

No. 19 of 2015.

*Climate Change (Management) Act 2015.*

Certified on : 20 NOV 2015



No. of 2015.

*Climate Change (Management) Act 2015.*

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## **SCHEDULE.**



No. of 2015.

AN ACT

entitled

*Climate Change (Management) Act 2015,*

Being an Act to provide for a regulatory framework to -

- (a) promote and manage climate compatible development through climate change mitigation and adaptation activities; and
- (b) implement any relevant obligations of the State under applicable rules of international law and international agreements related to climate change; and
- (c) establish Papua New Guinea's Designated National Authority or an equivalent entity for the purposes of the Kyoto Protocol and any such other or subsequent arrangements or agreements made under the Kyoto Protocol,

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 1. - PRELIMINARY.**

*Division 1. - Constitutional Requirements.*

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS, ETC.**

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

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to peacefully assemble and associate and to form or belong to or not belong to associations 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 protection from unjust deprivation of property conferred by Section 53,

of the *Constitution* is a law made pursuant to Section 38 of the *Constitution*, taking into account the National Goals and Directive Principles, in particular the fourth goal on the sustainable use of natural resources and environment, in order to protect the rights and freedoms of others, and to make provision for cases where the exercise of one such right may conflict with the exercise of another, is a law made for and in relation to public purposes, public interest and public welfare.

(2) This Act, to the extent that it causes or permits the compulsory taking of any property or of any interest in or right over property referred to in Section 53 of the *Constitution*, is a law to which the property is required for the public purpose of, or the reason of facilitating or regulating all matters relating to climate change and any acquisition of such property is for a public purpose and reasonably justified in a democratic society that has proper regard for the rights and dignity of mankind.

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(3) This Act to the extent that it provides for consultation between persons or bodies, is a law made to give effect to Section 255 of the *Constitution* to ensure that all consultations are meaningful and allow for a genuine interchange and consideration of views.

### **2. APPLICATION OF PROVISIONS OF *ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS*.**

(1) For the purpose 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 and importance.

(2) For the purpose of Section 98 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act establishes the Authority -

- (a) responsible for determining the benefits and levies (if any) which are payable pursuant to Subsection (2) of that Section in respect of release of greenhouse gases into the atmosphere or sequestration of greenhouse gases from the atmosphere; and
- (b) as the body which will determine the rates, management, sharing arrangement and application of such benefits and levies (if any); and
- (c) as the body responsible for establishing and administering the trust funds referred to in Subsection (3) of that Section (if any) and for the controlling and distribution of the benefits and levies established (if any).

(3) For the purpose of Section 99 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act establishes the principles by which the National Government will share with applicable Provincial Governments and Local-level Governments the revenues of the National Government generated from economic regulatory regimes for the sequestration or release of greenhouse gases (if any).

(4) For the purpose of Section 116 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act establishes the consultation process on the atmospheric greenhouse gases consequences of the development required amongst stakeholders.

### ***Division 2. - Interpretation.***

### **3. INTERPRETATION.**

In this Act, unless the contrary intention appears -

“anthropogenic” means relating to, or resulting from, the influence of human beings on the natural environment;

“Authorised Controller” means the natural person who has statutory and regulatory responsibility for the actions of an incorporated verifier;

“Authority” means the Climate Change and Development Authority established under Section 8;

“baseline year” means the year, specified by the Head of State acting on the advice of the National Executive Council, to be the baseline year for the purposes of this Act;

“Board” means the National Climate Change Board established under Section 12 of this Act;

“carbon dioxide (CO<sub>2</sub>)” means the gas having the molecular chemical compound composed of two oxygen atoms each covalently double bonded to a single carbon atom;

“carbon sink” means a natural or artificial reservoir that accumulates some carbon containing chemical compound for an indefinite period;

“CDM” means the Clean Development Mechanism under the Kyoto Protocol including amendments or revisions from time to time;



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- “climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural variability over comparable time periods;
- “climate change related project agreement” means an agreement between the Authority, the customary owners of the land and forest resources and the project proponent relating to an Agreement on REDD, REDD+, CDM or other Voluntary Carbon Offset Projects and any future climate change emission reduction mechanisms agreed to by the government that will facilitate for sustainable development and reduction of greenhouse gas emissions;
- “climate change related project or activity” means any project or activity that is undertaken in response to the effects of climate change to ensure climate resilience and carbon neutral pathway for climate compatible development;
- “Conference of the Parties (COP)” means the supreme decision-making body of the UNFCCC;
- “**Constitution**” means the Constitution of the Independent State of Papua New Guinea;
- “Designated National Authority” has the meaning ascribed by Article 12 of the Kyoto Protocol;
- “foreshore” means the area between the mean high water springs level of the sea and the lowest astronomical tide;
- “forest” means land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy cover of more than 10 percent, or trees able to reach these thresholds *in situ*, to the exclusion of land that is predominantly under agricultural or urban land use;
- “free prior and informed consent (FPIC)” means a consultative process to obtain consent of potentially affected landholders by engaging in an open and informed dialogue with REDD+ and other climate change related project proponents interested in establishing REDD+ and other climate change related projects in areas occupied or owned or used by landholders;
- “fuel standard” means the fuel standard referred to in Section 67;
- “hydrofluorocarbons (HFCs)” means any of several simple gaseous compounds that contain carbon, fluorine and hydrogen;
- “international reporting practice” means accepted practice in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change or such other agreements or arrangements at international level as the Head of State acting on the advice of the National Executive Council may specify by Regulation;
- “IPCC” means Intergovernmental Panel on Climate Change which provides UNFCCC technical advice on climate change and how to account for it;
- “Kyoto Protocol” means the protocol under the UNFCCC adopted at Kyoto, Japan, on 11 December 1997;
- “land” includes –
- (a) the surface and any ground beneath the surface of the land; and
  - (b) water; and
  - (c) the foreshore, being that area between the mean high water springs level of the sea and the mean low water springs level of the sea; and
  - (d) the waters of Papua New Guinea area being the seabed underlying the territorial sea from the mean low water springs level of the sea to such depth as admits of exploration for or mining of minerals,
- and any interest in land;
- “land holder” means -
- (a) persons having customary rights -
    - (i) of ownership or user rights over land or sea; or
    - (ii) of ownership or user rights over flora and fauna growing on land or sea; or
    - (iii) in relation to the use of land or sea; or
  - (b) a person who is in occupancy of Government land by virtue of an agreement with the State; or

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- (c) a person who is the owner or lawful occupant of land other than customary land or Government land;
- “Managing Director” means the Managing Director appointed and holding office pursuant to Section 45;
- “methane (CH<sub>4</sub>)” means a colorless odorless flammable gaseous hydrocarbon that is a product of decomposition of organic matter and of the carbonisation of coal;
- “Minister” means the Minister designated by the Prime Minister under Section 148 of the *Constitution* to be the Minister responsible for all matters related to Climate Change;
- “national reference level” means Papua New Guinea’s reference level for emissions in the baseline year established under Section 55;
- “nitrous oxide (N<sub>2</sub>O)” means a colorless gas that is used as an anesthetic in dentistry and as a fuel and that is an atmospheric pollutant and greenhouse gas produced by combustion;
- “Papua New Guinea emissions” means, in relation to a greenhouse gas emissions of a targeted greenhouse gas from sources in Papua New Guinea;
- “Papua New Guinea removals” means, in relation to a greenhouse gas removals of a targeted greenhouse gas from the atmosphere due to land use, land-use change, sea use or forestry preservation activities in Papua New Guinea;
- “perfluorocarbons (PFCs)” means any of various hydrocarbon derivatives in which all hydrogen atoms have been replaced with fluorine and that include blood substitutes used in emulsified form;
- “PGK” means Papua New Guinea Kina;
- “Public Service” means the service engaged under the *Public Services (Management) Act 2014*;
- “REDD” means policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation;
- “REDD+” means policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries as identified by the UNFCCC described by the Conference of Parties to the UNFCCC in Decision 1/CP.16 in its sixteenth session as amended from time to time;
- “regulated sector” means an economic sector specified in Section 53 as a Regulated Sector;
- “sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of any greenhouse gas from the atmosphere;
- “sulphur hexafluoride (SF<sub>6</sub>)” means a colorless gas that is soluble in alcohol and a powerful greenhouse gas widely used in the electrical utility industry;
- “targeted greenhouse gases” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF<sub>6</sub>) or any other targeted greenhouse gas declared by the Head of State acting on the advice of the Minister under Section 5 as a targeted greenhouse gas for the purposes of this definition;
- “this Act” means the *Climate Change (Management) Act 2015* and the Regulations made and adopted from time to time;
- “tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide or an amount of any other targeted greenhouse gas with an equivalent global warming potential (calculated consistently with international reporting practice);
- “Trust Fund” means the Climate Change and Green Growth Trust Fund established under Section 37;
- “UNFCCC” means the United Nations Framework Convention on Climate Change adopted at New York on 9 May 1992 including the protocols, accordance, instruments and other arrangements;

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“verification” means verification within the meaning of the UNFCCC of reports of targeted greenhouse gas emissions and removals by a person or entity in a Regulated Sector;

“verifier” means a person registered as a verifier under Section 60;

“waters of Papua New Guinea” means internal waters, including river, stream, watercourse, reservoir, well, bore, tank, dam, canal, channel, lake, lagoon, swamp, open drain, surface and underground water and other waters over which Papua New Guinea exercises or claims jurisdiction or sovereign rights and includes the seabed and subsoil underlying those waters.

### *Division 3. - Application of the Act.*

#### **4. ACT BINDS THE STATE.**

This Act binds the State.

#### **5. LIMITATION ON POWER TO INCLUDE NEW GREENHOUSE GASES.**

(1) The Head of State, acting on the advice of the Minister may, by notice in the National Gazette, add any new gas to the definition of targeted greenhouse gas in Section 3 from time to time.

(2) The power under Subsection (1) may only be exercised if it appears to the Head of State that an agreement or arrangement at the international level recognises that particular gas, that is to be added, is a gas that contributes to climate change.

(3) A regulation may provide for the procedure to give effect to this section.

#### **6. TERRITORIAL APPLICATION.**

This Act applies to all things done in, on, above or below -

- (a) any land or sea boundaries of Papua New Guinea; and
- (b) over any waters of Papua New Guinea to which Papua New Guinea exercises or claims jurisdiction or sovereign rights and includes the seabed and subsoil underlying those waters.

#### **7. INTERNATIONAL TRANSPORTATION.**

(1) Except as provided by a regulation made pursuant to Subsection (2), emissions of greenhouse gases from international aviation or international shipping do not count as emissions from sources in Papua New Guinea for the purposes of this Act.

(2) The Head of State, acting on advice of the National Executive Council, may, by regulation define what is to be regarded for the purposes of this section as international aviation or international shipping.

## **PART II. - INSTITUTIONAL ARRANGEMENTS.**

### *Division 1. - Establishment of the Climate Change and Development Authority.*

#### **8. ESTABLISHMENT.**

(1) The Climate Change and Development Authority is hereby established.

