



Tonga

ENVIRONMENTAL IMPACT ASSESSMENT ACT 2003

No. 16 of 2003



ENVIRONMENTAL IMPACT ASSESSMENT ACT 2003

Arrangement of Sections

Section

PART I - PRELIMINARY		5
1	Short Title	5
2	Interpretation.....	6
3	Binding the Crown.....	6
PART II - FUNCTIONS AND POWERS		7
4	Powers of Minister.....	7
5	Delegation.....	7
PART III - ENVIRONMENTAL IMPACT ASSESSMENT		7
6	Environmental Impact Assessment.....	7
7	Major Project Assessment.....	7
8	Minister to determine assessment	7
9	Major projects defined	8
10	Application.....	8
11	Minister to advise applicant	8
12	Referral to Environmental Assessment Committee	9
13	Environmental Committee established	9
14	Functions of Committee.....	9
15	Environmental Impact Assessment Report	10
16	Environmental Impact Assessment Approval.....	10

PART IV - OFFENCES **10**

17	Non compliance with environmental conditions	10
18	Supplying false information	10
19	Penalty for carrying out any activity or project without approval.....	10
20	Activity to cease forthwith	10
21	Review of license due to conviction.....	11
22	Offences by corporations	11

PART V - MISCELLANEOUS **11**

23	Transitional	11
24	Regulations.....	11

SCHEDULE **12**

MAJOR PROJECTS.....	12
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ENVIRONMENTAL IMPACT ASSESSMENT ACT 2003

No. 16 of 2003

**AN ACT TO PROVIDE FOR THE APPLICATION OF
ENVIRONMENTAL IMPACT ASSESSMENT TO THE PLANNING OF
DEVELOPMENT PROJECTS WITHIN THE KINGDOM AND
MATTERS RELATED THERETO**

I assent,
TAUFA'AHAU TUPOU IV,
18th November, 2003

[11th of September, 2003]

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Environmental Impact Assessment Act, 2003.

2 Interpretation

In this Act unless the context otherwise requires —

“**Committee**” means the Environmental Assessment Committee established by the Minister under this Act;

“**Department**” means the Department of Environment;

“**determining authority**” means any authority which is responsible for issuing of a licence or approval before any development activity proceeds;

“**development activity**” means any new project, including extensions and additions to existing projects, undertaken in the private or government sectors which requires any licence or other government approval and which accords with the criteria established by the Minister under Regulations made under this Act;

“**Director**” means the Director of the Department of Environment;

“**environment**” includes all natural, physical and social resources, people and culture and the relationship that exists between these elements;

“**environmental impact assessment**” means the study and evaluation of the potential effects that a development project may have on the environment;

“**land**” for the purpose of this Act includes all land covered by water or not;

“**major project**” means any development activity listed in the Schedule or determined by the Minister under this Act;

“**Minister**” means the Minister of Environment;

“**natural resources**” includes land, soil, minerals, water, air, plants and animals and their habitat whether native or introduced;

“**physical resources**” includes all buildings, structures, roads, and other man made facilities and constructions placed or otherwise fixed in, on, under or over land, whether temporary or permanent;

“**prescribed form**” means the form prescribed by Regulations under this Act.

3 Binding the Crown

This Act shall bind the Crown.

PART II - FUNCTIONS AND POWERS

4 Powers of Minister

The Minister shall be responsible for the proper administration of this Act.

5 Delegation

In exercising any function under this Act the Minister may, in writing delegate to the Director, such functions, either in part or in whole, as may be considered appropriate for the efficient and effective administration of that function.

PART III - ENVIRONMENTAL IMPACT ASSESSMENT

6 Environmental Impact Assessment

All major projects shall be supported by an appropriate environmental impact assessment, conducted as required under this Act.

7 Major Project Assessment

Major project assessment shall apply to all major projects as set out in the Schedule and shall be conducted in accordance with the procedures set out in the Regulations.

Where a development proposal is submitted with an impact assessment completed under the law of a foreign country, the Minister may, deem such assessment to fulfil the requirements of this Act.

8 Minister to determine assessment

- (1) The Minister shall determine an assessment for a major project.
- (2) The Minister shall have regard, in making any determination under subsection (1), to the effect the project is likely to have on —
 - (a) any ecosystems of importance, especially those supporting habitats or rare, threatened, or endangered species of flora or fauna;
 - (b) areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic or scientific value;
 - (c) any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of

- the heritage of the people of Tonga and which contribute to their well-being;
- (d) the social and the economic well-being of communities; or
 - (e) whether any project is likely to —
 - (i) result in or increase pollution;
 - (ii) result in the occurrence, or increase the chances of occurrence, of natural hazards such as soil erosion, flooding, tidal inundation, or hazardous substances;
 - (iii) result in the introduction of species of types not previously present that might adversely affect the environment and biodiversity;
 - (iv) have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation;
 - (v) result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials; or
 - (vi) whether utility services are available and adequate for that activity.

9 Major projects defined

Where, in the opinion of the Minister, any matter referred to in section 8(2)(e) of this Act is likely to occur to a significant degree, the project shall be deemed to be a major project and the prescribed procedures in the Regulations shall apply.

10 Application

All applications under this Act shall be in the prescribed form.

