

Water Resources Act 1982

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Water Resources Act 1982,

Being an Act—

(a) to provide for the protection of a national resource in accordance with the fourth goal of the National Goals and Directive Principles; and

(b) to give effect to the National Goals and Directive Principles under Section 25 of the *Constitution*; and

(c) to make provision for the management of national water resources and the responsibility for that management.

PART I.—PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

(a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and

(b) the right to privacy conferred by Section 49 of the *Constitution*; and

(c) the right of freedom of expression conferred by Section 46 of the *Constitution*,

is a law that is made for that purpose.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. Interpretation.

(1) In this Act, unless the contrary intention appears—

"the Board" means the Water Resources Board constituted under Section 9;

"the Board of Appeal" means the Board of Appeal constituted under Section 36;

"the Chairman" means the Chairman of the Board;

"the commencement date" means 22 April 1982, being the date on which the *Water Resources Act 1982* came into force;

"customary land" means land the ownership or occupancy of which is regulated by custom;

"customary rights to the use of water" means rights to the use of water—

- (a) that are authorized by custom; and
- (b) that are being availed of at the time in question or, in the normal course of land management, would be availed of in a customary manner within a reasonable period after that time;

"the Deputy Chairman" means the Deputy Chairman of the Board;

"the Director" means the Director of Water Resources appointed under Section 8;

"domestic purposes", in relation to water, includes use for watering trees, shrubs and plants and grass lawns, forming part of a garden surrounding a dwellinghouse not being a garden having an area exceeding 0.5 ha or a garden used for commercial or business purposes;

"government body" includes—

- (a) a Department or government agency; and
- (b) a statutory authority; and
- (c) a Provincial Government;

"holder" means the person to whom a permit is granted under Section 40 or 49, and includes—

- (a) the person to whom a permit is transferred or who acquires the permit under Section 41; and
- (b) a person whose permit has expired, been surrendered or revoked;

"inspector" means a person appointed under Section 18;

"land" includes an interest in land;

"member" means a member of the Board and includes the Director;

"permit" includes—

- (a) a water investigation permit; and
- (b) a water use permit,

and a renewal or extension of the permit;

"this Act" includes the regulations;

"waste" includes any matter that, when added to or mixed with water, contaminates or will contaminate the water so as to change the physical or chemical condition of it in such a manner as to—

- (a) make the water unclean, noxious or impure; or
- (b) be detrimental to the health, safety or welfare of persons using the water; or
- (c) render the water undrinkable, harmful or poisonous to animals, birds or fish around or in the water;

"water" means, for the purposes of this Act, all water in the country, including lakes, rivers, streams, swamps, surface and underground waters, water sources, and coastal waters comprising the internal waters and territorial sea as those expressions are used in the *National Seas Act 1977*;

"water control district" means an area of land declared under Section 23;

"water course" includes every river, stream, passage and channel on or under the ground whether natural or not, through which water flows, whether continuously or intermittently;

"water source" includes water course, lake and any other water sources, whether on the surface or underground;

"water works" includes all man-made contrivances or structures for managing, reticulating, controlling or obtaining water.

(2) In this Act, a reference to land includes a reference to water or a water source situated within the boundaries of the land.

3. Application to State.

(1) Subject to Subsection (2), this Act binds the State.

(2) This Act does not apply to any project to which the *Petroleum (Gulf of Papua) Agreements Act 1976* applies.

4. Exemption.

(1) The Minister may, on the recommendation of the Board, exempt—

(a) a person or class of persons; or

(b) an area; or

(c) a water use,

from any provisions of this Act.

(2) An application for an exemption shall be by written notice to the Director.

(3) An exemption under Subsection (1) shall—

(a) be in writing; and

(b) be subject to conditions as prescribed or as are endorsed on the exemption; and

(c) specify the persons, area or use to which the exemption relates and the period for which the exemption is in operation.

(4) A person to whom an exemption is granted who fails to observe any conditions of the exemption is guilty of an offence.

5. Vesting of rights in the State.

(1) Subject to this Act and to Subsections (2) and (3), the right to the use, flow and control of water is vested in the State.

(2) This Act does not affect customary rights to the use of water by the citizens resident in the area in which those customary rights are exercised.

(3) This section does not apply to the use of water for—

(a) domestic purposes; and

(b) prescribed recreational use; and

(c) any prescribed purposes.

6. Acquisition of land.

(1) For the purposes of Section 53(1) (*protection from unjust deprivation of property*) of the *Constitution* and the *Land Act*, the following are declared to be public purposes:—

- (a) the conducting of official investigations under Section 17;
- (b) the construction of waterworks for the use, flow or control of water;
- (c) the construction of works for the generation of hydro-electric power;
- (d) the conveyance of water or electricity;
- (e) the accommodation of officers, agents and employees of a permit holder in connection with purposes specified in this section;
- (f) the disposal of waste materials from operations connected with purposes specified in this section.

(2) Where it is proved, to the satisfaction of a court of competent jurisdiction, under the *Land Act* 1996 that damage has been sustained by a claimant by reason of the severance of the land acquired from adjoining land of the claimant, or land in which he is interested, the court may order that the adjoining land or a portion of it shall also be acquired.

(3) Where land has been acquired for a purpose specified in Subsection (1) and has been made available to a holder for the purposes of his permit under this Act, the amount of compensation paid by the State in respect of the land is a debt due and payable by the holder to the State.

(4) Payment of the amount under Subsection (3) on written demand being served on the holder is a condition applying to a permit for the purposes of Section 45(a).

