

No. 9 of 2014.

Conservation and Environment Protection Authority Act 2014.

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No. of 2014.

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No. of 2014

AN ACT

entitled

Conservation and Environment Protection Authority Act 2014,

Being an Act -

- (a) to provide for the conservation and protection of the environment in accordance with the Fourth National Goal and Directive Principle (***National Resources and Environment***) of the ***Constitution***; and
- (b) to establish the Conservation and Environment Protection Authority; and
- (c) to repeal the ***National Parks Act*** (Chapter 157),
and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the ***Constitution***, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression conferred by Section 46; and
- (c) the right to freedom of assembly and association conferred by Section 47; and
- (d) the right to freedom of employment conferred by Section 48; and
- (e) the right to privacy conferred by Section 49; and
- (f) the right to freedom of information conferred by Section 51; and
- (g) the right to freedom of movement conferred by Section 52; and
- (h) the right to protection from unjust deprivation of property conferred by Section 53,

of the ***Constitution***, is a law that is made, taking account of the National Goals and Directive Principles and the Basic Social Obligations of the ***Constitution***, in particular the Third National Goal (***National Sovereignty and Self Reliance***) and the Fourth National Goal (***Natural Resources and Environment***), for the purpose of giving effect to the public interest in public order and public welfare.

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- (2) For the purposes of Section 53 (**Protection from Unjust Deprivation of Property**) of the *Constitution* and the *Land Act 1996*, every -
- (a) possession of property; or
 - (b) acquisition of interest in or right over property; or
 - (c) restriction on the use of or on dealing with property,
- under or in connection with this Act is -
- (d) in the public interest; and
 - (e) required for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
 - (f) reasonably necessary for the preservation of the environment.
- (3) For the purposes of Part VIIA. of the *Constitution*, this Act -
- (a) makes provision for and in respect of the Conservation and Environment Protection Authority as permitted by Section 208A of the *Constitution*; and
 - (b) makes provision for all appointments, temporary appointments, revocation of appointments and suspension from office in the Conservation and Environment Protection Authority of persons in accordance with Section 208B of the *Constitution*.
- (4) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears -
- “activity” means an activity which results or is likely to result in a change to the environment;
 - “Administrative Order” means an Administrative Order made under Section 38;
 - “Authorised Institution” has the meaning given to it in Section 3(1) of the *Banks and Financial Institutions Act 2000*;
 - “Authority” means the Conservation and Environment Protection Authority established under Section 7;
 - “Board” means the Board of the Authority established under Section 10;
 - “Deputy Managing Director” means the Deputy Managing Director appointed under Section 27;
 - “employee” means an employee of the Authority appointed under Section 28, and includes an interim employee;
 - “Environment Council” means the Council by that name established under Section 17 of the *Environment Act 2000*;
 - “environment management fee” means an environment management fee imposed under Section 33;
 - “environment permit” means an environment permit issued under Part V of the *Environment Act 2000* and includes a permit, licence or approval which is deemed to be a permit under Section 136(1) of that Act;

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“environmental conservation law” means -

- (a) the ***Conservation Areas Act*** (Chapter 362); and
- (b) the ***Crocodile Trade (Protection) Act*** (Chapter 213); and
- (c) the ***Environment Act 2000***; and
- (d) the ***Fauna (Protection and Control) Act*** (Chapter 154); and
- (e) the ***International Trade (Fauna and Flora) Act*** (Chapter 391); and
- (f) any other law relating to environment or conservation matters the administration of which is or becomes the responsibility of the Authority from time to time;

“financial statement” in relation to the Authority and a balance date, means -

- (a) a balance sheet for the Authority as at the balance date; and
- (b) an income and expenditure statement for the Authority in relation to the accounting period ending at the balance date; and
- (c) a statement of cash flows for the Authority in relation to the accounting period ending at the balance date, together with any notes or documents giving information in relation to the balance sheet, income and expenditure statement or statement of cash flows;

“governmental authority” includes a Minister, a Departmental Head, a statutory authority or body, a provincial government, local-level government or district body or authority;

“interim employee” means a person holding office as an interim employee under Section 54(2);

“interim Managing Director” means the person holding office as Managing Director under Section 54(1) pending the appointment of a Managing Director under Section 24;

“Managing Director” means the Managing Director of the Authority appointed under Section 24, and includes the interim Managing Director;

“member” means a member of the Board;

“National Conservation Council” means the Council established under Section 4 of the ***Conservation Areas Act*** (Chapter 362);

“permit holder” means the holder of an environment permit;

“this Act” includes the regulations and the Administrative Orders.

(2) In the event of any inconsistency between the provisions of this Act and the ***Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004***, the latter Act shall prevail.

3. ACT BINDS THE STATE.

This Act binds the State.

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**PART II. - ENVIRONMENTAL CONSERVATION POLICY,
PRINCIPLES AND PRIORITIES.**

4. ENVIRONMENTAL CONSERVATION OBJECTS AND PRINCIPLES.

(1) In exercising powers under and in relation to this Act or an environmental conservation law, the Minister or the Authority, as the case may be, shall have regard to the following:-

- (a) objects and principles in respect of environmental conservation matters contained in the Fourth Goal (Natural Resources and Environment) of the National Goals and Directive Principles of the *Constitution*;
- (b) objects and principles in respect of environmental conservation matters contained in the environmental conservation laws, in particular the objects and principles set out in the *Conservation Areas Act* (Chapter 362) and the *Environment Act 2000*;
- (c) objects and principles in respect of environmental conservation matters contained in international agreements and treaties to which the State is a party.

(2) Where, by or under any other Act, the Head of State, acting on advice of the Minister or the National Executive Council, may give directions as to policy regarding conservation and protection of the environment, no direction given to the Authority under this section may be inconsistent with this Act or any other environmental conservation law.

5. FUNCTIONS AND ROLE OF MINISTER.

The principal functions of the Minister under this Act are as follows:

- (a) to ensure the proper fulfillment of the responsibilities of the State regarding the sustainable use of natural resources and protection of the environment; and
- (b) to advise the National Executive Council regarding environment and conservation law, policy and strategies based on advice and recommendations from the Authority, the Environment Council and the National Conservation Council as provided by or under any law; and
- (c) to give directions to the Authority in accordance with Section 6 on matters of law, policy and strategies pertaining to environment and conservation matters to the extent permitted by law, and in so doing, he shall be the sole authority responsible for giving such directions; and
- (d) to set priorities for the operation of the Authority; and
- (e) to perform such other functions as are set out in this Act or any other environmental conservation law, and any other function incidental to the functions set out in this section.

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6. **AUTHORITY TO COMPLY WITH POLICY DIRECTIONS.**

- (1) In the exercise of its functions and powers under this Act, the Authority shall -
 - (a) act in accordance with the requirements of Part II (*Objects and General Environmental Duty*) of the *Environment Act 2000* and any policy and purpose requirements set out in any other environmental conservation law; and
 - (b) act in accordance with the policies of the government in relation to environment and conservation matters and with any annual or other priorities established under Section 5(d); and
 - (c) comply with all directions relating to those policies and priorities given to it by the Minister under Section 5(c).

- (2) The Minister shall not give a direction under Subsection (1) which requires the Authority to -
 - (a) act contrary to the requirements of Part II (*Objects and General Environmental Duty*) of the *Environment Act 2000* or any policy and purpose requirements relating to the conservation and protection of the environment set out in any other law; or
 - (b) do, or refrain from doing, a particular act, or bring about a particular result, for the personal benefit of a particular person or persons.

PART III. - ESTABLISHMENT AND FUNCTIONS, ETC., OF THE CONSERVATION AND ENVIRONMENT PROTECTION AUTHORITY.

