

INDEPENDENT STATE OF PAPUA NEW GUINEA



Marine Pollution (Sea Dumping) Bill

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INDEPENDENT STATE OF PAPUA NEW GUINEA



A BILL

for an

ACT

entitled

Marine Pollution (Sea Dumping) Act [insert yr]

Being an Act:

- (a) to provide for the prevention and control of marine pollution from the dumping and incineration of wastes and other matter in Papua New Guinea waters and from any Papua New Guinea vessel, aircraft or platform wherever it may be; and
- (b) to incorporate into the law of Papua New Guinea relevant provisions of certain international Conventions relating to the dumping and incineration of wastes and other matter; and
- (c) to repeal the *Dumping of Wastes at Sea Act*; and
- (d) to make ancillary and related provisions.

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. Short title

This Act may be cited as the *Marine Pollution (Sea Dumping) Act*.

2. Purpose and application of this Act

- (1) The purpose of this Act is to prohibit the incineration of wastes and other matter at sea and to control the dumping of wastes and other matter at sea, through the implementation of the London Protocol and the SPREP Dumping Protocol.
- (2) This Act applies in all Papua New Guinea waters and to any Papua New Guinea vessel, aircraft or platform wherever it may be.
- (3) This Act applies to the State including any vessel, aircraft or platform owned or partly owned or chartered or otherwise operated by the National Government or any Provincial Government of Papua New Guinea, except that it does not apply to any vessel, aircraft or platform of the Papua New Guinea Defence Force in times of war, conflict or emergency only.
- (4) This Act does not apply to any warship, naval auxiliary, military aircraft or other vessel or aircraft owned or operated by the government of a State other than Papua New Guinea and used, for the time being, only on government non-commercial service.
- (5) This Act does not apply to the disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources.

3. Compliance with constitutional requirements

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision 111.3.C (qualified rights) of the *Constitution*, namely:
 - (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*;
 - (b) the right to privacy conferred by Section 49 of the *Constitution*;
 - (c) the right to freedom of movement conferred by Section 52 of the *Constitution*;
 - (d) the right to compensation conferred by Section 58 of the *Constitution*;
 - (e) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*; and
 - (f) the right to freedom of information conferred by Section 51 of the *Constitution*;

is a law made pursuant to Section 38 of the Constitution; made for the purpose of giving effect to the public interest in public order and public welfare.

- (2) For the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.
- (3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act is an Act of Parliament on a matter specified in Section 42 or 44 of the *Organic Law on Provincial Governments and Local-level Governments*, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.

4. Interpretation

In this Act, unless the contrary intention appears:

“artificial reef” means a structure or formation placed on the seabed:

- (a) for the purpose of increasing or concentrating populations of marine plants or animals; or
- (b) for the purpose of being used in human recreational activities;

“Authority” means the National Maritime Safety Authority established by the *National Maritime Safety Authority Act*;

"dumping" means :

- (a) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; when such wastes have been loaded onto a vessel, aircraft or platform or other man-made structure specifically for the purpose of disposal into the sea; or are derived from the processing and treatment of such wastes or other matter on vessels, aircraft, platforms and other man-made structures at sea; and
- (b) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea; and
- (c) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and

- (d) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal; and
- (e) any placement of matter on the seabed for the purpose of creating an artificial reef;

but does not include:

- (i) the discharge of wastes or other matter incidental to, or derived from, the normal, day-to-day operation of vessels, aircraft, platforms or other man-made structures at sea and their equipment, when such discharges are regulated by the *Marine Pollution (Ships & Installations) Act*; or
- (ii) the discharge or placement of wastes or other matter into the sea directly from a shore-based source, including from a pipeline connected to a shore-based source, when such discharge or placement is duly authorised under the *Environment Act*; or
- (iii) placement of matter for a purpose other than the mere disposal thereof or other than the purpose of creating an artificial reef, provided that such placement is not contrary to the aims of this Act; and
- (iv) abandonment in the sea of matter such as cables, pipelines and marine research devices placed for the purpose other than the mere disposal thereof;

and "to dump" and "dumped" have corresponding meanings;

"incineration at sea" means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction; but does not include the incineration of wastes or other matter on board a vessel, platform or other man-made structure at sea if such wastes or other matter were generated during the normal, day-to-day operation of the vessel, platform or other man-made structure at sea and "to incinerate" and "incinerated" have corresponding meanings;

