



No. 6 of 2021.

*National Energy Authority Act 2021.*

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No.                      of 2021.

AN ACT

entitled

***National Energy Authority Act 2021.***

Being an Act to regulate the generation, transmission, distribution and retailing of the renewable and non-renewable energy, including -

- (a) overseeing the administration and enforcement of laws and regulations and policies governing the energy industry; and
  - (b) receiving and collecting levies, fees, tariffs and other charges; and
  - (c) responsibility for energy research and development to implement the energy policy and law; and
  - (d) approval of the corporate policies of the subsidiary companies and affiliate entities; and
  - (e) administering the National Electrification Trust Fund,
- and for related purposes,

MADE by the National Parliament to come into operation, not less than six months after the date on which the Act comes into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(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 freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of employment conferred by Section 48; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51; and
- (e) the right to freedom of movement conferred by Section 52,

is a law that is made for the purpose of giving effect to the public interest in public order, public safety and public welfare.

(2) For the purposes of Sections 29 and 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

(3) National interest includes, but is not limited to -

- (a) downstream activities relating to oil, gas, coal and geothermal; and
- (b) regulating of generation, transmission, distribution and retailing of energy from renewable and non-renewable energy; and
- (c) benefit-sharing arrangements between the investors, national government, provincial governments and landowners relating to development of all energy resources.

**2. INTERPRETATION.**

In this act, unless the contrary intention appears -

- “agent” means a person performing an act or task on behalf of and under specific direction and control of the National Energy Authority;
- “annual electricity consumption level” means a level of consumption of electricity determined in accordance with regulations;
- “Appeals Panel” means the Panel established under Section 42;
- “assessable income” means all the income a person earns in a year which has been taxed;
- “authorised officer” means a person appointed under Section 91 as an authorised officer;
- “Authority” means the National Energy Authority;
- “biomass” means organic matter used as fuel, in a power plant for the generation of electricity;
- “Board” means National Energy Authority Board established under Section 13;
- “Board Secretary” means Secretary to the National Energy Authority Board appointed under Section 23;
- “Chairman” means Chairman of the National Energy Authority Board;
- “Commission” means the Commission established by the *Independent Consumer and Competition Commission Act 2002*;
- “condition” includes a limitation or restriction or requirement imposed on a licence, permit or authorisation or approval or decision;
- “contravention” includes a failure to comply;
- “Council” means the local-level government area as defined under the *Organic Law on Provincial Governments and Local-level Governments*;
- “customer” means a person who has a supply of electricity available from a transmission or distribution or retail network for consumption by that person and includes -
  - (a) the occupier for the time being of a place to which electricity is supplied; and
  - (b) where the context requires, a person seeking an electricity supply; and
  - (c) a person of a class declared by regulation to be customers;
- “Department” means the former department responsible for energy matters;
- “Deputy Chairman” means Deputy Chairman of the National Energy Authority Board;
- “disconnect” means a procedure to interrupt or discontinue the electricity supply to a customer or an electricity user;
- “economic regulatory powers” mean the Authority’s powers to fix tariff, approve access to transmission and distribution power lines, approve power purchase agreements and collect revenue and other powers prescribed by regulations;
- “electric line” means a wire, conductor or other means used for the purpose of conveying, transmitting or distributing electricity, including -
  - (a) any casing, coating, covering, tube, pipe, pole, post, frame, bracket or insulator enclosing, surrounding or supporting such a line, or any part of such a line; and
  - (b) any apparatus connected with such a line for the purpose of conveying, transmitting or distributing electricity;
- “electrical contractor” means a company, association or body of persons trading as an electrical contractor which is the holder of an electrical contractor’s licence; and
- “electrical contractor’s licence” means an electrical contractor’s licence issued under Section 102;
- “electrical equipment” means an electrical appliance or wire, a fitting, equipment or accessories beyond an electrical outlet at which fixed wiring terminates;
- “electrical installation” means a set of wires and associated fittings, equipment and accessory installed in a place for the conveyance, control, measurement or use of electricity that is, or is to be, or has been, supplied for consumption in the place, including anything declared by regulation to be or form part of an electrical installation, but does not include -

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- (a) electricity infrastructure owned or operated by an electricity entity; or
- (b) any wires, fittings, equipment or accessories connected to and beyond any electrical outlet at which fixed wiring terminates (other than any outlet used to connect sections of fixed wiring); or
- (c) anything declared by regulation not to be or form part of an electrical installation;

“electrical installation” means any appliances, wires, fittings or other apparatus placed in, on, under or over any premises and used for, or for purposes incidental to, the conveyance, control or use of electricity supplied or intended to be supplied by the State, or an electricity undertaker, whether or not the appliances, wires, fittings or apparatus are supplied by the person contracting or undertaking to supply them or it, and includes additions, alterations and repairs to any such appliances, wires, fittings or apparatus, but does not include -

- (a) an electricity supply main or service line of the State, or an electricity undertaker; or
- (b) any appliance, wire, fitting or apparatus -
  - (i) that is connected to and beyond any electrical outlet socket installed for the purpose of connecting portable electrical appliances, fittings and apparatus; and
  - (ii) at which fixed wiring terminates; or
- (c) any appliance, wire, fitting or apparatus that is placed in, on, under or over any premises owned or occupied by the State, or an electricity undertaker and that -
  - (i) is not used for the consumption of electricity on those premises; or
  - (ii) is not used solely for purposes incidental to the conveyance or control of electricity so consumed; or
- (d) any electrical installation about a mine;

“electrical wiring work” means the actual physical work of installing an electrical installation;

“electrician” means a person, other than an electrical contractor, engaged in electrical wiring work;

“electrician’s licence” means an electrician’s licence issued under Section 59;

“electricity” includes electric current, electrical energy or any like form of energy occurring in certain particles producing a supply of electric current;

“electricity entity” means a person licensed under Part III to carry on operations in the electricity supply industry and includes (where the context requires) a person who has been licensed to carry on operations in the electricity supply industry under this Act but whose licence has been suspended or cancelled or has expired;

“electricity infrastructure” means -

- (a) electricity generating plant; and
- (b) power lines; and
- (c) substations for converting, transforming or controlling electricity; and
- (d) equipment for metering, monitoring or controlling electricity; and
- (e) any wires, equipment or other things (including tunnels and cavities) used for, or in connection with, the generation, transmission, distribution or supply of electricity; and
- (f) anything declared by regulation to form part of electricity infrastructure, but does not include anything declared by regulation not to form part of electricity infrastructure;

“electricity inspector” means a person, appointed by the Minister in accordance with the conditions set out in a contract of employment, to exercise powers under Section 98;

“electricity retailer” means -

- (a) a person who is the holder of an electricity retailing licence or permit under this Act or regulations or another electricity law of Papua New Guinea; and
- (b) an exempt retailer or seller of electricity is a person exempt by regulation within the meaning of such regulation;

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- “electricity supply industry” means an industry involved in the generation, transmission, distribution, and retailing or supply or sale of electricity or other operations of a kind prescribed by regulation;
- “electricity undertaker” means a person, firm or company that is licensed under Part IV, Division 1, to carry on operations in the electricity supply industry and includes (where the context requires) a person, firm or company who or which has been licensed to carry on operations in the electricity supply industry under Part IV, Division 1, whose licence has been suspended or cancelled or has expired;
- “employee” means a permanent public servant or a casual employee;
- “energy” means power derived from the utilisation of physical or chemical resources, to provide light and heat or to work machines;
- “energy production levy” means levy imposed on generation of a unit of electricity generated;
- “energy resources” means undeveloped natural energy such as oil, gas, coal, hydro, solar, wind, geothermal, biomass, tidal, ocean, etc.;
- “fossil fuels” means hydro-carbon based fuels used as feed stock for generators to produce electricity;
- “generation of electricity” means production of electricity through the operation of any kind of electricity generating plant utilising any type or form of energy source, the operation of any kind of electricity generating plant and all incidental and related operations, but does not include anything declared by regulation not to be generation of electricity;
- “install” includes place;
- “land” includes -
- (a) an estate or interest in land (including an easement); or
  - (b) a right or power over or in respect of land;
- “licence” means an instrument signed by the Minister authorising a person to generate, transmit, distribute or retail electricity;
- “licensee” means holder of a licence;
- “LPG” means Liquidified Petroleum Gas;
- “Managing Director” means the Chief Executive of the National Energy Authority;
- “Minister” means the Minister responsible for energy matters;
- “National Content Forum” means the forum convened by the Minister under Section 80 for the discussions on benefit sharing arrangements and participation by the National Government and affected Provincial Governments, District Development Authorities, Local-level Governments, landowners and Papua New Guinea citizens and citizen companies;
- “national electricity law” means this Act and regulations and codes and other statutory instruments made under this Act;
- “National Electrification Roll-Out Plan” means the national plan approved by the National Government to be implemented in order to meet the national objective of electricity access to 70 percent of Papua New Guinea households by 2030;
- “National Energy Policy 2017 - 2027” means the overarching policy document approved by the National Executive Council on the 1<sup>st</sup> of February 2018, containing policies for the development of the energy sector;
- “network licensee” means an employee of a distribution network licensee;
- “network services” means -
- (a) the transmission and distribution of electricity between electricity entities or undertakers and from electricity entities or undertakers to customers (including connection to a transmission or distribution network); and
  - (b) controlling and regulating the quality of electricity;

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- “non-renewable energy” means certain petroleum products which can be utilised for power generation, transportation, heating, cooling and lighting;
- “occupier”, of land or a place, means a person who has or is entitled to possession or control of the land or place;
- “operations” includes activities;
- “Panel” means the Appeals Panel established under Section 42;
- “permit” means an authorisation to engage in energy activities allowed by regulations;
- “petroleum” is as defined by the *Oil and Gas Act 1998*;
- “power line” means -
- (a) a set of cables for the transmission or distribution of electricity and their supporting or protective structures, conduits and equipment; and
  - (b) associated equipment for the transmission or distribution of electricity, but does not include a telecommunications cable or associated equipment;
- “Power Purchase Agreement” means an agreement between a supplier and a purchaser of power;
- “power system” means a system for the generation, transmission and distribution of electricity or a part of such a system;
- “prescribed person” means an employee of a licensed electricity undertaker under Part III, Division 1;
- “private land” means -
- (a) freehold land title or other alienated land; or
  - (b) land occupied under a lease or licence from the State; or
  - (c) land dedicated to a particular purpose and placed under the care, control and management of any person (whether or not that person is a Minister, agency or instrumentality of the State);
- “private power line” means any private power line other than an authorised public power line;
- “project” means a generation, transmission, distribution or retailing of electricity project operated under a licence issued by the Minister in accordance with this Act;
- “public authority” means a government-owned entity;
- “registered company auditor” means a registered company auditor as defined in Section 2 of the *Accountants Act 1996*;
- “Registrar of Licence” means the Registrar of Licence appointed under Section 77;
- “Registrar of Titles” means the Registrar of Titles appointed under the *Land Registration Act 1981*;
- “regulations” means any regulations made under this Act;
- “renewable energy” means energy harnessed from natural energy sources such as water, sun, wind, ocean, biodegradable matter and other sources but does not include fossil fuel;
- “retail” in relation to electricity, means the sale of electricity;
- “retailing of electricity” means the sale of electricity to customers but does not include an activity declared by regulation not to be retailing of electricity;
- “supply of electricity” means the delivery of electricity to a customer;
- “tariff” means the charges or rates paid by a consumer for electric power supplied by the producer or supplier of electricity;
- “tariff review” means the review on tariff to be undertaken every five years;
- “technical regulatory powers” mean the powers of the Authority relating to inspection, safety, technical standards and enforcement of these powers;
- “telecommunications” means the transmission of telephonic, radio, computer, television or other electronic or digital signals;
- “this Act” includes the regulations;

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“transmission or distribution network” means -

- (a) the whole or a part of a system for the transmission or distribution of electricity, but does not include anything declared by regulation not to be a transmission or distribution network or part of a transmission or distribution network; and
- (b) a reference in this Act to power line, a network, infrastructure or other property of an entity includes a reference to a power line, a network, infrastructure or other property that is not owned by the entity but is operated by the entity;

“undertaker” means the developer, owner and operator of a power generation, transmission and distribution project;

“works” includes electric lines and any buildings, machinery, equipment (including substations and transformers), engines, works, matters and things used for, or in connection with, the generation or supply of electricity.

### **3. ACT BINDS THE STATE.**

This Act binds the State.

### **4. APPLICATION OF THIS ACT.**

This Act applies to a person in Papua New Guinea who carries on the business of -

- (a) engaging in downstream oil, gas, coal and geothermal activities; or
- (b) generating, transmitting, distributing and retailing of energy products and services; or
- (c) importing and exporting energy products, goods and services; or
- (d) storing and selling -
  - (i) petroleum products such as liquefied petroleum gas, diesel, petrol, kerosene and zoom; or
  - (ii) gas emanating from production of coal; or
  - (iii) renewable energy and to all other dealings in energy services and products which may be regulated by the Authority.

