private person or private enterprise or any other person;
- (i) set compulsory standards for environmental improvement, including the setting of pollution standards and limits for polluter licence;
- (j) conduct public education and awareness programmes about the environment;
- (k) promote the study of the environment through research, surveys, listing and classification.

(2) For the purposes of promoting sustainable development as envisaged under subsection (1)(b), the Minister acting in accordance with the advice of the Cabinet shall as far as practicable be guided by the following -

- (a) the precautionary principle, which is the lack of full scientific certainty should not be used as a reason for not acting to prevent any environmental damage or degradation;

- (b) fairness to future generations in that the present generation should ensure that the health, diversity, and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (c) conservation of biological diversity and ecological integrity; and
- (d) improved valuation and pricing of environmental resources.

Further functions of the Minister

7. Subject to the overall control and direction of the Cabinet and the provisions of this Act the Minister shall -

- (a) manage and control the affairs of the Environmental and Conservation Division of the Ministry;
- (b) guide and direct the Minister on matters concerning any aspect of the environment and in relation to any of the functions, powers and responsibilities of the Division;
- (c) promote co-ordination among Ministries and government divisions;
- (d) revise and amend the national environmental strategies and programme as necessary;
- (e) develop, co-ordinate and facilitate implementation of national policy concerning environmental planning, environmental impact assessment and pollution control;
- (f) monitor and advise on international development to environmental matters and to ensure the fulfilment of obligations of Kiribati under the relevant international and required treaties and conventions;
- (g) develop a comprehensive community participation policy concerning all aspects of the Division's work, and facilitate the implementation of such policy;
- (h) conduct and promote environmental research, environmental education, and environmental quality objectives; and
- (i) carry out such other acts as the Minister thinks necessary to properly discharge the functions and generally for carrying out the objects of this Act.

Performance targets for public authorities

8. The Minister, acting in accordance with the advice of the Cabinet may advise any public authority on performance targets, (including pollution control and other environment protection standards or quality) in respect of any matter or activity which may have a direct or indirect bearing on the functions of the Division.

Power to give directions to public authorities

9. The Beretitenti acting in accordance with the advice of the Cabinet may where he deems it necessary direct any public authority-

- (a) to do anything within the powers of that public authority which, in the opinion of the Beretitenti, contributes to the achievement of the objects of the Act; or

(b) to refrain from doing any act which, in the opinion of the Beretitenti, detracts from the achievements of the objects of the Act.

Powers of entry of Inspectors

10. (1) Subject to the provisions of subsections (2) and (3) an Inspector may enter:

- (a) any land or building other than a dwelling house at any time; and
- (b) a dwelling house at a reasonable time during daylight.

(2) An inspector shall not exercise the conferred by subsection (1) except for the purpose of -

- (a) ascertaining the nature and condition of the land, building, water or reef; or
- (b) investigating an alleged offence of which an Inspector has reasonable and probable grounds to believe that such entry will produce evidence.

(3) The powers conferred by subsection (1) shall not be exercised unless reasonable notice has been given to the owner or occupier of the land building or dwelling house or unless a search warrant has been obtained.

(4) The provisions of the Criminal Procedure Code section 101 and 102 or any successor legislation, shall apply to the issuance of search warrants hereunder.

Minister's power to issue general directions

11. The Minister acting in accordance with the advice of the Cabinet may give the Ministry such directions of a general character as to the policy to be followed by the Division in the performance of its functions as appear to the Minister to be necessary and the Division shall give effect thereto.

PART III DEVELOPMENT CONTROL, ENVIRONMENTAL IMPACT ASSESSMENT, REVIEW AND MONITORING

General duty to consider environmental impact

12. In considering the grant of approval for any existing or proposed development or further expansion in any existing development, the Minister, acting in accordance with the advice of Cabinet after consultation with the Division and the relevant public authority and all other relevant and concerned shareholders shall have regard as far as practicable to the effect such development or expansion would have on the environment.

Declaration of prescribed development Schedule

13. (1) The development specified in the Schedule shall for purposes of this Act be classified as prescribed development.

