

REPUBLIC OF KIRIBATI



ENVIRONMENT ACT 2021

Arrangement of Sections

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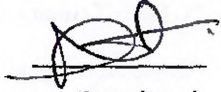
REPUBLIC OF KIRIBATI



(No: 18 of 2021)



I assent,


Beretitenti,
6/5/2022

AN ACT
entitled

**AN ACT TO PROVIDE FOR THE PROTECTION, CONSERVATION,
MANAGEMENT AND SUSTAINABILITY OF THE ENVIRONMENT OF THE
REPUBLIC OF KIRIBATI AND FOR CONNECTED PURPOSES**

Commencement date:
_____2022

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

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the *Environment Act 2021* and shall come into operation on such date as the Minister may by notice appoint.

2. Interpretation

(1) In this Act, unless the context otherwise requires –

"approval" includes the granting of any licence or permit required under this Act or any other administrative policy directive concerning any activities;

"basic environment impact assessment" means a preliminary environmental impact assessment of a proposed environment-significant activity under **Part IV**;

"basic environment impact assessment report" means a report presenting the results of preliminary environmental impact assessment;

"climate change" in addition to the definition provided in the *Disaster Risk Management and Climate Change Act* it also refers to any change in the state of climate that can be identified (e.g. by using statistical tests) by changes in the mean or the variability of its properties, and that persist for an extended period, typically decades or longer, whether natural or human induced;

"CHMS" means chemical and hazardous materials and substances;

"conduct" includes an act or omission;

"conservation" includes protection, management, maintenance and preservation;

"construction work" includes—

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

"conveyance" means a vessel, vehicle or aircraft;

"comprehensive environment impact assessment" means a full environmental impact assessment of a proposed environment-significant activity under **Part IV**;

"comprehensive environment impact assessment report" means a report presenting the results of a full environmental impact assessment;

"Department" means the department within the Ministry responsible for environment and conservation;

"Director" means the Director responsible for the Department;

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

"ecosystem approach" means a strategy for the holistic integrated management of land, water, and air as well as natural, social and cultural systems and their constituent, including anthropogenic activities that promote restoration, sustainable, equitable use, and long term conservation and preservation of ecosystem health and integrity;

"endemic species" means any plant or animal species that are found in a particular geographical place or region;

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

"environment" includes land, water and air as well as all natural and social and cultural systems and their constituent parts, and the interactions of their constituent parts, including people, communities and economic, aesthetic, culture and social factors;

“environment data and information” means data and information on environment licensing and compliance, waste management and pollution prevention and biodiversity conservation protection, management and sustainability;

“environment inspector” means a person appointed under **section 6(4)**, and includes the Secretary;

“EIA” means Environment Impact Assessment;

“environment licence” means a licence granted under this Act;

“Environment Management Plan” means a plan required under **Part IV** which identify, avoid and mitigate environmental impacts arising from an existing or proposed environment-significant activity;

“environment scientific research” is any scientific research that relate to environment licensing and compliance, waste management and pollution prevention and biodiversity conservation protection, management and sustainability;

“Environment spatial planning (ESP)” is a practical way to create and establish a more rational and integrated approach to the human use of terrestrial and marine environment space and the interactions among these users focusing on mapping of development project sites, polluting premises, ecological and ecosystem sites, waste management and pollution hotspots, protected and conservation areas; ecosystem-based adaptation sites and coastal erosion sites.

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

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

“harm” means an adverse effect other than an insignificant adverse effect, and, in the case of an organism, includes gathering, plucking, cutting, pulling up, moving, destroying, taking, digging up, removing, injuring, hunting, shooting, poisoning, netting, snaring, spearing, pursuing, capturing, trapping or killing the organism, except approved activities that carried out by Government Ministries;

“hazardous materials” means all –

- (a) materials having properties that may result in injury to human health and/or destruction of life or facilities; and
- (b) materials classified as hazardous under any Kiribati laws and any regional and International Conventions that Kiribati is a party to;

“hazardous substance” means all-

- (a) chemicals designated as hazardous under any laws or regulations made under this Act and any International Conventions that Kiribati is a party to; and
- (b) any other substances which appears in a list of hazardous substance or chemicals declared by the Minister;

“hazardous waste” refers to substance or matter, which is toxic or poisonous and may cause injury or damage to human health and the environment;

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

"impact" concerning the use, development, management, protection or sustainability of the environment, includes -

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

“invasive alien species” (IAS) are species whose introduction are spread outside their natural past or present distribution threatens biological diversity;

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

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

“litter” means small waste types and products that are discarded carelessly and incorrectly at public places and unsuitable location;

“management plan” means a management plan for a protected area for the purpose of this Act;

“Minister” – Minister responsible for environment and conservation;

"noise" includes sound and vibration;

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

“open place” means any place not inside a building or conveyance;

“organism” includes—

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

- (d) any matter or secretion that the organism produces; and
- (e) any product that is derived from or includes the organism;

“person” includes any public body and any body of persons, corporate or un-incorporate, and this definition shall apply notwithstanding that the word “person” occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;

“plant” means a living thing that grows and has a stem, leaves, stems, branches, tubers, bulbs, corms, stocks, budwood, cuttings, layers, slips, suckers, roots, flowers, fruits, seeds, botanical specimen (whether dead or alive), and any other part of a plant;

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

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

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

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

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

“private premises” means any premises which is not a public place;

“protected area” means an area, subject to any conditions (if any), prescribed under **section 70**;

“protected species” means a species, subject to any condition (if any), prescribed **under section 68**;

“public authority” means -

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

“public place” includes every place to which the public are entitled or permitted to have access whether on payment or otherwise;

“research methodology” means a research technique (such as survey, observation, scientific research and others) used to gather data and information;

“resilience” refers to the capacity of social, economic, and environmental systems to cope with hazardous event or trend or disturbance, that naturally caused or human-induced, responding or reorganizing in ways that maintain their essential functions, identity, and structure, while also maintaining the capacity for adaptations, learning and transformation;

“Secretary” means the Secretary responsible for environment;

“Scientific Report” means a systematic research of scientific theories and hypothesis;

“strategic environmental assessment” means a higher-level assessment process to examine the potential environmental impacts that may arise from, or impact upon, the implementation of policies, plans and programmes;

“substance” means any solid, liquid or gas, including odour as well as chemical elements and their compounds in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product and any impurities deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

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

- (a) sustaining the potential of natural and physical resources to meet the needs of future generations;
- (b) using, developing or protecting renewable natural and physical resources so that their ability to yield long-term benefits is not endangered;
- (c) using, developing or protecting non-renewable natural resources so as to lead to an orderly and practical transition to adequate substitutes including renewable resources;
- (d) safeguarding the life-supporting capacity of air, water, soil and ecosystem; and
- (e) avoiding, remedying or mitigating any adverse effects of development on the environment;
- (f) preserving protected species and areas of environmental, cultural and historic significance; and
- (g) avoiding, minimising, mitigating and remedying adverse effects on natural and cultural systems;

“trade” includes commercial undertaking;

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

“waste” includes matter -

- (a) whether liquid, solid, gaseous, hazardous or radioactive, whether toxic or not, which is discharged into the environment; or
- (b) which is the by product of any process activity or development with no apparent value or beneficial function; or
- (c) human excrement or faeces; or

- (d) animal excrement or remains; or
- (e) which is prescribed by regulation to be waste;

“water” includes the whole or any part of any lagoon, swamp, wetland, lake, unconfined surface water, natural or artificial watercourse, dam, tidal waters (including the sea), underground waters, or water in artificial works, watermains, waterpipes, or waterchannels;

“World Heritage Convention” means the Convention for the Protection of the World Cultural and Natural Heritage 16 November 1972 Paris; and

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

3. Objects of the Act

(1) The objects of this Act shall be-

- (a) to communicate, educate and raise public awareness on the environment and natural resources protection, conservation, management and sustainable utilization at all levels of society;
- (b) to provide for and establish integrated systems and environment safeguard system of development control, environmental impact assessment and pollution control;
- (c) to prevent, control, manage and monitor waste and pollution;
- (d) to reduce risks and prevent the degradation of the environment by all practical means, including the following -
 - (i) regulating the discharge of pollutants to the air, water or land;
 - (ii) regulating the import, export, manufacture, use, transport, collection, treatment, storage and disposal of chemicals and wastes;
 - (iii) promoting recycling, re-use, reduction, composting and recovery of materials in an economically viable manner;
 - (iv) protecting, conserving and managing the natural resources threatened by natural and human induced activities, particularly those resources of national and ecological significance as may be classified under the categories of terrestrial vegetation, coral, fish and marine life;
- (e) to promote and undertake ecosystem approach to protect, conserve, manage sustain and enhance the resilience building of the environment;
- (f) to comply with and give effect to regional and international conventions and obligations relating to the environment;

- (g) to collect, provide, and manage environment data and information for the state of environment report and national report obligations to international conventions relating to the environment;
 - (h) to enhance the sustainability, integrity and resilience of the Kiribati environment;
 - (i) to promote, ensure and support sustainable development;
 - (j) to promote, protect, conserve, manage, and sustainably use of biological diversity and heritage;
 - (k) to prevent, eradicate, reduce, and manage the impacts of IAS for the protection and conservation of terrestrial and marine biological diversity; and
 - (l) to enforce and ensure compliance.
- (2) Recognizing the extensive areas touching the environment, the objects of this Act acknowledges and compliments other existing legal instruments that support, the protection, management and sustainability of the marine resources.

4. **Extent of Act**

This Act applies, in addition to the circumstances described in Part III of the *Penal Code Cap 67* —

- (a) throughout Kiribati islands/land
- (b) throughout Kiribati and Kiribati waters; and
- (c) throughout the exclusive economic zone of Kiribati.

