

No. 10 of 2002.

Electricity Commission (Amendment) Act 2002.

Certified on : 10.05.02



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

Electricity Commission (Amendment) Act 2002.

ARRANGEMENT OF SECTIONS.

1. Compliance with constitutional requirements.
2. Amendment of short title.
3. Amendment of long title.
4. Interpretation (Amendment of Section 1).
5. Amendment and repeal of provisions in Part II.
6. Amendment and repeal of provisions in Part III.
7. New Parts IIIA and IIIB.

"PART IIIA. – ADMINISTRATION. "

"24A. FUNCTIONS AND POWERS OF REGULATOR."

"24B. DELEGATION."

"PART IIIB. – ELECTRICITY SUPPLY INDUSTRY. "

"Division 1. – Declaration. "

"24C. DECLARATION."

"Division 2. – Licensing of Electricity Undertakers.

"24D. REQUIREMENT FOR LICENCE."

"24E. APPLICATION FOR LICENCE."

"24F. CONSIDERATION OF APPLICATION."

"24G. LICENCES MAY BE HELD JOINTLY."

"24H. AUTHORITY CONFERRED BY LICENCE."

"24I. TERM OF LICENCE."

"24J. LICENCE FEES AND RETURNS."

"24K. SPECIALLY ISSUED LICENCES."
"24L. LICENCE CONDITIONS."
"24M. EXCLUSIVE RETAIL LICENCES."
"24N. REGULATORY DUPLICATION."
"24O. OFFENCE TO CONTRAVENE LICENCE CONDITIONS."
"24P. VARIATION OF LICENCE."
"24Q. TRANSFER OF LICENCE."
"24R. NOTICE OF LICENCE DECISIONS."
"24S. SURRENDER OF LICENCE."
"24T. REGISTER OF LICENCES."

"Division 3. – Standard Terms and Conditions for Sale or Supply."

"24U. STANDARD TERMS AND CONDITIONS FOR SALE OR SUPPLY."

"Division 4. – Suspension or Cancellation of Licences."

"24V. SUSPENSION OR CANCELLATION OF LICENCES."

"Division 5. – Regulator's powers to take over operations."

"24W. POWER TO TAKE OVER OPERATIONS."
"24X. APPOINTMENT OF OPERATOR."

8. Repeal and replacement of heading of Division III.2.
9. Erection of transmission lines, etc. (Amendment of Section 25).
10. New Section 25A.

"25A. OWNERSHIP OF TRANSMISSION LINES, ETC."

11. Entry on land, etc. (Amendment of Section 26).
12. Repeal and replacement of Section 27.

"27. NOTICE OF INTENTION TO ENTER UNDER SECTION 25 OR 26."

13. Repeal of Section 28.
14. Repeal and replacement of heading of Division III.3.
15. Registration of rights, etc. (Amendment of Section 30).
16. Repeal of Section 31.

17. Repeal and replacement of Part V.

“PART V. – INSPECTION, SAFETY AND TECHNICAL REQUIREMENTS.”

“Division 1. – Authorized Officers.”

“31A. APPOINTMENT OF AUTHORIZED OFFICERS.”

“PART V. – INSPECTION, SAFETY AND TECHNICAL REQUIREMENTS.”

“Division 1. – Authorized Officers.”

“31A. APPOINTMENT OF AUTHORIZED OFFICERS.”

“31B. IDENTITY CARD.”

“Division 2. – Powers of Authorized Officers.”

“31C. POWER OF ENTRY.”

“31D. GENERAL INVESTIGATIVE POWERS.”

“31E. DISCONNECTION OF ELECTRICITY SUPPLY.”

“31F. POWER TO MAKE WORKS OR INSTALLATION SAFE.”

“31G. POWER TO REQUIRE INFORMATION.”

“Division 3. – Electricity Inspectors.”

“32. APPOINTMENT OF INSPECTORS.”

“33. IDENTITY CARD.”

“34. POWERS OF INSPECTORS.”

“Division 4. – Safety and Technical Requirements.”

“35. SAFETY AND TECHNICAL COMPLIANCE OF WORKS, ELECTRICAL INSTALLATIONS AND EQUIPMENT.”

“36. POWER TO REQUIRE RECTIFICATION, ETC., IN RELATION TO WORKS OR ELECTRICAL INSTALLATIONS.”

“37. REPORTING OF ACCIDENTS.”

“PART VA. – ELECTRICAL CONTRACTORS AND ELECTRICIANS.”

“38. LICENSING OF ELECTRICAL CONTRACTORS AND ELECTRICIANS.”

- “39. ELECTRICAL WIRING WORK. ”**
- “40. EXCEPTIONS. ”**

“PART VB. – ELECTRICAL APPLIANCES AND APPARATUS. ”

- “41. PROHIBITED APPLIANCES, ETC.”**

“PART VC. – REVIEW. ”

- “42. REVIEW OF DECISIONS UNDER ACT. ”**
- “43. MINISTER’S POWER TO INTERVENE. ”**

“PART VD. – EXEMPTIONS. ”

- “43A. POWER OF EXEMPTION. ”**
- “43B. REGISTER OF EXEMPTIONS. ”**
- “43C. OBLIGATION TO COMPLY WITH CONDITIONS OF EXEMPTION. ”**

- 18. Repeal of Part VI.
- 19. Repeal of Section 48.
- 20. Removing, tampering with, etc., electric lines, etc. (Amendment of Section 49).
- 21. Repeal and replacement of Section 50.

“50. IMPERSONATION.”

- 22. Agreements for re-supply of electricity (Amendment of Section 51).
- 23. Repeal of Sections 52 to 58 (inclusive) and 60.
- 24. Repeal and replacement of Section 59.

- “58A. IMMUNITY. ”**
- “58B. IMMUNITY FOR FAILURE TO SUPPLY. ”**
- “59. COMPENSATION. ”**
- “59A. EMERGENCY.”**

- 25. Repeal and replacement of Section 61.

“61. REGULATIONS.”

- 26. Repeal of Schedule.
- 27. Consequential amendments.

SCHEDULE.



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002.