7. Notice to landholders of exercise of powers.

(1) Subject to Section 19, where a person owns or is entitled to occupy land, another person shall not, in relation to that land, exercise any of the powers conferred on him by this Act or by a permit unless he has given not less than 14 days written notice to the first-mentioned person, including where the land is occupied under a licence under—

(a) the *Mining Act* 1992; or

(b) the *Oil and Gas Act* 1998; or

(c) the *Forestry Act* 1991,

to the holder of that licence.

(2) It is sufficient compliance with Subsection (1) if, in respect of customary land, written notice is given to the delegate of the Minister responsible for decentralization matters in the area where the land is situated.

PART II.—ADMINISTRATION.

8. Director of Water Resources.

There shall be a Director of Water Resources who shall—

- (a) be an officer of the Public Service; and
- (b) be appointed by the Minister by notice in the National Gazette.

9. Water Resources Board.

(1) There shall be a Water Resources Board consisting of the Director who is an ex officio member and the following members appointed by the Minister by notice in the National Gazette:—

- (a) one person nominated by the Prime Minister; and
- (b) one person nominated by the Minister responsible for minerals and energy matters; and
- (c) one person nominated by the Minister responsible for land matters; and
- (d) one person nominated by the Minister responsible for environment and conservation matters; and
- (e) one person nominated by the Minister responsible for primary industry matters; and
- (f) one person nominated by the Minister responsible for forestry matters; and
- (g) one person nominated by the Minister responsible for health matters; and
- (h) one person nominated by the Minister responsible for works and supply matters; and
- (i) one person nominated by the Minister responsible for financial matters; and
- (j) one person nominated by the Minister responsible for decentralization matters; and
- (k) one person nominated by the Minister responsible for urban management matters; and
- (l) one person nominated by the Papua New Guinea Electricity Commission; and

(m) one person nominated by the Prime Minister to represent the interest of the private sector.

(2) Members other than the Director appointed under Subsection (1)—

(a) shall be appointed for a period of three years; and

(b) are eligible for reappointment.

10. Chairman and Deputy Chairman.

(1) The Minister shall appoint one of the members to be the Chairman and one to be the Deputy Chairman of the Board.

(2) The Deputy Chairman may, in the absence of the Chairman, exercise all or any of the powers or perform all or any of the functions of the Chairman.

11. Alternate members of the Board.

(1) For each member appointed under Section 9, there shall be an alternate member who shall be nominated and appointed in the same manner and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability of a member to act as a member of the Board, the alternate member has and may exercise all the powers, functions, duties and responsibilities as a member.

(3) Unless the Board otherwise directs, an alternate member may attend all meetings of the Board, but shall not vote on any matter or be counted towards a quorum except where he is attending in the absence of a member for whom he is the alternate.

12. Vacation of office of member.

(1) If a member—

(a) becomes permanently incapable of performing his duties; or

(b) resigns his office by written notice to the Minister; or

(c) is absent, except on leave granted by the Board from all meetings held during six consecutive months in any period of 12 months,

the Minister shall terminate his appointment.

(2) Where an office becomes vacant under Subsection (1) the vacancy shall be filled in accordance with Section 9.

(3) Without giving any prior notice the Minister may, at any time, terminate the appointment of a member for inability, inefficiency, incapacity or misbehaviour.

13. Meetings of the Board.

(1) The Board shall meet at such times and places as the Chairman determines or as the Minister directs, and in any case not less than four times in each year.

(2) The Chairman shall, if requested to do so by not less than four members, call a meeting of the Board as soon as practicable after receiving the request.

(3) The Chairman shall give at least seven days notice of a meeting of the Board to each member.

(4) At a meeting of the Board—

(a) a quorum is six; and

(b) the Chairman or Deputy Chairman shall preside; and

(c) matters arising shall be decided by a majority of votes; and

(d) the person presiding has a deliberative, and in the event of an equality of votes on a matter, also a casting vote.

(5) The Board shall cause minutes of its meetings to be recorded and kept, and shall forward copies to the Minister.

(6) Subject to this Act, the procedures of the Board are as determined by it.

14. Disclosure of interest by members of Board.

(1) A member of the Board who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and, after the disclosure, the member—

(a) shall not take part in any deliberation or decision of the Board with respect to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

15. Functions of the Board.

(1) The functions of the Board are—

(a) to examine problems concerning, and make plans in respect of—

(i) the allocation and quality of water; and

(ii) the control—

(A) of erosion on the banks of rivers and shores of lakes and coastal shores; and

(B) of flow and flooding in and from rivers and lakes; and

(iii) the conservation of water; and

(iv) the needs of fisheries and wildlife and recreational uses of water; and

(b) to advise the Minister on any question relating to the administration of this Act; and

(c) to co-ordinate all matters relating to water so as to ensure that this national asset is available to meet as many demands as possible and is used to the best advantage of the country and region in which it exists; and

(d) to consider all applications under Section 28 and to carry out all duties as specified in this Act in connection with such applications; and

(e) to control the damming, diversion, taking and use of water and discharge of anything into water so far as any such acts may affect the quality or availability of water for other purposes; and

(f) to guide and encourage research into matters relating to the investigation and use of water resources; and

(g) to demonstrate and encourage the development and use of efficient conservation of water resources; and

(h) to promote the best usage of water resources, including multiple uses, and to allocate water resources between competing demands; and

(i) to consult with government bodies on the maximum utilization of water resources in the national interest.

(2) The Minister may refer to the Board for advice, any question or matter relating to the administration of this Act.

(3) The Board shall inquire into and advise the Minister on any question or matter referred to it under Subsection (2).

16. Compensation.

(1) Subject to this section, the holder of a permit is liable to pay compensation to the owners and occupiers of, and any person interested in, any private land in relation to their several interests, in respect of entry on or occupation of the land by the holder.

