



Tuvalu

**ENVIRONMENT PROTECTION
(ENVIRONMENTAL IMPACT
ASSESSMENT) AMENDMENT
REGULATIONS 2018**



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MADE UNDER SECTION 39 OF THE ENVIRONMENT PROTECTION
ACT 2008

Commencement [4 July 2018]

1 Citation and commencement

This Regulation may be cited as the Environment Protection (Environmental Impact Assessment) Amendment Regulations 2018 and comes into effect on the day it is approved.

2 Interpretation

Regulation 2 is amended by inserting additional terms and their definitions in alphabetical order.

“**EIA Checklist**” means the Checklist for the environmental impact assessment issued by the Department;

“**environmental management plan**” means an action plan for the implementation of mitigation measures identified in the full environment impact assessment and required under regulation 12A;

“**induced environmental impacts**” means impacts on the environment that are anthropogenic in nature and not occur naturally;

“**scoping**” in relation to a development proposal means the process set out in regulation 6C to determine the scope of the environmental impact assessment report in order to ensure that the report addresses all relevant issues and concerns arising out of the development proposal;

“screening” in relation to a development proposal means the process set out in regulation 6B to determine whether the development is subject to an environmental impact assessment;

“Terms of Reference” means the guidelines issued by the Department to inform the proponent of the requirements for the preparation of the environment impact assessment report;

“vulnerable groups” refers to people who are landless or displaced as a result of natural or anthropogenic environmental impacts and where the context requires, it also refers to the elderly, children, youth, women and girls.

3 Amendment to Regulation 4

Regulation 4(2) is amended by inserting in sub-regulation (2) (d) after the words “an assessment of social and economic well-being of communities in Tuvalu” the words “including impacts on vulnerable groups and consideration of gender issues such as women empowerment.”

4 Regulation 6A inserted

(1) Regulation 6 is amended by inserting a new regulation 6A:

“6A Process for environmental impact assessment

(1) The environmental impact assessment process shall be undertaken as follows:

- (a) notification of the proposed development activity by the proponent to the Department through completing and lodging the Notification and Application for Development Approval as required under sub-regulation 6(1)(a);
- (b) screening by the Department in accordance with regulation 6B;
- (c) scoping by the Department in accordance with regulation 6C;
- (d) submission of the development approval application by the proponent in accordance with sub-regulation 6D;
- (e) review of the development approval application either by the Department or an external agency or consultant in accordance with regulation 14A or regulation 15;
- (f) public consultations by the proponent as determined by the Minister under regulation 16;
- (g) referral of a full assessment by the Department to the Environmental Impact Assessment Task Force for consideration and recommendation in accordance with regulation 18;
- (h) decision making by the Minister based on the recommendation of the Environmental Impact Assessment Task Force;

- (i) monitoring of the development by the Department in accordance with regulations 14 and 23; and
 - (j) enforcement by the Department of any conditions imposed with a development consent in accordance with regulation 23.
- (2) The environmental impact assessment process must be completed within thirty (30) working days after receiving the development proposal.”

5 Regulation 6B inserted

Regulation 6 is amended to insert a new regulation 6B:

“6B Screening

(1) The Department must screen any development proposal registered using the EIA Screening Checklist, issued by the Department, to identify potential environmental and social safeguard risks and impacts so as to determine which category to assess the proposed development activity under:

(a) Category A – development activities that will result in broad, diverse and potentially irreversible adverse impacts, major resettlement, conversion of natural habitats and involves the use of hazardous materials;

(b) Category B – development activities that are geographically limited with readily identified adverse impacts that can be mitigated;

(c) Category C – development activities with negligible or minimal potential adverse impacts are easily mitigated and are exempted under regulation 5.

(2) The screening must also determine the type of report required to be prepared for each category of development such as:

(a) full environmental impact assessment for category A; and

(b) preliminary assessment report for category B.

(3) The Department is to advise the proponent about the category and required report and request that an official development consent application be lodged.

(4) The Department must complete the screening process within two (2) working days after registration.”

6 Regulation 6C inserted

Regulation 6 is amended to insert a new regulation 6C:

“6C Scoping

(1) The Department must undertake a scoping exercise where the screening process assesses a development activity either as a Category A or B.

(2) In carrying out a scoping exercise, the Department must:

- (a) identify the significant environmental and social impacts that the proposed development may cause and identify which of those impacts are likely to be extreme and therefore require detailed investigation;
 - (b) consult with the people who may be affected by the proposed development, either directly or indirectly; and
 - (c) consult with the people who may have special knowledge of the proposed development.
- (3) The information collected under sub-regulation (2) shall inform the Terms of Reference which the proponent must develop in accordance with the EIA guidelines issued by the Department.
- (4) The scoping process must be completed within ten (10) working days.”