(2) The Minister acting in accordance with the advice of Cabinet may by order from time to time as the Minister sees fit, include in or delete from the said Schedule any development or proposed development except for individual proposals.

Applications for approval

14. (1) Any developer who proposes to carry out any prescribed development in Kiribati shall make application to the Minister in the prescribed form.

(2) On receipt of a development application referred to in subsection (1), the Minister shall instruct the Secretary within fifteen working days of such receipt to advise the developer to submit either -

- (a) a development application accompanied by an Initial environment evaluation report, together with any additional requirements as notified by the Secretary; or
- (b) a development application accompanied by an environmental impact statement, together with any additional requirements as notified by the Secretary.

(3) Where the developer is a foreign investor, a certified copy of the Foreign Investment Commission's certificate of approval shall be attached with the application.

(4) Where the Minister acting in accordance with the advice of the Cabinet decides to dispense with the requirements of subsection (2), the Secretary shall advise the developer accordingly within the time stipulated in that subsection

(5) In determining as to whether the developer is required to submit a report referred to in paragraph (a) or (b) of subsection (2), the Minister acting in accordance with the advice of the Cabinet shall take into consideration the significant impact the development is likely to have on the environment and other factors that may be prescribed by regulations made under section 52.

Requirement for information concerning existing prescribed development

15. Any developer carrying on an existing prescribed development, who has not submitted a development application to the Minister as required under section 14 shall, if required to do so in writing by the Minister provide -

- (a) information of the nature of the activity carried on; and

- (b) unless exempted by the Minister, acting in accordance with the advice of the Cabinet -
- (i) a development application; or
 - (ii) initial environment evaluation report or environmental impact statement, as the case may require, in accordance with this Part.

Consent required for prescribed development

16. (1) No developer shall commence or continue to carry out any prescribed development unless-

- (a) a development application has been submitted to the Minister, together with either a initial environmental evaluation report or an environmental impact statement, as specified by the Minister in section 14; and
- (b) the developer has been issued with a development consent by the Minister, acting in accordance with the advice of the Cabinet under this Part; or
- (c) the Minister acting in accordance with the advice of the Cabinet has exempted the development from the requirements of this Part.

(2) Any person who carries on any prescribed development in breach of subsection (1) commits an offence and shall be liable on conviction of a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Contents of initial environmental report

17. Any initial environmental evaluation report in respect of proposed and existing prescribed development shall -

- (a) describe the prescribed development in summary form, including its objectives and any reasonable alternatives to it;
- (b) describe any aspects of the prescribed development having or likely to have a substantial or important impact on the environment;
- (c) describe the environment likely to be affected by the prescribed development and any reasonable alternatives to it;
- (d) indicate the potential or actual impact of the prescribed development on the environment and of any reasonable alternatives to the prescribed development, including any enhancement of the environment;
- (e) outline the reasons for choice of the prescribed development;
- (f) describe and assess the effectiveness of any safeguards of standards intended to be adopted or applied for the protection of the environment;
- (g) state any intended investigations or studies of the possible impact on the environment before the prescribed developments implemented;
- (h) state any intended monitoring and reporting of the impact of the prescribed development; and

(i) address any further matters that the Minister, acting in accordance with the advice of the Cabinet may specify.

Requirements for further information

18. The Minister acting in accordance with the advice of the Cabinet may, where the Minister, deems it necessary require the developer to submit further information within a specified period.

Publication of initial environmental evaluation report and procedure in respect of objections and appeal

19. (1) The Minister acting in accordance with the advice of Cabinet on being satisfied that a public environmental report meets the requirements of this Act shall cause the public environmental report to be published in such manner as he considers adequate or most effective for the purpose of bringing it to the attention of all public authorities and other persons, whose interests are likely to be affected by the proposed development.

(2) Any public authority or person whose interests are likely to be affected by the proposed development may within thirty days from the date of publication of the notice referred to in subsection (1) make written objections to the Minister in respect of the proposed development.

