

No. 52 of 2016.

National Water Supply and Sanitation Act 2016.

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No. of 2016.

AN ACT

entitled

National Water Supply and Sanitation Act 2016,

Being an Act -

- (a) to provide for co-ordinated water supply and sanitation services and for the planning, design, construction and management of water supply and sanitation systems in the country; and
 - (b) to levy charges in respect of these services and systems, to make provision for the establishment of Water Papua New Guinea Limited as a company replacing the Waterboard; and
 - (c) to repeal the ***National Water Supply and Sewerage Act 1986,***
- and for related purposes,

MADE by the National Parliament.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

- (a) the right to 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 choice of employment in any calling for which a person has the qualifications (if any) lawfully required, conferred by Section 48; and
- (d) 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,

is a law that is made pursuant to Section 38 of the ***Constitution,*** taking into account the National Goals and Directive Principles and Basic Social Obligations, in particular, the National Goals and Directive Principles relating to -

- (e) national sovereignty and self-reliance; and
- (f) natural resources and environment.

(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*** or any other relevant law, the purposes and reasons for each such taking and acquisition are -

- (a) to facilitate and maintain the efficient and economical provision of water supply and sanitation services; and
- (b) to maintain the peace and good order in Papua New Guinea.

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(3) The purposes and reasons are declared as a public purpose and for 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.

(4) For the purposes of Section 53(2) of the *Constitution*, just compensation are 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 constitutes compensation procured and accordingly made by, and on behalf of the State in connection with each such taking or acquisition.

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

(6) 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.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“Company” means the Water Papua New Guinea Limited, a company incorporated under the *Companies Act 1997*;

“consumer” means, in relation to the supply of water, any person to whom water is supplied under this Act;

“occupier” means a person in actual occupation of any land or premises or, if there is no person in actual occupation, the person entitled to possession of the land or premises;

“owner” includes -

(a) in relation to land, the subject of a State lease under or continued in force by the *Land Act 1996* - the lessee under the lease; and

(b) where a person is in occupation of Government improved land under an agreement with the Government - the person;

“premises” means -

(a) a building or part of a building; or

(b) any structure or facility for educational, recreational or social purposes, on or over the sea or any other water;

“rateable land” means land which is rateable under Section 26;

“rates” means -

(a) in relation to the supply of water - water rates; and

(b) in relation to provision of sanitation services - sanitation rates;

“sanitation” means the treatment and proper disposal of sewage and wastewater;

“sanitation district” means an area declared under Section 6(1)(b) to be a sanitation district;

“sanitation rates” means the sanitation rates levied pursuant to this Act;

“sanitation system” means a system of sewers, fittings, fixtures, appliances, plant, machinery and sewerage and other sanitation works constructed and maintained for the purposes of treatment and conveyance of sewage or wastewater;

“sewage” means any water contaminated by domestic wastes or trade effluent;

“sewer main” means a main pipe for the carriage of sewage or wastewater, being part of a sanitation system;

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- “water” means any water, treated or untreated, that is made available to the public;
- “water main” means a main pipe for the carriage of water, being part of a water supply system;
- “water rates” means the water rates levied pursuant to this Act;
- “water supply district” means an area declared under Section 6(1)(a) to be a water supply district;
- “water supply system” means a system of reservoirs, wells, bores, tanks, aqueducts, tunnels, buildings, pipes or other works constructed and maintained for the purpose of supplying water.

PART II. - FUNCTIONS AND POWERS, ETC., OF THE COMPANY.

