

Harbours Act (Chapter 240).

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Harbours Act (Chapter 240).

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Harbours Act (Chapter 240),

Being an Act to provide for -

- (a) the incorporation under the ***Companies Act 1997*** of a Successor Company and the transfer to that Successor Company of certain assets and liabilities of the Papua New Guinea Harbours Board and the transfer of assets and liabilities of the Board not transferred to the Successor Company to a State owned entity; and
- (b) the powers and functions of the Independent Consumer and Competition Commission and the Departmental Head of the Department responsible for transport matters in connection with ports and essential port services; and
- (c) the licensing of regulated entities carrying on operations in the essential port services industry; and
- (d) the regulation of prices applicable to essential port services; and
- (e) for related purposes.¹

PART I. - PRELIMINARY.

1A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.²

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the ***Constitution***, namely -
 - (a) the right to liberty of the person conferred by Section 42; and
 - (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44; and
 - (c) the right to freedom of expression and publication conferred by Section 46; 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; 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; and
 - (f) the right to reasonable privacy in respect of private and family life, communications with other persons and personal papers and effects conferred by Section 49; and

¹ Long title repealed and replaced by No. 15 of 2002, s.2.

² Ibid, Section 1A added.

- (g) the right of reasonable access to official documents conferred by Section 51, is a law that is made (pursuant to Section 38 of the ***Constitution***) -
- (h) 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 organisation) 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 interests 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
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) 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 essential port services; 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 this Act and such terms will constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

(3) 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.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

“Appeals Panel” means the Appeals Panel constituted under Section 42 of the ***Independent Consumer and Competition Commission Act 2002***;³

“approved bank”, in relation to any provision of this Act, means the Central Bank or any other bank approved by the Minister for the purposes of that provision;

“approved institution”, in relation to any provision of this Act, means an institution or corporation approved by the Minister responsible for financial matters for the purposes of that provision;

“asset” means -

(a) a present, future, vested or contingent legal or equitable estate or interest in real or personal property of any description (including money) and includes a chose-in action; or

(b) a present, future, vested or contingent right, power, privilege or immunity;⁴

“the Board” means the Papua New Guinea Harbours Board established by Section 3;

“Commission” means the Independent Consumer and Competition Commission established under the ***Independent Consumer and Competition Commission Act 2002***;⁵

“declared port” means a port declared under Section 2;

“essential port service” means a port service consisting of -

(a) providing port facilities for loading or unloading vessels at a declared port; and

(b) providing berths and berth reservation services for vessels at a declared port;⁶

“essential port service industry” means the industry involved in the provision of an essential port service or other operations of a kind prescribed by regulation;⁷

“liability” means a present, future, vested or contingent liability, debt, duty or obligation of any description (whether incurred in Papua New Guinea or elsewhere) and includes a duty or non-pecuniary obligation;⁸

“licensee” means a person, firm or company who or which is licensed under Division IIIA.2 to carry on operations in the essential port services industry and includes (where the context requires) a person, firm or company who or which has been licensed to carry on operations in the essential port services industry under that part whose licence has been suspended or cancelled or has expired;⁹

“new employer” means the body to which the employment of an employee of the Board is transferred pursuant to Section 36C(1) or (2);¹⁰

³ Definition of “Appeals Panel” added by No. 15 of 2002, s.4(a).

⁴ Definition of “asset” added by No. 15 of 2002, s.4(b).

⁵ Ibid, definition of “Commission” added, s.4(d).

⁶ Ibid, definition of “essential port service” added, s.4(e).

⁷ Ibid, definition of “essential port service industry” added.

⁸ Ibid, definition of “liability” added.

⁹ Ibid, definition of “licensee” added.

¹⁰ Ibid, definition of “new employer” added.

“pilotage authority” means a pilotage authority appointed under Section 197 of the ***Merchant Shipping Act*** (Chapter 242);¹¹

“port” means a port, harbour, haven, roadstead, channel or navigable river or creek where a vessel can ship or unship passengers and goods;

“Port Advisory Committee” means a Port Advisory Committee appointed under Part VI;

“port craft” means a vessel plying solely within port limits;

“Port Manager” means a manager appointed by the Departmental Head of the Department responsible for transport matters to manage a port;¹²

“Privatization Commission” means the Privatization Commission established under the ***Privatization Act 1999***;¹³

“privatization policy” has the meaning given to that term in the ***Privatization Act 1999***,¹⁴

“regulated entity” has the same meaning as in the ***Independent Consumer and Competition Commission Act 2002***;¹⁵

“regulated industry” has the same meaning as in the ***Independent Consumer and Competition Commission Act 2002***;¹⁶

“regulatory contract” has the same meaning as in the ***Independent Consumer and Competition Commission Act 2002***;¹⁷

“State owned entity” means -

- (a) a company incorporated under the ***Companies Act 1997*** the issued shares of which are all owned by the State or a Minister holding such shares on trust for the State; or
- (b) a statutory body established by an Act; or
- (c) a trust where the State or the Minister as trustee for the State owns all the beneficial interest in the assets of the trust;¹⁸

“Successor Company” means the company incorporated under Section 36A(1);¹⁹

“transferee” means the body to which any assets or liabilities of the Board are transferred pursuant to Section 36B(1) or (2).²⁰

“vessel” means a ship, boat or other description of vessel used for any purpose on the sea or in navigation.

¹¹ Definition of “pilotage authority” added by No. 24 of 1977, s.1(a).

¹² Definition of “Port Manager” amended by No. 15 of 2002, s.4(f).

¹³ Ibid, definition of “Privatization Commission” added, s.4(g). Note, the ***Privatization Act 1999*** has been repealed by No. 18 of 2002, ***Independent Public Business Corporation of Papua New Guinea Act 2002***. The latter is now renamed as ***Kumul Consolidated Holdings Authorisation Act 2002***, see, No. 4 of 2015.

¹⁴ Ibid, “privatization policy” added.

¹⁵ Ibid, “regulated entity” added.

¹⁶ Ibid, “regulated industry” added.

¹⁷ Ibid, “regulatory contract” added.

¹⁸ Ibid, “State owned entity” added.

¹⁹ Ibid, “Successor Company” added.

²⁰ Ibid, “transferee” added.

- (2) For the purposes of this Act, the revenue of the Board consists of -
- (a) storage charges, wharfage dues and berthing, mooring, pilotage dues and fees for pilotage services collected by the Board as a pilotage authority and any other charges or dues payable in accordance with the by-laws; and
 - (b) rents and profits of land vested in the Board; and
 - (c) moneys appropriated by the Parliament for the purposes of the Board, other than any moneys collected under Section 24.²¹

2. DECLARATION OF PORTS.

- (1) The Minister may, by notice in the National Gazette, declare -
- (a) a port in Papua New Guinea; or
 - (b) any waters of Papua New Guinea and any land contiguous to such waters, to be a declared port for the purposes of this Act.
- (2) A notice under Subsection (1) shall define the limits of the port both by sea and by land.

PART II. - THE PAPUA NEW GUINEA HARBOURS BOARD.

Division 1. - Establishment and Constitution of the Board.

3. ESTABLISHMENT OF THE BOARD.

- (1) A Papua New Guinea Harbours Board is hereby established.
- (2) The Board -
- (a) is a corporation; and
 - (b) has perpetual succession; and
 - (c) shall have a seal; and
 - (d) may acquire, hold and dispose of property; and
 - (e) is capable of suing and being sued in its corporate name.
- (3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document, and shall presume that it was duly affixed.

4. CONSTITUTION OF THE BOARD.²²

- (1) The Board shall consist of -
- (a) the Head of the Department responsible for financial matters or his nominee; and
 - (b) the Head of the Department responsible for transport matters or his nominee; and
 - (c) the Head of the Department or Office responsible for national planning matters or his nominee; and
 - (d) four members appointed by the Head of State, acting on advice, given after consideration of recommendations by the Minister.

²¹ Subsection (2) amended by No. 24 of 1977, s.1(b).

²² Section 4 repealed and replaced by No. 46 of 1983, s.1.

(2) The Head of State, acting on advice, given after consideration of recommendations by the Minister, shall appoint one of the members appointed under Subsection (1)(d) to be Chairman of the Board.

(3) The members of the Board appointed under Subsection (1)(d) shall be appointed for such respective terms as are determined by the Head of State, acting on advice, and are eligible for re-appointment.

(4) The terms and conditions of service of members of the Board appointed under Subsection (1)(d) are such as are determined by the Minister.

4A. ALTERNATE MEMBERS OF THE BOARD.²³

(1) For each of the members of the Board appointed under Section 4(1)(d) an alternate member shall be appointed in the same way and subject to the same terms and conditions as the member for whom he is alternate.

(2) In the event of the inability to act of a member of the Board, the alternate member has and may exercise all his powers, functions, duties and responsibilities.

(3) An alternate member may, unless the Board otherwise directs, attend all meetings of the Board but shall not, except where he is attending in the absence of the member for whom he is the alternate, take part in the debate, vote on any matter or be counted towards a quorum.

5. DISMISSAL OF MEMBERS OF THE BOARD.

(1) The Minister may terminate the appointment of a member of the Board for incapacity or misbehaviour.

(2) If the appointment of a member of the Board is terminated under Subsection (1), the member may appeal to the National Court.

(3) The decision of the National Court on an appeal under Subsection (2) is final.

