



Tonga

ENVIRONMENT MANAGEMENT ACT 2010

Act No. 27 of 2010



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ENVIRONMENT MANAGEMENT ACT 2010

Act No. 27 of 2010

AN ACT TO ESTABLISH THE MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE TO ENSURE THE PROTECTION AND PROPER MANAGEMENT OF THE ENVIRONMENT AND THE PROMOTION OF SUSTAINABLE DEVELOPMENT

I assent,
GEORGE TUPOU V,
27th August 2010.

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 Environment Management Act 2010.

2 Interpretation

In this Act, unless the context otherwise requires –

“**climate change**” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

“**Director**” means the Director for Environment and Climate Change appointed under section 7;

“**environment**” includes all natural and physical resources, the ecology, people and culture of the Kingdom, and the social and economic relationships that exist between these elements;

“**living modified organism**” has the same meaning as under the Biosafety Act 2009;

“**Minister**” means the Minister for Environment and Climate Change;

“**Ministry**” means the Ministry of Environment and Climate Change;

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

“**premises**” includes any structure, building or part of a building, or land without buildings;

“**sustainable development**” means promoting development at a rate and in such a way as to ensure that the quality of the environment and the supply of resources is maintained and, wherever practicable, enhanced to meet the needs of the present generation without compromising the needs of future generations.

3 Binding the Crown

This Act shall bind the Crown.

4 Objects of this Act

The objects of this Act are to –

- (a) co-ordinate the role of Government in relation to all environmental management, including climate change issues, and decision-making processes;
- (b) promote meaningful public involvement in relation to issues of environment management, including climate change;
- (c) ensure the observance within the Kingdom of its international obligations relating to the protection of the environment;
- (d) promote the concept of sustainable development in relation to the environment and natural resources of the Kingdom;
- (e) facilitate an assessment of the impacts on the environment of any activity likely to affect it, prior to a proposed activity taking place;
- (f) promote the understanding, management, conservation and protection of the biological diversity of the Kingdom; and

- (g) facilitate implementation of measures to increase the resilience of the Kingdom and its environment to climate change.

PART II - ESTABLISHMENT OF THE MINISTRY

5 Establishment of the Ministry

The Ministry of Environment and Climate Change that existed before this Act came into force shall be the Ministry under this Act.

6 Appointment of Minister

- (1) There shall be a Minister for Environment and Climate Change.
- (2) The Minister shall be responsible for the administration of this Act.

7 Appointment of Director and other staff

- (1) There shall be a Director for Environment and Climate Change appointed in accordance with established procedures of Government.
- (2) There may also be appointed, in accordance with the established procedures of Government, such other officers and staff of the Ministry as are necessary for the Ministry to discharge its powers, functions and responsibilities.

PART III - FUNCTIONS AND POWERS OF THE MINISTRY

8 Functions of the Ministry

- (1) In achieving the objects of this Act, the functions of the Ministry shall include –
 - (a) liaising with Government ministries, departments and agencies in relation to issues affecting the environment and climate change;
 - (b) assisting other Government ministries and departments in relation to meeting their obligations in relation to the protection of the environment, climate change issues and the development of the natural resources of the Kingdom in ways that are consistent with the objects of this Act;
 - (c) advising Government in relation to matters of environmental management, including climate change and the protection and conservation of natural resources and the promotion of sustainable development;