"Inspector" means a person appointed as an inspector under Subsection 18(1);

"London Protocol" means the *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other*

Matter, 1972 as affected by any amendment other than an amendment not accepted by Papua New Guinea, which has been made and has come into force in accordance with the relevant provisions of the Protocol;

“**master**” means the person in charge of a vessel at any one time;

"**Minister**" means the Minister responsible for maritime transport;

"**National Government**" means the Government of Papua New Guinea;

“**owner**” in relation to any vessel, aircraft or platform, includes:

- (a) any person who is a co-owner of the vessel, aircraft or platform or of any part of, or any share in, the vessel, aircraft or platform; and
- (b) any person who has the use or control (whether alone or jointly with another person or persons) of the vessel, aircraft or platform.

“**Papua New Guinea**” means the Independent State of Papua New Guinea;

"**Papua New Guinea aircraft**" means an aircraft that is:

- (a) registered or required to be registered in Papua New Guinea; or
- (b) owned or partially owned by either:
 - (i) a citizen of Papua New Guinea; or
 - (ii) a Corporation established under and subject to the laws of Papua New Guinea;

and is unregistered;

"**Papua New Guinea platform**" means a platform that is:

- (a) registered or required to be registered in Papua New Guinea;
- (b) owned or partially owned by either:

- (i) a citizen of Papua New Guinea; or
- (ii) a Corporation established under and subject to the laws of Papua New Guinea;

and is unregistered;

“Papua New Guinea territory” and **“territory of Papua New Guinea”** mean all areas under the sovereign jurisdiction of Papua New Guinea, including the territorial sea;

"Papua New Guinea vessel" means a vessel that is:

- (a) registered or required to be registered under the *Merchant Shipping Act*; or any law administered by a Provincial Government; or

- (b) owned or partially owned by either:

- (i) a citizen of Papua New Guinea; or
- (ii) a Corporation established under and subject to the laws of Papua New Guinea;

and is unregistered;

"Papua New Guinea waters" means:

- (a) the internal waters;
- (b) the territorial sea;
- (c) the contiguous zone;
- (d) the archipelagic waters, and
- (e) the exclusive economic zone;

of Papua New Guinea as defined in the *Maritime Zones Act* [NB if this Bill passed before *Maritime Zones Bill* this will have to be changed to *National Seas Act*];

“person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent agencies and parts;

“person-in-charge” means:

- (a) in relation to a vessel – the master or other person in charge of the vessel;
- (b) in relation to an aircraft – the person in charge of the aircraft; or
- (c) in relation to a platform – the person in charge of the operations conducted on or from the platform;

“platform” includes any man-made structure at sea, whether floating or fixed to the seabed, but does not include a vessel;

“pollution” means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea or any other waters which results or is likely to result in such deleterious effects as harm to living resources and aquatic ecosystems, hazards to human health, hindrance to aquatic activities, including fishing and other legitimate uses of the sea or any waters, impairment of quality for use of any waters and reduction of amenities; and “pollutant” has a corresponding meaning;

“Provincial Government” means any of the governments of the Provinces of Papua New Guinea;

"sea" has the same meaning as Papua New Guinea waters and in addition includes the sea-bed and subsoil thereof, and does not include sub-sea-bed repositories accessed only from land, and in the case of Papua New Guinea vessels, aircraft and platforms, extends beyond Papua New Guinea waters to all marine waters other than the internal waters of States other than Papua New Guinea;

“SPREP Dumping Protocol” means the *Protocol on the Prevention of Pollution of the South Pacific by Dumping* (a protocol of the *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990*);

“vessel” means any water-borne vessel and craft of any size and type whatsoever and includes displacement and non-displacement craft, hydro-foil boats; air-cushion vehicles, submersibles, dredges and barges without regard to the method of or lack of propulsion; and

“wastes or other matter” means material and substance of any kind, form or description.

5. International Conventions

- (1) The following International Conventions, including any Protocols, Annexes, Appendices, Addenda and Amendments, other than a Protocol, Annex, Appendix, Addenda or Amendment not accepted by Papua New Guinea, which has been made and has come into force in accordance with the relevant provisions of the Convention; are the International Conventions to which this Act applies and which through this Act are incorporated into and have the force of law in Papua New Guinea:
 - (a) London Protocol; and
 - (b) SPREP Dumping Protocol
- (2) Regulations made under this Act may:
 - (a) make provision for any aspect of the application or enforcement of a Convention to which this Act applies;
 - (b) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Papua New Guinea; and
 - (c) prescribe offences for the breach of any aspect of a Convention to which this Act applies, and any related offences, and impose penalties being fines not exceeding **K1,000,000**, or imprisonment for terms not exceeding **five** years, or both.
- (3) In the event of any inconsistency between the provisions of any of the Conventions to which this Act applies and the provisions of this Act, this Act shall apply.

