

No. of 2010.

Environment (Amendment) Bill 2010.

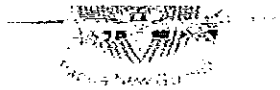
ARRANGEMENT OF CLAUSE.

PART 1. – PRELIMINARY.

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No. of 2010

A BILL

for

AN ACT

Entitled,

Being an Act to amend the *Environment Act 2000* to authorize the State to issue certificates certifying that certain conduct complies with environmental approvals, permits, leases, licences, consents or permissions.

MADE by the National Parliament.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

- (a) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (d) the right to freedom of movement conferred by Section 52 of the *Constitution*.

is a law that is made pursuant to Section 38 of the *Constitution* for the purpose of giving effect to –

- (e) the public interest in public order and public welfare, taking into account the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled –
 - (i) national sovereignty; and
 - (ii) natural resources and environment; and
- (f) the right of the State under the *Environment Act 2000* to regulate acts, works or activities that may harm or damage the environment through, but not limited to, notices, studies, directions, policies, environment permits and Regulations.

- (2) For the purposes of Section 25(1) and (2) of the *CONSTITUTION*:-
- (a) the purpose and reason for which this Act permits possession to be compulsorily to be taken of any property and permits any interest in or rights over property to be compulsorily acquired are declared and described to be a public purpose and a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
 - (b) this Act is expressed to be in the national interest.
- (3) For the purposes of Sections 29 and 41 of the *Organic Law on Provincial Governments and Local-Level Governments*, and it is declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

(1) Unless otherwise defined in this Act, words and expressions which are given certain meaning in the Principal Act are used in this Act with the same meanings.

(2) In This Act, unless the contrary intention appears, "Amendment Commencement Date" has the meaning given to it in Section 3(1).

PART 2. – AMENDMENTS TO THE *ENVIRONMENT ACT 2000*.

3. INTERPRETATION (AMENDMENT OF SECTION 2).

(1) Section 2 of the Principal Act is amended by inserting after the definition of "activity" the following new definition: -

"Amendment Commencement Date" means the date of commencement of the *Environment Act 2000*;"

(2) On the "Amendment Commencement Date", Section 2 of the Principal Act is amended: -

- (a) by inserting before the definition of "approval in principle" the following definition:

"Authorisation Instrument" includes any approval, consent, lease, licence, permission, permit or authorization issued or granted under the *Environmental Planning Act* (Chapter 370) and any Supplementary Approval;" and

- (b) by inserting after the definition of "serious environmental harm" the following new definition: -

"Supplementary Approval" means any approval, consent, lease, licence, permission or authorization or permit given in relation to an Authorisation Instrument including any variation, renewal, amendment, modification, transfer or extension thereof whenever made and by whatever statutory authority;"

4. NEW SECTIONS 69A AND 69B.

The Principal Act is amended by inserting after Section 69 the following new sections: -

“69A. DIRECTOR MAY AUTHORISE ASSOCIATED ACTS.

(1) Notwithstanding anything in any other law in force at any time (whether before or after the commencement of this Act), the Director may, on behalf of the State, authorise the carrying out of specific acts or works (including but not limited to those described under Section 41) relating or associated with an activity permitted under an Authorisation Instrument if:

- (a) the Director is satisfied that the acts or works relate to or are associated with the carrying on of a level 3 activity, or would not cause material harm to the environment; or
- (b) the acts or works have been allowed to be carried out in association with an identical or similar activity that is, or have been permitted under an Authorization Instrument, Supplementary Approval or an environment permit (whether or not granted to the same person and whether or not granted or issued prior to the commencement of this Act).

which authorisation may be granted with retrospective effect.

“(2) An authorization granted under Subsection (1) is deemed to be a permit granted under this Act and applies notwithstanding non-compliance with any procedural or other requirements for the grant of such permits under this Act.

“(3) The Director’s decision to grant an authorization is final and may not be challenged or reviewed in any court or tribunal.”.

“69B. ACTIVITY DOES NOT CONSTITUTE A CIVIL CAUSE OF ACTION OR AN OFFENCE.

If the Director grants an authorization under Section 69A, the holder of the permit for the associated activity is entitled to carry out that act, or work and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.”.

5. NEW SECTIONS 87A – 87E.

The Principal Act is amended by inserting after Section 87 the following new sections: -

“87A. DIRECTOR MAY GRANT EXEMPTION CERTIFICATE.

(1) The Director may, on behalf of the State, issue a Exemption Certificate declaring that an act, or a work or omission which was not in accordance with the terms of an Authorisation Instrument (including Authorisation Instruments granted or issued prior to the commencement of this Act) is an “Exempt Operation”, provided that the Director is satisfied that an act, a work or omission was carried out substantially in accordance with the terms of that Authorisation Instrument.

“(2) Subject to this section, in granting an Exemption certificate under Subsection (1), the Director is not bound by any provisions of any law requiring or permitting any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provisions.

“(3) An Exempt Operation shall be taken to have been authorized by the Authorisation Instrument to which it relates and an Exemption Certificate is conclusive evidence in any proceeding that an Exempt Operation was authorized by the Authorisation Instrument at the time at which it occurred.

“(4) The Director’s decision to issue the Exemption Certificate is final and may not be challenged or reviewed in any court or tribunal.”.

“87B. DIRECTOR MAY ISSUE BEST PRACTICE CERTIFICATE.

(1) A holder of an Authorisation Instrument may apply to the Director to request a confirmation that certain methodology or conduct (or proposed methodology or conduct) complies with best practice standards or requirements or best available standards or requirements (whether engineering, environmental or otherwise) specified in an Authorisation Instrument.

