

Water Resources Management Act 2002

Commencement: 10 March 2003

REPUBLIC OF VANUATU
**WATER RESOURCES MANAGEMENT ACT
NO. 9 OF 2002**

Arrangement of Sections

Assent: 31 December 2002

Commencement: 10 March 2003

REPUBLIC OF VANUATU
WATER RESOURCES MANAGEMENT
ACT NO. 9 OF 2002

An Act to provide for the protection, management and use of water resources in the Republic of Vanuatu.

Be it enacted by the President and Parliament of the Republic of Vanuatu as follows:-

PART 1 - PRELIMINARY

1 Application of Act

This Act applies to all water in Vanuatu.

2 Interpretation

approved form means a form approved by the Director.

aquifer means a geological structure or formation or an artificial land-fill permeated or capable of being permeated permanently or intermittently with water.

authorised officer means a person appointed under paragraph 14(3)(d).

bore includes any hole, well, excavation or other opening in the ground or any natural or artificially constructed or improved underground cavity used primarily for obtaining groundwater or which extends to an aquifer.

construct includes alter, maintain and repair.

customary use means a use recognised as customary by the landowners of an area, and includes non-commercial crop irrigation.

Director means the Director responsible for water resources.

Department means the Department responsible for water resources.

discharge means all discharges whether intended, accidental or unintended.

environment means the components of the earth and includes all or any of the following:

(a) land and water;

(b) layers of the atmosphere;

(c) all organic and inorganic matter and living organisms;

(d) the interacting natural and human systems that include components referred to in paragraphs (a) to (c).

groundwater means all water occurring or obtained from below the surface of the ground, and includes such water occurring in or obtained from any bore or aquifer.

land includes premises, and land covered by water.

Minister means the Minister responsible for water resources.

National Plan means the National Water Resources Management Plan provided for in section 21.

National Policy means the National Water Resources Management Policy provided for in section 21.

occupier means, in relation to land or premises, the person in occupation or entitled to be in occupation of that land or those premises.

person includes any statutory body, company or association or body of persons corporate or unincorporate.

pollute means directly or indirectly to adversely alter the physical, thermal, chemical, biological or other natural properties of any water, and

pollution has a corresponding meaning.

premises includes any building or structure whether of a temporary or permanent nature and any vehicle or vessel.

regulation means a regulation made under this Act.

use in relation to water includes:

(a) to withdraw, pump, extract, take, use or re-use, or to divert for the purpose of using or re-using, that water; and

(b) to allow artesian water to flow from any bore.

water means all or any of the following:

(a) water flowing over or situated upon the surface of any land;

(b) water flowing over or contained in:

(i) any river, stream, creek or other natural course for water;

(ii) any lake, lagoon, bay, swamp, marsh or spring,

whether or not it has been altered or artificially improved;

(c) groundwater;

(d) any water at any time contained by works;

(e) any estuarine or coastal sea water prescribed as water under this Act.

works mean any physical works related to the protection, management and use of water and includes any stormwater or wastewater works and their associated construction activities.

PART 2 - USE OF WATER

DIVISION 1 - USE AND WORKS

3 Minister responsible for water resources

(1) The Minister is responsible for the protection, management and use of the water resources of Vanuatu in accordance with this Act and the regulations.

(2) Subject to this Act, water may be used for any purpose.

4 Customary rights and rights of occupiers

(1) Every person may continue to use water without further reference to this Act if:

(a) no other custom users of the same water resources are adversely affected by that use; and

(b) the use of that water is for a customary use.

(2) The occupier of any land can use any water on, adjacent to, or under that land for domestic and stock purposes, if no other lawful users are adversely affected by that use.

(3) If any lease made under the Land Leases Act [CAP. 163] grants the right to use any water, the lessee:

(a) is entitled to use any water on, adjacent to or under that land in accordance with subsections (1) and (2); and

(b) must apply to the Director for the right to use water for any other purpose.

5 Existing works and uses

(1) All works and uses lawfully undertaken prior to the commencement of this Act are deemed to be lawful under this Act.

(2) The Director may require persons with existing use rights to provide such information as is reasonably necessary for the purpose of section 25.

6 Application for right to use water

(1) A person must apply to the Director for the right to use water for any purpose that does not comply with section 4 or 5.

(2) A person is not required to apply under subsection (1) if water is lawfully supplied from a work authorised under this Act.

7 Application for works

(1) A person must apply to the Director for the right to construct, operate or maintain works for any purpose that does not comply with section 4 or 5, including:

(a) any work in or adjacent to any water or any bore; or

(b) any work whose purpose is to supply water to any other person.