- (d) co-ordinating Government's response to matters affecting the environment and the enforcement of laws relating to the protection of the environment;
 - (e) monitoring impacts on the environment;
 - (f) preparing environment and climate change plans and policies;
 - (g) facilitating, conducting and participating in environmental research;
 - (h) promoting public awareness and education in relation to environmental issues, including climate change;
 - (i) facilitating the participation of non-government organisations, and agencies having expertise in relation to environmental management, in the protection of the environment of the Kingdom and the raising of public awareness in relation to such matters;
 - (j) conducting all matters necessary for the observance of the international and regional conventions to which the Kingdom is a party to, including those listed in the Schedule to this Act;
 - (k) ensuring that the laws of the Kingdom relating to the management and protection of the environment and climate change adaptation and mitigation are reviewed, implemented and enforced; and
 - (l) performing any other act or thing that attains or furthers the objects of this Act.
- (2) Without limiting the generality of sub-section (1), the functions of the Ministry in relation to the management of the environment shall include matters relating to –
- (a) climate change;
 - (b) ozone depletion;
 - (c) the movement or disposal of hazardous wastes and chemicals;
 - (d) desertification and drought relief;
 - (e) the preservation of wetlands and the management and protection of coastal areas;
 - (f) the conservation of endangered species;
 - (g) the preservation of biological diversity, including management of living modified organisms; and
 - (h) aspects of the environmental management of international waters.

9 Powers of the Minister

The Minister shall have the power to do all things necessary or convenient to be done in connection with the functions of the Ministry and in order to attain or further the objects of this Act, including power to –

- (a) grant approvals or any licence or authority designated to the Minister under this Act or any regulations made under this Act or any other law relating to the management or protection of the environment;
- (b) approve any report required to be prepared by the Ministry on behalf of Government;
- (c) approve any environment plan or programme required to be prepared by the Ministry for submission to Government, or to any other agency or body; and
- (d) delegate to the Director or an officer of the Ministry any Ministerial powers provided under this Act or regulations made under this Act, by notice in writing.

10 Powers of the Director

The Director shall have power to do all things necessary or convenient to be done in relation to the proper administration of the Ministry and the implementation of the provisions of this Act, including power to –

- (a) arrange for the investigation or monitoring of any activity, matter or thing that is having or may have an impact on the environment;
- (b) prepare reports in relation to any impact on the environment, or the implementation of the Kingdom's international environmental obligations, for the Minister or Cabinet, as directed; and
- (c) engage consultants for the purpose of assisting the Ministry to perform its functions.

11 Environment Officers

- (1) The Minister may appoint any person, whether employed in the Ministry or otherwise, to be an Environment Officer for the purposes of this Act.
- (2) The Director shall be an Environment Officer for the purposes of this Act.
- (3) All Environment Officers appointed under this section, whether officers of the Ministry or not, shall act under the direction of the Director.

12 Powers of Environment Officers

- (1) In addition to powers conferred by this or any other law, Environment Officers shall have power, on producing (if so required) evidence of appointment under this Act, to enter without any warrant at any time any land, premises, vehicle, ship, aircraft or other conveyance for the purpose of —
 - (a) monitoring the impact of any activity, matter or thing upon the environment;

- (b) investigating whether an offence has been committed, or an obligation in relation to the protection or management of the environment has been breached;
 - (c) enforcing this Act or any other law relating to the protection or management of the environment; or
 - (d) seizing property reasonably suspected of being used in relation to adverse impacts on the environment, or the breach of any law relating to environment protection.
- (2) In the exercise of the powers provided for in sub-section (1), an Environment Officer may –
- (a) conduct such investigations and examinations as are necessary to monitor the effect on the environment of any activity, matter or thing, or to determine whether any offence has been committed in relation to the environment;
 - (b) take samples for the purpose of analysis and testing;
 - (c) take photographs or measurements;
 - (d) require any person who he reasonably believes is associated with the creation of an impact upon the environment to state his full name and usual place of residence and if necessary require such person to provide information which shall be taken in writing;
 - (e) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by law relating to the activity, matter or thing; and
 - (f) require from any person any assistance that is relevant to the investigation or monitoring activity.
- (3) An Environment Officer shall not be liable for any loss or damage, in relation to the reasonable exercise of any power under this Act, or any other law.

PART IV - PROTECTION OF THE ENVIRONMENT

13 Committee

For the purpose of achieving the objects of this Act, the Minister may, with the consent of Cabinet, establish an Environment and Climate Change Committee, and may appoint its members, determine its functions, and such members may be remunerated in accordance with Government policy.

