

Environment



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2003, No. 22

An Act to repeal the Rarotonga Environment Act 1994-95 and to provide for the protection, conservation, and management of the environment in a sustainable manner.

(19 November 2003)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short title - This Act may be cited as the Environment Act 2003.
2. Interpretation - In this Act, unless the context otherwise requires -
"Animal" means any species, alive or dead, of the animal kingdom (other than human beings), and includes the following:
 - (a) marine animals;
 - (b) terrestrial animals;
 - (c) migratory animals that occasionally visit the Cook Islands or Cook Islands waters;
 - (d) any part of an animal's life cycle, such as eggs or parts of eggs;
 - (e) any part of animals or animal products such as skin, feathers, horn, shell or other part of an animal;

"Appointed member", in relation to an Island Environment Authority means a member of the Authority appointed by the Minister in accordance with the Schedule;

"Authority" means an Island Environment Authority;

"Aronga Mana" includes those persons invested with a title in accordance with the native custom and usage of the islands of the Cook Islands which that title is derived and which title is recognised by such custom and usage as entitling the holder to be a member of the Aronga Mana of the Cook Islands;

"Bank" means

- “(a) in respect of any natural inland waters, the whole area of land extending away from the stream, river or lake, measured at right angles to a distance of 5 metres from the edge of that stream, river and lake; and
- “(b) in respect of any storm water drain, the whole area of land extending away from any ordinarily exposed part of that drainage, measured at right angles to a distance of 5 metres from the edge of that drainage.”

"Chairperson" -

- (a) Means a person appointed under section 13 as the chairperson of an Island Environment Authority; and
- (b) Includes a member appointed to the position of chairperson for a particular meeting in the absence of the person referred to in paragraph (a);

"Council" means the National Environment Council;

"Constable" means any member of the police, of any rank;

"Conveyance" means any vessel, aircraft, vehicle, or other means of transportation;

"Cook Islands waters" includes the following:

- (a) the internal waters of the Cook Islands as defined by [the Maritime Zones 2018];
- (b) the territorial sea;
- (c) the exclusive economic zone;

[Amended Act 2018/01]

"Court" means the High Court of the Cook Islands;

"Director" means the Director of the Service;

"Discharge" includes, but is not limited to spill, leak, pump, pour, emit, empty or dump;

"Dwelling house" means a building that is used or intended to be used principally as a residence;

"Environment" -

- (a) Means the ecosystems and the equality of those ecosystems as well as the physical, biological, cultural, spiritual, social and historic processes and resources in those ecosystems; and
- (b) Includes -
 - (i) land, water, air, animals, plants and other features of human habitat; and
 - (ii) those natural, physical, cultural, demographic, and social qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes;

"Environment Protection Fund" means the account known by this name (within the Cook Islands Government Account) established by section 4 of the International Departure Tax Act 1984 (as inserted by section 2 of the International Departure Amendment Act 1994);

"Environment Officer" means an Island Environment Officer or a National Environment Officer;

"Exclusive economic zone" means the exclusive economic zone Cook Islands as defined by [the Maritime Zones Act 2018];

"Financial year" means a period of 12 months ending on the 30th of June;

"Foreshore" means:

- (a) in relation to Rarotonga -
 - (i) all that area between the mean high water mark and a line connecting those points landward and measured at right angles to a distance 30 metres from the mean high water mark or to the edge of the vegetation, whichever shall be the greater distance; and
 - (ii) every estuary, stream or river together with the bed of any stream or river and includes that area extending landward and measured at right angles from the mean high water mark in that estuary to a distance 5 metres landward from the edge of the vegetation; and
- (b) in relation to any Outer Island to which this Act applies -
 - (i) any area specified to be foreshore by the Island Environment Authority for the island concerned and approved for this purpose by the Queen's Representative by Order in Executive Council;
 - (ii) in the absence of any such order for an island, any area prescribed by regulations to be foreshore for the island, after consultation with the Island Environment Authority for the island concerned;

"Former Environment Council" means the Environment Council established under the Rarotonga Environment Act 1994-95 and subsisting immediately before the coming into of this Act;

"Former Service" means the Environment Service established under the Rarotonga Environment Act 1994-95 and subsisting immediately before the coming into force of this Act;

"Former Tu'anga Taporoporo" means the body known as the Tu'anga Taporoporo established under the Rarotonga Environment Act 1994-95 and subsisting immediately before the coming into force of this Act;

"Forum" means the Cook Islands Environment Forum convened under section 66;

"Gazette" means the Cook Islands Gazette published by the Parliament of the Cook Islands;

"Government" means the Government of the Cook Islands;

"Inland waters" means —

- “(a) the waters and banks of any stream, river or lake, together with its bed, whether dry or not; and
- “(b) any storm water drain, as that expression is defined in the Infrastructure Act 2019.”

"Internal waters", in relation to any island, means any area of the sea that is on the landward side of the baseline of the territorial sea (that baseline being determined in relation to the island concerned in accordance with [the Maritime Zones Act 2018]);

[Amended Act 2018/01]

"Island"-

- (a) means -
 - (i) Rarotonga; or
 - (ii) any Outer Island; and
- (b) includes the internal waters of the island or islands concerned;

"Island State Government" means an Island State Government established under the Island State Government Act 2003;

"Island Environment Authority" means an Island Environment Authority established under section 11;

"Island Environment Officer" -

- (a) means an Island Environment Officer appointed under section 24; and
- (b) includes a person deemed to be an Island Environment Officer for Rarotonga under section 77;

"Kavana Tutara" means the person or persons elected as Kavana Tutara under the Island State Government Act 2003;

"Konitara Tutara" means the chairperson of a Konitara Vaka under the Rarotonga Local Government Act 1997;

"Konitara Vaka" means a Konitara Vaka established by the Rarotonga Local Government Act 1997;

"Mean high water mark" means the line of medium high tide between the spring and neap tides;

"Member of Parliament" in relation to an island, means a member of Parliament for a constituency on the island;

"Minister" means the Minister for the Environment or such other Minister of the Crown charged by the Prime Minister with responsibility for the administration of this Act;

"National Environment Council" means the *ad hoc* council established under section 20;

"National Environment Officer" -

- (a) means a National Environment Officer appointed under section 25(1); and
- (b) includes any person deemed to be a National Environment Officer under section 25(6);

"National Environment Service" or "Tu'anga Taporoporo" -

- (a) means the body corporate established by section 5; and
- (b) includes any of its divisions or offices;

"Native" means a person of the Polynesian race indigenous to the Cook Islands and includes a person who is a descendant of a native;

"Native customary land" means land, which being vested in the Crown, is held by natives under the native customs and usage of the Cook Islands;

"Native freehold land" means land which, or any undivided share in which, is owned by a native by way of a beneficial estate in fee simple, whether legal or equitable;

"Native land" means native customary land or native freehold land;

"Natural resources" includes land, water, air, soil, minerals, energy, and all forms of plants and animals (whether native to the Cook Islands or introduced);

"Occupier", in relation to any premises, -

- (a) means any lessee, licensee or other occupant of the premises; and
- (b) includes the owner of the premises or an agent of the owner; and
- (c) includes any person in charge of the premises;

"Offence against this Act" includes any offence against a regulation made under this Act;

"Outer Island" -

- (a) means any island or group of islands in respect of which an Island State Government has functions, powers, or duties under the Island State Government Act 2003; and
- (b) includes the internal waters of the island or islands concerned; and
- (c) for the avoidance of doubt, excludes the island of Suvarrow and its internal waters;

"Permitting authority", -

- (a) in relation to an act, omission, or other activity on or in relation to Rarotonga or an Outer Island to which this Act applies, means the Island Environment Authority for the island concerned; and
- (b) in any other case, means the National Environment Council;

"Person" includes the Crown, or any Government department, Crown-funded agency, or public authority (for example a statutory authority or board, an Island State Government, or a Konitara Vaka);

"Plant" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, portion or product of any plant;

"Pollution" means the introduction, either directly or indirectly, of substances or energy into the environment, which results in -

- (a) deleterious effects that are harmful to living resources or marine life; or
- (b) hazards to human health; or
- (c) hindrance to marine activities including fishing and other legitimate uses of the sea; or
- (d) impairment of quality for use of water, air or soil; or
- (e) reduction of amenities; or
- (f) the creation of a nuisance;

"Premises" includes the following:

- (a) any conveyance;
- (b) any building or other structure;
- (c) any land;
- (d) any body of water;

"Protected species" means any species of animal or plant designated as a protected species under section 55 or regulations;

"Rarotonga" includes the internal waters of Rarotonga;

"Registered organisation" means an organisation registered under Part 12 of this Act;

"Regulation" means a regulation made under this Act;

"Seabed minerals activities" has the meaning given in section 6 of the Seabed Minerals Act 2019.

[Amended by the Seabed Minerals Act 2019/05]

"Service" means the National Environment Service or Tu'anga Taporoporo;

"Species" means a group of organisms capable of inter-breeding freely with each other but (usually) not with a member of other species includes any recognised sub-species or other taxon below a sub-species, and any recognisable variant of sub-species or taxon;

"Territorial sea" means the territorial sea of the Cook Islands as defined by [the Maritime Zones Act 2018];

[Amended Act 2018/01]

"Vessel" means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water;

"Wetlands" -

- (a) means areas of marsh, swamp or water, whether -
 - (i) natural or artificial;
 - (ii) permanent, seasonally flooded or temporary;
 - (iii) with water that is static or flowing, or fresh brackish or salty; and
- (b) includes water storage reservoirs, taro swamps and fish ponds;

"Wildlife" means:

- (a) animals and plants that are indigenous or naturalised to the Cook Islands; and
- (b) any other animals and plants prescribed by regulation.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Application of this Act - (1) On its coming into force, this Act applies throughout the Cook Islands (including the territorial sea and exclusive economic zone) except as otherwise provided by subsection (2).

(2) This Act shall apply to the islands of Rarotonga, Atiu and Aitutaki but shall not apply to any other Outer Island unless otherwise specified by the Queen's Representative by Order in Executive Council.