Part II - Incineration at sea

- (1) The incineration of wastes or other matter at sea is prohibited.
- (2) The loading of wastes or other matter onto a vessel or platform for the purpose of incineration at sea is prohibited.
- (3) The export of wastes or other matter for the purpose of incineration at sea is prohibited.
- (4) Any person who fails to comply with any provision of this section, including the owner and person in charge of any vessel, aircraft or platform to which the event relates, each commit an offence and shall each be liable upon conviction to:

- (a) a fine not exceeding K1,000,000; or
- (b) a term of imprisonment not exceeding five years; and
- (c) a fine not exceeding K10,000 for each day during which the offence has continued.

Part III - Dumping of wastes and other matter

7. Dumping prohibited or controlled

- (1) The dumping of wastes or other matter is prohibited, except for those wastes or other matter listed in Section 8, subject to assessment and permitting according to Sections 9 to 15.
- (2) The loading of wastes or other matter onto a vessel, aircraft or platform for the purpose of dumping is prohibited, except for those wastes or other matter listed in Section 8, subject to assessment and permitting according to Sections 9 to 15.
- (3) The export of wastes or other matter for the purpose of dumping is prohibited.
- (4) Any person who fails to comply with any provision of this section, including the owner and person-in-charge of any vessel, aircraft or platform to which the event relates, each commit an offence and shall each be liable upon conviction to:
 - (a) a fine not exceeding K1,000,000; or
 - (b) a term of imprisonment not exceeding five years; and
 - (c) in addition, to a fine not exceeding K10,000 for each day during which the offence has continued; and
 - (d) shall be liable to pay the total costs, as the Court may assess, of removing or cleaning up any waste or other matter to which the offence relates.

8. Wastes and other matter that may be considered for dumping

- (1) The following wastes or other matter may be considered for dumping, subject to assessment and permitting according to Sections 9 to 15:
 - (a) dredged material, providing that it is shown to be free of contamination by meeting the sediment quality guidelines as prescribed, in accordance with

sediment sampling and testing procedures published by the Authority from time to time;

- (b) sewage sludge;
 - (c) fish waste, or material resulting from industrial fish processing operations;
 - (d) vessels, aircraft and platforms or other man-made structures at sea; provided that:
 - (i) any oils, chemicals and other pollutants and any material capable of creating floating debris or otherwise contributing to pollution of the marine environment, has been removed to the maximum extent possible; and
 - (ii) the material proposed to be dumped poses no obstacle or impairment to fishing, navigation and other legitimate uses of the area, including by traditional inhabitants and users of the area;
 - (e) inert, inorganic geological material;
 - (f) organic material of natural origin;
 - (g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping; and
 - (h) the placement of materials listed under Subsections (1)(d) and (g) only, to create an artificial reef.
- (2) The dumping of wastes or other matter listed in Subsection (1) may only be carried out under the consent of a sea dumping permit (permit), issued pursuant to Sections 9 to 15.
- (3) The dumping of wastes or other matter listed in Subsection (1) without a permit or in contravention of the provisions, terms and conditions of a permit is prohibited.
- (4) Any person who fails to comply with any provision of this section, including the owner and person-in-charge of any vessel, aircraft or platform to which the event relates, each commit an offence and shall each be liable upon conviction to:
- (a) a fine not exceeding K1,000,000; or
 - (b) a term of imprisonment not exceeding five years; and

- (c) in addition, to a fine not exceeding K10,000 for each day during which the offence has continued; and
- (d) in addition, shall be liable to pay the total costs, as the Court may assess, of removing or cleaning up any waste or other matter to which the offence relates.