6. VACATION OF OFFICE.

The office of a member of the Board becomes vacant -

- (a) if he becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) if he resigns his office by writing under his hand addressed to the Minister, and the resignation is accepted; or
- (c) if he is absent, except on leave granted by the Minister, from all meetings of the Board held during a period of three months; or

²³ Ibid, Section 4A added, s.2.

- (d) if in any way, otherwise than with the approval of the Minister or as a member and in common with the other members of an incorporated company consisting of not less than 25 persons, he -
 - (i) is concerned or interested in a contract or agreement entered into by or on behalf of the Board; or
 - (ii) participates or claims to participate in the profit of any such contract or agreement, or in a benefit or emolument arising from any such contract or agreement.

7. LEAVE OF ABSENCE.

The Minister may grant leave of absence to a member of the Board on such terms and conditions as the Prime Minister determines.

8. MEETINGS OF THE BOARD.

- (1) The Board shall meet at such times and places as the Chairman determines.
- (2) The Minister may at any time convene a meeting of the Board.
- (3) At a meeting of the Board -
 - (a) four 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
 - (c) all matters shall be decided by a majority of the votes of the members present.

Division 2. - The Service of the Board.**9. APPOINTMENT OF OFFICERS.**

- (1) In addition to the General Manager appointed under Section 9A, the Board may appoint to be officers of the Board such persons as it thinks proper and necessary for the purposes of this Act.²⁴
- (2) The General Manager, other officers of the Board and Port Managers appointed under Section 15K(2)(f) constitute the Service of the Board.²⁵
- (3) A person shall not be admitted to the Service of the Board unless -
[Paragraph (a) repealed by No. 23 of 1977, s.1.]
 - (b) he provides evidence to the satisfaction of the Board as to -
 - (i) his health and physical fitness; and
 - (ii) his possession of qualifications that enable him to perform the duties of the office to which he is to be appointed; and
 - (iii) his age; and
 - (iv) his good character; and

²⁴ Subsection (1) amended by No. 2 of 1996, s.2(a). Further amended by No. 15 of 2002, s.5(a).

²⁵ Ibid, Subsection (2) repealed and replaced, s.2(b). Further amended by No. 15 of 2002, s.5(b).

(c) he makes and subscribes an oath or affirmation in the form in Schedule 1.

(4) The terms and conditions of employment of officers of the Board are as determined by the Minister responsible for Public Service matters, after considering reports from the Board and the Public Services Commission.

(5) If a person appointed under Section 9A or this section was, immediately before his appointment, an officer of the Public Service, his service as an officer of the Board shall be counted as service in the Public Service for the purpose of determining his existing and accruing rights under the ***Public Service Act*** (Chapter 67) and the ***Public Officers Superannuation Act*** (Chapter 66).²⁶

(6) Section 104 of the ***Public Service Act*** (Chapter 67) applies in relation to an office in the Service of the Board as if it had been specifically included in that section.²⁷

9A. GENERAL MANAGER.²⁸

There shall be a General Manager of the Board who shall -

- (a) be appointed by the National Executive Council, on the recommendation of the Minister, by notice in the National Gazette; and
- (b) be appointed for a period of four years; and
- (c) subject to the ***Salaries and Conditions Monitoring Committee Act 1988***, be appointed on a written contract on such terms and conditions as are determined by the Minister after receiving recommendations from the Board; and
- (d) be the Head of the Service of the Board; and
- (e) have such other duties as the Board determines.

10. TEMPORARY AND CASUAL EMPLOYEES.

The Board may employ such temporary or casual employees as it thinks proper on such terms and conditions as are determined by the Minister responsible for Public Service matters, after considering reports from the Board and the Public Services Commission.

²⁶ Subsection (5) amended by No. 2 of 1996, s.2(c).

Note: the stated legislations are now repealed, see now, the ***Public Services (Management) Act 1995*** and ***Public Officers Superannuation Fund Act 1990***.

²⁷ This Act is repealed and is now replaced by the ***Public Services (Management) Act 1995***. See the latter Act.

²⁸ Section 9A added by No. 2 of 1996, s.1.

Division 3. - Finance.**11. CAPITAL AND PROFITS OF THE BOARD.**

- (1) The capital of the Board is, at any time, an amount equal to the sum of -
- (a) K7,830,000.00, representing the value of the special purposes leases granted under this Act to the Board by the Minister responsible for land matters for use for port purposes; and²⁹
 - (b) the amount of the values, as determined by the Valuer General, of -
 - (i) any lease granted to the Board under the **Land Act 1996** other than a lease referred to in Paragraph (a); and³⁰
 - (ii) any other property (other than a State lease referred to in Paragraph (b)(i)) acquired by the Board from the State,³¹

as at the date of its grant or acquisition.

(2) Subject to Subsection (3), out of the profits of the Board for any financial year the Board shall pay to the State such amount in relation to that year as the Minister responsible for financial matters, with the approval of the Head of State, acting on advice, determines.

(3) In the making of a determination under Subsection (2), regard shall be had to any advice furnished by the Board to the Minister responsible for financial matters in relation to the financial affairs of the Board.

12. MONEYS OF THE BOARD GENERALLY.

- (1) The Board shall open and maintain an account or accounts with an approved bank or approved banks, and shall maintain at all times at least one such account.
- (2) The Board shall pay all money received by it into an account referred to in Subsection (1).
- (3) Out of the money standing to the credit of the accounts referred to in Subsection (1), the Board shall pay -
- (a) all money payable by it in repayment of advances under this Act, and as interest on those advances; and
 - (b) the costs, charges and expenses incurred by the Board in the performance of its functions under this Act; and
 - (c) the remuneration and allowances of the members of the Board and of officers and employees of the Board; and
 - (d) any other payments that the Board is authorised or required to make under this Act.

²⁹ Paragraph (a) amended by No. 15 of 2002, s.6(a).

³⁰ Ibid, Subparagraph (i) amended, s.6(b).

³¹ Ibid, Subparagraph (ii) amended, s.6(c).

(4) In respect of money advanced or borrowed under this Act for the purposes of the Board, the Board shall maintain a separate account in respect of the money that is related to each such purpose, and shall cause proper entries of -

- (a) all moneys so advanced or borrowed for a particular purpose of the Board; and
- (b) the purpose to which the moneys have been applied,

to be made in the account maintained in respect of the purpose.

12A. PILOTAGE DUES, ETC., TO BE COLLECTED.³²

(1) Where the Board is appointed the pilotage authority in respect of any area, the Board shall collect all pilotage dues and fees for pilotage services payable under the ***Merchant Shipping Act*** (Chapter 242) in respect of that area and shall pay such dues and fees into an account referred to in Section 12(1).³³

(2) Where Departmental Head of the Department responsible for transport matters is appointed the pilotage authority in respect of any area, he shall collect all pilotage dues and fees for pilotage services payable under the ***Merchant Shipping Act*** (Chapter 242) in respect of that area and pay such fees and dues into the Consolidated Revenue Fund.³⁴

13. GUARANTEE FOR LOANS.

With the concurrence of the Minister for Finance, the Minister may, for and on behalf of the State, guarantee to an approved bank or approved institution the repayment of any loan, including interest on the loan, by the bank or institution to the Board.

14. APPLICATION OF PUBLIC BODIES (FINANCIAL ADMINISTRATION) ACT.

The ***Public Bodies (Financial Administration) Act*** (Chapter 6)³⁵ applies to and in relation to the Board, subject to the exceptions and modifications set out in Schedule 2.

[Section 15 repealed by No. 38 of 1979.]

³² Section 12A added by No. 24 of 1977, s.2. Heading of Section 12A amended by No. 15 of 2002, s.7(a).

³³ Subsection (1) amended by No. 15 of 2002, s.7(b).

³⁴ Ibid, Subsection (2) added, s.7(c).

³⁵ Note, the ***Public Bodies (Financial Administration) Act 1969*** is repealed by No. 35 of 1986. See, the ***Public Finance (Management) Act 1995*** is current and in operation.

PART IIA. - ADMINISTRATION.³⁶***Division 1. - Commission.*****15A. FUNCTIONS OF THE COMMISSION.**

The Commission has (in addition to the functions it has under the *Independent Consumer and Competition Commission Act 2002*) the following functions:

- (a) any functions that a regulatory contract issued under the *Independent Consumer and Competition Commission Act 2002*, being a regulatory contract which relates to the essential port services industry, contemplates will be performed by the Commission for the purposes of that regulatory contract; and
- (b) the licensing functions conferred by this Act; and
- (c) providing economic monitoring, control, inspection and regulation of the essential port services industry; and
- (d) ensuring that this Act is implemented with due regard to the public interest; and
- (e) consulting, where appropriate, commercial, industrial and consumer organisations about any matter relating to the supply of essential port services; and
- (f) any other functions conferred by this Act or by regulation under this Act.

15B. POWERS OF THE COMMISSION.

(1) The Commission has (in addition to the powers it has 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, the performance of its functions under this Act.

(2) The Commission 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 essential port services industry.

15C. COMMISSION IS THE PRINCIPAL REGULATOR.

The Commission is the principal regulatory agency in respect of the provisions of this Act relating to essential port services.

15D. COMMISSION AND THE DEPARTMENTAL HEAD.

(1) Where the Commission and the Departmental Head of the Department responsible for transport matters are given concurrent functions or powers under this Act or the *Independent Consumer and Competition Commission Act 2002*, the Commission and that Departmental Head shall carry out those functions and exercise those powers in consultation with each other.

(2) If the Commission and the Departmental Head of the Department responsible for transport matters, in carrying out their concurrent functions or exercising their concurrent powers in accordance with Subsection (1) are, after consultation, unable to agree, the views of the Commission shall prevail.

