

# LAWS OF KIRIBATI

## Nº 9 OF 1999

### ENVIRONMENT ACT

(Incorporating amendments proposed by the *Environment (Amendment) Bill* 2006)

#### **An Act to provide for the protection, improvement and conservation of the environment of the Republic of Kiribati and for connected purposes**

*Commencement: 21 March 2000*

#### PART I—PRELIMINARY

##### **1. Short title and commencement**

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

##### **2. Interpretation**

In this Act, unless the context otherwise requires—

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

'conduct' includes an act or omission;

'conservation' includes protection, maintenance and preservation;

'construction work' includes—

(a) excavation; and

(b) erection, alteration or repair of a building or structure;

'conveyance' means a vessel, vehicle or aircraft;

'development' means any enterprise or undertaking, for industrial or commercial purposes which includes—

(a) the erection of a building or structure;

(b) the carrying out of work, in, on, over or under land or sea;

(c) the use of land, building, structure or work; and

(d) the subdivision of land;

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

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

'discharge' includes dumping, spilling, leaking, pumping, throwing, placing, dropping, abandonment, depositing, discarding, rejecting, emitting and other similar activities;

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

*As at 17 November 2006*

'energy' includes vibrations, noise, heat and electromagnetic radiation;

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

'environment inspector' means a person appointed under section 5(4), and includes the Principal Environment Officer;

'environment licence' means a licence granted under section 32 or section 37;

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

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

'Environment environmental impact statement (EIS)' means a report presenting the results of an environmental impact assessment under Part III;

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

'evidentiary material' means an item that is suspected on reasonable grounds of—

- (a) being involved in a contravention of this Act;
- (b) affording evidence as to a contravention of this Act; or
- (c) being used, or intended to be used, for the purpose of contravening this Act;

'harm' means an adverse effect other than an insignificant adverse effect, and, in the case of an organism, includes gathering, plucking, cutting, pulling up, moving, destroying, taking, digging up, removing, injuring, hunting, shooting, poisoning, netting, snaring, spearing, pursuing, capturing, trapping or killing the organism;

'heritage' includes a place, feature, structure or object that has aesthetic, archaeological, historic, cultural, natural, scientific or social significance or other special value for the present community and for future generations;

'impact', concerning the use, development or protection of the environment, includes—

- (a) a positive or adverse impact;
- (b) a temporary or permanent impact;
- (c) a past, present or future impact;
- (d) an impact which is cumulative over time or in combination with other impacts regardless of its scale, intensity, duration or frequency;
- (e) an impact of high probability; and
- (f) an impact of low probability which has a potentially high impact;
- (g) spatial dimension of such impacts, whether local, regional or global.

'Initial environmental report (IEE)' means a brief report presenting the results of a preliminary environmental assessment of an existing or proposed development under Part III;

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

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

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

'licence' means a licence granted under this Act;

'litter' includes waste, refuse, debris and rubbish, but does not include vegetation;

'management plan' means a management plan for a protected area or an area on the World Heritage list;

'mitigation' includes—

- (a) avoiding an impact by not taking a particular course of action as part of development;
- (b) minimising an impact by limiting the scale of the action or changing the method of carrying out an action;
- (c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- (d) reducing or eliminating an impact over time by conservation and maintenance action regarding development activities; or
- (e) compensating for the impact by replacing or providing substitutes for the resources or environment;

'noise' includes sound and vibration;

'noise control equipment' means—

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

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

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

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

'open place' means any place not inside a building or conveyance;

'organism' includes—

- (a) an organism that is alive or dead;
- (b) part of an organism;
- (c) egg, embryo, ova, semen, seed and any organic animal tissue from which the organism can be produced;
- (d) any matter or secretion that the organism produces; and
- (e) any product that is derived from or includes the organism;

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

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

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

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

'precautionary principle' means the principle whereby a lack of scientific certainty should not be used as a reason for not acting to anticipate, prevent or minimise environmental harm;

'premises' means residential, commercial, industrial or other premises of any kind and includes a building or structure, and any land or a place (whether enclosed or built on or not), and a land or sea based air or space launch or landing facility;

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

'Principal Environment Officer' means the person appointed under section 5(2);

'private premises' means any premises which is not a public place;

'protected area' means an area, subject to any conditions (if any), prescribed under section 43, and includes the area described under section 44;

'protected species' means a species, subject to any condition (if any), prescribed under section 41;

'public authority' means—

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

'species' includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon;

'substance' means any solid, liquid or gas, including odour;

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

- (a) sustaining the potential of natural and physical resources to meet the needs of future generations;
- (b) using, developing or protecting renewable natural and physical resources so that their ability to yield long-term benefits is not endangered;
- (c) using, developing or protecting non-renewable natural resources so as to lead to an orderly and practical transition to adequate substitutes including renewable resources;
- (d) safeguarding the life-supporting capacity of air, water, soil and ecosystem; and
- (e) avoiding, remedying or mitigating any adverse effects of development on the environment;
- ~~(f) preserving endangered, rare and threatened species that may be considered ecologically and in terms of heritage of special value to Kiribati and global diversity, as the Minister, acting in accordance with the advice of the Cabinet may from time to time by order in writing declare to be such, as the Minister, acting in accordance with the advice of the Cabinet may from time to time by order in writing declare to be such.~~
- (f) preserving protected species and areas of environmental, cultural and historic significance; and
- (g) avoiding, minimising, mitigating and remedying adverse effects on natural, social and cultural systems;

'trade' includes commercial undertaking;

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

'waste includes matter—

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

'World Heritage Convention' means the *Convention for the Protection of the World Cultural and Natural Heritage* done at Paris on 16 November 1972;

'World Heritage list' means the list established by Article 11(2) of the World Heritage Convention.

### **3. Objects of the Act**

The objects of this Act shall be—

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

### **4. Effect of this Act on other Acts**

- (1) To the extent of any inconsistency between this Act, and any other Act, the Acts shall be construed so far as is possible so that the objects of this Act are fulfilled.
- (2) Compliance with the requirements of this Act shall not absolve a person from separate compliance with any other law of Kiribati in so far as it is not inconsistent with this Act.

**4A. Extent of Act**

- (1) This Act applies, in addition to the circumstances described in Part III of the *Penal Code*—
- (a) throughout Kiribati and Kiribati waters; and
  - (b) throughout the exclusive economic zone of Kiribati.
- (2) This Act shall not apply to any island or part of an island which the Minister, acting in accordance with the advice of the Cabinet may from time to time by order in writing declare to be so exempt.
- (3) If expressly stated, a provision of this Act may apply in other places.

**4B. Requirements of decision making**

In any decision made under this Act, the decision-maker must—

- (a) have due respect for the culture and traditions of the people of Kiribati;
- (b) endeavour to minimise, where appropriate, any adverse effects upon those persons who engage in a subsistence lifestyle;
- (c) consider, where appropriate, the retention and use of the traditional knowledge, innovations and practices of the people of Kiribati relevant to the conservation and sustainable use of the biological diversity of Kiribati;
- (d) be mindful of the technical capacity constraints prevailing in Kiribati;
- (e) not act inconsistently with the precautionary principle; and
- (f) not act to substantially increase the risk of extinction of any species in Kiribati.

**PART II—ADMINISTRATION****5. Administration of the Act**

- (1) The Minister, acting in accordance with the advice of the Cabinet shall be responsible for the due administration and implementation of this Act.
- ~~(2) The Beretitenti, acting in accordance with the advice of the Public Service Commission may appoint Environmental Inspectors for the purposes of this Act.~~
- (2) Subject to section 99 of the *Constitution*, the Minister shall, by instrument in writing published in the *Gazette*, appoint a Principal Environment Officer.
- (3) The Minister may give the Principal Environment Officer directions as to the exercise of any powers or functions or the performance of any duties under this Act.
- (4) Subject to section 99 of the *Constitution*, and subject to subsection (5), the Minister may, by instrument in writing, appoint a person (including a class of persons) as an environment inspector.

- (5) If a person or class of persons to be appointed as an environment inspector is employed otherwise than in the Ministry of the Minister, the Minister must consult with the employer of the person or class of persons.

## **6. Functions of the Minister**

- (1) The Minister, acting in accordance with the advice of the Cabinet shall have the following functions—
- ~~(a) overall management and control of the Environmental and Conservation Division of the Ministry;~~
  - ~~(ab)~~ protect, restore and enhance the quality of the environment of Kiribati, balanced against the need to promote sustainable development;
  - ~~(be)~~ develop, establish and administer systems of prevention and control of pollution in both the industrial and non-industrial sectors;
  - ~~(cd)~~ develop national standards to promote sustainable development and to monitor those standards through environmental auditing;
  - ~~(de)~~ assist in developing legislation for systems of environmental planning at national, provincial and local level, and the development of national, provincial and local environment plans;
  - ~~(ef)~~ collaborate with relevant public authorities in assisting in the conservation and management of areas of national and international significance;
  - ~~(fg)~~ promote the participation of the community in environmental decision-making;
  - ~~(gh)~~ ensure freedom of and access to information on environmental matters, and in particular to ensure that the community has access to relevant information about hazardous substances arising from, or stored, used or sold by any industry or public authority, private person or private enterprise or any other person;
  - ~~(hi)~~ set compulsory standards for environmental improvement, including the setting of pollution standards and limits for polluter licence;
  - ~~(ij)~~ conduct public education and awareness programmes about the environment;
  - ~~(jk)~~ promote the study of the environment through research, surveys, listing and classification.
- (2) For the purposes of promoting sustainable development as envisaged under subsection (1)(b), the Minister acting in accordance with the advice of the Cabinet shall as far as practicable be guided by the following—
- (a) the precautionary principle, which is the lack of full scientific certainty should not be used as a reason for not acting to prevent any environmental damage or degradation;
  - (b) fairness to future generations in that the present generation should ensure that the health, diversity, and productivity of the environment is maintained or enhanced for the benefit of future generations;



- (c) conservation of biological diversity and ecological integrity; and
- (d) improved valuation and pricing of environmental resources.