(2) For the avoidance of doubt the existence of any work on land does not confer any rights:

(a) to that land on the part of the owner of the works; or

(b) to that work on the part of the landowner.

8 Limitation on right to use water

(1) The Director may, by determination in writing, limit any existing right to use water for either or both of the following purposes:

(a) in times of actual or anticipated shortage of water, to fix the amount of water which, and the purposes for which, any water can be used by any person;

(b) to prohibit the use of water from any source where it is considered dangerous to health or detrimental to the public interest.

(2) The Director must:

(a) publish a determination in such manner as he or she considers appropriate in the circumstances; and

(b) state in the determination the time period for which the order will remain in force, and the purpose for which water may, or must not, be used.

(3) If a determination is made on the grounds of health under paragraph (1)(b), that determination may also be made by or in conjunction with the Director responsible for public health.

DIVISION 2 - APPLICATIONS

9 Application required

(1) An application must be made to the Director on the approved form:

(a) for a use of water under section 6; or

(b) for the purpose of constructing, operating or maintaining a work under section 7.

(2) An application must be accompanied by the prescribed fee.

10 Matters to be considered

In determining the application, the Director must be satisfied that the use of water or work applied for:

(a) is consistent with any National Water Resource Management Policy or Plan currently in force; and

- (b) is not likely to create a water shortage; and
- (c) is not likely to create a health nuisance; and
- (d) is not likely to adversely affect other lawful users of the water resource; and
- (e) is not likely to damage the water resource or its environment; and
- (f) is compatible with other uses and works in the immediate area; and
- (g) is consistent with the regulations (if any).

11 Director to determine application

(1) Subject to subsection (3), the Director must determine an application within 30 days after receiving the application and any further information under subsection (2), and do one of the following:

- (a) approve the application with or without terms and conditions;
- (b) reject the application if he or she concludes that:
 - (i) the use of water or work applied for is inconsistent with section 10; and
 - (ii) no practical terms and conditions could be set to make the use of water or work applied for consistent with section 10.

(2) Before making his or her determination, the Director may in writing require further information.

(3) The Director may, with the agreement of the applicant, extend the time for determination a further 30 days if this is necessary for the purpose of obtaining a technical review of the information provided.

(4) The Director must advise the applicant in writing of his or her decision within 14 days.

(5) If the Director does not approve the application, the written advice must state the reasons for this.

PART 3 - ADMINISTRATION

DIVISION 1 - RESPONSIBILITY FOR WATER RESOURCES

12 Minister for Water Resources

The Minister has the following functions under this Act:

- (a) to ensure the efficient and effective administration of this Act;
- (b) to appoint members to the National Water Resources Advisory Committee under section 17;
- (c) to approve any national water resources management policy or plan under section 23;
- (d) to approve any variation to a national water resources management policy or plan under section 24;
- (e) to declare a Water Protection Zone under section 26;
- (f) to set fees or charges under section 36;
- (g) to approve the acquisition of any interest in land under section 31;
- (h) to make regulations under section 37;
- (i) to prescribe water in any estuarine or coastal area for the purpose of this Act;
- (j) such other functions as are conferred on the Minister by this Act.

13 Director appointed

(1) A Director of the Department is to be appointed under the Public Service Act No 11 of 1998.

(2) The Director is accountable to the Public Service Commission for the efficient and effective administration of this Act.

(3) The Director must advise and assist the Minister in all matters relating to this Act.

14 Functions and Powers of the Director

(1) The Director is responsible for the administration of this Act.

(2) In performing the general function outlined in subsection (1), the Director must do all of the following:

(a) determine applications for the right to use water, or to construct, operate or maintain works affecting water;

(b) conduct investigations, research and monitoring into water resources, their use and future management, including into water protection zones;

(c) assist in the preparation of any National Water Resource Management Policy or Plan;

(d) provide a secretariat service to the National Water Resources Advisory Committee;

(e) establish a National Water Resources Inventory;

(f) establish committees appropriate to the purpose of this Act;

(g) maintain a register of local water management committees;

(h) establish standards for water supply equipment and schemes;

(i) establish standards for drinking water;

(j) take water samples for testing;

(k) approve water supply schemes;

(l) conduct training for water supply operators;

(m) undertake such other duties and responsibilities as is lawfully required by the Minister.

