

REPUBLIC OF KIRIBATI
(No 1 of 2007)



No. 12
I assent,
Audo Teng
Beretitenti
07/09/2007

AN ACT TO AMEND THE *ENVIRONMENT ACT* 1999

Commencement:
2007

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

1. Short title

This Act may be cited as the *Environment (Amendment) Act* 2007.

2. Meaning of 'principal Act'

In this Act 'principal Act' means the *Environment Act* 1999.

3. Amendment of section 2

Section 2 of the principal Act is amended—

- (a) by inserting after the definition of 'approval' the following definition—
"conduct' includes an act or omission;"
- (b) by inserting after the definition of 'conservation' the following definitions—
"construction work' includes—
 - (a) excavation; and
 - (b) erection, alteration or repair of a building or structure;
'conveyance' means a vessel, vehicle or aircraft;"
- (c) by repealing the definition of 'discharge' and substituting the following definition—
"discharge' includes dumping, spilling, leaking, pumping, throwing, placing, dropping, abandonment, depositing, discarding, rejecting, emitting and other similar activities:"



- (d) by inserting after the definition of 'Division' the following definition—
 "‘energy’ includes vibrations, noise, heat and electromagnetic radiation;”;
- (e) by inserting after the definition of ‘environment’ the following definitions—
 "‘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;”;
- (f) by repealing the definition of ‘environmental impact assessment (EIA)’;
- (g) in the definition of ‘Environment impact statement (EIS)’, by repealing the word “Environment” (where it first appears) and substituting the word “environmental”;
- (h) by repealing the definition of ‘Environmental inspector’ and substituting the following definitions—
 "‘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;”;
- (i) by inserting after the definition of ‘licence’ the following definitions—
 "‘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;”;
- (j) by inserting after the definition of ‘offensive noise’ the following definitions—
 "‘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;";
- (k) by inserting after the definition of 'pollution' the following definition—
- "'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;";
- (l) in the definition of 'premises', by inserting after "includes" the words "a building or structure, and any land or a place (whether enclosed or built on or not), and a";
- (m) by inserting after the definition of 'prescribed development' the following definitions—
- "'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;
- 'protected species' means a species, subject to any condition (if any), prescribed under section 41;";
- (n) by inserting after the definition of 'public authority' the following definitions—
- "'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;";
- (o) in the definition of 'sustainable development', by repealing paragraph (f) and substituting the following paragraphs—
- (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;"; and

- (p) by inserting after the definition of 'waste' the following definitions—
- “‘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.”.

4. Amendment of section 3

Section 3 of the principal Act is amended—

- (a) by repealing sub-paragraph (iv) of paragraph (c); and
- (b) after paragraph (d), by inserting the following paragraphs—
- “(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.”.

5. New sections 4A and 4B

After section 4 of the principal Act, the following sections are inserted—

“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 of 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.”.

6. Amendment of section 5

Section 5 of the principal Act is amended by repealing subsection (2) and substituting the following subsections—

- “(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.”.

7. Amendment of section 6

Section 6 of the principal Act is amended as follows—

- (a) by repealing subsection (1)(a); and
- (b) by renumbering the existing sub subsections (b) to (k) of subsection (1) as (a) to (j).

8. Amendment of section 7

Section 7 of the principal Act is amended by repealing the whole section.

9. Amendment of section 9

Section 9 of the principal Act is amended by repealing the whole section.

10. Repeal and replacement of Parts III, IV and V

Parts III, IV and V of the principal Act are repealed and the following Parts are substituted—

"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 4—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 Principal Environment Officer is 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 Principal Environment Officer 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 Principal Environment Officer reasonably believes that a person has committed an offence under subsection (1), the Principal Environment Officer must obtain authority from the Minister to 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 Principal Environment Officer 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 Principal Environment Officer under subsection (2) while they are carrying out such direction, commits an offence.

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

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 of 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 82 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 74 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.
- (5) A court may order the forfeiture of any evidentiary material to the Republic.
- (6) 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.

30. 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 VI;
 - (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."

11. Existing authorisations

An authorisation or exemption (however described), under the principal Act that is valid immediately before this provision enters into force, is deemed to be an environment licence allowing the same conduct and subject to the same conditions (if any).

12. Pending authorisations

Any application, initial environment evaluation, or environmental impact statement that has been validly made under the principal Act, and at the time this provision enters into force is deemed to be the corresponding instrument validly submitted in relation to an environment licence.

ENVIRONMENT (AMENDMENT) BILL 2006

EXPLANATORY MEMORANDUM

This Bill seeks to consolidate and improve the environmental laws of Kiribati by amending the *Environment Act* 1999. Lessons learnt in the implementation of the *Environment Act* since it entered into force in March 2000 have demonstrated the need for refinement of the Act, to allow for its application in a more effective and functional manner. In addition, the Bill contains legislative provisions necessary for the implementation of the following international agreements—

- the *Convention for the Protection of the World Cultural and National Heritage*;
- the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*; and
- the *Convention on Biological Diversity*.

Clause 3 of the Bill inserts a number of new definitions into the interpretation section of the Act. Clause 4 introduces further refinement to the objects of the Act. New sections 4A and 4B are inserted by clause 5 to better clarify the application of the Act. The amendments to section 5 made by clause 6 establish the new position of Principal Environment Officer, who will play a major role in the administration of the Act. The powers of the Minister are restricted only to those of giving directions and policy guidelines; the implementation and administration of the Act is carried out by the Principal Environment Officer.

The most significant amendments are made to the Act by clause 10 of the Bill, which repeals and replaces Parts III, IV and V of the Act and inserts new Parts VI and VII.

The new Part III sets out the obligations of persons in protecting the environment. Issues such as pollution, the conduct of environmentally-significant activities (which will need to be carried out in accordance with the terms of an environment licence), conservation and World Heritage.

The replacement Part IV provides for the means by which environment licences are to be issued, and the matters to which consideration must be given. Depending on the scale and potential environmental impact of the activity, and applicant for an environment licence may need to first obtain an Initial Environmental Evaluation (IEE) or an Environmental Impact Statement (EIS). Licences will be subject to various conditions, to ensure that environmentally-significant activities are conducted with as little impact on the environment as possible.

A new Part V deals with conservation matters in greater depth. Species and ecological communities in need of protection are listed, and the means by which protected areas can be established are set out. This Part also covers matters provided for in the World Heritage Convention. It also provides for the making of management plans for protected areas and World Heritage Areas.

Part VI relates to enforcement of the Act. Environment inspectors are given powers to gather evidence and ensure compliance with the Act. It also provides for a range of tools to be used by environment inspectors and the Minister to encourage compliance with the Act. These tools are compliance notices, clean-up notices, infringement notices, mandatory audits and improvement plans. Part VI also provides that any offence under the Act is also a civil wrong which can be punished by a court. Bringing an action for a civil wrong uses civil rather than criminal procedures and standards of proof. This Part also allows for any person to bring an action in a court for a breach of this Act. Evidentiary provisions are set out, and the powers of the courts are clarified.

Part VII contains various miscellaneous provisions, covering such matters as: the maximum penalties for offences under the Act; the development of environment protocols; the establishment of environment committees; provisions for a special fund called the Environment Fund; appeals and the making of regulations.

Clauses 11 and 12 of the Bill provide for various transitional provisions. Existing and pending authorisations under the Act remain current, despite the changes.

Titabu Tabane
Attorney-General
19 October 2006

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 28 May 2007 and is found by me to be a true and correctly printed copy of the said Bill.



Ioataake Timeon
Clerk of the Maneaba ni Maungatabu

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