5. **Requirements of decision making**

In any decision made under this Act, the Secretary upon the advice of the Director must -

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

- (g) be consistent with existing roles and responsibilities recognized under government ministries, and if any decision may affect such roles and responsibilities consultation must be undertaken prior the decision making.

PART II - ADMINISTRATION

6. Administration of the Act

- (1) The Minister, acting in accordance with the advice of the Cabinet shall be responsible for the due administration and implementation of this Act.
- (2) The Minister may give the Secretary directions as to the exercise of any powers or functions or the performance of any duties under this Act.
- (3) Subject to section 99 of the *Constitution*, and subject to subsection (4), the Minister may, by instrument in writing, appoint a person (including a class of persons) as an environment inspector.
- (4) If a person or class of persons to be appointed as an environment inspector is employed in any area of the public authority, the Minister or Secretary must consult with the employer of the person or class of persons to enforce the provision of this Act.

7. Functions of the Minister

- (1) The Minister, acting in accordance with the advice of the Cabinet shall have the following functions-
 - (a) protect, restore, rehab and enhance the health, integrity and quality of the environment of Kiribati, balanced against the need to promote sustainable development;
 - (b) develop, establish and administer systems to manage waste and prevent pollution in commercial, industrial and non-industrial sectors;
 - (c) develop national standards to promote sustainable development and to monitor those standards through environmental auditing;
 - (d) assist in developing legislation for systems of environmental planning at national, island and village level, and the development of national, island and local environment management plans;
 - (e) assist in developing legislation for systems of environmental protection, planning (including ESP) and management at national, island and village level, and the development of national, island and local environment protection and management plans;

- (f) collaborate with relevant public authorities in assisting in the conservation and management of areas of national and international significance;
 - (g) ensure the participation of the community to facilitate and inform environmental decision-making;
 - (h) ensure freedom of and access to information on environmental matters, and in particular to ensure that the community has access to relevant information about hazardous substances arising from, or stored, used or sold by any industry or public authority, private person or private enterprise or any other person;
 - (i) set environment standards for environmental improvement to be complied with by the licence holders and the general public,
 - (j) promote the environment communication, education and public awareness;
 - (k) promote the study of the environment through research, surveys, listing and classification; and
 - (l) banning of imported items considered unfriendly to the environment as prescribed under the Regulations.
- (2) For the purposes of promoting sustainable development as envisaged under subsection (1)(a), the Minister acting in accordance with the advice of the Cabinet shall as far as practicable be guided by the following -
- (a) the precautionary principle;
 - (b) fairness to future generations in that the present generation should ensure that the health, diversity, and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - (c) conservation of biological diversity and ecological integrity; and
 - (d) improved valuation and pricing of environmental resources applying the following waste management guiding principles-
 - i. 3Rs (reduce, reuse, recycle) + return;
 - ii. polluter pays;
 - iii. extended producers responsibility; and
 - iv. circular economy.

8. Performance targets for public authorities

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

9. Powers of entry of Inspectors

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

10. Minister's power to issue general directions

The Minister upon the advise of the Secretary may give the Ministry such directions of a general character as to the policy to be followed by the Department in the performance of its functions as appear to the Minister to be necessary and the Department shall give effect thereto.

PART III—OBLIGATIONS

Division 1—Waste Management and Pollution Prevention

11. Waste Management

(1) Interpretation

“bulky waste” refers to

- (a) end of life vehicle, ship wrecks, shipping containers, ferrous scrap and tree trunks and branches;
- (b) similar household furniture or commercial appliances; and
- (c) any other item to be disposed of which cannot be effectively disposed of by regular waste collection services provided to residential or commercial premises.

“disposing” in relation to litter includes:

- (a) casting, placing, throwing or dropping of litter; and

- (b) allowing litter to be cast, thrown, dropped or, without reasonable excuse, to escape, from a motor vehicle, trailer, receptacle or place;

“organic waste” means biodegradable waste composed of garden wastes or vegetative waste matter;

“municipal solid waste” means all solid waste, except industrial and agricultural waste generated from household, commercial and business establishment, institutional facilities and municipal services. It also may include construction and demolition debris, and other waste that may enter the municipal waste stream, but it generally excludes hazardous wastes;

“heavy plant machinery” means any plant, equipment, apparatus, device machine or mechanism, heavy duty machinery, incinerator, generators and includes any vessel, dredge or crane, but does not include a motor vehicle;

“private land” means every place other than a public place;

“other waste” means kitchen waste, recyclable and residual waste, green waste;

“residual waste” means solid waste that cannot be reused, recycled or returned for recycling offshore.

12. Municipal Solid Waste Management

Municipal solid waste, litter, residual waste and other waste must be placed-

- (a) in a contained manner;
- (b) segregated in terms of recyclability being organic and inorganic waste; and
- (c) put in the approved bag in a place where it will be collected for disposal.

Any person who contravenes this section, by discharging municipal solid waste in an open place or public place other than in accordance with an environment license commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.00 and to imprisonment to a term not exceeding 12 months or both.

13. Littering

Any person who discharges any litter of any kind in any open or public place commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.00 and to a term of imprisonment not exceeding 12 months or both.

14. Litter from vehicle

- (a) No person in a vehicle shall throw out or deposit any litter of any kind onto any public road or public place.

- (b) No driver of a vehicle shall allow any article, substance or material to be thrown, fall from or be deposited by or from his or her vehicle onto a public road.
- (c) In the event that any article, substance or material is thrown from, falls from or is deposited by any vehicle on any street, the driver of the vehicle who fails to take all reasonable steps to safeguard other traffic in the public place and to remove the article, substance or material immediately afterwards commits an offence.
- (d) A person, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.00 or to imprisonment to a term not exceeding 12 months or both.

15. Management of other waste, residual waste and hazardous waste

The guideline prescribing and imposing requirements in relation to other wastes, residual waste and hazardous wastes having adverse impacts on the environment or human health shall be prescribed in the Regulations.

16. Designation of landfill site

The Secretary with the advice of the Director and in consultation with the Ministry responsible for the Local Government council may by notice;

- (a) designate any Government land as an area for the depositing of municipal solid waste; and
- (b) subject to the terms on which such land is held by the Government, designate any other land occupied by the Government by lease, licence or otherwise as an area for the depositing of municipal solid waste; and
- (c) any person who designates a landfill site other than subsection (a) and (b) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 or to imprisonment for 2 years or both.

17. Abandoning of bulky waste in public place, on private land or marine

- (a) No person shall abandon or leaves bulky waste in or on any public place, marine, or on private land other than in accordance with the advice of the Department.
- (b) A person, who contravenes paragraph (a) commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000.00 or to a term of imprisonment not exceeding 15 years or both, or in the case of a body corporate, to a fine not exceeding \$1,000,000.00 or to imprisonment not exceeding 20 years or both.

18. Government bodies, stakeholder, businesses and big development projects responsibilities

- (a) Every public authority and commercial facility must at all times provide and maintain in every public place under its control or management where municipal solid waste is likely to be deposited or left such number of receptacles as may reasonably be necessary to ensure that the place may be kept free of litter;
- (b) Every public authority and commercial facility must also make appropriate provision for the emptying of the contents of its receptacles and for the removal and disposal of those contents at regular intervals;
- (c) Every owner of any public transport vehicle must provide and maintain in every vehicle under his control or management such number or receptacles as may reasonably be necessary to ensure that the vehicle may be kept free of litter;
- (d) Every owner of any public vehicle must also make appropriate provision for the emptying of the contents of its receptacles and for the removal and disposal of those contents at regular intervals; and
- (e) The occupier of any commercial facility who disposes of commercial waste into receptacles provided for public use for the disposal of litter commits an offence.

19. Damaging litter receptacle

A person or corporate body or any other organization who, without lawful authority, damages, removes, tampers with or destroys or unlawfully removes a public or private receptacle designed or used for the deposit of litter or causes or permits its contents to be deposited on premises commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 and in default to imprisonment not exceeding 2 years or both.

20. Pig and poultry premises to be kept clean

- (1) The occupier of premises who allows a place where a pig or poultry is kept to be in an unclean condition commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.00 or imprisonment for 3 months or both.

“For the purposes of subsection (1) the word “unclean” means dirty, muddy, odor, contaminated, fouled, filthy, soiled and more similar activities.

- (2) Any person who within any water reserve erects a pig premises or poultry premises commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.00 or imprisonment for 1 year or both.
- (3) Any person who repeatedly commits an offence under subsection (1) and (2) his pig or poultry premises shall be relocated or forcefully removed in accordance with any prescribed guideline related to National Pigsty Guideline.
- 21. Excessive emissions from vehicles, energy power generating plants, heavy plant machineries and incinerator**
- (1) A person who drives a vehicle or conveyance or utilizing energy power generating plants, heavy plant machineries or incinerator commit an offence if the vehicle or energy power generating plants, heavy plant machineries or incinerator emits excessive emissions and shall be liable upon conviction to a fine not exceeding \$500,000.00 or to imprisonment not exceeding 15 years or both, or in the case of a body corporate, to a fine not exceeding \$1,000,000 or to imprisonment not exceeding 20 years or both.
- (2) For the purpose of subsection 1—
'excessive emissions' means—
- (a) for a diesel-fueled vehicle when operated normally—
- (i) visible smoke continuously for more than 5 seconds; or
- (ii) a cloud of visible smoke which is larger than one meter in diameter at any point;
- (b) for a petrol-fueled vehicle, when operated normally, any visible smoke; and
- (c) plants, heavy machineries, incinerator, burning activities and other relevant activities to be prescribed in the regulations.
- (3) The definition of 'excessive emissions' may be amended by regulation.
- (4) The Environment Inspector appointed under **section 6** upon receiving complaint and report in accordance with subsection (1) shall seek court order to cease or detain the operation of energy generating plants, heavy plant machinery and incinerator, and detained such vehicle and prosecute such persons accordingly.