(3) The Director has the powers conferred by this Act, and such other powers as may be necessary or convenient for the performance of the Director's functions under this Act, including all or any of the following:

(a) to prohibit, regulate or control:

(i) the taking or use of any water; or

(ii) the construction or operation of any bore or works; or

(iii) the doing of any act which may detrimentally affect a water resource;

(b) to supply water to any person from any works acquired, constructed or operated under this Act;

(c) to arrange, or authorise any other person, to acquire, construct, operate or remove any works relating to the protection, management or use of water;

(d) to appoint persons not employed by the Department as authorised officers for the purpose of administering this Act.

(4) The Director must consult with the Public Service Commission and such local government or municipal council as is appropriate before appointing any authorised officer under paragraph (3)(d).

(5) The powers, duties and responsibilities of any person appointed under paragraph (3)(d) must be stated in any instrument of appointment.

(6) The Director may, in writing, delegate to officers of the Department and any authorised officers appointed under paragraph (3)(d) such powers and functions as he or she considers appropriate, with the exception of this power of delegation.

(7) The Director may carry out any duty, function or responsibility under this Act in association with any other Government Ministry, Department, Agency, local government or municipal council.

DIVISION 2 - COMMITTEES

15 National Water Resources Advisory Committee

(1) A National Water Resources Advisory Committee is established.

(2) The National Water Resources Advisory Committee must:

(a) provide advice to the Director on matters relevant to the protection, management and use of water; and

(b) oversee the proper planning and development of urban and rural water supplies; and

(c) operate in such a way as to ensure co-ordination of water resource management activities; and

(d) do such other tasks as are agreed with the Director.

16 Composition of the National Water Resources Advisory Committee

(1) The Director is to be the Chairperson of the National Water Resources Advisory Committee.

(2) The Minister may appoint up to 5 additional members on the recommendation of the Director.

(3) In determining the composition of the Committee, the Minister and Director must take into consideration the merits of any candidates with respect to:

- (a) the relevant technical, legal and commercial water issues that are to be addressed;
- and
- (b) the needs of water consumers, including utilities and the commercial sector; and
 - (c) the need to ensure the fullest possible co-operation and co-ordination on water resource issues.

17 Appointment and term of members

- (1) The Minister is to determine, on the recommendation of the Director, the terms and conditions of appointment of the additional members of the National Water Resources Advisory Committee.
- (2) If a member is appointed because of the office or position held by that member, that membership will cease with the relinquishment of any such office or position, and the vacancy may be filled.
- (3) The maximum term of appointment for any member is 3 years.
- (4) A member may be re-appointed for a further term or terms.
- (5) The Minister may revoke any appointment on the recommendation of the Director if the appointee:
 - (a) fails to attend 3 consecutive meetings without the prior approval of the Chairperson;or
 - (b) fails to contribute constructively to the functioning of the Committee.

18 Meetings of the National Water Resources Advisory Committee

- (1) The National Water Resources Advisory Committee is to meet as the Chairperson determines, but must meet at least three times in any year.
- (2) The Department is to provide secretariat services to the Committee.

19 Local Water Management Committees

- (1) A landowner or group of landowners can establish, and the Director can promote, a local water management committee for any water resource on or under land for the purpose of implementing:
 - (a) water supply conservation measures; or
 - (b) a management scheme.
- (2) A local water management committee must register with the Department for the purpose of:
 - (a) establishing any water management scheme or works; or

(b) applying for assistance from the Director in the assessment, conservation or management of any water resource.

20 Transfer of water supply scheme to community

(1) The Director may, after consultation with the Minister, transfer a water supply scheme to a local water management committee.

(2) The Director is to determine, in writing, the terms and conditions of the transfer, including whether the Director continues to exercise his or her special powers under Part 5.

PART 4 - WATER RESOURCE MANAGEMENT

DIVISION 1 - PLANNING

21 National Water Resources Management Policy and Plan

If the Minister determines that a National Water Resources Management Policy or National Water Resources Management Plan is required for the protection, management or use of water, the Director must prepare the National Policy or National Plan.

22 Purpose of National Water Resources Management Policy and National Water Resources Management Plan

(1) The purpose of a National Water Resources Management Policy is:

(a) to promote the environmentally sound and safe management of all water resources; and

(b) to provide for the co-ordination of relevant activities.

(2) The purpose of a National Water Resources Management Plan is:

(a) to provide for the implementation of the National Policy; and

(b) to provide for the development of particular water resource activities.

