

# Environmental Planning Act 1978

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Environmental Planning Act 1978,

Being an Act—

(a) relating to development of the environment having regard to uniform systems of environmental management in accordance with the fourth goal of the National Goals and Directive Principles; and

(b) to give effect to those Goals and Principles under Section 25 of the Constitution, and for related purposes.

PART I.—PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act, to the extent that it—

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

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

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

(b) regulates a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely, the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for that purpose, taking into account the National Goals and the Basic Social Obligations, particularly the fourth goal of the National Goals and Directive Principles entitled "natural resources and environment".

(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.

In this Act, unless the contrary intention appears—

"authority" includes any Minister, Departmental Head, head of a statutory authority or body, member of a Provincial Government, provincial government body, Local-level Government or Local-level Government Authority;

"beneficial use" means a use of the environment or any element or segment of the environment that is conducive to public benefit, welfare, safety or health;

"Board" means a Board of Inquiry established under Section 17;

"Director" means the Director of the Office of Environment and Conservation;

"environment" means the total stock of physical, biological and social resources available to man and other species and the ecosystems of which they are a part;

"environmental contaminant" means—

(a) any substance whether liquid, solid, gaseous, or radio-active, or any form of electro-magnetic or thermal energy which, when discharged, emitted or deposited into the environment, causes or may cause, by reason of its properties, characteristics, the volume, amount and weight and point of its discharge or other relevant circumstances, a present or future alteration of the environment so as to affect adversely its beneficial use; and

(b) any prescribed substance, material or matter;

"environmental plan" means an environmental plan required under this Act;

"Local-level Government " means any Local-level Government established under the *Organic Law on Provincial Governments and Local-level Governments*;

"project" means any development, scheme, construction, undertaking or activity which would involve a change of use or condition;

"proponent" means the person proposing and assuming responsibility for any proposal;

"proposal" means any intention or proposal to embark on any project;

"province affected" means the National Capital District or province or provinces in which any project, which is the subject of a proposal, is located;

"Provincial Administrator" means the person having administrative charge of a province, and in the case of the National Capital District means the Manager appointed under Section 19 of the *National Capital District Commission Act 1991*;

"register" means the register kept under Section 26;

"requisition" means a requisition under Section 4;

"this Act" includes the regulations.

3. Application.

(1) This Act binds the State.

(2) This Act does not apply to any project to which the—

(a) *Mining (Bougainville Copper Agreement) Act 1974*; or

(b) *Mining (Ok Tedi Agreement) Act 1976*; or

(c) *Petroleum (Gulf of Papua Agreements) Act 1976*,

applies.

PART II.—ENVIRONMENTAL PLAN.

4. Submission of environmental plan.

(1) Where, after 8 May 1980 a proposal is to be implemented, and the project involved is one of a class of projects in respect of which guidelines have been issued under Section 5, the Minister may, if in his opinion the proposal may have significant environmental implications, serve a requisition in the prescribed form on the proponent requiring him to submit an environmental plan.

(2) An environmental plan required under Subsection (1) shall—

(a) recognize and be responsive to the National Goals and Directive Principles of the *Constitution* as the basis for planning; and

(b) be formulated—

(i) in response to any development goals, strategies or plans consistent with the National Goals and Directive Principles issued by the officer in charge of the Department or Office responsible for national planning matters or the Provincial Administrator of the province affected; and

(ii) in response to any guidelines, directions or plans on the protection, conservation and management of the environment consistent with the National Goals and Directive Principles issued by the Minister or the Provincial Administrator of the province affected.

(3) The Minister may allow an environmental plan to be submitted as a series of parts during the planning, feasibility study, construction or operational phase of any project,

each part of which shall be dealt with as an environmental plan in the manner provided by this Act.

(4) The Minister may, by written notice, require the proponent to furnish to him any additional information, plans or specifications that the Minister thinks fit.

(5) Any information, plans or specifications provided under Subsection (4) shall be deemed to be part of the environmental plan.

(6) A proponent may submit an environmental plan for a present or future proposal at any time before a requisition is served on him under Subsection (1).