(2) The Authority -

- (a) is a corporation with perpetual succession; and
- (b) shall have a Seal; and
- (c) may acquire, hold and dispose of property and any other assets; and
- (d) may sue or be sued in its corporate name.

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### **9. CUSTODY AND USE OF THE SEAL.**

(1) The Seal of the Authority shall be kept in such custody as the Board directs and shall not be used except by resolution of the Board or in such other manner as is authorised by this Act.

(2) All Courts, Judges and persons acting judicially shall take judicial notice of the Seal of the Authority affixed to a document and shall presume that it was duly affixed.

### **10. PURPOSE.**

The purpose of the Authority is to -

- (a) promote and manage the climate compatible development through climate change mitigation and adaptation activities; and
- (b) implement any relevant obligations of the State under applicable rules of international law and international agreements and to give effect to national commitments of Papua New Guinea, on a voluntary basis or otherwise, under the UNFCCC and the Kyoto Protocol together with such amendments or any new agreement that may supersede the Kyoto Protocol to which Papua New Guinea has acceded; and
- (c) be Papua New Guinea's Designated National Authority or equivalent entity or complementary or superseding entity and any relevant entity under the UNFCCC for the purposes of the Kyoto Protocol and any subsequent arrangement or agreement under the UNFCCC that may supersede Kyoto Protocol made thereto; and
- (d) administer compensation or incentive funds, grants, donor money and other funding derived from national and international sources under the direction of the Board to assist in the development of climate compatible economic endeavors and climate adaptation and mitigation programs in Papua New Guinea.

### **11. FUNCTIONS AND POWERS OF THE AUTHORITY.**

(1) In the discharge of its purpose, the Authority has the following functions:

- (a) to develop, periodically update, publish and make available to the Conference of the Parties, in accordance with the UNFCCC, the national inventory of anthropogenic emissions by sources and removals by sinks of all targeted greenhouse gases in accordance with international reporting practice; and
- (b) to formulate, implement, publish and regularly update national and regional measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all targeted greenhouse gases and measures to facilitate adequate adaptation to climate change; and
- (c) to promote and cooperate in the development, application and diffusion, including transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of targeted greenhouse gases in all relevant regulated sectors; and
- (d) to promote sustainable management and cooperation in the conservation and enhancement, as appropriate, of sinks and reservoirs of all targeted greenhouse gases, including in biomass, forests and oceans; and
- (e) to cooperate with relevant bodies or persons in preparing and implementing plans and activities for adaptation to the impacts of climate change; and
- (f) to establish administrative offices, agents or consultants in Papua New Guinea and overseas or climate change attachés; and
- (g) to promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system as a precautionary measure to reduce the uncertainties regarding the causes, effects, magnitude and timing of climate change; and

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- (h) to promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change; and
- (i) to promote and cooperate in education, training and public awareness related to climate change and encourage wide participation from individuals, groups, statutory bodies, donors and other relevant institutions; and
- (j) to confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere; and
- (k) to establish, coordinate and manage any trading schemes for the purpose of limiting greenhouse gas emissions or encourage activities that reduce such emissions or remove greenhouse gas from the atmosphere; and
- (l) to strengthen climate observation and support research towards improved understanding, modelling and prediction of the climate system and climate impacts; and
- (m) to carry out climate risk assessments and study human systems to identify options to adapt to minimise the effects of climate change; and
- (n) to coordinate planning efforts on climate change adaptation initiatives to address loss and damage associated with climate change; and
- (o) to monitor, evaluate and revise adaptation projects, policies and programs, including their effectiveness, efficiency and overall utility; and
- (p) to monitor and review climate change related activities annually to strengthen coordination, accountability, drive innovation, enforce compliance and ensure implementation; and
- (q) to promote and enforce the rights of the landholders by encouraging equitable participation in the climate change related programs that affect their customary land coastal sea area,

and to perform any other or further functions or roles imposed on the Authority by this Act or any other law.

(2) The Authority, in performance of the functions, may consult or collaborate where necessary with other departments, instrumentalities and agencies of the State and other agencies as the Authority determines from time to time for the implementation of laws and the making and implementation of policies in accordance with law on behalf of the State.

### *Division 2. - Establishment of the National Climate Change Board.*

#### **12. ESTABLISHMENT OF THE BOARD.**

There is hereby established a Board of Directors to be known as the National Climate Change Board.

#### **13. FUNCTIONS AND POWERS OF THE BOARD.**

(1) The primary function of the Board is to provide general control and guidance over the exercise of the functions and powers of the Authority.

- (2) Without limiting the generality of Subsection (1), the functions of the Board are to -
  - (a) determine the policies of the Authority; and
  - (b) oversee the performance of the Managing Director and implementation and delivery of policy directives of the Government under this Act; and

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- (c) ensure the proper national regulation by way of Regulations made under this Act for all matters reasonably requiring regulation including the establishment, coordination and management of any trading schemes under the UNFCCC and the Kyoto Protocol together with such amendments or any new agreement that may supersede Kyoto Protocol to which Papua New Guinea has acceded for the purpose of limiting greenhouse gas emissions as defined in this Act; and
- (d) administer the implementation of adaptation programs for the purposes of ensuring Papua New Guinea adapts to the effect of climate change and builds resilience to the adverse impacts of climate change; and
- (e) administer the receipt of donor funding (such as results-based finance) from REDD and REDD+ activities and other national or international climate compatible development programs; and
- (f) determine eligibility criteria in accordance with standard procedures for the implementation of REDD and REDD+ activities based on national circumstances and international best practices; and
- (g) monitor the performance and reporting of participants in REDD and REDD+ activities and other national or international climate compatible development programs; and
- (h) provide endorsement and ratification of proponents and projects applying to participate in the CDM, REDD and REDD+ and other national or international climate compatible development programs and activities.

(3) The Board shall undertake such other functions and exercise such powers as may be conferred on it by this Act or any other law.

(4) The Board is a sitting Board and shall perform its functions and powers accordingly to the exclusion of any other persons except powers and functions otherwise delegated.

(5) The Chairman of the Board, upon resolution of the Board, shall submit a report every four months to the Minister on the proceedings and resolutions of the Board and the steps taken, if any, in consequence of the resolutions.

(6) The Board may communicate to the Minister any matter the Board considers appropriate.

### **14. COMMITTEES.**

(1) The Board may from time to time -

- (a) appoint a Committee as the Board determines appropriate; and
- (b) determine the functions of the Committee.

(2) In establishing a Committee under Subsection (1), the Board may -

- (a) appoint such persons, including members of the Board, as it considers necessary; and
- (b) discharge, alter or reconstitute a Committee; or
- (c) discharge a member of a Committee and appoint another member in that member's place.

### **15. DELEGATION.**

(1) The Board may, by resolution in writing, delegate all or any of its powers or functions to the Managing Director or any Committee, other than -

- (a) this power of delegation; and
- (b) the functions given to it in Section 13.

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(2) Subject to any direction given by the Board, the functions and powers delegated to a Committee may be performed or exercised with the same effect as if they had been conferred by this Act and not by delegation.

(3) A delegation under Subsection (1) is revocable by resolution of the Board in writing, at any time.

(4) A delegation does not prevent the Board from performing or exercising the delegated functions and powers.

(5) A delegation to a Committee shall continue in force even if the membership of the Board or the Committee changes.

(6) Subject to this Act and to any directions given by the Board, a Committee may design its own procedure.

(7) Each decision of or exercise of discretion by, a Committee shall be reported to the Board along with the reasons for such decision or exercise of discretion.

#### *Division 3. - Arrangements of the Board.*

#### **16. MEMBERSHIP OF THE BOARD.**

(1) For the avoidance of doubt, the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* does not apply to the appointment of Board Members under this Division.

(2) The Board shall comprise of nine members being -

(a) two members appointed in accordance with Section 19 where -

(i) one member representing members of the National Council of Women of Papua New Guinea in accordance with the *National Council of Women Incorporation Act 1979*; and

(ii) one member representing the private sector appointed amongst the members of the Papua New Guinea Chamber of Commerce and Industry and Papua New Guinea Chamber of Mining and Petroleum or their successor entities; and

(b) seven *ex-officio* members comprised of -

(i) Managing Director of the Authority; and

(ii) Secretary for the Department of Treasury; and

(iii) Secretary for the Department of Provincial and Local Level Government Affairs; and

(iv) Managing Director for Papua New Guinea Forest Authority; and

(v) Managing Director for National Fisheries Authority; and

(vi) Managing Director for Conservation and Environment Protection Authority; and

(vii) Secretary for the Department of Petroleum and Energy.

(3) An *ex-officio* member may only be alternated by his deputy.

#### **17. APPOINTMENT COMMITTEE.**

(1) An Appointment Committee -

(a) is hereby established; and

(b) its functions are -

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- (i) to recommend to the National Executive Council, the appointment and removal of non *ex-officio* members of the Board, the Chairman and Deputy Chairman of the Board and the Managing Director; and
- (ii) to recommend to the National Executive Council for the endorsement of the *ex-officio* members of the Board.

(2) The Appointment Committee shall hold office on such terms and conditions as are determined by the Minister in accordance with the *Boards (Fees and Allowances) Act 1955* and shall consist of the -

- (a) Secretary for Department of Personnel Management or his alternate, who is the Chairman; and
- (b) Chairman for Public Service Commission or his alternate, who is the Deputy Chairman; and
- (c) Secretary for Department of National Planning and Monitoring or his alternate; and
- (d) Secretary for Department of Agriculture and Livestock or his alternate; and
- (e) State Solicitor of Papua New Guinea or his alternate; and
- (f) representative of the private sector representing the air or roads transport industry; and
- (g) civil society representative, who should be a resident in Papua New Guinea, as nominated by the Papua New Guinea Chamber of Commerce.

(3) An alternate member under Subsection (2)(a), (b), (c), (d) or (e) shall hold a senior management role in the department or agency concerned and shall be appointed with a written consent of the head of department or agency concerned.

### **18. SCREENING COMMITTEE.**

(1) There is established the Screening Committee.

(2) The Screening Committee's function is to screen applications for the appointment of -

- (a) non *ex-officio* Board members; and
- (b) the Managing Director,

and for related purposes.

(3) The Screening Committee shall be comprised of five members, where at least one member shall be a female, appointed by the National Executive Council from the officers within the Authority as the National Executive Council determines from time to time.

(4) The Screening Committee shall, within three weeks from the date of close of applications, submit to the Appointment Committee, screened applicants in the order of merit for -

- (a) the appointment of a non *ex-officio* Board member; or
- (b) the Managing Director.

### **19. APPOINTMENT OF BOARD MEMBERS.**

(1) Each Board member, other than the *ex-officio* member, shall be appointed by the Head of State, acting with and in accordance with, the advice of the National Executive Council.

(2) Before the National Executive Council advises the Head of State to appoint a person as a member of the Board, all the members of the National Executive Council shall be satisfied that the person -

- (a) is qualified for appointment to the Board in accordance with Section 21; and
- (b) is not disqualified from appointment to the Board under Section 22; and
- (c) has been nominated, from amongst a list of candidates, by the Appointment Committee.