³⁶ Ibid, Part IIA added, s.8.

(3) Any action taken by the Commission shall not be open to challenge by reason that any consultation required by Subsection (1) had not taken place or was in any way defective.

15E. COMMISSION SUBJECT TO REGULATORY CONTRACT.

The Commission shall not exercise any power in a manner that is inconsistent with the requirements of a regulatory contract that is in effect, where that regulatory contract relates to the provision of essential port services, and any exercise of a power that is inconsistent with such a regulatory contract is of no effect to the extent of the inconsistency.

15F. DELEGATION.

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

- (2) The Commission shall not delegate any of its powers and functions under -
- (a) a regulatory contract issued under the ***Independent Consumer and Competition Commission Act 2002***; or
 - (b) Part IIIA,

to a person other than a member or officer of the Commission.

- (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 Commission in writing; and
 - (d) does not affect or prevent the performance of a function or the exercise of a power by the Commission.

Division 2. - Departmental Head.**15G. POLICY DIRECTIONS BY MINISTER.**

The Departmental Head of the Department responsible for transport matters shall give effect to any direction given to him by the Minister on any matter of policy relating to the exercise or performance of his functions, duties or powers.

15H. GENERAL FUNCTIONS OF THE DEPARTMENTAL HEAD.

- (1) The Departmental Head of the Department responsible for transport matters is responsible for -
- (a) the technical and operational regulation and control of declared ports; and
 - (b) the regulation of movement of shipping in such ports; and
 - (c) the provision and maintenance of -
 - (i) lightships, buoys, beacons, moorings, wharves, docks, piers, jetties, landing stages, slips, landing ramps and platforms in such ports; and
 - (ii) machinery, equipment and installations used in connection with such ports.
- (2) In particular, and without limiting the generality of Subsection (1), the functions of the Departmental Head of the Department responsible for transport matters are, within a declared port -
- (a) to control and regulate all waters and the use of all waters; and
 - (b) to act as a pilotage authority for the purposes of Part VIII of the *Merchant Shipping Act* (Chapter 242) where appointed as such under that Act; and
 - (c) to erect and place in position buoys, markers, beacons and leads, and other things, that are necessary or desirable to facilitate navigation in or into a declared port; and
 - (d) to dredge and maintain channels and berthing places; and
 - (e) to build retaining walls for the purpose of reclaiming, and to reclaim and obtain title to, land that is the bed of a declared port; and
 - (f) to control, direct and regulate the employment of waterside workers (whether or not employed by the Department responsible for transport matters); and
 - (g) to do all such other acts as will facilitate the use of a declared port by shipping; and
 - (h) to establish effective co-operation between the Department responsible for transport matters, any licensee or licensees and Port Advisory Committees and to co-ordinate the work of those Committees.
- (3) The Departmental Head of the Department responsible for transport matters may act as the agent of the State or the Government in relation to any matter within his functions.
- (4) The Departmental Head of the Department responsible for transport matters may make recommendations to the Minister on any matter in connection with his functions.

15I. FUNCTIONS OF THE DEPARTMENTAL HEAD OUTSIDE DECLARED PORTS.

(1) Subject to Subsection (2), the functions of the Departmental Head of the Department responsible for transport matters include the following matters in places outside declared ports -

- (a) the determination of the location of markers, buoys, beacons and leads for the use of shipping approaching a declared port or in bays, rivers and estuaries used by shipping; and
- (b) in bays, rivers and estuaries used by shipping -
 - (i) the dredging and deepening of channels; and
 - (ii) the determination of the location of berthing and mooring places with or without wharves or jetties; and
- (c) the investigation of bays, rivers and estuaries with a view to ascertaining their suitability for use as ports or by shipping.

(2) The Departmental Head of the Department responsible for transport matters shall not perform a function specified in Subsection (1) without the consent of -

- (a) in the area of the former Territory of Papua - the Marine Board of Papua; or
- (b) in the area of the former Territory of New Guinea - the Controller (Marine Services), Department of Transport.

15J. SPECIAL REPORTS TO THE GOVERNMENT.

Where the Minister requests the Departmental Head of the Department responsible for transport matters to furnish a report or information on his activities or operations, or proposed activities or operations, or on any matter relating to the control or use of ports, that Departmental Head shall, to the best of his ability, furnish the report or information requested.

15K. GENERAL POWERS OF THE DEPARTMENTAL HEAD.

(1) The Departmental Head of the Department responsible for transport matters has power to do all things that are necessary or convenient to be done for or in connection with the performance of his functions.

(2) Without limiting the generality of Subsection (1), the Departmental Head of the Department responsible for transport matters has power -

- (a) subject to any right of tenancy or occupation granted by or under any law, to control the use of the foreshores in a declared port; and
- (b) to act as a pilotage authority for the purposes of Part VIII of the *Merchant Shipping Act* (Chapter 242); and
- (c) to enter into contracts and agreements for or in respect of the performance of any of his functions or the exercise of any of his powers; and
- (d) to require a person to remove or destroy, or to cause to be removed or destroyed, any object or thing that in his opinion is an obstruction, hindrance or danger to navigation in, or to the use of, a declared port by any vessel; and

- (e) where, under Paragraph (d), the Departmental Head removes or destroys, or causes to be removed or destroyed, any object or thing, to recover from the owner of it, or from the person responsible for the placing or abandoning of it, the cost of the removal or destruction; and
- (f) to appoint Port Managers; and
- (g) to appoint agents; and
- (h) to do such other things as are required or permitted under this Act to be done by him.

15L. DELEGATION.

The Departmental Head of the Department responsible for transport matters may delegate to a person (including to an officer of the Department responsible for transport matters) all or any of its powers and functions under this Act (except this power of delegation).

PART III. - OTHER POWERS AND FUNCTIONS.³⁷***Division 1. - Powers and functions of the Board.***³⁸**16. POLICY DIRECTIONS BY MINISTER.**

The Board shall give effect to any direction given to it by the Minister on any matter of policy relating to the exercise or performance of its functions, duties or powers.

17. GENERAL FUNCTIONS OF THE BOARD.

[Subsection (1) repealed by No. 15 of 2002, s.11(a).]

- (2) The functions of the Board are, within a declared port³⁹
[Paragraph (a) repealed by No. 15 of 2002, s.11(b).]
 - (b) to provide, erect, maintain and regulate wharves, docks, piers, slips, jetties, landing stages, platforms and landing ramps placed under its control by or under this Act or any other law; and
 - (c) to maintain, improve and extend any existing wharves, docks, piers, slips, jetties, landing stages, platforms and landing ramps referred to in Paragraph (b); and
 - (ca) to act as a pilotage authority for the purposes of Part VIII of the *Merchant Shipping Act* (Chapter 242) where appointed as such under that Act and to provide pilotage services in areas where pilotage is not compulsory; and⁴⁰
 - (d) to provide, maintain and regulate services and facilities for -
 - (i) the berthing, mooring, loading and unloading of ships; and
 - (ii) the storage of goods; and
 - (iii) the transport of goods to and from any place where goods are to be loaded or unloaded from a ship; and

³⁷ Heading of Part III repealed and replaced by No. 15 of 2002, s.9.

³⁸ Ibid, Heading of Division 1 amended, s.10.

³⁹ Subsection (2) amended by No. 15 of 2002, s.11(b).

⁴⁰ Paragraph (ca) added by No. 24 of 1977, s.3.

- (e) to provide, maintain and operate lighters and other craft for the loading or unloading of ships; and
[Paragraph (f) repealed by No. 15 of 2002, s.11(b).]
- (g) to acquire, erect and maintain -
 - (i) warehouses, storehouses, bins and tanks for the reception and holding of fuel or other liquids; and
 - (ii) yards for the holding of animals; and
- (h) to construct and maintain harbour works; and
[Paragraph (i) repealed by No. 15 of 2002, s.11(b).]
[Paragraph (j) repealed by No. 15 of 2002, s.11(b).]
[Paragraph (k) repealed by No. 15 of 2002, s.11(b).]
- (l) to provide, erect, maintain and operate services and facilities (including buildings for or incidental to the employment of waterside workers (whether or not employed by the Board); and
[Paragraph (m) repealed by No. 15 of 2002, s.11(b).]
[Paragraph (n) repealed by No. 15 of 2002, s.11(b).]

(3) The Board may act as the agent of the State or the Government in relation to any matter within the functions of the Board.

(4) The Board may make recommendations to the Minister on any matter in connection with its functions.

[Section 18 repealed by No. 15 of 2002, s.12.]

19. SPECIAL REPORTS TO THE GOVERNMENT.

Where the Minister requests the Board to furnish a report or information on the activities or operations, or proposed activities or operations, of the Board, or on any matter relating to the control or use of ports, the Board shall, to the best of its ability, furnish the report or information requested.

20. GENERAL POWERS OF THE BOARD.

(1) The Board has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

- (2) Without limiting the generality of Subsection (1), the Board has power -
- (a) for the purpose of securing any moneys borrowed by the Board -
 - (i) to give security over the property of the Board; and⁴¹
 - (ii) to execute all mortgages and other instruments of assurance or charge; and
 - (b) to purchase land, and to purchase or construct buildings, for use in carrying on the operations of the Board, and to dispose of land or buildings owned by the Board; and
 - (c) to take on lease land or buildings for use in carrying on the operations of the Board, and to dispose of any such lease; and

⁴¹ Subparagraph (i) amended by No. 15 of 2002, s.13(a).