(7) Where an environmental plan submitted under Subsection (6) is written in accordance with the terms of Subsection (2) and the guidelines issued under Section 5, the Minister may—

(a) approve the proposal; or

(b) approve the proposal subject to such terms and conditions as he thinks fit; or

(c) refuse to approve the proposal.

(8) Where the Minister refuses to approve a proposal under Subsection (7)(c), the proponent may, by written notice, request the Director to implement the procedures otherwise set out in this Act for environmental plans and the Director shall accede to that request and the procedures shall be put into operation as if a requisition had been served under Subsection (1).

## 5. Guidelines.

(1) The Minister shall cause to be prepared and issued general guidelines for the preparation and content of environmental plans and the guidelines may exempt certain classes of projects from the provisions of this Act.

(2) The Minister may issue specific guidelines for designated classes of projects and in so doing shall consult with, or direct that consultations be undertaken with, persons who are likely to be affected by the application of the provisions of this Act to such classes of projects.

(3) Guidelines issued under this section shall recognize the necessity for the cohesive, integrated and efficient planning of Papua New Guinea's development and the roles of other Ministers, provincial governments and other persons, in such planning.

(4) The Minister may from time to time revise guidelines issued under this section, and in so doing shall consult with persons who are likely to be affected by such revisions.

(5) Guidelines issued under this section shall recognize that environmental planning involves the consideration of—

- (a) the long-term and short-term objectives of the proposal or project; and
- (b) the proposal or project and alternatives to that proposal or project including alternative sites; and
- (c) alternative methods of carrying out the proposal or project and recommendations for a particular method; and
- (d) the environment that may be, or may reasonably be expected to be, affected directly or indirectly, immediately or in the long-term future; and
- (e) the environmental changes that may result from carrying out the proposal or project; and
- (f) the actions proposed to prevent or mitigate any adverse environmental changes that may occur as a result of carrying out a proposal or project; and
- (g) the projected utilization of natural resources and energy; and
- (h) the projected use and discharge of environmental contaminants; and
- (i) the costs and advantages that may accrue from a proposal or project; and
- (j) any permanent change in the physical, biological, social or cultural characteristics of the affected environment or in the possible future use of that environment; and
- (k) any matters that are necessary or that, in the opinion of the proponent or the Director, are relevant to the environmental plan.

6. Notice to be published.

Where a requisition is served under Section 4(1), the Minister shall—

- (a) forward a copy of the requisition to—
  - (i) the Provincial Administrator of the province affected; and
  - (ii) all other authorities and persons who, in his opinion, may be affected by the carrying out of the proposal; and
- (b) within 21 days of the service of the requisition publish a notice in the National Gazette that shall contain—

- (i) notice of the service of the requisition; and
- (ii) a description of the proposal; and
- (iii) a declaration that Section 8 is in force.

7. Duty to advise Minister.

(1) Where any proposal in respect of which a requisition under Section 4(1) has not been served comes to the notice of an authority, and the proposal can be construed as having significant environmental implications, that authority shall immediately—

- (a) advise the Minister of the proposal; and
- (b) forward to the Minister any plans and specifications available to it and any other information that, in its opinion, is relevant.

(2) The Minister may, from time to time, request information from an authority concerning a proposal, and that authority shall, where practicable, furnish that information.

8. Restraint on approvals, etc.

(1) Subject to Subsection (2), no authority shall—

- (a) grant any licence, permit or lease that may be required under any law; or
- (b) provide any loan, grant, guarantee or subsidy,

in respect of any matter the subject of a requisition under Section 4(1) prior to or inconsistent with the terms and conditions of the approval of that proposal by the National Executive Council under Section 18(1)(c) or (d).

(2) Where the proponent is applying for certification, or has been certified, under the *Investment Promotion Act* 1992, the Managing Director of the Investment Promotion Authority may request the Minister to state a time limit, from the date of submission of the environmental plan by the proponent, within which the Minister shall make a recommendation to the National Executive Council under Section 16(2), and the Minister shall comply with such request and adhere to the stated time limit.

9. Compensation not payable.

Where a proponent proceeds with any works, or incurs any expenditure, in relation to a proposal prior to approval of the proposal by the National Executive Council and—

- (a) the approval is refused; or

(b) the approval is given subject to terms and conditions on which the proponent declines to proceed,

compensation may not be claimed by the proponent in respect of those works or that expenditure.