22. Pollution of waters

- (1) No person shall causes or allows the dumping or discharge of any substance, waste or hazardous waste, energy into water that –
 - (a) results in a change in the physical, chemical or biological condition of the water;
 - (b) causes a visible change to the water or the surface of the water;
 - (c) makes, or is likely to make, the water unclean, noxious or poisonous;
 - (d) makes, or is likely to make, the water detrimental to the health or safety of persons, property, animals or plants; or
 - (e) interferes with, or is likely to interfere with, the exercise or enjoyment of any person's right in relation to the water.
- (2) A person who contravenes subsection (1), commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000,000.00 and in default to imprisonment not exceeding 20 years.

23. Dumping in the sea or lagoon

- (1) No person shall cause or allow the dumping of waste or other matter in the sea or lagoon other than in accordance with an environment licence.
- (2) A person who contravenes subsection 1 commits an offence and shall be liable;
 - (a) to a fine not exceeding \$500,000.00 and in default to imprisonment for 15 years or both, in the case of an individual; or
 - (b) in the case of a corporation, or an individual who has committed an offence against this Act on a previous occasion to a fine not exceeding \$1,000,000.00 and in default to a term of imprisonment not exceeding 20 years.
- (3) Subsection (1) does not apply to:
 - (a) the disposal of waste or other matter incidental to or derived from the normal operations of vessels, aircraft, platforms, approved hatchery and aquaculture farm operation or other man-made structures; or
 - (b) the placement or abandonment of waste or other matter other than for disposal.
- (4) Where applicable the administrative penalty notices in Part 12 of the *Fisheries Act* shall be applied here.

- (5) In this section-
- “dumping” includes any abandonment or toppling of platforms or other man-made structures;
- “waste or other matter” means materials and substances of any kind, form or description, and includes vessels, aircraft, platforms or other man-made structures, cables, pipelines and marine research devices.

24. Dumping on land

Any person who, deposits or dumps waste at a place other than an authorized dumping landfills commits an offence and shall be liable upon conviction to a fine-

- (a) not exceeding \$10,000.00 and in default to imprisonment for 2 years, or both, in the case of an individual; or
- (b) not exceeding \$20,000.00 and in default to imprisonment for 3 years, or both, in the case of a corporation, or an individual who has committed an offence against this Act on a previous occasion.

25. Pollution from private premises

- (1) A person who causes or allows the discharge of any substance like waste, waste pile, bulky waste, fuel or oil spill, odor, and energy from private premises that unreasonably interferes, or is likely to unreasonably interfere with, the environment or comfort of any person outside that premises commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 and to imprisonment for 2 years or both.
- (2) The Environment Inspector appointed under **section 6** upon receiving such complaint in accordance with subsection (1) shall seek court order to cease all activity in the premises, and prosecute them accordingly.

26. Pollution in a public place or public conveyance

A person who causes or allows the discharge of any substance, hazardous waste or energy in any public place, or conveyance used by the public, that unreasonably interferes with, or is likely to unreasonably interfere with, the health or comfort of any person and the environment commits an offence and shall be liable upon conviction to a fine-

- (a) not exceeding \$5,000.00 or to imprisonment for 12 months, or both, in the case of an individual; or

- (b) not exceeding \$10,000.00 or to imprisonment for 2 years, or both, in the case of a corporation, construction company or an individual who has committed an offence against this Act on a previous occasion.

27. Dumping of hazardous waste on land

Any person who, deposits, dumps or discharges any hazardous waste, or who causes hazardous waste to be deposited, dumped or discharged on any place, commits an offence and shall be liable upon conviction-

- (a) to a fine not exceeding \$5,000.00 or to imprisonment to a term not exceeding 12 months, or both, in the case of an individual; or
- (b) to a fine not exceeding \$10,000.00 or to imprisonment to a term not exceeding 2 years, or both, in the case of a Corporation, Construction Company or an individual who has committed an offence against this Act on a previous occasion.

28. Pollution to the environment

A person who causes or allows the discharge of a substance or energy or hazardous waste or chemical materials on land which pollute the environment other than in accordance with an environment licence commits an offence and shall be liable

- (a) to a fine not exceeding \$5,000.00 or to imprisonment to a term not exceeding 1 year, or both, in the case of an individual; or
- (b) to a fine not exceeding \$10,000.00 and to imprisonment to a term not exceeding 2 years, or both, in the case of a Corporation, Construction Company or an individual who has committed an offence against this Act on a previous occasion.

29. Controlling over the import of chemical or hazardous materials and substances (CHMS)

- (1) A person who import any chemical or hazardous material and substances into Kiribati shall follow national procedures, classifications and labelling system for chemicals and substances as prescribed in the Regulation on the Globally Harmonised System of Classifications and Labelling of Chemicals (GHS).
- (2) A person, who contravenes subsection (1), commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for a term not exceeding 10 years or to both.

30. Offences related to the import of hazardous or chemical materials and substances

- (1) No person shall imports, or allows the transits into Kiribati, and exports out of Kiribati any toxic or hazardous substances, except in compliance with regional and international obligations applying in Kiribati and support other national laws, commits an offence and is liable upon conviction to a fine not exceeding \$500,000.00 or to imprisonment for 15 years, or both.
- (2) A person who imports chemical or hazardous materials and substances into Kiribati shall be responsible to meet the handling, storage, transportation and offshore disposal cost of certain objects, substances or things before and after they become wastes.
- (3) A person who contravenes subsection 3 commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000.00 or imprisonment for 10 years or both.

31. Obligations to deal with certain wastes

- (1) This Act shall prescribe regulations to impose the requirements in relation to certain wastes having adverse impacts on the environment or human health by:
 - (a) imposing prohibitions in relation to the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes;
 - (b) regulating the importation, exportation, manufacture, use, storage or transportation of certain objects, substances or things which may become wastes to ensure their appropriate disposal by recycling or otherwise; or
 - (c) requiring the lodging of a deposit in relation to certain objects, substances or things which may become wastes to ensure their appropriate disposal by recycling or otherwise; or
 - (d) imposing obligations on persons importing, exporting, using or manufacturing certain objects, substances or things which may become wastes in relation to their eventual disposal.
- (2) Regulations made under subsection (1) may prescribe any matter necessary for the protection of the environment or human health from objects, substances or things which may become wastes, and any matter concerning the administration of any scheme requiring the lodging of deposits or obligations to dispose of such objects, substances or things.

32. Duty to clean-up the environment

- (1) A person who causes or allows the discharge of any waste or other substance in contravention of this Act must take appropriate actions to remove the waste or other substance and remedy, mitigate and contain any harm to the environment.
- (2) Communities or persons responsible from their communities are required to engage in taking any appropriate actions to remove the waste pile, or other substance from their areas.
- (3) A person who fails to comply with subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for 3 years or both.

Division 2—Environmentally-Significant Activities

33. Environmentally-significant activities

- (1) Environmentally-significant activities are activities listed in the Schedule.
- (2) The Minister, acting in accordance with the advice of Cabinet, may, by notice amend the Schedule.

34. Carrying out environmentally-significant activities

- (1) An—
 - (a) environmentally-significant activity; and
 - (b) any construction work designed to enable an environmentally-significant activity

must be carried out in accordance with a signed environment licence from the Ministry.

- (2) A person who—
 - (a) carries out; or
 - (b) is responsible for, directs and indirect, causes or allows the carrying out of, an environmentally-significant activity, or construction work, contrary to subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years or both.

Division 3— Protection, Conservation, Management, and Sustainability of Biological Diversity

35. Interpretation

For the purpose of this division-

“biosphere reserve” include terrestrial, marine and coastal ecosystems. Each site promotes solutions reconciling and conservation of biodiversity with its sustainable;

“Biodiversity genetic resources” mean any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity and include traditional knowledge;

“Ramsar site” a site that is designated and protected under a treaty relating to or concerning the conservation and sustainable use of wetlands and their natural resources;

“shoal ecosystem” refers to a small hill of sand just below the surface of the sea, that can be visible or invisible above the surface of the sea during low tides;

“species” means a group of living organisms consisting of similar individual capable of exchanging genes or interbreeding; and

“Traditional knowledge” refers to the knowledge, innovations, and practices associated with genetic resources and held or owned by indigenous and local communities.

36. Harming coral reefs, shoal ecosystem, mangroves and sea grass beds

- (1) No person shall cause or allows harm to a—
 - (a) coral reef;
 - (b) shoal ecosystem
 - (c) mangrove; or
 - (d) sea grass bed.
- (2) A person who contravenes subsection (1) other than in accordance with an environment licence commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years or both.
- (3) Subsection (1) does not apply to conduct that is a traditional practice in Kiribati.

37. Harming a protected species or its nest or dwelling place

- (1) No person shall causes or allows harm to—
- (a) an organism that is a protected species; or
 - (b) the nest or dwelling place of a living organism that is a protected species,
 - (c) A person who contravenes this subsection other than in accordance with an environment licence commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years or both.

“protected species” for the purpose of this section means an animal or plants (terrestrial and marine) that is protected due to its nature of existence, and are prescribed in the regulation.

- (2) In any proceedings for a contravention of subsection (1)(a), it is a defence if the person against whom the proceedings have been brought establishes—
- (a) that the harm to the organism was incidental to the lawful taking of a marine species or terrestrial; and
 - (b) if the organism was taken or captured, that upon becoming aware of the taking or capturing, immediate steps were taken to prevent further harm and return the organism to its natural environment.