- (d) to lease, sub-lease or otherwise deal with land held by it; and
 - (e) to act as trustee of any land reserved or resumed and placed under its control under the *Land Act* (Chapter 185)⁴², for any purpose consonant with the functions of the Board; and
 - (f) to negotiate with the State or any other person for the acquisition by the Board of any harbour works or for the transfer to the Board of the benefit of or liability under any contract connected with the harbour works, on such conditions as are agreed on by the Board with the State or that other person; and
 - (g) to purchase, take on hire or otherwise acquire plant, machinery, equipment or other goods necessary for carrying on the operations of the Board, and to dispose of any plant, machinery, equipment or other goods owned by the Board; and
 - (h) to maintain and operate and, where necessary, improve and extend any harbour works vested in the Board, and to construct new, additional or supplementary works or acquire works or property for or in relation to harbours; and
- [Paragraph (i) repealed by No. 15 of 2002, s.13(b).]*
- (j) to remit the whole or part of any amount payable to the Board under this Act; and
- [Paragraph (k) repealed by No. 15 of 2002, s.13(b).]*
- (ka) to act as a pilotage authority for the purposes of Part VIII of the *Merchant Shipping Act* (Chapter 242); and⁴³
 - (l) to enter into contracts and agreements for or in respect of the performance of any function of, or the exercise of any power by, the Board; and
- [Paragraph (m) repealed by No. 15 of 2002, s.13(b).]*
- [Paragraph (n) repealed by No. 15 of 2002, s.13(b).]*
- (o) to construct in a declared port roadways, railways or tramways necessary or convenient for the performance of its functions; and
 - (p) to appoint agents; and
 - (q) to do such other things as are required or permitted under this Act to be done by the Board.

21. DELEGATION.

The Board may delegate to a person or to a committee of the Board all or any of its powers and functions under this Act (except this power of delegation).

Division 2. - Special Provisions in Relation to Waterside Employment.

22. INTERPRETATION OF DIVISION 2.

In this division, “registered worker” means a person who is registered in a register established under Section 23(a).

⁴² This Act is repealed, refer now to the *Land Act 1996*.

⁴³ Paragraph (ka) added by No. 24 of 1977, s.4.

23. SPECIAL POWERS OF THE DEPARTMENTAL HEAD.⁴⁴

Without limiting the generality of Section 15K, the powers of the Departmental Head of the Department responsible for transport matters include power -

- (a) to establish a register for the registration of persons or classes of persons employed in the loading or unloading of cargo in a declared port; and
- (b) to register or de-register a person or class of persons in or from a register established under Paragraph (a); and
- (c) to pay the guaranteed minimum wage to registered workers; and
- (d) to pay attendance money to registered workers, and to determine in what circumstances and in what amount it should be paid; and
- (e) to appoint agents to perform any functions and to exercise any powers conferred on him by this division.

24. IMPOSITION AND COLLECTION OF CARGO LEVY.

(1) The Minister may, by notice in the National Gazette, impose a levy on cargo loaded or discharged in a declared port by registered workers.

(2) The Departmental Head of the Department responsible for transport matters shall collect a levy imposed under Subsection (1), and for the purposes of this Act the levy shall be deemed to be money due to the Departmental Head of the Department responsible for transport matters.⁴⁵

25. DISPOSAL OF CARGO LEVY.

Any money received by the Departmental Head of the Department responsible for transport matters under Section 24(2) shall be applied by the Departmental Head of the Department responsible for transport matters for the purposes only of -

- (a) payments of attendance money to registered workers at the port where the money was collected; and
- (aa) payment of the guaranteed minimum wage to registered workers; and⁴⁶
- (b) administrative costs and expenses connected with such payments.

PART IIIA. - ESSENTIAL PORT SERVICES INDUSTRY.⁴⁷***Division 1. - Declaration.*****25A. DECLARATION.**

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

⁴⁴ Section 23 repealed and replaced by No. 15 of 2002, s.14.

⁴⁵ Ibid, Subsection (2) amended, s.15.

⁴⁶ Paragraph (aa) added by No. 23 of 1977, s.3.

⁴⁷ Ibid, Part IIIA added, s.17.

Division 2. - Licensing.

25B. REQUIREMENT FOR LICENCE.

(1) A person, firm or company who or which is declared to be a regulated entity shall not carry on operations in the essential port services industry for which a licence is required unless the person holds a licence under this part authorising 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 essential port services industry for which a licence is required are -

- (a) providing port facilities for loading or unloading vessels at a declared port; or
- (b) providing berths and berth reservation services for vessels at a declared port.

(3) Nothing in this part is to be taken as requiring a person, firm or company who or which carries on operations in the essential port services industry but is not declared to be a regulated entity to hold a licence under this part.

25C. APPLICATION FOR LICENCE.

(1) An application for the issue of a licence shall -

- (a) be made to the Commission in a form approved by the Commission; and
- (b) contain the information specified in the form.

(2) The applicant shall pay to the Commission 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 Commission further relevant information requested by the Commission.

25D. CONSIDERATION OF APPLICATION.

(1) The Commission 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 the issue of a licence, the Commission shall have regard to the general factors specified in Part III of the ***Independent Consumer and Competition Commission Act 2002*** and, subject to this section, may only issue a licence if 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) prescribed by regulation for a licence of that kind.

(3) In deciding whether an applicant is a suitable person to hold a licence, the Commission 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.

25E. 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***.

25F. AUTHORITY CONFERRED BY LICENCE.

(1) A licence authorises the person named in the licence to carry on operations in the essential port services industry in accordance with the terms and conditions of the licence.

(2) The operations authorised 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.

25G. TERM OF LICENCE.

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

25H. LICENCE FEES AND RETURNS.

(1) A person is not entitled to the issue of a licence unless the person first pays to the Commission the annual licence fee, or the first instalment 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 Commission, before the date prescribed by regulation for that purpose, an annual return containing information required by the Commission by condition of the licence or by written notice; and
- (b) in each year pay to the Commission, before the date prescribed for the purpose, the annual licence fee, or the first instalment 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 Commission so determines, be paid in equal instalments at intervals fixed by the Commission.

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

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

(7) In this section -

“administrative costs” means -

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

(b) any costs of administration of the ***Independent Consumer and***

Competition Commission Act 2002 relating to the essential port services industry; and

(c) other costs prescribed by regulation;

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

25I. SPECIALLY ISSUED LICENCES.

(1) The Minister responsible for treasury matters may, by order in writing, require that one or more licences authorising specified operations be issued under this division to the Successor Company, to the lessee of the assets of the Successor Company, to the purchaser of assets or liabilities (or both) of the Successor Company, in accordance with specified requirements as to the terms and conditions of such licence or licences and the rights conferred by such licence or licences.

(2) The requirements of the Minister responsible for treasury matters as to the conditions of a licence issued under Subsection (1) shall be consistent with the provisions of this Act as to such conditions.

(3) The Minister responsible for treasury matters may, by order in writing, require that a licence issued to the Successor Company in accordance with an order under Subsection (1) be transferred to the lessee of the assets of the Successor Company, to the purchaser of assets or liabilities (or both) of the Successor Company or to the purchaser of the shares in the Successor Company (as the case may require).

(4) An order under this section must be given effect to without the need for the Successor Company, the lessee of the assets of the Successor Company, the purchaser of assets or liabilities (or both) of the Successor Company or the purchaser of the shares in the Successor Company (as the case may require) 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 the Successor Company 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 the Successor Company associated with the shares in the Successor Company being transferred from a Minister or State owned entity to the purchaser of the shares in the Successor Company.

25J. LICENCE CONDITIONS.

(1) The Commission shall, on the issue of a licence, make the licence subject to conditions determined by the Commission -

- (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 licensee; and
- (d) requiring the licensee to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Commission; and
- (e) requiring the licensee to notify the Commission about changes to officers and, if applicable, major shareholders of the licensee; and
- (f) requiring the licensee to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require; and
- (g) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles; and
- (h) requiring the business the operation which is authorised under the licence or any part of that business to be kept separate from any other business of the licensee or any other person in the manner and to the extent specified in the conditions; and
- (i) requiring the licensee to inform persons seeking or in receipt of specified services supplied by the licensee under the licence of the terms on which those services are provided (including the charges for those services) and of any changes in those terms; and

- (j) requiring the licensee -
 - (i) to prepare and periodically revise an asset management plan dealing with matters prescribed by regulation; and
 - (ii) to obtain the approval of the Commission 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 licensee's compliance with the plan and report the results of those audits to the Commission; and
- (k) requiring a specified process to be followed to resolve disputes between the licensee and its customers as to the provision of essential port services; and
- (l) requiring the licensee to comply with any code provisions in force from time to time under the ***Independent Consumer and Competition Commission Act 2002*** limiting the grounds on which the provision of essential port services to customers may be discontinued and prescribing the process to be followed before the provision of such services is discontinued; and
- (m) requiring the licensee to provide essential port services to relevant customers within the specified area.

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

(3) The Commission may, on the issue of a licence, make the licence subject to further conditions considered appropriate by the Commission.

(4) 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 licensee.

25K. LICENCE CONDITIONS TO BE CONSISTENT WITH REGULATORY CONTRACT.

If any condition in a licence issued to a regulated entity conflicts with, or is inconsistent with, any term or condition of the regulatory contract relating to that regulated entity, the provisions of the regulatory contract shall prevail and the licence condition, to the extent of any inconsistency, shall be of no effect.

25L. EXCLUSIVE LICENCES.