## **7. ~~Further functions of the Minister~~**

~~Subject to the overall control and direction of the Cabinet and the provisions of this Act the Minister shall—~~

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

## **8. Performance targets for public authorities**

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

## **9. ~~Power to give directions to public authorities~~**

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

- ~~(a) to do anything within the powers of that public authority which, in the opinion of the Beretitenti, contributes to the achievement of the objects of the Act; or~~
- ~~(b) to refrain from doing any act which, in the opinion of the Beretitenti, detracts from the achievements of the objects of the Act.~~

**10. Powers of entry of Inspectors**

- (1) Subject to the provisions of subsections (2) and (3) an Inspector may enter—
  - (a) any land or building other than a dwelling house at any time; and
  - (b) a dwelling house at a reasonable time during daylight.
- (2) An inspector shall not exercise the powers conferred by subsection (1) except for the purpose of—
  - (a) ascertaining the nature and condition of the land, building, water or reef; or
  - (b) investigating an alleged offence of which an Inspector has reasonable and probable grounds to believe that such entry will produce evidence.
- (2) The powers conferred by subsection (1) shall not be exercised unless reasonable notice has been given to the owner or occupier of the land building or dwelling house or unless a search warrant has been obtained.
- (3) The provisions of the *Criminal Procedure Code* section 101 and 102 or any successor legislation, shall apply to the issuance of search warrants hereunder.

**11. Minister's power to issue general directions**

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

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

**~~12. General duty to consider environmental impact~~**

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

**~~13. Declaration of prescribed development, Schedule~~**

- ~~(1) The development specified in the Schedule shall for purposes of this Act be classified as prescribed development.~~
- ~~(2) The Minister acting in accordance with the advice of Cabinet may by order from time to time as the Minister sees fit, include in or delete from the said Schedule any development or proposed development except for individual proposals.~~

**~~14. Applications for approval~~**

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

- ~~(2) On receipt of a development application referred to in subsection (1), the Minister shall instruct the Secretary within fifteen working days of such receipt to advise the developer to submit either—~~
- ~~(a) a development application accompanied by an Initial environment evaluation report, together with any additional requirements as notified by the Secretary; or~~
  - ~~(b) a development application accompanied by an environmental impact statement, together with any additional requirements as notified by the Secretary.~~
- ~~(3) Where the developer is a foreign investor, a certified copy of the Foreign Investment Commission's certificate of approval shall be attached with the application.~~
- ~~(4) Where the Minister acting in accordance with the advice of the Cabinet decides to dispense with the requirements of subsection (2), the Secretary shall advise the developer accordingly within the time stipulated in that subsection.~~
- ~~(5) In determining as to whether the developer is required to submit a report referred to in paragraph (a) or (b) of subsection (2), the Minister acting in accordance with the advice of the Cabinet shall take into consideration the significant impact the development is likely to have on the environment and other factors that may be prescribed by regulations made under section 52.~~

#### **~~15. Requirement for information concerning existing prescribed development~~**

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

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

#### **~~16. Consent required for prescribed development~~**

- ~~(1) No developer shall commence or continue to carry out any prescribed development unless—~~
- ~~(a) a development application has been submitted to the Minister, together with either a initial environmental evaluation report or an environmental impact statement, as specified by the Minister in section 14; and~~
  - ~~(b) the developer has been issued with a development consent by the Minister, acting in accordance with the advice of the Cabinet under this Part; or~~

~~(c) — the Minister acting in accordance with the advice of the Cabinet has exempted the development from the requirements of this Part.~~

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

### **~~17. — Contents of initial environmental report~~**

~~Any initial environmental evaluation report in respect of proposed and existing prescribed development shall —~~

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

### **~~18. — Requirements for further information~~**

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

### **~~19. — Publication of initial environmental evaluation report and procedure in respect of objections and appeal~~**

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

- ~~(2) Any public authority or person whose interests are likely to be affected by the proposed development may within thirty days from the date of publication of the notice referred to in subsection (1) make written objections to the Minister in respect of the proposed development.~~
- ~~(3) On receipt of the written objections referred to in subsection (2), the Minister shall examine the grounds of objections and where the Minister deems it necessary after examining the objections of the affected parties either—~~
- ~~(a) acting in accordance with the advice of the Cabinet consent to the development, or the continuation of that development, with or without conditions;~~
  - ~~(b) acting in accordance with the advice of the Cabinet require the developer to produce an environmental impact statement and to conform with the provisions concerning environmental impact statements under this Part; or~~
  - ~~(c) acting in accordance with the advice of the Cabinet refuse consent to the prescribed development.~~
- ~~(4) In making the decision the Minister, acting in accordance with the advice of the Cabinet shall take into account—~~
- ~~(a) the information contained in the development application in the initial environmental evaluation report;~~
  - ~~(b) any objections received under subsection (2) and any information provided in support of the objections; and~~
  - ~~(c) the objects of this Act.~~

## **20. Contents of environmental impact statement**

~~An environmental impact statement in respect of proposed and existing prescribed development shall—~~

- ~~(a) contain a full description of the objectives of the prescribed development;~~
- ~~(b) analyse the need for the prescribed development;~~
- ~~(c) indicate the consequences of not implementing or carrying out the prescribed development;~~
- ~~(d) include adequate information and technical data adequate to allow assessment of the impact of the prescribed development on the environment;~~
- ~~(e) examine any reasonable alternatives to the prescribed development, including alternative sites for it;~~
- ~~(f) describe the environment that is or is likely to be affected by the prescribed development and by any reasonable alternatives to it;~~
- ~~(g) assess the actual or potential impact on the environment of the prescribed development and of any reasonable alternatives to it, including the primary, secondary, short term, long term, adverse and beneficial impacts on the environment;~~

- ~~(h) — outline the reasons for the choice of the prescribed development;~~
- ~~(i) — estimate the time period of any expected impacts;~~
- ~~(j) — describe the geographic boundaries of the impacts;~~
- ~~(k) — state the methods of predicting and assessing each impact from the construction, operational and where relevant, the de-commissioning phase of an implemented development and for each alternative presented;~~
- ~~(l) — justify the prescribed development in terms of environmental, economic, culture and social considerations;~~
- ~~(m) — identify and analyse all likely impacts or consequences of implementing the prescribed development, including implications for the use and conservation of energy;~~
- ~~(n) — describe measures to prevent or reduce significant adverse impacts and enhance beneficial effects and an account of their likely success with estimated costs as appropriate;~~
- ~~(o) — describe residual impacts which cannot be mitigated or can only be mitigated partially;~~
- ~~(p) — describe proposed monitoring and reporting schemes with estimated costs as appropriate;~~
- ~~(q) — describe and assess the estimated cost-effectiveness of any safeguards or standards for the protection of the environment to be adopted or applied including its implementation, monitoring and reporting;~~
- ~~(r) — give an account of the impact on the environment of any of a series or programme of similar development (whether implemented or not) over a period of time;~~
- ~~(s) — give sources and references to information relied on and outline any consultations with any persons made during the preparation of the report.~~
- ~~(t) — include a site survey report concerning National Heritage items or traditional artifacts as specified by the Minister, acting in accordance with the advice of the Cabinet;~~
- ~~(u) — address any further matters as the Minister acting in accordance with the advice of the Cabinet specifies; and~~
- ~~(v) — give a clear and concise summary printed on a separate page.~~

## **21. — Publication of environmental impact statement and procedure in respect of objections and appeal**

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

- ~~(2) Any public authority or person whose interests are likely to be affected by the proposed development may within thirty days from the date of publication of the notice referred to subsection (1) make written objections to the Minister in respect of the proposed development.~~
- ~~(3) On receipt of the written objections referred to in subsection (2), the Minister acting in accordance with the advice of the Cabinet shall examine the grounds of objections, and where he deems it necessary after examining the objections of the affected parties either—~~
- ~~(a) acting in accordance with the advice of the Cabinet issue consent to the development with or without conditions; or~~
- ~~(b) acting in accordance with the advice of the Cabinet refuse consent.~~

## **~~22. Development to be carried out in accordance with development consent~~**

- ~~(1) A developer shall not carry on any development except in accordance with the development consent.~~
- ~~(2) An Inspector may at any time if he has reason to believe that any person is responsible for, or substantially involved in any development, request such person to produce within a reasonable time evidence of the development consent.~~
- ~~(3) If any Inspector is not satisfied that a development consent authorising the particular development exists, or where the person requested under this section fails within a reasonable period to produce such evidence, the Inspector may issue a notice in writing requiring all persons involved in the development to immediately discontinue such development.~~
- ~~(4) Any person who contravenes subsections (2) or (3) commits an offence against this Act.~~
- ~~(5) Any person who is dissatisfied or disagree with the decision of an inspector may appeal to the Minister within 14 days of the inspector's notice issued under subsection (3).~~
- ~~(6) Any person who is dissatisfied or disagree with the Minister's decision under subsection (5) may within 21 days of the Minister's decision appeal to the High Court.~~

## **~~23. Offence of providing false or misleading information~~**

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

## **~~24. Prescribed forms~~**

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

**25. ~~Secretary to keep records~~**

- (1) ~~The Secretary shall keep proper records of all development applications, environmental impact assessments, public environmental reports and development consents.~~
- (2) ~~The Secretary shall make the records referred to in subsection (1) available for perusal to the public during normal working hours.~~