38. Banning of the translocation of endemic species

- (1) Any person or institution that translocates an endemic species to another island within Kiribati, or outside Kiribati commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years or both.
- (2) If the population of an endemic species becomes threatened, operation for rehabilitation should be carried out within the natural habitat of that endemic species, in accordance with the approval and clearance from the Director on special circumstances.
- (3) A person or institution who contravenes subsection (1) and (2) commits an offence and shall be liable to a fine not exceeding \$500,000.00 or to imprisonment not exceeding 15 years or to both.

39. Trans boundary movement, transit and importation of living modified organisms, and/or genetically modified organisms and food feed and processing (FFPs)

The trans boundary movement, transit and importation of living modified organisms, genetically modified organisms and food feed and processing (FFPs) shall be made in accordance with the prescribed Regulation.

40. Trading and possession of protected, endangered, threatened, and endemic species

- (1) Any person who trades, buys, sells, offers for sale, possesses, has under control, imports or exports an organism that is a protected species other than in accordance with an environment licence commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 or to imprisonment for 2 years, or to both.
- (2) In any proceedings for a contravention of subsection (1), it is a defence if the person against whom the proceedings have been brought establishes that the organism was taken from the wild, or cultivated, without contravening this Act.

41. Invasive alien species

- (1) Any person or institution who introduces an invasive alien species (such as plant, animal and micro species) for any purpose into the country, other than in accordance with an environment licence commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years, or to both.
- (2) If an introduced invasive alien species such as plant, animal or other organism becomes invasive, cost of rehabilitation, remediation and other related costs shall be borne by the introducer.
- (3) If a plant or animal species becomes invasive, such species shall be dealt with, in accordance with the prescribed regulation.

42. Actions affecting protected areas

- (1) No person shall engage in conduct which results in—
 - (a) harm to an organism or organisms other than a non-native species in a protected area;
 - (b) harm to a natural feature or natural features in a protected area;
 - (c) harm to heritage in a protected area;
 - (d) the carrying out of construction work in a protected area;
 - (e) any activity for commercial purposes in a protected area;
 - (f) harm to any fence, sign, or building in a protected area; or
 - (g) harm to the environment in a protected area.
- (2) A person who contravenes subsection (1) other than in accordance with an environment licence or management plan for the area, commits an offence and shall be liable upon

conviction to a fine not exceeding \$500,000.00 or to imprisonment for 15 years or both or in the case of a body corporate to a fine not exceeding \$1,000,000.00.

43. Possessing certain items in a protected area

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

- (a) an explosive; or
- (b) a device or instrument used to hunt or capture an animal; or
- (c) a device for detecting minerals or metal, other than in a stowed position which is not accessible for use, or in accordance with an environment licence,

commits an offence and shall be liable upon conviction to fine of \$1,000,000.00 and to a term of imprisonment not exceeding 20 years or both.

44. World Heritage Area

The World Heritage area shall be declared, designated, established, set out penalties and fines, protected and managed as detailed in the Regulations.

45. Wetlands of International Importance especially waterfowl habitat Ramsar Site

The Ramsar site shall be declared, designated, established, set out penalties and fines, protected and managed as detailed in the Regulations.

46. Biosphere reserve

The Biosphere reserve shall be declared, designated, established, set out penalties and fines, protected and managed as detailed in the Regulations.

47. Access to biodiversity genetic resources

- (1) The prescribed regulation shall provide for the control of access to biodiversity genetic resources in Kiribati. With regards to access to marine genetic resources both Ministries responsible for environment and fisheries shall cooperate and work together on their roles and responsibilities.
- (2) Without limiting the generality of subsection 1, the regulation may contain provisions about any of the followings:
 - (a) equitable sharing of the benefits arising from the use of biodiversity genetic resources;
 - (b) the facilitation of access to such resource;
 - (c) the right to deny access to such resources;

- (d) the granting of access to such resources and the terms and conditions of such access; and
- (e) any other matters that deemed necessary to carry out the purpose of this section.

Division 4—Climate Change

48. Interpretation

“Carbon footprint” refers to the amount of carbon dioxide (CO₂) released into the atmosphere as a result of the activities of a particular individual, organization (e.g. building, corporation, etc.). It includes direct emissions, such as those that result from fossil fuel combustion in manufacturing, heating, and transportation, as well as emissions required to produce the electricity associated with goods and services consumed.

49. Climate Change

- 1) The roles and responsibilities of the Department are to be prescribed by regulation.
- 2) Before prescribing the roles and responsibilities, the Department shall undertake any consultations with appropriate government ministries where there may be an overlap of roles.
- 3) Without limiting the generality of subsection 1, the regulation may contain the following:
 - a) environment licencing and compliance;
 - b) waste management and pollution prevention;
 - c) biodiversity conservation, protection, management and sustainability; and
 - d) any other roles and responsibilities that deemed necessary to carry out the purpose of this section.

50. Carbon footprint offset.

Carbon footprint schemes shall be administered and listed in the prescribed regulation.

**Division 5 – Environment Data, Information, Environment Spatial Planning, and
Environment Scientific Research (ESR)**

**51. The Security of ECD data Department for Environment Data and Information
Management**

The roles and responsibilities of the Department shall consist of, but not be exclusive, to the following; -

- (1) to collect, manage, analyze, store and disseminate data and information for easy accessibility, retrieval, and use;
- (2) to protect and enhance data security, integrity, and credibility;
- (3) to support other sectors in sharing environment data and information that may be relevant for their reporting obligations; and
- (4) utilization and management of environment data and information for reporting obligations, State of the Environment report, environment spatial planning, outreach, policy and legislation formulation and for informed decision making.

52. Environment Scientific Research (ESR)

- (1) A foreigner, company, or scientific researchers who conduct a study on the environment through an Environment Scientific Research shall be responsible for sharing the data and information undertaken in the terrestrial and marine environment of Kiribati to the Department, to be used to improve and strengthen the protection, conservation, management, and sustainability of the environment of Kiribati.

Provided any foreigner, company or scientific researcher who conducts their study relating to marine resources or through the Ministry responsible for fisheries shall seek approval from the Ministry responsible for fisheries prior sharing of data. Marine resource is defined here as data that are not covered under the environmental data definition.

- (2) A person who contravenes subsection (1) shall be liable upon conviction to a fine not exceeding \$100,000.00 and in default to imprisonment for 10 years.
- (3) The application and approval for ESR shall be submitted to the National Coordinating Committee for Scientific Research hereby established to be chaired by the Office of the Beretitenti. The Committee shall develop its own rules, procedure, fees and any other necessary matters relating to its roles in consultation with Cabinet.

- (4) For the purpose of this section, the coordination, collection, and utilization of the data and information collected from Environment Scientific Research shall be prescribed in the Regulations.

Division 6 - Miscellaneous

53. Contravention of conditions of an environment licence

If—

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

the person commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 10 years or both.

54. Providing false or misleading information

If—

- (a) a person provides information in response to a requirement, direction or request under this Act or in the process of obtaining a licence, authorization or accreditation (however described) under this Act;
- (b) the person knows or is reckless as to whether the information is false or misleading in a material particular; and
- (c) the person commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 or to imprisonment for 2 years or both.

55. Strategic Environmental Assessment

- (1) The Department is responsible for administering the Strategic Environmental Assessment.
- (2) All matters related to the Strategic Environmental Assessment are to be prescribed by regulation.

PART IV—ENVIRONMENT LICENCES

56. Application for an environment licence

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

- (a) using the application form approved by the Secretary, and attaching any information required by that form; and
- (b) paying such fee as may be prescribed by regulation.

57. Consideration of application

- (1) After receiving a complete application for an environment licence for screening, the Secretary may, in writing to the applicant require additional information; and—
 - (a) grant an environment licence, subject to any reasonable conditions; or
 - (b) require the applicant to submit an environment management plan; or
 - (c) require the applicant to submit a basic environment impact assessment report; or
 - (d) require the applicant to submit a comprehensive environment impact assessment report; or,
 - (e) refuse to grant an environment licence.
- (2) The Secretary may only grant an environment licence under subsection (1) if—
 - (a) the possible environmental impacts of the proposed activity are well known, are not significant, will not harm area of natural, cultural or historic significance, and are not likely to be controversial; or
 - (b) the activity is an unforeseen activity requiring immediate action in the public interest, and the need for such action outweighs the need for an environmental assessment.
- (3) In making a decision under subsection (1), the Secretary must—
 - (a) be guided by the principles of sustainable development;
 - (b) not act inconsistently with any international obligation or agreement relating to the environment entered into by Kiribati;
 - (c) act in accordance with any other requirements that may be prescribed; and
 - (d) advised the applicant to appeal to the Minister when they are not satisfied with the rejection of their application within 3 days after receiving such decision.