(3) No Order in Executive Council may be made under subsection (2) specifying that this Act applies to an Outer Island unless -

- (a) all of the members of Parliament for the island concerned submits a written request to the Minister for such an order to be made; and
- (b) the Director certifies in writing to the Minister that the Island State Government has consulted all sectors of the community on the island concerned (including members of Parliament and the Aronga Mana of that island, and the Ui Ariki of that island, if distinct from the Aronga Mana) before requesting the order.

(4) If any regulation or order made under this Act is inconsistent with an Island State Government bylaw, or a provision in a shared resource management agreement or management plan, the regulation or order shall prevail.

PART 1

TU'ANGA TAPOROPORO

5. National Environment Service - (1) This section establishes a body to be called the National Environment Service or Tu'anga Taporoporo.

(2) The Service -

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is capable of holding real and personal property and of suing and being sued; and
- (c) is capable of doing and suffering all such other acts and things as corporations may lawfully do and suffer.

(3) The head office of the Service shall be based in Rarotonga with a separate division or office of the Service to be established on each Outer Island to which this Act applies.

6. Service to report annually - (1) The Service must within one month of the end of each financial year -

- (a) make a report to the Minister on -
 - (i) the work of the Service during the financial year;
 - (ii) any other matter that the Service considers necessary or desirable; and
 - (b) send the chairperson of each Island Environment Authority a copy of the report.
- (2) The Minister must lay a copy of the report before Parliament -
- (a) within 28 days of receiving the report, if Parliament is then in session; and
 - (b) if not, within 28 days after the commencement of the next ensuing session of Parliament.

(3) Notwithstanding subsection (2), the Service must, as soon as practicable after the expiry of 28 days from the date that it makes a report under subsection (1), make a copy of the report available to the public and widely publicise its availability.

7. Director of Service - (1) The Minister shall from time to time, with the concurrence of Cabinet, appoint a Director as head of the Service.

(2) The Director -

- (a) shall enter into an employment contract with the Minister; and
- (b) shall be appointed for a term not exceeding 3 years specified in the contract, but shall be eligible for reappointment; and
- (c) shall be paid remuneration and allowances as specified in the contract; and
- (d) shall be required to enter into a performance agreement with the Minister;
- (e) may resign from office by giving notice in writing to the Minister; and
- (f) may be suspended from office by the Minister only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct; and
- (g) may be removed from office by the Minister, with the concurrence of Cabinet, only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct.

(3) Any suspension of the Director under subsection (2)(f) shall be on full pay, unless the Director is removed from office under subsection (2)(g) within 2 months of the suspension.

(4) The Director shall be responsible to the Minister for the efficient and proper administration and management of the Service.

(5) The Director shall ensure that each Island Environment Authority is given full opportunity to participate in preparing the work programme and annual report of the Service, for the purposes of section 12(1)(b) and (c).

(6) Subject to the provisions of this Act, the Director may appoint such other officers and employees of the Service as may from time to time be required on such terms and conditions as the Director may determine.

(7) The Director may employ such consultants as may from time to time be necessary to assist the Service in the performance of its functions.

8. Delegation of powers - (1) The Director may by notice in writing, delegate to any Deputy Director or other officer of the Service, all or any of the Director's powers and functions under this Act, except this power of delegation.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will, and shall not prevent the exercise or performance by the Director of the power or function.

9. Functions of Service - (1) The functions of the Service are to -

- (a) protect, conserve, and manage the environment to ensure the sustainable use of natural resources;
- (b) protect, conserve, and manage wildlife, in particular protected species;
- (c) protect, conserve and manage the environment in relation to Cook Islands waters;
- (d) prevent, control and correct the pollution of air, water, and land;
- (e) carry out investigations, research and monitoring relevant to the protection and conservation of the natural resources of the Cook Islands;
- (f) protect, manage, and prevent damage to any beach, land, internal waters, inland waters, drain, building, market place and any area used or frequented by members of the public;
- (g) monitor and evaluate activities which significantly affect the environment;
- (h) provide secretarial and administrative services (including technical advice) to each Island Environment Authority, and, where requested by an Island Environment Authority, to any sub-committee appointed by the Island Environment Authority;
- (i) monitor and report on the state of the environment of an island or any other part of the Cook Islands, at the request of the Minister, the Director, or the Island Environment Authority for the island concerned;
- (j) recommend regulations to be made and advise the Government in relation to the making of regulations under this Act;
- (k) enforce this Act and any regulations made under it;
- (l) ensure environmentally safe disposal of toxic chemicals and wastes;
- (m) recommend to the Minister the ratification of regional or institutional convention, treaties, protocols or agendas relating to the environment, and review progress of the implementation of ratified instruments;
- (n) implement, coordinate and negotiate any projects provided under any regional or international conventions, treaties, protocols or agendas relating to the environment, which the Cook Islands has ratified or to which the Cook Islands has acceded or become a signatory;
- (o) make recommendations and provide, advice to file Government in relation to any regional or international obligations arising from any regional or international conventions, treaties, protocols or agendas relating to the environment, which the Cook Islands has ratified ,or to which the Cook Islands has acceded or become a signatory;

- (p) provide, and assist in the provision of, training in the skills associated with performing any of the Service's functions;
- (q) provide secretarial and administrative services (including technical advice) to the National Environment Council and the Forum;

[(qa) support the objectives of the marae moana under the Marae Moana Act 2017];

- (r) do anything incidental or conducive to the performance of any of the foregoing functions.

(2) In performing its functions, the Service shall take into account -

- (a) Government policies from time to time conveyed to it in writing by the Minister; and
- (b) Any recommendations of the forum.

(3) For the avoidance of doubt, and without limiting paragraphs (m), (n), and (o) of subsection (1), the Convention on Biological Diversity and the United Nations Frameworks Convention on Climate Change (both signed by the Cook Islands at Rio de Janeiro on 5 June 1992) shall be regarded as international conventions relating to the environment for the purposes of subsection (1).

[Amended Act 2017/10]

10. General Powers of Service - (1) The Service shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions including power to -

- (a) enter into contracts;
- (b) erect buildings and structures and carry out works in the public interest;
- (c) accept gifts, devises and bequests, and act as trustee of money or other property vested in the Service upon trust;
- (d) promote environmental management, conserve wildlife and regulate the use of natural resources as prescribed by regulations;
- (e) for the purpose of enforcing the provisions of this Act or any regulations made under it, prosecute and sue any person, body corporate or group of persons, whether incorporated or not, including the Crown, its agents, servants and agencies.

(2) The Service may perform any of its functions in collaboration with a Government agency, instrumentality or department, or with a registered organisation.

(3) Any Environment Officer may, with the approval of the Director, exercise the power specified in subsection (1)(e).

(4) In the exercise of his powers the Service shall, except where the circumstances require the immediate exercise of any power to protect the environment, at all times have regard to the principle that it may better serve the community by consultation, negotiation, and education.

PART 2

ISLAND ENVIRONMENT AUTHORITIES

11. Island Environment Authorities - (1) An Island Environment Authority shall be established, in accordance with the Schedule, for Rarotonga and for each Outer Islands to which this Act applies.

(2) Every member of an Island Environment Authority is a voting member unless otherwise provided in the Schedule.

12. Functions of Island Environment Authority - (1) It shall be the function of each Island Environment Authority in respect of its island to -

- (a) identify priority areas of environmental concerns and convey to the Service such policies and programs as are approved by the Authority for implementation;
- (b) participate in preparing the work programme of the Service for each financial year;
- (c) participate in preparing the Services' annual report in connection with -
 - (i) the work of the Service on and in relation to the island; and
 - (ii) any other matter concerning the island;
- (d) formulate and publish guidelines on specific issues of environmental protection and improvement and environmental quality and waste water standards for the purpose of this Act;
- (e) recommend to the Minister regulations to be made;
- (f) determine applications for permits and consents for the purposes of sections 36, 50, 51, 57, and 58;
- (g) carry out any other function conferred on the Authority by this Act or the regulation.

(2) In the performance of its functions under subsection (1) an Island Environment Authority shall -

- (a) take into account the following:
 - (i) Government policies in relation to the environment, as from time to time conveyed in writing to the Authority by the Minister;
 - (ii) any recommendations of the Forum;
 - (iii) relevant traditional resource management practices and standards on island; and
- (b) seek expert advice at all times where such expert advice is reasonably available.

(3) An Island Environment Authority may invite officials, experts, and other persons to advise the Authority in relation to any subject matter under consideration.

(4) An Island Environment Authority may appoint sub-committees consisting of officials, experts, and other persons to facilitate the committee's work on specific areas of concern and to advise the Authority in the discharge of its functions.

13. Chairperson - Each Island Environment Authority shall have a chairperson who shall be appointed by the Minister from amongst the persons appointed as voting members of the Authority. The chairperson shall hold office for a term of three years, unless he or she earlier resigns that post, or otherwise ceases to be an appointed member of that Authority.

14. Tenure of office of members - (1) Except as otherwise provided by this section, every appointed member of an Island Environment Authority shall be appointed for a term of 3 years, but shall be eligible for re-appointment.

(2) An appointed member may at any time resign by giving notice in writing to the Minister.

(3) Any member may be suspended or removed from office by the Minister with the concurrence of Cabinet, only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct, or if the member, having dissented from a majority decision of the Authority, publicly criticises the decision of the majority.

(4) The Minister shall by notice in writing remove an appointed member from office if he or she is absent from 3 consecutive meetings of the Authority without leave of that Authority.

(5) An appointed member ceases to hold office as an appointed member if he or she is elected to be a member of any Island State Government.

(6) Where an appointed member resigns, is removed from office, or where any member otherwise ceases to be a member, the Minister may appoint a person to replace that member in accordance with the provisions of the Schedule.

(7) The powers of an Island Environment Authority shall not be affected by any vacancies in its membership.

15. Meetings of Island Environment Authorities - (1) Every meeting of an Island Environment Authority shall be presided over by the chairperson, and in the absence of the chairperson the voting members present shall appoint one of their number to be the chairperson for that meeting.

(2) Meetings shall be held on such dates as the Authority shall decide, but in any event at a frequency of not less than one meeting every two months.