**26. ~~Minister to issue guidelines for assessment of reports and statements~~**

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

**27. ~~Responsibility for initial environmental evaluation reports, etc.~~**

- (1) ~~The developer shall be responsible for all expenses incurred in the preparation of—~~
- ~~(a) an initial environmental evaluation report;~~
  - ~~(b) the environmental impact statements; and~~
- (2) ~~The developer shall provide the necessary information for the preparation of the initial environmental evaluation report.~~

**28. ~~Monitoring environmental aspects of development and costs~~**

- (1) ~~The Secretary acting in accordance with the advice of the Cabinet or any relevant public authority authorised by the Cabinet may at any time, whether before or after a development activity has been completed, monitor, or cause to be monitored, all or any of the environmental aspects of the implemented development activity.~~
- (2) ~~In the performance of any functions under subsection (1), the Secretary acting in accordance with the advice of the Cabinet or any relevant public authority authorised by the Cabinet shall have regard to the effectiveness of any safeguards or standards adopted for the protection of the environment and the accuracy of any forecasts of the environmental impacts of the development activity.~~
- (3) ~~The Minister, may acting in accordance with the advice of the Cabinet give such directions to the developer to ensure that appropriate safeguards and steps are taken by the developer to mitigate any adverse environmental aspects.~~
- (4) ~~The developer shall comply with the directions of the Minister issued pursuant to this section.~~
- (5) ~~The developer of any prescribed development shall be responsible for the monitoring of such development and all the costs and expenses incurred for such monitoring.~~

**29. ~~Development consents non-transferable~~**

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



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

#### ~~PART IV—CONTROL OF POLLUTION~~

### ~~30. Causing pollution and noxious discharges~~

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

### ~~31. Discharge of waste in circumstances in which it is likely to cause pollution~~

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

### ~~32. Occupiers of premises to take certain measures~~

~~The occupier of any premises shall—~~

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

### ~~33. Penalties for breach of section 30 or 31~~

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

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

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

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

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

**34. ~~Occupiers of prescribed premises to obtain a licence for discharge of waste pollutant, etc~~**

- (1) ~~Subject to the provisions of this Act, no person who occupies a prescribed premises shall—~~
- ~~(a) cause or increase, or permit to be caused or increased, the discharge of waste or pollutant, the emission of noise, or electromagnetic radiation from the prescribed premises; or~~
  - ~~(b) alter or permit to be altered the nature of the waste or pollutant discharged or raised, odour or electromagnetic radiation emitted from the prescribed premises,~~
- ~~— unless in accordance with any conditions of the licence.~~
- (2) ~~Any occupier of a prescribed premises who contravenes the provisions of subsection (1) commits an offence against this Act.~~

**35. ~~Application for licence~~**

- (1) ~~An application for a licence to discharge waste, pollutant, emit noise, odour or electromagnetic radiation from a prescribed premises shall be made to the Secretary in the prescribed form and—~~
- ~~(a) be accompanied by the prescribed fee; and~~
  - ~~(b) include any information, plans, specifications and other document and information as the Secretary acting in accordance with the advice of the Cabinet may require.~~
- (2) ~~On receiving an application, the Secretary acting in accordance with the advice of the Cabinet shall advise the applicant that the application either complies with the requirements of subsection (1) or where it does not meet the requirements of the aforesaid subsection inform him accordingly.~~
- (3) ~~Where the application complies with subsection (1), the Secretary acting in accordance with the advice of the Cabinet shall seek comments on it from any public authority or person who in the opinion of the Minister, has a direct interest in the subject matter of the application.~~
- (4) ~~The Secretary shall on receipt of comments from the persons mentioned in subsection (3), take into account any comments received and may acting in accordance with the advice of the Cabinet either—~~
- ~~(i) acting in accordance with the advice of the Cabinet grant a licence subject to such conditions as he may specify; or~~
  - ~~(ii) acting in accordance with the advice of the Cabinet refuse to grant the licence.~~

**36. ~~Revocation, suspension or amendment of licences by Secretary~~**

- (1) ~~The Secretary acting in accordance with the advice of the Cabinet may, by notice in writing served on the licensee revoke or suspend the licence, if the Secretary acting~~

~~in accordance with the advice of the Cabinet is satisfied with the advice of the Cabinet that there has been a breach of any of the conditions of the licence issued pursuant to section 38.~~

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

### **~~37. Duty of persons becoming occupiers of prescribed premises~~**

- ~~(1) A person who is the occupier of any prescribed premises in respect of which a licence is in force shall comply with the conditions of the licence and within thirty days of coming into occupation of the prescribed premises apply for the transfer of the licence to him.~~
- ~~(2) Where the Secretary has reason to believe that the change of occupier of the prescribed premises would not cause a breach of the conditions of the licence, he acting in accordance with the advice of the Cabinet may transfer the licence to the new occupier with or without further conditions or otherwise refuse such transfer.~~

### **~~38. Conditions of licence~~**

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

- ~~(a) specified pollution control equipment is installed and operated in the manner specified;~~
  - ~~(b) specified measures are taken to minimise the likelihood of pollution due to any activity conducted or proposed to be conducted in the premises;~~
  - ~~(c) within any specified time, monitoring equipment of a specified type is provided on the premises;~~
  - ~~(d) within any specified time a monitoring programme is carried out to supply information concerning the characteristics, volume and effects of—~~
    - ~~(i) the waste that is being or is to be discharged from those premises into the environment; or~~
    - ~~(ii) the noise, odour or electromagnetic radiation that is being or is to be emitted from those premises into the environment;~~
  - ~~(e) where practicable, measures are taken to re-use or make available for re-use all or part of the waste;~~
  - ~~(f) any equipment be operated as specified so as to prevent, control or abate pollution; or~~
  - ~~(g) the licensee complies with any other condition the Secretary, acting in accordance with the advice of the Cabinet prescribes.~~
- ~~(2) The person occupying the premises shall carry out any monitoring programme as required in the licence and supply all information recorded as a result of that programme to the Secretary in the specified manner.~~

**39. ~~Pollution abatement notice~~**

- (1) ~~The Secretary may serve or cause to be served on the owner or the occupier of any premises a pollution abatement notice, if the Secretary acting in accordance with the advice of the Cabinet is satisfied that—~~
- ~~(a) waste matter is being or is likely to be discharged; or~~
  - ~~(b) any noise, odour or electromagnetic radiation is being or is likely to be emitted, from the premises into the environment; or~~
  - ~~(c) that waste matter or noise, odour or electromagnetic radiation does not comply with, or would not if it were discharged or emitted into the environment comply with—~~
    - ~~(i) any standard under an approved policy; or~~
    - ~~(ii) any prescribed standard; or~~
  - ~~(d) waste or noise, odour or electromagnetic radiation has caused or is causing or likely to cause pollution.~~
- (2) ~~A pollution abatement notice—~~
- ~~(a) shall set out the reason for the notice; and~~
  - ~~(b) may require persons affected by it to take any measures the Secretary acting in accordance with the advice of the Cabinet considers necessary to prevent, control or reduce the discharge of waste or emission of noise, odour or electromagnetic radiation to which the notice relates in the manner specified in the notice.~~
- (3) ~~Where a pollution abatement notice is in force it shall apply to each person who is the owner or the occupier of the premises on whom it is served and binds each successive owner or occupier of the premises or the land to which the notice relates.~~
- (4) ~~The Secretary, acting in accordance with the advice of the Cabinet may revoke a pollution abatement notice in writing.~~
- (5) ~~The Secretary, acting in accordance with the advice of the Cabinet may amend the pollution abatement notice—~~
- ~~(a) by extending the time to comply with any requirement in the notice if the Secretary is satisfied that the circumstances of the case justify such an extension; or~~
  - ~~(b) by revoking or amending any requirement in the notice.~~
- (6) ~~A person to whom a pollution abatement notice applies shall comply with the requirements contained in the notice.~~
- (7) ~~Before extending or amending a notice, the Secretary shall give the person a reasonable opportunity to state in writing his objections, if any.~~

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

**40. ~~Outgoing owner or occupier to notify the Secretary and successor in ownership or occupation~~**

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

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

**41. ~~Environment inspector may serve stop notice~~**

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

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

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

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

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

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

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

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

**42. ~~Records of licences, pollution abatement notices and stop notices~~**

~~The Secretary shall record details of the following—~~

- ~~(a) licences (including applications for renewals or transfer);~~

- ~~(b) — pollution abatement notices; and~~
- ~~(c) — stop notices.~~

#### **43. ~~Powers concerning discharge of waste or pollutant and creation of pollution~~**

- ~~(1) — Where any waste or pollutant has been or is being discharged or is likely to be discharged from any premises in breach of a licence, stop notice or a pollution abatement notice, an Inspector may in writing advise any person or assist such person to remove, disperse, destroy, dispose of or otherwise deal with the waste.~~
- ~~(2) — Any expenses incurred by the Division in assisting the removal, disposal, destruction, disposal or other dealing, in the prevention, control or abatement, may be recovered from the person who—~~
  - ~~(i) — was the occupier of the premises at the time of that discharge; or~~
  - ~~(ii) — caused or permitted to be caused such discharge or was responsible for such discharge, by action in a court as a debt due to the Republic and shall pay any costs so recovered into the Consolidated Fund.~~

#### **44. ~~Defences to certain proceedings~~**

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

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

#### **45. ~~Discharge from vehicles or vessels or aircrafts~~**

- ~~(1) — No person shall drive a vehicle capable of discharging any matter into the environment in any place unless the vehicle complies with the prescribed discharge standards.~~
- ~~(2) — No person shall sail or conduct a vessel capable of discharging any matter into the environment unless the vessel complies with the prescribed discharge standards.~~