9. Sea dumping permits

- (1) A person proposing to dump wastes or other matter listed under Section 8 (the applicant) shall apply in writing to the Authority for a permit, submitting all information required by the permit application form as prescribed, including:
 - (a) the name, legal entity, physical address, postal address, telephone number and other contact details of the applicant;
 - (b) the source and type of waste or other matter proposed to be dumped, including its composition and physical, chemical and biological characteristics;
 - (c) in the case of dredged material referred to in paragraph (a) of Subsection 8(1), an assessment of the contamination status of the material against the sediment quality guidelines as prescribed, in accordance with sediment sampling and testing procedures published by the Authority from time to time;
 - (d) in the case of vessels and platforms or other man-made structures at sea referred to in paragraph (d) of Subsection 8(1), evidence that any oils, chemicals and other pollutants and any material capable of creating floating debris or otherwise contributing to pollution of the marine environment, has been removed to the maximum extent possible;
 - (e) the quantity of the waste or other matter proposed to be dumped;
 - (f) the method by which the waste or other matter is proposed to be dumped, including the name, flag, registration and owner of the vessel, aircraft or platform from which the dumping is proposed to be undertaken;
 - (g) the proposed dump site location (including latitude and longitude);
 - (h) the characteristics of the proposed dump site, including water depth, nature of the sea-bed, prevailing winds, waves, currents and tides, biological communities, fisheries resources and existing uses and users of the area;

- (i) an assessment of alternatives to dumping, including options to:
 - (i) prevent or reduce production of the waste or other matter proposed to be dumped;
 - (ii) reuse or recycle the waste or other matter proposed to be dumped; and
 - (iii) dispose of the waste or other matter on land;
 - (j) justification for why dumping is the best option over the alternatives, considering environmental, social and cost factors;
 - (k) any supporting data, studies and reports to assist in the assessment of the likely environmental effects of the proposed dumping;
 - (l) details of measures that the applicant intends to put in place so as to prevent, control and monitor any possible adverse environmental effects of the proposed dumping; and
 - (m) such other information as may be required by the Authority.
- (2) In the event that there is insufficient information available from existing sources to fully address the information requirements under Subsection (1), the applicant is responsible for the full costs of obtaining and providing to the Authority all of the information required under Subsection (1); including:
- (a) the costs of any sampling and testing that might be necessary to address paragraph (c) of Subsection (1);
 - (b) the costs of any assessments that might be necessary to address paragraph (i) of Subsection (1); and
 - (c) the costs of any environmental surveys and studies that might be necessary to address paragraphs (h), (k) and (l) of Subsection (1).
- (3) Any and all such assessments, sampling, tests, surveys and studies that might be necessary must be undertaken in advance of any permit application, so that the full results are submitted at the time of the permit application, and, if such information is not provided at the time the application is made, the application shall be deemed, for the purposes of Section 12, not to have been duly made until such information is provided.

10. Permit application assessment fee

- (1) A person applying for a permit must pay to the Authority, at the time the application is made, a permit application assessment fee as prescribed.
- (2) The purpose of the permit application assessment fee is to partially cover the costs of the Authority in assessing the permit application, and such fee shall be non-refundable in the event that the Authority decides not to grant a permit.
- (3) If such fee is not paid at the time the application is made, the application shall be deemed, for the purposes of Section 12, not to have been duly made until such fee is paid.

11. Assessment of permit applications

- (1) Where an application is made for a permit and the Authority requires further information for the purpose of enabling it to assess the application in accordance with Subsections (2) to (7), the Authority may by notice in writing served on the applicant no later than 20 working days after the application is received by the Authority, require the applicant to furnish to the Authority such additional information in writing and, if a notice is so served, the application shall be deemed, for the purposes of Section 12, not to have been duly received until such additional information is furnished.
- (2) In assessing a permit application the Authority shall take into account:
 - (a) the physical, chemical and biological properties of the waste or other matter proposed to be dumped, including where relevant:
 - (i) its origin and total amount;
 - (ii) compliance with sediment quality guidelines as prescribed;
 - (iii) its toxicity;
 - (iv) its likely persistence in the environment (physically, chemically and biologically); and
 - (v) the potential for accumulation and biotransformation in biological materials or sediments; and
 - (b) the characteristics of the proposed dump site, including:
 - (i) water depth, nature of the sea-bed, prevailing winds, waves, currents and tides,