### **5. ROLES AND FUNCTIONS OF THE MINISTER.**

The Minister is responsible for policy development, through the Authority, to -

- (a) ensure the fulfillment of the responsibilities of the State regarding the sustainable development and use of all energy resources in a manner that is cost efficient and beneficial, consistent with the National Energy Policy 2017 - 2027 and the National Goals and Directive Principles of the *Constitution*; and
- (b) advise the National Executive Council regarding the development and implementation of the National Energy Policy and specific energy source, energy technology and related policies and plans based on the advice and recommendations of the Authority; and
- (c) advise the National Executive Council regarding the implementation of specific policies relating to import and use of foreign energy resources, products and technologies; and
- (d) give directions to the Authority on energy policy matters in accordance with the *Constitution*, this Act and other laws; and
- (e) perform other functions and roles as provided under this Act.

### **6. GENERAL POWERS OF THE MINISTER.**

(1) The Minister is responsible for -

- (a) the establishment of an energy entity, body or organisation and the development of policy, laws and regulations for the entity, body or organisation; and
- (b) the formulation, implementation and review of the policy relating to the energy sector; and

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- (c) the appointment of Board members of the Authority; and
- (d) the Managing Director of the Authority; and
- (e) the imposition of levies under this Act; and
- (f) formulation and co-ordination of a disaster preparedness plan for the energy sector; and
- (g) policy relating to development, financing, procurement industry standards and management of strategic renewable and certain non-renewable energy resources in accordance with the *Public Finances (Management) Act 1995* and *Public Moneys Management Regularisation Act 2017*; and
- (h) the performance of such other functions as are provided under this Act or any other law; and
- (i) advise the Head of State to make regulations and by-laws under this Act.

(2) In the case of an emergency, the Minister may, in consultation with the Authority, exercise such powers and give such directions as may be necessary in the public interest, for the proper continuance or resumption of the production or supply of energy.

(3) The Minister may, from time to time, give directions in writing to the Authority with respect to the policy to be developed or implemented by the Authority.

### **PART II. - THE NATIONAL ENERGY AUTHORITY.**

#### *Division 1. - Establishment of the Authority.*

#### **7. ESTABLISHMENT OF THE AUTHORITY.**

(1) The National Energy Authority is established.

(2) The Authority -

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) can sue and be sued in its corporate name; and
- (d) may take, accept, purchase, acquire, hold, charge or dispose of movable property and immovable property; and
- (e) may borrow money through the Department of Treasury; and
- (f) is responsible for policy advice to the Minister as required by this Act or any other law or policy; and
- (g) must perform functions or acts for the furtherance of its corporate interests and objectives provided for under this Act.

(3) Except as otherwise provided in this Act, the Authority must be independent in the performance of its functions, duties and exercise of its powers, and must not be subject to the direction or control of any person or Authority.

#### **8. PURPOSE OF THE AUTHORITY TO BE PUBLIC PURPOSE.**

The purposes of the Authority are a public purpose within the meaning of any law.

#### **9. AUTHORITY TO COMPLY WITH POLICY DIRECTIONS.**

(1) In the exercise of the Authority's powers and functions, the Authority must -

- (a) act in accordance with the requirements of any policy and requirements set out in any energy legislation; and

- (b) have regard to the overarching National Energy Policy 2017 - 2027 and energy implementation plans of the government; and
- (c) comply with any directions relating to policy given to it in writing signed by the Minister.

(2) If the Authority is unable to act on a direction issued by the Minister under Subsection (1)(c) or a direction to refrain from doing a particular act or bring about a particular result for the personal benefit of a particular person, the Authority must provide reasons to the Minister and after the Minister reviews the reasons provided by the Authority, the Minister must make a decision which may be upheld by the Authority.

#### **10. FUNCTIONS OF THE AUTHORITY.**

The functions of the Authority are -

- (a) to perform energy industry regulatory functions including recommending of electricity and energy regulations, codes and guidelines; and
- (b) to review the National Energy Policy 2017 - 2027 as and when required and formulate specific policies for various renewable and non-renewable energy sources; and
- (c) to prepare implementation plans for the National Energy Policy 2017 - 2027 and specific plans for various renewable and non-renewable sources approved by the Government; and
- (d) to develop programs for the implementation of specific policies and plans including the National Electrification Roll-Out Plan; and
- (e) to recruit staff for technical and operational functions of the Authority; and
- (f) to develop and maintain a viable workforce of professional and technical personnel qualified and competent to discharge the functions and duties required of the Authority; and
- (g) to prepare annual budgets and audits for the Board's approval; and
- (h) to co-ordinate with provincial and local-level governments and district development authorities and other statutory authorities and private sector agencies to foster, manage and monitor energy resource development strategies and programs within the country; and
- (i) to perform such other functions and duties as may be conferred on it by this Act or any other law; and
- (j) to establish and manage an Electricity Trust Fund for the National Electrification Roll-Out Plan; and
- (k) to develop and implement community service obligations programs in collaboration with Government and Non-Government Organisations; and
- (l) to review Papua New Guinea's energy needs every five years.

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

(1) The Authority has, in addition to the powers directly conferred on it by this Act and any other law, power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

(2) The Authority may establish a secretariat, panel, committee, sub-committee or any relevant structure for the purposes of Subsection (1).

#### **12. AUTHORITY NOT A DEPARTMENT.**

For the avoidance of doubt, the National Energy Authority is not a department.



*Division 2. - National Energy Authority Board.*

**13. NATIONAL ENERGY AUTHORITY BOARD.**

The National Energy Authority Board is established.

**14. FUNCTIONS OF THE BOARD.**

- (1) The Board must -
  - (a) approve the plans and proposals developed and presented by the Authority; and
  - (b) approve budgets to support the plans and programs developed and submitted by the Authority; and
  - (c) appoint and terminate senior management of the Authority; and
  - (d) approve the terms and conditions of the Managing Director and Deputy Managing Director in accordance with the *Salaries and Remuneration Commission Act 1988*; and
  - (e) approve the terms and conditions for staff, in accordance with the *Salaries and Conditions Monitoring Committee Act 1988*; and
  - (f) implement any directives of the Government that are consistent with this Act or other Acts applicable to other directives.

**15. MEMBERSHIP OF THE BOARD.**

- (1) The Board consists of the following *ex-officio* members:
  - (a) the Managing Director of the National Energy Authority, or an alternate at the Deputy Managing Director level; and
  - (b) Secretary of the Department of Treasury, or an alternate at the Deputy Secretary level; and
  - (c) Secretary of the Department of National Planning and Monitoring, or an alternate at the Deputy Secretary level.
- (2) The Board must include two non *ex-officio* members appointed in accordance with Part IV of the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*, as follows:
  - (a) one non *ex-officio* member with experience in the energy industry; and
  - (b) one non *ex-officio* member nominated by the Minister.

**16. ELIGIBILITY TO BE A MEMBER OF THE BOARD.**

A person must not be appointed as a Board member if he -

- (a) is bankrupt or has applied to his personal benefit monies contrary to law; or
- (b) is convicted by a Court of competent jurisdiction or committed to stand trial in the National Court of Justice; or
- (c) is prohibited from being a director or member or manager or promoter of, or from taking part in the administration of a company under any law; or
- (d) does not have the mental capacity under the *Mental Health Act 2015*; or
- (e) is more than 70 years old; or
- (f) is not ordinarily resident in the country; or
- (g) is a non *ex-officio* appointee, who does not have sufficient energy industry knowledge and experience.

**17. FEES AND ALLOWANCES OF BOARD MEMBERS AND ALTERNATE MEMBERS.**

(1) As soon as practicable after the coming into operation of this Act, the Board must recommend to the Minister appropriate fees to be paid to non *ex-officio* Board members in accordance with the *Boards (Fees and Allowances) Act 1955*.

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(2) The Authority must pay to a member of the Board reasonable travelling allowance and other expenses incurred for carrying out their duties under this Act.

(3) An alternate, other than an *ex-officio* member, shall be paid by the Authority a fee and any other expenses applicable when attending a board meeting.

### **18. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) The Minister must -

(a) nominate two independent Board members to be the Chairman and Deputy Chairman respectively; and

(b) submit their names to the National Executive Council for endorsement and for the National Executive Council to advise the Head of State to appoint the Chairman and the Deputy Chairman respectively.

(2) The Chairman, Deputy Chairman and Board members hold office until -

(a) the expiration of their respective terms; or

(b) they cease to be a member of the Board,

whichever occurs first.

(3) The Chairman and Deputy Chairman must not hold office for more than two consecutive terms.

(4) An *ex-officio* member must not be appointed as Chairman or Deputy Chairman of the Board.

### **19. LEAVE OF ABSENCE OF MEMBERS.**

(1) The Chairman may grant leave of absence to a member of the Board, other than the Deputy Chairman on such terms and conditions as the Chairman determines.

(2) The Board may grant leave of absence to the Chairman or Deputy Chairman on terms and conditions as the Board determines.

### **20. VACATION OF OFFICE BY MEMBERS OF THE BOARD.**

(1) A member of the Board, other than an *ex-officio* member, may resign by writing, signed by the member and delivered to the Authority.

(2) If a member of the Board, other than an *ex-officio* member -

(a) dies or becomes permanently incapable of performing his duties; or

(b) resigns under Subsection (1); or

(c) is absent, except with the written consent of the Board or is on leave of absence under Section 19 for three consecutive meetings of the Board; or

(d) does not comply with Section 19; or

(e) is not eligible under Section 16 to remain as member of the Board; or

(f) ceases to be an ordinary resident in the country; or

(g) commits an offence against this Act,

his appointment as a member of the Board is deemed to have been terminated with immediate effect and, he must cease to be a member of the Board.

**21. MINISTER'S INTENTION TO TERMINATE MEMBER'S APPOINTMENT.**

(1) The Minister, acting on the advice and recommendation of the Board, but not otherwise, may at any time, by written notice, inform a member of the Board (other than an *ex-officio* member) that he intends to terminate the member's appointment on the grounds of inefficiency, incapacity or misconduct.

(2) Within 14 days after receiving a notice under Subsection (1), the member must reply in writing to the Minister, who must consider the reply and may recommend to the National Executive Council to terminate the appointment by written notice to the member.

(3) Where the member does not reply in accordance with Subsection (2), the Minister may recommend to the National Executive Council to terminate the member's appointment by written notice.

**22. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy.

**23. SECRETARY OF THE BOARD.**

(1) The Board must appoint an employee of the Authority to be the Secretary of the Board in accordance with this Act.

(2) The Secretary of the Board must -

(a) be a practicing lawyer admitted to practice law with more than five years of law practice in Papua New Guinea; and

(b) be responsible for convening the meetings of the Board; and

(c) record minutes of all meetings; and

(d) perform other duties as directed by the Board.

**24. MEETINGS OF THE BOARD.**

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

(2) The Secretary must, not less than seven days, give written notification -

(a) to members of the Board, of the date, time and place of the meeting; and

(b) of the matters to be discussed at the meeting.

(3) Any irregularity in the notification to the members is waived where all members either attend the meeting without protest as to the irregularity or agree to the waiver.

(4) At a meeting of the Board -

(a) the Chairman and two other members constitute a quorum; and

(b) the Chairman, or in his absence the Deputy Chairman is to preside, and if both Chairman and Deputy Chairman are absent, the members present may appoint, from among their own number to be Chairman for that meeting; and

(c) subject to Paragraph (e), each member of the Board has one vote; and

(d) matters arising are to be decided by a majority of the votes of the members present and voting; and

(e) the person presiding has a deliberative, and if there is an equality of votes on any matter, also a casting vote.

(5) The Board must record and keep minutes of its meetings.

(6) The procedures of the Board are as determined by the Board.

**25. BOARD TO CONSIDER MANAGING DIRECTOR'S DISMISSAL.**

At the meeting of the Board at which there is to be consideration of the investigations, suspension or recommendation for dismissal of the Managing Director -

- (a) three members of the Board, other than Managing Director, constitute a quorum; and
- (b) the Managing Director must be given the opportunity to reply to allegations made against him before the Board makes a decision; and
- (c) no other business or matter may be transacted, considered or dealt with, at this meeting.

**26. DISCLOSURE OF INTEREST BY MEMBERS OF THE BOARD.**

(1) A member of the Board who has a direct or indirect interest in a matter considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Board.

(2) The disclosure of interest must be recorded in the minutes of the meeting and the member making the disclosure -

- (a) must not participate in any debate, deliberation, decision or vote in relation to the disclosed matter during the meeting or at any other meeting; and
- (b) is disregarded for the purpose of determining whether a quorum is present for the meeting or at any other meeting for the debate, deliberation, decision or vote in relation to the disclosed matter,

unless the Minister or the Board determine otherwise.

**27. COMMITTEES OF THE BOARD.**

(1) The Board may, from time to time, establish committees of the Board to advise the Board on matters that the Board considers necessary.

- (2) In establishing a committee, the Board may -
- (a) appoint such persons as it considers necessary; and
  - (b) specify the functions and procedures of the committee.