AN ACT

entitled

Electricity Commission (Amendment) Act 2002,

Being an Act to amend the *Electricity Commission Act* (Chapter 78) to establish a new regulatory regime for the electricity industry, and for other purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

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 liberty of the person conferred by Section 42 of the *Constitution*; and
 - (b) the right to freedom from arbitrary search of person or property and entry of premises conferred by Section 44 of the *Constitution*; and
 - (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
 - (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
 - (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
 - (f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and

Electricity Commission (Amendment)

- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*; and
- (h) the right to protection from unjust deprivation of property conferred by Section 53 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*) –

- (i) taking account of the National Goals and Directive Principles (including, in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self-reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organization) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interest not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare and the development of underprivileged or less advanced groups or areas; and
- (j) in order to protect the exercise of the rights and freedom of others; and
- (k) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* –

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be –
 - (i) to facilitate and maintain the efficient and economical provision of the service of electricity power supply to the people of Papua New Guinea as a contribution to the social and economic development of Papua New Guinea; and
 - (ii) to maintain the peace and good order in Papua New Guinea, and each of those purposes and reasons is hereby also declared and described as–
 - (iii) a public purpose; and
 - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in Division IIIB.5 of the Principal Act (inserted by Section 7) and such terms shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

Electricity Commission (Amendment)

(3) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(4) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

2. AMENDMENT OF SHORT TITLE.

The short title of the Principal Act is amended by repealing the word "Commission" and replacing with the following:—

"Industry".

3. AMENDMENT OF LONG TITLE.

The long title of the Principal Act is amended —

(a) by repealing the words "to provide for the establishment of an Electricity Commission and"; and

(b) by inserting after the word "generation" the following:—

“, supply”.

4. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended —

(a) by inserting before the definition of "the by-laws" the following new definition:—

"“Authorized Officer” means an Authorized Officer appointed under Section 31A;"; and

(b) by repealing the definition of "the by-laws"; and

(c) by repealing the definition of "the Chairman"; and

(d) by repealing the definition of "the Commission"; and

(e) by inserting before the definition of "electrical contractor" the following new definition:—

"“customer” includes (where the context requires) a person seeking the supply or sale of electricity to that person;"; and

Electricity Commission (Amendment)

- (f) in the definition of “electrical contractor’s licence”, by repealing the words “a licence under the by-laws made for the purposes of Section 44 (1)(m)(i)” and replacing them with the following:–
- “an electrical contractor’s licence issued under Section 38”; and
- (g) in the definition of “electrical installation”, by repealing the words “the Commission” (three times occurring); and
- (h) in the definition of “electrician’s licence”, by repealing the words “a licence under the by-laws made for the purposes of Section 44 (1)(m)(ii)” and replacing them with the following:–
- “an electrician’s licence issued under Section 38”; and
- (i) by inserting after the definition of “electricity” the following new definition:–
- ““electricity supply industry” means the industry involved in the generation, transmission, distribution, supply and sale of electricity or other operations of a prescribed kind;”; and
- (j) in the definition of “electricity undertaker”, by repealing the words “authorized by an Order to generate, supply and sell electricity in an area” and replacing them with the following:–
- “licensed under Part IIIB 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 that Part whose licence has been suspended or cancelled or has expired”; and
- (k) by repealing the definition of “the General Manager”; and
- (l) by repealing the definition of “member”; and
- (m) by inserting after the definition of “member” the following new definition:–
- ““officer of the Regulator” means any person engaged by the Regulator pursuant to Division II.7 of the *Independent Consumer and Competition Commission Act 2002*;”; and
- (n) by repealing the definition of “Order”; and

Electricity Commission (Amendment)

- (o) by inserting before the definition of “the Registrar of Titles” the following new definition:-
- ““the Appeals Panel” means the Appeals Panel constituted under Section 42 of the ***Independent Consumer and Competition Commission Act 2002***;” and
- (p) by repealing the definition of “registered company auditor”; and
- (q) by inserting after the definition of “the regulations” the following new definitions:-
- ““Regulator” means the Independent Consumer and Competition Commission established under the ***Independent Consumer and Competition Commission Act 2002***;
- “retail”, in relation to electricity, means the sale of electricity;” and
- (r) by repealing the definition of “works” and replacing it with the following:-
- ““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.”.

5. AMENDMENT AND REPEAL OF PROVISIONS IN PART II.

Part II of the Principal Act is amended –

- (a) by repealing Sections 3,4,7,8,10, 11, 12, 14A, 15, 16, 17 and 18A; and
- (b) in Section 5 –
- (i) by repealing Subsection (1) and replacing it with the following :-
- “(1) The Commission shall consist of three Commissioners appointed by the Minister and who shall hold office during the pleasure of the Minister.”; and
- (ii) by repealing Subsection (1A); and
- (iii) by repealing Subsection (3) and replacing it with the following:-
- “(3) The Minister shall appoint one of the members to be the Chairman of the Commission and who shall hold office during the pleasure of the Minister.”; and
- (iv) by repealing Subsections (4), (5) and (6); and
- (c) by repealing Section 5 (1) and (3); and
- (d) in Section 9 –
- (i) by repealing Subsections (1) and (2); and
- (ii) in Subsection (3), by repealing Paragraphs (a) and (b) and replacing them with the following:-

Electricity Commission (Amendment)

- “(a) two members are a quorum; and
- (b) the Chairman, or, in his absence, a member elected by the members present from their own number, shall preside; and”;
- and
- (e) by repealing Section 9(3); and
- (f) by repealing Sections 5(2), 9A, 9B, 9C and 9D; and
- (g) by repealing Section 13; and
- (h) by repealing Section 14; and
- (i) by repealing Sections 14B and 14C; and
- (j) by repealing Section 18.

6. AMENDMENT AND REPEAL OF PROVISIONS IN PART III.

Part III of the Principal Act is amended –

- (a) by repealing Sections 20, 22, 23A and 23B; and
- (b) by repealing Section 20A; and
- (c) in Section 21, by inserting after Subsection (1) the following new subsection :–

“(1A) The Minister may, by direction to the Commission, relieve it of functions, add to its functions or otherwise vary its functions as the Minister considers necessary or expedient.”; and

- (d) by repealing Section 21; and
- (e) in Section 23(2), by repealing Paragraph (h) and replacing it with the following:–

“(h) to supply electricity and other goods and services to any person in the country at such price and on such terms as are agreed between the Commission and that person; and”;

- (f) by repealing Section 23; and
- (g) by repealing Section 24 and replacing it with the following:–

"24. DELEGATION.