A licence may, if the Commission so determines, confer on the licensee an exclusive right to provide essential port services within a specified area.

25M. REGULATORY DUPLICATION.

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

25N. OFFENCE TO CONTRAVENE LICENCE CONDITIONS.

- (1) A licensee 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 a licensee profits from contravention of a condition of its licence, the Commission may recover an amount equal to the profit from the licensee -

- (a) on application to a court convicting the licensee 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.

25O. VARIATION OF LICENCE.

(1) The Commission may vary the terms or conditions of a licensee's licence by written notice to the licensee as the Commission considers appropriate, but not so as to -

- (a) remove a condition that the Commission 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 25I to the extent that, as at the date of issue of the licence, the licence provided that such term or condition is not to be varied or removed.

(2) A variation may only be made -

- (a) on application by the licensee or with the licensee's agreement; or
- (b) after giving the licensee reasonable notice of the proposed variation and allowing the licensee a reasonable opportunity to make submissions about the proposed variation.

25P. TRANSFER OF LICENCE.

(1) A licence may only be transferred with the Commission's agreement.

(2) The Commission 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 Commission in a form approved by the Commission; and
(b) contain the information specified in the form.

(4) The applicant shall pay to the Commission 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 Commission further relevant information requested by the Commission.

25Q. NOTICE OF LICENCE DECISIONS.

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

(2) The Commission shall give the holder of a licence written notice of any decision by the Commission affecting the terms or conditions of the licence.

25R. SURRENDER OF LICENCE.

(1) A licensee may, by written notice given to the Commission, surrender its licence.

(2) The notice shall be given to the Commission 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 Commission may, by agreement with the licensee, shorten the required period of notice.

25S. REGISTER OF LICENCES.

(1) The Commission shall keep a register of the licences issued to licensees under this Act.

(2) The register shall include -
(a) the terms and conditions of each licence; and
(b) other information required under the regulations.

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

Division 3. - Suspension or cancellation of licences.**25T. SUSPENSION OR CANCELLATION OF LICENCES.**

- (1) The Commission may, if satisfied that -
 - (a) the licensee obtained the licence improperly; or
 - (b) the licensee 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 authorised by the licence; or
 - (c) the licensee has ceased to carry on operations authorised by the licence; or
 - (d) there has been any act or default or change of circumstances such that the licensee would no longer be entitled to the issue of such a licence,
 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 fulfilment of specified conditions, or until further order of the Commission.

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

Division 4. - Commission's powers to take over operations.**25U. POWER TO TAKE OVER OPERATIONS.**

- (1) If -
 - (a) a licensee contravenes a condition of its licence or any other requirement of this Act, or a licensee's licence ceases, or is to cease, to be in force; and
 - (b) it is necessary, in the Commission's opinion, to take over the licensee's operations (or some of them) to ensure an adequate supply of essential port services 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 Commission shall give the licensee 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 Commission to take over the licensee's operations or a specified part of the licensee'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.

25V. APPOINTMENT OF OPERATOR.

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

(2) A person appointed to take over a licensee's operations is referred to in this section as the "operator".

(3) The licensee must 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 licensee 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.

[Part IV repealed by No. 15 of 2002, s.18.]

[Section 26 repealed by No. 15 of 2002, s.18]

[Section 27 repealed by No. 15 of 2002, s.18]

[Section 28 repealed by No. 15 of 2002, s.18]

[Section 29 repealed by No. 15 of 2002, s.18]

[Part V repealed by No. 15 of 2002, s.19.]

[Section 30 repealed by No. 15 of 2002, s.19]

[Section 31 repealed by No. 15 of 2002, s.19]

PART VI. - PORT ADVISORY COMMITTEES.**32. CONSTITUTION OF PORT ADVISORY COMMITTEES.**

- (1) A Port Advisory Committee for each declared port is hereby established.
- (2) Subject to Section 33, a Port Advisory Committee shall consist of not less than five, and not more than ten, members appointed by the Minister by notice in the National Gazette.⁴⁸
- (3) As far as practicable, the members of a Port Advisory Committee shall be selected to represent the following interests in the port -
- (a) overseas shipping; and
 - (b) coastal shipping; and
 - (c) stevedoring; and
 - (d) transport; and
 - (e) labour; and
 - (f) shippers; and
 - (g) bulk fuel handlers; and
 - (ga) the licensee; and⁴⁹
 - (h) warehouse operators; and
 - (i) the relevant Provincial Government or Local-level Government.⁵⁰
- (4) The term of office of the members of a Port Advisory Committee is two years, and they are eligible for re-appointment.

33. EX OFFICIO MEMBERS.⁵¹

- (1) For the purposes of this section “the licensed pilot” means -
- (a) the person holding a current pilot licence issued under the *Merchant Shipping Act* (Chapter 242); and
 - (b) where there is more than one person under Paragraph (a) for the pilotage area declared under that Act for the port, the licensed pilot appointed by the Departmental Head of the Department responsible for transport matters by written notice.⁵²
- (2) In addition to the members referred to in Section 32, the Port Manager, the licensed pilot and the Collector of Customs for the port are *ex -officio* members of the Port Advisory Committee for a port.

⁴⁸ Subsection (2) amended by No. 15 of 2002, s.21(a).

⁴⁹ Paragraph (ga) added by No. 15 of 2002, s.21(b)(i).

⁵⁰ Paragraph (i) added by No. 23 of 1977, s.4. Further amended by No. 15 of 2002, s.21(b)(ii).

⁵¹ Section 33 amended by No. 23 of 1977, s.5.

⁵² Paragraph (b) amended by No. 15 of 2002, s.21.

34. ALTERNATE MEMBERS OF PORT ADVISORY COMMITTEES.

(1) For each member of a Port Advisory Committee (other than an *ex-officio* member referred to in Section 33) an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the absence from the country, or the inability to act, of a member of a Port Advisory Committee, his alternate member has and may exercise all his powers, functions, duties and responsibilities.

35. PROCEDURES OF PORT ADVISORY COMMITTEES.

(1) A Port Advisory Committee shall elect a Chairman.

(2) A Port Advisory Committee shall meet at least once every three months, at such times and places as are fixed by the Chairman or as are directed by the Departmental Head of the Department responsible for transport matters.⁵³

(3) At a meeting of a Port Advisory Committee -

- (a) two-thirds of the members constitute a quorum; and
- (b) the Chairman, or in his absence a Deputy Chairman elected by the members present, shall preside; and
- (c) all matters shall be decided by a majority of the votes of the members present; and
- (d) the member presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(4) Minutes of the proceedings of a Port Advisory Committee shall be kept.

36. FUNCTIONS OF PORT ADVISORY COMMITTEES.

(1) A Port Advisory Committee may, and if directed by the Departmental Head of the Department responsible for transport matters shall, consider any matter relating to the working or efficiency of the port and advise the Departmental Head of the Department responsible for transport matters on it.⁵⁴

(2) A Port Advisory Committee may make local rules, not inconsistent with this Act, the regulations or other law, in relation to -⁵⁵

- (a) places for anchoring and mooring; and
- (b) the use of the wharves and ancillary facilities; and
- (c) the speed and loads of vehicles in the port area; and
- (d) fire precautions; and
- (e) water sports; and
- (f) safety in port working.

⁵³ Ibid, Subsection (2) amended, s.22.

⁵⁴ Subsection (1) amended by No. 15 of 2002, s.23(a).

⁵⁵ Ibid, Subsection (2) amended, s.23(b).

- (3) A local rule made under Subsection (2) -
 - (a) applies within the limits of the port; and
 - (b) is of no force or effect until approved by the Departmental Head of the Department responsible for transport matters.⁵⁶

- (4) A person who contravenes or fails to comply with a local rule made under Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K500.00.⁵⁷

Default penalty: A fine not exceeding K50.00.⁵⁸

PART VIB. - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES, ETC.⁵⁹

Division 1. - Incorporation of successor company and transfer to it and others of assets, etc.

36A. PRIVATIZATION COMMISSION SHALL INCORPORATE A SUCCESSOR COMPANY.

(1) For the purposes of this Act, the Privatization Commission shall incorporate or cause to be incorporated a company under the ***Companies Act 1997*** (the “Successor Company”).

- (2) The constitution of the Successor Company shall, *inter alia* -
 - (a) contain such provisions as are directed by or as are necessary to give effect to any decision of the National Executive Council or the Minister relating to the privatisation of the business conducted by the Board; and
 - (b) contain powers enabling the company to carry on the business and deal with the assets and liabilities transferred to it under Section 36B; and
 - (c) provide that, so long as the majority of the issued shares in the Successor Company is held by the State, a Minister holding such shares on trust for the State or a State owned entity, one of the basic objectives of the company, insofar as its ports business is concerned, shall be to perform its functions and direct its policies to the greatest advantage of the people of Papua New Guinea.

- (3) Subject to the date of any transfer of shares effected under Section 36F(d), the Successor Company shall be wholly owned by the State, and the shareholder on behalf of the State shall be the Minister or a State owned entity nominated by the Minister.

⁵⁶ Ibid, Paragraph (b) amended, s.23(c).

⁵⁷ Ibid, Penalty provision amended, s.23(d)(i).

⁵⁸ Ibid, Default Penalty Provision amended, s.23(d)(ii).

⁵⁹ Ibid, Part VIB added, s.24.

36B. DIRECTION TO TRANSFER ASSETS, ETC., OF THE BOARD.