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

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

#### **46. Interference with anti-pollution devices on vehicles or vessels**

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

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

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

#### **47. Installation of equipment emitting unreasonable noise**

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

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

### **PART V—MISCELLANEOUS**

#### **48. Protection of officers**

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

#### **49. Offences by corporation**

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

#### **50. General penalty for conviction**

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

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

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

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

### **51. — Judicial review**

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

### **52. — Application of Act may be limited**

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

### **53. — Regulations**

- ~~(1) — The Minister acting in accordance with the advice of the Cabinet may make regulations, prescribing all matters that are required or permitted to be prescribed under this Act.~~
- ~~(2) — Without prejudice to the generality of subsection (1), the Minister may make regulations—~~
- ~~(a) — prescribing the application forms to be used;~~
  - ~~(b) — prescribing the manner in which and the persons who may make applications;~~
  - ~~(c) — requiring information to be furnished by an owner, occupier, developer or any other person;~~
  - ~~(d) — prescribing the manner in which impact predictions and environmental impact statements may be made;~~
  - ~~(e) — prescribing the manner in which objections may be made to proposed or existing development~~
  - ~~(f) — prescribing the form and contents of public environmental reports, environmental impact statements and notices;~~
  - ~~(g) — for the manner in which records may be kept;~~
  - ~~(h) — prescribing the fees or charges that may be levied for forms, applications or other services rendered by the Division;~~
  - ~~(i) — for the form of licences, stop notices and pollution abatement notices;~~
  - ~~(j) — setting out discharge and other standards in respect of vehicles, vessels or aircraft; and~~



- ~~(k) prescribing anything which is required or permitted to be prescribed by regulations made under this Act.~~

### PART III—OBLIGATIONS

#### Division 1—Pollution

#### **12. Littering**

- (1) Litter must be placed—
- (a) in a contained manner;
  - (b) separate from vegetation material; and
  - (c) in a place where it will be collected for disposal.
- (2) Any person who discharges litter in any open place or public place contrary to subsection (1), other than in accordance with an environment licence, commits an offence.

*Maximum penalty: fine of \$500, imprisonment for one month*

- (3) Subsections (1) and (2) only apply to—
- (a) South Tarawa;
  - (b) Kiribati waters;
  - (c) the exclusive economic zone of Kiribati; and
  - (d) any other area that may be prescribed by regulation.

#### **13. Pig premises to be kept clean**

The occupier of premises who allows a place where a pig is kept to be in an unclean condition commits an offence.

*Maximum penalty: fine of \$500, imprisonment for one month*

#### **14. Excessive emissions from vehicles**

- (1) A person who drives, or allows a person to drive, a vehicle if the vehicle emits excessive emissions commits an offence.

*Maximum penalty: fine of \$500, imprisonment for one month*

- (2) For the purpose of subsection (1)—

'excessive emissions' means—

- (a) for a diesel-fuelled vehicle, when operated normally—
  - (i) visible smoke continuously for more than five seconds; or
  - (ii) a cloud of visible smoke which is larger than one metre in diameter at any point; and
- (b) for a petrol-fuelled vehicle, when operated normally, any visible smoke.

- (3) The definition of 'excessive emissions' may be amended by regulation.

**15. Pollution of waters**

- (1) A person who causes or allows the discharge of any substance or energy into water that—
- (a) results in a change in the physical, chemical or biological condition of the water;
  - (b) causes a visible change to the water or the surface of the water;
  - (c) makes, or is likely to make, the water unclean, noxious or poisonous;
  - (d) makes, or is likely to make, the water detrimental to the health or safety of persons, property, animals or plants; or
  - (e) interferes with, or is likely to interfere with, the exercise or enjoyment of any person's right in relation to the water,
- other than in accordance with an environment licence commits an offence.
- Maximum penalty: fine of \$100,000, imprisonment for five years*

- (2) In this section—

'discharge' includes, in addition to the definition in section 2, placing any substance in a position where it falls, descends, is washed, is blown or percolates into any water, or is likely to do so;

'water' includes the whole or any part of any lagoon, swamp, wetland, lake, unconfined surface water, natural or artificial watercourse, dam, tidal waters (including the sea), underground waters, or water in artificial works, water mains, water pipes or waterchannels.

**16. Dumping in sea or lagoon**

- (1) A person who causes or allows the dumping of waste or other matter in the sea or lagoon other than in accordance with an environment licence commits an offence.
- Maximum penalty: fine of \$10,000, imprisonment for two years*

- (2) Subsection (1) does not apply to:

- (a) the disposal of waste or other matter incidental to or derived from the normal operations of vessels, aircraft, platforms or other man-made structures; or
- (b) the placement or abandonment of waste or other matter other than for disposal.

- (3) In this section—

'dumping' includes any abandonment or toppling of platforms or other man-made structures;

'waste or other matter' means materials and substances of any kind, form or description, and includes vessels, aircraft, platforms or other man-made structures, cables, pipelines and marine research devices.

**17. Pollution from private premises**

A person who causes or allows the discharge of any substance or energy from private premises that unreasonably interferes, or is likely to unreasonably interfere with, the health or comfort of any person outside that premises commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

**18. Pollution in a public place or public conveyance**

A person who causes or allows the discharge of any substance or energy in any public place, or conveyance used by the public, that unreasonably interferes with, or is likely to unreasonably interfere with, the health or comfort of any person commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

**19. Pollution that harms the environment**

A person who causes or allows the discharge of a substance or energy which harms the environment other than in accordance with an environment licence commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

**20. Duty to clean-up environment**

(1) A person who causes or allows the discharge of any waste or other substance in contravention of this Act must take any appropriate actions to remove the waste or other substance and remedy, mitigate and contain any harm to the environment.

(2) A person who fails to comply with subsection (1) commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

Division 2—Environmentally-Significant Activities

**21. Environmentally-significant activities**

(1) Environmentally-significant activities are activities listed in the Schedule.

(2) The Minister, acting in accordance with the advice of Cabinet, may, by notice published in the *Gazette*, amend the Schedule.

**22. Carrying out environmentally-significant activities**

(1) An—

(a) environmentally-significant activity; and

(b) any construction work designed to enable an environmentally-significant activity,

must be carried out in accordance with an environment licence.

(2) A person who—

(a) carries out; or

(b) is responsible for, directs, causes or allows the carrying out of,

an environmentally-significant activity, or construction work, contrary to subsection (1) commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

### Division 3—Conservation

#### **23. Harming coral reefs, mangroves and sea grass beds**

(1) A person who causes or allows harm (other than insignificant harm) to a—

(a) coral reef;

(b) mangrove; or

(c) sea grass bed,

other than in accordance with an environment licence commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

(2) Subsection (1) does not apply to conduct that is a traditional practice in Kiribati.

#### **24. Harming a protected species or its nest or dwelling place**

(1) A person who causes or allows harm to—

(a) an organism that is a protected species; or

(b) the nest or dwelling place of a living organism that is a protected species,

other than in accordance with an environment licence commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

(2) In any proceedings for a contravention of paragraph (1)(a), it is a defence if the person against whom the proceedings have been brought establishes—

(a) that the harm to the organism was incidental to the lawful taking of a marine species; and

(b) if the organism was taken or captured, that upon becoming aware of the taking or capturing, immediate steps were taken to return the organism to its natural environment.

#### **25. Trading, possessing, etc. protected species**

(1) A person who buys, sells, offers for sale, possesses, has under control, imports or exports an organism that is a protected species other than in accordance with an environment licence commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

(2) In any proceedings for a contravention of subsection (1), it is a defence if the person against whom the proceedings have been brought establishes that the organism was taken from the wild, or cultivated, without contravening this Act.

(3) A person does not contravene subsection (1) if the organism is a plant naturally occurring on land that the person owns or occupies.

**26. Actions affecting protected areas**

A person who engages in conduct which results in—

- (a) harm an organism in a protected area;
- (b) harm to a natural feature in a protected area;
- (c) harm to heritage in a protected area;
- (d) the carrying out of construction work in a protected area;
- (e) any activity for commercial purposes in a protected area;
- (f) harm to any fence, sign, or building in a protected area; or
- (g) harm to the environment in a protected area,

other than in accordance with an environment licence or management plan for the area, commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

**27. Possessing certain items in a protected area**

A person who possesses any of the following items in a protected area—

- (a) an explosive;
- (b) a device or instrument used to hunt or capture an animal; or
- (c) a device for detecting minerals or metal,

other than in a stowed position which is not accessible for use, or in accordance with an environment licence, commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

**28. World Heritage of a World Heritage area**

A person who causes or allows harm to the cultural heritage or natural heritage (as defined by the World Heritage Convention) of an area included on the World Heritage list, other than in accordance with an environment licence, commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

**Division IV—Miscellaneous****29. Contravention of conditions of an environment licence**

If—

- (a) a person is the holder of an environment licence; and
- (b) a condition of that licence is contravened,

the person commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

**30. Providing false or misleading information**

If—

- (a) a person provides information in response to a requirement, direction or request under this Act or in the process of obtaining a licence, authorisation or accreditation (however described) under this Act; and
- (b) the person knows or is reckless as to whether the information is false or misleading in a material particular,

the person commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*

**PART IV—ENVIRONMENT LICENCES**

**31. Application for an environment licence**

A person may apply to the Principal Environment Officer for an environment licence in relation to a proposed activity by—

- (a) using the form approved by the Principal Environment Officer from time to time, and attaching any information required by that form; and
- (b) paying such fee as may be prescribed by regulation.

**32. Consideration of application**

(1) After receiving an application for an environment licence, the Principal Environment Officer may, in writing to the applicant—

- (a) grant an environment licence, subject to any reasonable conditions;
- (b) require the applicant to submit an environmental impact assessment report to the Principal Environment Officer; or
- (c) refuse to grant an environment licence.