7. **ESTABLISHMENT OF THE AUTHORITY.**

- (1) The Conservation and Environment Protection Authority is hereby established.

- (2) The Authority -
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

- (3) All courts, judges and persons acting in a judicial capacity shall take judicial notice of the seal of the Authority affixed to a document and shall presume that it was duly affixed.

- (4) For the purposes of the *Land Act 1996*, the purposes of the Authority are a public purpose within the meaning of that Act.

- (5) The Authority is not a Department of the Public Service.

8. **FUNCTIONS OF THE AUTHORITY.**

The functions of the Authority are -

- (a) to do all things necessary for the conservation and protection of the environment in accordance with the environmental conservation laws and any policy directions of the Minister and the National Executive Council; and

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- (b) to co-ordinate with provincial and local-level governments and sub-national authorities to foster, manage and monitor environmental conservation strategies and programmes in the country; and
- (c) in relation to land under the care, control and management of the Authority –
 - (i) to establish and maintain zoological and botanical parks and gardens; and
 - (ii) to permit and assist zoological and botanical research; and
 - (iii) to construct buildings, walks, drives, fences, enclosures, dams, reservoirs, drains and other structures for or in connection with the purposes of the Authority; and
- (d) to impose and receive rents, fees, charges and bonds in respect of its functions under any environmental conservation law, including but not limited to providing services related to the approval and issue of environment permits and the investigation and audit of activities under the ***Environment Act 2000***; and
- (e) to promote Papua New Guinea's laws, regulations and policies relating to conservation and environment matters within the country and overseas; and
- (f) to give advice to the Minister and maintain dialogue with other government agencies on environmental conservation laws and policies; and
- (g) to encourage, accept, administer and allocate aid monies, whether from within the country or elsewhere, for purposes consistent with its objects; and
- (h) to accept donations, gifts, devises and bequests made to the Authority and control, manage and develop those donations, gifts, devises and bequests in accordance with any conditions attached to them; and
- (i) where it considers it necessary or convenient to do so, to establish committees and similar bodies in relation to its functions, in accordance with regulations and to that effect; and
- (j) to perform such other functions and duties as may be conferred on it by this Act or any other law.

9. POWERS OF THE AUTHORITY.

The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and the achievement of its objectives.

PART IV. - THE BOARD.

10. THE BOARD.

The Board of the Authority is hereby established.

11. FUNCTIONS OF THE BOARD.

(1) The Board shall perform the functions, exercise the powers and manage and direct the financial and human resources affairs of the Authority as required by this Act or any other law.

(2) The functions and powers of the Board shall not extend to the formulation of environmental and conservation policies and laws.

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12. MEMBERSHIP OF THE BOARD.

- (1) The Board consists of the following:-
- (a) the Managing Director, ***ex officio***; and
 - (b) the Departmental Head of the Department responsible for treasury matters, ***ex officio***, or his nominee; and
 - (c) the Departmental Head of the Department responsible for national planning and monitoring matters, ***ex officio***, or his nominee; and
 - (d) the Departmental Head of the Department responsible for provincial and local-level government matters, ***ex officio***, or his nominee; and
 - (e) three persons nominated by the Business Council of Papua New Guinea -
 - (i) one of whom is admitted to practice as a lawyer under the ***Lawyers Act 1986***; and
 - (ii) one of whom is a Registered Public Accountant under the ***Accountants Act 1996***.

(2) The nominees of ***ex officio*** members under Subsection (1)(b), (c) and (d) shall be officers of the National Public Service of a level no lower than First Assistant Secretary or the equivalent.

(3) Where a nominee is appointed as a member by an ***ex officio*** member under Subsection (1)(b), (c) or (d), and that nominee ceases to hold office in the relevant Department or is otherwise unable to act, the Departmental Head shall advise the Minister and nominate another officer to be a member in accordance with this Act.

13. ALTERNATES OF NON EX OFFICIO MEMBERS OF THE BOARD.

(1) For each non ***ex officio*** member, an alternate member shall be nominated and appointed in the same manner and subject to the same conditions.

(2) In the event of the inability to act of a non ***ex officio*** member, the alternate member has and may exercise all of the member's powers, functions, duties and responsibilities and this Act applies accordingly.

(3) A non ***ex officio*** member of the Board shall hold office on such terms and conditions as are determined under the ***Boards (Fees and Allowances) Act*** (Chapter 299) and any regulation to that effect, and the alternate of a non ***ex officio*** member shall, when attending a board meeting in the place of the member for whom he is the alternate, be paid the applicable fee and other expenses.

(4) Subject to Section 18, a non ***ex officio*** member and the alternate of a non ***ex officio*** member -

- (a) hold office for a term of three years; and
- (b) are eligible for re-appointment.

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14. QUALIFICATIONS OF NON *EX OFFICIO* MEMBERS AND THEIR ALTERNATES.

(1) A person nominated as a non *ex officio* member or the alternate of a non *ex officio* member shall be -

- (a) less than 70 years of age; and
- (b) ordinarily resident in the country; and
- (c) of generally recognised standing, experience and expertise in matters relevant to the financial and human resources functions of the Authority, including (without limitation) business and financial management or corporate governance.

(2) A person may not be appointed as a non *ex officio* member or the alternate of a non *ex officio* member if he -

- (a) is or has been bankrupt, has applied to take the benefit of any law for the benefit of bankrupt or insolvent debtors or has compounded with his creditors or made an assignment of his remuneration for their benefit; or
- (b) is charged with, or is standing trial for or has been convicted of any offence punishable by imprisonment; or
- (c) is prohibited from being a director or member or promoter of, or from taking part (in any way, whether directly or indirectly) in the management of, a company under any law; or
- (d) is or becomes unwilling or unable to represent the interests of the nominator; or
- (e) has his affairs administered under any law relating to mental health.

15. APPOINTMENT OF NON *EX OFFICIO* MEMBERS AND THEIR ALTERNATES.

(1) Where there is or is likely to be a vacancy in the office of a non *ex officio* member or an alternate or both of them under Section 12(1)(e), the Minister shall -

- (a) carry out genuine consultations with the nominator regarding the proposed nominee for the office or offices; and
- (b) ascertain the suitability of the nominee for nomination in accordance with the qualifications set out in Section 14; and
- (c) submit the name and documentation to the Public Services Commission for its consideration.

(2) On receipt of the nomination under Subsection (1)(c), the Public Services Commission shall review the summaries and consider whether the nominee satisfies the criteria set out in Section 14.

(3) Where the Public Services Commission is not satisfied that a nominee satisfies the criteria set out in Section 14, it shall return the matter to the Minister for new consultations.

(4) Where the Public Services Commission is satisfied that a nominee satisfies the criteria set out in Section 14, it shall forward the nominee's name and relevant documentation to the Minister who shall make a submission on appointment to the National Executive Council for its consideration.

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(5) Where the National Executive Council approves a submission by the Minister under Subsection (4), it shall advise the Head of State to make the appointment.

(6) Where the National Executive Council does not approve a recommendation of the Minister under Subsection (5), it shall return the matter to the Minister for fresh consultations in accordance with this section.

16. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Board may, from time to time, appoint one of its members (other than the Managing Director) to be the Chairman of the Board for such period of time as it determines.

(2) Where the Chairman appointed under Subsection (1) is an *ex officio* member, the Board shall appoint one of its non *ex officio* members to be the Deputy Chairman for such period as it determines.

(3) Where the Chairman appointed under Subsection (1) is a non *ex officio* member, the Board shall appoint one of its *ex officio* members (other than the Managing Director), to be Deputy Chairman for such period of time as it determines.