(3) The Minister shall have the right to attend and address any meeting of the Authority.

(4) The Director or his or her designate representative shall attend every meeting of the Authority.

(5) At least three days' notice of every meeting of the Authority shall be given to its members and the Director (or his or her designated representative), except -

(a) where the chairperson of that Authority certifies in writing that he or she is of the opinion that there is good reason to hold an urgent meeting; or

(b) in the case of a special meeting called under section 19.

(6) At meetings of the Authority the quorum necessary to transact business shall be -

(a) In the case of the Authority for Mangaia or Rarotonga, 4 voting members;

(b) In any other case, 3 voting members.

(7) Every question before a meeting of the Authority shall be decided by consensus, failing which it shall be determined by a majority of valid votes of the members present. In the case of equality of votes, the chairperson at the meeting concerned shall have a casting vote.

(8) Subject to the provisions of this Act and any regulations made under it, the Authority may regulate its proceedings in any manner it thinks fit.

(9) Notwithstanding section 12(3) and (4) and subsection (5) of this section, the Authority may, at any time and at its sole discretion, exclude any person (other than a member of that Authority, or the Director or his or her designated representative) from its deliberations.

16. Minutes of meetings - (1) Every Island Environment Authority shall cause minutes to be kept in a book maintained for the purpose of recording all resolutions and proceedings at its meetings.

(2) The minutes shall be approved by the Authority at the following meeting, and signed by the chairperson of this later meeting.

(3) A copy of the minutes of each meeting shall be furnished to every person who was a member of the Authority at the time of that meeting.

17. Remuneration of Authority - (1) Subject to subsection (2), every appointed member of an Island Environment Authority shall be paid out of the Service's account

established under section 62, without further appropriation than this section, such remuneration, expenses and allowances as are prescribed by Order in Executive Council.

(2) No person who is a member of Parliament or an employee in the service of the Crown or any agency of the Crown shall be entitled to receive remuneration as a member of an Island Environment Authority.

18. Disclosure of conflicting interests - (1) Any member of an Island Environment Authority who, otherwise than in his capacity as a member, is directly or indirectly interested in any matter before the Authority, shall as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest -

- (a) if the Authority is in session or that member is the chairperson, to that Authority; and
- (b) in any other case, to the chairperson.

(2) A disclosure under this section shall be recorded by the Authority or the chairperson, as the case may be, and the member shall thereafter not take part in any deliberations or decisions relating to the matter, but shall be counted for the purpose of forming a quorum.

19. Special meetings - (1) The chairperson or any three members of an Island Environment Authority may at any time by notice in writing signed by them and setting forth the matters to be considered, call a special meeting of the Authority.

(2) A notice under subsection (1) shall be delivered to every member of that Authority and to the Director or his or her designated representative before the day of the meeting.

PART 3

NATIONAL ENVIRONMENT COUNCIL

20. National Environment Council – (1) The Director may, at any time as required for the purposes of this Act, convene a National Environment Council to act as permitting authority for any part of the Cook Islands, other than Rarotonga and the Pa Enua.

In carrying out his or her functions under subsection (1), the Director must consult with the responsible Minister.

The members of the Council are the following:

the Director, who is chairperson of the Council:

the members appointed by the responsible Minister under subsection (4):

the members appointed by the Director under subsection (5).

The responsible Minister must appoint as members—

- “(a) 2 persons to represent the Pae Tonga (Southern Group) and the Pae Tokerau (Northern Group) of the Cook Islands; and
- “(b) 1 person who is recognised by the Cook Islands community as a traditional leader; and
- “(c) 1 or 2 persons to represent the interests of the Cook Islands community and the interests of the private sector.

The Director must appoint, from the register of technical experts maintained by the National Environment Service—

between 1 and 3 members with knowledge and experience of 1 or more of the following matters:

environmental matters:

the law of the Cook Islands:

economics; and

1 or 2 persons with knowledge and expertise in the matters under consideration by the Council.

“20A Suspension or removal of members and disbanding of council – (1) A member of the council may be suspended or removed from office by the responsible Minister with the concurrence of Cabinet,—
on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct; or
if the member, having dissented from a majority decision of the council, publicly criticises the decision of the majority.

As soon as practicable after the council has completed its consideration and determination of the matter for which the council was convened, the Director must, after convening a final council meeting to approve the minutes of the last meeting relating to that matter, disband the council.

The Director may at any time necessary convene another council in accordance with section 20.

[Amended Seabed Minerals Act 2019/05]

21. Meetings of the Council - (1) Meetings of the council shall be held on such dates and at such locations as the Director shall decide.

(2) The Minister shall have the right to attend and address any meeting of the council.

(3) At least seven days notice of every meeting of the council shall be given to its members, except where the Director certifies in writing that he or she is of the opinion that there is good reason to hold an urgent meeting.

(4) At meetings of the council, the quorum necessary to transact business shall be half the total number of the members of the council (irrespective of any extraordinary vacancies) when that number is even, and a majority of such members when that number is odd.

(5) Every meeting of the council shall be presided over by the Director, and in the absence of the Director the members present shall appoint one of their number to be the chairperson for that meeting.

(6) Every question before a meeting of the council shall be decided by consensus, failing which it shall be determined by a majority of valid votes of the members present. In the case of equality of votes, the chairperson at the meeting concerned shall have a casting vote.

(7) Subject to the provisions of this Act and any regulations made under it, the council may regulate its proceedings in such manner as it thinks fit.

(8) Subject to subsection (8), a member of the council shall be paid out of the Service's account established under section 62, without further appropriation that this section, such remuneration, expenses and allowances as are prescribed by Order in Executive Council.

(9) No person who is a member of Parliament or an employee in the service of the Crown or any agency of the Crown, or who is the Director, shall be entitled to receive remuneration as a member of the council.

22. Minutes of meetings - (1) The council shall cause minutes to be kept in a book maintained for the purpose of recording all resolutions and proceedings at its meetings.

(2) The minutes shall be approved by the council at the following meeting, and signed by the chairperson of this later meeting.

(3) A copy of the minutes of every meeting shall be furnished to every person who was a member of the council at the time of that meeting.

23. Disclosure of conflicting interests - (1) Any member of the council who, otherwise than in his capacity as a member, is directly or indirectly interested in any matter before the Council, shall as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest -

- (a) if the council is in session or that member is the Director; to the council; and
- (b) in any other case, to the Director.

(2) A disclosure under this section shall be recorded by the council or the Director as the case may be, and the member shall thereafter not take part in any deliberations or decisions relating to the matter, but shall be counted for the purpose of forming a quorum of the Council.

PART 4 **ENVIRONMENT OFFICERS**

24. Island Environment Officers - (1) The Director following consultation with the Minister shall appoint at least one Island Environment Officer to Rarotonga and to each Outer Island to which this Act applies.

(2) Each Island Environment Officer shall be appointed by instalment in writing on the recommendation of the Island Environment Authority for the Island concerned.

(3) The Director shall cause to be issued to each Island Environment Officer an identity card in such form as the Director thinks fit. Every person who ceases to be an Island Environment Officer shall forthwith return his or her identity card to the Director.

(4) Subject to subsection (5), an Island Environment Officer shall perform the functions of the Service -

- (a) On or in relation to the island to which the officer was appointed; and
- (b) Under the general election of the relevant Island Environment Authority.

(5) The Director may at any time, after consulting the relevant Island Environment Authority, redeploy an Island Environment Officer to work on or in relation to any other part of the Cook Islands under the general direction of the Director.

(6) Except with the consent of the relevant Island Environment Authority, no redeployment under subsection (5) shall in aggregate exceed, in respect of each Island Environment Officer, a period of 3 months in any one financial year.

(7) An Island Environment Officer be employed by the Service on terms and conditions specified in a contract of employment.

(8) The Director may, after consulting the relevant Island Environment Authority, remove or suspend an Island Environment Officer on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct, in addition to any other grounds specified in the contract of employment.

(9) In this section, "relevant Island Environment Authority", in relation to an Island Environment Officer, means the Island Environment Authority for the island to which that officer was appointed.

25. National Environment Officers - (1) The Director may from time to time by instrument in writing appoint National Environment Officers for the purpose of this Act.

(2) The Director shall cause to be issued to each National Environment Officer appointed under subsection (1) an identity card in such form as the Director thinks fit. Every person who ceases to be a National Environment Officer shall forthwith return his or her identity card to the Director.

(3) A National Environment Officer shall perform the functions of the Service -

- (a) On or in relation to any part of the Cook Islands to which this Act applies; and
- (b) Under the general directions of the Director.

(4) A National Environment Officer appointed under subsection (1) shall be employed by the Service on terms and conditions specified in a contract of employment.

(5) The Director may remove or suspend a National Environment Officer appointed under subsection (1) on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct, in addition to any other grounds specified in the contract of employment.

(6) The following persons shall be deemed to be a National Environment Officer for the purposes of this Act:

- (a) the Director;
- (b) any constable designated in writing by the Director;
- (c) any constable assisting or accompanying an Environment Officer in the exercise or performance of functions or powers conferred under the Act.

26. Jurisdiction of Environment officers - (1) An Environment Officer wishing to exercise any power conferred on him or her by this Act on, or in relation to, Rarotonga or any Outer Island to which this Act applies shall consult the Island Environment Authority for the island concerned before exercising that power.

(2) The requirement for prior consultation in subsection (1) does not apply where, prior to the exercise of the power concerned, the Director certifies in writing that he or she is of the opinion that the situation requires urgent action to be taken by the Environment Officer concerned.

(3) Nothing in subsection (1) applies to an Island Environment Officer exercising powers on or in relation to the island to which he or she has been appointed under section 24(1).

27. Powers of Environment Officers - (1) Where an Environment Officer has reasonable grounds to suspect an instance of pollution, the officer may do all or any of the following:

- (a) enter at any reasonable time, and inspect and search, any premises to monitor or determine environmental quality;
- (b) take samples of suspected environmental pollution;
- (c) get these tested by a reputable laboratory.