3. FUNCTIONS OF THE COMPANY.

(1) The functions of the Company are -

- (a) to provide, design, construct and maintain such water supply systems as may be required for collection, production, supply and use of water for private and public purposes in and for cities, towns and rural areas in accordance with this Act; and
- (b) to provide, design, construct and maintain such sanitation systems as may be required in and for the disposal of sewage and wastewater in and for cities, towns and rural areas in accordance with this Act; and
- (c) to secure and provide an adequate supply of water in accordance with this Act; and
- (d) to manage, operate and maintain water supply systems and sanitation systems owned by the Company and such other installations as may be erected or constructed by the Company; and
- (e) to work with provincial governments and through them, with authorities involved in district administration, and where appropriate with other State-owned enterprises, to further the objectives of this Act; and
- (f) to comply with the *Public Health Act* (Chapter 226), the consumer protection provisions of the *Independent Consumer and Competition Commission Act 2002* and the *Environment Act 2000*, and to abide by such water quality and sewerage discharge standards as are from time to time in force; and
- (g) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out its functions.

(2) For so long as water supply and sewerage facilities and services in the National Capital District are provided by another entity under the *National Capital District Water Supply and Sewerage Act 1996*, the Company’s functions does not extend to or be exercisable in the National Capital District.

4. POWERS OF THE COMPANY.

(1) Subject to this Act, the Company has the capacity and power conferred on companies by the *Companies Act 1997*.

(2) In addition to the capacity and power referred to in Subsection (1), the Company has powers to do all things necessary or convenient to be done for and in connection with the performance of its functions and, in particular, but without limiting the generality of the capacity and power, the Company has the power -

- (a) to enter into, for the purposes of this Act, contracts and agreements for -

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- (i) the purchase of land or easements in or over land; and
- (ii) the acquisition of any materials; and
- (iii) the construction of any works; and
- (b) to enter on any land or premises for the purpose of -
 - (i) constructing, maintaining, repairing, enlarging or improving any water supply system or sanitation system; and
 - (ii) obtaining water, or sinking wells or shafts; and
 - (iii) improving water quality or sanitation facilities; and
- (c) to make, maintain, alter or disconnect any part of a water supply system or sanitation system; and
- (d) to maintain on any land, streams and water courses for the purposes of supplying water in accordance with this Act; and
- (e) to impound and take water from any stream or spring and for that purpose to alter or to divert the course of any stream or spring; and
- (f) to take water found in, under or on any land; and
- (g) to break up -
 - (i) the soil and pavement of any land, road, thoroughfare or street; or
 - (ii) any pipe, sewer, drain or tunnel within or under any land, road, thoroughfare or street,

for the purposes of laying and placing pipes, sewers, conduits or other works necessary for the supply of water or the provision of sanitation services, or for the repair, removal or maintenance of any pipes, sewers, conduits, or other works the property of the Company.

(3) Where, under Subsection (2), the Company has entered and held land permanently, that land shall, as far as practicable, be acquired in the manner provided for by the *Land Act 1996*.

(4) The Company shall, in the exercise of its powers under this section, inflict as little damage as possible and where any damage is inflicted by the Company, the Company shall pay compensation to the party sustaining the damage.

(5) The Company shall, as soon as practicable, restore any land, road, thoroughfare, street, pipe, sewer, drain or tunnel, broken up under Subsection (2)(g).

5. APPLICATION OF OTHER LEGISLATION.

(1) Subject to the provisions of this Act, the *Companies Act 1997* applies to the Company.

(2) The *Kumul Consolidated Holdings Act 2002* applies to the Company to the extent that, and for so long as, the Company is a Majority State Owned Enterprise (as defined in that Act).

(3) The Company may have a constitution in accordance with the *Companies Act 1997* but where the constitution is inconsistent with -

- (a) the provisions of this Act, this Act shall apply; or
- (b) the provisions of the *Kumul Consolidated Holdings Act 2002*, that Act shall apply for so long as the Company is a Majority State Owned Enterprise.

PART III. - WATER SUPPLY AND SANITATION DISTRICTS.

6. WATER SUPPLY DISTRICTS AND SANITATION DISTRICTS.

(1) The Minister may, on the recommendation of the Company, by notice in the National Gazette, declare an area to be -

- (a) water supply district; or
- (b) a sanitation district.