23 Content and Process for National Policy and Plan

(1) A National Water Resources Management Policy must include the following:

(a) an inventory of available water resources;

(b) a description of existing and future likely uses and demand;

(c) an evaluation of impacts upon the volume, quality or type of available water resources;

- (d) a statement of the national objectives sought for water resource management;
 - (e) an implementation strategy outlining all necessary mechanisms, programmes and policies;
 - (f) a monitoring and review strategy.
- (2) A National Water Resources Management Plan under this Act must give effect to any National Water Resources Management Policy, and any other relevant national policy or plan developed under any other Act.
- (3) A National Water Resources Management Policy or Plan must be developed through appropriate public consultation.
- (4) The Minister must refer a National Water Resources Management Policy or Plan to the Council of Ministers for approval.
- (5) A National Water Resources Management Policy or Plan takes effect on the date of its publication in the Gazette.
- (6) Every Government Ministry, Department or statutory authority, and local government or municipal council must act in a manner consistent with any approved National Water Resource Management Policy or Plan.

24 Variation of National Policy or Plan

- (1) The Minister may instruct the Director to prepare a variation to any National Policy or Plan.
- (2) A variation must be prepared, notified and consulted upon in accordance with this Act and the regulations.
- (3) A variation must be approved by the Council of Ministers, and takes effect on the date of its publication in the Gazette.

25 National Water Resources Inventory

- (1) To facilitate the protection, management and use of water resources the Director must prepare, publish and maintain a National Water Resources Inventory.
- (2) The National Water Resources Inventory must incorporate information relating to the collection, collation and analysis of data concerning the occurrence, flow, characteristics, quantity, quality and use of water.
- (3) The National Water Resources Inventory must be renewed at least every 5 years from the date of its first publication.

DIVISION 2 - WATER SUPPLY CONSERVATION AND DEVELOPMENT

9 Declaration of Water Protection Zone

(1) Subject to subsection (3), the Director may in writing declare any area to be a Water Protection Zone for all or any of the following purposes:

- (a) conserving or protecting any significant water resource;
- (b) conserving or protecting any water resource used or intended for water supply;
- (c) promoting the protection, management or use of water in rural and urban areas;
- (d) dealing with any emergency which may affect water supply.

(2) A declaration under subsection (1) must:

- (a) specify the boundaries of the Zone; and
- (b) assign a name to the Zone; and
- (c) state the purposes for which the Zone is constituted; and
- (d) contain such other relevant provisions or information as the Director considers necessary.

(3) A declaration must only be made if:

- (a) the Director is satisfied that all reasonable steps have been taken to inform any local government or municipal council, local water management committee or landowner about the Zone and the reasons for the proposed declaration; and
- (b) the local government or municipal council, local water management committee or landowner agree to the proposed declaration; and
- (c) compelling reasons exists to declare the Zone despite the failure to obtain the agreement of a local government or municipal council, local water management committee or landowner; and
- (d) appropriate alternative arrangements are made, as necessary, for customary and/or domestic uses such as washing and swimming areas.

(4) A declaration must be published in the Gazette.

(5) The Director may vary any declaration by notice published in the Gazette.

10 Water Protection Zone can be urban or rural

For the avoidance of doubt section 26 applies to both urban and rural areas.

11 Public education program

If a Water Protection Zone is declared the Director must:

(a) put in place a programme of public education and consultation for the purpose of increasing local understanding of the reasons for declaring the Zone; and

(b) for the purpose of advising and assisting the Director in managing the Zone, establish either:

(i) a local water management committees as provided under section 19; or

(ii) a local water management advisory committee or group.

PART 5 - SPECIAL POWERS

12 Power to enter land and take action

(1) In exercising powers conferred by this Act, the Director may:

(a) enter and remain upon any land; and

(b) take such measures or construct such works as is considered necessary for:

(i) the protection, management or use of water; or

(ii) the provision of any water supply or services.

(2) The Director must give the owner or occupier of the land in question such written or other notice of any intention to enter and/or remain as is reasonable in the circumstances.

(3) If written notice is provided, it must specify:

(a) the land upon which entry is to be made; and

(b) any work proposed to be carried out; and

(c) any measures proposed to be taken.

13 Power to give direction

(1) The Director may, by instrument in writing, direct any person to take measures for:

- (a) the protection, management or use of water; or
 - (b) the provision of any water supply or other services under this Act.
- (2) A direction given must:
- (a) specify the measures that must be taken; and
 - (b) state the period within which anything must be done; and
 - (c) be served on the person to whom the direction relates.
- (3) If any person unreasonably refuses or fails to comply with any direction, the Director may:
- (a) enter upon any land and, as necessary to ensure compliance with the direction:
 - (i) take appropriate measures; or
 - (ii) construct or remove works; and
 - (b) recover the reasonable costs of so doing from that person as a debt due by that person to the State.
- (4) For the avoidance of doubt, the Director may act under this section or section 29 with respect to any other Act where a condition relating to the protection, management and use of water resources is in force and is not being complied with.

