

**LAWS OF THE REPUBLIC OF VANUATU
CONSOLIDATED EDITION 2006**

Commencement: 10 March 2003

**CHAPTER 283
ENVIRONMENTAL
CONSERVATION**



PROTECTION AND

Act 12 of 2002

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ENVIRONMENTAL PROTECTION AND CONSERVATION

An Act to provide for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities.

PART 1 – PRELIMINARY

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1. Application of this Act

This Act applies throughout Vanuatu, including its lands, air and waters.

2. Interpretation

In this Act, unless the contrary intention appears:

"authorised officer" means a person appointed under section 5;

"biodiversity significance" means the ranked significance of an area according to the specified biological diversity values to account for ecological concepts such as rarity, diversity, fragmentation, habitat condition, resilience, threats and ecosystem processes;

"biological diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

"biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;

"bioprospecting" means any activity undertaken to harvest or exploit all or any of the following:

- (a) samples of genetic resources;
- (b) samples of any derivatives of genetic resources;
- (c) the knowledge, innovations, and customary practices of local communities associated with those genetic resources;

for purposes of research, product development, conservation or industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives;

"business day" means every day of a week, excluding Saturday, Sunday and a public holiday as prescribed or declared by the President under the Public Holidays Act [CAP 114];

"climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

"community" means a social group of any size whose members reside in a specific locality, share government, and often have a common cultural and historical heritage including but not limited to a group of individuals, family group, tribe or village;

"conservation" includes the preservation and protection of natural resources and heritage;

"conservation area" means an area of land or sea especially dedicated to the protection maintenance and sustainable use of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means;

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"Council" means the Biodiversity Advisory Council established under section 29;

"Department" means the Department responsible for the environment;

"Director" means the Director of the Department;

"EIA review committee" means the committee appointed by the Director in accordance with the regulations;

"endemic" means native to Vanuatu and not occurring naturally anywhere else;

"enforcement officer" means an officer of the Department of Environmental Protection and Conservation and any other person approved by the Director from time to time;

"environment" means the components of the earth and includes all or any of the following:

- (a) land and water;
- (b) layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms including ecosystem services and processes;
- (ca) weather and climatic systems;
- (d) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (ca);

"environmental impact assessment" means the environmental impact assessment process as provided in Part 3, and "EIA" has a corresponding meaning;

"Environmental Registry" means the registry established under section 6;

"foreign organism" includes all stages of any life form not endemic or normally found in Vanuatu;

"genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity;

"genetic resources" means genetic material of actual or potential value;

"land" includes land covered by water;

"management committee" means the entity that is responsible for the implementation, management and enforcement of the Community Conservation Area;

"management plan" means a comprehensive document that describes how, who, what, where, when and why a Community Conservation Area is managed;

"management rules" means the rules implemented for the purpose of managing the

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Community Conservation Area;

"Minister" means the Minister responsible for the environment;

"natural resources" includes all living and non-living, finite and renewable resources found within Vanuatu but does not include resources lawfully maintained for domestic or commercial purposes;

"person" includes any statutory body, company or association or body of persons corporate or unincorporate;

"preliminary environmental assessment" means the preliminary assessment process as provided under section 14, and "PEA" has a corresponding meaning;

"project proponent" means the person whose signature appears, or is otherwise nominated, on any application form as being responsible for any project, proposal or development activity;

"regulation" means a regulation made under this Act;

"significant environmental impact" in relation to a project, proposal or development activity means an impact on the environment, either in the context of the setting of the proposed or in the context of the intensity of the proposed's effect on the environment, which includes, but is not limited to:

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

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another aspect of use of that resource; or

- (l) the degree to which the adaptation to, and mitigation of climate change is affected;

“sustainable use” means the human use of biotic and abiotic resources that does not contribute to their long-term degradation, overuse or destruction;

"traditional knowledge" means any knowledge:

- (a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) whose nature or use of which has been transmitted from generation to generation; and
- (c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;

"water" means all or any of the following:

- (a) water flowing or situated upon the surface of any land;
- (b) water flowing or contained in:
 - (i) any river, stream, creek or other natural course for water; or
 - (ii) any sea, lake, lagoon, bay, swamp, marsh or spring;

whether or not it has been altered or artificially improved;

- (c) groundwater, including geothermal water;
- (d) any estuarine or coastal sea water.

PART 2– ADMINISTRATION

Division 1 – Powers and functions

3. Director appointed

- (1) A Director of the Department is to be appointed under the Public Service Act [Cap. 246].
- (2) The Director is accountable to the Public Service Commission for the efficient and effective administration of this Act.
- (3) The Director must advise and assist the Minister in all matters relating to this Act.

4. Functions of the Director

- (1) The Director is responsible for the development, co-ordination and, where appropriate, implementation of the Government’s environmental policies and programs.