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- (3) A non *ex-officio* Board member -
- (a) may be appointed for a term of up to three years and is eligible for reappointment; and
  - (b) shall hold office on such terms and conditions as are determined by the Minister in accordance with the *Boards (Fees and Allowances) Act 1955*; and
  - (c) may serve no more than two terms, whether consecutively or otherwise.

(4) Notwithstanding Subsection (3)(a), the terms of the first members of the Board shall vary between three to six years.

- (5) A Regulation shall make further provisions for -
- (a) the process of appointment of Board members; and
  - (b) the process for determination of terms and conditions, including the remuneration for Board members,

and such other matters as may be appropriate.

### **20. CHAIRMAN OF THE BOARD.**

(1) The Chairman and the Deputy Chairman of the Board shall be selected from amongst the members of the Board and appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

- (2) In addition to being qualified to be a Board member, the Chairman of the Board shall -
- (a) be a citizen of Papua New Guinea; and
  - (b) be of good moral standing and reputation; and
  - (c) have experience and expertise in -
    - (i) corporate governance and administration in order to guide a distinctive performance among relevant national and international entities; or
    - (ii) climate change issues.

- (3) The Chairman may resign and upon his resignation -
- (a) he is deemed to have vacated the Office of the Chairman; and
  - (b) an Acting Chairman shall be appointed by the Head of State, acting with and in accordance with the advice of the National Executive Council, from among the remaining members of the Board.

(4) In the absence of the Chairman, only the Deputy Chairman shall perform the functions of the Chairman.

(5) The Chairman is a leader for the purposes of Part III, Division 2 (*Leadership Code*) of the *Constitution* and *Organic Law on the Duties and Responsibilities of Leadership*.

### **21. QUALIFICATIONS FOR APPOINTMENT.**

Subject to Section 22, a person is eligible for appointment as a non *ex-officio* Board member if he has the following qualifications, but not limited to -

- (a) substantial experience or expertise in any field related to climate change; and
- (b) professional credibility or standing in a scientific field; and
- (c) corporate governance; and
- (d) investing in climate financing; and
- (e) high integrity, independence of mind and good reputation.

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### **22. DISQUALIFICATION FOR APPOINTMENT.**

A person is not qualified to be, or to remain as, a non *ex-officio* Board member if he -

- (a) is or becomes a Member or candidate for election as a Member of the National Parliament, a Provincial or Local-level Government; or
- (b) is a member of a Local-level Government Special Purposes Authority; or
- (c) an office-holder, or candidate for election as an office-holder in a registered political party; or
- (d) is an undischarged bankrupt or is insolvent; or
- (e) has been, or is, a director or shareholder controller of an incorporated company in Papua New Guinea or overseas and which has been, or is being, wound up or liquidated compulsorily during his tenure as director, or shareholder controller if he can be found liable under laws governing the industry; or
- (f) has been, or is being, removed or suspended, by order of company regulatory authority in Papua New Guinea or in a foreign country, as a director, officer or shareholder controller of corporation licensed to operate in Papua New Guinea or in a foreign country, unless such removal or suspension is solely the result of his political affiliation and in no way relates to his performance, conduct or competency as a director, officer or shareholder controller of a licensed corporation; or
- (g) is of unsound mind within the meaning of the *Public Health Act 1973* and any law relating to the protection of the person and property of persons of unsound mind; or
- (h) is under sentence of death or imprisonment or has previously been sentenced to death or a term of imprisonment; or
- (i) has been found guilty of any criminal offence whether under the laws of Papua New Guinea or a foreign law; or
- (j) has been found guilty of misconduct in office under the *Leadership Code* and *Organic Law on the Duties and Responsibilities of Leadership*; or
- (k) has or would be prohibited from being a director or member of, or take part in the management of a company under any law of Papua New Guinea.

### **23. RESIGNATION.**

(1) A non *ex-officio* Board member may resign by giving one month's notice, in writing, to the Chairman of the Board, with copies to the Minister and the Chairman of the Appointment Committee.

(2) The notice period referred to in Subsection (1) commences on the day that the Chairman of the Board receives the notice.

(3) A resignation takes effect at the end of the notice period.

(4) The Board member may withdraw his notice of resignation at any time before the resignation takes effect.

### **24. REMOVAL.**

(1) Subject to Subsection (3), the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may remove a Board member in any one or more of the grounds given in this Section.

(2) Subject to Subsection (3), a non *ex-officio* Board member shall be removed if -

- (a) in the case of the Chairman, he fails to attend two successive Board meetings without leave of absence granted by the Minister; or
- (b) in the case of any other Board member, he fails to attend three successive Board meetings, without leave of absence granted by the Chairman; or

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- (c) he becomes disqualified in accordance with Section 22; or
- (d) he fails to comply with Sections 29 and 30; or
- (e) he fails to comply with any other duty or responsibility conferred on him by this Act.

(3) In accordance with Subsection (2), and before advising the Head of State under Subsection (1), the National Executive Council shall determine whether or not a Board member is qualified to remain a member.

### **25. VACANCY.**

- (1) The position of a non *ex-officio* Board member becomes vacant if -
  - (a) he dies; or
  - (b) he becomes disqualified in accordance with Section 22; or
  - (c) his term expires; or
  - (d) he resigns; or
  - (e) he is removed in accordance with Section 24.

(2) A vacancy in the office of a member of the Board shall be filled within a reasonable time.

### **26. CALLING OF MEETINGS.**

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

(2) Where the Board receives a request to do so by the Minister or by not less than two members, the Chairman, or in his absence the Deputy Chairman, shall convene a meeting of the Board within 14 days to deliberate on the matter.

(3) For the purposes of Subsection (1), the Chairman or the Deputy Chairman shall give to every member at least 14 days written notice of the meeting.

(4) The Minister may, from time to time, request the Board to meet and consider and advise him on matters he may put to the Board.

### **27. MEETINGS OF THE BOARD.**

(1) The quorum for the first meeting of the first Board is all members of the Board, thereafter, it shall be the Chairman and seven other Board members.

- (2) At a meeting of the Board -
  - (a) all matters shall be decided by a majority of the votes of the members present at the quorum and any member in attendance as determined by the Board from time to time under Subsection (6); and
  - (b) the Chairman has a deliberative vote and if there is an equal number of votes on any matter, also a casting vote.

(3) Notwithstanding Subsection (2), if the Chairman -

- (a) is unable to attend a meeting; or
- (b) has a conflict of interest in respect of a transaction of a matter,

and the quorum requirements of Subsection (2) are nevertheless satisfied, the Board members present shall elect a Board member, other than the *ex-officio* member, to preside over that meeting in whole or in relation to deliberations on the matter of transaction in which the Chairman has a conflict of interest.

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(4) All Board meetings shall be held in Papua New Guinea except when a special circumstance arises requiring the Board to meet overseas.

(5) If any Board member has a conflict of interest in respect of a matter and the quorum requirements of Subsection (1) are nevertheless satisfied, the Board members present other than the concerned Board member, shall deliberate on the matter in which the Board member has a conflict of interest.

(6) Where appropriate the Board may determine the mode of attendance of a member not in attendance, either through electronic means or whichever mode the Board determines necessary.

### **28. EFFECT OF BOARD RESOLUTION.**

Subject to the inherent judicial powers of the National Court and the Supreme Court pursuant to Section 155 of the *Constitution*, a resolution of the Board is final and shall not be appealed.

#### *Division 4. - Duties and Responsibilities of Board Members.*

### **29. DUTIES AND RESPONSIBILITIES OF BOARD MEMBERS.**

(1) A Board member shall not act, or agree to the Board acting, in a manner that contravenes this Act.

(2) A Board member, when exercising his powers and duties under this Act -  
(a) shall act in good faith and in the best interest of the Authority; and  
(b) shall exercise the standard of care, diligence and skill that would be reasonably expected of a member of such a Board in the circumstances.

(3) A Board member -  
(a) shall maintain full confidentiality in relation to the business and affairs of the Board; and  
(b) in particular, shall not divulge or use for his own benefit or for the benefit of any other person, any information relating to the Authority or the Board or his function as a Board member,

except in accordance with this Act or as otherwise required by law.

(4) A Board member, when exercising powers or performing duties as a member of the Board, may rely on reports, statements and financial data and other information prepared or supplied and on professional or expert advice given, by any of the following persons:

(a) an employee of the Authority whom the Board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or  
(b) a professional adviser or expert in relation to matters which the Board member believes on reasonable grounds to be within the person's professional or expert competence.

(5) A Board member who contravenes any one or more of Subsections (1), (2), (3) or (4) shall be liable and dealt with under Section 24.

### **30. CONFLICT OF INTEREST.**

(1) For the purpose of this section, a Board member has a material interest in a matter or transaction to which the Board is interested in or is a party where, and only where, the Board member -  
(a) is a party to, or will or may derive a material financial benefit from, the transaction; or  
(b) has a material financial interest in another party to the transaction; or

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- (c) is a director, officer or trustee of another entity, or person who will or may derive a material benefit from the transaction, not being an entity that is wholly owned by the Authority; or
- (d) is the parent, child or spouse of another party to, or person who will or may derive material benefit from the transaction; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(2) A Board member who has a material interest in a matter or transaction that the Board is interested in, or to which the Board is a party to, shall give notice, in writing, of that interest to the Board as soon as practicable after the Board member becomes aware of his interest in the matter or transaction.

(3) The notice under Subsection (2) shall -

- (a) provide details of -
  - (i) the nature and extent of the interest, including monetary value of that interest (where that value can be quantified); and
  - (ii) the relation of the interest to the affairs of the Board; and
- (b) be given in writing to the Board before the next Board meeting as soon as he becomes aware of the interest.

(4) After a disclosure under Subsection (2), the member -

- (a) shall not be present during any deliberation or decision of the Board with respect to the matter or transaction; and
- (b) shall not take part in any deliberation or decision of the Board with respect to the matter or transaction; and
- (c) shall not discuss the matter with the Board or with another Board member other than in respect of the making of a disclosure under Subsection (2); and
- (d) shall be disregarded for the purpose of constituting a quorum for any such deliberation or decision on that matter or transaction.

(5) A Board member who contravenes this section shall be liable and dealt with under Section 24.

### **31. INDEMNITY AND INSURANCE.**

(1) The Authority shall indemnify a Board member for any costs incurred by him in any proceeding -

- (a) that relates to liability for any act or omission in his capacity as a Board member; and
- (b) in which judgment is given in his favour, or in which he is acquitted, or which is discontinued.

(2) The Authority shall indemnify a Board member in respect of -

- (a) liability to any person for any act or omission done in his capacity as a Board member; or
- (b) costs incurred by that Board member in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach of the duty specified in Section 29.

(3) The Board shall effect insurance for a Board member in respect of -

- (a) liability, not being criminal liability for any act or omission in his capacity as a member of the Board; or
- (b) costs incurred by that Board member in defending or settling any claim or proceeding relating to any such liability.

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### **32. FEES AND EXPENSES OF BOARD MEMBERS.**

(1) The Authority shall pay Board members such fees as the Minister, after considering any recommendation by the Board in accordance with the *Boards (Fees and Allowances) Act 1955*, determines.