(3) A member of the committee may receive fees and allowances under the *Boards (Fees and Allowances) Act 1955* if the member is not -

- (a) a member of the Board; or
- (b) an employee of the Authority; or
- (c) an officer of the National Public Service.

**28. REPORTS.**

The Board must furnish reports relating to the functions of the Authority as requested by the Minister, from time to time.

*Division 3. - Managing Director and staff of the Authority.*

**29. MANAGING DIRECTOR.**

(1) There must be a Managing Director of the Authority.

(2) The manner and procedure for appointment, suspension, termination etc., of the Managing Director are as prescribed under the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

(3) The Managing Director is -

- (a) the Chief Executive Officer of the Authority; and
- (b) the Head of the staff of the Authority; and
- (c) responsible to the Board for the efficient carrying out of the functions of the Authority; and
- (d) responsible to the Minister for -
  - (i) performing the functions of the Authority in accordance with this Act; and
  - (ii) the agreements that are enforceable under this Act or under any other relevant Act the administration of which is the responsibility of the Authority; and
- (e) not subject to any ministerial direction on matters not related to the powers of the Minister provided for under this Act.

(4) The Managing Director is appointed for a term of four years on such terms and conditions as are determined by the Board and is eligible for re-appointment.

(5) The Managing Director may be terminated in accordance with their Contract of Employment.

(6) Any contract, arrangement or understanding under which the Managing Director would, but for this subsection, be entitled to any compensation or payment in respect of the termination of appointment other than as provided in Subsection (5) is void.

(7) The Managing Director or nominee must represent the Authority and the ministry at national and international forums to -

- (a) promote the country's good governance and prospective record; and
- (b) account for -
  - (i) the government's energy policies; and
  - (ii) the performance of the Authority and the energy industry.

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

(1) The Managing Director must -

- (a) be responsible to the Minister for the efficient implementation of the policies of the government in relation to energy and downstream matters in accordance with the laws governing the ownership and development of energy resources; and
- (b) be responsible to the Board for the general working and efficient conduct of the Authority and of its administrative, human resources and financial affairs in accordance with this Act and any directions from the Board, and any permitted policy directions given to the Authority by the Minister through the Managing Director; and
- (c) perform such other functions, powers and duties as are required of him under this Act or any other law, or as the Board may determine from time to time not contrary to law or policy.

(2) The Managing Director, in performing his functions or exercising any of his powers in relation to the -

- (a) administration; or

(b) human resource; or

(c) financial matters,

of the Authority, is responsible to the Minister and the Board, except as and when required for the performance of a function or exercise of a power under this Act or any other law governing energy resources and energy activities.

(3) The Managing Director may delegate all or any of his powers and functions to an officer of the Authority but not the power of delegation.

### **31. STAFF OF THE AUTHORITY.**

(1) The Managing Director must create an organisational structure of the Authority and recruit staff of the Authority in accordance with the procedures approved by the Board.

(2) The Managing Director may dismiss an employee of the Authority in accordance with approval of the Board.

(3) The Managing Director and the employees recruited under Subsection (1), constitute the Staff of the Authority.

(4) The Managing Director must direct and control the employees of the Authority.

(5) The Board must set the terms and conditions of staff of the Authority in accordance with the *Salaries and Conditions Monitoring Committee Act 1988*.

(6) The Staff of the Authority, including the Managing Director are not officers of the National Public Service.

(7) The Managing Director must submit a list of three nominees, at general managerial level, to the Board for appointment to the position of Deputy Managing Director, following a public advertisement for recruitment of a Deputy Managing Director.

### **32. CONTRACT OF EMPLOYMENT FOR MANAGING DIRECTOR.**

The Managing Director of the Authority is employed under a contract of employment in accordance with the *Salaries and Remuneration Commission Act 1988*, executed by the Chairman and the Managing Director and one other Board member.

### **33. CONSULTANTS.**

(1) The Authority may engage persons with suitable qualifications and experience as consultants.

(2) The engagement of a consultant must be on such terms and conditions as the Authority determines.

(3) The Managing Director's financial power is subject to the limit set by the Board to approve the engagement of contractors and consultants.

*Division 4. - Personal liability and damages.*

**34. PROTECTION FROM PERSONAL LIABILITY.**

No matter or thing done by a member of the Authority or any officer, employee or agent of the Authority, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting by his directions personally liable to any action, claim or demand whatsoever, except in cases of recklessness and negligence.

**35. LIABILITY OF THE AUTHORITY CAUSING DAMAGE OR INJURY.**

The provisions of this Act must not relieve the Authority of the liability to pay compensation or damages to a person for any injury to him, his property or any of his interests caused by the exercise of a power conferred by this Act or by the failure, whether wholly or partially, by the Authority or its employees or agents where such damages or injury is a result of negligence or recklessness.

**36. THE COMMON SEAL OF THE AUTHORITY.**

(1) The common seal of the Authority must be kept in the custody of the Board's Secretary and must not be affixed to any instrument or document except as authorised by the Authority.

(2) An instrument or a document issued under the common seal of the Authority must be authenticated under the hand of the Chairman of the Board, Managing Director or any other member of the Authority authorised by the Authority.

(3) The common seal of the Authority must be judicially and officially noticed when affixed to a document and duly authenticated, and unless and until the contrary is proved, any necessary order or authorisation by the Authority under this section must be presumed to have been duly given.

**37. DELEGATION BY THE AUTHORITY.**

The Authority may, by resolution generally or in a particular case, delegate to a committee of the Authority or to a member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

*Division 5. - Funds, audits, accounts of the Authority.*

**38. FUNDS OF THE AUTHORITY.**

(1) The funds of the Authority shall consist of -

- (a) monies lawfully appropriated in the National Budget by the National Parliament; and
- (b) such other monies from levies, fees and charges, as may be allowed by this Act or any other laws in force,

for the purpose of carrying out or giving effect to this Act.

(2) The funds of the Authority must be expended only -

- (a) in payment or discharge of lawful expenses, obligations and liabilities of the Authority, incurred in compliance with the relevant laws in force; and
- (b) in accordance with the budget of the Authority approved under this section.

(3) The Board, on the recommendation of the Managing Director must approve, prior to the commencement of each financial year, a budget consisting of an estimate of expected revenues and expenditures for the Authority.

(4) The Managing Director must submit a monthly revenue and expenditure report to the department responsible for treasury matters.

**39. NATIONAL ELECTRIFICATION TRUST FUND.**

(1) A National Electrification Trust Fund is hereby established.

(2) The National Electrification Trust Fund must -

- (a) provide for the implementation of the National Electrification Roll-Out Plan; and
- (b) recommend and implement the development of rural electrification off-grid plans, programs and projects under the National Electrification Trust Fund; and
- (c) fund community service obligations of rural electrification; and
- (d) provide for the training and up-skilling of rural and off-grid technicians and operate and maintain off-grid infrastructure.

(3) The Board must set the terms and conditions for the Managing Director to appoint persons with extensive experience in the electricity and energy industry, as and when required, to advise on plans, programs and projects to be implemented under the National Electrification Trust Fund.

**40. FISCAL DUTY AND OBLIGATION OF THE AUTHORITY.**

(1) It is the duty and obligation of the Board, the Authority and the Managing Director to -

- (a) maximise the revenues of the Authority, consistent with this Act; and
- (b) minimise the expenditures of the Authority,

in order to render the greatest possible financial benefit to the State.

(2) The Board, the Authority and the Managing Director must operate on the principle of fiscal restraint and frugality in the implementation of this Act so that expenditures are made only when necessary for vital operations of the Authority.

*Division 6. - Decisions, appeals etc., of the Authority.*

**41. DECISIONS OF THE AUTHORITY.**

(1) A decision of the Authority on regulatory matters must be -

- (a) made in writing and is binding; and
- (b) published in the National Gazette.

(2) A decision of the Authority must become effective on the date of its entry into force and must be complied with, within the time period prescribed.

**42. APPEALS PANEL.**

(1) The Appeals Panel is established.

(2) The Appeals Panel must comprise of three members appointed by the Board, one of whom is the Chairman.

(3) The members of the Appeals Panel must comprise of -

- (a) a practicing engineer in the energy industry nominated by the Institute of Engineers of Papua New Guinea; and
- (b) a practicing lawyer nominated by the Papua New Guinea Law Society; and



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(c) a practicing accountant nominated by the Certified Professional Accountants of Papua New Guinea.

(4) Where a member of the Appeals Panel has a conflict of interest, another member must be appointed from the member's professional organisation.

(5) The role of the Appeals Panel is to deliberate on the dispute and make recommendations to the Board.

(6) The Appeals Panel has no power to award costs against a party to a review.

(7) The costs of the Appeals Panel must be determined by the Board.

### **43. APPEAL AGAINST A DECISION OF THE AUTHORITY.**

(1) A person aggrieved by a decision of the Authority may appeal to the Appeals Panel within 30 days of the decision.

(2) An appeal must be lodged in the prescribed form.

(3) Where an aggrieved person fails to file an appeal within 30 days, that person must provide the Appeals Panel with sufficient cause for the appeal to be heard.

(4) The Secretariat to the Appeals Panel is the Authority.

### **44. AUTHORITY TO COMPLY WITH POLICY DIRECTIONS.**

(1) In the exercise of its functions and powers under this Act, the Authority must -  
(a) have regard to the policy of the Government in relation to all energy matters; and  
(b) comply with any directions relating to that policy given to it in writing signed by the Minister.

(2) As soon as practicable, any direction given under Subsection (1), must be published in the National Gazette before the Authority effects the direction.

(3) The Minister must not give any direction under Subsection (1), which requires the Authority to do or refrain from doing a particular act, or bring about a particular result, in respect of any particular person or persons.

### **45. OTHER RELEVANT LAWS TO COMPLY WITH THIS ACT.**

Where a law or regulation governing the development of an energy resource or electricity industry services is in conflict with this Act, this Act prevails over that law or regulation.

## **PART III - REGULATORS OF ELECTRICITY AND ENERGY SERVICES.**

### *Division 1. - General.*

### **46. OBJECTIVES OF ELECTRICITY AND ENERGY SERVICE UNDER THIS ACT.**

The objectives of this part are -

(a) to promote efficiency and competition in the electricity supply industry and downstream gas industry; and

- (b) to promote planning, development and operations of a safe and efficient system of electricity generation, transmission, distribution and sale; and
- (c) to establish and enforce proper standards of safety, reliability and quality in the electricity supply industry and downstream gas industry; and
- (d) to establish and enforce proper technical standards for electrical and gas installations (including such standards relating to the design of electrical and gas installations); and
- (e) to protect the interests of consumers of electricity and gas services; and
- (f) to regulate the bulk import petroleum and petroleum products.

**47. ELECTRICITY SUPPLY INDUSTRY IS A REGULATED INDUSTRY.**

(1) The electricity supply industry is declared to be a regulated industry for the purposes of the *National Energy Authority Act 2021*.

(2) For the purposes of the *National Energy Authority Act 2021*, the Authority is the regulator.

**48. NATIONAL ENERGY AUTHORITY NOT A REGULATED ENTITY.**

For avoidance of doubt the National Energy Authority is not a regulated entity for the purpose of the *Independent Consumer and Competition Commission Act 2002*.

**49. CONSISTENCY IN LEGISLATION.**

This Act does not derogate from the provisions of the *Electricity Industry Act 2002* or any other law.

**50. PRESERVATION OF LICENCE RIGHTS.**

The rights granted to licensees, before the coming into operation of this Act, under the *Independent Consumer and Competition Commission Act 2002* are protected by this Act as follows:

- (a) the provisions of this Act and anything done pursuant to it does not limit the rights of a holder of a licence issued or granted pursuant to the *Independent Consumer and Competition Commission Act 2002*; and
- (b) an existing licence issued or granted under the *Independent Consumer and Competition Commission Act 2002*, may be renewed, but a licence shall not be issued or granted based on a new application under that Act conferring the same rights as a licence issued or granted under this Act.

*Division 2. - Technical regulation.*

**51. AUTHORITY'S POWER TO REQUIRE INFORMATION.**

(1) The Authority may, by written notice, require a person to -

- (a) give the Authority information in the person's possession that the Authority reasonably requires for the performance of its functions under this Act or any other law; and
- (b) provide the required information within the time stated in the notice.

(2) A person who contravenes this section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(3) A natural person is not required to give information under this section if the information would tend to incriminate the person of an offence.

(4) If a natural person is required to give information on the safety of electricity infrastructure, and electrical installation or equipment, and the information would incriminate him of an offence, the person may not give the information.

(5) The information given is not admissible in evidence against the person in proceedings for an offence other than an offence relating to the making of a false or misleading statement or declaration.

**52. OBLIGATION TO PRESERVE CONFIDENTIALITY.**

(1) The Authority must not disclose confidential information obtained by it, including information obtained by an authorised officer, that -

- (a) could affect the competitive position of an electricity entity or other person; or
  - (b) is commercially sensitive for some other reason,
- for a period of at least three years.