14 Monitoring of environmental impacts

The Ministry may undertake the monitoring of environmental impacts within the Kingdom –

- (a) as directed by Cabinet;
- (b) as determined by the Minister, or in accordance with any approved plan or programme;
- (c) at the request of any department or agency of Government; or
- (d) in accordance with any requirement of any international and regional conventions to which the Kingdom is a party to, including those set out in the Schedule to this Act.

15 Precautionary Notice

- (1) Where an Environment Officer reasonably suspects that an activity, matter or thing may be impacting upon the environment, he may issue a notice requiring that any person apparently in control of or associated with the activity, matter or thing comply with any requirement specified in sub-section (2).
- (2) A notice issued under sub-section (1) may require all or any of the following —
 - (a) that the activity, matter or thing be temporarily suspended;
 - (b) that information be provided in relation to the activity, matter or thing to satisfy the Director that the environment is not thereby being adversely impacted upon;
 - (c) that alternative activities or operating techniques be considered and employed to avoid or decrease the impact upon the environment;
 - (d) that improvements or alterations be made in relation to the activity, matter or thing to the satisfaction of the Director, to avoid or decrease the impact upon the environment; and
 - (e) any other requirement, as determined by the Director, to ensure that the activity, matter or thing is not adversely impacting upon the environment.
- (3) Any person served with a notice under this section shall ensure that the requirements stated in the notice are complied with within the time stipulated, and shall satisfy the Director, prior to the expiration of that time, that the activity, matter or thing is not, or is no longer adversely impacting upon the environment.

16 Notice to cease activity

- (1) A Notice may be issued under this section, notwithstanding that a Precautionary Notice has not been served under section 15.
- (2) Where the Director is of the opinion that there is occurring, or may occur, an act which involves an immediate threat or risk to the environment, the Director may issue a Notice under this section.

- (3) A Notice issued under this section shall —
 - (a) be directed to any person, organisation or body whom it is believed is carrying out the act, or apparently has some control over it;
 - (b) specify the act and the nature of its effect upon the environment; and
 - (c) require that the act cease, or not be done, until the Director is satisfied that the threat or risk no longer exists.
- (4) A Notice may be served under this section notwithstanding that any approval, licence or permit has been granted in relation to the activity.
- (5) The Minister, Director and Government shall not be liable in respect of any loss or damage arising from, or in any way connected with, the issuing of a notice under this section.

17 Appeal

Any person who disagrees with a decision of a Director or an Environment Officer may appeal to the Minister.

18 Offences and penalties

- (1) Any person who –
 - (a) hinders or obstructs an Environment Officer in the performance of his duties under this Act, or the exercise of a power under this Act;
 - (b) induces or incites any other person to hinder or obstruct an Environment Officer acting in accordance with this Act;
 - (c) by words or conduct falsely represents that he is an Environment Officer, or who otherwise impersonates an Environment Officer;
 - (d) fails to comply with a requirement made by an Environment Officer under section 12(2)(d), (e) or (f); or
 - (e) provides false or misleading information to an Environment Officer when required under section 12(2) to provide information,commits an offence.
- (2) Any person who, having been served with a Notice issued pursuant to section 15 –
 - (a) fails to comply with a requirement stated in the Notice; or
 - (b) fails to satisfy the Director that an activity, matter or thing is not or is no longer adversely impacting upon the environment within the time stipulated,commits an offence
- (3) Any person who —