(2) The Authority shall pay Board members reasonable travelling and other expenses incurred in carrying out their duties.

### **33. OATH AND AFFIRMATION OF OFFICE.**

(1) Before performing the duties of his office, a member of a Board shall take an oath or make an affirmation in the form in the Schedule.

(2) The oath, affirmation or declaration shall be taken or made before the Appointment Committee or a person appointed by the Appointment Committee for the purpose.

### **34. ANNUAL REPORTS.**

(1) The Board shall, by 31 March in each year, furnish to the Minister an annual report on the progress, performance and finances of the Authority in relation to its functions during the year ended 31 December previously.

(2) As soon as practicable, after he has received the report referred to in Subsection (1), the Minister shall forward -

- (a) a copy of the report to National Executive Council; and
- (b) a copy of the report to the Speaker for presentation to the Parliament; and
- (c) a copy of the report to each Provincial Government, where applicable.

(3) Upon the Minister's endorsement of the report produced under Subsection (1), the report shall be deemed a public document.

## **PART III. - ADMINISTRATION.**

### *Division 1. - Financial Management.*

### **35. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.**

Subject to this Act, Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

### **36. AUDITING PROCEDURES.**

(1) The accounts of the Authority shall be audited in accordance with Part III of the *Audit Act 1989*.

(2) The Board shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Authority in accordance with acceptable principles of accounting consistent with the *Public Finances (Management) Act 1995* and the *Audit Act 1989*.

(3) The Trust Account and its component parts shall be subject to regular and open audit and reporting in accordance with the *Public Finances (Management) Act 1995* and the *Audit Act 1989*.

(4) The Board shall, in each calendar year, engage an independent reputable external auditor to audit the accounts of the Authority.

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### **37. ESTABLISHMENT AND OPERATION OF THE CLIMATE CHANGE AND GREEN GROWTH TRUST FUND.**

(1) The Trust Funds established under Section 15 of the *Public Finances (Management) Act 1995*, namely -

- (a) Climate Change Trust Fund Account; and
- (b) Climate Change and Green Growth Trust Fund Account; and
- (c) Climate Change Mitigation Trust Account; and
- (d) Climate Change Adaptation Trust Account; and
- (e) other related Trust Accounts established under any law for the purpose of climate change issues,

are deemed to be established under this Act and shall continue their legal status without interruption and shall be governed by this Act.

(2) The Trust Funds established under Subsection (1) shall be combined and collectively called the *Climate Change and Green Growth Trust Fund*.

(3) For the purposes of Subsection (2), the Minister responsible for Finance matters shall, by instrument, within four months from the date this Act comes into operation, transfer all moneys standing to the credit of the Trust Funds referred to in Subsection (1) to the Trust Fund established under Subsection (2).

(4) Insofar as the provisions of the *Public Finances (Management) Act 1995* apply to the collection and transfer of public revenue directly to the *Climate Change and Green Growth Trust Fund*, those provisions shall be complied with.

### **38. FUNDING LEVY ARRANGEMENT.**

(1) The Authority shall, in consultation with the Department responsible for Treasury matters and any relevant entities, impose or redistribute such import levy or other levies or fees (as the case may be) as may be agreed or determined by the Authority and Department responsible for Treasury matters and any relevant entity from time to time.

(2) The Authority shall, in consultation with relevant entities, impose appropriate climate levies on factories, roadstead or installations at sea, or land based operations close to sea, movement or transport of hazardous wastes into and out of Papua New Guinea or related activities which may contribute to the emission of greenhouse gases.

(3) All funds received from donors or persons or entities nationally and internationally, except from the Government of Papua New Guinea, by any person or entity for the purposes of climate change related activities shall be declared by the Authority and 7% of the total moneys received at any one time shall be paid to the Trust Fund as climate administration fee.

(4) Any person who or an entity that contravenes Subsection (3) is guilty of an offence.

Penalty: A fine not exceeding K1,000,000.00 for a body corporate, or a fine of K250,000.00 or imprisonment for a term of not less than seven years or both for a natural person.

(5) All moneys prescribed under this section shall be paid to the credit of the Trust Fund.

(6) A Regulation shall provide for the industries and sectors that need to comply with this section and after the commencement of the Regulation and before enforcement, four months prior notice shall be given to persons or entities that this section applies.

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**39. THE TRUST FUND TO HOLD MONIES.**

- (1) The Trust Fund shall be authorised to hold monies received from, but not limited to -
- (a) gifts, bequests, subsidies, donations and subscriptions; and
  - (b) public and private donations from national and international sources; and
  - (c) budgetary allocations from the National Government, Provincial Government or Local-Level Government; and
  - (d) any fees, levies, taxes and fines that are specifically allocated to the Trust Fund by law or executive orders including those provided for under Section 38; and
  - (e) revenues from investments; and
  - (f) proceeds from the sale, lease or transfer of tangible and intangible property; and
  - (g) proceeds from services provided by the Authority; and
  - (h) all monies appropriated by an Act for the purposes of carrying out or giving effect to this Act; and
  - (i) all monies or assets as may accrue to or vest in the Trust Fund, whether in the course of the exercise by the Board of its functions or powers or otherwise; and
  - (j) monies or assets as may accrue to or vest in the Trust Fund by way of grants, subsidies, bequests, donations, gifts and subscriptions from the National Government or from a Provincial Government or from any other person; and
  - (k) all monies received by the Trust Fund by way of voluntary contribution; and
  - (l) all monies received as a loan, grant or assistance from authorised institutions, as that is defined under Section 3 of the *Banks and Financial Institutions Act 2000*, international agencies or organisation or foreign governments for the purposes of the Authority; and
  - (m) all other monies received by the Authority in the exercise and performance of its functions and powers; and
  - (n) all fines payable under this Act; and
  - (o) appropriations from the consolidated revenue fund for the purposes of the Trust Fund; and
  - (p) grants by donor governments or agencies; and
  - (q) equalisation or compensation payments to be made to Papua New Guinea by any government, supranational body, authority or person on account of national curtailment of targeted greenhouse gas emissions or its sequestration of targeted greenhouse gas emissions; and
  - (r) funds drawn from or on account of the CDM for administration of particular programs approved under CDM programs; and
  - (s) funds drawn from or on account of REDD and REDD+, such as results-based finance, for administration of particular activities approved under those schemes; and
  - (t) funds drawn from or on account of any targeted greenhouse gas reduction or mitigation or adaptation program howsoever arising where the government of Papua New Guinea has a responsibility for administration of a particular program in accordance with its terms; and
  - (u) accretions on such funds; and
  - (v) any other sources of revenue deemed appropriate to the Authority.
- (2) The Trust Fund shall be authorised to hold monies to provide grant and loan funding to finance any climate change related activities or programs in Papua New Guinea including, but not limited to -
- (a) Community-based small grant programs that have a climate change adaptation or mitigation, including CDM and REDD and REDD+ focus; and
  - (b) any climate change adaptation or climate change mitigation programs that supports women, children, vulnerable and displaced persons or persons with disability; and



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- (c) public, private, academic and civil society climate change adaptation or mitigation initiatives (including internationally funded programs, that support climate change adaptation and mitigation (including CDM and REDD and REDD+), programs; and
- (d) the establishment and operation of climate change attaché posts in diplomatic missions overseas including participation in the international climate change negotiations under the UNFCCC.

### **40. PAYMENTS FROM THE TRUST FUND.**

(1) Payments approved by the Board in the prescribed manner shall be paid from the Trust Fund for -

- (a) grant or loan funding under Section 39(2); and
- (b) the administrative expenses associated with the execution of the duties and responsibilities of the Authority and the management of the Trust Fund as approved by the Board; and
- (c) the contracting of services for the routine, periodic and emergency actions of the Authority in the performance of its duties; and
- (d) the human and technological resources required by the Authority for enforcing particular regulations regarding the national reference level and targets any other payments necessary to give effect to this Act,

and no other purpose.

(2) To the extent that there is, or on budget projections there would be expected to be, a shortfall in funds in the Trust Fund, the Minister responsible for treasury matters shall ensure that sufficient funds are appropriated to enable the Authority to perform its functions under this Act and any other law.

### **41. BANK ACCOUNTS.**

(1) The Authority shall open and maintain one or more accounts as it considers necessary within the country with such reputable banks or licensed financial institutions as the Board thinks fit and shall at all times maintain at least one such account.

(2) Subject to arrangements with the sources of the funds if and where necessary, monies in the bank account may be lodged in term deposits with any reputable commercial bank or licensed financial institutions.

(3) The Authority shall pay all monies received by it for operations or otherwise into the account referred to in Subsection (1) including funds received for the Trust Fund.

### **42. INVESTMENT AND BORROWING BY THE AUTHORITY.**

(1) The Authority may invest any monies standing to the credit of the Trust Fund -

- (a) in any securities of or guaranteed by the State; or
- (b) on deposit with an approved bank or a licensed financial institution; or
- (c) in any manner authorised by Section 57 of the *Public Finances (Management) Act 1995*; or
- (d) in any other manner approved by the Board.

(2) Subject to Part VI of the *Public Finances (Management) Act 1995*, the Authority may obtain loan from a reputable financial institution or regional or multilateral organisation or any person as the Board determines for the purpose of this Act.

(3) Subject to Subsection (4), any balance of monies in the operating accounts of the Authority at the end of each year shall be placed to the credit of the Trust Fund and be used only for the purposes of this Act.

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(4) The balance of monies in the Trust Fund shall be rolled over from year to year and no balance may be transferred to the Consolidated Revenue Fund unless the Board determines otherwise.

### **43. PROCUREMENT OF GOODS AND SERVICES.**

(1) For the purposes of Subsection (2), insofar as the provisions of the *Public Finances (Management) Act 1995* apply to the procurement of goods and services directly by the Authority, those provisions shall be deemed to be complied with.

(2) The Board may -  
(a) purchase and dispose of property and stores; and  
(b) procure works and services,  
for the Authority valued up to K1,000,000.00.

(3) Any procurement other than that prescribed under Subsection (2), shall comply with the provisions of the *Public Finances (Management) Act 1995* or any law made for the purpose.

(4) A Regulation shall prescribe the processes and procedures for procurement under this section, and in the absence of a regulation, the procurement processes and procedures under the *Public Finances (Management) Act 1995* shall apply to procurements under Subsection (2).

### *Division 2. - Service of the Authority.*

### **44. THE OFFICE OF MANAGING DIRECTOR.**

(1) For the avoidance of doubt, the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* does not apply to the appointment of the Managing Director under this Division.

(2) The office of Managing Director is hereby established.

(3) A person is eligible to be appointed as Managing Director in accordance with Section 45, provided the person has met the requirements of the merit-based appointment process under Section 45, and in addition, the person has -

- (a) relevant experience in climate change regulatory matters; and
- (b) a graduate degree and other relevant qualifications; and
- (c) good character, high integrity, independence of mind, good reputation; and
- (d) demonstrated administrative and organisation expertise and leadership; and
- (e) good health.