(3) On receipt of the written objections referred to in subsection (2), the Minister shall examine the grounds of objections and where the Minister deems it necessary after examining the objections of the affected parties either -

(a) acting in accordance with the advice of the Cabinet consent to the development, or the continuation of that development, with or without conditions;

(b) acting in accordance with the advice of the Cabinet require the developer to produce an environmental impact statement and to conform with the provisions concerning environmental impact statements under this Part; or

(c) acting in accordance with the advice of the Cabinet refuse consent to the prescribed development.

(4) In making the decision the Minister, acting in accordance with the advice of the Cabinet shall take into account -

(a) the information contained in the development application in the initial environmental evaluation report;

(b) any objections received under subsection (2) and any information provided in support of the objections; and

(c) the objects of this Act.

Contents of environmental impact statement

20. An environmental impact statement in respect of proposed and existing prescribed development shall -

- (a) contain a full description of the objectives of the prescribed development;
- (b) analyse the need for the prescribed development;
- (c) indicate the consequences of not implementing or carrying out the prescribed development;
- (d) include adequate information and technical data adequate to allow assessment of the impact of the prescribed development on the environment;
- (e) examine any reasonable alternatives to the prescribed development, including alternative sites for it;
- (f) describe the environment that is or is likely to be affected by the prescribed development and by any reasonable alternatives to it;
- (g) assess the actual or potential impact on the environment of the prescribed development and of any reasonable alternatives to it, including the primary, secondary, short term, long term, adverse and beneficial impacts on the environment;
- (h) outline the reasons for the choice of the prescribed development;
- (i) estimate the time period of any expected impacts;
- (j) describe the geographic boundaries of the impacts;
- (k) state the methods of predicting and assessing each impact from the construction, operational and where relevant, the de-commissioning phase of an implemented development and for each alternative presented;
- (l) justify the prescribed development in terms of environmental, economic, culture and social considerations;
- (m) identify and analyse all likely impacts or consequences of implementing the prescribed development, including implications for the use and conservation of energy;
- (n) describe measures to prevent or reduce significant adverse impacts and enhance beneficial effects and an account of their likely success with estimated costs as appropriate;
- (o) describe residual impacts which cannot be mitigated or can only be mitigated partially;
- (p) describe proposed monitoring and reporting schemes with estimated costs as appropriate;
- (q) describe and assess the estimated cost-effectiveness of any safeguards or standards for the protection of the environment to be adopted or applied including its implementation, monitoring and reporting;
- (r) give an account of the impact on the environment of any of a series or programme of similar development (whether implemented or not) over a period of time;
- (s) give sources and references to information relied on and outline any consultations with any person's made during the preparation of the report;
- (t) include a site survey report concerning National Heritage items or traditional artefacts as specified by the Minister acting in accordance with the advice of the Cabinet;

- (u) address any further matters as the Minister acting in accordance with the advice of the Cabinet specifies; and
- (v) give a clear and concise summary printed on a separate page.

Publication of environment impact statement and procedures in respect of objections and appeal

21. (1) The Minister, acting in accordance with the advice of the Cabinet on being satisfied that an environmental impact statement meets the requirements of this Act, shall cause such statement to be published in such manner as he considers adequate or most effective for the purpose of bringing it to the attention of all public authorities, and other persons whose interests are likely to be affected by the proposed development.

(2) Any public authority or person whose interests are likely to be affected by the proposed development may within thirty days from the date of publication of the notice referred to subsection (1) make written objections to the Minister in respect of the proposed development.

(3) On receipt of the written objections referred to in subsection (2), the Minister acting in accordance with the advice of the Cabinet shall examine the grounds of objections, and where he deems it necessary, after examining the objections of the affected parties either-

- (a) acting in accordance with the advice of the Cabinet issue consent to the development with or without conditions; or
- (b) acting in accordance with the advice of the Cabinet refuse consent.

Development to be carried out in accordance with development consent

22. (1) A developer shall not carry on any development except in accordance with the development consent.