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(2) In carrying out the functions outlined in subsection (1), the Director must do the following:

- (a) administer the Environmental Registry established under section 6;
- (b) prepare State of the Environment Reports under section 7;
- (c) prepare National Policies and National Plans under section 8;
- (d) administer the Environmental Impact Assessment procedure under Part 3;
- (e) prepare guidelines, standards, codes of practice and procedures;
- (f) prepare advice on international environmental treaties and instruments, including implementation strategies;
- (g) undertake environmental research, assessment, monitoring, and inspection generally;
- (h) undertake such other duties and responsibilities as may lawfully be required by the Minister.

(3) The Director may carry out any duty, function or responsibility under this Act in association with any other Government Ministry, Department, Agency, local government or municipal council.

5. Powers of the Director

(1) The Director has the powers conferred by this Act, and such other powers as may be necessary or convenient for the performance of the Director's functions under this Act, including:

- (a) the appointment of persons not employed by the Department as authorised officers for the purpose of administering this Act; and
- (b) the establishment of committees for the purpose of ensuring better inter-departmental and inter-agency co-ordination on particular environmental matters.

(2) The Director must consult with the Public Service Commission and such local government or municipal council as is appropriate before appointing any authorised officer under subsection (1)(a).

(3) The Director must consult with the Minister before establishing any committee under subsection (1) (b).

(4) The powers, duties and responsibilities of any person appointed under subsection (1) (a) or any committee established under subsection (1) (b) must be stated in any instrument of appointment or establishment.

(5) The Director may delegate to officers of the Department and any authorised officers appointed under subsection (1) (a), such powers and functions as he or she considers appropriate, with the exception of this power of delegation.

5A. Application of precautionary principal

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- (1) Notwithstanding the provisions of any other Act, all persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the environment, are to apply the precautionary principal when discharging their responsibilities and functions, or exercising their powers.
- (2) For the purposes of this section, the precautionary principal is applied if, in the event of a threat or damage to the environment or human health exists in Vanuatu, a lack of full scientific certainty regarding the extent of adverse effects of the threat or damage is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of environmental damage or degradation.
- (3) Any decision making made under the terms of this Act must be guided by consideration of climate change adaptation and mitigation issues

Division 2 – Instruments

6. Establishment of Environmental Registry

- (1) The Director must establish, operate and maintain an Environmental Registry of all records relating to:
 - (a) environmental impact assessment documentation provided under Part 3; and
 - (b) applications, permits and approvals required or issued under this Act; and
 - (c) regulations, standards, guidelines or codes of environmental practice established under this Act; and
 - (d) National State of the Environment Reports prepared under section 7; and
 - (e) National Policies and National Plans prepared under section 8; and
 - (f) Community Conservation Areas registered under section 37; and
 - (g) international environment and conservation treaties and instruments to which Vanuatu is a party; and
 - (ga) climate change database in joint coordination with the National Advisory Committee on Climate Change; and
 - (h) such other matters as may be prescribed by regulation.
- (2) All material entered in the Environmental Registry must be lodged with the Department in a physical or electronic form, and be available for public inspection during normal working hours.
- (3) If the Director determines that any registered material is commercially or culturally sensitive, he or she may classify that material, including any part of any material, as confidential and stipulate the terms and conditions, if any, on which any person can access that material.

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(4) The Minister on the advice of the Director may, by order, prescribe a system of fees and charges for the purpose of recovering any operational costs arising from requests for copies of material held in the Environmental Registry.

7. Preparation of National State of the Environment Reports

(1) The Director must prepare and publish a National State of the Environment Report at least once every 10 years following the commencement of this Act.

(2) A National State of the Environment Report must include all of the following:

- (a) an assessment of the state of all natural resources;
- (b) a review of the current use of natural resources;
- (c) an assessment of the quality of Vanuatu's environment;
- (d) an assessment of social and economic development trends and their likely impact upon the environment;
- (e) a summary of government and private sector policies, programs and initiatives to address and monitor environmental management and conservation issues;
- (ea) a description of national climate change activities, impacts and issues;
- (f) such other matters as the Minister considers appropriate.

(3) A National State of the Environment Report must be submitted to the Minister for approval, and a copy of any such report must be lodged in the Environmental Registry.

8. Development of National Policies and National Plans

If the Minister determines that a National Policy or National Plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the National Policy or National Plan.

9. Purpose of National Policies and National Plans

(1) The purpose of a National Policy is:

- (a) to promote the environmentally sound and safe management and conservation of the natural resources and environment of Vanuatu; and
- (b) to provide for the co-ordination of related activities.

(2) The purpose of a National Plan is:

- (a) to provide for the implementation of the National Policy; and
- (b) to provide for the conservation and/or sustainable management and development of particular natural resources and environment of Vanuatu.

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(3) A National Policy must include all of the following:

- (a) an evaluation of the current state of the particular matter that is the subject of the Policy;
- (b) an evaluation of the social, human health, custom, climatic, economic and ecological considerations and issues in respect of that matter;
- (c) a description of any relevant national priorities;
- (d) an outline of the objectives to be achieved by the Policy;
- (e) specific actions, initiatives or activities required to give effect to the objectives of the Policy, including any specific legal, financial and institutional aspects that need to be addressed;
- (f) mechanisms for monitoring and reviewing the implementation of the Policy.