(4) The Managing Director -

- (a) is the chief executive officer of the Authority; and
- (b) shall be appointed by, or suspended or removed from office in accordance with this Division and the Act; and
- (c) holds office for a term of four years in accordance with a contract of employment approved by the Board and prepared in accordance with the *Salaries and Conditions Monitoring Committee Act 1998*, on such terms and conditions including salary and allowances as the Board thinks fit; and
- (d) is eligible for reappointment; and
- (e) is a leader for the purposes of Part III Division 2 (*Leadership Code*) of the *Constitution and Organic Law on the Duties and Responsibilities of Leadership*.

### **45. APPOINTMENT OF MANAGING DIRECTOR.**

(1) The Managing Director shall be appointed by the National Executive Council in accordance with a prescribed merit-based appointment process which shall include, but not limited to the following:

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- (a) the advertisement of a vacancy in the office of the Managing Director in the prescribed format together with minimum person specification for applicants to the position; and
- (b) the assessment of each applicant's curriculum vitae, submitted in a prescribed format, and their competency to perform the prescribed duties as measured against the minimum person specification for the position; and
- (c) a ranked ordered assessment of all applicants for the advertised position in terms of their relative competency to perform the prescribed duties; and
- (d) the merit-based assessment described in this section shall be the primary consideration of the Appointment Committee, who will forward to the National Executive Council a list of applicants in merit-order; and
- (e) all other considerations not related to the processes described in this section shall have no bearing in the recommendation of the Appointment Committee to the National Executive Council.

(2) The Appointment Committee shall prepare a list using the merit-based process, of not less than three suitable candidates in the order of preference from the original applicants to the position and shall submit this list with the original documentation to the National Executive Council for consideration and appointment.

(3) On the receipt of the list under Subsection (2), the National Executive Council shall deliberate and select one successful candidate from the three shortlisted candidates within one month of the receipt of the list from the Appointment Committee.

(4) The National Executive Council, after selecting the successful candidate under Subsection (3), shall then advise the Head of State to make the appointment of the selected candidate to the position of Managing Director.

### **46. FUNCTIONS OF THE MANAGING DIRECTOR.**

(1) The Managing Director is to manage and direct the administrative affairs of the Authority and is responsible to the Board for ensuring that the Authority performs its functions and exercises its powers in accordance with this Act.

(2) Notwithstanding anything in this Act, the Managing Director has the sole right and responsibility to supervise and direct the staff of the Authority in the exercise of all powers, functions and discretions in respect of the administration and enforcement of this Act.

(3) The Managing Director may, in writing, delegate to any person, any or all of his powers, duties, functions and authorities, except, this power of delegation.

(4) Any delegation under Subsection (3) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Managing Director.

### **47. VACANCY IN THE OFFICE OF THE MANAGING DIRECTOR.**

(1) The National Executive Council may remove or suspend a Managing Director if the National Executive Council is satisfied that the -

- (a) person's services are no longer required; or
  - (b) person is of unsound mind; or
  - (c) person's actions or inactions bring disrepute to the Authority or Papua New Guinea; or
  - (d) person resigns; or
  - (e) person is convicted of an indictable offence either in Papua New Guinea or overseas;
- or

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- (f) person is dismissed from office by a leadership tribunal; or
- (g) person is declared bankrupt or insolvent; or
- (h) person commits a serious disciplinary offence under this Act or any other law; or
- (i) person is disqualified by any other law.

(2) Where the office of the Managing Director is vacant, or is likely to become vacant due to the completion of the term of the Managing Director, the Appointment Committee shall -

- (a) by notice in the National Gazette and in at least one daily newspaper circulating generally in Papua New Guinea, declare the office vacant; and
- (b) advertise the vacancy and invite applications for appointment to the office.

(3) The Appointment Committee and the National Executive Council shall follow the merit-based appointment process specified under Section 45.

### **48. ACTING MANAGING DIRECTOR.**

(1) In the event of incapacity through illness or the suspension from office of the Managing Director or removal, the Head of State, acting on the advice of the National Executive Council, may appoint a person, who is to be known, and is referred to in this section as the Acting Managing Director, to perform the functions of the Managing Director.

(2) An Acting Managing Director shall not hold the office of the Managing Director for a term in excess of 12 months.

(3) The Acting Managing Director may hold office and sit as a Board member on terms and conditions as may be determined by the Board in consultation with the National Executive Council.

(4) The Head of State, acting on the advice of the National Executive Council may, on reasonable grounds, suspend the Acting Managing Director from office or may terminate the appointment as Acting Managing Director on being satisfied that the Acting Managing Director is unable to resume or not performing his duties and functions to the expectation of the Appointment Committee.

### **49. APPOINTMENT OF OFFICERS.**

(1) The Managing Director may appoint such officers as are necessary for the purposes of this Act or for the purposes of any other activities as may be conferred on the Authority under this Act or any other law.

(2) The officers of the Authority constitute the service of the Authority.

### **50. REGULATIONS FOR THE SERVICE OF THE AUTHORITY.**

Without limiting the generality of the power to make regulations, regulations may make provision in relation to the service of the Authority, and in particular may, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, prescribe the terms and conditions of employment of officers of the Authority.

### **51. TEMPORARY AND CASUAL EMPLOYEES AND CONSULTANTS.**

(1) The Managing Director may appoint such temporary and casual employees as are necessary for the purposes of this Act.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Authority determines in accordance with the *Salaries and Conditions Monitoring Committee Act 1998*.

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(3) The Managing Director may appoint and remove persons with suitable qualifications as advisers or consultants from time to time on such terms and conditions as determined by the Managing Director to assist in achieving the objectives of the Authority in accordance with this Act.

(4) Notice of appointment and terms of the engagement of advisers or consultants under Subsection (3) shall be given to the Board by the Managing Director as soon as practicable.

### **52. APPOINTMENT OF OVERSEAS CLIMATE CHANGE ATTACHÉ, ETC.**

The Managing Director, in consultation with the Department responsible for Foreign Affairs matters, may appoint a climate change attaché or an agent to a particular overseas post on such terms and conditions as the Managing Director determines.

## **PART IV. - MEASURING, REPORTING AND VERIFICATION.**

### *Division 1. - The National Reference Level and Targets.*

### **53. REGULATED SECTORS.**

(1) Subject to Subsection (2) -

- (a) the Minister may, by notice in the National Gazette from time to time, establish economic activities into sectors in the national economy for the purposes of this Act; and
- (b) a regulation may, from time to time, prescribe which sectors of the national economy are regulated sectors.

(2) Until the Minister makes a determination pursuant to Subsection (1) and a regulation further prescribes the application of this Part, the following sectors of the national economy are regulated sectors for the purposes of this Act:

- (a) agriculture and livestock; and
- (b) electricity generation; and
- (c) transportation of persons and goods by road, sea and air; and
- (d) building materials for manufacturing, construction and infrastructure development; and
- (e) forestry including land use and land use change and forestry; and
- (f) petroleum, energy and natural gas production, refining and distribution; and
- (g) minerals exploration, extraction, production and refining; and
- (h) fishing and maritime resources include fishing shore based facilities or factories; and
- (i) waste management, industrial processing and disposal; and
- (j) any other sector which may be determined by the Minister and published in the National Gazette.

### **54. MEASUREMENT.**

(1) For the purposes of this Act, targeted greenhouse gas emissions, reductions of such emissions and removals of targeted greenhouse gases from the atmosphere shall be measured or calculated in tonnes of carbon dioxide equivalent.

(2) The amount of Papua New Guinea emissions and Papua New Guinea removals of a greenhouse gas for a period shall be determined every two years in accordance with international reporting practice under the UNFCCC.

(3) The net Papua New Guinea emissions for a period, in relation to a targeted greenhouse gas, means the amount of Papua New Guinea emissions of that gas for the period reduced by the amount for the period of Papua New Guinea removals of that gas.

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(4) Measurement of the national reference level, the targets, emissions, removals and net Papua New Guinea emissions shall include sub-measurements to differentiate each regulated sector of the national economy as stated in Section 53, and the balance of all other sectors from the national measurements.

(5) All regulated sectors under this Part shall have baseline emission of carbon dioxide and targeted greenhouse gases.

(6) A Regulation may prescribe the standard format for requirements and methodologies for measurement in accordance with international reporting practice adopted and applied from time to time.

### **55. THE NATIONAL REFERENCE LEVEL.**

(1) Subject to Subsection (2), the national reference level is the aggregate amount of -

- (a) net Papua New Guinea emissions of carbon dioxide for the baseline year; and
- (b) net Papua New Guinea emissions of each of the other targeted greenhouse gases for the baseline year,

each determined in accordance with Sections 56 and 57 and increased each calendar year following the baseline year by the percent of growth in gross domestic product as determined by the Bank of Papua New Guinea or Department of Treasury or National Statistics Office.

(2) The national reference level and any revisions or adjustments may be made in consultation with or by agreement among all relevant entities or bodies and be carried out in accordance with international practice or guidance under the UNFCCC.

### **56. REQUIREMENT FOR TARGETS.**

(1) On or before 30 June in the second calendar year after this Act comes into operation and on this second anniversary and every three years after that, having fully and properly consulted with -

- (a) the Minister responsible for Treasury matters; and
- (b) the Minister responsible for Commerce and Trade matters; and
- (c) the Minister responsible for Forestry matters; and
- (d) the Minister responsible for Mining matters; and
- (e) the Minister responsible for Petroleum and Energy matters; and
- (f) the Minister responsible for Transport and Civil Aviation matters; and
- (g) the Governor of the Bank of Papua New Guinea; and
- (h) the Minister for Agriculture matters; and
- (i) the relevant statutory entities; and
- (j) the relevant private entities and industries; and
- (k) the Board Members through public notices and advertisement of the consultation of the public; and

(l) such other persons entitled to be consulted by law or as determined by the Board, and having regard to the matters set out in Section 53, the Board shall recommend to the Minister the national reference level and targets for national net carbon dioxide emission and national net emissions of targeted greenhouse gases for each year, including sub-targets for each of the regulated sectors.

(2) The Head of State, acting on the advice of the Minister, shall determine, and at three year intervals, make a revision of the targets for national emissions of carbon dioxide and targeted greenhouse gases.

(3) A determination by the Head of State pursuant to this section shall be published in the National Gazette.

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### **57. CRITERIA FOR DETERMINING AND REVISING THE TARGETS.**

Before the Board, through the Minister, advises the Head of State on targets and revisions to targets pursuant to Section 56, it shall have regard to the following matters:

- (a) the gross domestic product of Papua New Guinea, including levels of planned or projected changes in national gross domestic product over time; and
- (b) economic growth generally in Papua New Guinea, including levels of planned or projected changes in gross domestic product over time; and
- (c) mitigation and adaptation plans under Part V and Part VI,

and further or other matters prescribed by Regulation.

### *Division 2. - Measuring and National Reporting.*

### **58. OBLIGATION TO MAINTAIN RECORDS AND MEASURING.**

(1) Each person or entity that carries on an activity in a regulated sector shall keep records of -  
(a) the emission in the country of greenhouse gases into the atmosphere; and  
(b) the removal of greenhouse gases to a sink in the country,  
and such further or other matters prescribed by regulation.