The Commission may delegate to a person all or any of its powers and functions under this Act (except the power to accept tenders and this power of delegation)."; and

- (h) by repealing Section 24.

7. NEW PARTS IIIA AND IIIB.

Part III of the Principal Act is amended by inserting before Division 2 the following new Parts:–

Electricity Commission (Amendment)

“PART IIIA. – ADMINISTRATION.

“24A. FUNCTIONS AND POWERS OF REGULATOR.

(1) The Regulator has, in addition to its functions under the *Independent Consumer and Competition Commission Act 2002*, the following functions :-

- (a) any function that a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002*, being a regulatory contract which relates to the electricity supply industry, contemplates will be performed by the Regulator for the purposes of that regulatory contract; and
- (b) the licensing functions conferred by this Act; and
- (c) the monitoring and regulation of safety and technical standards in the electricity supply industry; and
- (d) the monitoring and regulation of safety and technical standards with respect to works, electrical installations, electrical appliances and apparatus and associated equipment; and
- (e) any other function or power conferred by this Act or by regulation under this Act; and
- (f) any other function or power conferred by a prescribed contract.

"(2) The Regulator has, in addition to its powers under the *Independent Consumer and Competition Commission Act 2002*, the power to do all things necessary or convenient to be done for or in connection with or otherwise incidental to the performance of its functions under this Act.

"(3) The Regulator shall perform its functions in a manner consistent with the terms of any regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002* which relates to the electricity supply industry.

"24B. DELEGATION.

(1) Subject to Subsection (2), the Regulator may, by unanimous decision of all members of the Regulator and subject to any regulation made under this section, delegate to any member, officer or committee of the Regulator or to any other person any of its functions and powers (other than this power of delegation).

"(2) The Regulator shall not delegate any of its functions or powers under –

- (a) a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002*; or

Electricity Commission (Amendment)

(b) Part IIIB,
to a person other than a member or officer of the Regulator.

- "(3) A delegation under Subsection (1) –
- (a) shall be in writing; and
 - (b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
 - (c) is revocable at will by resolution of the Regulator in writing; and
 - (d) does not affect or prevent the performance of a function or the exercise of a power by the Regulator.

"PART IIIB. – ELECTRICITY SUPPLY INDUSTRY.

Division 1. – Declaration.

"24C. DECLARATION.

The electricity supply industry is declared to be a regulated industry for the purposes of the *Independent Consumer and Competition Commission Act 2002*.

"Division 2. – Licensing of Electricity Undertakers.

"24D. REQUIREMENT FOR LICENCE.

(1) A person, firm or company shall not carry on operations in the electricity supply industry for which a licence is required unless the person holds a licence under this Part authorizing the relevant operations.

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

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

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

- (a) the generation of electricity; and
- (b) the operation of a transmission or distribution network; and
- (c) the retailing of electricity; and
- (d) other operations for which a licence is required by the regulations.

"24E. APPLICATION FOR LICENCE.

- (1) An application for the issue of a licence shall –
- (a) be made to the Regulator in a form approved by the Regulator; and
 - (b) contain the information specified in the form.

Electricity Commission (Amendment)

"(2) The applicant shall pay to the Regulator an application fee fixed by the Minister responsible for treasury matters of an amount that he considers appropriate to meet the reasonable costs of determining the application.

"(3) The applicant shall give the Regulator further relevant information requested by the Regulator.

"24F. CONSIDERATION OF APPLICATION.

(1) The Regulator shall consider an application for the issue of a licence and may, subject to this Division, issue, or refuse to issue, the licence.

"(2) In considering an application for a licence, the Regulator shall have regard to the general factors specified in Part II of the *Independent Consumer and Competition Commission Act 2002* and, subject to this section, may only issue a licence if it is satisfied that –

- (a) the applicant is a suitable person to hold the licence; and
- (b) the grant of the licence would be consistent with the criteria (if any) as are prescribed for a licence of that kind.

"(3) In deciding whether an applicant is a suitable person to hold a licence, the Regulator 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 and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and
- (d) such other matters as are prescribed.

"24G. 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 or the *Independent Consumer and Competition Commission Act 2002*.

"24H. AUTHORITY CONFERRED BY LICENCE.

(1) A licence authorizes the person named in the licence to carry on operations in the electricity supply industry in accordance with the terms and conditions of the licence.

Electricity Commission (Amendment)

"(2) The operations authorized by a licence need not be all of the same character or at the same location but may consist of a number of different operations or operations at different locations.

"24I. TERM OF LICENCE.

A licence may be issued for an indefinite period or for a term specified in the licence.

"24J. LICENCE FEES AND RETURNS.

(1) Notwithstanding Section 24I, a person is not entitled to the issue of a licence unless he first pays to the Regulator the annual licence fee, or the first installment of the annual licence fee, as the case may require.

"(2) The holder of a licence issued for a term of more than one year shall –

- (a) in each year lodge with the Regulator, before the date prescribed for that purpose, an annual return containing information required by the Regulator by condition of the licence or by written notice; and
- (b) in each year pay to the Regulator, before the date prescribed for that purpose, the annual licence fee, or the first installment of the annual licence fee, as the case may require.

"(3) The annual licence fee for a licence is the fee fixed, from time to time, by the Minister responsible for treasury matters in respect of that licence as an amount that he considers to be a reasonable contribution towards administrative costs.

"(4) An annual licence fee may, if the Regulator so determines, be paid in equal installments at intervals fixed by the Regulator.

"(5) If the holder of a licence fails to lodge the annual return or to pay the annual licence fee or an installment of the annual licence fee, as the case may be, in accordance with this section, the Regulator may, by written notice, require the holder to make good the default and, in addition, to pay to the Regulator the amount prescribed as a penalty for default.

"(6) An annual licence fee (including any installment of an annual licence fee or any penalty for default) payable under this section is recoverable as a debt due to the Regulator.

"(7) In this section –

“administrative costs” means –

- (a) the costs of administration of this Act; and

Electricity Commission (Amendment)

- (b) any costs of administration of the *Independent Consumer and Competition Commission Act 2002* relating to the electricity supply industry; and
- (c) such other costs as are prescribed;

“holder” of a licence includes the holder of a licence that has been suspended.

"24K. SPECIALLY ISSUED LICENCES.

(1) The Minister may, by order in writing, require that one or more licences authorizing specified operations be issued under this Division to PNG Power, or to PNG Power’s purchaser, in accordance with specified requirements as to the term and conditions of such licence or licences and the rights conferred by such licence or licences.