58. Requirements of the Basic and Comprehensive Environment impact assessment and environment management plan (EMP)

- (1) The Environmental Management Plan must include;
 - (a) details about the development project including purpose need, components; specific tasks or works to be undertaken and step by step construction methodologies or operation;

- (b) project site, work schedule, expected deliverables, project organizational and management arrangement;
 - (c) national policy and legislative requirements;
 - (d) statement on potential environmental risks;
 - (e) statement on specific mitigation and management measures for environmental risks;
 - (f) statement on procedures for monitoring environmental risks;
 - (g) statement on roles and responsibilities in implementing the environmental and management plan;
 - (h) external and internal communication procedure on environmental incidences, and reporting requirements; and
 - (i) any details that may be required in the guide for an environmental and management plan.
- (2) The basic and comprehensive environment impact assessment report must include—
- (a) a description of the impacts of the proposed activity;
 - (b) the possible alternatives to the proposed activity, including the alternative of not undertaking the proposed activity;
 - (c) mitigation measures that can be applied to minimize or prevent harm to the environment;
 - (d) a description of how climate change and climate variability may impact on the activity; and
 - (e) any details that may be prescribed for a basic and comprehensive study report.
- (3) The Secretary may, by notice in writing to an applicant, exempt the applicant from including information required by subsection (1) and (2) if the Secretary considers the information is not necessary or appropriate for the purposes of evaluating the proposed activity.
- (4) In preparing the basic or comprehensive environmental impact assessment report, the applicant must—
- (a) consult with any nearby or adjacent landowners;
 - (b) consult with any other person who would have an immediate interest in the activity;
 - (c) maintain a record of the persons consulted number, date, time and location of consultations, and any agreements or grievances during those consultations; and

(d) any other requirement as set out in the guide for undertaking public consultation when preparing a basic or comprehensive environment impact assessment report;

(5) The basic or comprehensive environment impact assessment report must be prepared by a qualified and registered EIA consultant. EIA consultants are to be registered with the Department.

(6) The costs of preparing the basic and comprehensive environment impact assessment report must be borne by the applicant for the environment licence.

59. Requesting additional information and seeking advice and information

(1) At any point after an application for an environment licence has been made, and before determining the application, the Secretary may, in writing—

(a) request additional information from the applicant; or

(b) seek advice or information from any person, organizations or committee, to gain a better understanding of the proposed activity.

(2) If the Secretary has made a request under subsection (1)(a), the Secretary is not required to make any further decisions in relation the application for the environment licence until the information is provided.

60. Suggesting amendments to proposed activities

(1) The Secretary may by notice in writing to an applicant, suggest amendments to a proposed activity.

(2) The applicant, in response to a suggestion made under subsection (1), may by notice in writing to the Secretary, modify the proposed activity.

61. Publication of basic and comprehensive EIA report

(1) If the Director is satisfied that the basic and comprehensive EIA report meets the requirement of this Act, the Director shall then give notice in writing to the applicant setting out a procedure in the guideline for disclosing the basic or comprehensive EIA report for publication to adequately bring the report to the attention of interested persons.

(2) Without limiting the generality of subsection (1) the Director may require—

(a) publication of notices in newspapers and radio;

- (b) the holding of public hearings; and
 - (c) submission of copies to public authorities or specified persons that may be interested in the proposed activity.
- (3) The Director may require that comments be submitted to the Secretary by a particular date.
 - (4) The Director may exclude information from publication to—
 - (a) protect the environment; or
 - (b) protect commercially sensitive information.
 - (5) The Director must allow the applicant to inspect and copy any comments received from the public under this section.
 - (6) The Director may require that the costs of publication in relation to this section be borne by the applicant.
 - (7) The Director is not required to make any further decisions in relation to an application unless the applicant has published the approved environmental impact assessment report as required by subsection (1).

62. Consideration of the basic and comprehensive EIA report and comments

- (1) At the conclusion of any period allowed for comment under section 61 the Secretary may, in writing to the applicant—
 - (a) grant an environment licence for the proposed activity, subject to any reasonable conditions; or
 - (b) refuse to grant an environment licence.
- (2) In making a decision under subsection (1), the Secretary must—
 - (a) be guided by the principles of sustainable development;
 - (b) not act inconsistently with any international obligation or agreement relating to the environment entered into by Kiribati; and
 - (c) act in accordance with any requirements that may be prescribed.
- (3) In making a decision under subsection (2), the applicant may appeal the decision to the Review Committee within 3 days upon receiving decision;

63. Conditions on environment licences

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

- (a) specifying the activity and purpose;
- (b) Specifying license holder;

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

64. Grounds for Amendment, Suspension, Revocation of Environment Licence

(1) Amendment of Environment Licence Conditions

The Secretary may amend the conditions of the Environment Licence upon recommendations from the Director where deems fit and necessary.

(2) Suspension and Revocation of Environment Licence

The Secretary may suspend or revoke an Environment Licence upon the recommendations of the Director where deems fit and necessary.

65. Transfer of environment licences

An environment licence may only be transferred after written approval from the Secretary.

PART V—CONSERVATION OF BIOLOGICAL DIVERSITY

Division 1—Protected Species

66. Purpose of Division 1

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

67. Power of Minister over protected species

- (1) The Minister, acting in accordance with the advice of Cabinet, may nominate, declare and manage species to be protected under the Act or regulation.
- (2) The Minister shall declare the species that the locals wish to protect.
- (3) Where the status of the protected species are no longer endangered and threatened, the Minister shall lift the protection of the species.

68. Prescribing protected species

- (1) Protected species may be prescribed by regulation.
- (2) A protected species may be categorized according to international, national, island and village standards.
- (3) A protected species may be subject to any conditions, including that—
 - (a) it is a protected species only in certain areas, or during certain times; or
 - (b) the taking of a certain quota of the species is allowed.
- (4) Before prescribing a species under subsection (1), the Minister must—
 - (a) undertake any consultations with appropriate government ministries where there may be an overlap of powers over certain species;
 - (b) undertake any consultations that may be required by Cabinet; and
 - (c) follow any procedures that may be prescribed by regulation.

Division 2—Protected Areas

69. Purpose of Division 2

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

70. Prescribing protected areas

- (1) The Minister has the power to prescribe protected areas by regulation.
- (2) The Director must prepare actions and activities for the prescribed protected area.
- (3) The Minister with the advice of Cabinet may approve actions and activities in the Protected Areas that will promote sustainable economic development and other activities deemed necessary for the benefit of Kiribati.
- (4) A protected area may be categorized according to international, national, island and village standards.
- (5) A protected area may be subject to any conditions, including that—

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

71. Proprietary interest or rights over a protected area

- (1) If a proprietary interest or right over a protected area—
- (a) is held by a person other than the Republic or a person with whom an agreement has been made under **section 70(6)(d)**, and
 - (b) is held prior to the area becoming a protected area, **sections 42 and 43**, and any management plan for the protected area, do not apply to the exercise of that proprietary interest or right.
- (2) *This section applies to a right arising out of a proprietary interest or right in the same way as it applies to that interest or right.*

72. Management principles of protected areas

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

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

73. Management committees

- (1) The Minister may establish management committees under **section 108** to assist in the management of protected areas.
- (2) Without limiting the generality of subsection (1), a committee established to assist in the management of a protected area or areas may be given functions to—
- (a) prepare a draft management plan for a protected area;
 - (b) make decisions relating to the management of the protected area that are consistent with the management plan in operation for the area;
 - (c) monitor the management of the protected area; and
 - (d) advise the Minister on the future development of the protected area.

74. Management plans

- (1) The Minister, acting in accordance with the advice of Cabinet, may make a management plan for a protected area by notice in the *Gazette*.
- (2) A management plan sets out the principles, practices and procedures necessary to manage the protected area, and may—
- (a) state the activities that are allowed, prohibited or regulated in the area, and the means of allowing, prohibiting or regulating them;
 - (b) require the payment of fees and charges;

- (c) include offences punishable by fines not exceeding \$100,000.00 or to a term of imprisonment not exceeding 10 years, or both;
 - (d) included plans prepared by the Island Council or local communities relating to the management and development of other environment plans; and
 - (e) specify any limitation or prohibition on the exercise of a power or performance of a function under any Act in, or in relation to, the area.
- (3) Before making a management plan under subsection (1) the Minister must undertake any consultations—
 - (a) with relevant government ministries where there is an overlap of powers in relation to management plan over certain areas;
 - (b) that may be required by Cabinet; and
 - (c) prescribed by regulation.
 - (4) If a management plan limits or prohibits the exercise of a specified power, or the performance of a specified function, under an Act, the power or function is limited or prohibited in, or in relation to, the protected area while the plan is in operation.
 - (5) The Minister must use his or her powers and functions to give effect to a management plan.
 - (6) A public authority must not act inconsistently with a management plan.

75. World Heritage, Biosphere reserve, Wetland of international importance especially waterfowl habitat as Ramsar Site

- (a) The Minister acting in accordance with the advice of Cabinet may nominate areas to be known as the World Heritage (natural), Biosphere reserve, and Ramsar site as detailed in the regulations.
- (b) The nominated areas should be managed, protected, conserved as further detailed in the regulations.
- (c) There shall be a management plan for each area that declared by the Minister as the World Heritage, Biosphere reserve, and Ramsar site.
- (d) Any matters necessary or convenient for carrying out or giving effect, or maintaining the World Heritage, Biosphere reserve and Ramsar site are to be prescribed by regulations.

PART VI—ENFORCEMENT

Division 1 —Enforcement Powers

76. General provisions relating to environment inspectors

- (1) An environment inspector may only exercise his or her powers under this Act for the purpose of administering this Act.
- (2) Before or during the exercise of any power under this Act, an environment inspector must, if asked, provide his or her name and identification.
- (3) A person who falsely represents himself or herself to be an environment inspector commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.
- (4) A person who obstructs, intimidates, threatens, resists or hinders an environment inspector exercising or performing his or her powers, duties or functions under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.
- (5) An environment inspector may acquire assistance in the exercise of any power, duty or function under this Act.
- (6) No proceeding shall lie against an environment inspector, or any person assisting an environment inspector, for any act done in good faith and without gross negligence, in exercising or performing his or her powers, duties or functions under this Act.
- (7) An environment inspector may give reasonable directions and ask reasonable questions to any person to assist in the lawful exercise of any powers, functions or duties under this Act.
- (8) An environment inspector may use no more force than is necessary in exercising any powers, functions or duties under this Act.
- (9) An environment inspector shall acquire assistance from Police Officers in carrying out duties under this Act.
- (10) The Secretary may give environment inspectors directions as to the exercise or performance of any powers, duties or functions under this Act.