(2) Subject to this section, compensation shall be paid for—

(a) the deprivation of the use and enjoyment of the surface of the land or any part of it, or of rights to water customarily associated with the land, except where there has been a reservation in favour of the State of the right to that use and enjoyment; and

(b) damage to the surface of the land or any part of it or improvements on it, or to any flora or fauna, caused by the carrying on of operations under a permit; and

(c) rights of way and easements; and

(d) any damage consequential on the holder's use or occupation of the land, or use or control of water or a water source on or in the land.

(3) Where private land, or improvements on it, adjoining or in the vicinity of land occupied under a permit, is or are damaged or depreciated in value—

(a) by any operations carried on by or on behalf of the permit holder; or

(b) by reason of a right of way acquired by the permit holder,

the owners and occupiers of, and any person interested in, that private land or those improvements shall be entitled in respect of their several interests to compensation for loss or damage sustained and the amount of compensation shall be ascertained in accordance with this section.

(4) A holder may agree with any person entitled to compensation under this section as to the amount of compensation, and the time of payment.

(5) An agreement under Subsection (4) shall be—

(a) by instrument signed by the parties to it or their agents; and

(b) lodged with the Director.

(6) Where the parties are unable to agree on the amount of compensation to be paid, either party may, by written notice, apply to the Minister to have determined the amount of the payment and the time in which it shall be made.

(7) Where the Minister considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction for the damage sustained by the claimant, he may make a declaration—

(a) as to the compensation payable in respect of a specified period; and

(b) in respect of the whole or a part of the total claim for compensation.

(8) The Minister may, at any time, require that the person from whom compensation is sought gives such security as the Minister thinks fit for payment of compensation for which he may become liable before commencing or continuing, as the case may be, any operations under this Act.

(9) Where, after the Minister has determined an amount of compensation under this section, it is proved that further loss or damage, not being loss or damage in respect of which compensation has already been determined, has been sustained, the Minister may determine the further loss or damage and order that further compensation be paid by the holder to the person entitled to the further compensation.

(10) Where the Minister has determined the amount of compensation or further compensation under this section, payment of the amount is a condition applying to a permit for the purposes of Section 45(a).

(11) In determining the amount of compensation payable under this section, the Minister shall—

(a) take into consideration the amount of compensation that the owners or occupiers of, or the person interested in, the land or any of them or their predecessors in title has or have already received for the damage or loss for which compensation is being determined; and

(b) deduct that amount from the amount to which they or any of them respectively would otherwise be entitled.

(12) A person who is aggrieved by a determination of the Minister as to the amount of compensation to which he is entitled may appeal to the National Court.

(13) A person who fails to pay the compensation within the time determined in accordance with Subsection (6) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

(14) Where compensation payable under this section is not paid in accordance with an agreement under Subsection (4) or a determination under Subsection (6) the Board may, on the application of the person entitled to the compensation, cancel the permit.

17. Official investigations.

(1) The Director may, by instrument, authorize a person, by himself or by his assistants, employees, agents, servants or contractors, with or without vehicles and machinery—

(a) to enter on land for the purpose of exercising the rights vested by this Act in the State to the use, flow and control of water and carrying out investigations into water resources and of taking measures—

(i) for conserving water, regulating the flow of water and preventing the contamination of water; or

(ii) for protecting the bed and banks of any water course or lake or shore and removing obstructions from the bed or banks; or

(iii) for removing or destroying any works affecting the use, flow or control of water not authorized by or under this Act or not authorized, before the commencement date by or under any other Act; and

(b) to enter on land within a water control district and carry out such works relating to the use, flow and control of water,

as are specified in the instrument.

(2) A person who obstructs or hinders a person to whom authority is given under this section, or his assistant, employee, agent, servant or contractor in the course of carrying out or preparing to carry out the things he is authorized to do, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

18. Appointment of inspectors.

(1) The Director may, by notice in the National Gazette, appoint inspectors for the purposes of this Act.

(2) The Director shall issue to each inspector a certificate stating that he is an inspector.

(3) Where the appointment of an inspector under this section expires or is revoked, he shall promptly surrender to the Director his certificate of appointment.

19. Powers of inspectors.

For the purposes of this Act, an inspector, at all reasonable times may—

- (a) enter, inspect and examine any land, buildings, waterworks and water; and
- (b) examine and make inquiries in respect of—
 - (i) the state and condition of any building and water works; and
 - (ii) the flow or control of water; and
 - (iii) the contamination of water; and
 - (iv) land use; and
 - (v) any prohibited act referred to in Section 24; and
- (c) exercise such powers as are necessary for giving effect to this Act.

20. Obstruction of inspectors.

A person who—

- (a) hinders or obstructs an inspector in the execution of his duty; or
- (b) fails to comply with a lawful requirement made by an inspector; or
- (c) refuses an inspector entry to premises which the inspector may lawfully enter; or
- (d) impersonates an inspector; or
- (e) fails to state, or wrongly states, his name and address to an inspector in the execution of his duty,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

PART III.—RIGHT TO TAKE WATER.

21. Rights of the public to take water.

- (1) A person may take water without charge for—
 - (a) domestic purposes; or

(b) watering stock; or

(c) fire fighting,

from a water course or lake to which the public has free access by road or from an area of land reserved for the use of the public.

(2) A person taking water under Subsection (1) who places a permanent installation for taking water in, or on the land adjacent to, the watercourse or lake, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

22. Rights of owner, etc., of land near water course, etc.

(1) Subject to this section, the owner or occupier of land abutting on the bank of a water course or lake—

(a) may take water without charge from the water course or lake for—

(i) the domestic purposes, and for watering the stock, of himself or members of his family resident on the land and of his employees so resident; and

(ii) fire fighting purposes; and

(b) shall have a right of access for himself, those members of his family and those employees and for his and their stock to the part of the bed and bank of the water course or lake adjoining the land of which he is the owner or occupier.