"(2) The requirements of the Minister as to the conditions of a licence shall be consistent with the provisions of this Act as to such conditions.

"(3) The Minister may, by order in writing, require that a licence issued to PNG Power in accordance with an order under Subsection (1) be transferred to PNG Power’s purchaser.

"(4) An order under this section shall be given effect without the need for PNG Power or PNG Power’s purchaser to apply for the licence or agreement to the transfer of the licence and notwithstanding the provisions of this Act and Section 23 of the *Independent Consumer and Competition Commission Act 2002*.

"(5) A licence issued to PNG Power in accordance with an order under this section may not be suspended or cancelled under this Act on the ground of any change that has occurred in the officers or shareholders of PNG Power associated with the shares in PNG Power being transferred from a Minister or Ministers to PNG Power’s purchaser.

"(6) In this section –
“PNG Power” means the company incorporated pursuant to Section 3(1) of the *Electricity Commission (Privatization) Act 2002*;

“PNG Power’s purchaser” means the purchaser to whom the shares in PNG Power are transferred in accordance with the *Electricity Commission (Privatization) Act 2002*.

"24L. LICENCE CONDITIONS.

(1) On the issue of a licence, the Regulator shall make the licence subject to such conditions as it determines –

Electricity Commission (Amendment)

- (a) requiring compliance with applicable codes or rules made under the *Independent Consumer and Competition Commission Act 2002* as in force from time to time; and
- (b) requiring compliance with applicable technical or safety requirements or standards; and
- (c) requiring compliance with any regulatory contract issued under Section 34 or Section 35 of 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 authorized by the licence audited and to report the results of the audit to the Regulator; and
- (e) requiring the electricity undertaker to notify the Regulator 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 Regulator, such other information as the Regulator may from time to time require; and
- (g) requiring the electricity undertaker to maintain specified accounting records and to prepare accounts according to specified principles; and
- (h) requiring the business the operation of which is authorized 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 authorizing 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 Regulator to 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 Regulator; and

Electricity Commission (Amendment)

- (k) in the case of a licence authorizing 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 authorizing 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 authorizing 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 Regulator may establish by a code made under the *Independent Consumer and Competition Commission Act 2002* for the resolution of disputes in relation to such rights; and
- (n) in the case of a licence authorizing 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
 - (ii) any scheme that the Regulator may establish by a code made under the *Independent Consumer and Competition Commission Act 2002* for the resolution of disputes in relation to such rights; and
- (o) in the case of a licence authorizing the operation of a transmission or distribution network, requiring the electricity undertaker to comply with code provisions in force from time to time under the *Independent Consumer and Competition Commission Act 2002* establishing a

Electricity Commission (Amendment)

- 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 authorizing 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 authorizing 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 authorizing 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 under the *Independent Consumer and Competition Commission Act 2002* 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 authorizing 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 under the *Independent Consumer and Competition Commission Act 2002* 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 authorizing the retailing of electricity which confers an exclusive right to sell electricity pursuant to Section 24M, requiring the electricity undertaker to sell electricity to the relevant customers within the specified area.

"(2) On the issue of a licence, the Regulator shall make the licence subject to further conditions that the Regulator is required by regulation to impose on the issue of such a licence.

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

Electricity Commission (Amendment)

"(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 Section 34 or Section 35 of the *Independent Consumer and Competition Commission Act 2002* which applies to the electricity undertaker.

"24M. EXCLUSIVE RETAIL LICENCES.

A licence authorizing the retailing of electricity may, if the Regulator so determines, confer on the electricity undertaker an exclusive right to sell electricity to customers or classes of customers within a specified area.

"24N. REGULATORY DUPLICATION.

Notwithstanding the preceding provisions of this Division, the Regulator is not to impose a condition on a licence if the Regulator is satisfied that the condition would unnecessarily duplicate, or be inconsistent with, regulatory requirements under any other Act that are binding on the electricity undertaker.

"24O. OFFENCE TO CONTRAVENE LICENCE CONDITIONS.

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

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

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

(2) If an electricity undertaker profits from contravention of a condition of its licence, the Regulator may recover an amount equal to the profit from the electricity undertaker –

- (a) on application to a court convicting the electricity undertaker of an offence against this section; or
- (b) by action in a court of competent jurisdiction.

(3) An amount recovered under Subsection (2) shall be paid into the Consolidated Revenue Fund.

"24P. VARIATION OF LICENCE.

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

- (a) remove a condition that the Regulator is required by this Act to impose on such a licence; or
- (b) vary or remove a term or condition contained in a licence issued under Section 24K to the extent that, as at the date of issue of the licence, the licence provided that such term or condition is not be varied or removed.

Electricity Commission (Amendment)

- (2) A variation may only be made –
- (a) on application by the electricity undertaker or with the electricity undertaker's agreement; or
 - (b) after giving the electricity undertaker reasonable notice of the proposed variation and allowing the electricity undertaker a reasonable opportunity to make submissions about the proposed variation.

"24Q. TRANSFER OF LICENCE.

- (1) A licence may only be transferred with the Regulator's agreement.
- "(2) The Regulator shall not agree to the transfer of a licence if the transferee would not be entitled to the issue of the licence.
- "(3) An application for agreement to the transfer of a licence shall –
- (a) be made by the transferor with the consent of the transferee to the Regulator in a form approved by the Regulator; and
 - (b) contain the information specified in the form.
- "(4) The applicant shall pay to the Regulator an application fee fixed by the Minister responsible for treasury matters of an amount that he considers appropriate to meet the reasonable costs of determining the application.
- "(5) The applicant shall give the Regulator further relevant information requested by the Regulator.

"24R. NOTICE OF LICENCE DECISIONS.

- (1) The Regulator shall give an applicant for a licence, or for agreement to the transfer of a licence, written notice of the Regulator's decision on the application.
- "(2) The Regulator shall give the holder of a licence written notice of any decision by the Regulator affecting the terms or conditions of the licence.

"24S. SURRENDER OF LICENCE.

- (1) An electricity undertaker may, by written notice given to the Regulator, surrender its licence.
- "(2) A notice given under Subsection (1) shall be given to the Regulator at least six months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.
- "(3) The Regulator may, by agreement with the electricity undertaker, shorten the required period of notice.