10. Exemption.

(1) A proponent may, by written application to the Minister, request exemption from submitting an environmental plan in respect of that proposal.

(2) On receipt of an application under Subsection (1), the Minister shall, within 14 days—

(a) forward a copy of the particulars of the application to—

(i) the Provincial Administrator of the province affected; and

(ii) all other authorities and persons who, in his opinion, may be affected by the carrying out of the proposal; and

(b) publish a notice—

(i) in the National Gazette; and

(ii) in a newspaper circulated nationally; and

(iii) in a newspaper circulated in the province affected; and

(iv) by a radio broadcasting service which specifically serves the province affected,

that shall—

(v) contain a description of the proposal; and

(vi) contain particulars of the application for exemption; and

(vii) state that any person or authority may make representations to the Minister concerning the application for exemption within 28 days.

(3) The Minister may require the proponent to furnish any information, plans or specifications in relation to an application under Subsection (1) that he thinks fit.

(4) Where an application under Subsection (1) is false or misleading in any material particular, the proponent is guilty of an offence.

Penalty: A fine not exceeding K500.00.

11. Person or authority may make representations.

(1) Any person or authority may, within 28 days of the date of publication of a notice under Section 10(2), make representations to the Minister concerning an application for exemption under Section 10(1).

(2) On receipt of a representation under Subsection (1), the Minister may invite the person or authority making the representation—

(a) to provide further information; or

(b) to enter into consultation with him.

12. Exemption may be granted.

(1) The Minister may, after considering—

(a) the application for exemption together with all material lodged under Section 10; and

(b) any representations made to him under Section 11,

grant an exemption or refuse to grant an exemption.

(2) Where the Minister grants an exemption under Subsection (1), he shall—

(a) publish a notice in the National Gazette stating the reasons for granting the exemption; and

(b) notify the Provincial Administrator of the province affected of the reasons for granting the exemption.

PART III.—ASSESSMENT OF ENVIRONMENTAL PLAN.

13. Assessment of environmental plan.

(1) The Minister shall, as soon as practicable after the submission of an environmental plan, cause an assessment to be made of the proposal.

(2) As soon as practicable after the completion of an assessment under Subsection (1), the Minister shall—

(a) send a copy of the environmental plan together with the assessment to the Provincial Administrator of the province affected and advise him that representations may be made within a specified time; and

(b) publish a notice—

- (i) in the National Gazette; and
- (ii) in a newspaper circulated nationally; and
- (iii) in a newspaper circulated in the province affected; and
- (iv) by a radio broadcasting service which specifically serves the province affected,  
that shall state—

- (v) that an environmental plan has been lodged and its assessment made; and
- (vi) where the environmental plan and its assessment may be inspected; and
- (vii) that any person or authority may make representations to the Minister on the environmental plan or its assessment within the time specified in the notice.

(3) The time specified in a notice under Subsection (2) shall be not less than 28 days.

14. Person or authority may make representations to Minister.

(1) Any person or authority may, within the time specified in a notice under Section 13(2)(b), make representation to the Minister concerning an environmental plan or its assessment made under Section 13(1).

(2) On receipt of a representation under Subsection (1), the Minister may invite the person or authority making the representation—

- (a) to provide further information; and
- (b) to enter into consultation with him.

15. Recommendation.

At the end of the period specified in the notice under Section 13(2)(b), the Minister—

(a) shall cause a summary of any representation made to him under Section 14 to be prepared; and

(b) may cause a recommendation based on—

- (i) the environmental plan; and
- (ii) the summary under Paragraph (a); and

(iii) any other matter relevant to the proposal,

to be prepared.

16. Notice of recommendation to be published, etc.

(1) As soon as practicable after the preparation of the summary and recommendation (if any) under Section 15, the Minister may, where he is satisfied that substantial unresolved matters exist in the environmental plan, or that significant differences exist between any recommendation made under Section 15(b) and the original proposal, or that significant public opinion demands further consultation—

(a) send a copy of the summary and recommendation (if any) to the Provincial Administrator of the province affected; and

(b) advise any other authority likely to be affected by the environmental plan of the summary and recommendation (if any); and

(c) publish a notice—

(i) in the National Gazette; and

(ii) in a newspaper circulated nationally; and

(iii) in a newspaper circulated in the province affected; and

(iv) by a radio broadcasting service which specifically serves the province affected,

advising that the summary and recommendation (if any) may be inspected for the period specified in the notice at the places specified in the notice.