(2) The Principal Environment Officer may only grant an environment licence under subsection (1) if—

- (a) the possible environmental impacts of the proposed activity are well known, are not significant, will not harm area of natural, cultural or historic significance, and are not likely to be controversial; or
- (b) the activity is an unforeseen activity requiring immediate action in the public interest, and the need for such action outweighs the need for an environmental assessment.

(3) In making a decision under subsection (1), the Principal Environment Officer must—

- (a) be guided by the principles of sustainable development;
- (b) not act inconsistently with any international obligation or agreement relating to the environment entered into by Kiribati; and
- (c) act in accordance with any other requirements that may be prescribed.

**33. Requirements of environmental impact assessment report**

- (1) An environmental impact assessment report must include—
  - (a) a description of the impacts of the proposed activity;
  - (b) the possible alternatives to the proposed activity, including the alternative of not undertaking the proposed activity;
  - (c) mitigation measures that can be applied to minimise or prevent harm to the environment; and
  - (d) any details that may be prescribed.
- (2) The Principal Environment Officer may, by notice in writing to an applicant, exempt the applicant from including information required by subsection (1) if the Principal Environment Officer considers the information is not necessary or appropriate for the purposes of evaluating the proposed activity.
- (3) In preparing an environmental impact assessment report, the applicant must attempt to consult with—
  - (a) any nearby or adjacent landowners; and
  - (b) any other person who would have an immediate interest in the activity.
- (4) The costs of preparing an environmental impact assessment report must be borne by the applicant for the environment licence.

**34. Requesting additional information and seeking advice and information**

- (1) At any point after an application for an environment licence has been made, and before determining the application, the Principal Environment Officer may, in writing—
  - (a) request additional information from the applicant; or
  - (b) seek advice or information from any person or committee,  
to gain a better understanding of the proposed activity.
- (2) If the Principal Environment Officer has made a request under subsection (1)(a), the Principal Environment Officer is not required to make any further decisions in relation the application for the environment licence until the information is provided.

**35. Suggesting amendments to proposed activities**

- (1) The Principal Environment Officer may, by notice in writing to an applicant, suggest amendments to a proposed activity.
- (2) The applicant, in response to a suggestion made under subsection (1), may by notice in writing to the Principal Environment Officer, modify the proposed activity.

**36. Publication of environmental impact assessment report**

- (1) If the Principal Environment Officer is satisfied that an environmental impact assessment report meets the requirements of this Act, the Principal Environment

Officer must give notice in writing to the applicant setting out a procedure for publication adequate to bring the report to the attention of interested persons.

- (2) Without limiting the generality of subsection (1) the Principal Environment Officer may require—
  - (a) publication of notices in newspapers and radio;
  - (b) the holding of public hearings; and
  - (c) submission of copies to public authorities or specified persons that may be interested in the proposed activity.
- (3) The Principal Environment Officer may require that comments be submitted to the Principal Environment Officer by a particular date.
- (4) The Principal Environment Officer may exclude information from publication to—
  - (a) protect the environment; or
  - (b) protect commercially sensitive information.
- (5) The Principal Environment Officer must allow the applicant to inspect and copy any comments received by the Principal Environment Officer under this section.
- (6) The Principal Environment Officer may require that the costs of publication in relation to this section be borne by the applicant.
- (7) The Principal Environment Officer is not required to make any further decisions in relation to an application unless the applicant has published the environmental impact assessment report as required by subsection (1).

### **37. Consideration of environmental impact assessment report and comments**

- (1) At the conclusion of any period allowed for comment under section 36 the Principal Environment Officer may, in writing to the applicant—
  - (a) grant an environment licence for the proposed activity, subject to any reasonable conditions; or
  - (b) refuse to grant an environment licence.
- (2) In making a decision under subsection (1), the Principal Environment Officer must—
  - (a) be guided by the principles of sustainable development;
  - (b) not act inconsistently with any international obligation or agreement relating to the environment entered into by Kiribati; and
  - (c) act in accordance with any requirements that may be prescribed.

### **38. Conditions on environment licences**

An environment licence may be subject to reasonable conditions, including conditions—

- (a) specifying the duration of the licence;
- (b) specifying the location of any particular activities;



- (c) specifying the method of undertaking any activities;
- (d) modifying the proposed activity;
- (e) requiring the monitoring and reporting of any environmental impacts;
- (f) specifying maximum quantities of emissions of substances;
- (g) requiring the implementation of a plan to manage any environmental impacts;
- (h) requiring the lodgement of bonds;
- (i) specifying fees that must be paid;
- (j) requiring replanting of vegetation or measures to improve the environment;
- (k) specifying any procedures for cessation and rehabilitation; and
- (l) specifying individuals who may carry out activities under the licence.

### **39. Transfer of environment licences**

An environment licence may only be transferred after written approval from the Principal Environment Officer.

## PART V—CONSERVATION

### Division 1—Protected Species

#### **40. Purpose of Division**

This Division establishes a list of species which are at risk of extinction in Kiribati or globally, or are culturally significant, and are in need of protection.

#### **41. Prescribing protected species**

- (1) Protected species may be prescribed by regulation.
- (2) A protected species may be categorised according to international or national standards.
- (3) A protected species may be subject to any conditions, including that—
  - (a) it is a protected species only in certain areas, or during certain times; or
  - (b) the taking of a certain quota of the species is allowed.
- (4) Before prescribing a species under subsection (1), the Minister must—
  - (a) undertake any consultations that may be required by Cabinet; and
  - (b) follow any procedures that may be prescribed by regulation.

### Division 2—Protected Areas

#### **42. Purpose of Division**

This Division establishes a list of areas to be protected for conservation purposes.

**43. Prescribing protected areas**

- (1) Protected areas may be prescribed by regulation.
- (2) A protected area may be categorised according to international or national standards.
- (3) A protected area may be subject to any conditions, including that—
  - (a) it is a protected area only at certain times; or
  - (b) that particular provisions of Part III do not apply to the protected area.
- (4) Before prescribing an area under subsection (1) the Minister must—
  - (a) undertake any consultations that may be required by Cabinet;
  - (b) follow any procedures that may be prescribed by regulation; and
  - (c) make reasonable enquiries to identify persons having a proprietary interest or right in the area, and if such persons are identified, attempt to make an agreement in writing with those persons relating to the protected area.
- (5) Any agreement made under subsection (4)(c)—
  - (a) if the proprietary interest or right is over land, attaches to the interest in the land and binds any person to whom the interest is transferred;
  - (b) may provide for arrangements for the management of the protected area;
  - (c) may provide for compensation; and
  - (d) may provide for activities that are allowed without contravening this Act.
- (6) If an area (or part of an area) is proposed to be revoked from being a protected area, or the protection of the area is reduced, the revocation must be in accordance with a specific resolution of the Maneaba ni Maungatabu.

**44. Proprietary interest or rights over a protected area**

- (1) If a proprietary interest or right over a protected area—
  - (a) is held by a person other than the Republic or a person with whom an agreement has been made under section 43(4)(c), and
  - (b) is held prior to the area becoming a protected area,sections 26 and 27, and any management plan for the protected area, do not apply to the exercise of that proprietary interest or right.
- (2) This section applies to a right arising out of a proprietary interest or right in the same way as it applies to that interest or right.

**45. Management of protected areas**

- (1) The Minister and the Principal Environment Officer are responsible for managing protected areas—
  - (a) to the extent practicable, to provide for broad and meaningful participation by the community, public authorities and private interests;

- (b) according to the principle that the integrity of an area is best conserved by protecting it from disturbance and threatening processes;
  - (c) so that use of the protected area does not diminish the potential of the protected area to meet the needs and aspirations of future generations;
  - (d) to promote public appreciation and understanding of the values of the protected area;
  - (e) so that use and enjoyment of the area does not compromise the values of the protected area;
  - (f) to promote appropriate research and monitoring; and
  - (g) in any way that may be prescribed by regulation.
- (2) Any management plan for a protected area must not be inconsistent with the management principles for the protected area set out in subsection (1).

#### **46. Management committees**

- (1) The Minister may establish committees under section 81 to assist in the management of protected areas.
- (2) Without limiting the generality of subsection (1), a committee established to assist in the management of a protected area or areas may be given functions to—
- (a) prepare a draft management plan for a protected area;
  - (b) make decisions relating to the management of the protected area that are consistent with the management plan in operation for the area;
  - (c) monitor the management of the protected area; and
  - (d) advise the Minister on the future development of the protected area.

#### **47. Management plans**

- (1) The Minister, acting in accordance with the advice of Cabinet, may make a management plan for a protected area by notice in the *Gazette*.
- (2) A management plan sets out the principles, practices and procedures necessary to manage the protected area, and may—
- (a) state the activities that are allowed, prohibited or regulated in the area, and the means of allowing, prohibiting or regulating them;
  - (b) require the payment of fees and charges;
  - (c) include offences punishable by fines not exceeding \$100,000 or terms of imprisonment not exceeding five years, or both; and
  - (d) specify any limitation or prohibition on the exercise of a power or performance of a function under any Act in, or in relation to, the area.
- (3) Before making a management plan under subsection (1) the Minister must undertake any consultations that may be—
- (a) required by Cabinet; and

- (b) prescribed by regulation.
- (4) If a management plan limits or prohibits the exercise of a specified power, or the performance of a specified function, under an Act, the power or function is limited or prohibited in, or in relation to, the protected area while the plan is in operation.
- (5) The Minister must use his or her powers and functions to give effect to a management plan.
- (6) A public authority must not act inconsistently with a management plan.