(1) The Head of State, acting on advice, may, by direction published in the National Gazette, transfer such assets and liabilities of the Board as are identified (whether specifically or by general description) in the direction to the Successor Company for the consideration (if any) specified in the direction with effect from the transfer date specified in the direction.

(2) The Head of State, acting on advice, may, by direction published in the National Gazette, transfer any assets and liabilities of the Board identified (whether specifically or by general description) in the direction, that are not transferred to the Successor Company under Subsection (1), to a State owned entity for the consideration (if any) specified in the direction with effect from the transfer date specified in the direction.

(3) On the transfer date specified in a direction given under Subsection (1) or Subsection (2) -

- (a) all assets and liabilities of the Board immediately before the transfer date are transferred to the transferee by virtue of this section without the need for any conveyance, transfer, assignment or assurance; and
- (b) the liabilities cease to be liabilities of the Board and become by virtue of this section the liabilities of the transferee; and
- (c) all proceedings subsisting by or against the Board in respect of the assets or liabilities of the Board immediately before the transfer date are taken to be proceedings by or against the transferee and may, on and after the transfer date, be continued by and against the transferee; and
- (d) any act, matter or thing done or omitted to be done before the transfer date by, to or in respect of the Board in relation to the assets or liabilities (to the extent that the act, matter or thing has any force or effect) is taken to have been done or omitted to be done by, to or in respect of the transferee; and
- (e) and thereafter, a reference in any other Act, in any instrument made under any Act, or in any document of any kind, to the Board is (to the extent it relates to those assets or liabilities) to be read as, or as including, a reference to the transferee; and
- (f) every chose-in action that is transferred by virtue of this section is vested in the transferee and may, after the transfer date, be sued on, recovered or enforced by the transferee in its own name and it shall not be necessary for the transferee or the Board to give notice to any person of the transfer of the chose-in action; and
- (g) every right and obligation transferred by virtue of this section is vested in the transferee and may, on and after the transfer date, be sued on, recovered or enforced by or against the transferee in its own name and it shall not be necessary for the transferee or the Board to give notice to any person of the transfer of the right or obligation; and
- (h) in the case of rights and obligations arising under any loans which are transferred by virtue of this section, the transferee may enter into such arrangements or agreements in relation to such rights or obligations with the State or any third party as shall be necessary.

- (4) The operation of this section is not to be regarded -
 - (a) as constituting a breach of any obligation whether imposed by contract, statute, regulation or otherwise; or
 - (b) as constituting a breach of any contractual or statutory provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities; or
 - (c) as giving rise to any right or remedy of any party to any deed, agreement or other instrument, or as causing or permitting the termination of any deed, agreement or other instrument arising out of a change in the beneficial or legal ownership of any asset or liability or otherwise; or
 - (d) as releasing any surety or other obligee wholly or in part from any obligation.

- (5) Where, by virtue of this section, the rights and obligations of the Board under a deed, agreement or other instrument become the rights and obligations of a transferee -
 - (a) the transferee becomes, on the transfer date, a party to the deed, agreement or other instrument in place of the Board; and
 - (b) as from the transfer date, the deed, agreement or other instrument has effect as if the transferee had always been a party to the deed, agreement or other instrument; and
 - (c) acts performed by the Board under the deed, agreement or other instrument before the transfer date are deemed to have been performed by the transferee.

- (6) Any register maintained under any Act on which any property which is transferred by virtue of this section is registered in the name of the Board is deemed to be amended, as from the transfer date of that property, by substituting the transferee for the Board.

- (7) Without limiting the generality of Subsection (6) -
 - (a) the Registrar of Titles shall, on written application by the transferee, without formal transfer, enter and register the transferee as the proprietor of land in the Register Book or the Register of Leases maintained under the ***Land Registration Act*** (Chapter 191) (as appropriate) and issue the Certificate of Title or State Lease or other instrument evidencing title to the land in the name of the transferee; and
 - (b) the Minister responsible for land matters is deemed to have approved any transfer of any interest in land to the transferee where such approval is required under the ***Land Act 1996***; and
 - (c) the Registrar of Titles shall, on written application by the transferee, without formal transfer, enter and register the transferee as mortgagee in respect of any mortgage or other security granted in favour of the Board as mortgagee; and
 - (d) the Registrar of Companies shall, on written application by the transferee, without formal transfer, enter and register the transferee as mortgagee or chargee of any charges or other securities registered in favour of the Board as chargee or mortgagee in the appropriate register maintained under the ***Companies Act 1997***; and

- (e) the Registrar of the National Court shall, on written application by the transferee, without formal transfer, enter and register the transferee as mortgagee of any security registered in favour of the Board as mortgagee under the ***Instruments Act*** (Chapter 254); and
- (f) the Departmental Head of the Department responsible for merchant shipping matters shall, on written application by the transferee, without formal transfer, enter and register the transferee as owner or mortgagee of any ship or vessel owned by or mortgaged to the Board under the provisions of the ***Merchant Shipping Act*** (Chapter 242) whether or not such vessel was previously registered or not.

36C. TRANSFER OF EMPLOYEES.

(1) The Head of State, acting on advice, may, by direction published in the National Gazette, transfer such employees of the Board who are identified (whether specifically or by general description) in the direction to the employment of the Successor Company with effect from the date specified in the direction.

(2) The Head of State, acting on advice, may, by direction published in the National Gazette, transfer any employees of the Board identified (whether specifically or by general description) in the direction, that are not transferred to the employment of the Successor Company under Subsection (1), to the employment of a State owned entity with effect from the date specified in the direction.

(3) On the transfer of an employee's employment by a direction under Subsection (1) or (2), the employee ceases to be an employee of the Board and becomes an employee of the new employer on the same terms and conditions of employment as applied to the employee immediately before the transfer of employment, and those terms and conditions will continue to have effect until varied either by agreement or otherwise in accordance with law.

(4) Each employee to whom Subsection (1) or (2) applies is deemed to have an accrued entitlement to benefits in his employment with the new employer that is equivalent to the benefits which he had accrued with the Board immediately prior to the transfer date.

- (5) The transfer of employment under this section shall not be, and shall not be taken to -
- (a) be a breach, variation or termination of any contract of employment of, or to interrupt the period of employment for, any such employee, or to create any new contract of employment or to create any entitlement with respect to employee benefits including annual leave, furlough leave and superannuation entitlement beyond those which would have been applicable to the employee had he continued to be employed by the Board; or
 - (b) confer any entitlement on any person to receive payment of any accrued entitlements; or
 - (c) confer any entitlement on that employee to make any claim by way of redundancy, retrenchment or otherwise as a result of the transfer of employment.

36D. TAXES AND DUTIES.

(1) For the purposes of the ***Income Tax Act 1959***, a transferee is deemed to have acquired the assets and liabilities transferred to it by a direction under Section 36B(1) or (2) at a value equal to the amount specified in the direction, either in relation to a particular asset or liability or in relation to a general category of asset or liability.

(2) A transferee shall be entitled to tax depreciation and to any other applicable tax deduction in respect of assets and liabilities specified in the direction as if the transferee had owned such assets and liabilities since such assets and liabilities were first acquired, assumed or created by the Board.

(3) Shares issued by the Successor Company to the Minister or a State owned entity nominated by the Minister, in either case as the holder of those shares on behalf of the State, are deemed to have been fully paid and issued for valuable consideration other than cash.

(4) A transfer of assets or liabilities by a direction under Section 36B(1) or (2) shall be exempt from any and all stamp duty, fee, tax, levy, value added tax, charges or other duty or charge payable under any Act, including, but not limited to -

- (a) the ***Companies Act 1997***; and
- (b) the ***Income Tax Act 1959***; and
- (c) the ***Instruments Act*** (Chapter 254); and
- (d) the ***Land Registration Act*** (Chapter 191); and
- (e) the ***Stamp Duties Act*** (Chapter 117); and
- (f) the ***Value Added Tax Act 1998***; and
- (g) the ***Merchant Shipping Act*** (Chapter 242).

(5) No registration fee shall be payable in respect of the authorised capital of the Successor Company or any State owned entity referred to in Section 36B(2) and no tax or duty shall be payable on the issue of shares in the Successor Company or any State owned entity referred to in Section 36B(2) to the Minister or a State owned entity nominated by the Minister, as the holder of those shares on behalf of the State.

Division 2. - Cessation of business of the Board.

36E. BOARD TO CEASE BUSINESS.

(1) On and from the date of the last transfer of the assets and liabilities of the Board by a declaration pursuant to Section 36B(1) or (2) and of the last employee of the Board by a direction pursuant to Section 36C(1) or (2), except to the extent necessary to facilitate the provisions of this Part, the Board shall cease to carry out its business undertaking, and this Act is deemed to be amended so as to give effect to this subsection.

(2) Without limiting the generality of Subsection (1), on and from the date of the last transfer of the assets and liabilities of the Board by a declaration pursuant to Section 36B(1) or (2) and of the last employee of the Board by a declaration pursuant to Section 36C(1) or (2), the Board shall cease to have the functions and powers conferred upon it under Division III.1 and this Act is deemed to be amended so as to give effect to this subsection.

(3) The Minister shall cause to be published in the National Gazette the date of the last transfer of the assets and liabilities of the Board by a direction pursuant to Section 36B(1) or (2) and of the last employee of the Board by a direction pursuant to Section 36C(1) or (2).

Division 3. - Disposal of assets, etc., of successor company and others.

36F. DISPOSAL OF ASSETS OF SUCCESSOR COMPANY, ETC.