(2) The Director may, by written notice given to an owner or occupier referred to in Subsection (1), specify the maximum quantity of water that may be taken by the owner or occupier under Subsection 1(a) during a period specified in the notice.

(3) A person to whom a notice is given under Subsection (2) who, during the period specified in the notice, takes from the water course or lake a quantity of water exceeding the quantity specified in the notice is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) A person taking water from a water course or lake under Subsection (1)(a)(i) may place a permanent installation for taking water in, or on the land adjacent to, the water course or lake but must not build any works obstructing the flow of the water course or lake.

Penalty: A fine not exceeding K200.00.

(5) The right of access referred to in Subsection (1)(b) is subject to any rights granted under this or any other Act.

(6) A person who has a right to pass over land abutting on the bank of a water course or lake, that is owned or occupied by another person, for the purpose of access to the water course or lake shall have, for the purpose of this section, the same rights as that other person, but must not place a permanent installation for taking water in or on the land adjacent to, the water course or lake.

Penalty: A fine not exceeding K200.00.

PART IV.—WATER CONTROL DISTRICTS.

23. Declaration of water control districts.

(1) The Minister may, by notice in the National Gazette, declare an area to be—

- (a) a water control district; or
- (b) an underground water control district,

for the purposes of this Act.

(2) The terms and conditions in respect of the taking of water, restoration of land or any other matter in respect of an area declared under Subsection (1) are as prescribed.

24. Acts prohibited in a water control district.

(1) Subject to this section, in a water control district a person who—

- (a) ring-barks, cuts down or destroys trees; or
- (b) constructs, alters, removes, repairs, cleanses or scours a drain, trench or channel; or
- (c) constructs, alters or removes an embankment against a water course or lake; or
- (d) constructs, alters or removes an embankment in such a way as—
 - (i) to alter or be likely to alter the course; or
 - (ii) to impede or be likely to impede the flow or movement of surface water; or
- (e) sinks or constructs a well or water bore; or
- (f) burns off trees, shrubs, plants, grass or foliage,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(2) An act prohibited under Subsection (1) may be permitted as prescribed, subject to conditions (if any) and in accordance with the provisions prescribed.

(3) Subsection (1) does not apply to or in relation to—

(a) anything done by the holder in the exercise of rights conferred by his permit; or

(b) an act referred to in that subsection where a person holds an approval under Section 25 specifically authorizing the act to be done; or

(c) an act referred to in that subsection done in a water control district in accordance with the regulations made for the purposes of Subsection (2).

25. Approval of acts in a water control district.

(1) The Director may grant to a person a written approval authorizing the person to do, in a water control district specified in the approval, or in a part of a water control district so specified, an act otherwise prohibited under Section 24(1).

(2) An approval under this section shall be in force for such period and be subject to such conditions and restrictions as the Director sees fit and as are specified in the approval.

(3) The powers conferred by this section may be exercised whether or not regulations have been made for the purposes of Section 24(2) and, if regulations have been made for the purposes of that subsection, notwithstanding the provisions of those regulations.

26. Restoration of unauthorized work.

(1) Where within a water control district a person has, otherwise than in accordance with—

(a) the regulations made for the purposes of Section 24(2); or

(b) an approval granted under Section 25; or

(c) a notice under Subsection (2),

constructed, altered or removed a drain, trench, channel or embankment, the Director may, by written notice, require the person to—

(d) fill in or restore the drain or channel; or

(e) remove or restore the embankment,

within the time specified in the notice.

(2) If a notice under this section is not complied with in all respects, the Director may—

(a) cause the work specified in the notice, or the portion of that work that has not been done, to be done; and

(b) recover the cost of doing that work from the person to whom the notice was given as a debt due by that person to the State.

27. Additional acts prohibited, etc.

(1) The Director may, in respect of any land within a water control district, by written notice, require the owner or occupier of the land—

(a) to adopt, or refrain from using such agricultural or pastoral methods or practices; or

(b) to refrain from removing or clearing such trees, shrubs, plants, grass or foliage; or

(c) to take such action for preventing the erosion, drift or movement of soil or water, or both,

on or from the land, as specified in the notice.

(2) A person who fails to comply with a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) This section does not, except to the extent that the Director specifies in a notice under this section, affect the operation of Section 26 to or in relation to the land in respect of which a notice is in force under this section or in relation to the owner or occupier of the land.

(4) If a notice under Subsection (1)(c) is not complied with in all respects, the Director may—

(a) cause the work specified in the notice, or the portion of that work that has not been done, to be done; and

(b) recover the cost of doing that work from the person to whom the notice was given as a debt due by that person to the State.

PART V.—APPLICATIONS FOR WATER USE PERMITS, ETC.

28. Application for water use permits, etc.

(1) An application for—

(a) a water use permit; or

(b) an amendment under Section 43 to a water use permit,

shall be made to the Director—

(c) in the prescribed form; and

(d) accompanied by the prescribed fee.

(2) Every application for a water use permit or an amendment under Section 43 to a water use permit shall be submitted by the Director to the Board which shall make a decision as it thinks fit.

29. Duties of Board in relation to applications for permits, etc.

(1) Where an application is submitted to the Board under Section 28 the Board shall advise the Minister responsible for environmental matters—

(a) in accordance with Section 7 of the *Environmental Planning Act* 1978; or

(b) whether it considers that it is necessary to require an environmental plan under Section 4 of that Act.