(4) A National Plan must contain details of all the operational matters that are necessary to implement the National Policy.

(5) National Policies and National Plans must be developed through appropriate public consultation, and be submitted by the Director to the Minister for approval.

(6) Once approved by the Minister, a National Policy or National Plan must be referred to the Council of Ministers for approval. A National Policy or National Plan takes effect on the date of its publication in the Gazette.

10. Variation of National Policy or Plan

(1) The Minister may instruct the Director to prepare a variation to any National Policy or National Plan.

(2) A variation must be prepared, notified and consulted upon in accordance with this Act and the regulations.

(3) A variation must be approved by the Council of Ministers, and takes effect on the date of its publication in the Gazette.

PART 3 – ENVIRONMENTAL IMPACT ASSESSMENT

Division 1 – Activities subject to EIA

11. All activities subject to this Act

All projects, proposals or development activities that:

- (a) impact or are likely to impact on the environment of Vanuatu; and
- (b) require any license, permit or approval under any law;

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must comply with the provisions of this Act.

12. Activities that are subject to an EIA

(1) All projects, proposals or development activities that:

- (a) cause or are likely to cause significant environmental, social and/or custom impacts; or
- (b) cause impacts relating to the matters listed in subsection (2);

are subject to the EIA provisions of this Part.

(2). Without limiting subsection (1), all projects, proposals or development activities that will do or are likely to do all or any of the following are subject to the EIA provisions of this Part:

- a) affect coastal dynamics or result in coastal erosion;
- b) result in the pollution of water resources;
- c) affect any endemic, protected, rare, threatened or endangered species, its habitat or nesting grounds;
- d) result in the contamination of land;
- e) endanger public health;
- f) affect important custom resources;
- g) affect protected or proposed protected areas;
- h) affect air quality;
- i) result in the unsustainable use of renewable resources;
- j) result in the introduction of foreign organisms and species;
- k) result in any other activity prescribed by regulation.

12A. Foreshore development consents

(1) A person who has obtained the written consent of the Minister responsible for town and country planning, to undertake the development on the foreshore of the coast of any island under the Foreshore Development Act [CAP 90], must not commence any such development unless it is approved under the EIA provisions of this Act.

(2) A person who contravenes subsection (1) commits an offence as prescribed under section 24.

13. Activities not subject to an EIA

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The following projects, proposals or development activities are exempt from the requirements of this Part:

- (a) the construction of any single family residential building in an approved residential development area, however, such construction must be at least 30 metres from any river, stream, or from the line of mean high water spring tide of the sea;
- (b) any additions to an existing residential dwelling, being additions that are used only for residential purposes and are at least 30 metres from any river, stream, or from the line of mean high water spring tide;
- (c) the construction of traditional or custom structures fabricated from traditional materials, however, any natural rock, sand, coral, rubble or gravel that is used must not be taken from within 20 metres of the line of mean high water spring tide;
- (d) emergency action to protect the lives and property of people where there is not enough time to follow the requirements of this Act;
- (e) any other activity prescribed by regulation.

14. Preliminary environmental assessment of applications

(1) The project proponent for any project, proposal or development activity not exempted under section 13, must apply to the Director in the form set out in the regulations accompanied with the prescribed fee.

(2) Upon receiving an application under subsection (1) the Director is to undertake a preliminary environmental assessment (PEA) of that project, proposal or development activity, in order to screen the application and determine if there is a need for an EIA for the project, proposal or development activity.

(3) Any person who contravenes subsection (1) commits an offence prescribed under subsection 24(1).

(4) In determining whether an EIA is required for a project, proposal or development activity, the Director is to consider:

- (a) whether the project, proposal or development activity is likely to cause any environmental, social or custom impact; and
- (b) the significance of any identified impact; and
- (c) whether any proposed actions are likely to effectively mitigate, minimise, reduce or eliminate any identified significant impact; and
- (d) such other matters as the Director considers necessary or appropriate in the circumstances, or as required under this Act or prescribed by regulations.

(5) The Director must notify the project proponent, in writing, of his or her decision on the need for an EIA within 21 business days after receiving the application, unless a longer duration is agreed with the project proponent.

Division 2 – EIA process

18. Environmental Impact Assessment

- (1) This section applies if the Director determines under section 14 that an EIA is required.
- (2) The EIA must be undertaken:
 - (a) in such manner as the Director determines as appropriate in the circumstances; and
 - (b) as required under section 19; and
 - (c) in accordance with the regulations; and
 - (d) in a manner consistent with any guidelines issued for this purpose by the Director.
- (3) The Director must:
 - (a) register the particulars of the project, proposal or development activity in the Environmental Registry; and
 - (b) notify the project proponent and any affected Ministry, Department, Government Agency, local government or municipal council concerning the registration of the project, proposal or development activity.
- (4) An EIA must be undertaken with the fullest practicable consultation with the project proponent and other relevant interested parties.