(2) Each person or entity that carries on an activity in a regulated sector shall -  
(a) submit such records for verification by a registered verifier; and  
(b) submit those verified records annually to the Authority.

(3) A person or entity to which this section applies shall collect or obtain and store climate change related data at no cost to the Authority.

(4) A person or entity who contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months or both for a natural person or a fine not exceeding K500,000.00 for a body corporate.

(5) A regulation may prescribe the standard format for record keeping requirements, reporting and methodologies for reporting.

### **59. NATIONAL REPORTING.**

(1) The Managing Director shall cause to be prepared and delivered to the Board for its review annually and in good time, the national reports prescribed under Subsection (5).

(2) Subject to Subsection (3), the Board shall -  
(a) start its review within one month of receiving the report and shall complete the review within three months of receiving the report; and  
(b) once satisfied with the content, authorise the Minister to sign the national reports and forward them to the UNFCCC Secretariat in the discharge of its national obligations under the UNFCCC.

(3) If the Board is not satisfied with a report, the Board may direct the Managing Director to review the report and resubmit the revised version for further deliberation by the Board in accordance with Subsection (2).

(4) All reports prepared and delivered by the Board pursuant to this section shall also be delivered to the Parliament and tabled by the Minister at the next sitting of Parliament.

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(5) The national communication report and bi-annual update report and such other reports to the UNFCCC Secretariat shall be prepared in accordance with international reporting practice under the UNFCCC.

(6) A report produced under this section and after it has been presented in accordance with Subsection (2) or (3), whichever comes first, shall be deemed to be a public document.

#### *Division 3. - Verification.*

#### **60. NATIONAL AND INTERNATIONAL VERIFIERS TO BE REGISTERED.**

(1) Any verifier under this Division shall comply with the rules prescribed under the UNFCCC and the processes or procedures prescribed under this Act and any other law.

(2) A person who intends to perform or who performs verification shall be registered with the Authority as a registered verifier.

(3) A person registered under Subsection (2), shall be a natural person and none other.

#### **61. REQUIREMENTS FOR REGISTRATION.**

(1) A natural person may apply to the Managing Director for registration as a registered verifier if he -

- (a) is a resident in Papua New Guinea or elsewhere; and
- (b) meets the verifier accreditation criteria and requirements under the UNFCCC; and
- (c) has -
  - (i) provided sufficient evidence that he has taken out professional indemnity insurance, in the amount prescribed by the Board, with an independent reputable insurance company; and
  - (ii) complied with the provisions of the *Workers' Compensation Act 1978*; and
  - (iii) registered as a tax payer and is issued with a current certificate of compliance by the Internal Revenue Commission as required by the *Income Tax Act 1959*; and
  - (iv) registered a business name under the *Business Names Act 2014*; and
  - (v) paid an application or registration fee approved by the Board from time to time; and
- (d) possesses qualifications appropriate to conduct verification.

(2) On receipt of an application, the Managing Director shall consider the application and prior to the next meeting of the Board, make a recommendation to the Board whether or not the applicant should be registered as a verifier for the purpose of this Act.

(3) On receipt of the recommendation of the Managing Director, the Board shall decide on the application for registration as a verifier and the Managing Director shall inform the applicant of the outcome of the application, including in the case of a refusal to grant of registration, the reasons for such refusal.

(4) A person who is registered as a verifier under this section shall be issued a verifier certificate which shall expire on 31 December of each calendar year.

(5) The Board may revoke or suspend or reinstate a verifier certificate issued under Subsection (4) as the Board determines necessary.



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(6) A Regulation may, without limitation, prescribe further or other qualifications or requirements for registration as a registered verifier and fees payable for registration as a verifier.

(7) A code of conduct for verifiers and a schedule of costs or fees may provide for the minimum standards of conduct for verifiers and fees they may impose on their customers or clients.

### **62. UNCERTIFIED VERIFICATION, ETC., PROHIBITED.**

(1) No person shall verify or purport to verify or publish any oral or written statement that appear to comprise a verification or rejection of, any national record of -

- (a) emissions of carbon dioxide and other greenhouse gases into the atmosphere; or
- (b) removals of carbon dioxide and other greenhouse gases from the atmosphere to a sink in Papua New Guinea,

unless that person is authorised under this Act.

(2) No person, except the Authority, shall issue a certificate of compliance and authenticity related to climate change matters under this Act or any other law.

(3) A person who contravenes Subsection (1) or (2) commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years or both for a natural person or a fine not exceeding K500,000.00 for a body corporate.

## **PART V. - MITIGATION.**

### *Division 1. - Application of this Part.*

#### **63. APPLICATION OF THIS PART.**

This Part applies to persons, groups, organisations or bodies that carry on activities in a regulated sector.

#### **64. SECTORS REQUIRED TO MITIGATE.**

Each person, organisation, group or any such body which carries on an activity in a regulated sector is required, on and from the coming into operation of this Act, to implement a carbon dioxide emission and targeted greenhouse gas emission mitigation action in accordance with this Part.

### *Division 2. - Immediate Mitigation Steps.*

#### **65. EMISSIONS MITIGATION PLANS.**

(1) As at the coming into operation of this Act and for each year, each person, organisation, group or any other such body carrying on an activity in a regulated sector shall prepare a mitigation plan to -

- (a) reduce its production of carbon dioxide and other targeted greenhouse gases; and
  - (b) increase the capture of carbon dioxide or other targeted greenhouse gases in a sink,
- and identify ways the person, organisation, group or any other such body might participate in climate change related activities.

(2) A person who or an entity which contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two months or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

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### **66. ENFORCED MITIGATION.**

The Head of State acting on the advice of the Minister shall, within 12 months, make regulations of the type and effect specified in Sections 64 and 65.

### **67. FUEL STANDARDS.**

- (1) A regulation to be known as the Fuel Standards Regulation shall -
  - (a) prescribe the standard of refining and maximum permissible content of sulphur and other targeted greenhouse gas pollutants in all fuel for use in road, sea and air transport and power generation; and
  - (b) contain provisions requiring refiners and distributors of fuel to take measures to control and eliminate contamination of fuel with water, sediments and other substances which would impede the clean combustion of fuel; and
  - (c) provide for other technical matters necessary or convenient to give effect to mitigation of emission of carbon dioxide and other targeted greenhouse gases from use of petroleum fuels.
- (2) A person who or an entity that contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **68. BUILDING STANDARDS.**

(1) In addition to Section 65, a regulation to be known as the Building Climate Standards Regulation shall prescribe minimum environmental standards and performance levels to apply in the construction of all new buildings and in refurbishments which require regulatory approval under Section 11 of the *Building Act 1971*.

(2) Without limitation, the Building Climate Standards Regulation may address the design and performance requirements for -

- (a) insulation to be used in roof and external walls; and
- (b) glazing systems; and
- (c) cooling, heating and ventilation systems; and
- (d) internal lighting and external security lighting; and
- (e) energy efficiency technology; and
- (f) certification of building designs as compliant with the Building Climate Standards Regulation,

and all other technical matters necessary or convenient to give effect to mitigation of emission of carbon dioxide and other targeted greenhouse gases from buildings.

(3) The Building Climate Standards Regulation will be complementary with the existing *Building Regulations* and override the *Building Regulations*, only to the extent of any inconsistency between the two regulations.

(4) Where it is necessary or convenient for the purposes of any Act that a building or parts of a building or designs for a building be certified as being compliant with the Building Climate Standards Regulation, such certification may only be provided by a member of the Papua New Guinea Institute of Engineers or any other person authorised in accordance with the Building Climate Standards Regulation.

- (5) A person who or an entity that contravenes this section is guilty of an offence.

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Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **69. OTHER DEVELOPMENT STANDARDS.**

(1) In addition to Section 65 and further to any requirement under any other law, a person or entity, before undertaking any or more of the following developments:

- (a) civil works; or
- (b) mining, both land based and seabed mining operations; or
- (c) oil and gas, both land based and seabed extraction operations; or
- (d) agriculture and livestock; or
- (e) manufacturing; or
- (f) forestry; or
- (g) fisheries, both at sea and shore based fishing operations; or
- (h) any related activities,

shall comply with the minimum climate mitigation and compatibility standards and performance levels.

(2) A regulation shall prescribe climate mitigation and compatibility standards and performance levels applicable under Subsection (1).

(3) A person who or an entity that contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both, for a natural person or a fine not less than K500,000.00 for a body corporate.

### *Division 3. - Future Mitigation Steps.*

### **70. SECTOR SPECIFIC CONSULTATIONS.**

(1) The Board shall establish a planning committee with participants from each regulated sector to plan the development of future regulatory arrangements to mitigate emissions of carbon dioxide and targeted greenhouse gases into the atmosphere and to promote the establishment, maintenance and use of greenhouse gas sinks.

(2) Each planning committee established under Subsection (1) shall, within 12 months of its appointment and after sufficient public consultation report to the Board -

- (a) a set of regulatory principles with intent to pursue, in accordance with the National Goals and Directive Principles, mitigation generally and to manage sector emissions performance within the targets; and
- (b) the costs, to the participants in the regulated sector of implementing mitigation in accordance with the regulatory principles; and
- (c) proposed means by which the participants will be compensated or the costs being borne within the national economy.

### **71. MAKING REGULATIONS REGARDING MITIGATION.**

(1) Within two calendar years of coming into operation of this Act and again each five years after that, having regard to -

- (a) the regulatory principles, the costs of implementing mitigation and the means of compensation proposed and set out in the regulated sector planning committee report; and

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- (b) the national reference level (including as adjusted) and the targets set in accordance with this Act, and having further consulted with each of the parties described in Section 70,

the Minister may publish a proposed mitigation regulation for each regulated sector.

(2) The Minister shall allow an opportunity for public consultation on a proposed mitigation regulation published under Subsection (1).

(3) The Head of State, acting on the advice of the Minister may make a regulation to provide for -

- (a) mitigation actions; and
- (b) compensation or economic allocation of the cost of such mitigation actions; and
- (c) applicable fees, enforcement and penalty mechanisms,

and any other matter or thing necessary or reasonably required to be done to achieve mitigation in the regulated sector.

### **PART VI. - ADAPTATION.**

#### *Division 1. - Application of this Part.*

#### **72. APPLICATION OF THIS PART.**

This Part applies to persons, groups, organisations or any other such bodies that carry on activities in a regulated sector.

#### **73. SECTORS REQUIRED TO ADAPT.**

Each person, organisation, group or any other such body who carries on an activity in a regulated sector is required, on and from the coming into operation of this Act, to implement a climate change and climate compatible adaptation action in accordance with this Part.