(2) In dealing with—

(a) an application under Section 28; or

(b) a decision of the National Executive Council under Section 33(1)(e); or

(c) a decision of the Board of Appeal under Section 39(1)(c),

the Board shall consider the plan and programme for the water use including—

(d) the environmental plan where a plan has been requisitioned under the *Environmental Planning Act* 1978 or voluntarily submitted under that Act; and

(e) the data and any related information available on the water and the water source the subject of the application; and

- (f) the projected utilization of the water and the water source; and
- (g) the long-term and short-term objectives of the application; and
- (h) the proposal or project, the subject of the application, generally and alternatives including alternative sites; and
- (i) alternative methods for carrying out the proposal or project, the subject of the application, and recommendation of a particular method; and
- (j) the adequacy of proposed water works for the purpose of the application; and
- (k) the rights of prior holders or other users of water including any rights under—
 - (i) the *Mining Act* 1992; and
 - (ii) the *Oil and Gas Act* 1998; and
 - (iii) the *Forestry Act* 1991,that may be affected; and
- (l) where land is to be inundated as a result of proposed water works—
 - (i) the extent of the inundation; and
 - (ii) the ownership of land affected by the inundation; and
 - (iii) whether land that may be inundated is to be acquired by the applicant by purchase or lease; and
 - (iv) the amount of compensation to be paid to the owners or occupiers of inundated land; and
- (m) the costs and advantages that may accrue from the proposal or project, the subject of the application; and
- (n) the permanent changes in the physical, biological, social or cultural characteristics of the affected area that may occur as a result of the proposal or project, the subject of the application; and
- (o) any recommendations of the Environmental Contaminants Advisory Council made under the *Environmental Contaminants Act* 1978; and
- (p) whether the proposal or project, the subject of the application, is in the public interest; and

(q) any alterations to a plan or programme during the period of the permit; and

(r) any matters that are necessary or that, in the opinion of the Board, are relevant to the application.

30. Notice of application, etc.

(1) After consideration of an application under Section 28 and before the grant of a water use permit or an amendment to a water use permit, the Board shall—

(a) by written notice consult with any government body that has, in its opinion, an interest in the grant of the permit or the amendment, or that has any jurisdiction in the area to which the application relates; and

(b) arrange for public hearings at which government bodies and the private sector may be heard; and

(c) prepare, not less than seven days prior to the hearings referred to in Paragraph (b), a report and summary of matters associated with the application and the Board's consultation under Paragraph (a).

(2) Notice of an application and a public hearing in respect of it shall be given by the Board by publication in the prescribed form—

(a) in the National Gazette; and

(b) in a newspaper circulated nationally; and

(c) in a newspaper circulated in the province in which the area, the subject of the application, is situated,

and by a radio broadcasting service that specifically services the province referred to in Paragraph (c).

(3) A notice under Subsection (2) shall specify the date of the hearing being not less than 28 days from the date of publication.

(4) Subject to the regulations, the Chairman of the hearing may conduct a hearing as he thinks fit.

(5) A person may, on payment of the prescribed fee, inspect and make copies of the summary referred to in Subsection (1)(c).

31. Decision by Board.

(1) After consideration of the application and any matters brought to its notice by a public hearing under Section 30(1)(b) the Board shall, subject in particular to its functions under Section 15(1)(c), Section 29 and to this Act, make a written decision as prescribed to recommend the grant or refusal of a permit or an amendment.

(2) A copy of a decision under Subsection (1) shall be—

(a) forwarded to—

(i) the applicant or applicants; and

(ii) any government body that has an interest in the grant of the permit or amendment applied for or that has any jurisdiction in the area to which the permit or amendment applied for relates; and

(b) published promptly in the newspapers in which the notice was published under Section 30(2)(b) and (c).

PART VI.—APPEALS, ETC.

32. Appeal by government body.

(1) Where in relation to an application under Section 28 a government body is aggrieved by the decision of the Board under Section 31 because the government body—

(a) has been refused rights to water; or

(b) opposes the decision to recommend the grant of a permit or amendment to an applicant; or

(c) favours the grant of a permit or amendment to another applicant that has not been recommended,

the government body may, not more than 28 days after publication under Section 31(2)(b), appeal against the decision to the National Executive Council.

(2) An appeal under Subsection (1) shall be in the form of a submission containing—

(a) a copy of the decision made under Section 31; and

(b) the reasons for the appeal.

(3) A copy of the submission under Subsection (2) shall be forwarded by the appellant to—

(a) the Board; and

(b) any applicant in respect of whose application the decision refers.

33. Decision by National Executive Council.

(1) After consideration of—

(a) a submission under Section 32; or

(b) a notice of appeal under Section 35,

the National Executive Council shall decide that—

(c) the decision of the Board be confirmed; or

(d) the appeal be approved; or

(e) the application in respect of which the appeal is made be resubmitted and dealt with under Section 29.

(2) The National Executive Council shall forward a copy of its decision under Subsection (1) to—

(a) the Board; and

(b) the Board of Appeal where the decision relates to a notice of appeal under Subsection (1)(b); and

(c) the appellant; and

(d) any applicant in respect of whose application the decision of the Board was appealed against.

(3) A government body or a person aggrieved by a decision under Subsection (1) may, on a question of law, appeal to the National Court.

34. Appeal where application refused.

(1) Where, in relation to an application under Section 28, the Board has made a decision, a person other than a government body—

(a) whose application has been rejected; or

(b) who is aggrieved by the Board's decision,

may, not more than 28 days after publication under Section 31(2)(b), appeal against the decision to the Board of Appeal.

(2) An appeal under Subsection (1) shall be by written notice and shall contain—

(a) a copy of the decision; and

(b) the reasons for the appeal.

(3) A copy of the notice under Subsection (2) shall be forwarded by the appellant to—

(a) the Board; and

(b) any applicant in respect of whose application the recommendation refers.