- (ii) biological communities, fisheries resources and existing uses and users of the area;
 - (iii) economic and operational feasibility; and
 - (c) the possible impacts of the proposed dumping; including:
 - (i) direct impacts on the biological communities and marine resources at and near the proposed dump site;
 - (ii) the potential for dumped material to be transported from the proposed dump site and to cause impacts in adjacent areas; both in the short and long term; and
 - (iii) potential interference with other uses and users of the area including fishing, navigation, tourism, recreation and traditional inhabitants and users.
- (3) In assessing a permit application the Authority shall give special attention to ensuring the protection of Papua New Guinea's coastal and marine biodiversity and to identifying and avoiding potential impacts on areas of high value for conservation, fisheries and tourism.
- (4) In assessing a permit application the Authority shall also take into account:
 - (a) the views and requirements of other relevant government regulatory bodies, including the National Fisheries Authority, the Department of Environment and Conservation and the Maritime Branch of the Defence Force or their equivalents at the time; and
 - (b) the views of relevant stakeholders including traditional users of the marine resources of the area, the fishing industry, environmental non-government organizations and the shipping industry where there are possible implications for safety of navigation; and

these parties shall be invited to provide their views on the permit application at their own cost as part of their normal functions, responsibilities and/or interests.

- (5) In seeking the views of the parties identified in Subsection (4) the Authority shall furnish each party with the full set of information as submitted with the permit application within 10 working days of the permit application having been received by the Authority; and the parties may provide their views to the Authority in writing within 30 working days; whereafter if no response is received from a party, that party will be deemed to have no objections to or comments on the permit application.

- (6) In a case where the Authority seeks further information from the applicant under Subsection (1) the timeline for responses from other parties under Subsection (5) shall be extended accordingly and the parties shall be provided with the additional information immediately it is received by the Authority.
- (7) In assessing a permit application the Authority may seek professional, external expert advice including from marine scientists and others as required, at the cost of the applicant, providing that such costs are reasonable and have been agreed with the applicant prior to the Authority engaging such advice, and the Authority may engage such advice at its own cost.

12. Grant or refusal of permits

- (1) After considering a permit application in accordance with Section 11, the Authority must, in its discretion, either grant or refuse to grant a permit, within 60 working days after the application is received by the Authority, and this may be extended to a maximum of 90 days in the event that additional consultations are required with the applicant and/or the stakeholders listed under Subsection 11(4).
- (2) Reasons for refusing to grant a permit may include:
 - (a) incomplete, insufficient or incorrect information provided by the applicant;
 - (b) appropriate and practical alternatives to dumping at sea are available, including:
 - (i) measures to prevent and/or reduce production of the waste or other material;
 - (ii) opportunities to re-use or recycle the waste or other material; and
 - (iii) land-based disposal options;providing that such options do not:
 - (i) present a greater risk of adverse impacts on human health, other members of society or the environment; or
 - (ii) represent a disproportionate financial cost;compared to dumping at sea;

- (c) in the case of the material referred to in paragraph (a) of Subsection 8(1), the material does not meet the sediment quality guidelines as prescribed;
 - (d) in the case of the material referred to in paragraph (d) of Subsection 8(1), including for the purpose of creating an artificial reef in accordance with paragraph (h) of Subsection 8(1), any oils, chemicals and other pollutants and any material capable of creating floating debris or otherwise contributing to pollution of the marine environment, has not been removed to the maximum extent;
 - (e) the proposed dumping presents an unacceptable risk of adverse impacts on human health and/or the marine environment and its living resources, and/or on other uses and users of the area, including fishing, navigation, tourism, recreation and traditional inhabitants and users of the area; or
 - (f) there is an overwhelming objection to the proposed dumping with clearly stated and justified reasons from the majority of parties consulted under Subsection 11(4).
- (3) In the case where a permit is refused the Authority shall advise the applicant by written notice stating the reasons for refusal.

13. Issue of permits

- (1) When the Authority decides that a permit should be granted, such permit shall be in the form as prescribed, and shall specify
- (a) the person who shall be responsible for carrying out the dumping (the permittee);
 - (b) the name, flag and registration details of the vessel, aircraft, or platform to be used in the dumping;
 - (c) the type of waste or other matter to be dumped;
 - (d) the quantity of waste or other matter to be dumped;
 - (e) the method of dumping to be used;
 - (f) the specific location of the dumping site (latitude and longitude);
 - (g) the timing of the dumping and the set validity period of the permit;