(2) Where, upon the declaration of -

- (a) a water supply district, there is an existing water supply system in that district; or
- (b) a sanitation district, there is an existing sanitation system in that district,

the water supply system or sanitation system, together with all land, goods, materials and things forming part of that water supply system or sanitation system, are vested in the Company and become the property of the Company.

(3) Any person, including a provincial government, local authority or local-level government but not the State or a state-owned enterprise, who or which was the owner of property vested in the Company under Subsection (2) is entitled to compensation for the value of that property.

(4) The Company shall operate and maintain -

- (a) water supply systems in a water supply district; or
- (b) sanitation systems in a sanitation district,

which are acquired under Subsection (2) or Section 47.

(5) The Company may construct, operate and maintain new or additional -

- (a) water supply systems in a water supply district; or
- (b) sanitation systems in a sanitation district.

(6) Pursuant to Subsection (2) and Section 47, the Company is or will become the owner of all works and facilities forming part of a water supply system in a water supply district or part of a sanitation system in a sanitation district, whether installed in or on the land or under the sea or any waterway and whether or not the land is owned by the Company.

7. DELEGATION OF POWERS AND FUNCTIONS.

(1) Where -

- (a) a local authority or a local-level government applies to operate and maintain the water supply system and supply water within a water supply district, or to operate and maintain the sanitation system and provide sanitation services within a sanitation district, or both; and
- (b) the Company is satisfied that the local authority or local-level government has the capacity to operate and maintain the system and provide the services on a sound technical and commercial basis,

the Company may, subject to the approval of the Minister, delegate to the local authority or local-level government, all or any of the powers and functions of the Company under this Act relating to the supply of water in that water supply district or the provision of sanitation services within that sanitation district.

(2) If the Minister approves a delegation under Subsection (1), the Minister shall give notice in the National Gazette of the approved delegation and the delegation shall come into effect on the date of publication of that notice.

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(3) Any tariff, rates, fees and charges collected for water supply or sanitation services provided by a local authority or local-level government, as the case may be, under Subsection (1), shall be paid into the consolidated revenue of that local authority or local-level government, and the local authority or local-level government shall pay out of its consolidated revenue any charges agreed to be paid to the Company for access to facilities owned by the Company.

PART IV. - SUPPLY OF WATER.

8. SUPPLY OF WATER.

(1) Subject to Section 3(2), the Company may operate and maintain water supply systems in and for any city, town or rural area in a water supply district.

(2) The Company shall, unless prevented by drought or other unavoidable cause or accident, have a constant supply of water available in accordance with this Act for distribution within each water supply district.

(3) Subject to this Act, the Company may, on such terms and conditions as it determines, supply water to any person in a water supply district who enters into a contract with the Company for that purpose.

(4) Notwithstanding a contract under Subsection (3), the Company may, in the case of -

- (a) fire; or
- (b) excessive severe drought; or
- (c) repairs to mains; or
- (d) the construction of new works; or
- (e) alteration to existing works; or
- (f) installation, changing or removal of meters,

stop water wholly or in part or divert water to any pipe or other works under its control or management.

(5) The Company is exempted from incurring any liability that may arise out of any activity conducted by it under Subsection 4.

(6) The Company may make proportionate abatement (if any) in the sum agreed to be paid for the supply of water, discontinue the supply of water for such time as it considers fit, or reduce the quantity of water supplied at any time, if it is of the opinion that -

- (a) the supply of water available is insufficient for purposes of normal supply to the public; or
- (b) charges are due and payable to the Company for any services under this Act or any other Act remain unpaid; or
- (c) for any other reasons, the company require the service to be disconnected.

(7) The Company may, prior to supplying water to a consumer, require the consumer to pay to the Company the prescribed connection fee, which is non-refundable.