7 Amendment to Regulation 8

(1) Regulation 8 is amended by inserting additional requirements in sub-regulation 8(2) (g) and to now read as:

“**8 (2) (g)** an indication of the measures that the proponent intends to take, to address social safeguards such as:

- (i) employment and labour opportunities;
- (ii) housing supply and demand;
- (iii) water and sanitation;
- (iv) public health and safety;
- (v) involuntary resettlement;
- (vi) cultural heritage and resources of cultural, archaeological, environment or historical value;
- (vii) climate change impact and resilience;
- (viii) disaster risks reduction;
- (ix) marginalised and vulnerable groups; and
- (x) gender inequalities including women empowerment; and

(2) Regulation 8 is amended by inserting additional requirements in sub-regulation 8 (2) (h) and to now read as:

“**8 (2) (h)** a completed environmental management plan prepared in accordance with regulation 12A and any other guidelines issued by the Department.”

8 Amendment to Regulation 11

Regulation 11 is amended by substituting the reference to Part IV with Part III to correct the reference to the relevant Part III of these Regulations that provides for full assessment.

9 Amendment to Regulation 12

Regulation 12 is amended by:

(a) inserting a new sub-regulation 12 (3)(d)(v) – “assessment of all foreseeable positive impacts” and moving the word “and” to the end of the existing sub-regulation 12 (3)(d)(iv);

(b) inserting the correct numbering to sub-regulations 12(3)(ix) and 12(3)(g) respectively;

(c) substituting the word “may” with the word “shall” in regulation 12(3)(f);

(d) adding to the end of sub-regulation 3(f)(vi) the words “safeguards for the affected community such as:

(i) employment and labour opportunities for the affected people;

(ii) housing supply and demand;

(iii) water and sanitation services;

(iv) public health and safety;

(v) involuntary resettlement must be avoided or minimised;

(vi) cultural heritage and resources of cultural, archaeological, environment or historical value to be safeguarded;

(vii) climate change impact and resilience measures in place;

(viii) disaster risks reduction;

(ix) gender inequalities;

(x) marginalised and vulnerable groups to be protected; and

(xi) women empowerment.”

(e) adding to sub-regulation 12(3)(f) a new provision (ix) – “a description of the induced environmental impacts.”;

(f) re-numbering the paragraph after the new sub-regulation (3)(f)(ix) as (3)(f)(x), (3)(f)(xi) and (3)(f)(xii) respectively;

(g) substituting the numbering of the second sub-regulation (3)(f) with (3)(g); and

(h) substituting the numbering of the second sub-regulation 12(3) with sub-regulation 12(4).”

10 Regulation 12A inserted

Regulation 12 is amended by inserting a new regulation 12A;

“12A Environmental Management Plan

(1) All development projects, including government development projects, that are subject to a preliminary and full environmental assessment report must submit an environmental management plan in accordance with sub regulation (2) and in compliance with EIA guidelines issued by the Department.

(2) Unless otherwise directed by the Director, an environmental management plan shall contain the following particulars;

- (a) mitigation measures that;
 - (i) identify any significant environmental impact that cannot be avoided;
 - (ii) identify appropriate mitigation measures to minimise any significant environmental impacts arising from the preferred alternative; and
 - (iii) recommend any proposed conditions.
- (b) reporting requirements;
- (c) capacity building and training;
- (d) performance indicators;
- (e) implementation schedule;
- (f) cost estimates;
- (g) actions and procedures for responding to environmental or social emergencies arising from the development; and
- (h) an environmental and social mitigation and monitoring plan.

(3) The implementation of the environment management plan will be the responsibility of the proponent and it will be monitored by the EIA Officer in accordance with regulation 23.”

11 Regulation 14A inserted

Regulation 14 is amended by inserting a new regulation 14A;

“14A Internal Review

(1) In undertaking a review, the Department must check the development approval application against the EIA Report Review guidelines issues by the Department.

(2) The Department may, as part of its review:

- (a) refer the development approval application to relevant agencies and stakeholders known to have, or to be likely to have, statutory or functional interest in the application, for their written comments; and

(b) specify such period for the receipt of any written comments as is reasonable in the circumstance, taking into account the nature and scale of the application and its associated documentation.

(3) The relevant agencies and stakeholders to which the review is referred to, must submit their written comments to the Department not more than five (5) working days after receipt of the application.

(4) The Department must complete its own review within ten (10) working days after receipt of the written comments from the relevant agencies and stakeholders.

(5) The Department must prepare a Review Package that consist of the:

(a) development approval application which includes the relevant preliminary environment assessment report or the full environmental impact report;

(b) consultation report including written review comments from the relevant agencies and stakeholders; and

(c) EIA Officer's Review Report to assess whether the application complies with the Terms of Reference and makes a recommendation for either an approval with specified conditions or a decline with the reasons.

(6) The Review Package must be submitted to the Task Force, at least five (5) working days prior to its regular monthly meetings, for a decision on the recommendation from the EIA Officer."