The Head of State, acting on advice and in accordance with a privatization policy in respect of the business conducted by the Board, may, by agreement (a “sale/lease agreement”) with another (the “purchaser”) do one or more of the following:

- (a) transfer to the purchaser assets or liabilities (or both) of the Successor Company); or
- (b) grant to the purchaser a lease, easement or other rights in respect of the assets of or available to the Successor Company; or
- (c) transfer to the purchaser assets or liabilities (or both) of a State owned entity; or
- (d) transfer to the purchaser shares in the Successor Company; or
- (e) grant to the purchaser a lease, easement or other rights in respect of assets of or available to a State owned entity.

36G. PROVISIONS RELATING TO SALE/LEASE AGREEMENTS.

(1) A sale/lease agreement may transfer assets or liabilities (or both) to a State owned entity, Minister or any instrumentality of the State, or the State, with effect at the end of the term of a lease (whether granted by the agreement or otherwise) or in specified circumstances.

(2) In exercising powers in relation to assets or liabilities of, or available to, the Successor Company or a State owned entity, the Head of State is to be taken to be acting as the agent of the Successor Company or State owned entity (as the case may require).

(3) A sale/lease agreement effects the transfer and vesting of an asset or liability or shares, or the grant of a lease, easement or other rights, in accordance with its terms by force of this Act and notwithstanding the provisions of any other law or instruments.

(4) The transfer of a liability by a sale/lease agreement operates to discharge the transferor and the State from the liability.

- (5) Unless the sale/lease agreement otherwise provides -
 - (a) the transfer of an asset by a sale/lease agreement operates to discharge the asset from any trust in favour of the State; or
 - (b) the transfer of the shares in the Successor Company by a sale/lease agreement operates to discharge the assets of the Successor Company from any trust in favour of the State.

- (6) If a sale/lease agreement so provides -
 - (a) a security to which a transferred asset is subject ceases to apply to the asset on its transfer by the sale/lease agreement; or
 - (b) a security to which a leased asset is subject ceases to apply to the asset on the grant of the lease by the sale/lease agreement.

36H. TRANSFER OF EMPLOYEES.

(1) Action shall be taken to ensure that all employees engaged in a business to which a sale/lease agreement relates are taken over as employees of the purchaser, a company related to the purchaser or the Successor Company where the Successor Company is acquired by the purchaser under the sale/lease agreement.

(2) For the purposes of this section, the Head of State, acting on advice and in accordance with a privatization policy, may, by direction published in the National Gazette -

- (a) transfer employees of the Successor Company to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser; or
- (b) transfer employees of a State owned entity to positions in the employment of a purchaser under a sale/lease agreement or a company related to the purchaser.

(3) A direction under Subsection (2) takes effect on the date of the direction or on a later date specified in the direction.

(4) A direction under Subsection (2) may be varied or revoked by the Head of State, acting on advice, by further direction in writing made before the initial direction takes effect.

(5) A direction under Subsection (2) has effect by force of this Act and notwithstanding the provisions of any other law or instrument.

- (6) A transfer under this section does not -
 - (a) affect the employee's remuneration; or
 - (b) interrupt continuity of service; or
 - (c) constitute a retrenchment or redundancy.

(7) An employee's terms and conditions of employment are subject to variation after the transfer in the same way as before the transfer.

(8) A person whose employment is transferred from one body (the “former employer”) to another (the “new employer”) under this section is taken to have accrued as an employee of the new employer an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the former employer.

(9) A transfer under this section does not give rise to any remedy or entitlement arising from the cessation or change of employment.

(10) For the purposes of construing a contract applicable to a person whose employment is transferred under this section, a reference to the former employer is to be construed as a reference to the new employer.

(11) A company and a purchaser are related for the purposes of this section if they are related corporations within the meaning of the ***Companies Act 1997***.

PART VII. - OFFENCES.

37. 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 K500.00.⁶⁰

[Section 38 repealed by No. 15 of 2002, s.26.]

39. DIRECTIONS BY PORT MANAGER.⁶¹

- (1) Subject to Subsection (1A), the Port Manager may give directions for regulating -⁶²
- (a) the time and manner in which any vessel shall enter into, depart from or lie in a declared port; and
 - (b) the position, mooring, unmooring, placing or removing of any vessel within a declared port; and
 - (c) the manner in which, or the time at which, any vessel shall -
 - (i) take in or discharge its cargo or any part of its cargo; or
 - (ii) take in or deliver ballast, water or fuel.

(1A) The Port Manager may only give directions under Subsection (1) after consultation with the licensee providing essential port services with the declared port and to the extent necessary to ensure safety within the declared port and to the extent necessary to ensure safety within the declared port.⁶³

⁶⁰ Penalty provision amended by No. 15 of 2002, s.25.

⁶¹ Section 39 amended by No. 23 of 1977. S.6. Heading amended by No. 15 of 2002, s.27(a).

⁶² Subsection (1) amended by No. 15 of 2002, s.27(b).

⁶³ Ibid, Subsection (1A) added, s.26(c).

(2) The master of a vessel in a declared port must regulate the vessel according to any directions of the Port Manager given under Subsection (1).

Penalty: A fine not exceeding K 2, 000.00.⁶⁴

40. FAILURE TO COMPLY WITH DIRECTIONS OF PORT MANAGER.⁶⁵

(1) If the master of a vessel fails to comply with a direction of a Port Manager given under Section 39 to moor, unmoor, place or remove the vessel, the Port Manager may cause the vessel to be moored, unmoored, placed or removed accordingly.

(2) In addition to any penalty for an offence of failing to comply with the directions of the Port Manager, the master of a vessel that a Port Manager has caused to be moored, unmoored, placed or removed under Subsection (1) is liable to pay all expenses incurred in the mooring, unmooring, placing or removal of the vessel.

(3) Any amount that a master is liable to pay under Subsection (2) is payable into the Consolidated Revenue Fund.⁶⁶

40A. FALSE OR MISLEADING INFORMATION.⁶⁷

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.

40B. OFFENCES BY CORPORATIONS OR FIRMS.⁶⁸

If a corporation or 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 wilfully authorises or permits the commission of the offence, is also guilty of the offence.

⁶⁴ Ibid, Penalty provision amended, s.27(d).

⁶⁵ Section 40 amended by No. 23 of 1977, s.7. Heading amended by No. 15 of 2002, s.28(a).

⁶⁶ Subsection (3) amended by No. 15 of 2002, s.28(b).

⁶⁷ Section 40A added by No. 15 of 2002, s. 29.

⁶⁸ Ibid.

PART VIIA. - REVIEW.⁶⁹**40C. REVIEW OF DECISIONS BY COMMISSION.**

- (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 IIIA, or for agreement to the transfer of such a licence, for review of the decision of the Commission to refuse the application; or
 - (b) by a licensee for review of a decision of the Commission under Part IIIA to suspend or cancel the licensee's licence or to vary the terms or conditions of the licensee's licence.
- (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
 - (e) be lodged with Appeals Panel within ten days after written notice of the decision is given to the licensee or applicant or 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 Appeals Panel considers appropriate.
- (6) The Appeals Panel must give the applicant written notice of the decision, and the reasons for the decision, on the review.

40D. MINISTER'S POWER TO INTERVENE.

The Minister responsible for treasury matters 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.

⁶⁹ Ibid, Part VIIA added, s.30.

PART VIIB. - EXEMPTIONS.⁷⁰**40E. POWER OF EXEMPTION.**

(1) The Commission may, with the approval of the Minister responsible for treasury matters, grant an exemption from Part IIIA, or specified provisions of Part IIIA, on terms and conditions the Commission considers appropriate.

(2) If the Commission exempts a person from the requirement to hold a licence under Part IIIA, the Commission may (without limiting Subsection (1)) by conditions of the exemption require that the person is to be treated as a licensee for the purposes of specified provisions of this Act.

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

40F. REGISTER OF EXEMPTIONS.

(1) The Commission 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.

40G. 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 Commission 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.

⁷⁰ Part VIIB added by No. 15 of 2002, s.30.

PART VIII. - MISCELLANEOUS.

41. PURPOSES OF THE BOARD TO BE PUBLIC PURPOSE.

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

[*Section 42 repealed by No. 15 of 2002, s.31.*]

43. PROOF OF CERTAIN MATTERS.

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

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

44. INDEMNITY.

A member, officer, employee or agent of the Board is not personally liable for any act or default of himself or the Board done or omitted to be done in good faith in the course of the operations of the Board or for the purposes of this Act.

45. SERVICE OF PROCESS.

A notice, summons, writ or other process required to be served on the Board may be served by being left at the office of the Board or, in the case of a notice, by post.

46. AUTHENTICATION OF DOCUMENTS.

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

47. APPOINTMENT OF ATTORNEYS.

(1) The Board 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 Board itself might lawfully do.

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

48. COMPENSATION.

(1A) Where a person exercises by or on behalf of the Board the functions of a licensed stevedore under this Act, that person shall indemnify, and keep indemnified the Board against any liability it may incur to any person suffering loss or damage as a result of the exercise of that function where the loss or damage is attributable in whole or in part to a negligent or wrongful act or omission in connection with the purported exercise of that function.⁷¹

⁷¹ Subsection (1A) added by No. 23 of 1977, s.8(a).

(1) Subject to Subsection (1A), where loss or damage is suffered by any person by reason of the exercise, by or on behalf of the Board, of a power conferred by or under this Act, compensation for the loss or damage is payable to him by the Board.⁷²

(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.

49. RECOVERY OF MONEY DUE.

Any money due to a person or body under this Act may be recovered by a person or body as a debt.⁷³

50. IMMUNITY.⁷⁴

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.