19. Terms of reference for EIA

- (1) The Director must develop a terms of reference for any work that is to be undertaken for an EIA, including a description of the scope of work required.
- (2) In developing the terms of reference, the Director must give special consideration to the need for consultation, participation and involvement of custom landowners, chiefs and other interested parties, and may consult with the National Council of Chiefs for that purpose.
- (3) The Director must refer the terms of reference for the EIA to the project proponent for written comment within 15 business days or such longer period as the Director specifies.
- (4) Within 30 business days after receiving any written comments from the project proponent, the Director must make such revisions as are considered appropriate, and issue the final written terms of reference for the EIA to the project proponent. A copy of the terms of reference must be lodged in the Environmental Registry at the same time.

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(5) Unless otherwise agreed, all costs associated with the preparation of an EIA are the responsibility of the project proponent.

20. Public notice of EIA

(1) The project proponent must give such public notice about the project, proposal or development activity as the Director determines is appropriate in the circumstances.

(2) Any requirement for public notice must be practical and be reasonably certain to reach any identified interested parties.

(3) If the public notice invites written submissions, it must specify:

(a) the time period by which submissions must be received; and

(b) the address to which submissions must be sent.

(4) If practicable, a copy of any public notice must be lodged by the project proponent in the Environmental Registry.

(5) Unless otherwise agreed, all costs associated with any public notice requirement are the responsibility of the project proponent.

21. Deficiencies in EIA Report

After receiving and reviewing the EIA report, including any submissions made under section 20, the Director may, by notice in writing, require the project proponent to correct any deficiencies and/or provide additional information in relation to the EIA report.

22. Review of EIA Report and decision on application

(1) The Director must, within 30 business days after receiving an EIA report and any additional information required under section 21, request an EIA review committee to review the report.

(2) EIA review committee is to make a recommendation to the Director on the application for the project, proposal or development activity for which the EIA report derives from.

(3) The Director may, after receiving a recommendation from the review committee under subsection (2), do any of the following:

(a) approve the application with or without terms and conditions; or

(b) refer the matter back to the EIA review committee for further assessment; or

(c) reject the application.

(4) The Director must notify the project proponent of his or her decision in writing, within 30 business days set out under subsection (1).

(5) The Director may extend the 30 business day period set out under subsection (1) to a longer period as he or she determines.

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(6) An approval granted under paragraph 3(a) is only valid for the specific project, proposal or development activity for which it is approved, and the approval must not be transferred or used for any other purpose other than the purpose for which it is approved.

Division 3 – Miscellaneous

24. Activities without approval

(1) Subject to subsection (2), it is an offence for any person:

(a) to undertake any activity that is subject to the EIA provisions of this Act prior to receiving written approval under this Part; or

(b) to undertake any such activity where approval has been refused under the provisions of this Part.

(2) A project proponent may undertake any activity necessary for the purpose of preparing the EIA report if:

(a) such activity has minimal impact on the environment; and

(b) the Director is advised, in writing, of the nature of any such activity at least one week in advance of its undertaking.

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 5 years or a fine not exceeding VT5,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT100,000,000; or

(c) in the case of an individual who has previously committed an offence against this section – by imprisonment for not more than 10 years or a fine not exceeding VT10,000,000, or both; or

(d) in the case of a body corporate that has previously committed an offence against this section – by a fine not exceeding VT200,000,000.

25. Compliance with terms and/or conditions

If an application is approved under section 22, the project proponent must comply with all terms and/or conditions of the approval.

26. Directions

(1) The Director may issue a notice in writing if:

(a) a breach of a term or condition of an approval given under section 22 occurs; or

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(b) an activity is undertaken contrary to the provisions of this Part.

(2) The notice may require either or both of the following:

(a) the stopping of any specified activity for such period of time as is stated in the notice;

(b) the restoration of any area affected at the project proponents' cost.

(3) An activity that is subject to a notice must not restart until the Director cancels the notice and notifies the project proponent in writing.

27. Director may determine alternate process

(1) If the Director considers that an EIA is not appropriate in the circumstances, an alternate agreed process may be established consistent with the regulations.

(2) If an alternate agreed process is not completed to the satisfaction of the Director, he or she may terminate the process and require the activity to be completed in accordance with this Part.

28. Minister's approval no guarantee

(1) If the Minister approves a project, proposal or development activity, the approval is not to be interpreted as an approval for all requirements under the laws of Vanuatu.

(2) A project proponent is responsible for ensuring that all approvals, permits, licences, agreements, authorities or permissions required under or by any other Act are obtained before proceeding with the approved project, proposal or development activity.

PART 4 – BIODIVERSITY AND PROTECTED AREAS

Division 1 – Bioprospecting

29. Establishment of Biodiversity Advisory Council

(1) The Biodiversity Advisory Council is established.

(2) The Director is the Chairperson of the Council, and the Department is to provide administrative support to the Council.