#### **48. World Heritage**

- (1) The Minister, acting in accordance with the advice from Cabinet, may nominate areas to the World Heritage Committee established under the World Heritage Convention, for inclusion on the World Heritage list.
- (2) Before making a nomination under subsection (1), the Minister must—
  - (a) undertake any consultations that may be required by Cabinet;
  - (b) undertake any consultations that may be prescribed by regulation; and
  - (c) use his or her best endeavours to reach agreement with any person who has a proprietary interest in the area proposed to be nominated on—
    - (i) whether the area should be nominated; and
    - (ii) the management arrangements for the area.
- (3) The Principal Environment Officer must publish a notice in the *Gazette*—
  - (a) if an area of Kiribati has been included in the World Heritage list; and
  - (b) if an area of Kiribati has been altered or withdrawn from the World Heritage list.
- (4) All World Heritage areas must be managed—
  - (a) in accordance with the obligations of the Republic under the World Heritage Convention to identify, protect, conserve, present and transmit to future generations the World Heritage and the outstanding universal value of the area;
  - (b) to give the World Heritage and the outstanding universal value of the area a function in the life of the community;
  - (c) to integrate the protection of the World Heritage and the outstanding universal value of the area into comprehensive planning programmes;
  - (d) to develop scientific and technical studies, and research and to establish methods to counteract threats to the World Heritage and the outstanding universal value of the area;
  - (e) to promote public appreciation and understanding of the World Heritage and the outstanding universal value of the area;

- (f) to make special provision, if appropriate, for the involvement in managing the area of people who—
  - (i) have a particular interest in the area; and
  - (ii) may be affected by the management of the area.
- (5) The Minister must ensure that a management plan is in place for each area of Kiribati included on the World Heritage list.
- (6) Section 47 applies to the making and effect of a management plan for an area included on the World Heritage list as if the area were a protected area for the purposes of that section.
- (7) Any management plan for an area included on the World Heritage list must not be inconsistent with the management principles contained in subsection (4).

## PART VI—ENFORCEMENT

### Division 1—Enforcement Powers

#### **49. General provisions relating to environment inspectors**

- (1) An environment inspector may only exercise his or her powers under this Act for the purpose of administering this Act
- (2) Before or during the exercise of any power under this Act, an environment inspector must, if asked, provide his or her name and identification.
- (3) A person who falsely represents himself or herself to be an environment inspector commits an offence.  
*Maximum penalty: fine of \$10,000, imprisonment for two years*
- (4) A person who obstructs, intimidates, threatens, resists or hinders an environment inspector exercising or performing his or her powers, duties or functions under this Act commits an offence.  
*Maximum penalty: fine of \$10,000, imprisonment for two years*
- (5) An environment inspector may acquire assistance in the exercise of any power, duty or function under this Act.
- (6) No proceeding shall lie against an environment inspector, or any person assisting an environment inspector, for any act done in good faith and without gross negligence, in exercising or performing his or her powers, duties or functions under this Act.
- (7) An environment inspector may give reasonable directions and ask reasonable questions to any person to assist in the lawful exercise of any powers, functions or duties under this Act.
- (8) An environment inspector may use no more force than is necessary in exercising any powers, functions or duties under this Act.

- (9) The Principal Environment Officer may give environment inspectors directions as to the exercise or performance of any powers, duties or functions under this Act.

## **50. Powers in relation to conveyances**

- (1) For the purposes of testing a conveyance, an environment inspector may—
- (a) direct the person in charge of the conveyance to stop or move the conveyance;
  - (b) enter and operate the conveyance;
  - (c) take photographs, video or other recordings of the conveyance; and
  - (d) inspect or test the conveyance.
- (2) An environment inspector may exercise any of the following powers in relation to a conveyance for the purpose of detecting or preventing a contravention of this Act—
- (a) any power contained in subsection (1);
  - (b) inspect and test any substance being carried by the conveyance;
  - (c) inspect and take samples, extracts or copies of any evidentiary material; and
  - (d) seize any evidentiary material.

## **51. Powers in relation to items involved in international travel**

If an environment inspector reasonably believes that an item will be, is, or has been on a conveyance that travels between a place in Kiribati and a place outside Kiribati, he or she may—

- (a) examine the item;
- (b) open and search the item;
- (c) if the items are in a container, open and search the container; and
- (d) seize any evidentiary material.

## **52. Powers in relation to premises**

- (1) An environment inspector may only enter residential premises if the environment inspector has—
- (a) the consent of the occupier of the premises; or
  - (b) a search warrant allowing such activities.
- (2) An environment inspector may enter any premises, except for residential premises, for the purpose of detecting or preventing a contravention of this Act.
- (3) If an environment inspector lawfully enters premises, the inspector may—
- (a) examine and search the premises and any equipment, structures, conveyances or other items on the premises;
  - (b) make examinations, inquiries and tests of any substance or thing;
  - (c) take photographs, films, audio, video and other recordings;

- (d) require records to be produced for inspection;
  - (e) use any electronic equipment;
  - (f) inspect, and take samples, extracts or copies of any records or evidentiary material;
  - (g) seize any evidentiary material; and
  - (h) take other action authorised by a search warrant.
- (4) A magistrate may issue a search warrant in relation to premises if the magistrate believes, based on information provided on oath, that—
- (a) a contravention of this Act has occurred, is occurring, or is likely to occur on premises; or
  - (b) there is evidentiary material on the premises.

### **53. Power to ask for information and records**

- (1) The Principal Environment Officer may, by notice in writing, request a person to—
- (a) answer a question; or
  - (b) provide information or records in written or other form,
- for the purpose of any matter connected with this Act.
- (2) Any answer given, or information or record provided in response to a request under subsection (1) can not be used in any proceedings against that person.
- (3) A notice issued under subsection (1) must state that—
- (a) failure to comply with the request without reasonable excuse is an offence; and
  - (b) any answer given, or information or record provided in response to such request will not be used in any criminal proceedings against that person.
- (4) A person is not excused from complying with a request under this section on the ground that the answer, record or information might incriminate the person.

### **54. Arrest**

- (1) An environment inspector may, without warrant, arrest any person, if the environment inspector reasonably suspects that the person—
- (a) is committing or has committed an offence against this Act and proceedings by summons against the person would not be effective;
  - (b) is committing, has committed, or is attempting to commit, an offence against this Act in the presence of the environment inspector.
- (2) An environment inspector must bring any person arrested under subsection (1) to the officer-in-charge of the nearest police station to be dealt with in accordance with the *Criminal Procedure Code*.

**55. Removal of litter**

If an environment inspector reasonably believes that a person has contravened section 12 (relating to littering), the environment inspector may require the person to remove the litter.

**56. Contravening a direction or request of environment inspector**

- (1) A person who does not comply with a reasonable direction or request of an environment inspector in exercise of a power under this Act, commits an offence.  
*Maximum penalty: fine of \$500, imprisonment for one month*
- (2) In any proceedings for a contravention of subsection (1), it is a defence if the person against whom the proceedings have been brought establishes that he or she had a reasonable excuse for not complying with the direction or request.

**Division 2—Compliance Notices and Clean-up Notices****57. Compliance notices**

- (1) A compliance notice is a notice requiring a person to—
- (a) carry out specified actions by a particular time; or
  - (b) cease taking specified actions by a particular time.
- (2) An environment inspector may issue a compliance notice to a person who the inspector reasonably believes is contravening, has contravened, or is likely to contravene this Act if the inspector reasonably believes that the conduct required by the notice will prevent a contravention of this Act from occurring.
- (3) Without limiting the generality of subsections (1) or (2) a compliance notice may require—
- (a) the installation, repair, alteration, replacement, maintenance or operation of any equipment;
  - (b) modifying, or carrying out any work on equipment, structures or vehicles;
  - (c) ceasing to use equipment or vehicles or altering the way equipment or vehicles are used;
  - (d) ceasing to carry on or not commencing to carry on an activity;
  - (e) carrying on an activity in a particular manner or during particular times;
  - (f) monitoring, sampling or analysing any discharge of a substance or energy or otherwise ascertaining the nature, extent, or risk of such a discharge;
  - (g) taking action with respect to the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of any waste;
  - (h) preparing and carrying out a plan of action to control, prevent or minimise waste; and
  - (i) the reporting to the Principal Environment Officer on any result or progress of any activity.



**58. Clean-up notices**

- (1) An environment inspector may issue a clean-up notice to any person who the environment inspector reasonably believes has caused or allowed the discharge of a substance or energy if the environment inspector reasonably believes the notice will minimise or prevent the adverse effect of the discharge on the environment.
- (2) The clean-up notice must specify the actions that are required to be taken by the person to whom the notice is issued and the time by which they are to be taken.
- (3) Without limiting the generality of subsections (1) or (2), a clean-up notice may require—
  - (a) the taking of action to prevent, minimise, remove, disperse, destroy or mitigate the adverse effect of any discharge;
  - (b) the taking of action to restore the environment to a state that it was before the discharge;
  - (c) ascertaining the nature and extent of the discharge and of the actual or likely effects of the discharge;
  - (d) preparing and carrying out a remedial plan of action; and
  - (e) the taking of action to remove or store waste or litter.

**59. Failing to comply with notices**

- (1) A person who—
  - (a) has been issued a notice under this Division; and
  - (b) does not comply with the notice,commits an offence.

*Maximum penalty: fine of \$100,000, imprisonment for five years*
- (2) If the Minister reasonably believes that a person has committed an offence under subsection (1), the Minister may take any action, either by directing environment inspectors, agents, contractors, or otherwise, to ensure that the actions or omissions required by the notice are carried out.
- (3) Any costs incurred by the Republic as a result of the taking of action under subsection (2) may be recovered from the person to whom the notice was issued as a debt due to the Republic.
- (4) Any person who has been directed by the Minister under subsection (2) may enter any premises at any reasonable time to give effect to the direction.
- (5) A person who obstructs a person directed by the Minister under subsection (2) while they are carrying out the Minister's direction, commits an offence.