35. Procedure where more than one appeal pending.

Where—

(a) a government body has appealed under Section 32; and

(b) a person has appealed under Section 34,

in respect of the same decision of the Board, the Board of Appeal shall forward the notice of appeal under Section 34 to the National Executive Council to be considered simultaneously with the submission under Section 32(2).

36. Board of Appeal.

There shall be a Board of Appeal consisting of the Departmental Head of—

(a) the Department responsible for minerals and energy matters; and

(b) the Department responsible for decentralization matters; and

(c) the Department responsible for works and supply matters,

of whom one shall be appointed by the Minister to be Chairman.

37. Meetings of Board of Appeal.

(1) At all meetings of the Board of Appeal—

(a) the Chairman shall preside; and

(b) all matters shall be decided by a majority of votes.

(2) The Board of Appeal shall cause minutes of its meetings to be recorded and kept and shall forward copies to the Minister, the Director and the Board.

(3) Subject to this Act, the procedures of the Board of Appeal are as determined by it.

38. Functions of Board of Appeal.

The functions of the Board of Appeal are to consider and determine all appeals made under Section 34.

39. Decision of Board of Appeal.

(1) Subject to Section 35, the Board of Appeal shall consider all appeals under Section 34 and shall decide that—

(a) the decision of the Board be confirmed; or

(b) the appeal be approved; or

(c) the application in respect of which the appeal is made be resubmitted and dealt with under Section 29,

and the Board shall act accordingly.

(2) The Board of Appeal shall forward a copy of its decision under Subsection (1) to—

(a) the Board; and

(b) the appellant; and

(c) any applicant in respect of whose application the decision of the Board was appealed against.

(3) A person aggrieved by the decision of the Board of Appeal under Subsection (1) may appeal to the Minister.

PART VII.—GRANT OF WATER USE PERMIT, ETC.

40. Grant of water use permit.

(1) The Minister shall, on the recommendation of the Board, grant a water use permit or an amendment to a water use permit—

(a) where no appeal is lodged—after the expiry of 28 days after publication under Section 31(2)(b); or

(b) where an appeal is lodged under Section 32 or 34—in accordance with the determination of an appeal under this Act.

(2) A water use permit may be—

(a) interim; or

(b) final.

(3) Subject to Subsection (9), an interim water use permit may be granted by the Minister on the recommendation of the Board—

(a) for the purpose of permitting detailed investigation in a designated area; or

(b) for the construction of water works.

(4) An interim water use permit shall be for the period and—

(a) for the designated area; or

(b) in relation to the construction of water works,

as the case may be, as specified in the permit.

(5) The grant of an interim permit does not entitle the holder to the grant of a final water use permit.

(6) On expiry of the period and conditions specified in an interim water use permit, the holder may submit an application for a final water use permit under Section 28.

(7) A final water use permit shall be for a specified period not exceeding 25 years.

(8) Subject to Section 42, a water use permit is subject to such conditions—

(a) as are prescribed; and

(b) as are endorsed on the permit.

(9) Subject to Subsection (3)(a), an interim or a final water use permit shall not be granted unless—

(a) an environmental plan requisitioned under Section 4(1) of the *Environmental Planning Act 1978*; or

(b) an environmental plan voluntarily submitted under Section 4(6) of the *Environmental Planning Act 1978*,

has been approved under Section 18(1) of that Act.

(10) A final water use permit shall not be granted in relation to an interim water use permit unless all the conditions for that permit have been fulfilled.

41. Duration and assignment of water use permits.

(1) The Minister shall not grant a water use permit under Section 40 in respect of any land for a period exceeding the period for which the person by whom the permit is sought has rights in the land.

(2) Where rights in land in respect of which a water use permit is in force—

(a) are transferred; or

(b) cease to exist by reason of the transfer or surrender of his rights by the holder to a person having a greater interest in the land,

then the—

(c) transferee; or

(d) holder acquiring the greater interest; or

(e) person having the greater interest,

as the case may be, shall, subject to Subsection (3) become, by force of this section, the holder of the permit.

(3) A person who, by virtue of Subsection (2), becomes the holder of a permit must, within 14 days of becoming the holder, give written notice to the Board.

Penalty: A fine not exceeding K100.00.

(4) If the rights in land in respect of which a water use permit is in force cease to exist and the permit is not, under Subsection (2), transferred to a new holder having rights in the land, the permit is by force of this section terminated.

42. Rights conferred by water use permit.

Subject to any prescribed conditions or conditions endorsed on a water use permit, a permit confers on the holder for the purposes for which it was granted and in the area of land specified in the permit—

(a) the exclusive right of the construction or protection of works, subject to the right of the Director or a person authorized by him to enter and inspect the land and the works constructed on it under the permit; and

(b) the right to construct, in accordance with the plan and the programme approved by the Minister on the recommendation of the Board—

(i) works in accordance with that plan and works for purposes subsidiary to those works; and

(ii) on Government land, or land over which the State has easements permitting the construction of pipelines—tunnels, electricity transmission lines, roads for construction and maintenance purposes, helicopter landing pads and other necessary works; and

(c) the right to flood such areas of land specified in the permit as areas that may be flooded; and

(d) such rights as are set out in Section 41; and

(e) the right to operate and maintain the works constructed in pursuance of Paragraph (b) for—

(i) the generation and distribution of hydro-electric power; or

(ii) the taking of water for the purpose specified in the permit at a rate not exceeding the maximum rate specified; and

(f) the right to discharge water or waste in accordance with prescribed conditions and standards.

43. Amendments to plans, etc.

(1) Where a holder wishes to amend a plan or programme for which a water use permit has been granted, he may make application to the Director in accordance with Section 28.

(2) An application for an amendment under this section shall be dealt with as if it were an application for a permit.