12 Amendments to Regulation 16

Regulation 16 is amended as follows:

(1) Substituting the word "may" with "shall" in sub-regulation 16(1);

(2) Inserting the words "the identified affected groups or communities and the relevant stakeholders that must be consulted" after the words "consultation process," and before the words "and the reasons for that determination", in sub-regulation 16(3);

(3) Inserting the words "with a Consultation Report submitted to the Department" after the words "...and shall be completed" and before the words "before a decision....." in sub-regulation 16(4);

(4) Substituting the words "this regulation" with "these regulations" in sub-regulation 16(4);

(5) Adding a new sub-regulation (6) – "The proponent must carry out the public awareness and consultations with the affected community, Government and community stakeholders during the environmental impact assessment process and the implementation of the development, where it is necessary to address any environmental concerns that arise before and after approval is granted."

13 Amendment to Regulation 18

Regulation 18 is amended by deleting the words “(if any)” after “public consultations”.

14 Amendment to Regulation 21

Regulation 21 is amended by adding a new sub-regulation (3);

“**21 (3)** – “The Minister must take into account a recommendation made by the Task Force when considering a decision to approve or decline the development application.”

15 Amendments to Regulation 23

Regulation 23 is amended by inserting a new-regulation (3):

“**23 (3)(a)** – The EIA Officer, who may be assigned as the Compliance Monitoring and Enforcement Officer for a development, is responsible for monitoring and evaluating the overall performance of the development in accordance with the guidelines issued by the Department.

(b) The EIA Officer will liaise with the Proponent’s Environment Specialist Consultant or ESC who is responsible for the supervision and monitoring of the implementation of the environment management plan for any information, reporting and compliance requirements.

(c) During the term of the development project, the ESC must:

(i) complete and submit the appropriate forms such as Mitigation Compliance and Inspection Monitoring Form, Emissions/Ambient Monitoring Plan and Form, Unanticipated Impact/Significant Incident/Accident Notice, Monthly Summary Environmental Non-Compliance/Incident Notice and Complaints Log;

(ii) schedule site visits, inspection of operations, and conducting of testing for measurement of environmental parameters; and

(iii) submit on a weekly basis, monitoring reports with the appropriate forms filled in and completed.

(d) At the completion of the development project and after decommissioning and rehabilitation phase, the ESC must prepare a Final Audit Report to be submitted to the Department for referral to the EIA Task Force.

(e) The EIA Task Force must review the Final Audit Report and:

(i) if it considers the report inadequate, the proponent is notified and requested to address the concerns before resubmitting the report for a second review;

(ii) if it approves the report, the Minister will be notified to issue an approval for final payments to be released to be proponent.

(f) At the completion of the development, the EIA Officer must prepare a Development Evaluation Report to be submitted to the EIA Task Force.

(g) All monitoring reports submitted to by the Department must be disclosed to the public.”

16 Amendment to Regulation 25

Regulation 25 is amended by adding a new sub-regulation (1) (d) – “fails to implement the environmental management plan as required under regulation 12A.”

17 Part VII inserted

A new Part VII is inserted after Regulation 25 to provide for a grievance redress mechanism:

“PART VII – GRIEVANCE REDRESS MECHANISM

26 Appeal by a proponent

(1) A proponent who disagrees with a decision of the Department may appeal to the Minister, and if there is any further disagreement, an appeal to the National Environment Council follows.

(2) An appeal under this regulation must be filed within twenty-one (21) days after receipt of the decision in question.

(3) After hearing the appeal, the person or body appealed to, may confirm, amend, or cancel the decision appealed.

(4) All costs associated with an appeal are borne by the proponent.

27 Complaint by affected person

(1) Any person affected by the development, directly or indirectly, may lodge a complaint with the Department either in person or by telephone or by letter in the Tuvaluan or English language.

(2) Any affected person who disagrees with the decision of the Director may appeal to the Minister, and if there is any further disagreement, an appeal to the National Environment Council follows.

(3) The EIA Officer must record in the Complaints Register the following particulars for a complaint:

(a) the name of the complainant (or representative like the Kaupule), contact details, and the island or area affected;

(b) description of the development activity complained of including the site of the development and the name of the developer;

(c) description of the harm of non-compliance by the proponent with the approval, and include photographs, documents or other evidence to support the complaint;

(d) description of the safeguard standard or mitigation measure allegedly breached.

(4) The Director or Minister or National Council may take any of the following actions to address a complaint:

(a) inspect the site of the development complained of to confirm the complaint;

(b) call a meeting of the complainant and the developer to discuss the issues complained of with the objective of finding a solution which may include modification to the development proposal and environmental and social mitigation and the environment management plans;

(c) issue a Precautionary Notice and require the developer to address the issue complained of within a specified period of time;

(d) issue a Notice to Cease Activity and require the developer to address the issue complained of immediately.

(5) The Department must record all responses to the complaints and monitor the complaint until it is addressed.”