*Maximum penalty: fine of \$10,000, imprisonment for two years*

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### Division 3—Infringement Notices

#### **60. Infringement notices**

- (1) If an environment inspector reasonably believes that a person has contravened this Act, the environment inspector may issue, in writing, an infringement notice to that person.
- (2) An infringement notice must set out the following information—
  - (a) the name and address of the person who has been issued with the notice;
  - (b) the date of the issue of the notice;
  - (c) the conduct resulting in the alleged contravention of the Act including—
    - (i) the day, and time (if appropriate); and
    - (ii) the place;
  - (d) the amount of money that can be paid to satisfy the infringement notice;
  - (e) a statement that if the person does not pay the amount of money to satisfy the infringement notice within 28 days, the person may be prosecuted for an offence;
  - (f) details of how, and where payment under paragraph (d) may be made;
  - (g) a statement that, if the amount of money is paid to satisfy the infringement notice in time—
    - (i) proceedings under this Act cannot be taken against the person for the contravention; and
    - (ii) the person is not taken to have been convicted of an offence; and
  - (h) the name of the environment inspector who issued the notice.
- (3) The maximum amount of money that can be required to be paid to satisfy an infringement notice is one-tenth the maximum fine that a court may impose upon conviction for the offence to which the infringement notice relates.
- (4) If a person pays the amount of money specified in the infringement notice in accordance with the procedure set out in the infringement notice, the person must be issued with a receipt stating that the infringement notice has been satisfied.

#### **61. Community service to satisfy an infringement notice**

- (1) An infringement notice may include information that, as an alternative to paying money, the infringement notice may be satisfied by undertaking a specified number of hours of community service.
- (2) The maximum number of hours of community service that can be required to satisfy an infringement notice is one hour for each \$20 of the maximum fine that a court may impose upon conviction for the offence to which the infringement notice relates.

- (3) If an infringement notice states that the notice may be satisfied by undertaking community service, the notice must set out the following information—
  - (a) how and where the person may notify an intention to undertake community service;
  - (b) that if the community service is not undertaken or not undertaken in a satisfactory manner, the person may be prosecuted for an offence.
- (4) If a person notifies an intention to undertake community service to satisfy an infringement notice the person must be given a written statement specifying where and when to report for community service.
- (5) If the person completes the required number of hours of community service to the reasonable satisfaction of the supervising officer, the officer must issue a receipt to the person stating that the infringement notice has been satisfied.

## **62. Effect of satisfying an infringement notice**

If a person served with an infringement notice receives a receipt stating that the infringement notice has been satisfied—

- (a) proceedings cannot be taken against the person in respect the conduct specified in the infringement notice; and
- (b) the person is not convicted of an offence.

### Division 4—Improvement Plans

## **63. Improvement plans**

- (1) An improvement plan is a plan to improve an activity so that it complies with environmental standards required by this Act.
- (2) The Principal Environment Officer may agree in writing with any person on an improvement plan for an activity carried on by that person.
- (3) An improvement plan must set out—
  - (a) the actions that are required to be taken by the person;
  - (b) the time by when the actions must be taken; and
  - (c) the period the improvement plan is in force.
- (4) An improvement plan may—
  - (a) exempt the person from having to comply with particular sections of this Act in relation to the activity while the person is acting in accordance with the improvement plan; and
  - (b) contain any other matter appropriate to the circumstances.
- (5) The Principal Environment Officer may amend an improvement plan by subsequent agreement with the person who made the improvement plan.

- (6) The Principal Environment Officer may terminate an improvement plan by notice in writing to the person who made the improvement plan.
- (7) A person who has agreed to an improvement plan and who breaches that plan commits an offence.
- Maximum penalty: fine of \$10,000, imprisonment for two years*

#### Division 5—Other Authorisations

### **64. Amending, suspending, revoking and withholding other authorisations**

- (1) If the Principal Environment Officer reasonably believes that a person has contravened this Act, the Principal Environment Officer may recommend to any other public authority that a licence or other authorisation (however described) which is—
- (a) issued by that authority; and
  - (b) held or proposed to be obtained by the person who is believed to have contravened this Act; and
  - (c) associated with the conduct or item involved in the contravention of this Act,
- be amended, suspended, revoked or withheld.
- (2) If the Principal Environment Officer makes a recommendation to a public authority under subsection (1), the public authority may amend, suspend, revoke or withhold the licence or other authorisation (however described) as the public authority thinks fit.

#### Division 6—Injunctions

### **65. Injunctions**

- (1) If a person has contravened, is contravening, or proposes to contravene this Act, any person may apply to a court for an injunction.
- (2) If the court is satisfied that a person has, is, or might contravene this Act, the court may grant an injunction—
- (a) restraining the person from engaging in conduct which would constitute a contravention of this Act; or
  - (b) require the person to do an act, which if not done, would constitute a contravention of this Act.
- (3) If the court grants an injunction under subsection (2), the court may make an order requiring the person to do an act (including repairing or mitigating damage to the environment).
- (4) Before deciding an application under this section, the court may grant an interim injunction—
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do an act.

- (5) On application, a court may discharge or vary an injunction or interim injunction.
- (6) Powers given to a court under this Act do not limit any other powers of the court.

## PART VII—MISCELLANEOUS

### Division 1—Provisions relating to contraventions of the Act

#### **66. Liability for offence**

Where a person commits an offence against a provision of this Act, or attempts to commit such an offence, that person shall be liable upon conviction to a fine not exceeding the amount specified immediately after the offence, imprisonment for not more than the period specified immediately after the offence, or both such fine and imprisonment.

#### **67. Continuing contraventions**

If there is a contravention of this Act that occurs over more than one day, each day that the contravention continues is a separate contravention.

#### **68. Mental elements of contravention**

Unless explicitly stated, no mental element need be proved to establish a contravention of this Act.

#### **69. Effect on existing civil rights and remedies**

This Act does not limit or alter any civil right or remedy that exists apart from this Act, whether at common law or otherwise.

#### **70. Act to bind the Government**

- (1) This Act affects the rights of and binds the Government
- (2) Each Ministry, department, agency, and instrumentality of the Government, is subject to, and shall comply with both the substantive and procedural provisions of this Act to the same extent as any person, but no Ministry, department, agency, or instrumentality of the Government shall be subject to any criminal sanction.

#### **71. Actions by corporations and other persons**

- (1) A contravention of this Act by a person—
  - (a) while an officer, employee or agent of a corporation or other person; and
  - (b) acting within the scope of his or her actual or apparent authority,is deemed also to be a contravention of that corporation or other person.
- (2) If a corporation or other person contravenes this Act, a director, officer, employee or agent of the corporation or other person who directed, authorised, assented to, acquiesced in or participated in the commission of the contravention, commits the contravention.

**72. Certain persons deemed to allow conduct**

- (1) The owner of, and the person in charge of or managing, a conveyance are deemed to allow any conduct involving the conveyance.
- (2) An occupier of premises is deemed to allow any conduct occurring on the premises.

**73. Offences also deemed to be civil wrongs**

- (1) Any conduct by a person which is an offence under this Act, is, by virtue of this section, also conduct which is a civil wrong.
- (2) Committing a civil wrong is not an offence.
- (3) A person must not—
  - (a) attempt or conspire to commit a civil wrong;
  - (b) aid, abet, counsel or procure or induce a person to commit a civil wrong; or
  - (c) be in any way party to the commission of a civil wrong.
- (4) A person who contravenes subsection (3) is deemed to have committed the civil wrong.
- (5) A court may not find a person to have committed an offence or civil wrong against this Act if a court has found the person to have committed an offence or civil wrong against this Act in relation to substantially similar conduct.

**74. Proceedings for a civil wrong**

- (1) Any person may apply to a court for an order that a person pay a monetary penalty for committing a civil wrong.
- (2) Rules of evidence and procedure for civil matters apply to proceedings under subsection (1).
- (3) If the court is satisfied that a person has committed a civil wrong, the court may order the person to pay a monetary penalty up to the maximum monetary penalty stated immediately after the offence which gives rise to the civil wrong.
- (4) Any monetary penalty must be paid into the Environment Fund under section 83 unless prescribed otherwise by regulation.

**75. Defences to contraventions of this Act**

- (1) It is a defence in any proceedings for a contravention of this Act if a person establishes that conduct giving rise to the contravention is allowed or required by—
  - (a) an environment licence;
  - (b) a management plan;
  - (c) an agreement made under section 43(4)(c);
  - (d) a direction or request of an environment inspector;
  - (e) a notice issued under Part VI, Division 2;

- (f) an improvement plan under Part VI, Division 4; or
  - (g) an environment protocol made under Part VII, Division 2.
- (2) It is a defence in any proceedings for a contravention of this Act if a person establishes—
  - (a) that the contravention was not intentionally or knowingly caused or allowed and that all reasonable precautions were taken (if any were reasonable) to prevent the contravention; or
  - (b) that the contravention was reasonably necessary to deal with an emergency involving a serious threat to human life or property.
- (3) A defendant may only rely on a defence contained in subsection (2) if the defendant reported the contravention to the Principal Environment Officer as soon as practicable after the defendant knew that the contravention occurred.
- (4) A defendant must establish any defence or exemption contained in this Act by proving it on the balance of probabilities.
- (5) A person charged with a contravention of this Act must, no less than 14 days before the appointed date of hearing, notify the prosecution of an intention to rely on a particular defence contained in this Act.