- (h) a requirement for the permittee to provide periodic progress reports to the Authority during the dumping and a full report to the Authority at the end of the dumping; in a format as required by the Authority;
 - (i) such other conditions as the Authority thinks necessary for the protection of the environment, marine resources and other uses and users of the area, including but not limited to:
 - (i) the timing and management of dumping;
 - (ii) site supervision and inspection requirements;
 - (iii) declaration of exclusion zones and restricted areas;
 - (iv) environmental management plans and contingency plans;
 - (v) plans for community consultations and awareness before, during and/or after the dumping; and
 - (vi) environmental monitoring and reporting requirements.
- (2) In setting conditions under paragraph (i) of Subsection (1) the Authority shall give due regard to the views and requirements of the parties consulted under Subsection 11(4).
- (3) Any person to whom a permit is issued who fails to comply with the provisions and conditions contained in such permit, as well as the owner and person in charge of any vessel, aircraft or platform used for any dumping in contravention of such permit, each commit an offence and shall each be liable upon conviction to:
- (a) a fine not exceeding K1,000,000; or
 - (b) a term of imprisonment not exceeding five years; and
 - (c) in addition, to a fine not exceeding K10,000 for each day during which the offence has continued; and
 - (d) in addition, shall be liable to pay the total costs, as the Court may assess, of removing or cleaning up any waste or other matter to which the offence relates.

14. Permit variations, suspensions and revocations

- (1) The Authority may, at any time, by notice in writing served on the holder of a permit, vary, suspend or revoke the permit where it is satisfied that:
 - (a) a provision of this Act relating to the permit or a condition imposed in respect of the permit has been contravened; or
 - (b) it is necessary or expedient to do so in order to properly regulate the activities with which this Act is concerned.
- (2) Any person to whom a permit is issued who fails to comply with any permit variation, suspension or revocation issued under Subsection (1), as well as the owner and person in charge of any vessel, aircraft or platform to which the event relates, each commit an offence and shall each be liable upon conviction to:
 - (a) a fine not exceeding K 1,000,000; or
 - (b) a term of imprisonment not exceeding five years; and
 - (c) in addition, to a fine not exceeding K10,000 for each day during which the offence has continued; and
 - (d) in addition, shall be liable to pay the total costs, as the Court may assess, of removing or cleaning up any waste or other matter to which the offence relates.

15. Notices, records and reports

- (1) The Authority shall ensure that Notices to Mariners are issued as appropriate whenever a permit is granted; and that complete records are kept of all permits that are granted under this Act; including for identification of permitted dump sites on hydrographic charts as required and for reporting to the Secretariat of the London Protocol.
- (2) The Authority shall ensure that the reports required from a permittee under paragraphs (h) and (i)(vi) of Subsection 13(1), including any reports on environmental monitoring that is required as a condition of permit, are provided in full to all stakeholders consulted under Subsection 11(4).

Part IV – Administration, enforcement & miscellaneous

16. Administration, enforcement, prosecution and jurisdiction

- (1) The Authority has primary responsibility for the administration and enforcement of this Act; and any person appointed as an Inspector under this Act in accordance with Section 18 may undertake an investigation in relation to an alleged offence under this Act, under the supervision of the Authority.
- (2) The General Manager of the Authority or his or her delegate, may, after consultation with the Public Prosecutor, institute and conduct prosecutions for offences under this Act.
- (3) An offence against this Act shall be prosecuted:
 - (a) in the District Court where the offence provides for a maximum monetary penalty of K50,000, in the case of a person other than a Corporation; or
 - (b) in the National Court in any other case.

17. Defences and exceptions

Where a person is charged with an offence under this Act it shall be a defence to prove on the balance of probabilities that the dumping of the waste or other matter or the failure to comply with any condition or requirement of a permit was necessary:

- (a) to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather; or
- (b) in any case which constitutes a clear and present danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur;

provided such dumping was conducted in a manner so as to minimise the likelihood of damage to human and marine life and was reported to the Authority as soon as possible.

18. Appointment of Inspectors

- (1) The General Manager of the Authority may, by notice in the National Gazette, appoint any officer of the Authority, the National Fisheries Authority, the Department of Environment and Conservation or their equivalents at the time, or any other officer of the National Government or of a Provincial Government, as an Inspector under this Act.
- (2) The Authority shall ensure that all persons that are appointed as Inspectors receive proper and regular training in order to assist them to carry out their duties and functions in a competent and responsible manner.
- (3) Inspectors shall be issued with an identity card by the Authority in a form approved by the Authority.
- (4) Where a person in possession of an identity card issued to him or her under Subsection (3) ceases to be an Inspector, he or she shall forthwith return the identity card to the Authority.
- (5) Any person who fails to comply with Subsection (4) commits an offence and is liable upon conviction to a fine not exceeding **K1,000**.