(2) Despite Subsection (1) and subject to Subsection (3), the Authority may disclose confidential information in the following circumstances:

- (a) where the information is reasonably required for the administration or enforcement of this Act by the Authority, a person assisting the Authority or Minister or as otherwise related to the performance of the technical regulator's functions under this Act or any other Act; and
- (b) to a person concerned in the administration or enforcement of any other law, for purposes related to the administration or operation of that other law; and
- (c) to a government agency or instrumentality of the State, for purposes related to the performance of its functions or to a person acting on behalf of such a government agency or instrumentality; and
- (d) with the consent of the person who gave the information or to whom the information relates; and
- (e) as required by a court or tribunal constituted by law.

(3) Information classified by the Authority as confidential must not be disclosed without the approval of the Minister or the Authority, with due regard to the position of the person who provided the information to the Authority.

**53. ANNUAL REPORT.**

The Authority must, within three months after the end of each financial year, deliver to the Minister a report on its operations under this Act during that financial year.

**54. TECHNICAL ADVISORY COMMITTEE.**

- (1) The Authority must establish the Technical Advisory Committee consisting of -
- (a) a senior officer at the same level of the Chief Technical Officer or a level higher with background in engineering; and
  - (b) the Chief Technical Officer of the Authority or the Deputy Chief Technical Officer, if the Chief Technical Officer is appointed under Subsection (1)(a); and
  - (c) a representative of the electricity undertakers; and
  - (d) a representative of contractor and employee associations involved in the electricity supply industry; and
  - (e) a person representing community service obligations.

(2) The senior officer mentioned in Subsection (1)(a) is the Chairman of the Technical Advisory Committee.

**55. OTHER ADVISORY COMMITTEES.**

The Authority may establish other advisory committees to provide advice on specified aspects of the industry for the effective administration of this Act.

*Division 3. - Economic regulation.*

**56. ESTABLISHMENT OF A TARIFF SYSTEM.**

(1) The Authority must establish a tariff system for the electricity and energy supply industry based on -

- (a) accessibility; and
- (b) consistency of supply; and
- (c) affordability,

of electricity and energy supply to consumers.

(2) Before establishing a tariff system referred to in Subsection (1), there must be consultations with departments and agencies of government as well as electricity and energy industry participants organised by the Authority.

(3) The tariff system referred to in Subsection (1) may be reviewed, amended, updated, improved or replaced as and when required.

**57. POWER PURCHASE AGREEMENT BETWEEN GENERATION AND TRANSMISSION UNDERTAKERS.**

(1) A power generation licensee or an applicant for a power generation licence may sign a power purchase agreement with a transmission licensee or an applicant for a transmission licence to supply power.

(2) A tariff arrangement agreed under a power purchase agreement referred to in Subsection (1) must -

- (a) comply with tariff rules, regulations, codes, regulatory contracts, guidelines, arrangements and mechanisms in force at any one time; and
- (b) take into consideration the objectives of this Act, and in particular, Section 46, including the policy on reduction of tariff,

to ensure that electricity is affordable to consumers.

(3) It is a condition of licence that the power purchase agreement referred to in Subsection (1) is signed before an application for a generation licence or an application for a transmission licence is granted.

**58. ADMINISTRATION OF FEES, LEVIES AND OTHER CHARGES.**

(1) The Authority may, by written notice, require a person to pay an administration fee, levy or charge required by this Act or prescribed by regulation within a time period specified in the notice.

(2) A person who contravenes this section is guilty of an offence.

Penalty: A fine of K10,000.00 for contractors and K50,000.00 for transmission undertakers.

**PART IV. - ELECTRICITY SUPPLY INDUSTRY LAW.**

*Division 1. - Licensing of electricity entities and undertakers.*

**59. ELECTRICITY SUPPLY INDUSTRY.**

The electricity supply industry is the industry involved in the generation, transmission, distribution, supply and sale of electricity or other similar or related operations prescribed by this Act or the regulations.

**60. ELECTRICITY UNDERTAKER OR ELECTRICITY CONTRACTOR.**

An electricity entity or electricity undertaker is a person licensed under this Act to carry on operations in the electricity supply industry and includes, where the context requires, a person who has been licensed to carry on operations in the electricity supply industry but whose licence has been suspended, cancelled or has expired.

**61. OPERATIONS REQUIRING LICENCES.**

(1) A person, firm or company must not carry on operations in the electricity supply industry without a licence.

Penalty: A fine not exceeding K10,000,000.00.

Default penalty: A fine not exceeding K1,000,000.00.

(2) A person, firm or company who holds a generation licence must pay, on a quarterly basis, a levy for administration of this Act computed at K0.009 per kilowatt hour (k/Wh) of energy generated and transmitted.

(3) A levy set under Subsection (2) is subject to review after every three years.

(4) The generation levy is subject to review after three years or any other period determined by the Minister on the recommendation of the Board.

(5) The operations in the electricity supply industry for which a licence is required are -

- (a) the generation of electricity from renewable energy sources and other energy sources as determined by law from time to time; and
- (b) the operation of a transmission network; and
- (c) the operation of a distribution network; and
- (d) the retailing of electricity; and
- (e) other operations required under this Act or any other law.

(6) In addition to Subsection (5), the annual fees for each of the categories of licences issued under this section are as follows:

- (a) for generation licences with installed capacity under one megawatt, the annual fees are as prescribed in the Regulations; and
- (b) for generation licences with installed capacity of one megawatt and above, the annual fees are as follows:
  - (i) for a generation licence with installed capacity of one to ten megawatts, the annual fee is K10,000.00; and

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- (ii) for a generation licence with installed capacity of eleven to twenty megawatts, the annual fee is K20,000.00; and
- (iii) for a generation licence with installed capacity of twenty-one to fifty megawatts, the annual fee is K30,000.00; and
- (iv) for a generation licence with installed capacity of fifty-one to one hundred megawatts, the annual fee is K40,000.00; and
- (v) for a generation licence with installed capacity of one hundred and one to five hundred megawatts, the annual fee is K100,000.00; and
- (vi) for a generation licence, with installed capacity of five hundred and one megawatts and above, the annual fee is K500,000.00; and
- (c) for the operation of transmission and distribution networks, the annual fee is as prescribed in the Regulations; and
- (d) for the retailing of electricity, the annual fee is as prescribed in the Regulations.

(7) The annual fees are subject to review and determination in accordance with the *Public Finances (Management) Act 1995*.

**62. APPLICATION FOR A LICENCE.**

- (1) An application for a licence must -
  - (a) be submitted to the Authority in a form approved by the Authority; and
  - (b) contain the information specified in the form.
- (2) The applicant must pay the Authority the prescribed application fee.
- (3) The applicant must provide further relevant information requested by the Authority.
- (4) The Regulations will provide specific guidelines for applications.

**63. CONSIDERATION OF APPLICATION.**

- (1) The Board, on the advice of the Managing Director, must consider an application for the issue of a licence and may, subject to this division, recommend to the Minister to issue or refuse to issue a licence.
- (2) In considering an application for a licence, and before recommending to the Minister to issue or refuse to issue a licence, the Board must be satisfied that -
  - (a) the applicant is a suitable person to hold the licence; and
  - (b) the grant of the licence is consistent with the criteria prescribed for a licence of that kind; and
  - (c) any other information relevant for a licence of that kind.
- (3) In deciding whether an applicant is a suitable person to hold a licence, the Authority may consider -
  - (a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and
  - (b) the financial, technical and human resources available to the applicant; and
  - (c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings including breaches of statutory and other legal obligations; and

- (d) such other matters as are prescribed, including background information on the applicant's success or failure in building electricity generation projects, especially the kind stated in the application.

**64. LICENCES MAY BE HELD JOINTLY.**

- (1) A licence may be held jointly by two or more persons.
- (2) If a licence is held jointly by two or more persons, those persons are jointly and severally liable to meet the requirements imposed under this Act.

**65. AUTHORITY CONFERRED BY LICENCE.**

- (1) A licence authorises the person named in the licence to carry on operations authorised by that licence in accordance with the terms and conditions of the licence.
- (2) The operations authorised by a licence may consist of a number of different operations or operations at different locations.

**66. TERM OF LICENCE.**

A licence may be issued for a term specified in the licence or in accordance with the term of a Power Purchase Agreement.

**67. LICENCE FEES AND RETURNS.**

- (1) A person is not entitled to a licence unless he pays the annual licence fee to the Authority.
- (2) The holder of a licence issued for a term of more than one year must -
- (a) in each year lodge with the Authority, before the date prescribed for that purpose, an annual return with information required by the Authority as a condition of the licence or by written notice or direction; and
- (b) in each year pay to the Authority, before the date prescribed for that purpose, the annual licence fee.
- (3) An annual licence fee must be paid in full to the Authority on the prescribed date.
- (4) If the holder of a licence fails to lodge the annual return or to pay the annual licence fee, the Authority must, by written notice, require the holder to lodge the annual return or pay the annual licence fee and pay to the Authority a penalty fee as prescribed.

**68. LICENCE CONDITIONS.**

- (1) On the issue of a licence, the Authority must subject the licence to the following conditions as prescribed or as the Authority determines in the national interest:
- (a) requiring compliance with applicable codes or rules in force from time to time; and
- (b) requiring compliance with prescribed applicable technical or safety requirements or other standards; and
- (c) requiring compliance with any regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002* that applies to the electricity undertaker; and
- (d) requiring the electricity undertaker to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Managing Director; and

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- (e) requiring the electricity undertaker to notify the Managing Director about changes to officers and, if applicable, major shareholders of the electricity undertaker; and
- (f) requiring the electricity undertaker to provide, in the manner and form determined by the Managing Director, such other information as the Managing Director may from time to time require; and
- (g) requiring the electricity undertaker to maintain specified accounting records and to prepare accounts according to standard accounting principles; and
- (h) requiring the business the operation of which, is authorised under the licence or any part of that business to be kept separate from any other business of the electricity undertaker or any other person in the manner and to the extent specified in the conditions; and
- (i) requiring the electricity undertaker to inform persons seeking or in receipt of specified services supplied by the electricity undertaker under the licence of the terms on which those services are provided, including the charges for these services, and of any changes in those terms; and
- (j) in the case of a licence authorising the generation of electricity or the operation of a transmission or distribution network, requiring the electricity undertaker -
  - (i) to prepare and periodically revise a safety and technical management plan dealing with such matters as are prescribed; and
  - (ii) to obtain the approval of the Managing Director of the plan and any revision; and
  - (iii) to comply with the plan as approved from time to time; and
  - (iv) to audit from time to time the electricity undertaker's compliance with the plan and report the results of those audits to the Managing Director; and
- (k) in the case of a licence authorising the generation of electricity, requiring the electricity undertaker not to do anything affecting the compatibility of the electricity undertaker's electricity generating plant with any transmission or distribution network so as to prejudice public safety or the security of the power system of which the generating plant forms a part; and
- (l) in the case of a licence authorising the operation of a transmission or distribution network, requiring the electricity undertaker not to do anything affecting the compatibility of the electricity undertaker's transmission or distribution network with any electricity generating plant or transmission or distribution network so as to prejudice public safety or the security of the power system of which the transmission or distribution network forms a part; and
- (m) in the case of a licence authorising the operation of a transmission or distribution network, requiring the electricity undertaker to comply with -
  - (i) specified provisions for or relating to the granting to other electricity undertakers of rights to use or have access to the electricity undertaker's transmission or distribution network for the transmission or distribution of electricity by the other electricity undertakers; and
  - (ii) any scheme that the Authority may establish by a code made under this Act for the resolution of disputes in relation to such rights; and
- (n) in the case of a licence authorising the operation of a transmission or distribution network, requiring the electricity undertaker to comply with -
  - (i) specified provisions for or relating to the granting to all electricity undertakers and customers of a class specified in the condition of rights to use or have access to the electricity undertaker's transmission or distribution network to obtain electricity from the network; and



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- (ii) any dispute resolution involving the Authority must comply with the Third Party Access Code, Grid Code, Electricity Code and any other electricity industry code for the resolution of disputes in relation to such rights; and
- (o) in the case of a licence authorising the operation of a transmission or distribution network, requiring the electricity undertaker to comply with any code provisions in force from time to time establishing a method for sharing of the costs of an augmentation of the network, being an augmentation of a kind specified in the code provisions, between customers who benefit from that augmentation; and
- (p) in the case of a licence authorising the operation of a transmission or distribution network or the retailing of electricity, requiring a specified process to be followed to resolve any dispute between the electricity undertaker and a customer as to the supply or sale of electricity; and
- (q) in the case of a licence authorising the operation of a transmission or distribution network or the retailing of electricity, requiring or relating to standard contractual terms and conditions to apply to the supply or sale of electricity to customers of a prescribed class; and
- (r) in the case of a licence authorising the operation of a transmission or distribution network or the retailing of electricity, requiring the electricity undertaker to comply with code provisions in force from time to time imposing minimum standards of service for customers and requiring the electricity undertaker to monitor and report on levels of compliance with those minimum standards; and
- (s) in the case of a licence authorising the operation of a transmission or distribution network or the retailing of electricity, requiring the electricity undertaker to comply with code provisions in force from time to time limiting the grounds on which the supply or sale of electricity to customers may be disconnected or discontinued and prescribing the process to be followed before the supply or sale of electricity is disconnected or discontinued; and
- (t) in the case of a licence authorising the retailing of electricity which confers an exclusive right to sell electricity, requiring the electricity undertaker to sell electricity to the relevant customers within the specified area; and
- (u) in the case of a licence authorising the generation of electricity, or transmission of electricity, or distribution of electricity or retailing of electricity, requiring compliance with directions of the Authority.