9. FIRE PROTECTION.

(1) The Company shall, at the request of the Minister responsible for fire service matters, fix fire plugs and other pipes belonging to the water mains, or erect and connect other pipes pillar hydrants to those water mains at such places within a water supply district as are most convenient or proper for the supply of water for extinguishing any fire that may break out in any area in a water supply district or adjacent to a water supply district.

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(2) The Company shall keep or cause to be kept in good repair the fire plugs and hydrants referred to in Subsection (1).

(3) The Company shall -

- (a) at all times, unless prevented by drought, unavoidable cause or necessary repairs, keep charged, with water, all pipes, the property of the Company, to which fire plugs and hydrants are fixed; and
- (b) permit, without charge, the use of the water for the purposes of putting out or stopping the spread of a fire.

10. METERS.

(1) A contract under Section 8(3) may stipulate that the water to be supplied under the contract shall be supplied through a meter to be affixed by the Company.

(2) A meter referred to in Subsection (1) remains the property of the Company and, if the person to whom the Company is supplying water is a supplier of water to others, the Company may charge that person a fee for the hire of the meter.

(3) A person who, unless authorised by the Company, affixes, refixes, repairs, removes, alters, breaks or otherwise interferes or tampers with, a meter supplied under this section, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

11. LAYING OF CONNECTING PIPES.

(1) Subject to Subsection (2), the Company may, at the request of the owner or occupier of any land or premises in a water supply district, connect, by pipe, that land or those premises to a water main of the Company.

(2) The Company shall not comply with a request under Subsection (1) unless the person making the request has undertaken -

- (a) to bear the cost of -
 - (i) the materials and the labour necessary in making the connection; and
 - (ii) restoring the ground to the satisfaction of the Company; and
- (b) to comply with such other condition as the Company may impose.

12. NOTICE TO CONNECT WITH WATER SUPPLY SYSTEM.

(1) The Company may, in relation to any land or premises situated in a water supply district, require, by written notice, the owner or occupier of the land or premises to connect, by pipe, that land or those premises to a water main of the Company.

(2) A person on whom a notice is served under Subsection (1) shall be responsible for -

- (a) the cost of -
 - (i) the materials and the labour necessary in making the connection; and
 - (ii) restoring the ground to the satisfaction of the Company; and
- (b) compliance with such other conditions as the Company may impose.

(3) A person who, without reasonable excuse (burden proof of which is on him), refuses or fails to comply with a requirement under Subsection (1), is guilty of an offence.

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Penalty: A fine not exceeding K1,000.00.

13. EXECUTION OF WORKS BY THE COMPANY.

- (1) Where a person on whom a notice is served under Section 12(1) refuses or fails to comply with a requirement of the notice within the time specified in the notice, the Company may -
- (a) cause the necessary works to be executed at the cost of that person; and
 - (b) for the purposes of executing those works cause such servants, agents or workmen as it deems necessary, to enter and remain on the land or premises on which those works are to be executed.
- (2) The reasonable cost and expenses incurred by the Company in the execution of the works under this section are recoverable by the Company from the owner or occupier of land or premises as a debt.

14. FITTINGS TO BE IN GOOD REPAIR.

- (1) A consumer shall keep the connecting pipe and other works and fittings that are within his land or premises in good repair so as to prevent wastage of water.
- (2) Where the Company is of the opinion that a person has failed or neglected to comply with Subsection (1), the Company may, in addition to any other remedy it may possess, stop the supply of water to the land or premises until the person complies with that subsection.

15. USE OF WATER WITHOUT AUTHORITY.

A person, who -

- (a) uses, takes or diverts; or
- (b) does any act that diminishes,

the water, the property of the Company, unless the use, taking, diversion or the doing of the act, as the case may be, is authorised by or under this Act, is guilty of an offence.

Penalty: A fine of not less than K4,000.00 and not exceeding K10,000.00.

16. WRONGFUL USE OF WATER.

A consumer who uses water, supplied by the Company, for a purpose other than the purpose for which the supply is made, is guilty of an offence.