51. REGULATIONS.⁷⁵

(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, and, in particular, for prescribing penalties of fines not exceeding K100, 000.00 and default penalties of fines not exceeding K2, 500.00 for offences against the regulations.⁷⁶

- (2) Without limiting Subsection (1), the regulations may deal with the following matters -
- (a) the security and facility of navigation in declared ports; and
 - (b) the regulation, control and supervision of loading and unloading, the use of machinery, equipment and appliances in loading and unloading and the storage and handling of goods in declared ports; and
 - (c) the construction and the method of constitution of -
 - (i) wharves, docks, piers, jetties or embankments; and
 - (ii) sheds, landing stages, slips, platforms, roadways, railways, tramways or hoisting shears and engines; and
 - (d) the dredging, cleansing and scouring of declared ports, the improvement of the beds and channels of ports and the abating and removing of wrecks and impediments, obstructions and nuisances to navigation in ports; and
 - (e) the supply and removal of ballast and water for shipping; and

⁷² Ibid, amended, s.8(b).

⁷³ Section 49 amended by No. 15 of 2002, s.32.

⁷⁴ Ibid, Section 50 repealed and replaced, s.33.

⁷⁵ Ibid, Section 51 repealed and replaced, s.34.

⁷⁶ Subsection (1) amended by No. 23 of 2013.

- (f) the improvement and management of declared ports and facilities in declared ports; and
- (g) the regulation and management of port craft, except as provided for by the *Navigation Act, 1889* of the former Territory of Papua (Adopted) or the *Coastal Shipping, Ports and Harbours Regulations 1938* of the former Territory of New Guinea (Adopted); and
- (h) the anchoring, mooring and fastening of vessels and port craft, and the shifting, removal and control of vessels and port craft, in declared ports whether under way or at anchor, afloat or aground, hove down, hauled up or in dock; and
- (i) the regulation and control of the use of lights and fire on board vessels within declared ports; and
- (j) the appointing of places for the loading or unloading, and the manner of loading or unloading, of any inflammable or explosive substance; and
- (k) the storage within declared ports of inflammable or explosive substances; and
- (l) the licensing of ferries and port craft, boatmen and operators of ferries and port craft, subject to such conditions as are prescribed in the regulations; and
- (m) the control of lights within a declared port with a view to the safety of navigation; and
- (n) technical, operational and safety requirements and standards in ports; and
- (o) the exemption (conditionally or unconditionally) of persons or operations from the application of this Act or specified provisions of this Act; and
- (p) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and
- (q) conditions which the Commission is required to impose on the issue of a licence; and
- (r) the Departmental Head appointing Port Managers for Declared Ports, Non Declared Ports and Port Facilities within such Ports; and⁷⁷
- (s) a Port Facility Operator requiring prior written approval by the Port Manager before any construction, extension, alteration or excavation (proposed or otherwise) is made to a Declared Port, Non Declared Port or Port Facility; and⁷⁸
- (t) the power for a Port Manager to issue and require compliance with Environmental Directions concerning a Declared Port, Non Declared Port or Port Facility; and⁷⁹
- (u) the power for a Port Manager to establish and issue standards and specifications, and require compliance with such standards and specifications, concerning the construction, maintenance and operation of a Declared Port, Non Declared Port and Port Facility, and for a Port Manager to require an economic impact statement concerning any proposed or other construction, extension, alteration or excavation within a Declared Port, Non Declared Port or Port Facility; and

⁷⁷ Paragraph (r) added by No. 23 of 2013.

⁷⁸ Ibid.

⁷⁹ Ibid.

- (v) the National Maritime Safety Authority establishing and issuing standards and specifications, and requiring compliance with such standards and specifications, concerning the construction, operation, maintenance, inspection and testing of a pipeline within or connected to a Declared Port, Non Declared Port or Port Facility; and⁸⁰
- (w) a Port Manager preparing, issuing and requiring compliance with Port Management and Operations Directions concerning -
 - (i) navigation, vessel movements and vessel safety; and
 - (ii) passenger services, handling and safety; and
 - (iii) cargo services, handling, storage and safety; and
 - (iv) dangerous goods handling, storage and safety; and
 - (v) port facilities management, operations and safety, including but not limited to the making of enforceable Port Facility Operator Rules, Practices and Guidelines; and
 - (vi) port safety; and
 - (vii) port security; and
 - (viii) equipment and machinery management and operations; and
 - (ix) traffic and other movement management and operations; and
 - (x) aquatic sports; and
 - (xi) such other matters concerning the operation and control of the Port as the Port Manager reasonably deems necessary; and
 - (xii) provisions concerning the powers and duties of Port Facility Operators to make enforceable operational Rules, Practices and Guidelines within their areas of operation and responsibility, not inconsistent with Port Management and Operations Directions; and⁸¹
- (x) the licencing, appointment, control and management by a Port Manager of Port Facility Operators for Declared Ports, Non Declared Ports and Port Facilities, and requirements for compliance by all persons with such licencing, appointment, control and management Regulations; and⁸²
- (y) the licencing, appointment, control and management of Stevedoring and Stevedores by a Port Manager, and requirements for compliance with such licencing, appointment, control and management Regulations; and⁸³
- (z) the National Maritime Safety Authority preparing, issuing and requiring compliance with Port Safety Directions concerning -
 - (i) safe navigation and vessel movement within Declared Ports, Non Declared Ports and Port Facilities; and
 - (ii) safe passenger handling and movement within Declared Ports, Non Declared Ports and Port Facilities; and

⁸⁰ Ibid.⁸¹ Paragraph (w) added by No. 23 of 2013.⁸² Ibid.⁸³ Ibid.

- (iii) safe cargo handling, storage and movement within Declared Ports, Non Declared Ports and Port Facilities; and
- (iv) safe dangerous goods handling and movement within a Declared Port, Non Declared Port and Port Facility; and
- (v) safe maritime traffic and other movements and operations within a Declared Port, Non Declared Port and Port Facility; and⁸⁴
- (aa) the entry to and departure from a Declared Port and Non Declared Port of a vessel and the requirements and duties of the owner, master and agent of such vessel while the vessel is entering, departing or within such Port; and⁸⁵
- (bb) the opening and closing of a Declared Port, Non Declared Port and Port Facility, including the power of a Port Manager to control the opening and closing of such Port and Port Facility; and⁸⁶
- (cc) the loading to, unloading from, control, handling and storage of passengers, goods, cargo and dangerous goods from and to a vessel in a Declared Port or Non Declared Port; and⁸⁷
- (dd) the control, management, operation and safety of a Declared Port, Non Declared Port and Port Facility; and⁸⁸
- (ee) the control, management and operation of entry to and departure from a Declared Port, Non Declared Port and Port Facility by any person, vehicle or vessel, and the conduct of any person, vehicle or vessel while within such Port and Port Facility; and⁸⁹
- (ff) Port Traffic Management and the power of a Port Manager to establish and require compliance with Port Traffic Management provisions; and⁹⁰
- (gg) a Port Manager appointing Authorised Officers to enforce a regulation and the powers and duties of such Authorised Officers; and⁹¹
- (hh) the National Maritime Safety Authority appointing Inspectors to enforce a Regulation and the powers and duties of such Inspectors; and⁹²
- (ii) a Port Manager and the National Maritime Safety Authority setting fees and charges for any matter under or concerning a Regulation and for the collection of such fees and charges; and⁹³
- (jj) the power to prosecute offenders by the Port Manager.⁹⁴

(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.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Paragraph (ee) added by No. 23 of 2013.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

(4) If the regulations grant an exemption from the requirement to hold a licence under Part IIIA, the regulations may require a person exempted from the requirement to be treated as a licensee for the purposes of specified provisions of this Act.

- (5) The regulations may -
 - (a) be of general application or of limited 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 responsible for treasury matters or the Commission; or
 - (c) refer to or incorporate, wholly or partially and subject to such modifications, conditions or restrictions as are prescribed by the regulations, any standard, code, procedure or other document prepared or laid down by the Standards Association of Australia or any other authority, as in force time to time or as in force at a particular time.
- (6) For the purpose of removal of doubt -
 - (a) the ***Ports (Management and Safety) Regulation 2010***, and each of the regulations made under the ***Ports (Management and Safety) Regulation 2010***, are declared for all purposes to be lawful, and in full force and effect and made under and in accordance with this Act; and
 - (b) this Act provides the power to make each of the regulations made under the ***Ports (Management and Safety) Regulation 2010***.⁹⁵

SCHEMES.

SCHEDULE 1.

Sec. 9(3)(c).

OATH AND AFFIRMATION OF OFFICE.

Oath.

“I, _____, do swear that I will give good and faithful service as an officer of the Papua New Guinea Harbours Board.

So help me God!”

Affirmation.

“I, _____, do solemnly and sincerely promise and declare that I will give good and faithful service as an officer of the Papua New Guinea Harbours Board.”

⁹⁵ Ibid.

SCHEDULE 2.

Sec. 14.

EXCEPTIONS AND MODIFICATIONS TO THE PUBLIC BODIES (FINANCIAL ADMINISTRATION) ACT.⁹⁶

Provision	Modification, etc.
51	Applies as if the words “in such form as the Minister approves” were omitted.
52	Does not apply.
53	Does not apply.
58	Does not apply.
59	For the purposes of Subsection (1) the specified sum is K1,000.00.

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⁹⁶ This Act is repealed, refer now to the *Public Finances (Management) Act 1995*.