(2) Where an Environment Officer suspects that an offence against this Act is being or has been committed (whether or not it is an offence involving pollution), the officer may enter at any reasonable time, and inspect, any premises to investigate the suspected offence, and order any person whom he or she suspects of the offence to do all or any of the following:

- (a) disclose his or her full name and usual place of residence;
- (b) produce any permit, consent, or other evidence of a document authorising the act or omission that will otherwise constitute the offence;

(c) cease carrying on any specified activity, which the officer has reasonable grounds to believe is an offence against this Act.

(3) An Environment Officer entering any premises under subsection (1) or (2) shall, if requested by an occupier of the premises, produce that officer's identity card.

(4) An order under paragraph (c) of subsection (2) must be made in writing, and must specify the alleged offence.

(5) Where an Environment Officer wishes to make an order under subsection (2), and the person to whom the order is addressed is not readily contactable, the officer may leave the order in written form in a place where it can easily be noticed by that person. Any order so left shall be deemed to have been made to the person concerned in the absence of proof to the contrary.

(6) Notwithstanding subsections (1) and (2), no Environment Officer may enter a dwelling house for the purposes of this section except -

- (a) With the consent of an occupier of the dwelling house; or
- (b) In accordance with a warrant issued under section 29(1) (a).

(7) Every person commits an offence against this Act who, without reasonable excuse or lawful justification, fails or refuses to comply with an order made under subsection (2), and shall upon conviction be liable-

- (a) in the case of an order made under paragraph (a) or (b) of subsection (2), to a fine not exceeding \$500;
- (b) in the case of an order made under paragraph (c) of subsection (2), to a fine not exceeding \$1,000.

28. Additional powers of Environment Officers - (1) Where there are reasonable grounds to believe that an offence under this Act is being or has been committed, an Environment Officer may exercise a power specified in subsection (2) if the officer-

- (a) is a constable; or
- (b) is assisted or accompanied by a constable; or
- (c) is acting in accordance with a warrant issued under section 29(1)(b) or (c).

(2) Subsection (1) refers to the power to-

- (a) seize any animal, plant, article or other property that could constitute evidence as to the commission of the offence;
- (b) arrest a person who is believed to by committing, or have committed the offence.

(3) In this section, "property" excludes land.

29. Warrants to inspect dwelling house, seize property, or arrest persons - (1) A Justice of the Peace or Judge may, on the written application of an Environment Officer made on oath, issue to the officer unconditionally or subject to conditions a warrant, valid for 14 days from the date of issue, authorising that officer to do all or any of the following:

- (a) enter and inspect a specified dwelling house on one occasion for the purposes of section 27;
- (b) seize any description of animal, plant, article or other property that could constitute evidence as to the commission of an offence against this Act;
- (c) arrest a named person who is believed to be committing, or have committed, an offence against this Act.

(2) No warrant may be issued under subsection (1) unless the Justice of the Peace or Judge concerned is satisfied that there are reasonable grounds for believing-

- (a) In the case of the warrant issued under paragraph (a) of that subsection, that an instance of pollution has occurred, or an offence against this Act is being or has been committed, in or from the dwelling house concerned;
 - (b) In the case of as warrant issued under paragraph (b) of that section, that the property concerned could constitute evidence as to the commission of an offence against this Act;
 - (c) In the case of a warrant issued under paragraph (c) of that subsection, that the person concerned is committing or has committed an offence against this Act.
- (3) In this section, "property" excludes land.

30. Interference with work of Island Environment Authority or Service - Every person commits and offence against this Act who threatens, destroys, or otherwise interferes with the work of an Island Environment Authority or the Service (whether undertaken or in progress, and whether or not carried out by an Environment Officer), and upon conviction shall be liable to a fine not exceeding \$500, or to imprisonment for a period not exceeding 3 months, or both the fine and the imprisonment.

31. Assaulting or threatening officers - Every person who assaults or threatens an Environment Officer acting in the exercise or performance of functions or powers conferred under this Act commits an offence, and upon conviction shall be liable to a fine not exceeding \$2,000, or to imprisonment for a period not exceeding 3 months or both the fine and the imprisonment.

32. Impersonation of officers - Every person commits an offence who by words or conduct falsely represents that he or she is an Environment Officer or who otherwise impersonates an Environment Officer, and upon conviction shall be liable to a fine not exceeding \$500, or to imprisonment for a period not exceeding 3 months, or to both the fine and the imprisonment.

33. Release of seized property - The Court may, pending the hearing of any prosecution, order that any property seized under section 28 be released to its owner or to the person from whom it was seized, either conditionally or upon such conditions as the Court in its absolute discretion considers appropriate.

34. Order for forfeiture - (1) Upon the conviction of any person for an offence against this Act, the Court may in addition to imposing any penalty by way of fine or imprisonment, order the forfeiture to the Service of any property used or otherwise involved in the commission of the offence.

- (2) In this section, "property" excludes land.

35. Disposal of forfeited property- Any property or article forfeited under section 34, may be sold or otherwise disposed of as the Court thinks fit, and the proceeds of any such sale shall without further appropriation than this section be paid to the Service for its use.

“PART 5
Tier 1 to 3 activities”

The provisions of this Part relating to applications for, and the grant of, project permits are subject to section 33(4) of the Infrastructure Act 2019.

“36A Tier 1 to 3 activities

“(1) A tier 1 activity is an activity that has only minimal environmental impact and is able to be undertaken without conditions.

“(2) A tier 2 activity is an activity that has some but not significant environmental impacts and may be undertaken—
with the consent of the permitting authority; and
subject to any conditions imposed by the Authority.

A tier 3 activity is an activity which will cause or is likely to cause significant environmental impact, and may only be undertaken in accordance with sections 36 to 36C.

Regulations may be made under this Act—

regulating the undertaking of Tier 1, Tier 2, and Tier 3 activities; and
categorising specified activities as Tier 1, Tier 2, or Tier 3 category activities.

“36 Environmental impact assessment

“(1) No person may undertake any activity which causes or is likely to cause significant environmental impacts except in accordance with a project permit issued under this section.

“(2) A person who proposes to undertake an activity of the kind referred to in subsection (1) must apply to the permitting authority for a project permit in respect of the activity in accordance with the procedures (if any) prescribed by regulations.

Every application for a project permit must be submitted to the service and must include an environmental impact assessment, setting out details of—

the impact of the project on the environment and, in particular,—
the adverse effects that the project will have on the environment;
and

a justification for the use or commitment of resources that can be depleted, or non-renewable resources (if any), to the project;
and

a reconciliation of short-term uses and long-term productivity of the affected resources; and

the proposed action to mitigate adverse environmental effects and the proposed plan to monitor environmental impacts arising out of the project; and

the alternatives to the proposed project.

“(3) Every application for a project permit must be accompanied by an application fee prescribed by regulations.

“(4) After the permitting authority has reviewed and assessed the application and all relevant information including the environment impact assessment, it must, subject to guidelines (if any) prescribed by regulations—

issue a permit for the proposed project specifying the terms and conditions subject to which the permit is issued; or

request the applicant to submit modifications regarding the proposed project; or

where there are reasonable grounds to do so (taking particular account of the purpose of this Act), decline to issue a permit for the proposed project and state the reasons for that refusal.

“(6) The service must immediately convey to the applicant the decision of the permitting authority.

“(7) For the purposes of subsection (1),—

“(a) any designation, or issue or reissue of approval of any land (whether by a responsible Minister or any other public officer or authority, and whether under this or any other Act) for the disposal of any kind of waste is deemed to be an activity that is likely to cause significant environmental impacts:

“(b) regulations may declare any kind or class of seabed minerals activity to be or not to be an activity which causes or is likely to cause significant environment impacts.

“36A Consultation for purpose of section 36

“(5) The service must undertake public consultation for the issuing of the project permit and for that purpose—
publish details of the project in such a manner that these become accessible to the affected public; and
make available copies of the environment impact assessment report prepared by the project developer for review by the public; and
receive comments within 30 days from the date of public notice from the general public and other interested parties.

The service must request comment from any Government department or agency or person affected by or having expertise relevant to the proposed project or its environmental impact.

“36B Reconsideration of, and appeal against, permitting Authority’s decisions

“(6) Within 14 days of receiving notice of a refusal under section 36(5)(c), the applicant may, by letter to the responsible Minister, request that the responsible Minister review the permitting authority’s decision.

“(7) The responsible Minister must review the permitting authority’s decision and all information relevant to it and must notify the applicant and the permitting authority in writing of the responsible Minister’s decision to—
uphold the permitting authority’s decision to refuse a permit for the proposed project; or

direct the service to request that the applicant submit specified modifications to the service regarding the proposed project for reconsideration by the permitting authority.

If the responsible Minister is required to make a decision under subsection (2) in any case where the responsible Minister is the applicant for the permit, or is otherwise directly or indirectly interested in the permit application otherwise than as the reviewing authority, the responsible Minister must,—

—
with the concurrence of the permitting authority concerned, convene an independent panel to review the permitting authority’s decision and submit a recommendation to the responsible Minister; and
follow the panel’s recommendation in making the decision under subsection (2); and
make those recommendations public.

If the responsible Minister has conducted a review under subsection (2), or an independent panel has conducted a review under subsection (3), no further review of the decision may be conducted (except on the order of the court).

“36C Offences of failing to comply with section 36(1)

“(8) Every person commits an offence who, without reasonable excuse or lawful justification, fails or refuses to comply with section 36(1), and is liable on conviction,—

in the case of a body corporate, to a fine not exceeding \$100,000;

in any other case, to a fine not exceeding \$50,000.

In addition to any penalties imposed under subsection (1), the court may order that the person convicted, —

“(a) under the supervision and to the satisfaction of a person appointed by the court, clear up and remove the damage caused to the environment as a consequent of the offence, within any period and subject to any conditions that are specified in the order:

“(b) pay an amount that the court assesses in respect of the expenses and costs that have been or are likely to have been incurred—
in restoring the environment to its former state (its state immediately before the offence was committed); or
in removing or cleaning up or dispensing any oil or noxious liquid, or other harmful substance to which the offence relates.”

In section 50(1), insert:

“(e) carries out seabed mineral activities in Cook Islands waters.”