Electricity Commission (Amendment)

"24T. REGISTER OF LICENCES.

(1) The Regulator shall keep a register of the licences issued to electricity undertakers under this Act.

"(2) The register shall include –
(a) the terms and conditions of each licence; and
(b) such other information as is required under the regulations.

"(3) A person may, without payment of a fee, inspect the register.

"Division 3. – Standard Terms and Conditions for Sale or Supply.

"24U. STANDARD TERMS AND CONDITIONS FOR SALE OR SUPPLY.

(1) An electricity undertaker may, 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) An electricity undertaker shall publish in the National Gazette and in a daily newspaper circulating nationally a notice setting out any standard terms and conditions fixed by the electricity undertaker.

"(3) Standard terms and conditions fixed under this section –
(a) shall comply with the conditions of the electricity undertaker's licence; and
(b) shall come into force on the day specified by the electricity undertaker in the notice of the standard terms and conditions published under this section, being a day not earlier than the day on which the notice is published; 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.

"(4) Subject to the conditions of an electricity undertaker's licence, a standard term or condition fixed under this section may be modified or excluded by express agreement between the electricity undertaker and a customer of the electricity undertaker.

"Division 4. – Suspension or Cancellation of Licences.

"24V. SUSPENSION OR CANCELLATION OF LICENCES.

(1) Upon being satisfied that –
(a) the holder of a licence obtained the licence improperly; or
(b) the holder of a licence has been guilty of a material contravention of a condition of a licence or any other requirement imposed by or under this Act or any other Act in connection with the operations authorized by the licence; or

Electricity Commission (Amendment)

(c) the holder of a licence has ceased to carry on operations authorized by the licence; or
(d) there has been any act or default or change of circumstances such that the holder of a licence would no longer be entitled to the issue of such a licence,
the Regulator may suspend or cancel the licence with effect from a specified date.

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

"(3) Before the Regulator acts under this section, the Regulator shall –
(a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and
(b) allow the holder of the licence at least 14 days within which to make submissions to the Regulator in relation to the proposed action.

"Division 5. – Regulator's powers to take over operations.

"24W. POWER TO TAKE OVER OPERATIONS.

(1) If –
(a) an electricity undertaker contravenes a condition of its licence or any other requirement of this Act, or an electricity undertaker's licence is suspended, cancelled or surrendered; and
(b) it is necessary, in the Regulator'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 an order under this section.

"(2) Before an order is made under this section, the Regulator shall 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) authorizes the Regulator to take over the electricity undertaker's operations or a specified part of the electricity undertaker's operations; and
(b) may contain ancillary directions (and may, in particular, contain directions about 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.

Electricity Commission (Amendment)

"24X. APPOINTMENT OF OPERATOR.

(1) If an order is made under this Division, the Regulator shall appoint a suitable person to take over the relevant operations on agreed terms and conditions.

"(2) A person appointed under Subsection (1) –
(a) is referred to in this section as the “operator”; and
(b) may, but need not, be an electricity undertaker.

"(3) The electricity undertaker shall facilitate the take over of the relevant operations by the operator.

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

"(5) A person shall not obstruct the operator’s access to employees or property or the exercise by the operator of the operator’s responsibilities under this Division.

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

"(6) A person shall comply with reasonable directions given by the operator in the exercise of the operator’s responsibilities under this Division.

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

8. REPEAL AND REPLACEMENT OF HEADING OF DIVISION III.2.

Part III of the Principal Act is amended in Division 2 by repealing the heading of that Division and replacing it with the following: –

**“PART IIIC. – CONSTRUCTION, ENTRY ON LAND,
REGISTRATION OF TITLES.**

Division 1. – Construction, Entry on Land, etc.”.

9. ERECTION OF TRANSMISSION LINES, ETC. (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended –

(a) in Subsection (2)–

(i) by repealing the words “this Act and of”; and

(ii) by repealing the words “the Commission” and replacing them with the following:-

“an electricity undertaker”; and

(b) by repealing Subsection (5).

Electricity Commission (Amendment)

10. NEW SECTION 25A.

The Principal Act is amended by inserting after Section 25 the following new section:-

“25A. OWNERSHIP OF TRANSMISSION LINES, ETC.

Notwithstanding 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.”.

11. ENTRY ON LAND, ETC. (AMENDMENT OF SECTION 26).

Section 26 of the Principal Act is amended –

(a) by repealing Subsection (1) and replacing it with the following:-

“(1) Notwithstanding anything in any other law, a person authorized by an electricity undertaker may, subject to Subsections (2) and (3), 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 have been or may be erected, or on any adjoining land, with such assistants, vehicles and things as he 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 authorized 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.”; and

(b) in Subsection (3)(b), by repealing the word “Commission” and replacing it with the following:-

“electricity undertaker”; and

(c) in Subsection (4)(b), by repealing the words “of this Act” and replacing them with the following:-

“set out in Subsection (1)”;

(d) by inserting after Subsection (4) the following new subsection :-

“(5) An electricity undertaker shall minimize the impact of things done under this section on activities of others on the relevant land.”.

Electricity Commission (Amendment)

12. REPEAL AND REPLACEMENT OF SECTION 27.

Section 27 of the Principal Act is repealed and is replaced with the following:—

"27. NOTICE OF INTENTION TO ENTER UNDER SECTION 25 OR 26.

- (1) Notice of intention to enter land under Section 25 or 26 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 abode or business; or
 - (c) in writing to a person apparently living or employed at that place of abode or business and apparently not less than 16 years of age,

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 authorized by an electricity undertaker may exercise a power of entry referred to in Section 25 or 26 —

- (a) at any time and without prior notice if it is not practicable to give such notice; and
- (b) if necessary in the circumstances, by the use of reasonable force, but only if the authorized person is accompanied by a member of the police force."

13. REPEAL OF SECTION 28.

Section 28 of the Principal Act is repealed.

14. REPEAL AND REPLACEMENT OF HEADING OF DIVISION III.3.

Part III of the Principal Act is amended in Division 3 by repealing the heading of that Division and replacing it with the following:—

"Division 2. — Registration of Titles."