Penalty: A fine of not less than K500.00 and not exceeding K1,000.00.

17. NON-PAYMENT OF RATES.

(1) The Company may stop or suspend the supply of water to any person from whom money is due to the Company in respect of rates levied or water supplied under this Act where the money remains unpaid for a period of 60 days after it became due and payable.

(2) Where the Company stops or suspends the supply of water to a consumer, it may require the consumer to pay the prescribed reconnection fee before the supply of water to that consumer is reinstated.

PART V. - SANITATION SERVICES.

18. SANITATION SYSTEMS.

(1) Subject to Section 3(2), the Company may operate and maintain a sanitation system in and for any city, town or rural area in a sanitation district.

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(2) Subject to Section 3(2), the Company may, upon certain conditions and standards as it considers appropriate, authorise a person or body to construct and operate a sanitation system in and for a city, town or rural area in a sanitation district.

(3) An authorisation under Subsection (2) may be given on the condition that the person or body to which it is given shall follow appropriate tendering and selection processes consistent with the processes followed by the Company when it purchases goods and services or enters into contracts for the supply, to it, of goods or services.

- (4) A person who constructs, maintains or operates a sanitation system -
- (a) without the authority of the Company under Subsection (2); or
 - (b) otherwise than in accordance with the conditions and standards imposed under Subsection (2),

is guilty of an offence.

Penalty: A fine of not less than K4,000.00 and not exceeding K10,000.00.

(5) Upon conviction pursuant to Subsection (4), a person so convicted shall, if required by the Company, cease to operate the sanitation system and remove all parts of it, and if he fails or refuses to do so, the Company may enter upon any land or premises and remove the sanitation system at the expense of the person convicted.

(6) The Company may, by written notice, require the owner of a sanitation system operated under an authority of the Company under Subsection (2) to make such alterations to the system as the Company considers necessary in the interest of public health and convenience.

(7) A person who refuses to comply with a requirement under Subsection (6), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

19. NOTICE TO CONNECT WITH SANITATION SYSTEMS.

(1) The Company may, in relation to any land or premises situated in a sanitation district, require, by written notice, the owner or occupier of that land or those premises to provide, within such time as is specified in the notice, water closets, drains, fixtures and fittings, appliances and apparatus and connections with such sewers as the Company may in the notice order.

(2) A person who, without reasonable excuse (onus of proof of which is on him), refuses or fails to comply with a requirement under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

20. EXECUTION OF SANITATION WORKS BY THE COMPANY.

(1) Where a person, on whom a notice is served under Section 19(1), refuses or fails to comply with a requirement of the notice within the time specified in the notice, the Company may -

- (a) cause the necessary works to be executed at the cost of that person; and
- (b) for the purposes of executing those works, cause such servants, agents and workmen as it deems necessary, to enter and remain on the land or premises on which those works are to be executed.

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(2) The reasonable cost and expenses incurred by the Company in and about the execution of works under this section are recoverable by the Company from the owner or occupier of the land or premises as a debt.

21. CERTAIN CLOSETS NOT TO BE USED.

(1) A notice under Section 19(1) shall specify the date on and from which a privy-closet, other than a water-closet approved by the Company, may not be used on the land or premises to which the notice relates.

(2) Where a privy-closet is used on any land or premises contrary to Subsection (1), the owner or occupier on whom the notice was served, is guilty of an offence.

Penalty: A fine of not less than K500.00 and not exceeding K1,000.00.

22. APPLICATION FOR PERMISSION TO CONNECT WITH SANITATION SYSTEM.

(1) An application to connect with a sanitation system or to do plumbing work relating to the connection, including alterations and extensions, shall be made to the Company by the owner of the land or premises from which the sewage or wastewater is to be carried or conveyed.

(2) An application under Subsection (1) shall be in the prescribed form and shall be accompanied by payment, to the Company, of any prescribed head works charges which are applicable.