(4) An appointment under Subsections (1), (2) or (3) terminates when -
(a) the period of time referred to in that subsection expires; or
(b) the person appointed ceases to be a member of the Board; or
(c) the Board determines that it is terminated,
whichever occurs first.

17. LEAVE OF ABSENCE OF MEMBERS.

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman on such terms and conditions as the Minister determines.

18. VACATION OF OFFICE.

(1) A non *ex officio* member may resign from office in writing signed by him and delivered to the Minister.

(2) If a non *ex officio* member dies, resigns his office or is otherwise terminated in accordance with this section, his office becomes vacant.

(3) If a non *ex officio* member -
(a) is absent, except with the written consent of the Minister or Chairman in accordance with Section 17, from three consecutive meetings of the Board; or
(b) becomes a person who is not eligible under Section 14 to be a member of the Board; or

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(c) otherwise becomes incapable of performing his duties, his appointment as a member of the Board (and as Chairman or Deputy Chairman, if the member is also the Chairman or Deputy Chairman) terminates with immediate effect, and he shall cease to be a member of the Board.

(4) The Minister, acting on the advice and recommendation of the Board but not otherwise, may at any time, by written notice, advise a member that he intends to recommend the termination of his appointment on the grounds of inefficiency, incapacity, misbehaviour or misconduct in office.

(5) The notice under Section 4 shall specify the details of the grounds for termination, including but not limited to -

- (a) undisclosed interest as provided in Section 20; or
- (b) disclosure of information which is confidential to the Authority as provided in this Act.

(5) Within 14 days after receiving a notice under Subsection (4), the member may reply in writing to the Minister, who shall consider the reply and, where he considers it appropriate, may recommend to the National Executive Council that the member's appointment be terminated by written notice to the member.

(6) Where the member referred to in Subsection (4) does not reply in accordance with Subsection (5), the Minister may recommend to the National Executive Council that the member's appointment be terminated by written notice to the member.

(7) The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

19. MEETINGS OF THE BOARD.

(1) The Board shall meet as often as the business of the Authority requires and at such times and places as the Chairman directs, but in any event shall meet not less frequently than once in every three months.

(2) At a meeting of the Board -

- (a) a quorum consists of four members, at least two of whom are *ex officio* members and one of whom is the Managing Director; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside; and
- (c) subject to Paragraph (e), each member of the Board has one vote; and
- (d) matters arising are decided by a majority of the votes of the members present and voting; and
- (e) the person presiding has a deliberative, and in an equality of votes on a matter, a casting vote.

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(3) The regulations may make further provision for the calling of meetings and special meetings of the Board and the procedures to be followed at those meetings.

(4) Subject to this Act, the procedures of the Board are as determined by the Board.

20. DISCLOSURE OF INTEREST.

(1) A member of the Board who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the relevant meeting of the Board, and the member making the disclosure shall -

- (a) not participate in any debate, deliberation, decision or vote of the Board in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Board; and
- (b) be disregarded for the purpose of determining whether a quorum is present for the meeting of the Board at which the disclosure is made or at any other meeting of the Board for any such debate, deliberation, decision or vote in relation to the matter.

21. ANNUAL REPORT.

(1) Within three months after 31 December in each year, the Managing Director shall furnish to the Board a report on the progress, performance and finances of the Authority in relation to its functions during the year ended 31 December previously, including but not limited to the following matters:

- (a) the audited financial statements for that year, together with the report of the Auditor-General on those statements; and
- (b) a disclosure of all funding received by source, and expended by the Authority by type of expenditure; and
- (c) any policy directions issued by the Minister under Section 6; and
- (d) any Administrative Orders made by the Board during the year ending 31 December previously; and
- (e) any appointment, termination or vacation of office of a member of the Board occurring during the year ending 31 December previously.

(2) Upon receiving the report referred to in Subsection (1), the Board shall forward the report to the Minister who shall forward -

- (a) the report to the Speaker for presentation to the National Parliament; and
- (b) a copy of the report to each Provincial Government.

(3) The Administrative Orders may make further provision for matters to be included in a report under this section.

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PART V. - STAFF OF THE AUTHORITY.

22. STAFF OF THE AUTHORITY.

(1) The Managing Director, the Deputy Managing Director and the employees of the Authority appointed under this Division constitute the staff of the Authority.

(2) The staff of the Authority are not officers in the National Public Service.

(3) The Board shall make further Administrative Orders in accordance with this Part to govern the eligibility, qualifications, process of selection, method of appointment, terms and conditions of employment, and discipline, suspension and dismissal of staff of the Authority.

23. MANAGING DIRECTOR.

(1) The Managing Director -

(a) is the chief executive officer of the Authority and the head of staff of the Authority; and

(b) holds office under a contract of employment for a period of four years on such terms and conditions as are determined by the Board, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, and is eligible for re-appointment; and

(c) is responsible to the Board for the general working and efficient conduct of the Authority and of its financial and human resources affairs in accordance with this Act and any directions from the Board; and

(d) is responsible to the Minister for the efficient implementation, in accordance with the environmental conservation laws, of the policy of the government in relation to environment and conservation matters and of any policy directions given to the Authority under Section 6; and

(e) has such other functions, powers and duties as are required of him under this Act or any other law, or as the Board may determine from time to time.

(2) The Managing Director, in performing or exercising any of his functions or powers in relation to policy matters under this Act or any environmental conservation law, is not responsible to the Board for the performance or exercise of those functions and powers.

(3) The Managing Director, in performing or exercising any of his functions or powers in relation to the financial and human resources matters of the Authority, is not responsible to the Minister for the performance or exercise of those functions and powers.

(4) The Managing Director may, in writing, delegate all or any of his powers and functions under this Act or any other environmental conservation law (except this power of delegation) -

(a) where the relevant environmental conservation law provides for delegation - in accordance with that provision; or

(b) in any other case - to an appropriately qualified employee of the Authority.

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24. APPOINTMENT OF THE MANAGING DIRECTOR.

(1) Where the office of Managing Director is or is likely to become vacant, or where the Board determines to seek alternative candidates for consideration for appointment to the office of Managing Director under Section 25(1), or where the National Executive Council rejects the Minister's recommendation under Section 25(3)(b), the Board shall, as soon as is practicable -

- (a) by notice in the National Gazette and in at least one newspaper circulating generally in Papua New Guinea, declare the office vacant, likely to become vacant or due to become vacant, as the case may be; and
- (b) invite applications for appointment to the office.

(2) An applicant for appointment to the office of Managing Director shall -

- (a) satisfy the health and fitness requirements for occupancy of the position, as determined by a medical examination conducted by a qualified medical practitioner approved by the Board; and
- (b) be not less than 35 years of age and not more than 65 years of age; and
- (c) possess a degree from a recognised university, together with post-graduate qualifications or other relevant experience; and
- (d) be of good character and repute, with no previous criminal record, as witnessed by suitable references from at least three persons of standing in the community; and
- (e) not currently be subject to criminal charges, investigations or disciplinary proceedings under any law, or any other proceedings of a nature likely to cause serious injury to his professional standing and reputation; and
- (f) possess proven skills, experience and competencies in -
 - (i) policy formulation and development; and
 - (ii) strategic and corporate planning; and
 - (iii) negotiation and conflict resolution skills; and
 - (iv) financial budgeting and personnel planning and management; and
- (g) have a sound knowledge of this Act and the environmental conservation laws, and the international treaties and agreements to which the State is a signatory in relation to the conservation and protection of the environment.

(3) Following receipt of applications within the time specified in the advertisement under Subsection (1), the Board shall -

- (a) prepare a list from the applications received of not less than three and not more than five suitable candidates; and
- (b) submit the list, together with any other relevant or prescribed documentation, to the Public Services Commission for its consideration.