(2) The Authority must issue a licence with further conditions that the Authority is required by regulation to impose on the issue of such a licence.

(3) On the issue of a licence, the Authority may issue the licence subject to further conditions considered appropriate by the Authority.

(4) A condition of an electricity undertaker's licence imposed under Subsection (1)(m) is not to take effect until the date prescribed for that purpose.

(5) Nothing in this section permits a condition to be included in a licence where that condition would be inconsistent with the terms of a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002* which applies to the electricity undertaker.

**69. LICENCE CONDITIONS AND NATIONAL ELECTRICITY AND ENERGY LAW.**

Despite the preceding provisions of this part, the Authority must not recommend a condition to be imposed on a licence if the Authority is satisfied that the condition would not duplicate or be inconsistent with regulatory requirements under this Act, the *Electricity Industry Act 2002* or any other national electricity and energy law of Papua New Guinea.

**70. OFFENCE TO CONTRAVENE LICENCE CONDITIONS.**

- (1) An electricity undertaker must not contravene a condition of its licence.

Penalty: A fine not exceeding K10,000,000.00.

(2) If an electricity undertaker profits from contravening a condition of the licence, the Authority may recover an amount equal to the profit from the electricity undertaker on application to a court of competent jurisdiction.

**71. VARIATION OF LICENCE.**

(1) The Minister may vary the terms or conditions of an electricity undertaker's licence by written notice to the electricity undertaker as the Authority considers appropriate, but so as not to -

- (a) remove a condition that the Authority is required to impose on the licence; or
- (b) vary or remove a term or condition of the licence issued to the extent that, at the date of issue of the licence, the licence provided that a term or a condition is not to be varied or removed.

(2) A variation may only be made -

- (a) on application by the electricity undertaker or by agreement with the electricity undertaker; or
- (b) after giving the electricity undertaker reasonable notice of the proposed variation and allowing the electricity undertaker a reasonable opportunity to make submissions of the proposed variation (where variation is to be effected without consent of the undertaker or not by agreement).

**72. TRANSFER OF LICENCE.**

(1) Subject to the requirement of this Act, a licence may only be transferred with the approval of the Minister.

(2) The Authority must not process the transfer of a licence if the transferee is not eligible to be issued such a licence.

(3) An application may be submitted by a potential transferor for the transfer of a licence which must -

- (a) be made by the transferor with the consent of the transferee to the Authority in a form approved by the Authority; and
- (b) contain the information specified in the form.

(4) The applicant must pay to the Authority the application fee to meet the costs of determining the application or any other costs associated with the transfer.

(5) The applicant must give the Authority further relevant information requested by the Authority.

**73. NOTICE OF LICENCE DECISIONS.**

(1) The Managing Director must give an applicant for a licence or for agreement to the transfer of a licence, written notice of the Minister's decision on the application.

(2) The Managing Director must give the holder of a licence written notice of any decision made by the Authority that affects the terms or conditions of the licence.

**74. SURRENDER OF LICENCE.**

(1) An electricity undertaker may, by written notice given to the Managing Director, surrender the licence, subject to the requirements of this Act, and any other laws of Papua New Guinea.

(2) The notice must be given to the Managing Director at least six months before the surrender takes effect or, if the licence requires a longer period of notice, as required by the licence.

(3) The Board may, by agreement with the electricity undertaker, shorten the required period of notice.

**75. STANDARD TERMS AND CONDITIONS FOR SALE OR SUPPLY.**

(1) The Regulations must, from time to time, fix standard terms and conditions governing the sale or supply of electricity, including the service of making connections to a transmission or distribution network, by the electricity undertaker to customers of a prescribed class.

(2) The Authority must publish in the National Gazette and in a daily newspaper circulating nationally a notice setting out any standard terms and conditions set by the Regulations.

- (3) The standard terms and conditions fixed under this section -
- (a) must not affect the existing conditions of the electricity undertaker's licence; and
  - (b) must come into force on the day specified in the gazettal notice of the regulation containing the standard terms and conditions; and
  - (c) when in force, are contractually binding on the electricity undertaker and the class of customers to which the terms and conditions are expressed to apply; and
  - (d) may be modified or excluded by express agreement between the electricity undertaker and a customer of the electricity undertaker -
    - (i) subject to approval of the Board, on the advice from the Managing Director; and
    - (ii) subject to the conditions of an electricity undertaker's licence.

**76. SUSPENSION OR CANCELLATION OF LICENCES.**

(1) The Minister may, on recommendation of the Board, suspend or cancel a licence with effect from the specified date upon being satisfied that -

- (a) the holder of a licence obtained the licence improperly; or
- (b) the holder of a licence is guilty of a material contravention of a condition of the licence or any other requirement imposed by or under this Act, or any other Act in connection with the operations authorised by the licence; or
- (c) the holder of a licence has ceased to carry on operations authorised by the licence; or
- (d) there has been an act or a default or change of circumstances such that the holder of a licence would no longer be entitled to the issue of such a licence.

(2) A suspension under this section may be for a specified period, or until the fulfillment of specified conditions, or until further order from the Minister.

(3) Before the Minister takes action, he must -

- (a) notify the holder of the licence in writing of the proposed action and the reasons for the proposed action; and
- (b) allow the holder of the licence at least 14 days to make a submission to the Minister regarding the proposed action.

**77. POWER TO TAKE OVER OPERATIONS.**

(1) If an electricity undertaker -

- (a) contravenes a condition of the licence or any other requirement of this Act; and
- (b) the licence is suspended, cancelled or surrendered; and
- (c) it is necessary, in the Authority's opinion, to take over the electricity undertaker's operations (or some of them) to ensure an adequate supply of electricity to customers,

the Head of State, acting on advice, may make the order.

(2) Before an order is made under this section, the Authority must give the electricity undertaker a reasonable opportunity to make written representations giving reasons why the order should not be made.

(3) An order under this section -

- (a) authorises the Regulator to take over the electricity undertaker's operations or a specified part of the electricity undertaker's operations; and
- (b) may contain directions on how the costs of carrying on the operations and revenue generated from the operations are to be dealt with.

(4) A direction under Subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

**78. APPOINTMENT OF OPERATOR.**

(1) If an order is made under this division, the Minister must, on advice, appoint a suitable person to -

- (a) be the operator; and
- (b) take over the relevant operations on agreed terms and conditions, including those terms and conditions prescribed by the Authority.

(2) A person appointed under Subsection (1) must be -

- (a) an electricity undertaker with financial and technical capacity; and
- (b) selected from a short list of three undertakers.

(3) The electricity undertaker must facilitate the takeover of the relevant operations by the operator.

(4) The operator may have access to the employees, equipment, infrastructure and other property, of the electricity undertaker for the purposes of carrying on the relevant operations.

(5) The undertaker or any other person must not obstruct the operator's access to employees or property or the exercise of the operator's responsibilities under this division.

Penalty: A fine not exceeding K10,000,000.00.

(6) The undertaker or a person who does not comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this division commits an offence.

Penalty: A fine not exceeding K10,000,000.00.

#### **79. REGISTER OF LICENCES.**

(1) The Authority must appoint a Registrar to create and maintain a register of licences and other formal and legal documents.

(2) The Registrar must keep a register of the licences issued to electricity undertakers and all other dealings under each licence, and perform other functions as directed by the Managing Director.

(3) The register must include -

- (a) the terms and conditions of each licence; and
- (b) such other information as is required under the regulations; and
- (c) any other information relevant to licences required by this Act.

(4) A licence holder may, without paying a fee, inspect the register.

#### ***Division 2. - National Content.***

#### **80 NATIONAL CONTENT FORUM.**

The Minister must convene a National Content Forum, before the commencement of construction of the project, for all stakeholders, including -

- (a) the National Government; and
- (b) the affected -
  - (i) provincial governments; and
  - (ii) local-level governments; and
  - (iii) district development authorities; and
  - (iv) landowners,

to discuss benefit sharing from the project.

#### **81. METHOD OF IDENTIFICATION OF TRADITIONAL LANDOWNERS.**

(1) The holder of a licence must deploy appropriate proven methods of landowner identification, including -

- (a) social mapping and landowner identification; and
- (b) landowner investigation reports by the department responsible for lands and physical planning matters; and
- (c) demarcation of clan land boundaries.

(2) The landowner clans identified under Subsection (1) must be approved by the Minister through a gazettal notice before the National Content Forum is convened and before the commencement of project construction.

(3) The benefits sharing as agreed to amongst the landowners must be approved by the Minister by notice in the National Gazette before the commencement of project construction.

**82. ROYALTY BENEFIT.**

(1) Prior to the National Content Forum, a direct royalty benefit of up to five percent as approved by the Minister by notice in the National Gazette, must be provided to the landowners having land rights within a one kilometer radius of the project facilities (especially main generation facilities, transmission lines, and distribution networks), and directly affected by a generation licence, a transmission licence or a distributor licence issued under this Act.

(2) The royalty entitlement for the landowners as approved by the Minister under Subsection (1) must be calculated based on the gross annual revenue of the project.

(3) The sharing amongst the affected landowners of the direct royalty benefit referred to in Subsection (1) must be endorsed by the Minister by notice in the National Gazette prior to the National Content Forum.

**83. EQUITY BENEFIT.**

(1) An equity benefit option of up to 20 percent of a generation, transmission and distribution project must be available to the National Government and the affected provincial government, local-level government and landowners.

(2) The National Government may acquire up to ten percent equity in a project.

(3) The affected provincial and local-level governments respectively, may acquire up to five percent equity in a project and their sharing of the equity must be agreed to, and published by the Minister in the National Gazette prior to the National Content Forum.

(4) The landowners may acquire up to five percent equity in a project and their sharing of the equity must be agreed to at the National Content Forum.

(5) Any equity not acquired under Subsections (2), (3) and (4) may be purchased by other entities to the 20 percent equity referred to in Subsection (1).

(6) For the avoidance of doubt, the payment of dividends to the national government, provincial government, the local-level government and the landowners must be based on the annual net profit of the project.

**84. EMPLOYMENT, TRAINING AND LOCALISATION.**

(1) It is a condition of a licence for a licensee to provide employment, training and localisation for Papua New Guineans, and priority is to be given to local people affected by the project licensed and approved under this Act.

(2) The employment, training and localisation programs must comply with the relevant laws of Papua New Guinea.

**85. BUSINESS DEVELOPMENT.**

(1) It is a condition of a licence for a licensee to provide business development opportunities for Papua New Guineans, and priority is to be given to local people affected by the project licensed and approved under this Act.

(2) The business development opportunities may be in the form of sub-contracts, security services, catering services, transport services, camp construction, building maintenance contracts, office supplies, food supplies and other opportunities that may be agreed to at the National Content Forum.

**86. COMMUNITY DEVELOPMENT ASSISTANCE.**

(1) It is a condition of a licence for a licensee to provide community development assistance to local people affected by the project licensed and approved under this Act.

(2) The form of community development assistance to be provided may include community roads, bridges, schools, scholarships for local students, power supply connections to villages and charging subsidised rates and other types of assistance that may be agreed at the National Content Forum.

**87. SMALL, MEDIUM AND LARGE SCALE GENERATION PROJECTS.**

(1) A licence issued under this Act for a small scale generation project with installed capacity of up to 10 megawatts (10MW) must be reserved for Papua New Guinea citizen companies.

(2) A licence issued under this Act for a generation project with installed capacity of more than 10 megawatts (10 MW) must involve Papua New Guinean companies as joint venture partners in the project.

(3) Standby generators are exempted from licensing and tariff requirements.

**88. DOMESTIC MARKET OBLIGATION.**

(1) The National Energy Authority is the sole regulatory body responsible for domestic market obligation gas under this Act.

(2) Pursuant to Subsection (4), the Authority must receive a volume of domestic market obligation gas requested annually by the Authority, based on substantial evidence confirming the request to be approved by the Minister responsible for petroleum matters, for utilisation by the electricity supply industry.

(3) The requirement of gas for the electricity supply industry is determined by the following factors:

- (a) due to the need for national energy security the gas utilisation electricity projects in the electricity supply industry must be given first right of refusal for off-take of gas under this Act; and
- (b) the need for use of domestic market obligation gas for projects of national importance as prescribed by the Regulations.

(4) The Authority must -

- (a) regulate the licencing of gas secured by Agreement with gas producing projects under the domestic market obligation requirements of the *Oil and Gas Act 1998* or under a Gas Agreement or a Petroleum Agreement; and
- (b) allocate domestic market obligation gas to operating gas-based electricity projects in accordance with guidelines prescribed by the Regulations; and
- (c) in consultation with the State organisation responsible for petroleum matters, regulate gas utilisation for power generation, including safety standards for off-take of gas from producers, transport of gas to electricity project sites, storage, usage and environmental considerations for utilisation of gas; and
- (d) regulate the storage, distribution and usage of liquefied petroleum gas (LPG).