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Best Practice Certificate declaring that the methodology or conduct (or proposed methodology or conduct) specified in the application complies or would comply with best practice standards or requirements or best available standards or requirements for the purposes of a particular Authorisation Instrument.

“(3) Where an Authorisation Instrument refers to best practice standards or requirements or best available standards or requirements, a Best Practice Certificate issued in accordance with this section shall be conclusive evidence that the conduct or methodology specified in the Best Practice Certificate meets or would meet that standard or requirement in relation to the Authorisation Instrument specified in the Best Practice Certificate.

“(4) The Director’s decision to issue the Best Practice Certificate is final and may not be challenged or reviewed in any court or tribunal, except at the instigation of any aggrieved holder of an Authorisation Instrument.”.

“87C. DIRECTOR MAY ISSUE A CERTIFICATE OF NECESSARY CONSEQUENCE.

(1) A holder of an Authorisation Instrument may apply to the Director to request a confirmation of any or all of the following matters, namely, that:

- (a) the undertaking of certain conduct or proposed conduct referred to in the application is, was, or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the application in respect of that conduct or proposed conduct or of the work or activity that is authorized by the Authorisation Instrument are, were or will be necessary or inevitable, consequences of undertaking that conduct, proposed conduct, work or activity.

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Certificate of Necessary Consequence declaring any or all of the following matters, namely, that:-

- (a) the undertaking of the conduct or proposed conduct referred to in the certificate is, was or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the certificate in respect of that conduct, proposed conduct, work or activity are, were or will be necessary or inevitable consequences of carrying out that conduct, proposed conduct, work or activity.

“(3) A Certificate of Necessary Consequence issued in accordance with this section shall be conclusive evidence that:

- (a) the undertaking of the conduct or proposed conduct referred to in the certificate is, was or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the certificate in the respect of that conduct, proposed conduct, work or activity are, were or will be necessary or inevitable consequences of carrying out that conduct, proposed conduct, work or activity.

“(4) The Director’s decision to issue the Certificate of Necessary Consequence is final and may not be challenged or reviewed or any court or tribunal, except all the instigation of an aggrieved holder of an Authorisation Instrument.

“(5) The carrying out of a conduct or proposed conduct, or the occurring of consequences, referred to in a Certificate of Necessary Consequence do not constitute wholly or partly a civil cause of action, whether in torts or otherwise, or an offence and are not unlawful.”.

“87D. A DIRECTOR MAY ISSUE A CERTIFICATE OF COMPLIANCE.

(1) A holder of an Authorisation Instrument may apply to the Director for a Certificate of Compliance to certify that an act, a work or activity has been conducted in compliance with the Authorisation Instrument or Supplementary Approval or an environment permit and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Certificate of Compliance declaring that the act, work or activity has been conducted in compliance with the related Authorisation Instrument or Supplementary Approval or an environment permit and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.

“(3) A Certificate of Compliance issued in accordance with this Section shall be conclusive evidence that the act, work or activity has been conducted in compliance with the related Authorisation Instrument or Supplementary Approval or an environment permit and no civil or other action may be brought or maintained in relation to that conduct.

“(4) The Director’s decision to issue a Certificate of Compliance is final and may not be challenged or reviewed in any court or tribunal, except at the instigation of an aggrieved holder of an Authorisation Instrument.

“(5) The carrying out of any act, work or activity that is the subject of a Certificate of Compliance does not constitute wholly or partly a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.”.

“87E. A HOLDER MAY APPLY FOR MORE THAN ONE CERTIFICATE.

A holder of an Authorisation Instrument may apply for the issue of, and the Director may issue, more than one certificate under Sections 87A to Section 87D in respect of one Authorisation Instrument.”.



Environment (Amendment) Bill 2010

EXPLANATORY NOTES

The matters prescribed in the *Environment (Amendment) Bill 2010* will supplement, give full effect to and enable holders of environment permits to comply with the standards and requirements set by their permits. The proposed amendments will also mitigate risks associated with third party litigation that resource projects are now exposed to.

A recent Court decision against the State has exposed resource projects to the risk that environment permits, granted by the State in satisfaction of legal and scientific requirements, may not be valid and enforceable. A third party (financed by special interest groups), although not a stakeholder in such projects, can now challenge the validity of a environment permit and frustrate works and activities that are carried out in accordance such permits or approvals. The idea that this is capable of happening even though any such project has been operating strictly within the terms of those permits gives rise to a concern of national priority. All major mining and petroleum projects (including LNG projects) are particularly at risk, whether they be already operating, in construction or proposed. This represents a significant threat to the PNG economy and investor confidence in it and is therefore a matter of utmost national significance.

Amendments that would need to be made to the *Environment Act 2000*, through the proposed *Environment (Amendment) Bill 2010* are intended to assist the Department of Environment and Conservation and the courts in better interpreting and applying our environmental laws in the national interest of PNG.

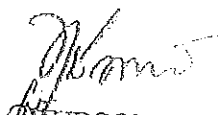
It is in the national interest and, therefore, imperative that the proposed amendments be brought into effect as is immediately possible.



C E R T I F I C A T E

Environment (Amendment) Bill 2010.

I hereby certify that the *Environment (Amendment) Bill 2010* (Draft of 17/05/10) is in accordance with the *National Executive Council Decision No 86 /2010* and with the drafting instructions.


HUDSON ALOIS RAMATLAP
FIRST LEGISLATIVE COUNSEL.

17th May 2010.