(3) The Minister, in consultation with the Director, may appoint up to 5 additional members to the Council, on merit and for such terms, not exceeding three years, as he or she determines, taking into account:

(a) the scientific, custom and technical needs of the Council; and

(b) the nature of the legal and commercial issues likely to be involved; and

(c) the volume of relevant bioprospecting applications; and

(d) any other relevant matters.

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- (4) The Council is to meet as the Director requires but must meet at least twice every year.
- (5) The Council is to regulate its own procedures.
- (6) Members of the Council may be reappointed for a further term or terms.

30. Other terms and conditions

The Minister is to determine, on the recommendation of the Director, the other terms and conditions of appointment of the additional members of the Council.

31. Functions of the Council

The Council is responsible for advising the Minister, through the Chairperson, on any matter relating to the implementation of the *Convention on Biological Diversity* and, in particular, on matters relating to commercial bioprospecting.

32. Bioprospecting to require permit

A person who:

- (a) undertakes or attempts to undertake any biodiversity prospecting without a bioprospecting permit; or
- (b) exports or attempts to export any specimen obtained from biodiversity prospecting without a bioprospecting permit; or
- (c) imports or attempts to import any foreign organism that may have a significant adverse impact on Vanuatu's native flora or fauna without a bioprospecting permit; or
- (d) contravenes any law relating to the protection of Vanuatu's native flora and fauna;

is guilty of an offence punishable on conviction to a fine of not more than VT 50,000,000 or to imprisonment for a period of not more than 5 years, or both.

33. Application for bioprospecting permit

- (1) Any person wanting to undertake bioprospecting must apply in writing to the Director and pay:
 - (a) an application fee of VT50,000; and
 - (b) a bioprospecting information bond of VT100,000.
- (2) The application must be in such form as is approved by the Director and include the following:
 - (a) the name and particulars of the applicant, including that of any associate, affiliate or party that may benefit or share in the research or obtain any benefit from such research;
 - (b) a full and accurate description of the nature and extent of the research that is to be undertaken, and the area where such research will take place;

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- (c) a description of the nature of any biological resource or traditional knowledge that is to be investigated;
- (d) a statement concerning the nature of the research to be undertaken, including an outline of the investigation and sampling methods to be used;
- (e) an outline of the nature, duration and extent of any expected commercial research and development plan that may result from the biodiversity prospecting;
- (f) a statement indicating whether any information in the application should be regarded as confidential;
- (fa) an undertaking that any preliminary information gathered during the bioprospecting, will be provided to the Director within 4 weeks after the bioprospecting is undertaken, and that a final report will be provided to the Director within 12 months after the bioprospecting is undertaken;
- (fb) an endorsement from the community concerned indicating that the applicant has carried out consultations with that community;
- (g) and such other matters as the Director considers appropriate in the circumstance.

(2A) The Director must consult with the custom landowners and community concerned regarding the application.

(3) If the Director is satisfied that the application is complete, he or she must refer the application to the Council for determination.

(4) Despite subsection (3), the Director may only refer the application to the Council for determination if the land owners and community concerned are in support of the application.

34. Determination of application

(1) The Council must meet within 21 business days after receiving an application from the Director for the purpose of determining that application.

(2) The Chairperson and at least 3 Council members must determine the application.

(3) The Council must do one of the following:

- a) approve the application with or without terms and conditions;
- b) refer the matter back to the Director for further assessment or additional information;
- c) reject the application.

(4) The Director must advise the applicant in writing of the Council's decision within 14 business days of the determination.

(5) If the Council refers the matter back to the Director or rejects the application, the written advice must state the reason for this.

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(6) Before making its decision, the Council must satisfy itself that:

(a) a legally binding and enforceable contract is concluded with custom landowners, or any owner of traditional knowledge, concerning:

(i) rights of access; and

(ii) rights of acquisition of any biological resource or traditional knowledge; and

(iii) appropriate fees, concessions or royalties that will be charged for any research, or the acquisition of any biological resource or traditional knowledge, or for any commercial benefit that may be obtained; and

(aa) the relevant custom landowners and community have been consulted; and

(b) a research and investigation plan is completed by the applicant which outlines the nature of the research to be undertaken, the investigation and sampling method, and any specimens to be taken; and

(c) a monitoring and auditing system is established to verify all activities undertaken by the applicant; and

(d) any bond arrangements for damage or harm that may result from any non-compliance with the Government of Vanuatu are properly in place; and

(e) the decision is consistent with all other Acts.

34A. Bioprospecting information bond

(1) A bioprospecting information bond is a bond deposited into the Environmental Trust Fund for the purposes of ensuring that all the information gathered from bioprospecting is provided to the Director.

(2) A bioprospecting information bond may be made in any of the following form:

(a) by cash; or

(b) as an indemnity; or

(c) as an insurance; or

(d) as a guarantee; or

(e) in any other form approved by the Director in any particular case with the consent of the Ministry of Finance and Economic Management.

(3) Money payable under a cash bond must be paid to the Ministry of Finance and Economic Management which is to be transferred into the Environmental Trust Fund.