(2) An Inspector may at any time if he has reason to believe that any person is responsible for, or substantially involved in any development, request such person to produce within a reasonable time evidence of the development consent.

(3) If any Inspector is not satisfied that a development consent authorising the particular development exists, or where the person requested under this section fails within a reasonable period to produce such evidence, the Inspector may issue a notice in writing requiring all persons involved in the development to immediately discontinue such development.

(4) Any person who contravenes subsections (2) or (3) commits an offence against this Act.

(5) Any person who is satisfied or disagree with the decision of an inspector may appeal to the Minister within 21 days of the inspector's notice issued under subsection (3).

(6) Any person who is dissatisfied or disagree with the Minister's decision under subsection (5) may within 21 days of the Minister's decision appeal to the High Court.

Offence of providing false or misleading information

23. A developer who knowingly or recklessly provides false or misleading information to the Minister or Secretary or to any public authority concerning any matter required to be addressed in the initial environmental evaluation report or in an environmental impact statement commits an offence against this Act.

Prescribed forms

24. Initial environmental evaluation report and environmental impact statement shall be in such form as prescribed by regulations.

Secretary to keep records

25. (1) The Secretary shall keep proper records of all development applications, environmental impact assessments, public environmental reports and development consents.

(2) The Secretary shall make the records referred to in subsection (1) available for perusal to the public during normal working hours.

Minister to issue guidelines for assessment of reports and statements

26. The Minister, acting in accordance with the advice of the Cabinet, may issue guideline for assisting the Division and the relevant public authority in assessing and evaluating any report, statements or other information.

Responsibility for initial environmental evaluation reports, etc.

27. (1) The developer shall be responsible for all expenses incurred in the preparation of-

- (a) an initial environmental evaluation report:
- (b) the environmental impact statements; and

(2) The developer shall provide the necessary information for the preparation of the initial environmental evaluation report.

Monitoring environmental aspects of development and costs

28. (1) The Secretary acting in accordance with the advice of the Cabinet or the relevant public authority authorised by the Cabinet may at any time, whether before or after a development activity has been completed, monitor, or cause to be monitored, all or any of the environmental aspects of the implemented development activity.

(2) In the performance of any functions under subsection (1), the Secretary acting in accordance with the advice of the Cabinet or any relevant public authority authorised by the Cabinet shall have regard to the effectiveness of any safeguards or standards adopted for the protection of the environment and the accuracy of any forecasts of the environmental impacts of the development activity.

(3) The Minister, may acting in accordance with the advice of the Cabinet gives such directions to the developer to ensure that appropriate safeguards and steps are taken by the developer to mitigate any adverse environmental aspects.

(4) The developer shall comply with the directions of the Minister issued pursuant to this section.

(5) The developer of any prescribed development shall be responsible for the monitoring of such development and all the costs and expenses incurred for such monitoring.

Development consents non-transferable

29. (1) No developer shall transfer a development consent granted under this Part.

(2) Any transfer of shareholding in a company or other change of ownership which has the effect of substantially changing the identity of the development which has been granted a development consent shall be deemed to be a transfer contrary to this section, and shall render the development consent invalid.

PART IV CONTROL OF POLLUTION

Causing pollution and noxious discharges

30. No person shall emit or cause to be emitted from any premises noise, odour or pollutant waste or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person.

Discharge of waste in circumstances in which it is likely to cause pollution

31. No person shall cause or allow waste or pollutant to be discharged in any position, place, land, beach, sea, lagoon or foreshore from which the waste or pollutant is likely to result in pollution or in the unreasonable interference with health, welfare, convenience, comfort or amenity of any person.

Occupiers of premises to take certain measures

32. The occupier of any premises shall -

- (a) comply with any prescribed standard for the discharge of waste pollutant or the emission of noise, odour or electromagnetic radiation from such premises;
- (b) take all reasonable and practicable measures to prevent or minimise the discharge of waste and the emission of noise, odour or electromagnetic radiation from such premises.