## **76. Evidence**

- (1) Any monitoring or recording equipment, or other instrument or installation used by an environment inspector (or any person directed or engaged by an environment inspector) is presumed to be accurate, precise and give a reading of the particular thing stated unless evidence to the contrary is presented.
- (2) Each attribute of a sample taken for any purpose under this Act is presumed not to be materially affected by its method of storage or preservation unless proven to the contrary.
- (3) An environment inspector may give evidence (without any need to call further opinion evidence) that the environment inspector formed the opinion based on the inspector's own senses that the discharge of noise, smoke, dust, fumes, light or odour caused unreasonable interference to the comfort of a person.
- (4) An allegation that an organism is a particular species shall be sufficient without proof of the matter, unless proven to the contrary.

## **77. Expanded jurisdiction of magistrates' courts**

- (1) A magistrates' court shall have jurisdiction to hear any—
  - (a) criminal proceedings for a contravention of this Act;
  - (b) application under section 65 (dealing with injunctions); and
  - (c) application under section 74 (dealing with civil wrongs),where the alleged conduct giving rise to the proceedings or application occurred, is occurring or may occur within the area over which such court has jurisdiction.

- (2) A magistrates' court shall have jurisdiction to make an order for a monetary penalty under section 75 not exceeding \$5000.
- (3) This section does not limit the jurisdiction or power of a court conferred by any other law.

## **78. Additional powers of courts**

- (1) A court may order a person to pay an amount to the owner of any property (or if the property has no owner – the Republic), for any adverse effect caused to the property as a result of that persons contravention of this Act.
- (2) A court may order a person to clean up any substance, take actions, or pay an amount to the Republic for actual or anticipated costs, to remedy or mitigate any adverse effect caused as a result of the contravention of this Act.
- (3) A court may order, if a person does not pay an amount ordered to be paid within the time allowed, that any property of the person seized under this Act be sold to satisfy the amount.
- (4) A court may order payment of compensation to the Republic or any other person for costs involved in—
  - (a) investigation of the contravention of the Act;
  - (b) bringing court proceedings for the contravention; and
  - (c) seizing, storing, transporting or returning any evidentiary material.
- (6) A court may order the forfeiture of any evidentiary material to the Republic.
- (7) The powers under this section are in addition to and do not limit any other power of a court.

## Division 2—Environment Protocols

## **79. Scope of environment protocols**

- (1) An environment protocol sets out what is and what is not environmentally acceptable in relation to any—
  - (a) environmental issue;
  - (b) area;
  - (c) activity that may affect the environment; or
  - (d) substance that may affect the environment.
- (2) An environment protocol may contain—
  - (a) methods for achieving what is and avoiding what is not environmentally acceptable; and
  - (b) any matter that is necessary or incidental to the effective operation of the protocol.



- (3) Without limiting the generality of subsections (1) or (2), examples of environmental protocols include environmental protocols in relation to—
- (a) the foreshore;
  - (b) standards for—
    - (i) maximum quantities of waste to be discharged into the environment;
    - (ii) maximum quantities of noise to be emitted; and
    - (iii) the installation and operation of works or equipment to control waste or pollution;
  - (c) measures designed to minimise the possibility of the occurrence of pollution; and
  - (d) methods of distributing limited numbers of licences under this Act.
- (4) An environment protocol may—
- (a) apply only to a certain area or at certain times;
  - (b) include offences punishable by fines not exceeding \$100,000 or terms of imprisonment not exceeding five years, or both; and
  - (c) require the payment of fees and charges.

## **80. Making and effect of environment protocols**

- (1) The Minister, acting in accordance with the advice of Cabinet, may make an environment protocol, by notice published in the *Gazette*.
- (2) Before making an environment protocol under subsection (1), the Minister must undertake any consultations that may be—
- (a) required by Cabinet; and
  - (b) prescribed by regulation.
- (3) A public authority may not act inconsistently with an environment protocol.

### Division 3—Environment Committees

## **81. Environment committees**

- (1) The Minister has the power to establish environment committees.
- (2) The Minister may, by instrument in writing, establish an environment committee and determine—
- (a) the members of the committee;
  - (b) the title of the committee; and
  - (c) the functions and roles of the committee to further the objects of this Act.
- (3) The Minister may, by notice in writing to an environment committee—
- (a) determine any issues in relation to the meetings of the committee;

- (b) determine any matters of procedure applying to the committee; and
- (c) determine the entitlement of members of the committee to receive allowances (if any).
- (4) In the absence of any determination as to the procedures of a committee, the committee may determine its own procedures.
- (5) Any instrument made under this section must, in due course, be published in the Gazette.

#### Division 4—Miscellaneous

### **82. Environment Fund**

- (1) A special fund, to be known as the Environment Fund, is established in accordance with section 107(2) of the *Constitution*.
- (2) There shall be paid into the Environment Fund such moneys as may be prescribed by regulation.
- (3) There shall be paid out of the Environment Fund any money approved by the Minister responsible for finance, on receipt of a request from the Minister, in accordance with—
  - (a) the objects of this Act; and
  - (b) any requirements that may be prescribed by regulation.
- (4) No money shall be paid out of the Environment Fund other than in accordance with a warrant under the hand of the Minister responsible for finance authorising the Chief Accountant under the *Public Finance (Control and Audit) Ordinance* to issue the money to the accounting officer responsible for operating the Fund.
- (5) The Minister responsible for finance shall, within six months after the end of each financial year, lay before the Maneaba ni Maungatabu a report dealing generally with the operations of the Special Fund during the preceding financial year and containing the audited statement of accounts for that financial year.

### **83. Public register of applications, licences, etc.**

- (1) The Principal Environment Officer must keep a public register of every—
  - (a) application for an environment licence;
  - (b) environment impact assessment report;
  - (c) environment licence;
  - (d) management plan;
  - (e) notice issued under Division 2 of Part V;
  - (f) improvement plan;
  - (g) environment protocol; and
  - (h) any variation, suspension, termination and transfer of any of the above.

- (2) The Principal Environment Officer may exclude information from the public register to—
  - (a) protect the environment;
  - (b) protect commercially sensitive information.
- (3) The public register must be made available to be inspected and copied during normal office hours.

#### **84. Statements as to whether an activity is complying**

- (1) Any person may apply to the Minister in writing for an opinion as to whether a particular person is complying, or has complied with this Act in relation to a particular activity.
- (2) Within 30 days after receiving an application under subsection (1), the Minister, acting in accordance with the advice of the Cabinet, must provide to the applicant an opinion as to whether the activity is complying or has complied with this Act, and the Minister must include a statement as to any actions the Republic is taking in relation to the activity to ensure compliance with this Act.
- (3) Any opinion under subsection (2) must be made available to be inspected and copied by members of the public during normal office hours.
- (4) Any opinion given under this section is not legally binding on the Republic.

#### **85. Appeals to the Minister**

- (1) Subject to subsection (5), any person who disagrees with a decision of the Principal Environment Officer or any environment inspector may, in writing within 30 days of the date of the decision, appeal against the decision to the Minister.
- (2) The Minister, acting in accordance with the advice of Cabinet, must—
  - (a) confirm the original decision; or
  - (b) vary the decision.
- (3) Any decision, remains valid while being considered by the Minister.
- (4) Any timeframe in a notice issued under Part VI, Division 2 does not run while an appeal in relation to that notice is being considered.
- (5) The regulations may prescribe decisions against which no appeal may be made.

#### **86. Regulations**

- (1) The Minister may, acting in accordance with the advice of the Cabinet, make regulations prescribing all matters permitted, necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made—
  - (a) to give further effect to the object of this Act;

- (b) to implement any international agreement, treaty, protocol, convention and other similar document relating to the environment;
- (c) on procedures for seizure of items, and dealing with seized items;
- (d) to provide for delegation of duties, powers and functions under this Act.

(3) Regulations made under this section may prescribe or allow for penalties for offences, being terms of imprisonment not exceeding 10 years, fines not exceeding \$200,000, or both.

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## SCHEDULE

(Section 14)

### **PRESCRIBED DEVELOPMENTS**

1. FOOD INDUSTRIES including:
  - (a) fruit processing, bottling and canning
  - (b) brewing, making and distillery works
  - (c) abattoirs
  - (d) other food processing requiring packaging
2. IRON AND STEEL INDUSTRIES
3. NON-METALLIC INDUSTRIES including:
  - (a) lime production
  - (b) brick and tile manufacture
  - (c) extraction of minerals and mining
  - (d) extraction of aggregates stones or shingles, sand and reef mud, beach rock
  - (e) radio-active related industries
  - (f) manufacture of cement
  - (g) plastic manufacturing and moulding
4. LEATHER, PAPER, TEXTILE AND WOOD INDUSTRIES including:
  - (a) leather tanning and processing
  - (b) textile industry with dyeing facilities
  - (c) carpet industry with chemical dyeing
  - (d) manufacture of paper, pulp and other wood products

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5. FISHING AND MARINE INDUSTRY PRODUCT

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

6. CHEMICAL INDUSTRY including:

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

7. TOURISM INDUSTRY including:

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

8. AGRICULTURE INDUSTRY including:

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

9. PUBLIC WORKS SECTOR including:

- (a) landfills
- (b) infrastructure developments
- (c) major waste disposal plants including recycling and collection systems
- (d) soil erosion, beach erosion and siltation control
- (e) hydropower schemes, desalination plants
- (f) reservoir development
- (g) airport developments
- (h) causeways, drainage and disposal systems
- (i) dredging
- (j) watershed management
- (k) ports and harbours
- (l) seawalls/land reclamation
- (m) boat channels

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(n) port and harbours

10. GENETICALLY ENGINEERED ORGANISMS (GEOs)

11. OTHER

(a) industrial estates

(b) housing multiple units

(c) settlement and resettlement schemes

(d) petroleum product storage and processing works.