77. Powers in relation to conveyances

- (1) For the purposes of testing a conveyance, an environment inspector may—
 - (a) direct the person in charge of the conveyance to stop or move the conveyance;

- (b) enter and operate the conveyance;
- (c) take photographs, video or other recordings of the conveyance; and
- (d) inspect or test the conveyance.

(2) An environment inspector may exercise any of the following powers in relation to a conveyance for the purpose of detecting or preventing a contravention of this Act—

- (a) any power contained in subsection (1);
- (b) inspect and test any substance being carried by the conveyance;
- (c) inspect and take samples, extracts or copies of any evidentiary material; and
- (d) seize any evidentiary material.

78. Powers in relation to items involved in international travel

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

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

79. Powers in relation to premises

(1) An environment inspector may only enter residential premises if the environment inspector has—

- (a) the consent of the occupier of the premises; or
- (b) a search warrant allowing such activities.

(2) An environment inspector may enter any premises, for the purpose of detecting or preventing a contravention of this Act.

(3) If an environment inspector lawfully enters premises, the inspector may—

- (a) examine and search the premises and any equipment, structures, conveyances or other items on the premises;
 - (b) make examinations, inquiries and tests of any substance or thing;
 - (c) take photographs, films, audio, video and other recordings;
 - (d) require records to be produced for inspection;
 - (e) use any electronic equipment;
 - (f) inspect, and take samples, extracts or copies of any records or evidentiary material;
 - (g) seize any evidentiary material;
 - (h) take other action authorised by a search warrant; and
 - i) inform the premises owner on the next steps to be undertaken and serve necessary notice if required.
- (4) A magistrate may issue a search warrant in relation to premises if the magistrate believes, based on information provided on oath, that—
- (a) a contravention of this Act has occurred, is occurring, or is likely to occur on premises; or
 - (b) there is evidentiary material on the premises.

80. Power to ask for information and records

- (1) The Secretary may, by notice in writing, request a person to—
- (a) answer a question; or
 - (b) provide information or records in written or other form, for the purpose of any matter connected with this Act.
- (2) Any answer given, or information or record provided in response to a request under subsection (1) cannot be used in any proceedings against that person.
- (3) A notice issued under subsection (1) must state that—
- (a) failure to comply with the request without reasonable excuse is an offence; and

(b) any answer given, or information or record provided in response to such request will not be used in any criminal proceedings against that person.

(4) A person is not excused from complying with a request under this section on the ground that the answer, record or information might incriminate the person.

81. Arrest

(1) An environment inspector may, without warrant, arrest any person, if the environment inspector reasonably suspects that the person—

(a) is committing or has committed an offence against this Act and proceedings by summons against the person would not be effective; and

(b) is committing, has committed, or is attempting to commit, an offence against this Act in the presence of the environment inspector.

(2) An environment inspector may seek assistance where necessary from the Officer in Charge of the nearest Police station to deal with any offence suspected or committed under subsection (1).

82. Removal and contained of litter, municipal solid waste, residual waste and other waste

If an environment inspector reasonably believes that a person has contravened section 12, the environment inspector may require the person or agency to remove and/or contain the litter, municipal solid waste, residual waste and other waste.

83. Contravening a direction or request of environment inspector

A person, corporation, or any organization, who does not comply with a reasonable direction or request of an environment inspector in exercise of a power under this Act, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 or to imprisonment for 2 years or both.

Division 2—Compliance Notices and Clean—up Notices

84. Compliance notices

(1) A compliance notice is a notice requiring a person to—

(a) carry out specified actions by a particular time; or

(b) cease taking specified actions by a particular time.

(2) An environment inspector may issue a compliance notice to a person who the inspector reasonably believes is contravening, has contravened, or is likely to

contravene this Act if the inspector reasonably believes that the conduct required by the notice will prevent a contravention of this Act from occurring.

- (3) Without limiting the generality of subsections (1) or (2) a compliance notice may require—
- (a) the installation, repair, alteration, replacement, maintenance or operation of any equipment;
 - (b) modifying, or carrying out any work on equipment, structures or vehicles;
 - (c) ceasing to use equipment or vehicles or altering the way equipment or vehicles are used;
 - (d) ceasing to carry on or not commencing to carry on an activity;
 - (e) carrying on an activity in a particular manner or during particular times;
 - (f) monitoring, sampling or analysing any discharge of a substance or energy or otherwise ascertaining the nature, extent, or risk of such a discharge;
 - (g) taking action with respect to the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of any waste;
 - (h) preparing and carrying out a plan of action to control, prevent or minimise waste; and
 - (i) the reporting to the Secretary on any result or progress of any activity.

85. Clean-up notices

- (1) An environment inspector may issue a clean-up notice to any person who the environment inspector reasonably believes has caused or allowed the discharge of a substance or energy if the environment inspector reasonably believes the notice will minimise or prevent the adverse effect of the discharge on the environment.
- (2) The clean-up notice must specify the actions that are required to be taken by the person to whom the notice is issued and the time by which they are to be taken.
- (3) Without limiting the generality of subsections (1) or (2), a clean-up notice may require—
- (a) the taking of action to prevent, minimise, remove, disperse, destroy or mitigate the adverse effect of any discharge;

- (b) the taking of action to restore the environment to a state that it was before the discharge;
- (c) ascertaining the nature and extent of the discharge and of the actual or likely effects of the discharge;
- (d) preparing and carrying out a remedial plan of action; and
- (e) the taking of action to remove or store waste or litter.

86. Failing to comply with notices

(1) A person who—

- (a) has been issued a notice under this Division; and
- (b) does not comply with the notice,

commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000.00 or to imprisonment for 5 years or both.

- (2) If the Secretary reasonably believes that a person has committed an offence under subsection (1), the Secretary must obtain authority from the Minister to take any action, either by directing environment inspectors, agents, contractors, or otherwise, to ensure that the actions or omissions required by the notice are carried out.
- (3) Any costs incurred by the Republic as a result of the taking of action under subsection (2) may be recovered from the person to whom the notice was issued as a debt due to the Republic.
- (4) Any person who has been directed by the Secretary under subsection (2) may enter any premises at any reasonable time to give effect to the direction.
- (5) A person who obstructs a person directed by the Secretary under subsection (2) while they are carrying out such direction commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 or to imprisonment for 2 years, or both.

Division 3—Infringement Notices

87. Infringement notices

- (1) If an environment inspector reasonably believes that a person has contravened this Act, the environment inspector may issue, in writing, an infringement notice to that person.
- (2) An infringement notice must set out the following information—

- (a) the name and address of the person who has been issued with the notice;
 - (b) the date of the issue of the notice;
 - (c) the conduct resulting in the alleged contravention of the Act including-
 - (i) the day, and time (if appropriate); and
 - (ii) the place;
 - (d) the amount of money that can be paid to satisfy the infringement notice;
 - (e) a statement that if the person does not pay the amount of money to satisfy the infringement notice within 14 days, the person may be prosecuted for an offence;
 - (f) details of how, and where payment under paragraph (d) may be made;
 - (g) a statement that, if the amount of money is paid to satisfy the infringement notice in time-
 - (i) proceedings under this Act cannot be taken against the person for the contravention; and
 - (ii) the person is not taken to have been convicted of an offence; and
 - (h) the name of the environment inspector who issued the notice.
- (3) The maximum amount of money that can be required to be paid to satisfy an infringement notice is one-tenth the maximum fine that a court may impose upon conviction for the offence to which the infringement notice relates.
- (4) If a person pays the amount of money specified in the infringement notice in accordance with the procedure set out in the infringement notice, the person must be issued with a receipt stating that the infringement notice has been satisfied.
- (5) A person who-
- (a) has been issued a notice under this Division; and
 - (b) refuse to take the notice or does not comply with the notice,
- shall be prosecuted accordingly for the offence he/she commits.

88. Community service to satisfy an infringement notice

- (1) An infringement notice may include information that, as an alternative to paying money, the infringement notice may be satisfied by undertaking a specified number of hours of community service.
- (2) The maximum number of hours of community service that can be required to satisfy an infringement notice is one hour for each \$20 of the maximum fine that a court may impose upon conviction for the offence to which the infringement notice relates.
- (3) If an infringement notice states that the notice may be satisfied by undertaking community service, the notice must set out the following information—
 - (a) how and where the person may notify an intention to undertake community service; and
 - (b) that if the community service is not undertaken or not undertaken in a satisfactory manner, the person may be prosecuted for an offence.
- (4) If a person notifies an intention to undertake community service to satisfy an infringement notice the person must be given a written statement specifying where and when to report for community service.
- (5) If the person completes the required number of hours of community service to the reasonable satisfaction of the supervising officer, the officer must issue a receipt to the person stating that the infringement notice has been satisfied.

89. Effect of satisfying an infringement notice

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

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

Division 4—Improvement Plans

90. Improvement plans

- (1) An improvement plan is a plan to improve an activity so that it complies with environmental standards required by this Act.

- (2) The Secretary may agree in writing with any person on an improvement plan for an activity carried on by that person.
- (3) An improvement plan must set out—
 - (a) the actions that are required to be taken by the person;
 - (b) the time by when the actions must be taken; and
 - (c) the period the improvement plan is in force.
- (4) An improvement plan may—
 - (a) exempt the person from having to comply with particular sections of this Act in relation to the activity while the person is acting in accordance with the improvement plan;
 - (b) contain any other matter appropriate to the circumstances;
 - (c) not exempt a person who have breached any provisions of this Act, and will still be penalized.
- (5) The Secretary may amend an improvement plan by subsequent agreement with the person who made the improvement plan.
- (6) The Secretary may terminate an improvement plan by notice in writing to the person who made the improvement plan.
- (7) A person who has agreed to an improvement plan and who breaches that plan commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.00 and to a term of imprisonment not exceeding 2 years or both.