#### *Division 2. - Immediate Adaptation Steps.*

#### **74. CLIMATE CHANGE ADAPTATION PLANS.**

(1) On or before 1 January of each year, each person, organisation, group or any other such persons or bodies carrying on an activity in a regulated sector shall prepare an adaptation plan using reasonable endeavors to -

- (a) adapt to climate induced natural events including -
- (i) coastal flooding and sea level rise; or
  - (ii) inland flooding; or
  - (iii) landslides; or
  - (iv) vector-borne diseases; or
  - (v) changes in agricultural yields; or
  - (vi) changes in livestock production; or
  - (vii) food security; or
  - (viii) marine eco-system health; or
  - (ix) climate induced migration; or
  - (x) climate impacts on cities and towns; or
  - (xi) water and sanitation,

or any other related events; and

- (b) identify ways to participate in -
- (i) coastal early warning system; or
  - (ii) community-based mangrove planting; or
  - (iii) coastal engineering protection; or

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- (iv) agricultural intervention; or
  - (v) human settlement and migration; or
  - (vi) protection of marine protected areas or marine reserves,
- or any other related activities or programs.

(2) A person who or an entity that contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **75. ENFORCED ADAPTATION.**

The Head of State acting on the advice of the Minister, shall within 12 months make regulations of the type and effect specified in Sections 73 and 74.

### *Division 3. - Future Adaptation Steps.*

### **76. SECTOR SPECIFIC CONSULTATIONS.**

(1) The Board shall establish a planning committee with participants from each regulated sector to plan the development of future regulatory arrangements to adapt to climate induced events and to promote the establishment, maintenance and use of eco-system friendly measures.

(2) Each planning committee appointed under Subsection (1) shall, within 12 months of its appointment, and after sufficient public consultation, report to the Board -

- (a) a set of regulatory principles to be pursued in accordance with the National Goals and Directive Principles, adaptation generally and to manage climate compatible and adaptive measures or activities; and
- (b) the cost to the participants in the regulated sector of implementing adaptation programs in accordance with the regulatory principles; and
- (c) the proposed means by which the participants will be compensated or the costs being borne within the national economy; and
- (d) any other report the Board determines from time to time.

### **77. DEVELOPMENT AND ADAPTATION STANDARDS.**

(1) In addition to Section 74 and further to any requirement under any other law, a person or entity, before undertaking any or more of the following developments:

- (a) building and civil works; or
- (b) mining, both land based and seabed mining, operations; or
- (c) oil and gas, both land based and seabed extraction operations; or
- (d) agriculture and livestock; or
- (e) manufacturing; or
- (f) forestry; or
- (g) fisheries, both at sea and shore based fishing operations; or
- (h) energy; or
- (i) transport; or
- (j) any related activities,

shall comply with the minimum climate adaptation and compatibility standards and performance levels.

(2) A Regulation shall prescribe climate adaptation and compatibility standards and performance levels and applicable fees under Subsection (1).

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- (3) A person who or an entity that contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **78. MAKING REGULATIONS REGARDING ADAPTATION.**

(1) Within two calendar years of the coming into operation of this Act and again, each five years after that, having had regard to -

(a) the regulatory principles, the costs of implementing adaptation and the means of compensation proposed and set out in the regulated sector planning committee report; and

(b) having further consulted with each of the parties described in Section 76, the Minister may publish a proposed adaptation regulation for each regulated sector.

(2) The Minister shall allow an opportunity for public consultation on a proposed adaptation regulation published pursuant to Subsection (1).

(3) The Head of State, acting on the advice of the Minister, may make a regulation to provide for

(a) adaptation actions; and

(b) compensation or economic allocation of the cost of such adaptation actions; and

(c) applicable fees, enforcement and penalty mechanisms,

and other matter or thing necessary or reasonably required to be done to achieve adaptation in the regulated sector.

## **PART VII. - AUTHORITY TO INSPECT AND COLLECT DATA.**

### *Division 1. - Application of the Search Act 1977.*

### **79. INTERPRETATION, ETC.**

(1) For the purposes of this Part, an “authorised officer” means an officer of the Authority duly appointed by the Authority to conduct search or obtain data or information related to climate change.

(2) An authorised officer appointed under Subsection (1) shall produce a valid search warrant in the course of carrying out searches or related functions under this Act.

### **80. APPLICATION OF SEARCH ACT 1977.**

(1) The *Search Act 1977* shall apply to searches conducted by the Authority.

(2) Where the term “Police” is appearing in the provisions of the *Search Act 1977*, that term shall be taken to mean an authorised officer under this Act.

(3) An authorised officer may exercise the search powers of police that are prescribed by the *Search Act 1977* as if those powers and functions were provided for under this Act.

(4) For the avoidance of doubt, an authorised officer shall not exercise search powers of police under the *Search Act 1977* other than for the purposes of this Act.

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### **81. SEARCH, ETC.**

- (1) A search may be conducted by an authorised officer for the purpose of, but not limited to -
- (a) monitor and ensure compliance with this Act; or
  - (b) gather information about a suspected offence against this Act; or
  - (c) gather other information relevant to the administration or enforcement of this Act.

(2) A person who or an entity which, without reasonable excuse, resists or obstruct or does not cooperate or fail to provide data to an authorised officer within a reasonable period of time to carry out an authorised activity under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding one year or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### *Division 2. - Power of Entry and Collection of Data.*

### **82. POWERS OF SEARCH.**

In addition to those powers conferred by the *Search Act 1977*, an authorised officer may -

- (a) enter land or premises and inspect the land or premises and any operations or activities conducted on the land or premises; or
- (b) examine anything on the land or premises; or
- (c) take photographs, films or videos; or
- (d) carry out tests on machinery, facilities and equipment; or
- (e) take and remove samples; or
- (f) take and remove anything that may be evidence of non-compliance with this Act,

or do such other necessary thing in the circumstances for the purposes of this Act.

### **83. POWER TO GATHER INFORMATION.**

(1) An authorised officer may require a person who may be in a position to provide information relevant to any matter subject to an authorised investigation or data collection or for any such purpose under this Act -

- (a) to answer a question relevant to the investigation; or
- (b) to take reasonable steps, within that person's power, to obtain information relevant to the investigation or data collection and to pass it on to the authorised officer.

(2) Where a person is required to answer a question under this section fails to answer the question to the best of the person's knowledge, information and belief within a reasonable time, he commits an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **84. PRODUCTION OF RECORDS.**

(1) This section applies to records relating to -

- (a) targeted greenhouse gas emissions by a person or entity in a regulated sector; or
- (b) removals of targeted greenhouse gases to a sink by a person or entity in a regulated sector; or
- (c) verification of any records under this Act; or
- (d) mitigation plans, mitigation action or adaptation projects; or

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(e) compliance with the Fuel Standards Regulation; or  
(f) compliance with the Building Climate Standards Regulation,  
or other matters relevant to the administration of this Act.

(2) A person or an entity who has possession or control of a record to which this section applies shall, at the request of an authorised officer -

- (a) produce the record for inspection by the authorised officer; and
- (b) answer any questions that the authorised officer reasonably asks about the record.

(3) An authorised officer may retain records produced under this section for the purpose of making copies of them.

(4) A person who or an entity which fails to comply with this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **85. POWER TO RECORD INFORMATION.**

(1) The Authority shall, in respect of mitigation and adaptation, REDD+ and other climate related activities, keep such records or information as are determined by the Authority.

(2) All records shall be kept in such manner as determined by the Board.

### **86. NON DISCLOSURE OF INFORMATION.**

(1) Subject to Subsection (2), a member of the Board or an officer who, except for the purpose of the performance of his functions and duties under this Act, discloses to any person, business group, company, corporation or any other business association, any information in relation to the financial affairs, plant, equipment, mitigation, adaptation, REDD+ or any related climate change activities, of a person acquired in the performance of the functions and duties of the member or officer, as the case may be, under this Act, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months.

(2) Subsection (1) does not apply to a disclosure made in criminal proceedings in accordance with this Act.

## **PART VIII. - RECOGNITION OF LANDHOLDER RIGHTS.**

### *Division 1. - Rights of Customary Landholder.*

### **87. FREE, PRIOR AND INFORMED CONSENT.**

In this Part consent of all landholders shall be obtained through the “free, prior and informed consent” process prescribed in the Regulation.

### **88. CUSTOMARY LANDHOLDERS.**

The rights of the customary landholder shall be fully recognised and respected in all transactions affecting the customary land.



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### **89. OBTAINING CONSENT OF CUSTOMARY LANDHOLDERS.**

(1) Where the Authority or any such entity or person desires to enter into a climate change related project agreement over customary land, the title of the customary landholders to that land shall be -

- (a) vested in a land group or land groups incorporated under the *Land Groups Incorporation Act 2009*; or
- (b) registered under a law providing for the registration of title to customary land.

(2) Where it is impractical to give effect to the requirements of Subsection (1), a climate change related project agreement may be executed on behalf of customary groups who are customary landholders in respect of the land covered by the agreement, provided that 85% of the adult members resident on the land of each such land group give consent in accordance with Section 87 to their group entering into the agreement.

(3) Where the Authority or any person or entity intends to enter into a climate change related project agreement, the Board shall inform -

- (a) the Provincial Government for the province and the Local-level Government in which the area covered by the agreement is situated; and
- (b) the member or members of Parliament for the Province and the electorate or electorates in which the area covered by the agreement is situated,

in relation to the intention of the Board to enter into the proposed climate change related project agreement.

### *Division 2. - Rights of Customary Landholders in Climate Change Related Project Agreements.*

### **90. CLIMATE CHANGE RELATED PROJECT AGREEMENT.**

(1) A climate change related project agreement shall -

- (a) be in writing; and
- (b) specify the monetary and other benefits, if any, to be received by the landholders, as prescribed under Part IX, in consideration for the rights granted; and
- (c) specify the nature of project in the area covered by the agreement; and
- (d) specify a term of sufficient duration in order to allow for proper project management measures to be carried out to completion; and
- (e) be accompanied by a map showing clearly the boundaries of the area covered by the agreement; and
- (f) specify any other climate compatible or green growth related land use options, if any.

(2) An agreement under Subsection (1) shall be lodged with the Office of State Solicitor for necessary legal clearance before execution.

(3) A copy of a duly executed agreement together with a copy of the legal clearance issued under Subsection (2) shall be lodged with the Authority.

(4) The Board may, from time to time, determine appropriate lodgement fees in relation to the lodgement of copy of an agreement.

(5) An agreement under Subsection (1) shall comply with the requirements under Subsections (2), (3) and (4) and failure to comply with any one or more of those requirements shall render the agreement under Subsection (1) invalid and unenforceable for all intents and purposes.

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### **91. RIGHTS UNDER CLIMATE CHANGE RELATED PROJECT AGREEMENT.**

Where the Authority or any person or entity enters into a climate change related project agreement -

- (a) subject to this Act and the terms and conditions of the agreement, the Authority or any person or entity may assign land-user rights, other than land ownership rights, acquired under the agreement to one or more other persons; and
- (b) for the purposes of exercising project rights, the Authority or any person or entity may, according to the terms of the agreement and in consultation with any relevant agencies -
  - (i) enter on land covered by the agreement; and
  - (ii) build, maintain and use roads, wharves, bridges, buildings and other infrastructure on land covered by the agreement.

### *Division 3. - Rights of State and Freehold or Fee Simple Landholders.*

### **92. RIGHTS OF STATE AND FREEHOLD OR FEE SIMPLE LANDHOLDERS.**

(1) The ownership rights of the State and any freehold or fee simple landholders shall be respected when dealing with a climate change related project under this Part.