(4) Where, in relation to an advertised vacancy, less than three suitable applications are received, the Board shall re-advertise the vacancy.

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(5) On the receipt of a list under Subsection (3)(b), the Public Services Commission shall assess the applicants according to the criteria set out in Subsection (2).

(6) Where -

- (a) at least three applicants are assessed as suitable - the Public Service Commission shall return the list, together with its assessments and comments, to the Board for forwarding to the Minister who shall submit it to the National Executive Council; or
- (b) the Public Service Commission determines that there are less than three suitable applicants - it shall return the list to the Board with a recommendation for re-advertisement.

(7) Upon consideration of the submission from the Minister under Subsection (5)(a), the National Executive Council may -

- (a) select one of the candidates and advise the Head of State to make the appointment of the selected candidate to the position; or
- (b) reject all the candidates, in which case the Board shall re-advertise the position in accordance with this section.

25. EXPIRY OF TERM OF THE MANAGING DIRECTOR.

(1) Not less than three months before the term of office of the Managing Director is due to expire, the Board shall, after consultation with the Minister, determine whether -

- (a) to renew the contract of the Managing Director; or
- (b) to seek alternative candidates for consideration in accordance with Section 24.

(2) Where the Board determines to renew the contract of the Managing Director, the Minister shall recommend to the National Executive Council that the Managing Director's appointment be renewed.

(3) On receipt of the Minister's recommendation under Subsection (2), the National Executive Council may -

- (a) advise the Head of State to renew the appointment; or
- (b) reject the recommendation, in which case the Board shall re-advertise the position according to Section 24.

(4) Where the contract of the Managing Director has expired and has not yet been renewed, or no new appointment has yet been made under Section 24, the Managing Director shall continue to act until the renewal or new appointment has taken place.

26. TERMINATION OF THE MANAGING DIRECTOR.

(1) The Managing Director may be suspended or terminated if he -

- (a) becomes incapable, for any reason, of performing his duties; or
- (b) other than with the written consent of the Board, engages in any paid employment or carries on business outside the duties of his office; or

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- (c) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (d) is convicted of an offence that is punishable under a law by imprisonment; or
- (e) ceases to be ordinarily resident in the country; or
- (f) commits an offence against this Act or any environmental conservation law.

(2) Where the Board believes that grounds exist for the termination of the Managing Director, it shall cause an investigation into his conduct, activities or performance.

(3) Where the Board intends to carry out an investigation under Subsection (2) and is in receipt of material information from credible sources that the conduct of the Managing Director is such that serious charges of misconduct may be brought against him, the Board shall determine whether grounds exist for the suspension of the Managing Director during the period of the investigation.

(4) Where the Board determines that grounds exist for the suspension of the Managing Director, it shall advise the Minister to recommend to the National Executive Council that the Managing Director be suspended on full pay for the duration of the investigation.

(5) Where the National Executive Council approves the recommendation of the Minister for the suspension of the Managing Director, it shall advise the Head of State to suspend the Managing Director.

(6) Where the Board has made an investigation under Subsection (1), it shall submit a report on its investigation, together with its recommendations, to the Public Services Commission.

(7) On the receipt of a report under Subsection (6), the Public Services Commission shall -

- (a) consider the evidence provided and the recommendations of the Board; and
- (b) make a recommendation to the Board as to whether or not the appointment of the Managing Director should be terminated.

(8) Where the Public Services Commission recommends under Subsection (7)(b) that the appointment of the Managing Director should be terminated, the Board shall forward the recommendation to the Minister for submission to the National Executive Council.

(9) The National Executive Council may -

- (a) accept the submission of the Minister to terminate the appointment of the Managing Director, in which case it shall advise the Head of State to terminate the appointment; or
- (b) reject the submission.

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(10) Where the Managing Director's appointment is terminated under Subsection (9) –

- (a) the Managing Director is not entitled to; and
- (b) the Board may not authorise the provision or giving to the Managing Director of; and
- (c) the Authority may not provide or give to the Managing Director,

any compensation or payment in respect of the termination of his appointment, and the Authority has no liability to the Managing Director in respect of the termination of his appointment, other than liability for any unpaid remuneration or benefits in respect of the period before the termination, payable in accordance with the terms and conditions of the Managing Director's contract of employment.

27. DEPUTY MANAGING DIRECTOR.

(1) There shall be a Deputy Managing Director of the Authority who shall undertake such responsibilities in accordance with this Act as may be required by the Managing Director, and who shall act for the Managing Director in any case where –

- (a) the Managing Director is absent or unable, for any reason, to undertake his duties; or
- (b) the office of Managing Director is vacant pending a new substantive appointment.

(2) Where the office of Deputy Managing Director is or is likely to become vacant, or where the Board refuses a nomination under Subsection (3), or where the Managing Director resolves under Subsection (3) or (4) to proceed again under this subsection, the Managing Director shall –

- (a) by notice in the National Gazette and in at least one newspaper circulating generally in Papua New Guinea, declare the office vacant, likely to become vacant or due to become vacant, as the case may be; and
- (b) invite applications for appointment to the office; and
- (c) prepare a list from the applications received of suitable candidates; and
- (d) nominate his selection for the position to the Board.

(3) Upon receipt of the nomination under Subsection (2), the Board may –

- (a) accept the nomination, in which case, it shall forward the name to the Public Services Commission for its approval; or
- (b) refuse the nomination, in which case, the Managing Director may select another candidate from the list of suitable candidates and nominate his selection to the Board, or proceed again in accordance with Subsection (2).

(4) Where the Public Services Commission approves the nomination under Subsection (3)(a), the Board shall submit the nomination to the Minister for recommendation to the National Executive Council.

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- (5) The National Executive Council may -
- (a) approve the recommendation and make the appointment; or
 - (b) reject the recommendation, in which case, the matter shall be returned to the Managing Director who may select another candidate from the list of suitable candidates and nominate his selection to the Board, or declare the office vacant and proceed again in accordance with Subsection (2).

(6) Where the Public Services Commission does not approve the nomination, the Board shall notify the Managing Director who may select another candidate from the list of suitable candidates and nominate his selection to the Board, or proceed again in accordance with Subsection (2).

(7) The Administrative Orders may make further provision for procedures to be followed under this section.

28. EMPLOYEES OF THE AUTHORITY.

(1) The Managing Director may, within the limit of funds available for the purpose, appoint, as employees of the Authority, persons as the Board considers necessary for the purposes of giving effect to this Act.

(2) Employees appointed under Subsection (1) shall be appointed on such terms and conditions as the Board, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, shall determine.

29. PRIOR SERVICE.

(1) Where a person appointed as Managing Director was, immediately before the appointment, an officer of the Public Service or a public body within the meaning of the *Public Services (Management) Act 1995*, the person's service as that officer or employee shall, for all purposes, be counted as service as the Managing Director of the Authority.

(2) Where a person appointed as an employee of the Authority was, immediately before the appointment, an officer of or employed in the Public Service or a public body within the meaning of the *Public Services (Management) Act 1995*, the person's service as that officer or employee shall, for all purposes, be counted as service as an employee of the Authority.

30. CONTRACTORS, CONSULTANTS, ETC.

The Managing Director may, within the limit of funds available, appoint as employees of, or contractors to, the Authority, technical advisors and consultants on any matter in relation to its functions as he considers necessary, on terms and conditions which are determined by the Managing Director.

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PART VI. - FINANCES OF THE AUTHORITY.

31. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) The Authority and any subsidiary corporations are public bodies for the purposes of the *Public Finances (Management) Act 1995*.