Penalties for breach of section 30 or 31

33. Any person who contravenes the provisions of section 30 or 31 commits an offence against this Act, and where a person charged under either sections 30 or 31 is convicted of an offence of discharging waste in the nature of -

- (i) human excrement; or
- (ii) animal excrement or remains;

such person shall be liable to a fine not exceeding \$1000 or to imprisonment for a term not exceeding six (6) months or both such fine and imprisonment, and where a person charged under either sections 30 or 31 is convicted of an offence of discharging waste in the nature of -

- (i) human excrement; or
- (ii) animal excrement or remains;

such person shall be liable to a fine not exceeding \$1000 or imprisonment for a term not exceeding six(6) months or both such fine and imprisonment.

Occupiers of prescribed premises to obtain a licence for discharge of waste pollutant, etc

34. (1) Subject to the provisions of this Act, no person who occupies a prescribed premises shall -

- (a) cause or increase, or permit to be caused or increased, the discharge of waste or pollutant, the emission of noise, or electromagnetic radiation from the prescribed premises; or
- (b) alter or permit to be altered the nature of the waste or pollutant discharged or raised, odour or electromagnetic radiation emitted from the prescribed premises,

unless in accordance with any conditions of the licence.

(2) Any occupier of a prescribed premises who contravenes the provisions of subsection (1) commits an offence against this Act.

Application for licence

35. (1) An application for a licence to discharge waste, pollutant, emit noise, odour or electromagnetic radiation from a prescribed premises shall be made to the Secretary in the prescribed form and -

(a) be accompanied by the prescribed fee; and
(b) include any information, plans, specifications and other document and information as the Secretary acting in accordance with the advice of the Cabinet may require.

(2) On receiving an application, the Secretary acting in accordance with the advice of the Cabinet shall advise the applicant that the application either complies with the requirements of subsection (1) or where it does not meet the requirements of the aforesaid subsection inform him accordingly.

(3) Where the application complies with subsection (1), the Secretary acting in accordance with the advice of the Cabinet shall seek comments on it from any public authority or person who in the opinion of the Minister, has a direct interest in the subject matter of the application.

(4) The Secretary shall on receipt of comments from the persons mentioned in subsection (3) take into account any comments received and may acting in accordance with the advice of the Cabinet either-

(i) acting in accordance with the advice of the Cabinet grant a licence subject to such conditions as he may specify; or
(ii) acting in accordance with the advice of the Cabinet refuse to grant the licence.

Revocation, suspension or amendment of licences by Secretary

36. (1) The Secretary acting in accordance with the advice of the Cabinet may, by notice in writing served on the licensee revoke or suspend the licence, if the Secretary acting in accordance with the advice of the Cabinet is satisfied with the advice of the Cabinet that there has been a breach of any of the conditions of the licence issued pursuant to section 38.

(2) The Secretary may at any time amend the licence, by notice in writing, in the manner prescribed by regulations and approved by the Cabinet.

Duty of persons becoming occupiers of prescribed premises

37. (1) A person who is the occupier of any prescribed premises in respect of which a licence is in force shall comply with the conditions of the licence and within thirty days of coming into occupation of the prescribed premises apply for the transfer of the licence to him.

(2) Where the Secretary has reason to believe that the change of occupier of the prescribed premises would not cause a breach of the conditions of the licence, he acting in accordance with the advice of the Cabinet may transfer the licence to the new occupier with or without further conditions or otherwise refuse such transfer.

Conditions of licence

38. The licence issued pursuant to section 35 may be subject to one or more of the following conditions, namely that -

- (a) specified pollution control equipment is installed and operated in the manner specified;
- (b) specified measures are taken to minimise the likelihood of pollution due to any activity conducted or proposed to be conducted in the premises;
- (c) within any specified time, monitoring equipment of a specified type is provided on the premises;
- (d) within any specified time a monitoring programme is carried out to supply information concerning the characteristics, volume and effects of -
 - (i) the waste that is being or is to be discharged from those premises into the environment; or
 - (ii) the noise, odour or electromagnetic radiation that is being or is to be emitted from those premises into the environment.
- (e) where practicable, measures are taken to re-use or make available for re-use all or part of the waste;
- (f) any equipment be operated as specified so as to prevent control or abate pollution; or
- (g) the licensee complies with any other condition the Secretary, acting in accordance with the advice of the Cabinet prescribes.