19. Boarding of vessels etc by Inspectors

- (1) Where there are clear grounds for believing that any vessel, aircraft or platform has violated any provision(s) of this Act, or that there is in or on that vessel, aircraft or platform any matter or thing that may afford evidence as to the commission of an offence against this Act; and
 - (a) the vessel, aircraft or platform is voluntarily within Papua New Guinea territory; or
 - (b) the vessel, aircraft or platform is a Papua New Guinea vessel, aircraft or platform anywhere;

an Inspector may, with such assistance as he or she thinks necessary, board that vessel, aircraft or platform; for the purposes of exercising the functions of an Inspector in accordance with Section 21, and may for that purpose, stop and detain that vessel, aircraft or platform.

- (2) Where there are clear grounds for believing that a vessel, aircraft or platform has violated any provision(s) of this Act;
 - (a) while in the exclusive economic zone of Papua New Guinea; and

- (b) the vessel, aircraft or platform is within or over Papua New Guinea territory or in or over the exclusive economic zone of Papua New Guinea;

the Authority or an Inspector may require the vessel, aircraft or platform to give information regarding:

- (i) its identity and port of registry;
 - (ii) its last and next port of call; and
 - (iii) any other relevant information required to establish whether a violation of this Act has occurred.
- (3) Where there are clear grounds for believing that a vessel, aircraft or platform has violated any provision(s) of this Act while in or over the exclusive economic zone of Papua New Guinea, resulting in or threatening significant pollution of the marine environment; and
- (a) the vessel, aircraft or platform is within or over Papua New Guinea territory or in or over the exclusive economic zone of Papua New Guinea; and
 - (b) the vessel, aircraft or platform has refused to give information as outlined under Subsection (2) or if the information supplied is at variance with the evident factual situation;

an Inspector may, with such assistance as he or she thinks necessary, board that vessel, aircraft or platform for the purposes of exercising the functions of an Inspector in accordance with Section 21.

- (4) Where there is clear objective evidence that a vessel, aircraft or platform has violated any provision(s) of this Act while in the exclusive economic zone of Papua New Guinea, resulting in major damage or threat of major damage to the coastline or resources or related interests of Papua New Guinea, and the vessel, aircraft or platform is within or over Papua New Guinea territory or in or over the exclusive economic zone of Papua New Guinea, an Inspector may, with such assistance as he or she thinks necessary, board that vessel, aircraft or platform for the purposes of exercising the functions of an Inspector in accordance with Section 21, and may for that purpose, stop and detain that vessel, aircraft or platform.
- (5) An Inspector may require any person on board a vessel, aircraft or platform to which this section applies whom the Inspector finds committing, or whom the Inspector suspects on clear reasonable grounds of having committed, an offence against this Act to state his or her full name and usual place of residence.

- (6) Subject to Subsections (1) to (4), where an Inspector believes on clear reasonable grounds that a vessel to which this section applies has been used or otherwise involved in the commission of an offence against this Act, the Inspector may bring, or require the person in charge of the vessel to bring, the vessel to the nearest port in Papua New Guinea to which it is safe and practicable to bring the vessel.
- (7) An Inspector may, for the purposes of this Act, require the person in charge of a vessel, aircraft or platform to which this section applies, to give information concerning the vessel, aircraft or platform and its crew and any other person on board the vessel, aircraft or platform.
- (8) Where an Inspector boards a vessel, aircraft or platform to which this section applies, or makes a requirement of a person under this section, the Inspector shall produce his or her identity card for inspection by that person and the person in charge of that vessel, aircraft or platform and, if the Inspector fails to do so, he or she is not authorized to remain, or to require any person assisting him or her to remain, on board that vessel, aircraft or platform or to detain that vessel or aircraft, or to make any requirement of a person.
- (9) A person who, without reasonable excuse, fails to comply with a requirement made of him or her by an Inspector under this section, is guilty of an offence punishable on conviction by a fine not exceeding K20,000.