*Division 3. - Construction, entry on land and registration of titles.*

**89. ERECTION OF TRANSMISSION LINES, ETC.**

- (1) In this section, "Government land" means all land other than -
- (a) customary land that is not leased by the owners to the State; and
  - (b) land held by a person other than the State for an estate greater than a term of years; and
  - (c) land that is the subject of a State lease under the *Land Act 1996*.

(2) For the purposes of the conveyance, transmission and distribution of electricity, an electricity undertaker, on giving notice of its intention to do so to the owner or occupier of the land may, subject to Subsection (4), erect, maintain or remove -

- (a) pylons, posts, poles or pillars in, under, through, over, across or on any land to which this subsection applies; and
- (b) electric lines, including, conduits, substations, transformers and other appliances and things necessary for the works,

in, under, through, over, across or on any such land or any building, house or premises on any such land to which this section applies.

(3) The land to which Subsection (2) applies is land, including land under the sea or a river or stream, that -

- (a) is outside a town; or
  - (b) is a street or other government land within a town,
- at the time when the pylons, posts, poles, pillars or electric lines are erected.

(4) The activities of electricity undertakers in relation to land matters are subject to the *Land Act 1996*.

(5) For the purpose of Subsection (2), the licensee must not exercise the powers conferred on it under the licence conditions until approval is given -

- (a) by the Head of State acting on advice, in the case of land outside a town; or
- (b) by the Minister, in the case of land within a town.

**90. OWNERSHIP OF TRANSMISSION LINES, ETC.**

(1) Despite anything in any other law, but subject to any agreement in writing to the contrary, the ownership of pylons, posts, poles, pillars and electric lines erected or operated by an electricity undertaker is not affected by their affixation to land.

(2) Despite anything in any other law, a person authorised by an electricity undertaker may, at all reasonable times -

- (a) enter on any land on which pylons, posts, poles, pillars and electric lines owned or operated by the electricity undertaker is erected, or on any adjoining land, with such assistants, vehicles and things as the person thinks necessary; and
- (b) make surveys, take levels, sink pits, examine the soil and do any other thing in relation to the land,

for the purposes of maintaining, removing or (where otherwise authorised or permitted to do so) erecting or preparing (including through surveying and obtaining other information in relation to the land) for the possible erection of pylons, posts, poles, pillars and electric lines.



(3) Before entering any land under Subsection (2), the person concerned must give notice to the owner or occupier of the land of his intention for entering the land.

(4) The notice in accordance with Subsection (3) need not be given if -

- (a) the land, or part of the land, is in a Council area and written notice has, not less than one week before entry, been given to the Council specifying the area, or the approximate area, affected, together with a request that the Council advise any persons likely to be affected; or
- (b) the name, or the place of abode or business, of the owner or occupier cannot, after the exercise of reasonable diligence, be found and unreasonable delay or expense would otherwise be caused to the electricity undertaker; or
- (c) the land is apparently unoccupied, but in any such case, the authorised person must advise any person who asks for his authority for being on the land.

(5) In addition to the powers conferred by Subsection (1), the authorised person or his assistants may, by doing as little damage as may be -

- (a) trim, lop or cut down any trees and bushes that may obstruct the work being carried out; and
- (b) place on or below the surface of the soil such pegs, marks, metal pins or other distinguishing marks as are necessary for any of the purposes set out in Subsection (1).

(6) An electricity undertaker must minimise the impact of things done to the activities of others on the relevant land.

(7) A written notice must be given to the Provincial Administrator of the province where the operations of an undertaker are likely to affect traditional landowners.

#### **91. NOTICE OF INTENTION TO ENTER LAND.**

(1) A notice of intention to enter land may be given -

- (a) orally or in writing to the owner or occupier personally; or
- (b) by post addressed to the owner or occupier at his usual or last-known place of residence or business; or
- (c) in writing to a person, who is not less than 16 years of age, living or employed at that place of residence or business, but where notice of intention is given in accordance with Paragraph (b), entry shall not be made before the notice would be delivered in the ordinary course of post.

(2) In an emergency, a person authorised by an electricity undertaker may enter the land at any time and without prior notice if it is not practicable to give such notice, and if necessary in the circumstances, by the use of reasonable force, but only if the authorised person is accompanied by a member of the Police Force.

(3) A written notice must be given to the Ward Member of the traditional land that is likely to be affected by the operation of an electricity undertaker.

**92. NOTICE OF NATIONAL EXECUTIVE COUNCIL APPROVAL TO WORKS.**

(1) Where the Head of State, acting on advice, or the Minister, approves the erection of electric lines in, under, through, over, across or on any land or on a building, house or premises on any land, that is subject to the *Land Registration Act 1981*, a copy of the approval must be forwarded by the Secretary of the National Executive Council to -

- (a) the Registrar of Titles, with a request that the approval be noted on the title or titles affected; and
- (b) enter the registered proprietor of the land.

(2) As soon as practicable before the erection of electric lines and, by agreement between an electricity undertaker and any other person, including traditional landowners, the electricity undertaker must conduct a survey and forward to the Registrar of Titles a copy of the survey plan specifying details of the land that is likely to be affected.

(3) The Registrar of Titles must note the approval on the title or titles affected, and on receipt of a survey plan required under Subsection (2) specifying the width of the land affected and the extent of the restrictions imposed, cause the rights conferred to be registered on the title or titles affected.

(4) Despite the absence of a dominant tenement, the registration of a right under Subsection (3) is deemed to be the registration of an easement, and the *Land Registration Act 1981* must be read subject to this section.

***Division 4. - Inspection, safety and technical requirements.***

***Subdivision 1. - Authorised officers.***

**93. APPOINTMENT OF AUTHORISED OFFICERS.**

(1) The Authority may, recommend to the Minister, to appoint suitable persons as authorised officers for the purposes of this Act.

(2) An authorised officer holds office on the conditions stated in the instrument of appointment.

**94. IDENTIFICATION OF AUTHORISED OFFICERS.**

(1) The Authority must give each authorised officer an identity card.

(2) The identity card must -

- (a) contain a photograph of the authorised officer; and
- (b) identify the authorised officer as an authorised officer appointed by the Minister.

(3) An authorised officer must, before exercising a power in relation to another person, produce his identity card for inspection by that other person.

(4) A person must, within two days after ceasing to be an authorised officer, return the identity card to the Authority.

(5) A person who fails to return the identity card is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**95. POWER OF ENTRY.**

- (1) An authorised officer may, as reasonably required for the purposes of the enforcement of this Act, enter and remain in any place with such assistants, vehicles and things as he thinks necessary.
- (2) In an emergency, an authorised officer may exercise a power of entry under Subsection (1), at any time and, if necessary in the circumstances, by the use of reasonable force.
- (3) An authorised officer may not enter a place by force in an emergency unless accompanied by a member of the Police Force.

**96. GENERAL INVESTIGATIVE POWERS.**

- (1) An authorised officer who enters a place may exercise any one or more of the following powers:
  - (a) investigate whether the provisions of this Act are being or have been complied with; and
  - (b) examine and test works, electrical installations or equipment in the place to find out whether the works, electrical installations or equipment are safe and comply with the requirements of this Act; and
  - (c) investigate a suspected electrical accident; and
  - (d) investigate a suspected interference with works or an electrical installation; and
  - (e) investigate a suspected theft or diversion of electricity; and
  - (f) search for, examine and copy or take an extract from a document or record of any kind as reasonably required for the purposes of the enforcement of this Act; and
  - (g) take photographs or make films or other records of activities in the place and works, electrical installations or equipment in the place; and
  - (h) take possession of any object that may be evidence of an offence against this Act.
- (2) If an authorised officer takes possession of an object that may be evidence of an offence -
  - (a) the authorised officer must give the occupier of the place a receipt for the object; and
  - (b) the object must be returned to its owner -
    - (i) if proceedings for an offence are not commenced within six months after the authorised officer takes possession of the object at the end of that period; or
    - (ii) if such proceedings are commenced within that period on completion of the proceedings, unless the Court, on application by the Authority, orders confiscation of the object.
- (3) A Court may order the confiscation of an object that an authorised officer has taken possession of under Subsection (1), if the Court is of the opinion that the object has been used for the purpose of committing an offence or there is some other proper reason for ordering its confiscation.
- (4) If the Court orders the confiscation of an object, the Authority may dispose of the object.

**97. DISCONNECTION OF ELECTRICITY SUPPLY.**

- (1) If an authorised officer finds that electricity is being consumed or supplied contrary to this Act, he may disconnect the electricity supply.
- (2) If an authorised officer disconnects an electricity supply, he must give written notice to the occupier of the relevant place -
  - (a) informing the occupier that the electricity supply is disconnected; and

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(b) direct that the electricity supply must not be reconnected until arrangements are made to the satisfaction of an authorised officer to ensure against future contravention of this Act.

(3) If an electricity supply is disconnected, a person must not reconnect the electricity supply without the approval of an authorised officer.

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

Penalty: A fine not exceeding K2,000.00.

**98. POWER TO MAKE WORKS OR INSTALLATION SAFE.**

(1) If an authorised officer finds that works or an electrical installation is unsafe, he may -  
(a) disconnect the electricity supply or give a direction requiring the disconnection of the electricity supply; or  
(b) give a direction requiring the carrying out of the work necessary to make the works or electrical installation safe before the electricity supply is reconnected.

(2) A direction under this section must be given -  
(a) in relation to works, to the electricity undertaker or other person who operates the works; or  
(b) in relation to an electrical installation, to the person in charge of the electrical installation or the occupier of the place in which the electrical installation is situated.

(3) An authorised officer may give direction by written notice or, if he is of the opinion that immediate action is required, he may give notice orally but must subsequently confirm it in writing.

(4) A person to whom a direction is given -  
(a) must comply with the direction; and  
(b) must not reconnect or permit the reconnection of the electricity supply unless the work required by the direction is carried out, or an authorised officer approves the reconnection of the electricity supply.

(5) A person who fails to comply with this section is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

**99. POWER TO REQUIRE INFORMATION.**

(1) An authorised officer may require a person to provide information in the person's possession relevant to the enforcement of this Act.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the enforcement of this Act for inspection by the authorised officer.

(3) A person who, without reasonable excuse, fails to comply with a requirement under this section is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

(4) A person is not required to give information or produce a document under this section if the answer to the question or the contents of the document would incriminate the person of an offence.

***Subdivision 2. - Electricity inspectors.***

**100. APPOINTMENT OF ELECTRICITY INSPECTORS.**

(1) The Minister may, at the request of an electricity undertaker, subject to conditions determined by Regulation, appoint an officer or employee to be an electricity inspector for the purposes of this Act.

(2) An electricity inspector may only exercise powers under this Act subject to the conditions of appointment and any directions given to him by the Minister.

(3) The Authority must give each electricity inspector appointed by the Minister an identity card.

(4) The identity card must be in a form approved by the Regulations and must -

(a) contain a photograph of the electricity inspector taken for the purpose; and

(b) identify the electricity inspector as an electricity inspector appointed by the Minister.

(5) An electricity inspector must, before exercising a power in relation to another person, produce his identity card for inspection by that other person.

(6) A person must, within two days after ceasing to be an electricity inspector, return the identity card to the electricity undertaker.

(7) A person who fails to return the identity card is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**101. POWERS OF ELECTRICITY INSPECTORS.**

(1) An electricity inspector for an electricity undertaker may -

(a) require the owner or occupier of any land to cut down or lop any trees or undergrowth growing on the land that obstruct or, in the opinion of the electricity undertaker or the electricity inspector, are likely to interfere with an electric line; and

(b) at all reasonable times, enter any premises to which electricity is, or is to be, supplied or sold by the electricity undertaker for the purpose of -

(i) inspecting or testing any electric line or works; or

(ii) ascertaining the quantity of electricity consumed or supplied; or

(iii) installing, repairing or replacing meters and testing their accuracy; and

(c) remove or disconnect any electric line or works or electricity supply where -

(i) a supply of electricity to the premises is no longer required; or

(ii) the electricity undertaker desires to cut off the supply of electricity to the premises; or

(iii) in the opinion of the electricity inspector, the supply of electricity to the premises is unsafe; and

(d) inspect electrical installations in the place to ensure that it is safe to connect or reconnect electricity supply; and

(e) take action to prevent or minimise an electrical hazard, or investigate a suspected theft or diversion of electricity; and

- (f) in an emergency, exercise a power of entry under Subsection (1)(b) at any time and, if necessary in the circumstances, by the use of reasonable force; and
- (g) enter a place under Subsection (1)(b) with such assistants, vehicles and things as he thinks reasonably necessary; and
- (h) not enter a place by force in an emergency unless accompanied by a member of the Police Force.