(2) Sections 88 and 89 shall apply for and in relation to a dealing with a climate change related project on a land or resource owned by the State or a freehold or fee simple landholders.

## **PART IX. - BENEFIT SHARING OR ALLOCATION OF INCENTIVES.**

### **93. LANDHOLDER PARTICIPATION AND BENEFITS.**

(1) This Part applies to the participation and benefit sharing or allocation of incentives for climate change related projects or activities.

(2) All affected landholders shall participate and benefit from the incentives of a climate change related project implemented on land or at sea.

(3) Unless a law provides to the contrary, a Regulation shall provide for the participation and benefit sharing or incentive allocation mechanism under this Part.

### **94. ANNUAL REPORT.**

(1) The Authority or any person or entity who undertakes a climate change related project shall use every reasonable means to quantify the net income or net benefits (as the case may be) and present an annual report before or by 31<sup>st</sup> March of each calendar year to the concerned landholders and the Authority and relevant provincial government.

(2) An abstract or summary of the report under Subsection (1) shall be published at least twice in a daily newspaper circulated nationwide.

(3) An annual report produced under Subsection (1) is a public document for all intent and purposes.

### **95. PENALTY PROVISION.**

A person who or an entity which contravenes any of the provisions under this Part is guilty of an offence.

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Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding six months or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **PART X. - MISCELLANEOUS.**

#### **96. NO PERSONAL LIABILITY.**

The Minister, Managing Director, or a servant or agent of the Authority properly acting under the direction of one of them or an authority delegated to him under this Act, shall not be personally liable to an action, suit or proceeding or claim for damages for or in respect of an act or matter done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.

#### **97. IDENTITY CARDS.**

- (1) The Managing Director shall issue to each officer of the Authority an identity card -
  - (a) stating the name of the authorised officer; and
  - (b) containing a photograph of the authorised officer; and
  - (c) stating that the person whose name and photograph appear on the card is an authorised officer for the purposes of this Act.

- (2) If an authorised officer proposes to exercise powers under this Act against a person, the authorised officer shall, if practicable, produce the identity card for inspection.

#### **98. GIVING OF NOTICES AND SERVICE.**

- (1) A notice under this Act may be given by the Authority -
  - (a) personally or at the registered office of the person or through electronic means to whom the notice is addressed; and
  - (b) by publication in the National Gazette.

- (2) A notice shall be given to or legal process shall be served on the Authority by personal service on the personal or executive secretary of the Managing Director or a person duly authorised by the Managing Director to accept service of legal process at any offices of the Authority.

#### **99. EXTENSION OF TIME LIMITS.**

- (1) Subject to any requirement under any other law, within three months from the date of receipt of a request for an extension of time from a person or entity, the Managing Director may, after being satisfied on reasonable grounds, extend time limits fixed by or under this Act.

- (2) Upon application by an aggrieved person or entity in regard to a decision made by the Managing Director or where there is an unreasonable delay by the Managing Director in making a decision under Subsection (1), the National Court may, after being satisfied on reasonable grounds, extend time limits fixed by this Act.

#### **100. SECRECY.**

- (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act shall not disclose confidential information acquired in the course, or as a result of, carrying out those duties except -

- (a) in the course of carrying out official duties; or
- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised by law; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) as authorised by the Minister after consultation (where practicable) with the person to whom the duty of confidentiality is owed.

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- (2) A person who or an entity which contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K25,000.00 or imprisonment of a term not exceeding one year or both for a natural person or a fine of not exceeding K500,000.00 for a body corporate.

### **101. GENERAL PENALTY PROVISION.**

(1) Where a person is found guilty, according to law, of committing an offence under this Act and no specific penalty is provided, as a sentencing guide, a penalty of K2,500.00 each day that the offence has been committed up to a maximum penalty of K25,000.00 may be imposed for a natural person or a fine not exceeding K500,000.00 for a body corporate.

(2) In addition to the penalty under Subsection (1) or any penalty prescribed elsewhere in this Act, the Board may impose other penalties as the Board determines appropriate from time to time.

### **102. AUTHENTICATION OF DOCUMENTS.**

(1) Where, for any purpose, it is necessary to prove the authenticity of a document or record held or issued by the Authority, it shall be sufficient if such document is issued under the Seal of the Authority and signed by the Chairman or his delegate.

(2) Any person or entity that falsifies any document or instrument or tampers with the authenticity of documents or takes any action that contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **103. FUNCTIONAL AUDIT.**

(1) The Authority shall, before -

- (a) the last day of February following one year after the establishment of the Authority; and
- (b) each five year anniversary of the day referred to in Subsection (1)(a) while the Authority continues in existence,

engage a firm that is a Registered Company Auditor under the *Accountants Act 1996*, to conduct a functional audit and furnish to the Authority a report of their findings in relation to that functional audit, within four months of being engaged.

(2) The Authority shall present a copy of the report referred to in Subsection (1) to the Minister as soon as possible following receipt and the Minister shall table a copy of the report at the first sitting of the National Parliament.

(3) The Authority shall publish the report referred to in Subsection (1) within a reasonable period after the report is tabled in the National Parliament.

### **104. PROJECT AUDIT.**

(1) The Board may, from time to time, appoint an independent reputable project auditor, on such terms and conditions as the Board determines, to audit any climate change related project.

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(2) A project auditor appointed under Subsection (1) shall furnish to the Authority a report of its findings in relation to that project audit within a time specified by the Authority.

(3) The Authority shall publish the report referred to in Subsection (2) within a reasonable period after the report is received by the Authority.

### **105. DISPUTES RESOLUTION MECHANISM.**

(1) Any disputes or complaints related to climate change related project or activities shall, in the first instance, be resolved through the dispute resolution process in accordance with Subsection (2).

(2) A regulation shall provide for a dispute resolution process.

### **106. JURISDICTION OF COURT.**

(1) For any personal actions at law or equity, other than those actions prescribed under Sections 105 and 107, brought against the Authority or by the Authority for which Section 21 of the *District Courts Act 1963* applies, the District Court may have jurisdiction.

(2) Except for matters prescribed under Subsection (1) and Section 105 and the issuance of a search warrant under Part VII of this Act, where all Courts, except the Village Courts, have concurrent jurisdictions under the *Search Act 1977*, and any other matters prescribed under any other law, the National Court shall have jurisdiction for all matters arising under this Act.

### **107. PROSECUTIONS, ETC.**

(1) Subject to the approval of the Public Prosecutor, the Authority may prosecute any offence against this Act or any other Act the administration of which is the responsibility of the Authority from time to time.

(2) A prosecution under Subsection (1) of this Act shall be made on indictment to the National Court.

(3) Any fine or penalty or any default fine or penalty to be paid by a person or body corporate as a result of an action brought by the Authority is to be paid to the Authority and, in addition to any other remedy, may be recovered by the Authority as a debt due to the Authority.

## **PART X. - TRANSITIONAL PROVISIONS.**

### **108. TRANSFER OF STAFF AND ASSETS.**

(1) The Minister responsible for Environment and Climate Change matters shall, within 30 days from the coming into operation of this Act, sign an allocation statement identifying staff, assets and liabilities of the Public Service for transfer to the Authority.

(2) Within 14 days of the date of signing of the allocation statement under Subsection 1, the Minister shall cause the allocation statement to be published in the National Gazette.

(3) The Office of Climate Change and Development established by the National Executive Council shall be subsumed into the Authority, with necessary modifications or adjustments as the Board determines, and all the staff, assets, property, rights, obligations and liabilities which, immediately before the commencement date, were vested in or imposed on the Office of Climate Change and Development shall, on that date, continue to be vested in or imposed on the Authority.

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### **109. SAVING OF CONTRACTS, ETC.**

(1) Subject to Subsection (2), all contracts, agreements, conveyances, leases, deeds, licences and other instruments and undertakings entered into by, or made with or addressed to the Office of Climate Change and Development, whether alone or with any other person, before, and in effect immediately before, the commencement date, continue on that date, to the extent that they were previously binding on and enforceable against the Office of Climate Change and Development, to be binding and of full force and effect in every respect against or in favour of the Office of Climate Change and Development as if entered into, made with or addressed to the Authority.

(2) Subject to Subsection (3), any climate change related agreement or project that was not directly dealt with or approved or sanctioned by the Office of Climate Change and Development is hereby declared void and unenforceable for all intent and purposes.

(3) A person who or an entity which, carries on an activity or dealing in relation to matters described under Subsection (2), without the prior approval of the Board within one year after this Act takes effect, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment of a term not exceeding three years or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.

### **110. TRANSFER NOT TO AFFECT SERVICE.**

The transfer of staff under this Part shall not invalidate, diminish or restart the period of service of any staff member and service with the Public Service will count as service with the Authority for all purposes and all accumulated entitlements of each staff member of the Office of Climate Change and Development who is transferred to the Authority shall be preserved and met by the Authority.

### **111. PUBLIC SERVICE RIGHTS.**

Where -

- (a) an officer of the Public Service is appointed to be Managing Director, his service as Managing Director; and
- (b) an officer of the Authority was, immediately before his appointment, an officer of the Public Service, his service as an officer of the Authority,

shall be counted as service in the Public Service for the purpose of determining his rights, if any, in respect of -

- (i) leave of absence on the grounds of illness; and
- (ii) furlough, or pay in lieu of furlough, including pay to dependents on the death of the officer.

### **112. EFFECT OF TRANSFER OF ASSETS AND LIABILITIES.**

No stamp duty or goods and services tax is payable on the transfer of any asset or liability from the Public Service to the Authority under this Act.

### **113. INAUGURAL APPOINTMENT OF SCREENING COMMITTEE.**

(1) For the purposes of appointing inaugural non-*ex officio* Board members and the Managing Director, the inaugural five members of the Screening Committee, where at least one member shall be a female, shall be appointed amongst the officers of the Authority by the National Executive Council.

(2) The appointment under Subsection (1) shall be made within three months from the date that this Act comes into operation.

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(3) This section shall not apply after the full inaugural Board is established and the inaugural Managing Director is appointed.

**114. REGULATIONS.**

Without limiting specific powers to make regulations provided elsewhere in this Act, the Head of State acting on advice of the Minister may make regulations for the purposes of prescribing anything under this Act.

**SCHEDULE.**

**OATH AND AFFIRMATION OF OFFICE.**

**Oath.**

I, ....., do swear that I will give good and faithful service as a member of the Board of the Climate Change and Development Authority of Papua New Guinea.

So help me God!

**Affirmation.**

I, ....., do solemnly and sincerely promise and declare that I will give good and faithful service as a member of the Board of the Climate Change and Development Authority of Papua New Guinea.

I hereby certify that the above is a fair print of the *Climate Change (Management) Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

  
20 NOV 2015

I hereby certify that the *Climate Change (Management) Act 2015* was made by the National Parliament on 28 July 2015, by an absolute majority in accordance with the *Constitution*.

Acting Speaker of the National Parliament.

  
20 NOV 2015