(2) The Minister shall—

(a) as soon as practicable after a summary and any recommendation have been prepared under Section 15; or

(b) where he has given notice under Subsection (1)—on the expiry of the period of notice,

submit to the National Executive Council—

(c) the environmental plan or a summary of it; and

(d) the assessment; and

(e) the summary of representations (if any); and

(f) the recommendation (if any).

PART IV.—DECISION.

17. Board of Inquiry or reference to National Planning Committee.

(1) Where the National Executive Council, having considered the submission made under Section 16(2), is of the opinion that further investigation is required, it may—

(a) establish a Board of Inquiry to conduct an investigation; or

(b) refer the matter to the National Planning Committee or any other body for its opinion.

(2) A Board established under Subsection (1)(a) shall consist of not more than five members appointed by the National Executive Council of whom one shall be Chairman.

(3) At a meeting of a Board—

(a) the Chairman and two members form a quorum; and

(b) the Chairman shall preside; and

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

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

(4) Subject to Subsection (5), an inquiry shall be held in public and evidence shall be taken in public on oath or affirmation.

(5) Where the Chairman is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, he may—

(a) direct that all or part of the evidence be given in private; and

(b) give directions as to who may stay to hear the evidence; and

(c) give directions prohibiting or restricting the reporting and publication of the evidence or any part of the evidence.

(6) A Board—

(a) shall comply with the principles of natural justice; and

(b) is not bound by the technical rules of evidence or procedure; and

(c) shall investigate and inform itself on all matters relevant to the application and admit and consider such relevant information as is available; and

(d) may summon witnesses, by instrument under the hand of the Chairman; and

(e) may take evidence on oath or affirmation, and administer oaths and affirmations for that purpose; and

(f) may, by instrument under the hand of the Chairman, require a person to produce a document, book or paper in his possession or control.

(7) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—

(a) to attend before the Board at the time and place appointed in the summons or requirement; or

(b) to be sworn or make an affirmation; or

(c) to answer any question put to him by the Board; or

(d) to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(8) A person who, without lawful excuse (proof of which is on him) directly or indirectly hinders or obstructs a Board in the exercise or performance of its jurisdiction, powers, functions, duties and responsibilities is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(9) In the exercise of their functions and the performance of their duties the members of a Board holding an inquiry have the same protection and immunities as a Judge.

(10) Where—

(a) a Board has been established under Subsection (1)(a); or

(b) a reference has been made to the National Planning Committee or any other body under Subsection (1)(b),

a final report shall be submitted by the Board, the National Planning Committee or the other body, as the case may be, to the National Executive Council within 56 days from the date of establishment or reference, as the case may be.

18. Decision.

(1) After consideration of—

(a) the final report under Section 17(10)(if any); and

(b) the submission under Section 16(2),

the National Executive Council shall—

(c) approve the proposal; or

(d) approve the proposal subject to such terms and conditions as it thinks fit; or

(e) refuse to approve the proposal.

(2) The Minister shall—

(a) give written notice to the Provincial Administrator of the province affected, of the decision of the National Executive Council under Subsection (1); and

(b) by notice in the National Gazette—

(i) give notice of the decision of the National Executive Council under Subsection (1); and

(ii) where approval of a proposal is refused—declare that proposal to be prohibited.

19. Offence to proceed.

(1) Subject to Section 21, a person who proceeds with a proposal that is prohibited under Section 18 is guilty of an offence.

(2) Subject to Section 21, where a proposal is approved subject to conditions, a person who proceeds with the proposal in contravention of those conditions is guilty of an offence.

(3) A person who acts in breach of any of the terms and conditions of an approval by the Minister under Section 4(7) is guilty of an offence.

Penalty: A fine not exceeding K40,000.00.

Default penalty: A fine not exceeding K4,000.00.