[Amended by the Seabed Minerals Act 2019/05]

PART 6

MANAGEMENT PLANS AND PROTECTED AREAS

37. Management Plans - (1) The Service shall from time to time, at the request of the Island Environment Authority for an island, prepare a draft management plan for any area within the island, for all or any of the following purposes:

- (a) protection, conservation, and management of wild life including protected species and the habitat of such wildlife and species;
- (b) protection, conservation and management of inland waters;
- (c) protection, conservation and management of uninhabited islands;
- (d) conservation and management of forests;
- (e) prevention of soil erosion;
- (f) prevention and control of pollution and waste;
- (g) protection, conservation and management of wetlands;
- (h) conservation and management of historical , archaeological and cultural sites;
- (i) setting out restrictions to which the land and waters in the area shall be subject to in the interests of achieving the objectives of the plan;

- (j) any other purpose relating to the environment which in the opinion of the Island Environment Authority will benefit from a Management Plan.

(2) The draft management plan shall be prepared in consultation with the landowners and occupiers affected by the plan and the plan shall include a management committee comprising representatives of these landowners and occupiers.

(3) When the Service has proposed a draft management plan, the Director shall by public notice-

- (a) state that a draft management plan has been prepared and specify the areas affected by the plan;
- (b) specify the place where the draft management plan is displayed and may be inspected by interested persons;
- (c) invite interested persons including the Aronga Mana of the district that may be affected (and the Ariki of the island where there is only one Ariki for the island) to make representation in connection with the draft management plan by a specified date, not being less than 1 month after the publication of the notice; and
- (d) specify an address to which such representations may be forwarded.

(4) Any person may not later than the date specified in the notice, make representations to the Service in connection with the draft management plan and the Service shall give due consideration to any representations so made, and may alter, amend or vary the draft management plan.

(5) In the preparation of the management plan, regard shall be had to the following objects:

- (a) the protection of special features, including objects and sites of biological, geological, and geographical interest;
- (b) the protection of the water catchment values of those areas within the plan;
- (c) the protection, conservation and management of soil resources;
- (d) environmentally sound traditional resource management practices and standards.

(6) The Director shall submit to the Island Environment Authority for the island the draft management plan together with such representations as have been made under subsection (4).

(7) The Island Environment Authority may -

- (a) approve or decline to approve the draft management plan as submitted; or
- (b) refer it to the Service, together with its suggestions for further consideration and for any amendment to the draft management plan.

(8) If the Island Environment Authority refers the draft management plan to the Service under subsection (7)(b), the Service shall consider the Island Environment Authority's suggestions and may alter, amend, or vary the plan before re-submitting the plan to the Island Environment Authority for approval.

(9) As soon as practicable after a management plan has been approved by the Island Environment Authority, it is to be laid -

- (a) In the case of a management plan for an area within an Outer Island, before the Island State Government for the island concerned; and

- (b) In the case of a management plan for an area within Rarotonga, before each Konitara Vaka that is responsible for the local government of the area concerned.

(10) The Island State Government (or Konitara Vaka., as the case may

be) may -

- (a) approve or decline to approve the management plan as submitted; or
- (b) refer it to the Service, together with its suggestions for further consideration, and for any necessary amendment to the management plan.

(11) Where the Island State Government (or Konitara Vaka, as the case may be) has referred the management plan to the Service under subsection (10) (b), the Service shall consider the suggestions of the Island State Government (or Konitara Vaka, as the case may be) and may alter, amend, or vary the plan before re-submitting the plan to the Island State Government (or Konitara Vaka, as the case may be) for approval.

38. When management plans come into effect - No management plan has effect until it is -

- (a) approved by the relevant Island Environment Authority and the relevant Island State Government (or in the case of Rarotonga, Konitara Vaka) under section 37; and
- (b) notified as part of a notification of a protected area under section 41.

39. Amendment or substitution of plans - The Service may from time to time prepare a draft amendment of a management plan in force for the time being, or a new management plan in substitution for such a management plan, and sections 37, 38, and 41 shall, with the necessary modifications, apply to the amendment or new plan as if it were a draft management plan or, as the case may be, a management plan.

40. Effect of plans - Any person who, without reasonable excuse or lawful justification, fails to comply with or acts in contravention of any provision of a management plan in force for the time being shall upon conviction be liable to a fine not exceeding \$5,000.

41. Protected Areas - (1) Where an Island Environment Authority proposes to designate an area within its island having ecological, cultural, archaeological, historical or scenic importance as a protected area for the purpose of environment and natural resource conservation and management (including protection, conservation and management of animals and plants and their habitats), the Island Environment Authority may cause to be issued in respect of that area a notification to that effect in accordance with the procedure set out in this section.

(2) Every notification issued pursuant to this section shall specify -

- (a) the description of the area to which the notification relates including, in the case of native freehold land, the legal description of the land concerned, or in the case of native customary land, a survey description; and
- (b) the particulars of the ecological, cultural, archaeological, historical or scenic importance and the resources, animals, plants, and their habitats; and

- (c) the name of the management plan that relates to the area concerned (or, in the case of an amendment to a management plan, the number and date of the amendment); and
 - (d) where the management plan (or, as the case may be, the amendment) may be viewed during normal office hours.
- (3) An Island Environment Authority shall not issue a notification -
 - (a) in respect of native freehold land, unless and until there has been concluded pursuant to the Land (Facilitation of Dealings) Act 1970 between the Director and the owners of the land and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4);
 - (b) in respect of native customary land, unless and until there has been concluded between the Director and the members of the Aronga Mana of the district in which the land is situated (and the Ariki of the island, where there is only one Ariki for the that island) and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4);
 - (c) in respect of any other land., unless and until there has been concluded between the Director and the owners of the land and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4).
- (4) Every shared resource management agreement shall -
 - (a) identify the resource, animals, plants and habitats to be protected, conserved, or managed; and
 - (b) include the management plan to be notified under subsection (2); and
 - (c) describe the manner in which the management plan shall be implemented so as to achieve the objectives of the plan; and
 - (d) provide a procedure for agreeing to an amendment to or substitution of the management plan following notification of that plan under subsection (2).
- (5) No notification may be made-
 - (a) In respect of any area, unless the Aronga Mana of the relevant district (and the Ariki of the island, where there is only one Ariki for that island) concur with the notification;
 - (b) Of any amendment to or substitution of a management plan, unless that amendment or substitution has been approved in terms of section 38(1)(a) and agreed to in accordance with the procedure referred to in subsection (4) (d.).
- (6) A notifications shall come into force and take effect from the date of its publication in the Gazette.
- (7) Without limiting the powers conferred by sections 27 and 28, an Environment Officer may at all reasonable times enter and inspect any premises within a protected area to-
 - (a) implement the provisions of the management plan notified in relation to the area; and
 - (b) determine whether the provisions of that management plan are being complied with; and
 - (c) monitor the attainment of the objectives of that management plan.

42. Document to be registered - Following the notification of an area as a protected area in the Gazette, the Director shall make an application to the Registrar of the Court for the registration of the shared resource management agreement and that notification in the Register of Titles.

43. Cancellation of notification - (1) Where an Island Environment Authority is of the opinion that a notification should be cancelled, the Island Environment Authority shall, after consultation with the owners and occupiers (if any) of the land and the Aronga Mana of the district in which the land is situated (and the Ariki of the island, where there is only one Ariki for that island), cause to be published in the Gazette a notice to that effect, and shall cause notice thereof to be given to the owner or occupier of the land affected (if any), and upon the giving of such notice by that Island Environment Authority, the notification shall cease to have any force or effect, and any shared resource management agreement or management plan in force in respect of the area to which the notification relates shall be deemed to have been terminated.

(2) A copy of every notice of cancellation shall be filed with the Registrar of the Court who shall cause the notice of cancellation to be noted against the earlier registration.

PART 7 **CONTROL OF LITTER**

44. Interpretation - In this Part, unless the context otherwise requires-
"Crown land" means land owned by the Crown or occupied by the Crown under a lease, license, or otherwise;

"Deposit", in relation to litter, includes-

- (a) cast, place, throw or drop litter; and
- (b) allow litter to be cast, thrown, dropped, or to escape, from any conveyance;

"Litter" includes any refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, sewage, or waste matter, or any other thing of a like nature;

"Private land" means every place other than a public place;

"Public place" -

- (a) Includes the following:
 - (i) every road, street, private street, footpath, access way, storm water drain, service lane, court, mall, thoroughfare, wharf and airport to which the public generally has access, whether with or without payment of any fee, and includes any national park or reserve;
 - (ii) any park, garden or other place of public recreation to which the public has access, whether with or without payment of any fee;
 - (iii) any beach or foreshore, or the bank of any river or stream, or the margin of any lake, to which the public traditionally has access, whether with or without payment of any fee;

- (iv) any waters to which the public traditionally has access, whether with or without payment of any fee, for bathing or other recreational purposes;
 - (v) every wharf, pier or jetty to which the public has access;
 - (vi) any airport within the meaning of section 2 of the Airport Authority Act 1985;
 - (vii) any land vested in or controlled by the Crown, being land that is not occupied pursuant to any lease, license, or other authority by any private person;
 - (viii) any other place whether public or private in the open air to which the public has access, whether with or without payment of any fee; but
- (b) Excludes any site designated or approved for the disposal of waste pursuant to this or any other Act, or any receptacle installed in a public place.

45. Control of litter in public places - (1) Every person who has a public place under that person's control or management shall at all times provide and maintain in that place, where litter is likely to be deposited, such number of litter receptacles of suitable construction and design for the temporary deposit of litter as may reasonably be necessary to keep that place free from litter.

(2) Where litter generated on or attributable to any particular premises is likely to be carried from or to otherwise escape from those premises onto a public place, an Environment Officer may require the occupier of the premises to take all reasonable steps to prevent such litter being carried to or escaping onto the public place.

(3) Where it can be shown that excessive litter is attributable to or emanates from any particular premises, an Environment Officer may require the occupier of the premises to provide and maintain such number of litter receptacles of suitable construction or design in any public place adjacent to or within the vicinity of the land or premises for the temporary deposit of litter, as may reasonably be necessary to ensure that the public place be kept free of that litter.