Division 5—Other Authorisations

91. Amending, suspending, revoking and withholding other authorisations

- (1) If the Secretary reasonably believes that a person has contravened this Act, the Secretary may recommend to any other public authority that a licence or other authorisation (however described) which is—
 - (a) issued by that authority;
 - (b) held or proposed to be obtained by the person who is believed to have contravened this Act; and
 - (c) associated with the conduct or item involved in the contravention of this Act,

be amended, suspended, revoked or withheld.

- (2) If the Secretary makes recommendation to a public authority under subsection (1), the public authority may amend, suspend, revoke or withhold the licence or other authorisation (however described) as the public authority thinks fit.

Division 6—Injunctions

92. Injunctions

(1) If a person has contravened, is contravening, or proposes to contravene this Act, any person may apply to a court for an injunction.

(2) If the court is satisfied that a person has, is, or might contravene this Act, the court may grant an injunction—

- (a) restraining the person from engaging in conduct which would constitute a contravention of this Act; or
- (b) require the person to do an act, which if not done, would constitute a contravention of this Act.

(3) If the court grants an injunction under subsection (2), the court may make an order requiring the person to do an act (including repairing or mitigating damage to the environment).

(4) Before deciding an application under this section, the court may grant an interim injunction—

- (a) restraining a person from engaging in conduct; or
- (b) requiring a person to do an act.

(5) On application, a court may discharge or vary an injunction or interim injunction.

(6) Powers given to a court under this Act do not limit any other powers of the court.

PART VII - MISCELLANEOUS

Division 1—Provisions relating to contraventions of the Act

93. Liability for offence

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

94. Continuing contraventions

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

95. Mental elements of contravention

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

96. Effect on existing civil rights and remedies

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

97. Act to bind the Government

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

98. Actions by Corporations and other persons

- (1) A contravention of this Act by a person—
 - (a) while an officer, employee or agent of a corporation or other person; and
 - (b) acting within the scope of his or her actual or apparent authority,is deemed also to be a contravention of that corporation or other person.

- (2) If a corporation or other person contravenes this Act, a director, officer, employee or agent of the corporation or other person who directed, authorised, assented to, acquiesced in or participated in the commission of the contravention, commits the contravention.

99. Certain persons deemed to allow conduct

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

100. Offences also deemed to be civil wrongs

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

101. Proceedings for a civil wrong

- (1) Any person may apply to a court for an order that a person pay a monetary penalty for committing a civil wrong.
- (2) Rules of evidence and procedure for civil matters apply to proceedings under subsection (1).
- (3) If the court is satisfied that a person has committed a civil wrong, the court may order the person to pay a monetary penalty up to the maximum monetary penalty stated immediately after the offence which gives rise to the civil wrong.

- (4) Any monetary penalty must be paid into the Environment Fund under section 109 unless prescribed otherwise by regulation.

102. Defences to contraventions of this Act

- (1) It is a defence in any proceedings for a contravention of this Act if a person establishes that conduct giving rise to the contravention is allowed or required by—

- (a) an environment licence;
- (b) a management plan;
- (c) an agreement made under section 70(6)(d);
- (d) a direction or request of an environment inspector;
- (e) a notice issued under Part VI, Division 2;
- (f) an improvement plan under Part VI, Division 4; or
- (g) an environment protocol made under Part VII, Division 2.

- (2) It is a defence in any proceedings for a contravention of this Act if a person establishes—

- (a) that the contravention was not intentionally or knowingly caused or allowed and that all reasonable precautions were taken (if any were reasonable) to prevent the contravention; or
- (b) that the contravention was reasonably necessary to deal with an emergency involving a serious threat to human life or property.

- (3) A defendant may only rely on a defence contained in subsection (2) if the defendant reported the contravention to the Secretary as soon as practicable after the defendant knew that the contravention occurred.

- (4) A defendant must establish any defence or exemption contained in this Act by proving it on the balance of probabilities.

- (5) A person charged with a contravention of this Act must, no less than 14 days before the appointed date of hearing, notify the prosecution of an intention to rely on a particular defence contained in this Act.

103. Evidence

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

104. Expanded jurisdiction of magistrates' courts

- (1) A magistrates' court shall have jurisdiction to hear any—
 - (a) criminal proceedings for a contravention of this Act;
 - (b) application under section 92 (dealing with injunctions); and
 - (c) application under section 100 (dealing with civil wrongs),

where the alleged conduct giving rise to the proceedings or application occurred, is occurring or may occur within the area over which such court has jurisdiction.

- (2) A magistrates' court shall have jurisdiction to make an order for a monetary penalty under section 100 not exceeding \$10,000.00.
- (3) This section does not limit the jurisdiction or power of a court conferred by any other law.

105. Additional powers of courts

- (1) A court may order a person to pay an amount to the owner of any property (or if the property has no owner - the Republic), for any adverse effect caused to the property as a result of that person's contravention of this Act.

- (2) A court may order a person to clean up any substance, take actions, or pay an amount to the Republic for actual or anticipated costs, to remedy or mitigate any adverse effect caused as a result of the contravention of this Act.
- (3) A court may order, if a person does not pay an amount ordered to be paid within the time allowed, that any property of the person seized under this Act be sold to satisfy the amount.
- (4) A court may order payment of compensation to the Republic or any other person for costs involved in—
 - (a) investigation of the contravention of the Act;
 - (b) bringing court proceedings for the contravention; and
 - (c) seizing, storing, transporting or returning any evidentiary material.
- (5) A court may order the forfeiture of any evidentiary material to the Republic.
- (6) The powers under this section are in addition to and do not limit any other power of a court.

Division 2—Environment Protocols

106. Scope of environment protocols

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

- (3) Without limiting the generality of subsections (1) or (2), examples of environmental protocols include environmental protocols in relation to—
- (a) the foreshore;
 - (b) standards for-
 - (i) maximum quantities of waste to be discharged into the environment;
 - (ii) maximum quantities of noise to be emitted; and
 - (iii) the installation and operation of works or equipment to control waste or pollution;
 - (c) measures designed to minimise the possibility of the occurrence of pollution; and
 - (d) methods of distributing limited numbers of licences under this Act.
- (4) An environment protocol may—
- (a) apply only to a certain area or at certain times;
 - (b) include offences punishable by fines not exceeding \$100,000.00 or to a term of imprisonment not exceeding 10, or both;
 - (c) require the payment of fees and charges; and
 - (d) complement and support existing protocols established under other authorities.

107. Making and effect of environment protocols

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

Division 3—Environment Committees

108. Environment committees

- (1) The Minister has the power to establish environment committees.
- (2) The Minister may, by instrument in writing, establish an environment committee and determine
 - (a) the members of the committee may not be limited to relevant technical authorities;
 - (b) the title of the committee; and
 - (c) the functions and roles of the committee to further the objects of this Act.
- (3) The Minister may, by notice in writing to an environment committee
 - (a) determine any issues in relation to the meetings of the committee;
 - (b) determine any matters of procedure applying to the committee; and
 - (c) determine the entitlement of members of the committee to receive allowances (if any).
- (4) In the absence of any determination as to the procedures of a committee, the committee may determine its own procedures.
- (5) Any instrument made under this section must, in due course, be published in the *Gazette*.

Division 4—Related Matters

109. Environment Fund

- (1) A special fund, to be known as the Environment Fund, is established in accordance with section 107(2) of the *Constitution*.
- (2) There shall be paid into the Environment Fund such moneys as may be prescribed by regulation.
- (3) There shall be paid out of the Environment Fund any money approved by the Minister responsible for finance, on receipt of a request from the Minister, in accordance with —

- (a) the objects of this Act; and
 - (b) any requirements that may be prescribed by regulation.
- (4) No money shall be paid out of the Environment Fund other than in accordance with a warrant under the hand of the Minister responsible for finance authorising the Chief Accountant under the *Public Finance (Control and Audit) Ordinance* to issue the money to the accounting officer responsible for operating the Fund.
- (5) The Minister responsible for finance shall, within six months after the end of each financial year, lay before the Maneaba ni Maungatabu a report dealing generally with the operations of the Special Fund during the preceding financial year and containing the audited statement of accounts for that financial year.

110. Public register of applications, licences, etc.

- (1) The Secretary must keep a public register of every—
- (a) application for an environment licence;
 - (b) basic and comprehensive environment impact assessment report;
 - (c) environment licence;
 - (d) management plan;
 - (e) notice issued under Division 2 of Part VI;
 - (f) improvement plan;
 - (g) environment protocol; and
 - (h) any variation, suspension, termination and transfer of any of the above.
- (2) The Secretary may exclude information from the public register to—
- (a) protect the environment; and
 - (b) protect commercially sensitive information.
- (3) The public register must be made available to be inspected and copied during normal office hours.

111. Statements as to whether an activity is complying

- (1) Any person may apply to the Minister in writing for an opinion as to whether a particular person is complying, or has complied with this Act in relation to a particular activity.

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

112. Appeals to the Minister

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

113. Offences by corporation

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

114. General Penalty

Any person who commits an offence against this Act or any rule and regulations made under this Act for which no penalty is expressly provided shall be liable upon conviction as follows—

- (a) in the case of a first offence for a natural person, a fine not exceeding \$10,000.00 or to imprisonment for a term not exceeding 3 years or to both;
- (b) in the case of a second or subsequent offence, to a fine not exceeding \$20,000.00 or to imprisonment for a term not exceeding 4 years or to both; and
- (c) in addition the Court convicting such person may order such person within a time specified in the order to do any act that he had failed, refused or neglected to do, or to remove or stop any waste or pollution of the environment caused by such person at such person's own cost and a person who does not duly comply with such an order commits an offence and shall be liable on conviction to a fine not exceeding \$50,000.00 or to imprisonment for 5 years or to both.