***Subdivision 3. - Safety and technical requirements.***

**102. SAFETY AND TECHNICAL COMPLIANCE OF WORKS, ELECTRICAL INSTALLATIONS AND EQUIPMENT.**

(1) A person who connects an electrical installation to a transmission or distribution network must ensure that the electrical installation and the connection comply with technical and safety requirements imposed under the Regulations.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 and in addition, a fine not exceeding K200.00 for every day during which the offence continues.

(3) A person who owns or operates works or an electrical installation must ensure that -  
(a) the works or electrical installation comply with, and are operated in accordance with, the technical and safety requirements imposed under the Regulations; and  
(b) the works or electrical installation are safe and are operated safely.

(4) A person who fails to comply with this subsection is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 and in addition, a fine not exceeding K200.00 for every day during which the offence continues.

**103. POWER TO REQUIRE RECTIFICATION, ETC., IN RELATION TO WORKS OR ELECTRICAL INSTALLATIONS.**

(1) If works or an electrical installation is unsafe, or does not comply with this Act, the Authority may give a direction requiring -

- (a) the rectification of the works or electrical installation to the Authority's satisfaction; or
- (b) if appropriate, the temporary disconnection of the electricity supply while the rectification is carried out; or
- (c) the disconnection and removal of the works or installation.

(2) A direction by the Authority must be given -

- (a) in relation to works, to the electricity undertaker or other person that operates the works; or
- (b) in relation to an electrical installation, to the person in charge of the electrical installation or the occupier of the place in which the installation is situated.

(3) A direction may be given by written notice or, if the Authority is of the opinion that immediate action is required, orally but must subsequently be confirmed in writing.

(4) A person to whom a direction is given and fails to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 and in addition, a fine not exceeding K200.00 for every day during which the offence continues.

(5) If a person does not comply with a direction, the Authority may take action that is reasonable and necessary for the direction to be carried out.

(6) A person, authorised in writing by the Authority, may do what is reasonable and necessary to carry out the direction.

(7) The costs incurred in carrying out the direction are recoverable as a debt due to the Authority.

#### **104. REPORTING OF ACCIDENTS.**

(1) If an accident occurs that involves electric shock caused by the operation or condition of works or an electrical installation -

(a) the accident must be reported as required under this Act -

- (i) if the accident involves part of an electricity undertaker's works, by the electricity undertaker; or
- (ii) if the accident happens while an electrician or an electrical contractor is working on an electrical installation and the electrician or electrical contractor is able to make the report, by the electrician or electrical contractor; or
- (iii) in any other case by the occupier of the place in which the accident occurs; and

(b) the works or electrical installation must not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the accident.

(2) A person who fails to comply with this section is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

#### *Division 5. - Electrical contractors and electricians.*

#### **105. LICENSING OF ELECTRICAL CONTRACTORS AND ELECTRICIANS.**

(1) The Minister may issue electrical contractor's licences and electrician's licences in accordance with this Act and the Regulations.

(2) The procedures for licensing of electrical contractors and electricians are as prescribed in the Regulations.

#### **106. ELECTRICAL WIRING WORK.**

(1) Subject to Section 107, a person other than -

- (a) the holder of an electrical contractor's or electrician's licence; or
- (b) a person who is in the employment of and carries out the work under the personal supervision of a licensed person,

who undertakes or carries out any electrical wiring work is guilty of an offence.

Penalty: A fine not exceeding K100.00.

- (2) Subject to Section 110, an electrical contractor who undertakes any electrical wiring work must -
- (a) carry out the work with or without assistance; or
  - (b) constantly employ a person who is the holder of an electrician's licence or electrical contractor's licence.

Penalty: A fine not exceeding K100.00 and in addition, a fine not exceeding K10.00 for every day during which the offence continues.

(3) Subsection (2) does not apply to work that consists of fixing, connecting and maintaining overhead electrical conductors not in conduits, or of other work usually carried out by a linesman, where the work is carried out under the personal supervision of the holder of an electrical contractor's licence or electrician's licence.

(4) The holder of an electrician's licence who undertakes or carries out electrical wiring work otherwise than -

- (a) on his own premises; or
- (b) as an employee of an electrical contractor; or
- (c) in accordance with Section 114,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(5) This section does not prevent the carrying out of electrical wiring work by an apprentice electrician working under the supervision of his master.

#### **107. EXCEPTIONS.**

Despite this division -

- (a) an unlicensed person may carry out electrical wiring work as part of a contract for building or construction work if the installation is carried out by or under the personal supervision of a person holding an electrical contractor's licence or electrician's licence; and
- (b) a person, or body of persons, corporate or un-incorporate, who -
  - (i) is not trading as an electrical contractor; and
  - (ii) is employing a licensed electrician for the purpose of making or maintaining the installations necessary for the conduct of the business of that person,is not required to be licensed under this division, and a licensed electrician so employed may carry out the duties of that employment.

#### **108. PROHIBITED APPLIANCES, ETC.**

(1) The Regulations may prohibit the sale, hiring, exposure or advertisement for sale or hire of any class, description or type of wire, cable, appliance, fitting, meter, insulator, apparatus or material intended, suggested or designed for use in or for the purposes of or for connection to any electrical installation, unless the wire, cable, appliance, fitting, meter, insulator, apparatus or material, as the case may be, has been approved by the Authority and is stamped or labeled as prescribed.

(2) Regulations made for the purposes of this section may provide for the approval of the Authority to be signified by approval of a sample or by some other means.



*Division 6. - Review of decisions of the Authority.*

**109. REVIEW OF DECISIONS UNDER THIS ACT.**

- (1) An application may be made to the Appeals Panel -
  - (a) by an applicant for the issue or variation of the terms or conditions of a licence under Part III, Division 8, or for agreement to the transfer of such a licence, for review of the decision of the Minister to refuse the application; or
  - (b) by an electricity undertaker for review of a decision of the Minister under Part III, Division 4, to suspend or cancel the electricity undertaker's licence or to vary the terms or conditions of the electricity undertaker's licence; or
  - (c) by a person to whom a direction is given under Part III, Division 13, by the Authority or an authorised officer for review of the decision to give the direction; or
  - (d) by a person affected by the decision for review of the decision of an authorised officer or an electricity inspector to disconnect an electricity supply.
  
- (2) An application for review of a decision referred to in Subsection (1) must -
  - (a) be in writing; and
  - (b) set out the decision to which the application relates; and
  - (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
  - (d) be accompanied by any information that the applicant considers should be taken into account by the Appeals Panel on the review and be lodged with the Appeals Panel -
    - (i) in the case of a decision relating to a licence or application for a licence, within ten days after written notice of the decision is given to the electricity undertaker or applicant; or
    - (ii) in the case of a decision to give a direction, within ten days after the direction is given; or
    - (iii) in the case of a decision to disconnect an electricity supply, within ten days after notice of the disconnection is given or, if notice is not given, within ten days after the supply is disconnected, or, in any of these cases, such longer period as the Appeals Panel may allow.
  
- (3) The Appeals Panel may stay the operation of the decision to which the application relates.
  
- (4) A review must be decided within four weeks of the application being lodged with the Appeals Panel.
  
- (5) After considering the application, the Appeals Panel may confirm, amend or substitute the decision or return the matter to the original decision maker with directions the Appeal Panel considers appropriate.
  
- (6) The Appeals Panel must give the applicant written notice of the decision and the reasons for the decision.

**110. MINISTER'S POWERS TO INTERVENE.**

The Minister may intervene, personally or by counsel or other representative, in a review under this part for the purpose of introducing evidence or making submissions on any question relevant to the public interest.

*Division 7. - Exemptions.*

**111. POWER OF EXEMPTION.**

(1) The Minister may grant an exemption from the application of Part IV, Division 1, for a condition not prescribed by the Act or the Regulations, or specified provisions of Part IV, Division 1, on terms and conditions the Minister considers appropriate or as specified by the Regulations.

(2) If the Minister exempts a person from the requirement to hold a licence under Part III, Division 1, the Minister may, without limiting Subsection (1), by conditions of the exemption require that the person is to be treated as an electricity undertaker for the purposes of this Act.

(3) Except as otherwise provided in the exemption, an exemption under Subsection (1), may be varied or revoked by the Minister by notice in writing.

**112. REGISTER OF EXEMPTIONS.**

(1) The Authority must keep a register of exemptions granted under this Act.

(2) The register must include -  
(a) the terms and conditions of each exemption; and  
(b) any other information required under the Regulations.

(3) A person may, without paying a fee, inspect the register.

**113. OBLIGATION TO COMPLY WITH CONDITIONS OF EXEMPTIONS.**

(1) A person in whose favor an exemption is given must comply with the conditions of the exemption.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K10,000,000.00.

Default penalty: A fine not exceeding K1,000,000.00.

(3) If a person, in whose favor an exemption is given, profits from contravention of a condition of its exemption, the Authority may recover an amount equal to the profit from the person -

(a) on application to a Court convicting the person of an offence against this section; or  
(b) by action in a Court of competent jurisdiction.

(4) Any amount recovered under Subsection (2) must be paid as a debt due to the Authority.

*Division 8. - Offences.*

**114. OBSTRUCTION, ETC.**

A person who hinders or obstructs a person in the performance of his functions or the exercise of his powers under this Act is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**115. CORRUPTION.**

(1) In this section, "bribe" includes the giving, conferring or procuring of any property or benefit of any kind in respect of -

- (a) any act done or to be done; or
- (b) any forbearance observed or to be observed; or
- (c) any favor or disfavor shown or to be shown, in relation to the affairs or business of the Authority or to any matter under this Act.

(2) A member, officer or employee of the Authority who obtains or attempts to obtain a bribe is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years.

(3) A person who bribes or attempts to bribe a member, officer or employee of the Authority is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years.

**116. REMOVING, TAMPERING WITH ELECTRICAL LINES, ETC.**

(1) A person who -

- (a) willfully and without lawful excuse removes, destroys or damages an electric line, or a pillar, post, lamp, meter, sealing device, fitting, insulator, apparatus or works connected with or relating to the supply of electricity by the State, or an electricity undertaker; or
- (b) willfully and unlawfully extinguishes a public lamp or light maintained by the State, or an electricity undertaker,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding 12 months.

(2) A person who -

- (a) willfully, fraudulently or by culpable negligence -
  - (i) destroys an electric line or a pillar, post, lamp, meter, sealing device, fitting, insulator, apparatus or works connected with or relating to the supply of electricity by the State, or an electricity undertaker, or permits one to be injured; or
  - (ii) alters the index of a meter; or
  - (iii) prevents a meter from duly registering the quantity of electricity supplied; or
- (b) fraudulently abstracts, causes to be wasted or diverted, consumes or uses electricity supplied by the State, or an electricity undertaker,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years.

(3) In addition to any damages that may be recovered, a person who is convicted of an offence under Subsection (1) or (2) must, for each offence forfeit and pay to the Authority, or the electricity undertaker such sum as the Court thinks reasonable, not exceeding K50.00.

(4) Subsection (3) does not affect any other right or remedy for the protection of the Authority, an electricity undertaker, or the punishment of the offender.

(5) The existence, in connection with a meter that is in the custody or control of the consumer, of artificial means for -

- (a) causing the alteration of the index of the meter; or
- (b) preventing the meter from duly registering the quantity of electricity supplied; or
- (c) abstracting, wasting, diverting or using electricity supplied by the State, or an electricity undertaker,

is *prima facie* evidence that the alteration, prevention, abstraction, waste, diversion, consumption or use, as the case may be, has been fraudulently, knowingly and willfully caused by the consumer.

Penalty: A fine not exceeding K2,000.00.

Default Penalty: A fine not exceeding K200.00.

#### **117. IMPERSONATION.**

A person who impersonates an authorised officer, an electricity inspector or other person entitled to exercise a power or perform a function under this Act, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

Default penalty: A fine not exceeding K200.00.

#### **118. FALSE OR MISLEADING INFORMATION.**

A person who makes a statement that is false or misleading, whether by reason of the inclusion or omission of any particular, in any information furnished under this Act, is guilty of an offence.

Penalty: If the person made the statement knowing that it was false or misleading - a fine not exceeding K2,000.00 and in any other case - a fine not exceeding K200.00.

#### **119. OFFENCES BY CORPORATIONS OR FIRMS.**

If a corporation or a firm is guilty of an offence under this Act, a director, manager, secretary, officer or member of the corporation or the firm, as the case may be, who knowingly and willfully authorises or permits the commission of the offence is also guilty of the offence.

#### **120. AGREEMENTS FOR RE-SUPPLY OF ELECTRICITY.**

(1) Where -

- (a) electricity is supplied to a person; and
- (b) the person makes electricity available to a second person under an agreement, express or implied, that the second person shall pay to him an amount of money in respect of the electricity,

the first-mentioned person must not, without the consent of the Authority, demand or receive an amount for the electricity greater than the amount that the second person would be liable to pay if the electricity was supplied directly to the second person.

Penalty: A fine not exceeding K200.00.

(2) The excess of any amount paid in contravention of Subsection (1), may be recovered by the person who paid it from the person to whom it was paid, as a debt.