(2) Without limitation to any function or power of the Authority under this Act, Section 39A and Part VIII (other than Sections 57 and 58) of the *Public Finances (Management) Act 1995* apply to and in relation to the Authority.

(3) Subject to Subsection (2), the *Public Finances (Management) Act 1995* does not apply to or in relation to the Authority.

(4) Where the *Public Finances (Management) Act 1995* is silent on any matter related to the management of the finances of the Authority, the regulations may make provision for that matter.

32. FUNDS OF THE AUTHORITY.

(1) The funds of the Authority shall consist of -

- (a) monies appropriated by law for the purposes of carrying out or giving effect to this Act; and
- (b) monies received for goods and services provided by the Authority; and
- (c) monies received in respect of rents, fees, charges, bonds and other sums payable under this Act or any other environmental conservation law; and
- (d) monies received in respect of the sale or lease of items forfeited and other payments made under this Act or any environmental conservation law; and
- (e) grants, donations, subscriptions, credits or other contributions, whether from within or outside Papua New Guinea, including contributions from international organisations or from a government, government department, government instrumentality or statutory entity of a country other than Papua New Guinea; and
- (f) borrowings by the Authority in accordance with Section 35; and
- (g) monies received by the Authority in respect of sale of real or personal property owned by the Authority or monies received through trading activities or investments of the Authority; and
- (h) any other monies received by the Authority in accordance with law.

(2) The funds of the Authority may be expended only -

- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
- (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Board; and
- (c) in making investments authorised by this Act; and
- (d) for such other purposes authorised by this Act or the regulations or consistent with the functions of the Authority as the Board, after consultation with the Managing Director, may determine.

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33. ENVIRONMENT MANAGEMENT FEES.

- (1) A person who -
- (a) is the holder of or applicant for an environment permit under the *Environment Act 2000*; or
 - (b) has carried out, is carrying out or is proposing to carry out an activity within the meaning of the *Environment Act 2000* –
 - (i) which has resulted, is resulting or is likely to result in a change to the environment; or
 - (ii) which has caused, is causing or is likely to cause environmental harm within the meaning of the *Environment Act 2000*,

shall pay an environment management fee in respect of that environment permit or application or the carrying out or proposed carrying out of that activity, irrespective of whether or not that person holds or is required to hold an environment permit.

- (2) An environment management fee is imposed as prescribed.

(3) The Managing Director may, by written notice in the prescribed form, issue to a person referred to in Subsection (1) an assessment of the environment management fee calculated as prescribed in respect of his environment permit or application or his carrying out or proposed carrying out of an activity of the kind referred to in Subsection (1)(b).

(4) A person to whom an assessment is issued under Subsection (1) may object to the assessment by notice given to the Board in the prescribed form and within the prescribed period.

(5) Where the Board receives an objection under Subsection (4), it shall within 45 days of receipt consider the objection and issue a decision in the prescribed form confirming or reducing the amount of the assessment.

(6) Notwithstanding anything to the contrary in the *Environment Act 2000*, payment of an environment management fee is a condition of a permit.

(7) Where a permit holder fails to pay an environment management fee within the prescribed time, in addition to any proceedings for recovery under Section 43, the permit is suspended until such time as the fee is paid or further action, including cancellation of the permit in accordance with Section 72 of the *Environment Act 2000*, is taken in respect of the permit.

(8) Where an applicant for a permit fails to pay an environment management fee or any part of it within the prescribed time, in addition to any proceedings for recovery under Section 43, the process of application under the *Environment Act 2000* is suspended until such time as the fee is paid or further action is taken in respect of the permit.

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- (9) The regulations may provide for -
- (a) the person or category of persons being required to pay an environment management fee; and
 - (b) the permit or activity in respect of which the environment management fee is payable; and
 - (c) the basis on which the amount of environment management fee payable is calculated; and
 - (d) the time at which the environment management fee becomes payable and the period of time in respect of which it is to be paid; and
 - (e) the variation, waiver and exemption from payment of environment management fees; and
 - (f) the appointment of agents for the collection of environment management fees; and
 - (g) recovery procedures for environment management fees; and
 - (h) penalties and default penalties for non-payment of environment management fees; and
 - (i) actions which may be taken (including the suspension or cancellation of permits) in relation to the non-payment of environment management fees and default penalties; and
 - (j) any other matter necessary or convenient for carrying out or giving effect to the calculation, imposition and collection of environment management fees.
- (10) The calculation of environment management fees under this section shall be made with regard to the following general principles -
- (a) the principle of certainty, so that annual volatility in fees is minimised or the manner of calculation of fees is known in advance; and
 - (b) the principle of cost recovery, so that the Authority ensures that the aggregate fees it proposes to recover are sufficient to recover its forecast ongoing expenditure and to provide for unforeseen and emergency risk management expenditure; and
 - (c) the principle of fee minimisation, so that the Authority endeavours to minimise the fees payable, subject to the principle of cost recovery; and
 - (d) the principle of non-discrimination, so that similarly situated persons undertaking the same activities are subject to similar fee structures; and
 - (e) the principle of transparency, so that persons to be charged an environment management fee are informed of the rationale behind the fee-charging structure proposed by the Authority.

34. INVESTMENTS.

- (1) Monies of the Authority which are not immediately required may be invested -
- (a) in accordance with law; and
 - (b) for a period not exceeding 12 months; and
 - (c) in a manner which ensures appropriate capital guarantees; and
 - (d) at a known and acceptable rate of return, being a rate not less than the Singapore Interbank Offer Rate (SIBOR) at the time of lodging the investment.

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(2) The regulations may make further provision for investing monies of the Authority in accordance with the requirements of Subsection (1).

35. BORROWINGS.

(1) Subject to Subsection (2), the Authority may borrow money for its purposes from an Authorised Institution in any manner, including by overdraft in accordance with the provisions of Sections 55 and 56 of the ***Public Finances (Management) Act 1995***.

(2) No money may be borrowed unless the Board has certified that the sum to be borrowed does not exceed the debt servicing capacity of the Authority as established by audited financial statements of the Authority which are not more than 12 months old.

(3) Where the Board makes a fraudulent certification under Subsection (2), each member present at the meeting which resolved to make the certification is jointly and severally liable for the certification.

(4) The regulations may make further provisions for investing monies of the Authority in accordance with the requirements of this section.

36. ACCOUNTING, RECORDS AND REPORTS.

(1) For the purposes of Section 62(1) of the ***Public Finances (Management) Act 1995***, the Authority shall keep its accounts and records in accordance with the accounting principles generally applied in commercial practice.

(2) The Authority shall cause its accounts to be audited every six months in accordance with the requirements of Part III of the ***Audit Act 1989*** and Section 63 of the ***Public Finances (Management) Act 1995***.

(3) Upon completion of the audit for each financial year, the Board shall assess the amount of revenue (if any) standing to the credit of the Authority, and return to the Consolidated Revenue all surplus recurrent revenue other than -

- (a) an amount equivalent to the budgeted recurrent and operational expenses for one quarter; and
- (b) such funds as the National Executive Council agrees shall be retained by the Authority for specified purposes.

37. BUDGET AND TAXATION.

(1) The Managing Director shall, no later than five months before the commencement of each financial year, submit to the Board for its approval -

- (a) an Annual Plan for that financial year which conforms to the priorities (if any) issued to it under Section 5; and
- (b) a budget which consists of estimates of receipts, borrowings and expenditure for that financial year.

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(2) Where the Board approves the Annual Plan and budget, it shall forward them to the Minister for his approval, and the Minister may -

- (a) approve the Annual Plan and the budget; or
- (b) return one or both of them to the Board for amendment.