115. Regulations

- (1) The Minister may, acting in accordance with the advice of the Cabinet, make regulations prescribing all matters permitted, necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made—
 - (a) to give further effect to the object of this Act;
 - (b) to implement any international agreement, treaty, protocol, convention and other similar document relating to the environment;
 - (c) on procedures for seizure of items, and dealing with seized and confiscated items;
 - (d) to provide for delegation of duties, powers and functions under this Act;
 - (e) to provide for environmental standards required for the purposes of the Act;
 - (f) the imposition of “user fees” and the “polluter pays” principle;
 - (g) to implement environmental standards and guidelines; and
 - (h) to establish EIA review committee.

- (3) Regulations made under this section may prescribe or allow for penalties for offences, being terms of imprisonment not exceeding 10 years, fines not exceeding \$500,000.00 or both.

116. Transitional Provision

- (1) An authorisation or exemption (however described), under the repealed Act that is valid immediately before this provision enters into force, is deemed to be an environment licence allowing the same conduct and subject to the same conditions (if any).
- (2) Any application, initial environment evaluation, or environmental impact statement that has been validly made under the principal Act, and at the time this provision enters into force is deemed to be the corresponding instrument validly submitted in relation to an environment licence.

117. Repeal

The Environment Act 1999 and its amendment 2007 are hereby repealed.

SCHEDULE
(Section 33)

Environmentally Significant Activities

1. Activities involving significant coastal and marine impact

- (1) Extraction of aggregates, stones or shingles, sand, reef mud and beach rock –
 - (a) for commercial purposes;
 - (b) for construction work; or
 - (c) in excess of 200 kilograms per year.
- (2) Clearance of live corals, mangroves and seagrass-
 - (a) for commercial purposes; and
 - (b) for construction or development work.
- (3) Construction work below the high water mark.
- (4) Construction of seawalls or groins.
- (5) Land reclamation.
- (6) Construction of causeways.
- (7) Establishment of boat channels.
- (8) Dredging below the high water mark.

2. Activities requiring significant materials

- (a) Brick and tile manufacture
- (b) Landfilling

3. Activities involving significant waste products

- (a) Keeping or producing more than 10 pigs or 20 chickens
- (b) Operation of landfills or dumpsites
- (c) Copra mechanical and chemical processing
- (d) Fish processing
- (e) Operation of waste disposal plants including recycling and collection systems
- (f) Building for servicing and repair of vehicles, vessels and aircraft
- (g) Food processing facilities, canning, bottling and other commercial packaging of food

- (h) Beverage production or processing in excess of 200 litres per week
- (i) Commercial tanning and dyeing
- (j) Chemical treatment of timber
- (k) Manufacture of paper and pulp
- (l) Manufacture of cigarettes
- (m) Manufacture of cement and lime
- (n) Operation of a hotel, tourism resorts or estates (commercial accommodation with more than 10 units)
- (o) Operation of restaurant
- (p) Operation of a water purification system including desalination plants of more than 2 cubic meters per day average effluent or brine discharge.
- (q) Operation of waste incinerators
- (r) Operation of industrial boilers
- (s) Intensive fish farming activities
- (t) Operation of agricultural industries
- (u) Demolition of a building of 40 square meters floor dimension and above.

4. Activities using significant natural resources

- (a) The collection of fish to be used as pet fish
- (b) Collection in Kiribati waters of an organism that is intended to be exported
- (c) Pearl farming
- (d) Commercial logging operations

5. Activities involving harmful chemicals

- (a) Storage or transport of more than 1000 liters of petroleum, not including petroleum in standard fuel tanks of conveyances
- (b) Operation of gas station
- (c) Manufacturing and moulding of plastic or fiberglass
- (d) Production and manufacture of fertilizer of at least 200 kilograms and above per day
- (e) Use of pesticides in a commercial operation
- (f) Storage, handling or disposing of (expired)
- (g) Use of fertilizer
- (h) Use of hydroponic systems in a commercial operation
- (i) Storage or disposal of any hazardous material including chemicals of at least 200 kilograms and above.
- (j) Beaching of vessel

6. Activities involving a significant alteration of the environment

- (a) Any agricultural activity covering more than 10,000 square meters
- (b) Clearing of land vegetation with an area of 2,000 square meters or more

7. Other environmentally significant activities

- (1) Operation of a facility-

- (a) that generates power for commercial purposes; or
 - (b) that has a total expected power generation capacity of 100 kilowatts or more.
- (2) Use of extraction of more than 10,000 liters of water per day from a single source
 - (3) Operation of drainage, disposal or sewage systems
 - (4) Operation of fish ponds / aquaculture
 - (5) Extraction of minerals and mining
 - (6) Production of metals
 - (7) Activities involving radio-active materials
 - (8) Oil refining
 - (9) Operation of an airport including runway and airfield
 - (10) Operation of a hospital
 - (11) Operation of ports and harbours
 - (12) Operation of vessel slip way and dry dock facility
 - (13) Operation of a commercial laundry service or Laundromat
 - (14) Construction of settlements of more than 10 houses
 - (15) Construction or rehabilitation of public road
 - (16) Operation of a building or buildings for a civic, community or commercial purpose with a value of A\$200,000.00 and above.
 - (17) Operation of a permanent facility for car washing for commercial and business purpose.
 - (18) Disposal of any obsolete good of at least 500 kilograms of weight per day.
 - (19) Disposal of a vessel and aircraft
 - (20) Disposal of unexploded ordnance
 - (21) Geotechnical and hydrogeological investigation which involve drilling
 - (22) Environment scientific research activity which involve any of the followings-
 - (a) drilling;
 - (b) collection of living and non-living specimens or samples; and
 - (c) Interfere with land and marine habitat and ecosystem including seagrass, coral and mangrove.
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EXPLANATORY MEMORANDUM

THE ENVIRONMENT ACT 2021

There is only one Kiribati found nowhere else around the world. Our home, our islands, our surroundings we have now and in the future, defines us as the people of Kiribati. The atolls environment of Kiribati are unique, it defines us as the atolls dwellers with our unique cultural identity and heritage, for generations after generations, within the Pacific region. The environment of the atoll islands of Kiribati comprises of the land, sea, and air as well as all natural and social and cultural systems and their constituent parts, and the interactions of their constituent parts, including people, communities and economic, aesthetic, culture and social factors that are intricately linked as one whole system. The rights to stay, live, and prosper on a resilient, healthy, thriving, safe, clean, and sustainable environment is important for the people of Kiribati and its future generations.

The stewardship roles and responsibilities to protect, conserve, manage, sustainable utilize, and sustainable develop the atolls environment of Kiribati falls on the Government of Kiribati, for current and future generations of Kiribati. This Environment Act 2021 is intended to realize this priority at the national level.

The three pillars of sustainable development – environment, socio-cultural, and economy form the foundation of this Act. The Act also explicitly clarifies the environment pillar of sustainable development. Sustainable utilization and sustainable development are considered within the context of global changes and their impacts on the atoll's environment of Kiribati. The Act strives to achieve and enhance balance between the need to develop and grow sustainably while ensuring the protection, conservation, management, sustainability, and resilience of the atolls environment of Kiribati.

Kiribati is a State Party to certain international and regional conventions, and treaties. References to our international commitments are also reflected in the Act.

The Act is divided into 7 Parts.

Part I deals with preliminary matters and sets out the objects and extents of the Act.

Part II provides for the due administration and implementation of the Act, which once passed by the Maneaba ni Maungatabu, shall be in the hands of the Minister and the Cabinet together.

Part III outlines the obligations under the Act, which provides for important obligations to consider: i. to refuse, prevent, reduce, reuse, recycle, and manage wastes and pollutions; ii. identifying and providing the means to deal with environment significant activities; iii. protection, conservation, management, and sustainability of biological diversity; iv. climate change as an equally important environmental problem; and v. environment data and information, environment spatial planning, and environment scientific research, to enhance and strengthen the need to have safe, accurate and up-to-date environment data and environment information to inform and support Government decision – making on the state of the environment of Kiribati.

Part IV outlines the Environment Licences, which provides for mechanisms required to seek clearance for proposed development projects and for consideration on the relevant needs to apply for either the basic or comprehensive environment impact assessment. This applies both to Government and private sectors development needs.

Part V provides for the conservation of biological diversity of global and national ecological significance at the national, island, and village levels.

Part VI provides for the enforcement of the Act and outlines: i. the enforcement powers of the designated Environment Inspectors (EIs); ii. Compliance notices and clean up notices; iii. Infringement notices; iv. Improvement plans; v. other authorisations; and vi. injunctions.

Part VII provides for Miscellaneous matters which includes inter alia: i. provisions related to the contravention of the Act; ii. Environment protocols; iii. Environment Committees; and iv. Miscellaneous related to the environment fund; public register of applications, licenses, etc, to name a few.

Honorable Ruateki Tekaiara

The Minister for Environment Lands and Agricultural Development

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act are in conflict with the Constitution and that His Excellency the Beretitenti may properly assent to the Act.

Tetiro Maate Semilota

Attorney General

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

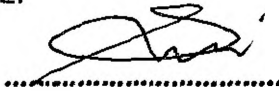
This printed impression of the Environment Act 2021 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 25th November 2021 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene

Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this day of 2022.



Eni Tekanene

Clerk of the Maneaba ni Maungatabu