23. CONDITIONS TO BE COMPLIED WITH BEFORE APPROVAL.

The Company shall not approve an application to connect with a sanitation system unless -

- (a) the plan has been submitted to, and approved by, the Company; and
- (b) in the case of a new building -
 - (i) the Company has fixed the position of the branch at which the connection is to be made; and
 - (ii) a proper plan of the plumbing and draining of the building to be connected has been submitted to, and approved by, the Company; and
- (c) the Company is satisfied that provision has been made for the plumbing to be executed in accordance with such specifications and conditions as prescribed.

PART VI. - FINANCES.

24. FINANCIAL CONTROLS.

(1) The provisions of Part VIII of the *Public Finances (Management) Act 1995* do not apply to and in relation to the Company.

(2) For as long as the Company is a Majority State Owned Enterprise, the provisions of Part VIA of the *Kumul Consolidated Holdings Authorisation Act 2002* apply to and in relation to the Company.

25. TARIFFS, RATES, FEES AND CHARGES.

(1) Subject to -

- (a) compliance with any regulatory contract applying to the Company under the *Independent Consumer and Competition Commission Act 2002*; or

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- (b) if there is no regulatory contract applying to the Company, compliance with any determination of maximum prices applying to the Company under the *Prices Regulation Act* (Chapter 320),

the Company is authorised to impose tariffs, rates, fees and charges for water and sanitation services supplied by the Company in the categories set out in the Schedule, and from time to time to vary the quantum (being percentages or monetary amounts) of those tariffs, rates, fees and charges.

(2) Where the tariff, rates, fees and charges referred to in Subsection (1) are imposed or varied, the nature or quantum of them shall be published by notice in the National Gazette and shall come into effect on the date of publication.

26. RATEABLE LAND.

- (1) All land in a water supply district or a sanitation district which is -
(a) the subject of a State Lease under the *Land Act 1996*; or
(b) Government land as defined in the *Land Act 1996*,

is rateable, in respect of water rates and sanitation rates, as the case may be, with the exception of any land for which an exemption has been granted by the Company.

- (2) Subject to and in accordance with Section 25, the Company may levy prescribed water rates or sanitation rates in respect of any rateable land that is -
(a) in the case of water rates - at any point within 25 metres of a water main from which the Company is prepared to supply water to that land; and
(b) in the case of sanitation rates - at any point within 25 metres of a sewer main which the Company is prepared to use to dispose of sewage from that land.

(3) Subsection (2) applies in relation to both vacant and occupied rateable land.

27. PAYMENT OF TARIFFS, RATES, FEES AND CHARGES.

- (1) A prescribed water rate or sanitation rate levied on land under Section 26 -
(a) becomes due and payable in respect of rateable land, 14 days after the date of publication of the rate in the National Gazette; and
(b) shall be paid to the Company in a lump sum or by instalments, and on such terms and conditions, as may be determined by the Company from time to time and is recoverable by the Company as a debt.

(2) A prescribed tariff, rate, fee or charge not levied on land but payable by a person in respect of the supply of water or the provision of sanitation services, or the provision of any related services, by the Company is recoverable by the Company from that person as a debt.

28. LIABILITY FOR WATER AND SANITATION RATES.

(1) The owner of rateable land is liable for the water rates and sanitation rates payable in respect of the land unless payment is otherwise provided for by arrangement with the Company.

(2) Notwithstanding any other law, water rates and sanitation rates constitute a first charge on the land in relation to which they were levied.

(3) Where land is rateable for only a portion of the year, the amount of the water rates and sanitation rates payable in respect of that portion of the year is such amount as bears the same proportion to the amount of the rates payable for the whole year as the proportion of the year during which the land is rateable bears to a period of 12 months.

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29. PENALTY FOR NON-PAYMENT OF RATES.

Where water rates and sanitation rates have become due and payable and remain unpaid, there shall be added to those rates a penalty computed at the rate of 8% per annum (or such other rate as may be prescribed) of the amount from the time it became due and payable until payment is received.