20. Preservation of legal remedies.

This Act does not preclude the commencement of proceedings at law for an injunction.

21. Subsequent submission.

(1) Where the National Executive Council has—

(a) approved a proposal subject to conditions; or

(b) refused to approve a proposal,

under Section 18(1), a proponent may, after making those modifications to the proposal that are necessary or desirable, submit to the Minister a revised environmental plan.

(2) The provisions of this Act shall apply to a revised environmental plan as if that plan was the environmental plan submitted under Section 4.

(3) Where the National Executive Council refuses to approve a revised environmental plan under Subsection (1), the National Executive Council may reserve the right to the proponent to submit a further revised environmental plan subject to Subsection (2).

PART V.—MISCELLANEOUS.

22. Withdrawal of environmental plan.

(1) Where a proponent does not wish to proceed with a proposal, he may, by written notice to the Minister, withdraw an environmental plan submitted under this Act.

(2) Where the Minister has received a notice under Subsection (1), he shall as soon as practicable return to the proponent the environmental plan and any plans and specification provided to the Minister by the proponent in connection with the proposal.

23. False information.

Any person who wilfully provides any information that is false or misleading in any material particular in relation to—

(a) an environmental plan; or

(b) a submission under Section 13(2); or

(c) information given to a Board,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

24. Information may be withheld.

(1) Notwithstanding the provisions of this Act, where the Minister is of the opinion that—

(a) information or data contained in an environmental plan; or

(b) the assessment of an environmental plan; or

(c) the approval or refusal of approval of the National Executive Council,

is of a nature that it is in the public interest that it should not be divulged, the Minister may withhold any part from that environmental plan, assessment, approval or refusal of approval from public inspection.

(2) Where the Minister withholds any information under Subsection (1), the document or plan from which the information has been withheld shall be endorsed with a notice that the Minister has exercised his power under that subsection, and the reason for that exercise.

25. Service of notices, etc.

The service of a notice or requisition 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.

26. Register.

(1) The Director shall keep a register containing a copy of—

(a) environmental plans; and

(b) assessments; and

(c) representations; and

(d) decisions,

in connection with every proposal.

(2) The register shall be available for inspection by any person at all reasonable times.

(3) Any person may be entitled to search for, demand and obtain copies of any entry in the register.

(4) The production of the register, a copy or an extract from the register, certified by the Director to be the register or a true copy of the register or a true extract from the register, is evidence of the matters contained in it.

27. Institution of proceedings, etc.

(1) Proceedings for offences against this Act shall be taken in the National Court and may be taken by any person.

(2) Where for the purposes of this Act, or in any proceedings under this Act it is necessary to tender in evidence—

(a) an environmental plan; or

(b) an assessment of an environmental plan; or

(c) any representations made under Section 14(1); or

(d) any recommendation made to the National Executive Council,

the production of a copy of it purporting to bear an endorsement by the Minister that it is a true copy of the original document lodged or prepared under this Act shall be admissible in evidence and sufficient evidence of the matters contained in it.

28. Environmental contaminants Act to apply.

This Act shall not relieve a proponent from compliance with the *Environmental Contaminants Act 1978*.

29. General penalty.

Any person who fails to comply with a provision of this Act applicable to him in respect of which a specific penalty is not provided is guilty of an offence.

Penalty: A fine not exceeding K500.00.

30. Inspection.

(1) The Minister may, by written notice, authorize any person to be an inspector for the purposes of this Act.

(2) An inspector may at all reasonable times enter and inspect any building or place the subject of a proposal.

31. Obstruction of inspectors.

A person who—

- (a) hinders or obstructs an inspector in the execution of his duty; or
  - (b) refuses or fails to comply with any reasonable request of an inspector in the exercise or performance of his powers and functions under this Act,
- is guilty of an offence.

Penalty: A fine not exceeding K500.00.

32. 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 payment of fees to the members of a Board; and
- (b) the form of notices and documents required under this Act; and
- (c) fees to be paid for lodgement of any documents required under this Act, or copies of information contained in the register; and
- (d) the employment of and payment of fees to consultants engaged in connection with matters arising under this Act; and
- (e) Penalties of fines not exceeding K500.00 for offences against the regulations.