15. REGISTRATION OF RIGHTS, ETC. (AMENDMENT OF SECTION 30).

Section 30 of the Principal Act is amended —

- (a) by repealing Subsection (1) and replacing it with the following:—

- "(1) As soon as practicable after the erection of electric lines—
- (a) under Section 25; or
 - (b) by agreement between an electricity undertaker and any other person,

the electricity undertaker shall conduct a survey and forward to the Registrar of Titles a copy of the survey plan specifying details of the land affected."; and

- (b) in Subsection (2)(b), by repealing the words “, and any by-laws made under Section 44(1)(j),” and replacing them with the following:—

“and any regulations”.

Electricity Commission (Amendment)

16. REPEAL OF SECTION 31.

Section 31 of the Principal Act is repealed.

17. REPEAL AND REPLACEMENT OF PART V.

The Principal Act is amended by repealing Part V and replacing it with the following new Parts:-

"PART V. – INSPECTION, SAFETY AND TECHNICAL REQUIREMENTS.

Division 1. – Authorized Officers.

"31A. APPOINTMENT OF AUTHORIZED OFFICERS.

(1) The Regulator may appoint suitable persons as Authorized Officers for the purposes of this Act.

(2) An Authorized Officer holds office on the conditions stated in the instrument of appointment.

"31B. IDENTITY CARD.

(1) The Regulator shall give each Authorized Officer an identity card.

"(2) The identity card shall –

(a) contain a photograph of the Authorized Officer taken for the purpose; and

(b) identify the Authorized Officer as an Authorized Officer appointed by the Regulator.

"(3) A person shall, within two days after ceasing to be an Authorized Officer, return the identify card to the Regulator.

Penalty: A fine not exceeding K200.00.

"(4) An Authorized Officer shall, before exercising a power in relation to another person, produce his identity card for inspection by that other person.

"Division 2. – Powers of Authorized Officers.

"31C. POWER OF ENTRY.

(1) An Authorized 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 Authorized 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.

Electricity Commission (Amendment)

"(3) An Authorized Officer may not enter a place by force in an emergency unless accompanied by a member of the police force.

"31D. GENERAL INVESTIGATIVE POWERS.

(1) An Authorized Officer who enters a place under this Division 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 Authorized Officer takes possession of an object that may be evidence of an offence -

- (a) the Authorized Officer shall give the occupier of the place a receipt for the object; and
- (b) the object shall be returned to its owner -
 - (i) if proceedings for an offence are not commenced within six months after the Authorized 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 Regulator, orders confiscation of the object.

"(3) A court may order the confiscation of an object of which an Authorized Officer has taken possession under Subsection (1) if it 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 Regulator may dispose of the object.

Electricity Commission (Amendment)

"31E. DISCONNECTION OF ELECTRICITY SUPPLY.

(1) If an Authorized Officer finds that electricity is being consumed or supplied contrary to this Act, the Authorized Officer may disconnect the electricity supply.

"(2) If an Authorized Officer disconnects an electricity supply under this section, the Authorized Officer shall give written notice to the occupier of the relevant place –

- (a) informing the occupier that the electricity supply has been disconnected under this section; and
- (b) directing that the electricity supply shall not be reconnected until arrangements have been made to the satisfaction of an Authorized Officer to ensure against future contravention of this Act.

"(3) If an electricity supply has been disconnected under this section, no person shall reconnect the electricity supply, or have it reconnected, without the approval of an Authorized Officer.

Penalty: A fine not exceeding K2,000.00.

"31F. POWER TO MAKE WORKS OR INSTALLATION SAFE.

(1) If an Authorized Officer finds that works or an electrical installation are unsafe, the Authorized Officer 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) Subject to this section, a direction under this section shall 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 electrical installation is situated.

"(3) A direction under this section may be given by written notice or, if the Authorized Officer is of the opinion that immediate action is required, orally but shall subsequently be confirmed in writing.

"(4) A person to whom a direction is given under this section –

- (a) shall comply with the direction; and
- (b) shall not reconnect or permit the reconnection of the electricity supply unless the work required by the direction under this section has been carried out, or an Authorized Officer approves the reconnection of the electricity supply.

Penalty: A fine not exceeding K2,000.00.

Electricity Commission (Amendment)

31G. POWER TO REQUIRE INFORMATION.

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

"(2) An Authorized 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 Authorized Officer.

"(3) A person shall not, without reasonable excuse, fail to comply with a requirement under this section.

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 tend to incriminate the person of an offence.

Division 3. – Electricity Inspectors.

"32. APPOINTMENT OF INSPECTORS.

(1) An electricity undertaker may, subject to conditions determined by the Minister, appoint an officer or employee to be an Electricity Inspector for the purposes of this Act.

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

"33. IDENTITY CARD.

(1) An electricity undertaker shall give each Inspector appointed by the electricity undertaker an identity card.

"(2) The identity card shall be in a form approved by the Minister and shall –

- (a) contain a photograph of the Inspector taken for the purpose; and
- (b) identify the Inspector as an Electricity Inspector appointed by the electricity undertaker.

"(3) A person shall, within two days after ceasing to be an Inspector for the relevant electricity undertaker, return the identity card to the electricity undertaker.

Penalty: A fine not exceeding K200.00.

Electricity Commission (Amendment)

"(4) An Inspector shall, before exercising a power in relation to another person, produce his identity card for inspection by that other person.

"34. POWERS OF INSPECTORS.

- (1) An 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 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 or has been, 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; or
 - (iv) removing or disconnecting any electric line or works or electricity supply where –
 - (A) a supply of electricity to the premises is no longer required; or
 - (B) the electricity undertaker desires to cut off the supply of electricity to the premises; or
 - (C) in the opinion of the Inspector, the supply of electricity to the premises is unsafe; or
 - (v) inspecting electrical installations in the place to ensure that it is safe to connect or reconnect electricity supply; or
 - (vi) taking action to prevent or minimize an electrical hazard; or
 - (vii) investigating a suspected theft or diversion of electricity.

"(2) In an emergency, an Inspector may exercise a power of entry under Subsection (1)(b) at any time and, if necessary in the circumstances, by the use of reasonable force.

"(3) An Inspector may enter a place under Subsection (1)(b) with such assistants, vehicles and things as he thinks reasonably necessary.

"(4) An Inspector may not enter a place by force in an emergency unless accompanied by a member of the police force.

Electricity Commission (Amendment)

"Division 4. – Safety and Technical Requirements.

"35. SAFETY AND TECHNICAL COMPLIANCE OF WORKS, ELECTRICAL INSTALLATIONS AND EQUIPMENT.

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

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.