(3) Where the Minister approves the Annual Plan and budget under Subsection (2), he shall submit to the Minister responsible for Treasury matters a budget consisting of -

- (a) the Authority's receipts of funds under Section 32(1), excluding those received under Section 32(1)(a) and (e); and
- (b) proposed borrowings by the Authority under Section 35; and
- (c) the Authority's expenditure of the funds and monies referred to in Paragraphs (a) and (b).

(4) Where the Minister responsible for Treasury matters is satisfied as to the budget under Subsection (3) -

- (a) he shall table it in the Parliament as soon as practicable, and in any event within seven sitting days of the Parliament; and
- (b) it is subject to disallowance in whole or in part by decision of the Parliament taken within 7 days of their tabling; and
- (c) where the Parliament has not disallowed it within 7 days of their tabling, it is deemed to have authorised the expenditure identified in the budget.

(5) Where, in respect of any year, the Board considers that the amount to be received from environmental management fees will exceed the amount authorised by the National Parliament for that year (if any), the Board shall prepare a revised budget and submit that revised budget to the Minister for approval or amendment.

(6) Where the Minister approves the revised budget submitted to him under Subsection (5) -

- (a) the Minister responsible for Treasury matters shall table it in the Parliament as soon as practicable, and in any event within seven sitting days of the Parliament; and
- (b) it is subject to disallowance in whole or in part by decision of the Parliament taken within 7 days of its tabling; and
- (c) where the Parliament has not disallowed it within 7 days of its tabling, it is deemed to have accepted the revised budget and authorised the expenditure identified in it.

(7) Nothing in this section shall be construed as limiting an amount that may be appropriated to the Authority from the Consolidated Revenue Fund.

(8) For the purposes of Section 24(1) of the *Income Tax Act 1959*, the Authority is a public authority constituted under this Act.

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PART VII. - MISCELLANEOUS.

38. ADMINISTRATIVE ORDERS.

(1) The Board may make Administrative Orders as to any matter required or permitted by this Act to be made, or that are necessary or desirable to be made, for carrying out or giving effect to this Act for the good governance of the Authority, the conduct and discipline of the employees of the Authority and the better management and control of the finances and assets of the Authority.

(2) In addition to Subsection (1), the Board may make Administrative Orders for the following:

- (a) the use and custody of the seal of the Authority; and
- (b) the organisation and establishment of the staff of the Authority; and
- (c) the persons who are to be regarded, for the purposes of this Act, as employees of the Authority; and
- (d) the terms and conditions of employment of employees and categories of employees of the Authority; and
- (e) criteria and procedures for the regular appraisal by the Board of the performance of the Managing Director; and
- (f) criteria and procedures for the regular appraisal by the Managing Director of the performance of employees of the Authority; and
- (g) criteria and procedures for the disciplining of staff of the Authority; and
- (h) codes of ethics and conduct for staff of the Authority, including codes relating to the specialised function of any employee or category or group of employees of the Authority; and
- (i) the management, protection and control of property, including intellectual property, of the Authority; and
- (j) tender and procurement procedures of the Authority; and
- (k) procedures and other matters connected with the imposition and collection of environment management fees; and
- (l) matters to be included in a report under Section 18; and
- (m) procedures and other matters connected with the preparation and submission of the budget and the remission of funds to the Consolidated Revenue Fund referred to in Section 37(3); and
- (n) other matters of management and administration of the Authority that are authorised by this Act, or that are necessary or convenient for giving effect to this Act.

(3) It is sufficient proof of the making of an Administrative Order by the Board if the Administrative Order is signed by the Chairman, the Managing Director and one other member of the Board.

(4) In making an Administrative Order under this section, the Board may have regard to any law which it considers necessary or desirable to take into account.

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39. RESERVATION OF LAND FOR PURPOSES OF THE AUTHORITY.

(1) The Head of State, acting on advice, may, by notice in the National Gazette, commit to the care, control and management of the Authority an area of land that has been reserved from lease or further lease under Section 49 of the ***Land Act 1996*** for a place for -

- (a) a national park, botanical or zoological garden, reserve or sanctuary for the protection of flora or fauna; or
- (b) any other purpose of the Authority under this Act or any other environmental conservation law.

(2) Notwithstanding Section 52 of the ***Land Act 1996***, where Government land is reserved under Subsection (1) -

- (a) a special purposes lease over the land for a term of 99 years, free of obligation to pay rent or royalties, shall be issued and registered in the name of the Authority; and
- (b) Sections 50, 51, 100(2) and 100(6) of the ***Land Act 1996*** shall not apply.

(3) The Authority shall not alienate, mortgage, charge or demise any lands, tenements or hereditaments of the Authority except with the approval of the National Executive Council.

40. PROTECTION FROM PERSONAL LIABILITY.

Subject to Section 35(3), a member of the Board or an employee of the Authority is not personally liable for anything done or omitted to be done in good faith in the course of the activities or operations of the Authority or for the purposes of the Authority.

41. PROOF OF CERTAIN MATTERS.

(1) Except as otherwise provided under any other environmental conservation law, in any proceedings by or against the Authority, proof is not required, unless evidence is given to the contrary, of -

- (a) a resolution of the Board; or
- (b) the appointment of a member of the Board; or
- (c) the appointment of the Managing Director; or
- (d) the presence of a quorum at a meeting of the Board at which a determination is made or an act is done.

(2) No action or proceeding taken under this Act or any other environmental conservation law shall be questioned on the ground of -

- (a) the existence of any vacancy in the membership or defect in the appointment of any member of the Authority; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

42. REQUIREMENT TO PROVIDE INFORMATION.

(1) This section does not apply to information under the ***Environment Act 2000*** and a reference in this section to an environmental conservation law does not include a reference to that Act.

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(2) The Managing Director or an employee of the Authority authorised by the Managing Director in writing may give written notice to -

- (a) a governmental authority or a person; or
- (b) the owner or occupier of any premises or site; or
- (c) the person having control of any aircraft, vessel or vehicle,

to provide to the Managing Director any document, report, book, plan, map or other record (including monitoring records) in the possession or custody or under the control of the person for inspection.

(3) The inspection under Subsection (2) shall relate to -

- (a) the exercise or performance of the powers or functions of the Authority or any other person or body under this Act or any other environmental conservation law; or
- (b) information required to be kept in accordance with this Act or any other environmental conservation law or the conditions of any approval, certificate, licence, permit or other authorization issued under this Act or any other environmental conservation law; or
- (c) the achievement of the purposes of this Act or any other environmental conservation law.

(4) A notice under Subsection (2) shall state -

- (a) the person to whom it is issued; and
- (b) the information that is required; and
- (c) the time within which the information is to be provided; and
- (d) why the information is required.

(5) A notice under Subsection (2) may be given to any person who the Managing Director believes, on reasonable grounds, has knowledge of a matter or has possession or control of a document dealing with a matter for which the information is required.

(6) A person who fails to comply with a notice under Subsection (2) within the time stipulated under Subsection (4)(c) is guilty of an offence.

Penalty: (a) In the case of a corporation - a fine not exceeding K100,000.00; or
(b) In the case other than a corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

Default penalty: A fine not exceeding K10,000.00 per day until the penalty is paid in full.

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(7) Where the document or other item required to be provided for inspection under Subsection (2) contains -

- (a) information which relates to matters of a secret or confidential nature, the disclosure of which would be injurious to the public interest; or
- (b) information which relates to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment or information of a business or financial nature which is confidential to the person from whom the information is required under this section, unless the person providing the information authorises its disclosure; or
- (c) such information as the Managing Director may designate as confidential or as may be prescribed,

the person required to provide the information may inform the Managing Director in writing and the Managing Director may, to the extent he considers appropriate or is required to do so by law, treat that information as confidential.