44. Surrender of water use permits.

A holder may, by written notice to the Board, surrender his water use permit at any time.

45. Revocation of water use permits.

Where—

(a) a condition specified in or applying to or in relation to a water use permit; or

(b) a provision of this Act applying to or in relation to the permit or the holder,

is not complied with, the permit is liable to be revoked.

46. Revocation, etc., of water use permit for lack of use.

(1) If, at any time, the Minister, on the recommendation of the Board, considers that a holder is not making adequate use of the rights conferred by his water use permit, the Minister may, by written notice, require the holder to show cause, within the time specified in the notice, why the permit should not be revoked or the rights granted by it reduced.

(2) If—

(a) the holder fails to reply within the time specified in the notice referred to in Subsection (1); or

(b) sufficient cause, in the opinion of the Minister on the recommendation of the Board, is not shown,

the Minister may, by written notice to the holder, revoke the water use permit or vary or reduce the rights granted by the permit.

(3) Where a water use permit is revoked under Subsection (2), it ceases to have any force or effect from the date of receipt by the holder of the notice referred to it in that subsection.

(4) Where the rights under a water use permit are varied or reduced under Subsection (2) the permit shall be deemed to be amended in accordance with the notice at a date specified in the notice.

47. Rights in improvements.

(1) Subject to Subsection (3), the Minister may, at any time within three months after the date of the expiry, surrender or revocation of a water use permit, by written notice allow the holder to take down and remove any equipment or fixtures erected on Government land under the permit within the period specified in the notice.

(2) Where the Minister does not allow the taking and removal referred to in Subsection (1), he shall pay to the holder such sum in full payment as the Minister determines, and the Consolidated Revenue Fund is appropriated accordingly.

(3) This section does not include water works, but may apply to machinery or plant whether fixed or not, forming part of, or connected to, water works.

48. Transmission of water under permit, etc.

(1) An applicant or intending applicant for a permit may enter into an agreement with the owners of land intervening between the land for the benefit of which the works the subject of the permit are to be used and the point from which the water is to be taken from or discharged to a water source, to allow the construction, maintenance and use of a channel, pipeline or other method of conveying water or waste from that point to the last-mentioned land.

(2) Where an agreement referred to in Subsection (1) has been entered into, the land the subject from time to time of the agreement (whether ascertained or not) shall be deemed to be land in which the applicant or intending applicant has rights in land to which Section 42 applies.

(3) An agreement under this section is of no force or effect until—

(a) the permit in relation to which it was entered into is granted; and

(b) the assent of the Minister is given,

and, subject to anything to the contrary contained in the agreement, runs with the permit.

(4) The provisions of Parts XVI. and XX. of the *Land Act* 1996 do not apply to or in relation to an agreement referred to in this section.

PART VIII.—WATER INVESTIGATION PERMITS.

49. Water investigation permits.

(1) An application for a water investigation permit—

(a) in the prescribed form; and

(b) accompanied by the prescribed fee,

may be made to the Director.

(2) Subject to this Act, a water investigation permit may be granted by the Director.

(3) A water investigation permit may be granted for a period not exceeding one year and shall not be extended.

(4) A water investigation permit is subject to such conditions—

(a) as are prescribed; and

(b) as are endorsed on the permit.

50. Rights conferred by water investigation permits.

Subject to Section 49(4), a permit confers on the holder for the purpose of carrying out the investigations in the area of land specified in the permit—

(a) the right to carry out investigations into the water resources in the area, except for the right of a person authorized in writing by the Director to carry out investigations into the water resources in the area on behalf of the State; and

(b) the right to make surveys, to take levels, to carry out pumping tests, to test-drill and to collect soil or geological samples in the area; and

(c) the right to install and to inspect, operate and maintain gauges, instruments and appliances in the area; and

(d) the right to do such other things as are reasonably necessary for, or incidental to, the carrying out of the investigation,

but does not confer the right to authorize the doing of any act prejudicing any customary rights to the customary use of water.

51. Assignment of water investigation permits.

A water investigation permit shall not be assigned without the written consent of the Director.

52. Surrender of water investigation permits.

A holder may at any time, by written notice to the Director, surrender his water investigation permit.

53. Revocation of water investigation permits.

A water investigation permit shall be liable to revocation—

(a) if any of the conditions specified in or applying to or in relation to the permit are not complied with by the holder; or

(b) if any of the provisions of this Act that apply to or in relation to the permit or the holder are not complied with by the holder.

54. Reports of investigations.

(1) The holder of a water investigation permit may at any time, and shall in any case within two months after its expiry or revocation, furnish to the Director a report of the

investigations of water resources carried out under the permit giving details of the hydrological, geographical, geological and geophysical information collected.

(2) The report submitted under Subsection (1) may form part of the data compiled by the Director under Section 61 and shall be used only for purposes related to the conservation of water resources and administration of this Act.

(3) Where information in a report forms part of the data referred to in Subsection (1), the Director shall, where possible, arrange it in such a manner as to prevent any particulars from being identifiable as particulars relating to a specific undertaking.

PART IX.—ACTION IN CASE OF DROUGHT, ETC.

55. Application of Part IX.

(1) Where, after receiving a report from the Board, the Director considers that there has been or is likely to be—

- (a) a reduction or alteration in the flow or supply of water in a water source; or
- (b) an alteration of a water course,

he may, by notice in the National Gazette, declare that this Part shall apply in respect of the period and the water source or part of the water source specified in the notice.

(2) Where a notice has been published under Subsection (1), the Director may, by written notice to the holder of a water use permit in the specified area—

- (a) require the holder of the permit to operate water works for a reduced period; or
- (b) suspend the operation of the permit,

during the period of, and subject to such conditions as are endorsed on, the notice.