"(2) A person who owns or operates works or an electrical installation shall ensure that –

- (a) the works or electrical installation comply with, and are operated in accordance with, technical and safety requirements imposed under the regulations; and
- (b) the works or electrical installation are safe and are safely operated.

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.

"36. POWER TO REQUIRE RECTIFICATION, ETC., IN RELATION TO WORKS OR ELECTRICAL INSTALLATIONS.

(1) If works or an electrical installation are unsafe, or do not comply with this Act, the Regulator may give a direction requiring –

- (a) the rectification of the works or electrical installation to the Regulator'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) Subject to this section, a direction under this section shall 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 Regulator is of the opinion that immediate action is required, orally but shall subsequently be confirmed in writing.

"(4) A person to whom a direction is given under this section shall comply with the direction.

Electricity Commission (Amendment)

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 Regulator may take any action that is reasonable and necessary to have the direction carried out.

"(6) A person, authorized in writing by the Regulator, 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 Regulator.

"37. REPORTING OF ACCIDENTS.

If an accident happens that involves electric shock caused by the operation or condition of works or an electrical installation –

- (a) the accident shall be reported as required under the regulations –
 - (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 happens; and
- (b) the works or electrical installation shall not be altered or interfered with unnecessarily by any person so as to prevent a proper investigation of the accident.

Penalty: A fine not exceeding K2,000.00.

"PART VA. – ELECTRICAL CONTRACTORS AND ELECTRICIANS.

"38. LICENSING OF ELECTRICAL CONTRACTORS AND ELECTRICIANS.

The Regulator may issue electrical contractor's licences and electrician's licences in accordance with the regulations.

"39. ELECTRICAL WIRING WORK.

- (1) Subject to Section 40, a person other than –
 - (a) the holder of an electrical contractor's or electrician's licence under this Act; or
 - (b) a person who is in the employment of and carries out the work under the personal supervision of a person so licensed,

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

Penalty: A fine not exceeding K100.00.

Electricity Commission (Amendment)

"(2) Subject to Section 40, an electrical contractor who undertakes any electrical wiring work shall –

- (a) himself, carry out the work whether with or without assistance; or
- (b) constantly employ on the work 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 40(b),

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.

"40. EXCEPTIONS.

Notwithstanding 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 unincorporate, who or that –
 - (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.

Electricity Commission (Amendment)

“PART VB. – ELECTRICAL APPLIANCES AND APPARATUS.

"41. PROHIBITED APPLIANCES, ETC.

(1) The regulations may prohibit the sale, hiring or 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 Regulator and is stamped or labelled as prescribed.

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

“PART VC. – REVIEW.

"42. REVIEW OF DECISIONS UNDER 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 IIIB, or for agreement to the transfer of such a licence, for review of the decision of the Regulator to refuse the application; or
 - (b) by an electricity undertaker for review of a decision of the Regulator under Part IIIB 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 has been given under Part V by the Regulator or an Authorized 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 Authorized Officer or an Inspector to disconnect an electricity supply.

- "(2) An application for review of a decision referred to in Subsection (1) shall –
- (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

Electricity Commission (Amendment)

- (e) 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 shall 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 shall give the applicant written notice of the decision, and the reasons for the decision, on the review.

"43. MINISTER'S POWER 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.

"PART VD. – EXEMPTIONS.

"43A. POWER OF EXEMPTION.

(1) The Regulator may, with the approval of the Minister, grant an exemption from Part IIIB, or specified provisions of Part IIIB, on terms and conditions the Regulator considers appropriate.

"(2) If the Regulator exempts a person from the requirement to hold a licence under Part IIIB, the Regulator 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 specified provisions of this Act.

Electricity Commission (Amendment)

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

"43B. REGISTER OF EXEMPTIONS.

(1) The Regulator shall keep a register of exemptions granted under this Act.

"(2) The register shall include –
(a) the terms and conditions of each exemption; and
(b) any other information required under the regulations.

"(3) A person may, without payment of a fee, inspect the register.

"43C. OBLIGATION TO COMPLY WITH CONDITIONS OF EXEMPTION.

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

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

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

"(2) If a person in whose favour an exemption is given profits from contravention of a condition of its exemption, the Regulator 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.

"(3) Any amount recovered under Subsection (2) shall be paid into the Consolidated Revenue Fund."

18. REPEAL OF PART VI.

Part VI of the Principal Act is repealed.

19. REPEAL OF SECTION 48.

Section 48 of the Principal Act is repealed.

20. REMOVING, TAMPERING WITH, ETC., ELECTRIC LINES, ETC. (AMENDMENT OF SECTION 49).

Section 49 of the Principal Act is amended by repealing the words ", the Commission" (six times occurring).

Electricity Commission (Amendment)

21. REPEAL AND REPLACEMENT OF SECTION 50.

The Principal Act is amended by repealing Section 50 and replacing it with the following new sections:—

“50. IMPERSONATION.

A person shall not impersonate an Authorized Officer, an Electricity Inspector or other person entitled to exercise a power or perform a function under this Act.

Penalty: A fine not exceeding K2,000.00.

Default penalty: A fine not exceeding K200.00.

“50A. FALSE OR MISLEADING INFORMATION.

A person shall not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under this Act.

Penalty: If the person made the statement knowing that it was false or misleading – a fine not exceeding K2,000.00.

In any other case – a fine not exceeding K200.00.

“50B. OFFENCES BY CORPORATIONS OR FIRMS.

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

22. AGREEMENTS FOR RE-SUPPLY OF ELECTRICITY (AMENDMENT OF SECTION 51).

Subsection 51(1) of the Principal Act is amended –

(a) by repealing the word “Commission” (first occurring) and replacing it with the following :—

“Regulator”; and

(b) by repealing the words “to the Commission”; and

(c) by repealing the words “by the Commission”.

23. REPEAL OF SECTIONS 52 TO 58 (INCLUSIVE) AND 60.

Sections 52, 53, 54, 55, 56, 57, 58 and 60 of the Principal Act are repealed.

24. REPEAL AND REPLACEMENT OF SECTION 59.

Section 59 of the Principal Act is repealed and is replaced with the following :—

“58A. IMMUNITY.

Any person engaged in the administration or enforcement of this Act is not personally liable for any thing 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.

Electricity Commission (Amendment)

"58B. 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.