- (a) having been served with a Notice issued under section 16, fails to comply with any of its terms;
 - (b) having been served with a Notice issued under section 16, causes or permits any other person to act in breach of its requirements; or
 - (c) knowingly acts in breach of the requirements of a Notice given under section 16, whether or not that person has been served with the Notice, commits an offence.
- (4) Any person who commits an offence under this section shall be liable upon conviction:
- (a) if it is an individual, to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 5 years, or both; or
 - (b) if it is a company, to a fine not exceeding \$100,000.
- (5) In addition to any other penalty imposed under this section, a court may order that any person convicted of an offence:
- (a) do any act to reinstate the environment as far as practicable to its state prior to the commission of the offence;
 - (b) pay to Government any sum representing the cost of reinstating the environment to its state prior to the commission of the offence; and
 - (c) pay any compensation to Government, or to any other person affected by the offence, in respect of the damage caused to the environment.
- (6) Where a company is guilty of an offence under this Act or the Regulations, any officer, director or agent of the company who authorised, assented to or participated in, or by his neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and may be liable to the penalty provided for the offence.

PART V - MISCELLANEOUS

19 General Regulations

- (1) The Minister, with the consent of Cabinet, may make Regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or advancing its objects, and in particular for prescribing matters in relation to:
- (a) the implementation of any obligation under the international and regional conventions set out in the Schedule to this Act;
 - (b) regulating or prohibiting trade and commerce in connection with wildlife, including rare and endangered species;

- (c) regulating or prohibiting the pollution of the air, water or land, and the depositing or dumping of litter, rubbish, or any substance of a dangerous, noxious or offensive nature;
 - (d) the prevention and control of soil erosion and siltation, and the taking of gravel, sand, soil, rock coral or like material;
 - (e) prescribing fees for applications, permits or approvals under any law relating to the management of the environment, or for the provision of advisory, inspection or other services by the Ministry; and
 - (f) regulating or prohibiting the importation or dumping of non-recyclable products.
- (2) Any Regulation made under this Act may make provision for offences, and may prescribe penalties:
- (a) if it is an individual, a fine not exceeding \$10,000, or to a term of imprisonment not exceeding 3 years, or both; or
 - (b) if it is a company, a fine not exceeding \$50,000.

Passed by the Legislative Assembly this 12th day of August 2010.

SCHEDULE

(Section 8(1)(j) and 14(d))

CONVENTIONS

1. Convention on Biological Diversity
(Adopted at Rio de Janeiro on 5 June 1992, Acceded to by the Kingdom on 19 May 1998)
2. United Nations Framework Convention on Climate Change
(Adopted at New York on 9 May 1992, Acceded to by the Kingdom on 20 July 1998)
3. Montreal Protocol on Substances that Deplete the Ozone Layer
(Adopted at Montreal on 16 September 1987, Acceded to by the Kingdom on 29 July 1998)
4. Vienna Convention for the Protection of the Ozone Layer
(Adopted at Vienna on 22 March 1985, Acceded to by the Kingdom on 29 July 1998)
5. United Nations Convention to Combat Desertification
(Adopted at Paris on 17 June 1994, Acceded to by the Kingdom on 25 September 1998)
6. Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific Region
(Adopted at Waigani, PNG on 16 September 1995, Ratified by the Kingdom on 22 May 2002)
7. Cartagena Protocol on Biosafety to the Convention on Biological Diversity
(Adopted at Montreal on 29 January 2000, Acceded to by the Kingdom on 18 September 2003)
8. Convention for the Protection of the World Cultural and Natural Heritage
(Adopted at Paris on 23 November 1972, Acceded to by the Kingdom on 30 April 2004)
9. Kyoto Protocol to the United Nations Framework Convention on Climate Change
(Adopted at Kyoto on 11 December 1997, Acceded to by the Kingdom in January 2008)

10. Stockholm Convention on Persistent Organic Pollutants
(Adopted at Stockholm, on 23 May 2001, Ratified by the Kingdom on 23 October 2009)
11. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
(Adopted at Basel in March 1989, Acceded to by the Kingdom on 26 March 2010)
12. Rotterdam Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade
(Adopted at Rotterdam in September 1998, Acceded to by the Kingdom on 31 March 2010)