(4) The nature and amount of a bioprospecting bond is as agreed between the Director and the applicant, and the wording will be as settled in each case by the Department.

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(5) A bioprospecting information bond is retained, and any indemnity or insurance or guarantee subsists until:

- (a) in the case of an application that is approved under paragraph 34(3)(a) – the requirement to provide information to the Director under paragraph 33(2)(fa) is satisfied; or
- (b) the Council rejects the application under paragraph 34(3)(c),

and the bond must then be returned in whole or in the case of an indemnity, insurance or guarantee, the bond is to be cancelled.

Division 2 – Community Conservation Areas

34B. Definitions

In this Division:

applicant means the entity that applies for registration of a community conservation area and may include one or more of the following:

- (a) customary landowner;
- (b) customary resource steward;
- (c) recognised community leader;
- (d) village governing body;
- (e) chief;
- (f) family group;
- (g) tribe;
- (h) organisation or body
- (i) private individual;
- (j) any other entity;

governing body means any entity that is recognised as having the right to make decisions on behalf of the populous whose composition may include but not limited to the paramount or high ranking chief, council of chiefs, village council, conservation area committee, or provincial office.

35. Identification of sites having national biodiversity significance

The Director may after acquiring the consent of the custom landowners, negotiate with the applicant for the protection and registration of any site as a Community Conservation Area where he or she is satisfied that the site:

- (a) possesses unique genetic, cultural, geological or biological resources; or

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(b) constitutes the habitat of species of wild fauna or flora of unique national or international importance; or

(ba) provides critical ecosystem services such as (but not limited to) watershed management and climate mitigation; or

(c) merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage and any other relevant International or Regional Conventions.

36. Director may provide assistance

If the applicant agrees to establish a Community Conservation Area, the Director may consult with and provide assistance to the landowners, chiefs and other interested parties to do all or any of the following:

(a) review and evaluate the nature of any proposed Community Conservation Area;

(b) accurately identify the area to be included in any proposed Community Conservation Area;

(c) verify rights and interests in land that is to be included in the proposed Community Conservation Area;

(d) identify and evaluate the conservation, protection and management options proposed.

37. Registration of Community Conservation Areas

(1) If the applicant agrees to the formal protection of areas of biodiversity significance, these areas may be registered by the Director as Community Conservation Areas.

(2) Before registering a Community Conservation Area, the Director must ensure that:

(a) the objectives of the proposed Community Conservation Area are identified, and are in accordance with sound conservation practices; and

(b) the boundaries of any proposed Community Conservation Area are accurately identified; and

(c) consent and approval are obtained from all persons having rights and interests in any land that is to be included in the proposed Community Conservation Area; and

(d) an appropriate management plan is developed for the area to ensure the achievement of identified conservation objectives.

(3) If the Director is satisfied that the requirements of subsection (2) have been met, he or she may register the proposed Community Conservation Area as a Community Conservation Area in the Environmental Registry, and issue a certificate of registration to the applicant.

38. Amendment to registered areas

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- (1) An applicant may, at any time, apply in writing to the Director for a determination to do all or any of the following:
 - (a) cancel the registration of a Community Conservation Area, or any part of such area;
 - (b) amend any established Community Conservation Area management plan;
 - (c) modify any area of the registered Community Conservation Area.
- (2) Upon receiving an application from the applicant, the Director must consult with the landowners, community concerned and other interested parties before determining the application.
- (3) If the registration of the Community Conservation Area is cancelled, the Environmental Registry must be amended accordingly.
- (4) If any amendment is made to a Community Conservation Area management plan, the Environmental Registry must be amended accordingly.
- (5) Before modifying any Community Conservation Area, the Director must ensure that:
 - (a) the boundaries of any area to be added to or removed from a registered Community Conservation Area are accurately identified; and
 - (b) agreement is obtained from all persons having rights and interests in any land to be added to the registered Community Conservation Area.

39. Effect of registration

- (1) A management committee is responsible for:
 - (a) the development, implementation and enforcement of the management plan established for a registered Community Conservation Area; and
 - (b) ensuring that procedures are followed for solving disputes over breaches of Community Conservation Areas management rules under any alternative dispute resolution process provided for in the management plan; and
 - (c) providing annual reports to the Department.
- (2) The Director may provide technical or financial support to the management committee for the purpose of developing, implementing or enforcing the management plan.
- (3) If a registration is cancelled under sections 38 or 40, the Director is not obliged to provide further technical or financial support to the landowners.

40. Deregistration if plan not implemented

If the management plan for a Community Conservation Area is not implemented within the time frame agreed at the time of registration, the Director may, by notice in writing, cancel the

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registration of that Community Conservation Area and must remove it from the Environmental Registry. .