**PART V. - TRANSITIONAL AND MISCELLANEOUS PROVISIONS.**

*Division 1. - Miscellaneous provisions.*

**121. REGULATIONS.**

- (1) The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting Subsection (1), the Regulations may deal with the following matters -
- (a) the construction, installation and positioning of cables, poles, structures, pipes, fittings and other works supplying electricity, the notice to be given of such work, the superintendence of such work, the making good and replacement of ground disturbed in the course of such work and the inspection of such work; and
  - (b) the method (including the notice (if any) to be given) and means of access to land on or from which any pylon, post, pole, pillar or electric line is or is to be erected, maintained or removed under Division 10 of this part, and the prohibition or restriction of any use of any such land to the extent necessary or desirable for the maintenance of, or the prevention of damage or interference to, any such pylon, post, pole, pillar or electric line or the conveyance, transmission or distribution of electricity; and
  - (c) the construction, distribution, installation, inspection and reading of meters, and access to them; and
  - (d) the lamps, meters, appliances and electricity-consuming devices that a consumer may connect to an electricity supply; and
  - (e) the licensing of electrical contractors and electricians, the standards required and the fees to be paid for such licences and the conditions on which such licences may be cancelled, suspended or limited in their application; and
  - (f) governing rules of the bodies, committees or sub-committees established under this Act; and
  - (g) standards of safety in the construction, operation, maintenance and use of -
    - (i) electrical installations, works and equipment for the generation, transmission, distribution, supply and consumption of electricity; and
    - (ii) electrical apparatus and appliances; and
  - (h) technical, operational and safety requirements and standards; and
  - (i) the generation, transmission, distribution, sale and supply of electricity; and
  - (j) the exemption (conditionally or unconditionally) of persons or operations from the application of this Act or specified provisions of this Act; and
  - (k) penalties not exceeding K100.00, or K10.00 for every day during which the offence continues, for contravention of a regulation.
- (3) Without limiting Subsection (1), the Regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act, or anything done under or for the purposes of this Act.
- (4) If the Regulations grant an exemption from the requirement to hold a licence under Part III, Division 1, the Regulations may require a person exempted from the requirement to be treated as an electricity undertaker for the purposes of specified provisions of this Act.

- (5) The Regulations may -
- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which they apply; or
  - (b) provide that a matter or thing in respect of which Regulations may be made is determined, regulated or prohibited according to the discretion of the Minister or the Authority; or
  - (c) refer to or incorporate, wholly or partially and subject to such modifications, conditions or restrictions as are prescribed, any standard, code, procedure or other document prepared or laid down by the Standards Association of Australia as adopted under PNG Codes or as standards or any other authority, as in force from time to time or as in force at a particular time.

**122. AUTHORITY MAY REQUIRE INFORMATION.**

(1) A licensee must, in writing, furnish to the Authority any information that the Authority requires at such times and in such form and manner as required by this Act, Regulations and other legislation.

(2) The Authority must direct the licensee to provide information in writing where the licensee refuses to cooperate in providing information required by the Authority.

(3) The Managing Director may request information from consumers, researchers, academic institutions, potential investors or any other person for policy development purposes.

**123. FALSE INFORMATION.**

A person who makes a false statement or a statement which he has reason to believe is untrue, to the Minister, the Authority, a committee, an officer or agent acting on behalf of the Authority is guilty of an offence.

Penalty: A fine not exceeding K500,000.00 or a maximum term of imprisonment of six months, or both.

**124. SECRECY OF INFORMATION.**

(1) No information relating to any matter obtained under Section 52 must be published or disclosed to a third party without prior consent in writing from the person from whom the information was obtained.

- (2) Nothing in this section restricts the disclosure of such information to -
- (a) the Minister responsible for energy matters; or
  - (b) the Board in relation to energy policy development or economic planning of energy business in Papua New Guinea; or
  - (c) which the Authority deems necessary or expedient in connection with the objects of this Act.

**125. AUTHORITY NOT TO DISCRIMINATE.**

The Authority must ensure that no person is given undue preference or is subjected to any undue disadvantages, while discharging the Authority's functions and exercising its powers under this Act.

**126. PENALTIES NOT TO AFFECT OTHER LIABILITIES.**

The penalties imposed under this Act are in addition to and not in derogation of any liabilities in respect of payment of compensation or in the case of penalties for breach of the licence conditions or other electricity industry laws and regulations.

**127. GENERAL PENALTY.**

Where a person contravenes a provision of this Act or defaults in payment of a penalty for which no fine or penalty is expressly stated, the person so defaulting or contravening is, on conviction, liable to a fine not exceeding K1,000,000.00.

**128. AUTHORISATION FOR PURPOSES OF THE *LAND ACT 1996*.**

(1) The Authority, or an authorised officer or employee of the Authority is deemed to be a person authorised by the Minister for the purposes of Sections 79, 80, 81 and 82 of the *Land Act 1996*.

(2) In the application of Section 83 of the *Land Act 1996* in relation to the Authority or an officer or employee of the Authority by virtue of this section, a reference to the Minister or to the State shall be read as a reference to the Authority.

**129. PROOF OF CERTAIN MATTERS.**

In any proceedings by or against the Authority, proof is not required, unless evidence is given to the contrary, of -

- (a) the constitution of the Authority; or
- (b) a resolution of the Authority; or
- (c) the appointment of a member, officer, servant or agent of the Authority; or
- (d) the presence of a quorum at a meeting at which a determination is made or an act is done by the Authority.

**130. INDEMNITY.**

(1) A member, officer, employee or agent of the Authority is not personally liable for anything done or omitted to be done in good faith in the course of the operations of the Authority.

(2) Any person engaged in the administration or enforcement of this Act is not personally liable for anything done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

**131. SERVICE OF PROCESS.**

Any notice, summons, writ or other process required to be served on the Authority may be served at the office of the Authority or, in the case of a notice, by post.

**132. AUTHENTICATION OF DOCUMENTS.**

Any document requiring authentication by the Authority is sufficiently authenticated without the seal of the Authority if signed by the Chairman.

**133. APPOINTMENT OF ATTORNEYS.**

(1) The Authority may, by instrument under its seal, appoint a person to act as its attorney outside the country for the purpose of doing anything that the Authority might lawfully do.

(2) A person appointed under Subsection (1) may, on behalf of and in the name of the Authority, do any act, exercise any power and perform any function that the person is authorised by the instrument to do, exercise or perform.

**134. IMMUNITY FOR FAILURE TO SUPPLY.**

An electricity undertaker is not liable in damages to any person for any partial or total failure to supply electricity or any variation in electricity supply to the extent that the failure or variation is due to an event that is beyond the reasonable control of the electricity undertaker.

**135. COMPENSATION.**

(1) Where loss or damage is suffered by any person by reason of the exercise, by or on behalf of an electricity undertaker, of a power conferred by or under this Act, compensation for the loss or damage is payable to that person by the electricity undertaker.

(2) Subject to Subsection (3), the amount of compensation payable under Subsection (1), is as determined by the Minister.

(3) A person who is aggrieved by a determination of the Minister under Subsection (2) may appeal to the National Court.

**136. EMERGENCY.**

(1) The Minister may declare an emergency under the *Essential Services Act 2002*, and exercise the powers granted to him under this Act and the *Essential Services Act 2002*, in relation to electricity and energy services.

(2) An electricity undertaker may, without incurring any liability, cut off the supply of electricity to any region, area, land or place if it is, in the electricity undertaker's opinion, necessary to do so to avert danger to person or property.

**137. RECOVERY OF MONEY DUE.**

Any money due to the Authority under this Act may be recovered by the Authority as a debt.

*Division 2. - Savings and transitional provisions.*

**138. INTERIM MANAGING DIRECTOR.**

(1) On the commencement of this Act, the Deputy Secretary responsible for the Energy Wing of the former Department of Petroleum and Energy will act as the Interim Managing Director until the appointment of a Managing Director under this Act.

(2) The Interim Managing Director is vested with full powers and authority under this Act.

**139. EMPLOYEES AND CASUAL EMPLOYEES OF THE ENERGY WING OF THE DEPARTMENT OF PETROLEUM AND ENERGY AND CERTAIN OFFICERS OF THE DEPARTMENT OF PUBLIC ENTERPRISES.**

(1) A person who, immediately before the coming into operation of this Act, held a position under the Energy Wing of the former Department of Petroleum and Energy or the Department of Public Enterprises, as an employee or casual employee is, on that coming into operation of this Act, deemed to be an employee or casual employee of the Authority in the same or equivalent position or category of employment, and on the same terms and conditions of employment.



(2) Until such time the Managing Director makes a decision on the future appointment of his staff, the staff of the Energy Wing of the former Department of Petroleum and Energy, and certain officers of the former Department of Public Enterprises, will become unattached and occupying positions in the National Energy Authority in acting capacity, equivalent to the positions that the staff occupied in the former departments.

(3) All terms and conditions under the *Public Services (Management) Act 1995* and the Public Services General Orders continue to apply during the transitional period and all continuous services are deemed to be services with the National Energy Authority and all entitlements accrued in the public services are be deemed to be entitlements accrued in the Authority which become a liability for the Authority.

(4) Upon confirmation to a position in the National Energy Authority, a former employee of the Energy Wing of the former Department of Petroleum and Energy or the Department of Public Enterprises shall be paid out by the Authority all his public service entitlements accrued up to the date of a new appointment with the Authority.

(5) An employee of the Energy Wing of the former Department of Petroleum and Energy or the Department of Public Enterprises who is not employed by the Authority must be paid out by the Authority all his public service entitlements.

#### **140. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, an action, arbitration or proceeding was pending or existing by, against or in favor of the Energy Wing of the former Department of Petroleum and Energy, that action, arbitration or proceeding does not, on that date, abate or discontinue or be in any way affected by the provisions of this Act.

#### **141. TRANSFER OF ASSETS.**

(1) All the assets, estates, titles, interests and liabilities both in and to any property and assets which, immediately before the coming into operation of this Act, was vested in the State on behalf of the Energy Wing of the Department of Petroleum and Energy and some identified assets of the Department of Public Enterprises or otherwise reserved or set aside for use by the Department or for any purpose connected with energy is, by virtue of this section and without the necessity of any formal deed of assurance, vested in the Authority for the purposes of this Act and any other law governing energy.

(2) Where the property referred to in Subsection (1) is land registered under the *Land Registration Act 1981*, the Registrar of Titles must, without formal transfer and without fee, on application in that behalf by the Authority, enter or register the Authority in the relevant Register kept under that Act, and, on that entry or registration, grant a certificate of title, lease or other instrument to the Authority, evidencing title to the land within the *Land Registration Act 1981*.

#### **142. SAVING OF CONTRACTS.**

(1) All contracts and agreements (other than contracts of employment) entered into, made with, or addressed to the Department of Petroleum and Energy, in relation to the Energy Wing of the Department are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favor of the Department on that coming into operation, binding on and of full force and effect against or in favor of the Authority as fully and effectually as if, instead of the Department, the Authority had been a party to them or bound by them or entitled to the benefit of them.

- (2) The operation of Subsection (1) is not to be regarded as -
- (a) a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights, obligations or liabilities; or
  - (c) giving rise to any remedy by a party to an instrument or agreement, or as causing or permitting the termination of any instrument or agreement; or
  - (d) releasing any surety or other assurance wholly or in part from any obligation.

**143. APPLICATION OF ACTS, ETC.**

Without limiting the provisions of this Act, where -

- (a) an Act or other law (other than this Act) or any other document or instrument wherever made or executed, contains a reference, expressed or implied, to the Department, that reference, on the coming into operation of this Act, except where the context otherwise requires, is to be read and construed and have effect as a reference to the Authority; and
- (b) an Act or other law (other than this Act) or any other document or instrument wherever made or executed, contains a reference, expressed or implied, to the Secretary, that reference, on the coming into operation of this Act, except where the context otherwise requires, is to be read and construed and have effect as a reference to the Managing Director; and
- (c) an Act or other law (other than this Act) or any other document or instrument wherever made or executed, contains a reference, expressed or implied, to the Director, that reference, on the coming into operation of this Act, except where the context otherwise requires, is to be read and construed and have effect as a reference to the Managing Director; and
- (d) an Act or other law (other than this Act) or any other document or instrument wherever made or executed, contains a reference, expressed or implied, to the Departmental Head, in relation to the Department, that reference, on the coming into operation of this Act, except where the context otherwise requires, is to be read and construed and have effect as a reference to the Managing Director.

**144. DEEMING OF PREVIOUS ACTIONS AND DECISIONS.**

To the extent necessary or desirable for the application or the administration of any other decision, after the coming into operation of this Act -

- (a) any act or decision done or made by the Department which is relevant to its Energy Wing before the coming into operation of this Act, will be taken to be an act or decision, as the case requires, of the Authority; and
- (b) any act or decision done or made by the Deputy Secretary, Energy Wing of the Department, before the coming into operation of this Act, will be taken to be an act or decision, as the case requires, of the Managing Director.

*National Energy Authority*

I hereby certify that the above is a fair print of the *National Energy Authority Act 2021*, which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *National Energy Authority Act 2021*, was made by the National Parliament on 21 April 2021, by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.