(3) The conditions endorsed on a notice under Subsection (2) shall restrict water use to the extent only of ensuring that water is available for supplying the minimum essential need of users in the following descending order of priority of purpose:—

- (a) domestic purposes;
- (b) watering stock;
- (c) irrigation;
- (d) industrial purposes or generation of hydroelectric power.

(4) A person who acts in contravention of a notice under this section is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 for every day on which the breach is allowed to continue.

PART X.—MISCELLANEOUS.

56. Institution of proceedings.

(1) Subject to Subsection (2), a person may, on his own behalf or on behalf of a group or class of persons representing that group or class or the public as a whole, take proceedings—

(a) where an alleged offence against this Act has occurred or is likely to occur; or

(b) where there is an alleged failure to perform an act or duty under this Act that is not discretionary,

in a court against—

(c) the State; or

(d) a government body; or

(e) another person,

or all or any of them jointly.

(2) Proceedings under Subsection (1) shall not be commenced—

(a) where the State or a government body is proceeding in an action in a court for the same offence or failure to perform an act or duty; or

(b) in any other case before the expiry of 60 days from the service of written notice of the alleged offence or failure to perform an act or duty to—

(i) the Minister; and

(ii) the Board; and

(iii) the party responsible for the alleged offence or failure to perform an act or duty.

(3) Where an action is commenced under Subsection (2)(a) any person may intervene as a matter of right.

(4) In an action under this section, the court may, in making any order—

(a) award such costs; and

(b) make an order as to the lodging of a bond or equivalent security,

as it thinks fit.

(5) This section does not restrict any right that a person or class of persons may have under any other law.

57. Compensation for damage, etc.

(1) Where a person is convicted of an offence under this Act, and as a consequence directly or indirectly of the commission of that offence another person (including the State) has suffered damage or injury or has incurred expense, that other person may make application to the court for an award of damages or compensation in respect of that damage, injury or expense and the court may make an order accordingly.

(2) An application under Subsection (1) may be made at the conclusion of the prosecution for the offence or to the same court at a later time.

58. Offences.

(1) A person who, being the holder of a permit, contravenes or fails to comply with a condition to which the permit is subject, is guilty of an offence.

(2) A person who, not being the holder of a permit—

(a) dams a river or stream; or

(b) diverts any water; or

(c) discharges water or waste into any water; or

(d) discharges water containing waste on to land or into the ground in circumstances that result in—

(i) the waste; or

(ii) other waste emanating as a result of processes from the waste,
entering water; or

(e) being the occupier of land, causes or permits waste, emanating as a result of processes from matter previously placed on or discharged on to the land or into the ground, to enter water; or

(f) takes or uses water; or

(g) knowingly causes or permits any chemical, metallic or organic wastes or any unsightly or odorous litter or waste or refuse to enter any water,

is guilty of an offence.

(3) A person who acts in contravention of, or fails to comply with, a provision of this Act, or a direction, notice, order or requirement given or made under this Act is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 for every day for which the breach is permitted to continue.

59. General penalty.

A person who fails to comply with a requirement under this Act in respect of which a penalty is not provided is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 for every day for which the breach is permitted to continue.

60. Liability of corporation, etc.

Where a corporation is convicted of an offence against this act and the court by which the conviction is imposed is satisfied that the offence was committed as a result of the negligence, omission or intention of a director, manager, secretary or agent of the corporation, or that it was, or ought to have been, known by him that it would be committed, in addition to the conviction and any penalty imposed on the corporation, the court may find that director, manager, secretary or agent guilty of the same offence as, and liable to the same penalty imposed on, the corporation.

61. Register.

(1) The Director shall cause to be maintained in the prescribed form a register containing particulars of applications and grants of permits.

(2) A person may, on payment of the prescribed fee, inspect and make copies of entries in the register.

62. Data collection.

(1) The Director may, and where he considers it necessary shall, arrange for the collection and storage of information and the compilation of related information and details concerning water resources and the use of water.

(2) The information and details referred to in Subsection (1) shall include—

(a) rainfall records; and

(b) water flow rate; and

(c) water height records; and

(d) any information that the Director considers relevant.

(3) The Director may, by written notice, require any person to provide information and details for the purposes of Subsection (2)(d) or as prescribed.

(4) A person who fails to comply with a notice under Subsection (3) within the time specified in the notice is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) A person may, on payment of the prescribed fee—

(a) inspect and make copies of entries; or

(b) receive from the Director a copy of information and details contained in the collection referred to in Subsection (1).

63. Service of notices, etc.

The service of a notice or document under this Act may be effected personally or by post, and in the case of a corporation may be served at or posted to its registered office or principal place of business.

64. Charges.

The Minister, having received recommendation from the Board and after consultation with the Minister responsible for financial matters, may, by notice in the National Gazette, fix charges for—

(a) the consumptive or non-consumptive use of water; and

(b) the use of water as a carrier following the discharge of waste,

in relation to use of water generally or to a particular use in a specified area.

65. Regulations.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) the particulars to be contained in applications for permits; and
- (b) the particulars for which exemptions may be granted; and
- (c) the methods of informing government bodies concerning applications for permits; and
- (d) the manner of calling and conducting public hearings; and
- (e) fees for the issue of permits; and
- (f) exemptions from liability for fees or charges; and
- (g) fees in relation to any other matter or thing under this Act; and
- (h) forms and notices; and
- (i) the planning and construction procedures for water project planners and builders; and
- (j) the quality standards and other standards for water; and
- (k) the permitted variations from standards; and
- (l) the limits of changes permitted by the discharge of wastes into water; and
- (m) the methods of disposal of wastes; and
- (n) penalties of fines not exceeding K5,000.00 and default penalties of fines not exceeding K2,000.00 for offences against the regulations.