11 Minister to advise applicant

- (1) The Minister shall determine the application for major projects within 30 working days of receipt and notify the applicant in writing of his decision.
- (2) Where the Minister requires further information, he may notify the applicant of the requirements.

12 Referral to Environmental Assessment Committee

All major projects shall be referred to the Environmental Assessment Committee for processing.

13 Environmental Committee established

- (1) There shall be established an Environmental Assessment Committee which shall consist of:
 - (a) Director of Environment, who shall be Chairman;
 - (b) Solicitor General;
 - (c) Director of Health
 - (d) Director of Planning; and
 - (e) one member appointed by the Minister, from the private sector. (2)
The Secretariat shall be provided by the Department.
- (3) A quorum shall be the Chairman and any 3 members.
- (4) The Committee may co-opt persons as it deems necessary.

14 Functions of Committee

- (1) The Environmental Assessment Committee shall review and recommend to the determining authority, conditions to be attached to major projects and the means by which they should be implemented and shall have the following functions:
 - (a) to receive all relevant documentation relating to the application submitted for projects required to undertake major project assessment;
 - (b) to ensure appropriate inter-departmental coordination is made for all major projects submitted to the Environmental Assessment Committee;
 - (c) to receive a copy of all completed major project assessments and any report prepared on that assessment by or at the request of the Secretariat;
 - (d) to review any environmental conditions recommended by the Secretariat for attachment to major projects submitted to it; and
 - (e) to recommend to the appropriate determining authority environmental conditions to be attached to major projects and the means by which these should be implemented.

15 Environmental Impact Assessment Report

The determining authority shall ensure that all major project proposals are to be submitted with an environmental impact assessment report.

16 Environmental Impact Assessment Approval

No major project application shall proceed, unless it has satisfied the appropriate environmental impact assessment requirements under this Act and approved in the prescribed form.

PART IV - OFFENCES**17 Non compliance with environmental conditions**

Any person who fails to comply with environmental conditions required under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a term of 1 year or both, and in the case of a corporation to a fine not exceeding \$10,000.

18 Supplying false information

Any person who knowingly supplies false information under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term of 2 years or both, and in the case of a corporation to a fine not exceeding \$20,000.

19 Penalty for carrying out any activity or project without approval

- (1) Any person carrying out any activity or project, without any approval required under this Act, shall be liable upon conviction to a fine not exceeding \$500 or imprisonment for a term not exceeding 1 month and in the case of a corporation to a fine not exceeding \$1,000.
- (2) Upon conviction under subsection (1) of this section, the Court in addition to any penalty may order the offender to return the site to its original condition.

20 Activity to cease forthwith

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

- (2) Any person who fails to comply with the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding \$500 and in the case of a corporation to a fine not exceeding \$1,000, for each day that non-compliance continues.

21 Review of license due to conviction

Where a person is convicted of an offence under this Act, the Court may recommend the revocation of the licence or refer it back to the Minister for a review of the application.

22 Offences by corporations

Where a body corporate is charged with an offence, every person who, at the time of the commission of the offence, was a director or officer of the body corporate may be charged jointly in the same proceedings with such body corporate, and where the body corporate is convicted of the offence, every such director or officer shall be guilty of that offence unless he satisfies the court that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

PART V - MISCELLANEOUS

23 Transitional

Any major project which has not been completed at the date of commencement of this Act shall be exempted from the requirements of this Act.

24 Regulations

The Minister may, with the consent of Cabinet, make regulations for the proper and efficient administration of this Act.

Passed in the Legislative Assembly this 11 day of September, 2003.

SCHEDULE**MAJOR PROJECTS**

Any of the following activities shall be deemed to be major projects:

- (a) abattoirs;
- (b) brewery works;
- (c) buildings, works, or land associated with the landing, take-off, parking or servicing of aircraft or helicopters;
- (d) canning and bottling works in excess of floor space 2000 square metres;
- (e) cattle feedlots or intensive piggeries with excess of 50 animals;
- (f) cement works or concrete batching works in which more than 2,000 tonnes per annum are manufactured;
- (g) ceramic works, being works in which excess of 200 tonnes per annum are produced of bricks, tiles, pipes, glass are manufactured in furnaces or kilns;
- (h) chemical factories, or chemical storage areas in excess of 1,000 square metres;
- (i) electricity generating stations;
- (j) marinas (comprising pontoons, jetties, piers, dry storage, moorings) for more than 20 vessels primarily for pleasure or recreation;
- (k) mining, being an activity that disturbs the surface of the land in excess of one hectare;
- (l) sand or gravel extraction from any beach within 50 metres of the high tide mark;
- (m) liquid, chemical, oil or petroleum refineries, storage or waste processing works;
- (n) farms for the propagation of marine, estuarine or freshwater organisms; (o) pre-mix bitumen works;
- (p) rubber or plastics works;
- (q) the removal of trees (including mangroves) or natural vegetation of any area in excess of half a hectare;
- (r) construction of roads, wharfs, barrages, embankments or levees which affect the flow of tidal waters;
- (s) any facility involving the use, storage or dumping of nuclear materials;

- (t) sawmills where more than 2,000 cubic metres per annum of timber is sawn, milled or machined in any way; or
- (u) tourism or recreational resorts, buildings or facilities, involving a total building floor area of greater than 1,000 square metres or a potential total overnight accommodation level (visitors and staff combined) in excess of 20 persons.