43. DUTY OF CONFIDENTIALITY.

(1) This section does not apply to general summaries of aggregated information which the Managing Director determines are exempted from confidentiality requirements.

(2) Except as -

- (a) authorised in the course of official duty; or
- (b) required or permitted by any law or court of competent jurisdiction; or
- (c) as provided in Subsection (5),

no member of the Board, member of Authority staff or other person who in the course of any duty in or in connection with the Authority shall divulge, directly or indirectly, any confidential information received by or concerning the business of the Authority or any matters of which he has knowledge in the course of his duties.

(3) A person who discloses information in contravention of this section is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(4) Notwithstanding Subsection (3), where an Administrative Order has provided for disciplinary measures to be taken against members of the Board or employees of the Authority in relation to the unauthorised disclosure of confidential information, a member of the Board or employee of the Authority who discloses information in contravention of this section may, in the discretion of the person authorised in the Administrative Order to take the disciplinary measure in respect of that person, be dealt with in accordance with that Administrative Order.

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(5) Subsection (2) does not apply to a person who believes on reasonable grounds that the information disclosed may provide evidence of -

- (a) the commission of; or
- (b) the attempted commission of; or
- (c) a conspiracy to commit,

an offence in relation to funds or other property of the Authority by any person, and the disclosure is made to -

- (d) the Managing Director; or
- (e) a member of the Board; or
- (f) the Auditor-General; or
- (g) the Ombudsman Commission,

or by order of a court.

44. RECOVERY OF FEES, CHARGES, ETC.

Except as otherwise provided under any other environmental conservation law, all -

- (a) rents, fees, charges and expenses; and
- (b) forfeitures incurred or imposed; and
- (c) liabilities to forfeiture of any article seized; and
- (d) other sums of money payable,

under this Act or any other environmental conservation law may be sued for, determined, enforced and recovered by civil proceedings in a court of competent jurisdiction in the name of the Authority, and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any of those proceedings.

45. SERVICE OF PROCESS.

A notice, summons, order, writ or other process to be served on the Authority may be served by being delivered to the office of the Authority or being sent by registered post and received in the Authority.

46. INSTITUTION OF PROCEEDINGS.

(1) This section does not apply to offences against the *International Trade (Fauna and Flora) Act* (Chapter 391).

(2) The Managing Director or a person authorized by the Managing Director in writing may, after consultation with the Public Prosecutor, lay informations and institute prosecutions for an offence against this Act or any other environmental conservation law.

- (3) An offence under Subsection (1) shall be prosecuted -
 - (a) where the offence provides for a maximum monetary penalty of K20,000.00 or less in the case of a person other than a corporation - in the District Court; or
 - (b) where the offence provides for a maximum monetary penalty, in the case of a person other than a corporation, of K50,000.00 - before a Principal Magistrate; or
 - (c) in any other case - in the National Court.

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47. FALSE STATEMENTS.

A person who, in a statement made or information furnished under or for the purposes of this Act, makes, without reasonable excuse (proof of which is on him), a statement, or gives information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

48. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters, that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular for -

- (a) the management and good governance of the Authority; and
- (b) service in actions under this Act, giving evidence in any proceedings under this Act, and any other procedural matters in relation to any proceedings under this Act; and
- (c) any fees, charges, taxes, resource rents or royalties payable in respect of any matter under this Act; and
- (d) the establishment and management of reserve funds for the purposes of the Authority under this Act or any other environmental conservation law; and
- (e) the establishment of committees and similar bodies in relation to the functions of the Authority, and the regulation of their membership, powers and related matters; and
- (f) receiving, securing, accessing and divulging confidential information; and
- (g) giving full effect to the transitional provisions of this Act; and
- (h) penalties of fines not exceeding K500,000.00 or imprisonment for a term not exceeding two years for offences against the regulations.

(2) Without limiting the generality of Subsection (1), the regulations may prescribe, in relation to reserved land committed to the care, control and management of the Authority under Section 39, for any of the purposes specified under Section 39(1)(a) or (b) -

- (a) the times at which reserves shall be opened and closed, and fees for admission to reserves; and
- (b) the regulation or prohibition of the admission of vehicles to reserves, and for their removal if trespassing on reserves; and
- (c) the regulation or prohibition of the entry of animals on reserves; and
- (d) the conduct of persons when on reserves; and
- (e) the introduction to or removal from reserves of any flora and fauna; and
- (f) the prevention of damage or injury to, or destruction of, trees, shrubs, plants and flowers on reserves; and
- (g) the prevention or regulation of shooting over or on reserves; and
- (h) the prevention or regulation of the trapping of birds or animals on reserves; and
- (i) the prevention or regulation of the destruction or removal of the eggs of birds on or from reserves; and
- (j) the control of fishing within reserves; and

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- (k) the prevention of nuisances on reserves and of the contamination of water on reserves; and
- (l) the prevention of damage or injury to, or destruction or defacement of, buildings, structures or erections or natural features on reserves; and
- (m) the impounding or confiscation within reserves of firearms, traps, nets, snares, lines, hooks, lures, poisons, baits, enticements, cages and other articles capable of being used, in contravention of the regulations, for luring, holding, taking or destroying animals, birds, reptiles or fish; and
- (n) the regulation of zoological and botanical research in reserves; and
- (o) the grant of licences or other rights to use and occupy any place or building on reserves, and the manner of charging, and the fixing of fees for those licenses and rights; and
- (p) the prohibition or the regulation of the sale or exposal for sale of goods, wares or merchandise on reserves; and
- (q) the authorisation of persons to demand the names and places of abode of persons who are believed on reasonable grounds to have contravened or failed to comply with the regulations and requiring persons to comply with such a demand made by a person so authorised; and
- (r) the removal from reserves of persons who are believed on reasonable grounds to have contravened or failed to comply with the regulations.

(3) A regulation made under Subsection (2) may be made generally or in respect of a particular area of reserved land.

PART VIII. - REPEAL, SAVINGS AND TRANSITIONAL.

49. INTERPRETATION.

In this Part, unless the contrary intention appears -

“Department of Environment and Conservation” includes the office formerly known as the Office of Environment and Conservation and any similar office, division or section.

50. REPEAL.

(1) The *National Parks Act* (Chapter 157) is repealed.

(2) All subordinate enactments including the *National Parks Regulation* (Chapter 157) and all forms and instruments made, issued or approved under the *National Parks Act* (Chapter 157) (*repealed*) continue in force as if made under this Act, so far as they are not inconsistent with this Act, until varied, repealed or replaced in accordance with this Act.

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51. APPLICATION OF ACTS AND OTHER DOCUMENTS.

Where -

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the former Department of Environment and Conservation, that reference shall, on the coming into operation of this Act, unless the contrary intention appears, be read and construed and have effect as a reference to the Authority.

52. REFERENCES TO DIRECTOR, DEPARTMENTAL HEAD AND OFFICERS.

(1) Where -

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Director of National Parks under the *National Parks Act* (Chapter 157) (*repealed*), the Director of the Office of the Environment or the Departmental Head of the Department of Environment and Conservation or any similar reference, that reference shall, on the coming into operation of this Act, unless the contrary intention appears, be read and construed and have effect as a reference to the Managing Director.

(2) Where -

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to an officer carrying out the duties and performing the functions of an office under an environmental law, that reference shall, unless the contrary intention appears, be read and construed and have effect as a reference to the employee (if any) appointed in accordance with this Act to carry out the duties and perform the functions, as nearly as may be, of that office.

53. INTERIM BOARD.

Until not less than three non *ex officio* members of the Board are appointed in accordance with Section 15, the Board consists of the *ex officio* members or their nominees as provided by Section 12 and, despite Section 19(2), the quorum of the Board is three members, including the Managing Director.