(2) The person occupying the premises shall carry out any monitoring programme as required in the licence and supply all information recorded as a result of that programme to the Secretary in the specified manner.

Pollution abatement notice

39. (1) The Secretary may serve or cause to be served on the owner or the occupier of any premises a pollution abatement notice, if the Secretary acting in accordance with the advice of the Cabinet is satisfied that -

- (a) waste matter is being or is likely to be discharged; or
- (b) any noise, odour or electromagnetic radiation is being or is likely to be emitted, from the premises into the environment; or
- (c) that waste matter or noise, odour or electromagnetic radiation does not comply with, or would not if it were discharged or emitted into the environment comply with -
 - (i) any standard under an approved policy; or
 - (ii) any prescribed standard; or
- (d) waste or noise, odour or electromagnetic radiation has caused or is causing or likely to cause pollution.

(2) A pollution abatement notice -

- (a) shall set out the reason for the notice; and
- (b) may require persons, affected by it to take any measures the Secretary acting in accordance with the advice of the Cabinet considers necessary to prevent, control or reduce the discharge of waste or emission of noise, odour or electromagnetic radiation to which the notice relates in the manner specified in the notice.

(3) Where a pollution abatement notice is in force it shall apply to each person who is the owner or the occupier of the premises on whom it is served and binds each successive owner or occupier of the premises or the land to which the notice relates.

(4) The Secretary acting in accordance with the advice of the Cabinet may revoke a pollution abatement notice in writing.

(5) The Secretary, acting in accordance with the advice of the Cabinet may amend the pollution abatement notice -

- (a) by extending the time to comply with any requirement in the notice if the Secretary is satisfied that the circumstances of the case justify such an extension; or
- (b) by revoking or amending any requirement in the notice.

(6) A person to whom a pollution abatement notice applies shall comply with the requirements contained in the notice.

(7) Before extending or amending a notice, the Secretary shall give the person a reasonable opportunity to state in writing his objections, if any.

(8) Any occupier of a premises who fails to comply with any matters referred to in this section commits an offence against this Act.

Outgoing owner or occupier to notify the Secretary and successor in ownership or occupation

40. Where a person who is the owner or occupier of premises to which a pollution abatement notice applies, ceases to be such an owner or occupier, he shall in writing notify -

- (a) the Secretary of that fact, and of name and address of any person who succeeds him as owner or occupier of the premises; and
- (b) the person who succeeds him as owner or occupier or both that the pollution abatement notice is binding on such person.

Environment inspector may serve stop notice

41. (1) An Inspector may in consultation with the Minister or the Beretitenti in the absence of the Minister, and the Secretary issue and serve a stop notice on a person if the Inspector is satisfied that -

- (a) such person has not complied with any of the requirements contained in the pollution abatement notice; and
- (b) the non-compliance is causing or is about to cause conditions seriously detrimental to the environment or dangerous to human life or health.

(2) After serving the stop notice, the Inspector may take or cause to be taken such steps as he considers necessary -

- (a) to stop the carrying on of the trade, process or activity, and to close down the particular premises; and
- (b) to take measures so as to prevent or minimise the ill-effects such non-compliance has on the environment and on the health of the population.

(3) The cost of taking the steps under subsection (2) is a debt due to the Government and may be recovered by action in a court of competent jurisdiction.

(4) An Inspector in consultation with the Secretary and the Minister, may amend, if satisfied that steps have been taken to ensure that the conditions referred to in subsection (1) have been abated, revoke such order by notice served on the person.

(5) An Inspector who serves a stop notice referred to in subsection (1), shall notify the Minister or the Beretitenti in the absence of the Minister and the Secretary in writing within 7 days of service of the notice.

(6) Any person who fails to comply with a notice made under this section commits an offence against this Act.