PART 5 – OFFENCES

41. Offences

(1) A person who:

- (a) provides false or misleading information, including any false or misleading report, under any requirement of this Act; or
- (b) hinders or obstructs an officer or any person empowered to carry out any function or duty under this Act; or
- (c) fails to give all reasonable assistance to any officer or any person empowered to carry out any function or duty under this Act; or
- (d) contravenes a term or condition of an approval, permit or notice issued under this Act; or
- (e) contravenes or fails to comply with any regulation, direction or order made under this Act; or
- (f) contravenes any term or condition of a management plan for a registered community conservation area;

commits an offence.

(2) A person who contravenes paragraph (1)(a), (b), (c), (d), (e) or (f), is guilty of an offence punishable on conviction:

- (a) if the person is an individual – by imprisonment for not more than 5 years or a fine not exceeding VT5,000,000 or both; or
- (b) if the person is a body corporate – by a fine not exceeding VT50,000,000; or
- (c) in the case of an individual who has previously committed an offence against this section - by imprisonment for not more than 10 years or a fine not exceeding VT10,000,000, or both; or
- (d) in the case of a body corporate that has previously committed an offence against this section – by a fine not exceeding VT100,000,000.

(3) If a body corporate commits an offence under this Act, any officer, director or agent of the corporation who:

- (a) authorised, assented or participated in; or
- (b) by his or her neglect or omission, contributed to,

the commission of the offence, is a party to and may be found guilty of the offence, and is liable to the penalty provided for the offence

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42. Continuing offence

Where an offence under this Act is committed or continues on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continues.

42A. Enforcement provisions

(1) For the purposes of implementing, enforcing or ensuring compliance with the provisions of this Act and its regulations, an enforcement officer may:

- (a) enter any land; and
- (b) enter private premises after notifying the owner of his or her intention to do so; and
- (c) examine any plant, facility, substance or thing; and
- (d) take or remove samples of any matter, substance or thing required for testing and analysis; and
- (e) take possession of any machinery, equipment, plant or other thing for further examination or testing or for use as evidence; and
- (f) take pictures, photographs or measurements or make sketches or recordings in any form; and
- (g) require the production of records and information relevant to the requirements of this Act and its regulations, and to make and take copies of such records and information; and
- (h) order that the operation of whole or part of a Ministry, department, statutory authority, local authority, plant or facility be stopped for the purposes of inspection; and
- (i) interview any person for the purposes of inspection; and
- (j) exercise any other powers conferred to him or her under this Act or under any other Act.

(2) If an enforcement officer takes possession of a matter, substance, plant machinery or other item or thing from a Ministry, department, statutory authority, local authority or facility, the Ministry, department, statutory authority, local authority or facility may request the Director to make a decision for the return of the matter, substance, plant machinery or other item or thing.

(3) Any document or information collected under paragraph (1)(g) must not be disclosed unless the document or information is disclosed:

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

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(d) in the public interest.

(4) A civil or criminal liability action is not to be taken against an enforcement officer or observer in respect of anything done or omitted to be done by the officer in good faith in the execution or purported execution of his or her powers and duties under this section.

(5) An employee of a Ministry, department, statutory authority or local authority or the owner, occupier or employer of a facility in respect of which an enforcement officer is exercising powers under this Act, must:

(a) give the enforcement officer any assistance to enable the enforcement officer to exercise powers and functions under this Act; and

(b) provide any document or information required by the enforcement officer for the purposes of this Act.

(6) A person who knowingly or deliberately, conceals the location or existence of any matter, substance, plant machinery, document or information from an enforcement officer, is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT250,000 or both.

(7) A person who fails to comply with a request or direction of an enforcement officer under this section is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT250,000, or both.

(8) For the purposes of this section, unless the context otherwise provides:

facility includes a building or place that provides a particular service or is used for a particular industry;

plant includes any machinery, equipment, tool or any of its components.

42B. Activity to cease

(1) If a person is charged with an offence under this Act, the activity for which that person is charged must cease immediately.

(2) A person who fails to comply with subsection (1) is guilty of an offence punishable on conviction:

- (a) if the person is an individual – by a fine not exceeding VT5,000,000; or
- (b) if the person is a body corporate – by a fine not exceeding VT10,000,000.

42C. Additional Court Orders

(1) The Court may, when convicting a person for an offence under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any penalty imposed, make an order:

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- (a) to prohibit the person from doing any act or engaging in any activity or undertaking that may result in the continuation or repetition of the offence; or
 - (b) directing work to stop temporarily or permanently, on any activity or undertaking on a proposed development; or
 - (c) directing the person to undertake the restoration of the area on which any activity is taking place, to as near to its original condition with the cost to be borne by the proponent; or
 - (d) directing the person to carry out improvement or remediation work on the area, with the cost to be borne by the proponent; or
 - (e) directing the person to pay into the Trust Fund, costs and other expenses associated with any inspection, audit or investigation undertaken in respect of the offence: or
 - (f) directing the person to pay into the Trust Fund, a refundable security for costs to ensure compliance with an order made under this section; or
 - (g) directing the person to pay a specified amount into the Trust Fund for the purposes of restoring the area on which the activity is taking place, to as near to its original condition; or
 - (h) directing the seizure and forfeiture of any vessel, aircraft or thing used in the commission of an offence; or
 - (i) directing the person to carry out a specified environmental audit of the activities the person has carried out; or
 - (j) requiring the person to comply with any other condition the court considers appropriate in the circumstances.
- (2) If a person is convicted of an offence under this Act, the Court may when sentencing the offender and on application by a person aggrieved, order the convicted person to pay to the person aggrieved:
- (a) compensation for loss or damage to property or income proved to have been suffered by that person as a result of the commission of the offence; or
 - (b) the cost of preventative or remedial action proved to have been reasonably taken or caused to be taken by that person as a result of the act or omission that constituted the offence.
- (3) An order under paragraph (1)(a) or (b) is enforceable as if it were an injunction.
- (4) An order under this section relating to payment of money is enforceable as if it were a judgement debt and recoverable in a court.
- (5) If a person fails to comply with a Court order made under this section relating to restoration, improvement or remedial action of an area, the Department may undertake the restoration, improvement or remediation of the area, and the cost is to become a debt recoverable in the court (including using the security for costs deposited in the Fund).

42D. Civil claims and damages

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(1) A person who has suffered loss which includes contracting health-related problems as a result of any activity that is found to be in breach of this Act, may institute a civil claim for damages in Court, which may include a claim for any or all of the following:

- (a) economic loss resulting from the activity or from activities undertaken to prevent, mitigate, manage, clean up or remedy any damage to the environment;
- (b) loss of earnings arising from damage to any natural resource;
- (c) loss to or of any natural environment or resource;
- (d) costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

(2) A claim under this section may be set off against any compensation paid under subsection 42C(2).

PART 6 – MISCELLANEOUS

43. Appeal to the Supreme Court

(1) A person may appeal to the Supreme Court against any decision made by the Minister, Council or Director to do all or any of the following:

- (a) to require an EIA under section 14;
- (b) to reject an application under section 22 or section 34;
- (c) to impose terms and conditions on any approval given under section 22 or section 34;
- (d) to issue a direction under section 26;
- (e) to make a decision prescribed by the regulations as a decision in respect of which an appeal can be made.

(2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.

(3) The Supreme Court may:

- (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Minister, Director or Council as may be necessary to give effect to the Court's decision; or
- (b) refer the matter back to the Minister, Director or Council with directions to reconsider the whole or any specified part of the matter.

44. Protection of officers, etc.

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An individual is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

44A. Penalty notice

(1) An enforcement officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under any provision of this Act or the regulations.

(2) A penalty notice is a notice to the effect that, if a person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) Payments made under this section are to be made at the Ministry of Finance and Economic Management which is then to be transferred into the Environmental Trust Fund.

(4) A penalty notice may be served personally or by post.

(5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(7) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(8) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

44B. Environmental Trust Fund

(1) The Environmental Trust Fund is established.

(2) There is to be paid into the Trust Fund:

(a) money appropriated by Parliament; or

(b) any environmental bond; or

(c) any contribution or donation; or

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- (d) fines of fixed penalties; or
- (e) any environmental protection fee; or
- (f) any other money required under this Act or any other written law to be paid into the Trust Fund.

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

- (a) to pay for necessary expenses incurred in the negotiation, monitoring (including the retention of technical experts), investigation or analysis of any matter or the undertaking of any environmental monitoring or audit programme; and
- (b) to pay for environmental rehabilitation work; and
- (c) to pay for research programmes; and
- (d) for the management of community conservation areas; and
- (e) if necessary, to pay for refund of environmental bonds and security of costs; and
- (f) as required for the protection and conservation of the environment.

45. Regulations

(1) The Minister may make regulations to give effect to the purposes and provisions of this Act, including for all or any of the following:

- (a) to establish criteria for the licensing of environmental practitioners and environmental laboratories or analytical facilities;
- (b) to prescribe and promote standards, guidelines or codes of environmental practice to give effect to any requirement under this Act;
- (c) to establish alternate dispute resolution processes for resolving environmental disputes, including the prescribing of criteria for the appointment of qualified persons to act as a mediator, arbitrator or facilitator;
- (d) to provide for the variation of any environmental assessment procedure;
- (e) to prescribe fees and charges in respect of any application made or service provided under this Act, including for the purpose of expert review of applications;
- (f) to control the taking or use of specified species;
- (g) to provide for the registration of Community Conservation Areas;
- (h) to establish conditions or model agreements for bioprospecting.

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(2) The Minister may make regulations with other Ministers, including for the purpose of any or all of the following:

(a) regulating the environmental effects of:

(i) the importation and transportation of hazardous substances;

(ii) the proposed introduction of foreign organisms;

(iii) pests and weeds;

(iv) waste management;

(v) air and water pollution;

(b) regulating the harvesting of natural resources;

(ba) upholding obligations under the United Nations Framework Convention on Climate Change for climate change adaptation and mitigation;

(c) providing for the containment, isolation, seizure, transportation, safe-keeping or disposal of any species of wild flora or fauna.