54. STAFF.

(1) The person who, immediately before the coming into operation of this Act, held or acted in the position of Departmental Head of the Department of Environment and Conservation shall, on that coming into operation -

- (a) hold office as interim Managing Director, on the same terms and conditions and subject to the same provisions of the *Public Services (Management) Act 1995* and the General Orders; and
- (b) while holding that office, retain and continue to accrue all rights and entitlements of his former office in the Public Service,

until such time as a Managing Director is appointed in accordance with Section 24 and terms and conditions are determined under this Act.

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(2) A person who, immediately before the coming into operation of this Act, held an office in the Department of Environment and Conservation under the ***Public Services (Management) Act 1995*** shall, on that coming into operation -

- (a) hold a similar office in the Authority as an interim employee, on the same terms and conditions and subject to the same provisions of the ***Public Services (Management) Act 1995*** and the General Orders; and
- (b) while holding that office, retain and continue to accrue all rights and entitlements of his former office in the Public Service,

until -

- (c) he is appointed to the staff of the Authority under Section 28; or
- (d) he is notified, in writing, by the Managing Director that he will not be appointed to the staff of the Authority.

(3) Nothing in Subsection (2) shall create or be taken to be -

- (a) a breach of any contract of employment; or
- (b) an interruption to employment; or
- (c) a right to payment in respect of accrued leave entitlements; or
- (d) a retrenchment, severance or redundancy.

(4) Where a person holding office as an interim employee under Subsection (2) is appointed as an employee of the Authority under Section 28, nothing in that appointment shall create or be taken to be -

- (a) a breach of any contract of employment; or
- (b) an interruption to employment; or
- (c) a right to payment in respect of accrued leave entitlements; or
- (d) a retrenchment, severance or redundancy.

(5) An interim employee referred to in Subsection (2)(d) shall be made redundant and shall have his entitlements paid to him by the State.

(6) A person who is made redundant under Subsection (5) is not eligible to be employed by the Authority for a period of two years from the date of the notice under Subsection (2)(d).

(7) For the purposes of Section 43(4), the interim Managing Director, the interim Deputy Managing Director and interim employees are subject to the provisions of the ***Public Services (Management) Act 1995*** and the General Orders relating to disciplinary measures.

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55. SAVING OF APPOINTMENTS.

(1) A person who, immediately before the coming into operation of this Act, was authorised -

- (a) to perform functions and exercise powers under the *National Parks Act* (Chapter 157) (*repealed*); or
- (b) to perform functions or exercise powers under any provision of an environmental conservation law which is amended by this Act,

shall, on the coming into operation of this Act, continue to perform those functions and exercise those powers as if he were authorised under this Act, until such time as the authorisation is revoked or a new authorisation is made under this Act.

(2) A person who, immediately before the coming into operation of this Act, was appointed as -

- (a) a ranger under the *Conservation Areas Act* (Chapter 362); or
- (b) an analyst or authorised officer under the *Environment Act 2000*; or
- (c) a ranger under the *Fauna (Protection and Control) Act* (Chapter 155) and the *Crocodile (Trade Protection) Act* (Chapter 213),

shall, on the coming into operation of this Act, continue to hold that position, as nearly as may be, and perform the functions and exercise the powers of the position as if he were appointed and authorised to perform the functions and exercise the powers under this Act, until such time as the appointment is revoked or a new appointment is made under this Act.

56. CONTINUATION OF LICENCES AND PERMITS.

Every licence, permit and consent issued or given under the *National Parks Act* (Chapter 157) (*repealed*) shall, on the coming into operation of this Act, continue in force on the same terms and conditions as if that Act had not been repealed.

57. CONTINUATION OF CONTRACTS, ETC.

(1) All contracts, agreements, deeds, bonds or other instruments entered into, made with or addressed to the State through the Department of Environment and Conservation, insofar as they relate to the functions of the Authority under this Act, are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of the State are, on that coming into operation, binding on and of full force and effect against or in favour of the Authority as fully and effectually as if, instead of the State, the Authority were a party to them or bound by them or entitled to the benefit of them.

(2) Where a contract, agreement, deed, bond or other instrument of the kind referred to in Subsection (1) is substantially at variance with this Act, it shall nevertheless continue in full force and effect until the earliest possible date of its renegotiation or renewal according to its terms, at which time it shall be renegotiated or renewed so as to ensure substantial compliance with this Act.

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58. ACCOUNTS.

All monies, immediately before the coming into operation of this Act, standing to the credit of, and in accounts opened by or on behalf of, the Department of Environment and Conservation, including any trust account opened under the ***Public Finance (Management) Act 1995***, are, on that coming into operation, transferred to and stand to the credit of the Authority.

59. TRANSFER OF ASSETS TO THE AUTHORITY.

(1) All the estate, right, title and interest, both in and to any property which, immediately before the coming into operation of this Act, was vested in the State on behalf of the Department of Environment and Conservation or otherwise reserved or set aside for use by the Department of Environment and Conservation or for any purpose connected with the conservation and protection of the environment is, by virtue of this section and without the necessity of any formal deed of assurance, vested in the Authority for the purposes of this Act and any other environmental conservation law.

(2) Where the property referred to in Subsection (1) is land registered under the ***Land Registration Act*** (Chapter 191), the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the Authority, enter or register the Authority in the relevant Register kept under that Act and, on that entry or registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

60. RIGHTS AND LIABILITIES.

(1) All rights, obligations and liabilities of the State in respect of the Department of Environment and Conservation immediately before the coming into operation of this Act, other than the liabilities referred to in Subsection (2), shall, on that coming into operation, become rights, obligations and liabilities of the Authority.

(2) Despite Subsection (1), the State shall retain liability after the coming into operation of this Act in respect of -

- (a) provision of office space and rentals and other outlays in relation to that space, until such time as an alternative arrangement is agreed between the State and the Authority; and
- (b) all rights and entitlements of the interim Managing Director and interim employees.

61. ACTIONS NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by, against or in favour of the State, in so far as it relates to the functions of the Authority under this Act, it does not, on that coming into operation, abate or discontinue or be in any way affected by anything in this Act, but it may be prosecuted, continued or enforced by, against or in favour of the State as if the action, arbitration or proceeding were taken under this Act.

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62. REGULATION TO RESOLVE DIFFICULTIES WITH TRANSITIONAL PROVISIONS.

(1) Where difficulty arises in respect of the transitional provisions in this Part, the Head of State, acting on advice, may, by regulations -

- (a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any modifications or provisions made by the Head of State, acting on advice, have, and are deemed always to have had, the same force and effect as if they had been enacted by way of an amendment of this Part, and on publication of the regulation in the National Gazette, this Part is amended accordingly.

(2) The regulations under Subsection (1) may be given retrospective operation to a date not earlier than the date of commencement of this Act.

- (3) To the extent to which the regulations under Subsection (1) takes effect from a date earlier than the date of its publication in the National Gazette, it does not operate so as to -
- (a) affect, in a prejudicial manner, the rights of any person existing before that date of publication; or
 - (b) impose liabilities on any person in respect of anything done or omitted to be done before that date of publication.

(4) This section expires one year after this Act comes into force.

I hereby certify that the above is a fair print of the ***Conservation and Environment Protection Authority Act 2014*** which has been made by the National Parliament.


Clerk of the National Parliament.

3 0 MAY 2014

I hereby certify that the ***Conservation and Environment Protection Authority Act 2014*** was made by the National Parliament on 19 February 2014 by an absolute majority in accordance with the ***Constitution***.


Speaker of the National Parliament.