Records of licences, pollution abatement notices and stop notices

42. The Secretary shall record details of the following -

- (a) licences (including applications for renewals or transfer);
- (b) pollution abatement notices; and
- (c) stop notices.

Powers concerning discharge of waste or pollutant and creation of pollution

43. (1) Where any waste or pollutant has been or is being discharged or is likely to be discharged from any premises in breach of a licence, stop notice or a pollution abatement notice, an Inspector may in writing advise any person or assist such person to remove, disperse, destroy, dispose of or otherwise deal with the waste.

(2) Any expenses incurred by the Division in assisting the removal, disposal, destruction, disposal or other dealing, in the prevention, control or abatement, may be recovered from the person who -

- (i) was the occupier of the premises at the time of that discharge; or
- (ii) caused or permitted to be caused such discharge or was responsible for such discharge, by action in a court as a debt due to the Republic and shall pay any costs so recovered into the Consolidated Fund.

Defences to certain proceedings

44. It shall be a defence to proceedings for an offence under this Part if the person charged with the offence proves that -

- (a) the discharge or emission occurred -
 - (i) as a result of preventing danger to human life or health or irreversible damage to a significant portion of the environment; or
 - (ii) as a result of an accident which was beyond such person's control and not caused by the negligence of such person;
- (b) the person who occupies or owns the premises took all reasonable precautions to prevent that discharge or emission;
- (c) as soon as was reasonably practicable after that discharge or emission the Secretary was notified in writing by the person of the particulars therefore; or
- (d) the discharge or emission complies with any prescribed standard, licence or requirement in a pollution abatement notice, or a condition to a development consent, or an approved policy agreed or decided under this Act

Discharge from vehicles, vessels or aircrafts

45. (1) No person shall drive a vehicle capable of discharging any matter into the environment in any place unless the vehicle complies with the prescribed discharge standards.

(2) No person shall sail or conduct a vessel capable of discharging any matter into the environment unless the vessel complies with the prescribed discharge standards.

(3) No person shall operate or fly an aircraft capable of discharging any matter into the environment unless the aircraft complies with the discharge standards.

(4) Any person who contravenes this section or any regulations relating to discharge standards commits an offence against this Act.

Interference with anti-pollution devices on vehicles, vessels or aircrafts

46. (1) No person shall remove, disconnect or impair, a device fitted to a vehicle or vessel or aircraft for the purpose of preventing the discharge of waste matter or controlling noise.

(2) No person shall adjust or modify, or permit to be adjusted or modified, a device fitted to a vehicle or vessel or aircraft if the adjustment or modification results in the discharge into the environment of any waste matter or in the emission of any noise that does not comply with the prescribed standard.

(3) Any person who contravenes any provisions of this section or any prescribed standard commits an offence against this Act.

Installation of equipment emitting unreasonable noise

47 (1) No person shall install on or in any premises any equipment which, when operated, emits unreasonable noise, or which the person knows or would reasonably have known to emit that noise when installed and operated.

(2) Any person who contravenes this section commits an offence against this Act.

PART V MISCELLANEOUS

Protection of officers

48. No proceedings shall be instituted against any officer appointed under this Act for any act which is done in good faith by him in the performance of his duties under this Act.

Offences by corporation

49. Where a corporation is guilty of an offence under this Act, any officer, director, or agent of such corporation who authorised, assented to or participated in, or by his neglect or omission contributed to the commission of the offence, is a party to and guilty of the offence and liable to the penalty provided for the offence.

General penalty for conviction

50. Any person who commits any offence against this Act for which no penalty is elsewhere prescribed shall be liable on conviction by a competent court as follows -

(a) in the case of a first offence to a fine not exceeding ten thousand dollars (10,000) or to imprisonment for a term not exceeding five (5) years or to both such fine and imprisonment; and

(b) in the case of a second or subsequent offence, to a fine not exceeding fifteen thousand dollars (15,000) or to imprisonment for a term not exceeding ten (10) years; and

(c) in addition the Court convicting such person may order such person within a time specified in the order to do any act that he had failed, refused or neglected to do, or to remove or stop any waste or pollution of the environment caused by such person at such person's own cost and a person who does not duly comply with such an order commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand dollars (20,000) or to imprisonment for a term not exceeding fifteen (15) years or to both such fine and imprisonment

Judicial review

51. Any person who is aggrieved by any decision made under sections 19, 21, 35, 36, 39 and 41 may apply to the High Court with the leave of the High Court by way of proceedings in the nature of Judicial review.