(4) Where any occupier fails to comply within a reasonable time with a requirement of an Environment Officer made under subsection (2) or (3), the officer may take any reasonable steps to remedy that default and shall recover the cost of so doing from the occupier as a debt due to the Service.

(5) Every person to whom this section applies shall also make appropriate provision for emptying the contents of litter receptacles provided within the public places under that person's control or management, and for the removal and disposal of those contents. The work shall be executed promptly, efficiently and at regular intervals.

46. Designation or approvals of waste disposal areas - (1) The Minister may by notice in the Gazette designate any Crown land as an area to be used by the public for the disposal of waste.

(2) At any time before Crown land on an island is designated under subsection (1), the Minister may by notice in the Gazette approve any land (except Crown land) on that island to be used for the disposal of waste. An approval under this subsection shall not be issued except at the request of the owners of the land concerned.

(3) An approval issued under subsection (2) expires at the earlier of:

- (a) the expiry of one year following the date of the approval; or
- (b) the expiry of seven days following the first designation of Crown land on the island concerned under subsection (1).

(4) An approval that expires under subsection (3)(a) may be re-issued by the Minister under subsection (2).

(5) Nothing in this section authorises any land to be used for the disposal of waste, where the lease, license, or other right by which the land is held or occupied prohibits such use of the land.

(6) This section is subject to section 36(13).

47. Occupiers of private land to clear litter - (1) An Environment Officer may serve on the occupier of any private land or any land vested in or controlled by any person, a notice in writing requiring the occupier, to the satisfaction of the officer to-

- (a) clear away, or remove from the land; or
- (b) clean up; or
- (c) screen, cover, or otherwise obscure from view such litter as may be specified in the notice, within such time as may be so specified.

(2) If upon the representations of an occupier served with a notice under subsection (1) the officer is satisfied that steps have been taken to comply with the requirements of the notice, but the occupier has been prevented by reasonable cause from completing the necessary work within the time specified, the officer may extend the time specified for such further period as he thinks fit.

(3) Every person receiving a notice under subsection (1) of this section may object to the requirements of the notice within 7 days after its receipt on the grounds that those requirements are unreasonable.

(4) Every objection shall be made in writing to the Director, who shall appoint a time and place for hearing the objection, and shall give reasonable notice of that time and place to the objector who shall be entitled to be present and, if present and, if present at that time and place, to be heard.

(5) The permitting authority in relation to the land concerned shall hear the objection, and after hearing it, may confirm, cancel or vary the requirements of the notice, and shall within 14 days after the hearing, give to the objector written notice of its decision.

48. Offences relating to litter - (1) Every person commits an offence who, without reasonable excuse or lawful justification,-

- (a) deposits any litter in or any public place; or
- (b) deposits any litter in or on any private land without the consent of its occupier; or
- (c) deposits any litter in or on any private land in the ownership or possession of a person who does not reside in the Cook Islands, whether or not that person consents to it; or
- (d) deposits any inorganic litter in or on any land other than land designated or approved for the disposal of waste under section 46; or
- (e) having deposited any litter (whether inadvertently or otherwise) in or on any public place, or in or on any private land without the consent of its occupier, leaves the litter there after having been requested by an Environment Officer to remove it; or
- (f) refuses or fails to comply with section 45(1) or (5); or
- (g) refuses or fails to comply with a requirement made under section 45(2) or (3); or

- (h) refuses or fails to comply with a notice issued under section 47 or refuses or fails to comply with a decision of the permitting authority under that section,-

and upon conviction shall be liable, in the case of an individual, to a fine not exceeding \$750, and in the case of a body corporate, to a fine not exceeding \$5,000.

(2) Where any person is convicted of an offence against this section, the Court shall in addition to imposing a penalty, order the offender, under the supervision and to the satisfaction of a person nominated by the Court, to clear up and remove the deposited litter within such period and to such place as may be specified in the order, and of the making of any such order, the Court shall further order that if the offender fails to comply with the order he is liable in addition to any other penalty imposed, to a fine not exceeding \$5000.

(3) Where the Court convicts a person of an offence against this section the Court may, if it thinks fit, in addition to imposing of penalty, order the offender to pay by way of compensation to the public authority having the control or management of the public place or, as the case may be, the occupier of the private land where the offence was committed, such sum as it considers reasonable to cover the cost of the removal of the litter, and the amount so awarded shall be deemed to be a judgement debt due to the authority or occupier from the offender, and may be enforced in any manner in which a judgement or order of the Court for the payment of a civil debt may be enforced.

(4) Subsection (1)(d) has no effect until the expiry of six months following the coming into force of this Act.

49. Wilful breaking of bottles or glass - Every person commits an offence who wilfully breaks any bottle, or glass or any article made of glass, in or on any public place, without lawful authority or without the express consent of the public authority having the control or management of the public place, or in or on any private land without lawful authority or without the express consent of the occupier of the private land, and upon conviction shall be liable to a fine not exceeding \$5000.

PART 8

SPECIFIC AREAS OF CONCERN

50. Protection of foreshore and Cook Islands waters- (1) Every person commits an offence who, without the prior consent in writing of the permitting authority or contrary to any provision of a management plan,-

- (a) remove any silt, sand, cobble, gravel, boulder, coral or any tree from the foreshore or Cook Islands waters; or
- (b) carries out any excavation, dredging, clearing, paving, grading, ploughing, removal of trees or vegetation, or other activity within the foreshore or Cook Islands waters which may result in the alteration of the neutral configuration of the foreshore; or
- (c) places and fill or material of any type within the foreshore or Cook Islands waters; or
- (d) carries out the construction or erection of any wall or structure within the foreshore or Cook Islands waters.

(2) The permitting authority-

- (a) may grant consent under subsection (1) subject to-
 - (i) guidelines (if any) prescribed by regulations; and
 - (ii) any conditions that the permitting authority considers necessary or desirable to safeguard the environment;

- (b) shall not grant any consent in respect of the foreshore unless the permitting authority is of the opinion that the activity consented to would result in the preservation, restoration, or enhancement of the natural configuration and features of the foreshore or the natural flow of water.

2019/06 (2A) This section is subject to section 33(4) of the Infrastructure Act

(3) Nothing in subsection (1) applies to an activity that is specifically authorised by a project permit issued under Part 5 of this Act.

51. Pollution of Cook Islands waters and inland waters- (1) Every person commits an offence who, without the prior consent in writing of the permitting authority,

- (a) throws, discharges, or deposits or causes, suffers, or procures to be thrown, discharged or deposited into any Cooks Islands waters or inland waters, either from or out of any vessel, or from the shore or any wharf, manufacturing establishment or mill of any kind, any refuse matter of any kind or description whatever; or
 - (b) deposits or causes or suffers or procures to be deposited material of any kind in any place on the shore or bank of any Cook Islands waters or inland waters where the same shall be liable to be washed into such waters, whereby navigation shall or may be impeded or obstructed, or the level of pollution of such waters increased, or where the same may become a danger (physical, or otherwise) to another person or to premises owned by another person;
 - (c) discharges or causes or suffers or permits to be discharged any oil, noxious liquid substances or other harmful substances, by any method, means or manner, into or upon any Cook Islands waters or inland waters.
- (2) The permitting authority-
- (a) may grant consent under subsection (1) subject to-
 - (i) guidelines (if any) prescribed by regulations; and
 - (ii) any conditions that the permitting authority considers necessary or desirable to safeguard the environment;
 - (b) shall not grant any consent unless it is of the opinion that the activity consented to-
 - (i) conforms with environmental quality and wastewater standards (if any) published by the permitting authority; and
 - (ii) shall not result in undue pollution of Cook Islands waters or, as the case may be, inland waters.
- (3) Nothing in subsection (1) applies to-
- (a) a discharge exempted from the application of section 3 of the Prevention of Marine Pollution Act 1998 by subsection (3) of that section; or
 - (b) an activity that is specifically authorised by a project permit issued under Part 5 of this Act.

52. Power to order remedial action

- “(1) This section applies if permitting authority considers that a person has acted in breach of any of sections 50, 51, 57, and 58.
- “(2) The permitting authority may—
- “(a) require the person to stop acting in breach of the Act and to take remedial action that the permitting authority considers necessary to make good the loss or damage caused by that person; or
 - “(b) notify the circumstances of the breach to any other Crown agency or government department having authority in the matter of the breach, with a view to settling a joint approach to—
 - “(i) stopping the breach“
 - (ii) assessing loss or damage:
 - “(iii) requiring that person to carry out any necessary remedial action:
 - “(iv) carrying out that remedial action at (in the first instance government expense) if for any reason that person does not do so.
- “(3) If the person fails or refuses to take remedial action as directed either by the permitting authority or the other Crown agency or government department requires, then one or more of the following may take that remedial action:
- “(a) the Service:
 - “(b) the permitting authority:
 - “(c) the other Crown agency or government department having authority in the matter of the breach.”
- “(4) If remedial action is taken at the cost of the Government, the cost of that remedial action is a debt due from the person to the Government.
- “(5) In this section the expressions **Crown agency** and **Government department** have the same mean as in the Cook Islands Investment Corporation Act 1998.
- “(6) This section does not affect—
- “(a) any power to impose a penalty or make any other order for an offence committed under this Act; or
 - “(b) the provisions of any other Act

53. Emergency provisions - Whenever the Service is of the view that there is an imminent danger of loss of life or property due to serious environment degradation, it shall immediately take necessary action to remove the cause of environmental degradation by itself, or direct any other relevant agency to do so, and recover the cost of so doing from that person as a debt to the Service.

54. Pollution levy - (1) Regulations may be made to impose levies on any hotel, resort, or industrial or other commercial establishment using or allowing its customers or guests to use fresh water and degrade its quality.

(2) Such levies shall be based on the quantity of fresh water used and the purpose for which it has been used.

(3) Any levies collected pursuant to such regulations shall be deposited in the Environment Protection Fund.

55. Protection of Species - (1) The service may, with the approval of the Island Environment Authority for an island, from time to time by notice in the Gazette designate specified animals and plants on the island as protected species.