"59. 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 him 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 aggrieved by a determination of the Minister under Subsection (2) may appeal to the National Court.

"59A. EMERGENCY.

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."

25. REPEAL AND REPLACEMENT OF SECTION 61.

Section 61 of the Principal Act is repealed and is replaced with the following :-

"61. 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 Subsection 25(2) 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

Electricity Commission (Amendment)

- (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) 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
- (g) technical, operational and safety requirements and standards; and
- (h) the generation, transmission, distribution, sale and supply of electricity; and
- (i) the exemption (conditionally or unconditionally) of persons or operations from the application of this Act or specified provisions of this Act; and
- (j) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; 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 IIIB, 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 are expressed to apply; or
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Regulator; or

Electricity Commission (Amendment)

- (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 or any other authority, as in force from time to time or as in force at a particular time."

26. REPEAL OF SCHEDULE.

The Schedule to the Principal Act is repealed.

27. CONSEQUENTIAL AMENDMENTS.

Each Act, regulation and order specified in Column 1 of the Schedule is amended in the manner set out in Column 2 of the Schedule and set out opposite with effect from the date specified for the purpose of the relevant amendment in a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

Electricity Commission (Amendment)

SCHEDULE – CONSEQUENTIAL AMENDMENTS

Acts	
Column 1	Column 2
<i>Electricity Supply (Government Power Stations) Act</i> (Ch. 306)	<p>(a) In Section 3, repeal Paragraph (f); and</p> <p>(b) in Section 4(2), repeal the words “erected at any time by or for” and replace with the following:– “vested in”; and</p> <p>(c) in Section 5(1)(a) –</p> <p style="padding-left: 20px;">(i) repeal the words “have been or”; and</p> <p style="padding-left: 20px;">(ii) insert after the word “Administration,” the following:– “or on which pylons, posts, poles, pillars and electric lines that are vested in the State are erected,”; and</p> <p>(d) in Section 23 –</p> <p style="padding-left: 20px;">(i) in Subsection (2), repeal Paragraph (b); and</p> <p style="padding-left: 20px;">(ii) in Subsection (3), repeal the words “or a by-law”.</p>
<i>Environment Act 2000</i>	In Section 82(d), insert at the beginning of the paragraph the following:– “subject to the <i>Electricity Industry Act</i> (Ch 78),”.
<i>Gazelle Restoration Authority Act 1995</i>	<p>(a) In Section 2(1), in the definition of “public authority”, add at the end of Paragraph (c) the following:– “or any body which supplies electricity, water, sewerage, gas, drainage, communications, or other similar services to the public”; and</p> <p>(b) in Section 18(2), add at the end of the subsection the following:– “or of a level not less than that of a senior manager”.</p>
<i>Income Tax Act 1959</i>	In Section 24(3), repeal Paragraph (a).
<i>Loan (Works, Services and Electricity) Act</i> (Ch 130)	In Section 2, repeal Paragraph (c).
<i>Loans (Overseas Borrowings) Act</i> (Ch 133)	In Section 2(1)(c), repeal Paragraph (i).
<i>Loans (Overseas Borrowing) (No.2) Act</i> (Ch 133A)	In Section 2(1)(d), repeal Paragraph (i).
<i>Stamp Duties Act</i> (Ch 117)	In Schedule 1, in Clause 6, repeal the words “the Papua New Guinea Electricity Commission” and replace with the following:– “any electricity undertaker (as defined in the <i>Electricity Industry Act</i> (Ch 78),”.

Electricity Commission (Amendment)

Trade Licensing Act (Ch 96)	In Section 2(a), repeal the words "Electricity Commission Act or any by-laws made" and replace with the following:— " Electricity Industry Act (Ch. 78) or any regulations".
Unclaimed Moneys Act (Ch 326)	In Section 1, in the definition of "company", repeal Paragraph (g).

Regulations and Orders

Building Regulations 1994	(a) In Section 8(a), repeal the words "Electricity Commission Act" and replace with the following:— " Electricity Industry Act (Ch 78)"; and (b) in Section 199, repeal the words "Electricity Commission Act" and replace with the following:— " Electricity Industry Act (Ch 78)"; and (c) in Section 261, repeal the words "Electricity Commission Act and regulations and by-laws" and replace with the following:— " Electricity Industry Act (Ch 78) and regulations".
Electricity Supply (Government Power Stations) Regulation (Ch 306)	In Section 1(1), repeal the words "as amended from time to time" and replace with the following:— "as in existence as at 31 January 2002".
Electricity Commission Regulation (Ch 78)	Repeal
Income Tax Regulations 1959	(a) In Section 5A, repeal Paragraph (j); and (b) in Section 5B(a), repeal Paragraph (i).
Industrial Safety (Building Works) Order	(a) In Clause 19(1), repeal the words "electricity supply authority" and replace with the following:— "entity that operates the line, main or apparatus"; and (b) in Clause 19(2), repeal the words "electricity supply authority" and replace with the following:— "entity that operates the line, main or apparatus".
Inflammable Liquid Regulation (Ch 311)	(a) In Section 87(a)(ii), repeal the words "Electricity Commission (Service and Installation) By-laws" and replace with the following:— "regulations under the Electricity Industry Act (Ch 78)"; and (b) in Section 87(b), repeal the words "By-laws" and replace with the following:— "regulations".
Land Regulation 1999	In Schedule 2, repeal Item 27.
Ministers (Delegation) Regulation (Ch 35)	In Section 16, repeal the words "Electricity Commission Act other than the powers and functions under Section 17(2) and the Schedule of that Act" and replace with the following:— " Electricity Industry Act (Ch 78)".

Electricity Commission (Amendment)

<i>Physical Planning Regulation 1990</i>	(a) In Section 1, in the definition of "public utility", repeal the words "public authority to provide" and replace with the following:- "any entity for the public supply of"; and (b) in Section 39(n), in the heading of Class 14, repeal the words "the Papua New Guinea Electricity Commission or by any other" and replace with the following:- "any".
<i>Public Services Conciliation and Arbitration Regulation (Chapter 69)</i>	In Section 1(1)(a), repeal Subparagraph (iii).

I hereby certify that the above is a fair print of the ***Electricity Commission (Amendment) Act 2002*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Electricity Commission (Amendment) Act 2002*** was made by the National Parliament on 27 March 2002 by an absolute majority in accordance with the ***Constitution***.

Speaker of the National Parliament.