Application of Act may be limited

52. This Act shall not apply to any island or a part of an island which the Minister, acting in accordance with the advice of the Cabinet may from time to time by order in writing declare to be so exempt.

Regulations

53. (1) The Minister acting in accordance to the advice of the Cabinet may make regulations prescribing all matters that are required or permitted to be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations -

- (a) prescribing the application forms to be used;
- (b) prescribing the manner in which and the persons who may make applications;
- (c) requiring information to be furnished by an owner, occupier, developer or any other person;
- (d) prescribing the manner in which impact predictions and environmental impact statements may be made;
- (e) prescribing the manner in which objections may be made to proposed or existing development;
- (f) prescribing the form and contents of public environmental reports, environmental impact statements and notices;
- (g) for the manner in which records may be kept;
- (h) prescribing the fees or charges that may be levied for forms, applications or other services rendered by the Division;
- (i) for the form of licences, stop notices and pollution abatement notices;
- (j) setting out discharge and other standards in respect of vehicles, vessels or aircraft; and
- (k) prescribing anything which is required or permitted to be prescribed by regulations made under this Act.

SCHEDULE
(Section 14)

PRESCRIBED DEVELOPMENTS

1. FOOD INDUSTRIES including;

- (a) fruit processing, bottling and canning
- (b) brewing, making and distillery works
- (c) abattoirs
- (d) other food processing requiring packaging

2. IRON AND STEEL INDUSTRIES

3. NON-METALLIC INDUSTRIES including:

- (a) lime production
- (b) brick and tile manufacture
- (c) extraction of minerals and mining
- (d) extraction of aggregates stones or shingles, sand and reef mud, beach rock
- (e) radio-active related industries
- (f) manufacture of cement
- (g) plastic manufacturing and moulding

4. LEATHER, PAPER, TEXTILE AND WOOD INDUSTRIES including:

- (a) leather tanning and processing
- (b) textile industry with dyeing facilities
- (c) carpet industry with chemical dyeing
- (d) manufacture of paper, pulp and other wood products

5. FISHING AND MARINE INDUSTRY PRODUCT

Fish processing, seaweed farming, land or marine foods processing or farming, pet fishing licensing, fishing ponds industries, fishing activities in Kiribati waters, introduction to Kiribati non-native (alien) species.

6. CHEMICAL INDUSTRY including:

- (a) pesticide production and use
- (b) pharmaceutical production
- (c) fertiliser manufacture and use
- (d) oil refineries

7. TOURISM INDUSTRY including:

- (a) hotels
- (b) golf courses
- (c) recreational parks
- (d) tourism resorts or estates

8. AGRICULTURE INDUSTRY including:

- (a) livestock development
- (b) agricultural development schemes
- (c) irrigation and water supply schemes
- (d) logging operations
- (e) saw milling, all forms of timber milling and treatment, copra processing

9. PUBLIC WORKS SECTOR including:

- (a) landfills
- (b) infrastructure developments
- (c) major waste disposal plants including recycling and collection systems
- (d) soil erosion, beach erosion and siltation control

- (e) hydropower schemes, desalination plants
- (f) reservoir development
- (g) airport developments
- (h) causeways, drainage and disposal systems
- (i) dredging
- (j) watershed management
- (k) ports and harbours
- (l) seawalls/land reclamation
- (m) boat channels
- (n) port and harbours

10. GENETICALLY ENGINEERED ORGANISMS (GEOs)

11. OTHER

- (a) industrial estates
 - (b) housing multiple units
 - (c) settlement and resettlement schemes
 - (d) petroleum product storage and processing works.
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