20. Access to premises

- (1) An Inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an Inspector in accordance with Section 21.
- (2) Where an Inspector has reason to believe that there is on premises any matter or thing that may afford evidence as to the commission of an offence against this Act, the Inspector may make application to a magistrate for a warrant authorizing the Inspector to enter the premises for the purpose of exercising the functions of an Inspector in accordance with Section 21.
- (3) If, on an application under Subsection (2), the magistrate is satisfied, by information on oath or affirmation:
 - (a) that there are reasonable grounds to believe that there is on the premises to which the application relates any matter or thing that may afford evidence as to the commission of an offence against this Act; and

- (b) that the issue of the warrant is reasonably required for the purposes of this Act;

the magistrate may grant a warrant authorizing the Inspector, with such assistance as the Inspector thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an Inspector in accordance with Section 21.

- (4) Where an Inspector has entered any premises in pursuance of Subsection (1) or in pursuance of a warrant granted under Subsection (3), he or she may exercise the functions of an Inspector in accordance with Section 21.

21. Functions of Inspectors

- (1) The functions of an Inspector who boards a vessel, aircraft or platform under Section 19 or enters premises under Section 20 are as follows:
 - (a) to assess compliance with a permit issued under Section 13 that relates to that vessel, aircraft or platform;
 - (b) to search for, and take possession of, any matter or thing that may afford evidence as to the commission of an offence against this Act;
 - (c) to search for, inspect, takes extracts from and make copies of any document that relates to:
 - (i) the loading, dumping or incineration at sea of any wastes or other matter; and/or
 - (ii) the export of any wastes or other matter that is to be dumped into the sea or incinerated at sea; and/or
 - (d) to inspect and take samples of any wastes or other matter; and/or
 - (e) to observe:
 - (i) the loading on a vessel, aircraft or platform of any wastes or other matter that is to be dumped into the sea; and/or
 - (ii) the dumping into the sea of any wastes or other matter; and/or

- (iii) the undertaking of other operations and activities relating to any dumping of wastes or other matter including any environmental monitoring that might be required as a condition of the permit.
- (2) For the purposes of carrying out his functions under Subsection (1), an Inspector may break open any hold or compartment, or any container or other receptacle, on a vessel, aircraft or platform or on any premises.

22. Powers of arrest of Inspectors

- (1) An Inspector may, without warrant, arrest any person, if the Inspector believes on reasonable grounds that the person is committing or has committed an offence against this Act, for which the penalty includes imprisonment.
- (2) Where an Inspector arrests a person under Subsection (1), the Inspector shall produce his or her identity card for inspection by that person.
- (3) Where a person is arrested under Subsection (1), an Inspector shall forthwith bring the person, or cause him or her to be brought, before the court or other proper authority to be dealt with in accordance with law, except in the case where the person arrested may be the master of a vessel or the pilot of an aircraft or a person in charge of a platform or any other person whose immediate removal might pose a threat to the safe operation of the vessel, aircraft or platform, in which case such person shall be permitted to carry out any such tasks that are critical to the safe operation of the vessel, aircraft or platform, until such time that they can be satisfactorily relieved.
- (4) Nothing in this section prevents the arrest of a person in accordance with any other law.

23. Regulations

The Head of State may make regulations providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

24. Offences and penalties

- (1) Every person who commits an offence against this Act or any regulations made thereunder for which no penalty is provided elsewhere, shall be liable upon conviction:
 - (a) in the case of a corporation to a fine not exceeding **K1,000,000**; and

- (b) in the case of an individual to a fine not exceeding K250,000 or a term of imprisonment not exceeding two years.
- (3) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance thereof, every person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding K1,000 for every day during which the offence continues.

25. Recovery of fines by distress

Where a Court orders a person convicted of any offence against this Act to pay any fine or other costs and that person is the owner or master or person in charge of a vessel, aircraft or platform to which this Act applies and the fine or other costs are not paid within the time and in the manner specified by the conviction or in the Order of the Court, the Court may, in addition to any other power it may have to compel payment, and notwithstanding any other Act, direct the amount remaining unpaid to be levied by distress or by the sale of any premises, vessel, aircraft or platform or of any other equipment relating to the offence, as the case requires.

26. Time limit for prosecution proceedings

- (1) A proceeding for prosecution for an offence against this Act must be commenced:
- (a) within two years after the commission of the offence; or
 - (b) within two years after the offence comes to the complainant's knowledge, but within three years after the commission of the offence.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

27. Acts repealed

The *Dumping of Wastes at Sea Act* is repealed.