(2) Every person commits an offence who, within the island concerned, threatens or disturbs any animal or plant of the protected species or the habitat of any such animal or plant.

56. Disposal of toxic chemicals - Every person commits an offence against this Act who disposes of any toxic chemical or its waste in a manner likely to harm the environment.

57. Excavations on sloping land- (1) No person may -

- (a) undertake any excavation of any kind on any land having natural gradient in excess of 1:10; or
- (b) erect or alter any building or structure on such land, except with the written consent of the permitting authority.

(2) The permitting authority-

- (a) may grant consent under subsection (1)(b) subject to-
 - (i) guidelines (if any) prescribed by regulations; and
 - (ii) any conditions that the permitting authority considers necessary or desirable to safeguard the environment;
- (b) shall not unreasonably refuse to grant a consent under subsection (1)(b).

(2A) This section is subject to section 33(4) of the Infrastructure Act 2019

(3) Nothing in subsection (1) (b) applies to an activity that is specifically authorised by a project permit issued under Part 5 of this Act.

(4) Every person who commits an offence shall be liable on conviction to a fine not exceeding \$10,000 who acts in contravention of subsection (1).

(5) The Court may in addition to the penalty provided for by subsection (4), order the offender to repair or restore under the supervision of an Environment Officer, any damage done as a consequence of any act done in contravention of subsection (1).

58. Protection of wetlands - (1) No excavation, dredging, clearing, paving, grading, ploughing, dumping, reclamation., removal of trees or other activity of any which may alter the natural configuration of the wetlands shall be undertaken on any wetlands, nor shall any building or structure be erected or altered on any wetlands, without the written consent of the permitting authority.

(2) The permitting authority-

- (a) may grant consent under subsection (1) subject to -

- (i) guidelines (if any) prescribed by regulations; and
- (ii) any conditions that the permitting authority considers necessary or desirable to safeguard the environment;

(b) shall not unreasonably refuse subsection (1).

(2A) This section is subject to section 38(4) of the Infrastructure Act 2019

(3) Nothing in subsection (1) applies to an activity that is specifically authorised by a project permit issued under Part 5 of this Act.

(4) Every person commits an offence and shall be liable on conviction to a fine not exceeding \$10, 000 who acts in contravention of subsection (1).

(5) The Court may, in addition to the penalty provided for by subsection (4), order the offender to repair or restore under the supervision of an Environment Officer, any damage done as a consequence of any act done in contravention of subsection (1).

59. General penalties - (1) Every person who commits an offence against this Act (whether or not an offence against a provision of this Part of this Act) for which no other penalty is provided by this Act shall be liable -

- (a) in the case of a body corporate to a fine not exceeding \$100,000, and if the offence is a continuing one to a further fine of \$10,000 for each day or part of a day that the offence shall continue;
- (b) in the case of an individual to a fine not exceeding \$10,000, and if the offence is a continuing one to a further fine of \$250 for each day or part of a day that the offence shall continue, or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(2) In addition to or instead of such fine and imprisonment, the Court may order that individual or body corporate to do all or any of the following:

- (a) under the supervision and to the satisfaction of a person nominated by the Court, to clear up and remedy any damage caused to the environment as a consequence of the offence within such period and upon such condition as may be specified in the order with the intent that any damaged area be restored as near as possible to a satisfactory, environmentally sound state;
- (b) to remove any structure, fill or material placed in contravention of this Act;
- (c) to pay such amount as the Court may assess in respect of the expenses and costs that have been or are likely to be incurred restoring the environment to its former state (its state immediately before the offence) or in removing or cleaning up or dispersing any oil or noxious liquid substance, or other harmful substance to which the offence relates.

(3) Where the offence is committed through the discharge of oil or noxious liquid substances or other harmful substances from a vessel, the clearance of any such vessel by the Customs Department shall be withheld until -

- (a) all proceedings before the Court have been finally dealt with; and
- (b) the penalty and any amount payable under subsection (1) or (2) is satisfied or paid;-

and any penalty or amount payable under subsection (1) or (2) shall constitute a lien on such vessel which may be recovered in proceedings by action in the Court.

60. Liability of principals and agents - (1) if an offence against this Act (whether or not all offence against a provision of this Part of this Act) is committed by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person, liable under this Act in the same manner and to the same extent as if he or she had personally committed the offence if it is proved-

- (a) That the act or omission that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she -
 - (i) Knew or should have known that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

(2) Where any body corporate is convicted of an offence against Act, every person, being a director or a person concerned in the management of the body corporate, is guilty of the same offence if it is proved -

- (a) That the act or omission that constituted the offence took place with his or her authority, permission or consent; or
- (b) That he or she -
 - (i) Knew or should have known that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

PART 9

ENVIRONMENT PROTECTION FUND

61. Environment Protection Fund - (1) The monies held in the Environment Protection Fund shall be expended on the protection, conservation and management of the natural environment including the protection of reef and foreshore, preservation and protection of flora and fauna, soil conservation, protection from pollution of (and removal of pollution from) land, sea and air, and other purposes consistent with the provisions of this Act, at such times and in such manner -

- (a) As prescribed by regulations; or
- (b) In the absence of such regulations, as Cabinet may from time to time approve.

(2) The Government may, from time to time, impose levies and taxes by Acts of Parliament, or make appropriations the proceeds of which shall be deposited in the Environment Protection Fund.

PART 10

FINANCIAL PROVISIONS

62. Funds of the Service - (1) The funds of the Service consist of -

- (a) all moneys received by the Service out of money appropriated by Parliament for the purpose;

- (b) all moneys received by way of fees, fines, rents, royalties or other income in respect of real or personal property vested in or controlled by the Service or in respect of the exercise of any of the functions or powers of the Service under this Act;
- (c) all moneys from time to time received by way of grants, donations, and subsidies;
- (d) all moneys received by the Service from the sale or other disposal of any real or personal property of the Service;
- (e) all accumulations of moneys belonging to the Service.

(2) The Service shall open and maintain an account on accordance with the provisions of the Ministry of Finance and Economic Management Act 1995-96.

63. Accounts - (1) The Service shall keep full and correct accounts of money received and expended in accordance with the provisions of the Ministry of Finance and Economic Management Act 1995-96.

(2) The accounts, financial statements, and records of the Service shall be audited in accordance with the Public Expenditure Review Committee and Audit Act 1995-96.

64. Financial and fiscal responsibility - The Director shall be responsible for ensuring that all activities of the Service are undertaken in a manner which is consistent with the provisions of the Ministry of Finance and Economic Management Act 1995-1996.

65. Exemption from taxation - The Service shall be exempt from the payment of any tax, duty or levy due in the performance of its functions or the exercise of its powers.

PART 11

COOK ISLANDS ENVIRONMENT FORUM

66. The Forum - (1) The Service shall convene a Cook Islands Environment Forum within one year of the Act coming into force, and at such other dates as determined by the Forum under subsection (2) or required by the Minister under subsection (3).

(2) Each Forum shall determine the date of its next meeting.

(3) The Minister may require that additional Fora be convened for any special purpose.

(4) The Forum shall -

- (a) consider the effectiveness and shortcomings of this Act;
- (b) receive reports from the Island Environment Authorities and the Service, on the operation of this Act;
- (c) make recommendations to the Minister concerning reforms to the laws relating to the protection of the environment, priority environment and sustainable development concerns of the Cook Islands and changes in environment policies and programs;
- (d) receive reports from any other interested parties including government departments and agencies, and registered organisations;
- (e) recommend species of plants and animals for designation as protected species under section 55 or regulations;

- (f) recommend protected areas from notification, the development of shared resource management agreements, and the preparation of management plans;
- (g) perform such other functions as directed by the Minister.

(5) The meetings of the Forum shall be conducted in such manner as the Minister may determine from time to time, and the Minister may chair the Forum or appoint a chairperson.

PART 12

REGISTRATION OF ORGANISATIONS

67. Voluntary registration of environmental organisations - (1) Any private or community organisation or association in the Cook Islands which purports to have expertise in environmental matters or which offers advice to any persons on such matters or purports to represent the interests of any persons in relation to such matters, may, at its discretion, register the Service for the purposes of this Act.

(2) Regulations may prescribe the procedure and forms for registration under this section.

PART 13

MISCELLANEOUS

68. Protection of Environment Officers and members of Island Environment Authority or National Environment Council - (1) No Environment Officer shall in any way be liable to be prosecuted, or be liable in damages, for the exercise or performance in good faith of the functions, duties, or powers vested in the Service or an Environment Officer under this Act.

(2) No member of an Island Environment Authority or a National Environment Council shall in any way be liable in respect of-

- (a) Anything done or omitted to be done in the exercise or performance of the functions, duties, or powers of the Authority or (as the case may be) the council; or
- (b) Any words spoken or written at or for the purposes of -
 - (i) the hearing of any application, inquiry, or investigation under this Act; or
 - (ii) any other proceedings under this Act; -

unless the thing was done or omitted to be done, or the words were written or spoken, in bad faith.

69. Contracts - (1) Any contract entered into by the Service shall be in writing and executed under the seal of the Service pursuant to approved decisions.

(2) The seal of the Service shall be kept in the safe custody of the Director and shall not be used except by the Authority of the Director.

(3) Every document to which the seal of the Service shall be applied shall be witnessed by the Director.

70. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make such regulations as are contemplated by any provision of this Act or are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) designating animals and plants as protected species for the purposes of this Act;
- (b) providing for the protection, conservation, and management of wildlife, protected species, or both;
- (c) regulating or prohibiting trade and commerce in wildlife, protected species, or both;
- (d) regulating or prohibiting the pollution of air, water, or land, and the depositing, or dumping of litter, rubbish, or any substance of a dangerous, noxious, or offensive nature;
- (e) regulating or prohibiting the exportation, importation, or transportation of hazardous wastes into or out of the Cook Islands, for the purpose of implementing any regional or international conventions, treaties, protocols, or agendas;
- (f) controlling soil erosion and siltation, and regulating or prohibiting the taking of gravel, sand, soil, rock, coral or like materials;
- (g) providing for the preservation, protection and conservation of trees and the prevention and control of the clearing, cutting, lopping, trimming, felling, burning, or removal of trees and other plants;
- (h) establishing protected areas (which may include any protected areas notified under section 41) and regulating or prohibiting activities within these protected areas;
- (i) prescribing procedures for the preparation of and giving effect to any management plan;
- (j) prescribing forms required to be used for the purposes of this Act;
- (k) prescribing offences against the regulations, and prescribing fines for such offences not exceeding not exceeding \$50,000 and, in the case of continuing offences, a fine not exceeding \$1000 for every day on which the offence continues;
- (l) providing for the taking of samples and their testing by laboratories;
- (m) prescribing procedures for entry, inspection, or search of premises, arrest of a person, and seizure or forfeiture of property, in the exercise of powers conferred by this Act;
- (n) regulating the operation of the Environment Protection Fund;
- (o) prescribing procedures for the registration of organisations under Part 12 of this Act;
- (p) prescribing procedures for making an application for a permit or consent under this Act;
- (q) prescribing guidelines restricting or otherwise regulating the issuance of permits and consents by permitting authorities;

- (r) prescribing fees for applications made under this Act, and the issue of permits and consents, and for the provision of advisory and other services;
- (s) prohibiting or regulating the importation or disposal of recyclable or non-recyclable products;
- (t) imposing further reporting obligations on the Service;
- (u) Providing for any matter incidental to or connected with any of the foregoing.

71. General provisions as to regulations - (1) Any regulation made under this Act may-

- (a) Apply generally throughout the Cook Islands or within a specified part of the Cook Islands;
- (b) Apply generally or with respect to different classes of activities, places, or things;
- (c) Apply generally or at any specified time of the year.

(2) Regulations may confer power on an Environment Officer or a permitting authority to give, issue, serve, or make a direction, notice, order, or requirement, for the purposes of this Act.

(3) Regulations may authorise a permitting authority to exempt any person, activity, place, or thing from any requirement of those regulations, if the permitting authority is satisfied that, in the circumstances, the imposition of the requirement on that person, activity, place, or thing, is not necessary.

(4) Notwithstanding any other provision in this Act, no regulation may be made under this Act that applies to an island or any part of an island, except after consultation (to the extent reasonable under the circumstances) with the Island Environment Authority for the island concerned.

(5) In this section, "thing" includes a species of plant or animal.

72. Adoption of Outer Island by-laws - (1) An Island State Government may refer to the Minister for approval a by-law made by it under the Island State Government Act 2003 relating to the protection or management of the environment.

(2) If the Minister considers it appropriate the Minister may by notice in the Gazette approve that by-law.

(3) A by-law approved by the Minister under this section shall be deemed to have the force of a regulation made under this Act.

(4) Notwithstanding any provision of the Island State Government Act 2003 to the contrary, every person who commits an offence against a by-law approved by the Minister under this section shall be liable to a fine not exceeding \$50,000, and in the case of a continuing offence, to an additional fine not exceeding \$1,000 for every day on which the offence continues.

73. Repeals - (1) The following Acts are repealed:

- (a) The Rarotonga Environment Act 1994 - 1995;
- (b) The Rarotonga Environment Amendment Act 1998;
- (c) The Rarotonga Environment Amendment Act 1999.

(2) All proceedings, applications, notices, plans or other matter or action taken, made, or done under an Act repealed by subsection (1) shall be continued and shall have full force and effect as if taken, made, or done under this Act.

74. Consequential amendment - Section 4A of the International Departure Tax Act 1984 (as inserted by section 2 of the International Departure Amendment Act 1994) is repealed.

75. Transitional and savings provisions for former Service and former Tu'anga Taporoporo - (1) Unless the context otherwise requires, every reference to the former Service or the former Tu'anga Taporoporo in any enactment, document, or agreement (whether in writing or not), in force immediately before the coming into force of this Act, is, on the coming into force of this Act, a reference to the Service.

(2) The assets and liabilities that the former Service or the former Tu'anga Taporoporo had immediately before the coming into force of this Act, shall, on the coming into force of this Act, become the assets and liabilities of the Service.

(3) Every person who is an officer (other than Director) or employee of the former Service or former Tu'anga Taporoporo immediately before the coming into force of this Act, shall, on the coming into force of this Act, become an officer or employee of the Service subject to any contract of employment applying to the person concerned immediately before the coming into force of this Act.

76. Transitional provisions for Director - (1) The person holding the office of Director of the former Tu'anga Taporoporo immediately before the coming into force of this Act shall, on the coming into force of this Act, hold the office of Director of the National Environment Service subject to the provisions of this Act.

(2) The employment contract applying to that person in respect of the office of Director of the former Tu'anga Taporoporo immediately before the coming into force of this Act shall be deemed to have been made under section 7(2) (a) of this Act.

77. Transitional provisions for former Environment Council and former Environment Officers - (1) Every member of the former Environment Council holding office immediately before the coming into force of this Act, shall, on the coming into force of this Act, be deemed to hold office as a member of the Island Environment Authority for Rarotonga as if he or she were appointed in accordance with item 1(a) of the Schedule.

(2) Every person holding office as an Environment Officer under the Rarotonga Environment Act 1994-95 immediately before the coming into force of this Act, be deemed to be an Island Environment Officer for Rarotonga, subject to the provisions of this Act and any contract of employment applying to the person immediately before the coming into force of this Act.

(3) Subsection (1) expires at the end of the 30th day following the day on which this Act comes into force.

This Act is administered within the National Environment Service

SCHEDULE

Section 11(1) and (2)

ISLAND ENVIRONMENT AUTHORITY FOR EACH ISLAND TO WHICH THIS ACT APPLIES

1. Island Environment Authority for Rarotonga

The Island Environment Authority for Rarotonga shall consist of the following members:

- (a) 4 members appointed by the Minister with the concurrence of Cabinet, and after consultation with the three Konitara Vaka, the members of Parliament, and the Aronga Mana, of Rarotonga, being:
 - (i) one person to represent the public of Rarotonga; and
 - (ii) one person to represent the public health interests of the Ministry of Health in relation to Rarotonga; and
 - (iii) one person to represent registered organisations that are active on Rarotonga, or in the absence of such organisations, to represent the non-governmental organisations of Rarotonga; and
 - (iv) one person to represent the Aronga Mana or Rarotonga; and
- (b) The Konitara Tutara for the time being of each of the three Konitara Vaka;
- (c) The members of Parliament of Rarotonga, as voting members of the Authority.

2. Island Environment Authority for Mangaia

The Island Environment Authority for Mangaia shall consist of the following members:

- (a) 7 members appointed by the Minister on the recommendation of the Aronga Mana of Mangaia, with the concurrence of the Cabinet and after consultation with the Island State Government and members of Parliament of Mangaia; and
- (b) The Kavaua Tutara for the time being of Mangaia; and
- (c) Every member of Parliament for the time being of Mangaia, as a voting member of the Authority.

3. Island Environment Authority for Mitiaro

The Island Environment Authority for Mitiaro shall consist of the following members:

- (a) 3 members appointed by the Minister on the recommendation of the Ui Ariki of Mitiaro, with the concurrence of Cabinet and after consultation with the Island State Government, members of Parliament, and Aronga Mana, of Mitiaro; and
- (b) One member appointed by the Minister on the recommendation of the Aronga Mana of Mitiaro, with the concurrence of Cabinet and after

- consultation with the Island State Government, members of Parliament, and Ui Ariki, of Mitiaro; and
- (c) The Kavana Tutara for the time being of Mitiaro; and
- (d) Every member of Parliament for the time being of Mitiaro, as a voting member of the Authority.

4. Island Environment Authority for Pukapuka-Nassau

The Island Environment Authority for Pukapuka-Nassau shall consist of the following members:

- (a) 4 members appointed by the Minister on the recommendation of the *kau wowolo* of the Pukapuka-Nassau, with the concurrence of Cabinet and after consultation with the Island State Government, members of Parliament, and Aronga Mana, of Pukapuka-Nassau; and
- (b) The Kavana Tutara for the time being of Pukapuka-Nassau; and
- (c) Every member of Parliament for the time being of Pukapuka-Nassau, as a voting member of the Authority.

5. Island Environment Authority for Rakahanga

The Islands Environment Authority for Rakahanga shall consist of the following members:

- (a) 4 members appointed by the Minister on the recommendation of the *Raungahuru* of Rakahanga, with the concurrence of Cabinet and after consultation with the Island State Government, members of Parliament, and Aronga Mana, of Rakahanga; and
- (b) The Kavana Tutara for the time being of Rakahanga; and
- (c) Every member of Parliament for the time being of Rakahanga, as a voting member of the Authority.

6. Island Environment Authority for each of the remaining Outer Islands

The Island Environment Authority for an Outer Island not specified in any of items 2 to 5 of this Schedule shall consist of the following members:

- (a) 4 members appointed by the Minister with the concurrence of Cabinet, after consultation with the members of Parliament, Island State Government, and Aronga Mana, of the island concerned, being:
 - (i) one person to represent the public of that island; and
 - (ii) one person to represent the public health interests of the Ministry of Health in relation to that island; and
 - (iii) one person to represent registered organisations that are active on that island, or in the absence of such organisations, to represent the non-governmental organisations of that island; and
 - (iv) one person to represent the Aronga Mana of that island; and
- (b) The Kavana Tutara for the time being of that island; and
- (c) Every member of Parliament for the time being of that island, as a voting member of the Authority.

7. Restrictions on the appointment of members

(1) Notwithstanding items 1 to 6 of this Schedule,-

- (a) The Minister shall not appoint any person to an Island Environment Authority unless the Minister is of the opinion that the person has suitable knowledge or experience relating to the protection, conservation, and management of the environment; and
- (b) The Minister shall not appoint to an Island Environment Authority any person who is a member of an Island State Government.

(2) For the avoidance of doubt, nothing in paragraph (1) of this item affects any person holding office as a member of an Island Environment Authority by virtue of holding the office of Konitara Tutara, Kavana Tutara, or member of Parliament.