14 Acquiring interest in land

The Minister may, subject to any Act concerning the acquisition of interests in land, acquire an interest in land on behalf of the State for the protection, management or use of any water resource.

PART 6 - OFFENCES

15 Offences

- (1) A person who:
- (a) uses water without approval under section 6; or
 - (b) constructs or operates a work without approval under section 7; or
 - (c) contravenes a term or condition of an approval or notice issued under this Act; or

(d) contravenes a regulation, order, declaration or direction made under this Act; or

(e) fails to give all reasonable assistance to any officer or any person empowered to carry out any function or duty under this Act; or

(f) provides false or misleading information under any requirement of this Act; or

(g) hinders or obstructs an officer or any person empowered to carry out any function or duty under this Act; or

(h) obstructs someone lawfully entitled to use water;

is guilty of an offence punishable on conviction to a penalty in accordance with subsection (2).

(2) If convicted of an offence under subsection (1), the penalty is:

(a) for an individual - a fine of not more than 1,000,000 vatu or to imprisonment for a period of not more than 2 years, or to both; or

(b) in any other case - a fine of not more than 5,000,000 vatu.

(3) A person who:

(a) without authorisation, interferes with or encourages others to interfere with the means of supply of water, including any works; or

(b) without authorisation, pollutes any water;

is guilty of an offence punishable on conviction to a penalty in accordance with subsection (4).

(4) If convicted of an offence under subsection (3), the penalty is:

(a) for an individual - a fine of not more than 1,000,000 vatu or to imprisonment for a period of not more than 2 years, or to both; or

(b) in any other case - a fine of not more than 5,000,000 vatu.

16 Continuing offence

If an offence under this Act is committed or continues on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continues.

PART 7 - MISCELLANEOUS

17 Appeal to the Supreme Court

(1) A person may appeal to the Supreme Court against any decision made by the Minister or Director to do all or any of the following:

- (a) to limit existing rights under section 8;
- (b) to reject an application under section 11;
- (c) to impose terms and conditions on any approval given under section 11;
- (d) to declare a Water Protection Zone under section 26;
- (e) to issue a direction under section 30;

(f) to make a decision prescribed by the regulations as a decision in respect of which an appeal can be made.

(2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.

(3) The Supreme Court may:

(a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Minister or Director as may be necessary to give effect to the Court's decision; or

(b) refer the matter back to the Minister or Director with directions to reconsider the whole or any specified part of the matter.

18 Protection of officers etc

An individual is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

19 Minister may determine fees

(1) The Minister may, by order, and on the recommendation of the Director, determine fees for services provided by officers of the Department, any authorised officer, or any other person under this Act.

(2) A fee may be determined for all or any of the following:

- (a) the administration and determination of applications and documents;
- (b) the issuing or renewal of approvals;
- (c) the inspection or surveying of lands or premises;
- (d) the taking or use of any water;
- (e) the provision of any water supply;
- (f) such other purpose as prescribed by regulation.

20 Regulations

(1) The Minister may make regulations to give effect to the purpose and provisions of this Act.

(2) Without limiting subsection (1), the regulations may provide for all or any of the following:

- (a) the prescription of water to be included as estuarine or coastal water;
- (b) the registration of works or bores;
- (c) the granting, amending, renewing, suspending or cancelling of approvals issued under this Act;
- (d) the classification of any water by reference to its quantity, quality or possible use;
- (e) the establishment of water quality standards, guidelines and criteria, and prescriptions for testing and monitoring;
- (f) the preparation of a National Water Resources Management Policy or Plan;
- (g) the preparation of the National Water Resources Inventory;
- (h) the design, construction, operation, maintenance or repair of any works;
- (i) the control, regulation or prohibition of any matter or thing in connection with the diversion, taking, collection, storage, supply, disposal, or discharge of any wastewater;
- (j) the prescription of any relevant matter in connection with the supply of water to urban or rural areas;
- (k) the declaration and management of a Water Protection Zone;
- (l) the registration of local water management committees;

(m) the control of access, including grazing, around bores and works.

(3) The Minister may make regulations with other Ministers not inconsistent with this Act, including for the purpose of all or any of the following:

(a) public health protection;

(b) the protection of freshwater and seawater fisheries;

(c) water supplies under forestry covenant; including standards for watercourse crossings during forestry operations;

(d) the control of pollution or contaminant discharges into water.

21 Commencement

This Act commences on the date of its publication in the Gazette.