30. RECOVERY OF RATES.

(1) Where water rates and sanitation rates, and the penalty due on those rates remain unpaid six months after the rates became due and payable, the Company shall notify the owner of the amounts of the outstanding rates and the particulars of the land to which those rates relate and, where the rates including the penalty are not paid, or a satisfactory arrangement regarding payment is not entered into with the Company within 30 days after the notification, the Company may -

- (a) institute legal proceedings in a court of competent jurisdiction against the person liable to pay the rates to recover the outstanding amounts; or
- (b) if the land is vacant - take possession of the land, hold it and -
 - (i) lease it for a term or terms not exceeding five years at any one time until the sums due to the Company have been recovered as provided in this section; or
 - (ii) if the owner cannot be found or contacted within a further period of three months, sell the land in accordance with an order of the National Court on a separate application.

(2) Where the Company has proceeded in accordance with Subsection (1)(b), the Company shall apply the rents and other moneys received in respect of the land or the proceeds of the sale, as the case may be, in defraying -

- (a) the expenses incurred -
 - (i) in letting the land and collecting the rents and other moneys; or
 - (ii) in selling the land; and
- (b) the rates and other sums due to the Company in respect of the land,

and hold the credit balance (if any) in trust for the person who, but for Subsection (2)(b), would have been entitled to the rents or, prior to the sale, was the owner of the land and account to that person for the credit balance showing how it resulted from the application of rents and other moneys received to the expenses which were incurred and the rates and other sums which were due.

31. DUTY AND LIABILITY OF OWNER ON DISPOSAL OF LAND.

Where rateable land is sold or otherwise disposed of, the owner shall notify the Company of the fact and, until that notification is given, he continues to be liable for the rates and the penalty on those rates as if he were still the owner.

32. LIABILITY OF JOINT OWNERS.

Joint owners of rateable land are jointly and severally liable for the whole amount of the rates and the penalty due in respect of the land but, as between themselves, each is liable for his share.

33. COMMUNITY SERVICE OBLIGATIONS.

(1) For the purposes of this section -

“community service obligation” means an obligation of the Company specified in a notice in the National Gazette by the Head of State, acting on advice, to supply water or to provide sanitation services in a manner which is for the advantage of the people of Papua New Guinea, or a segment of them, rather than for the best commercial advantage of the Company;

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“financial detriment” includes, without limitation -

- (a) costs or expenditure incurred or likely to be incurred in excess of that which would otherwise be incurred or likely to be incurred; and
- (b) revenue that would be forgone or likely to be forgone which would otherwise be received or likely to be received; and
- (c) both fixed and recurring costs and expenditure.

(2) Subject to this section, the Minister may, after consultation with the board of directors of the Company, give to the board such written directions in relation to the performance of the community service obligation as appear to the Minister to be necessary in the public interest and the Company shall perform the community service obligation in accordance with those directions.

(3) A written direction given by the Minister under Subsection (2) shall specify the amount by which the Company is to be compensated in accordance with Subsection (4) for performing the community service obligation.

(4) Where the Company satisfies the Minister that it will suffer financial detriment as a result of complying with a direction given under Subsection (2), the Company is entitled to be compensated by the State out of the Consolidated Revenue Fund for an amount that the Minister, after consultation with the board of directors of the Company, reasonably determines to be the amount necessary to adequately compensate the Company for the financial detriment suffered, or likely to be suffered, both immediately and in the future as a result of complying with the direction.

(5) The Minister shall cause a copy of a direction under Subsection (2) to be laid before Parliament within 15 sitting days after the direction is given.

PART VII. - MISCELLANEOUS.

34. INSPECTION OF LAND OR PREMISES.

A person authorised by the Company in writing may, at all reasonable times, enter on any lands or premises through or into which pipes or sewers have been laid or are to be laid, for the purpose of inspecting that land or those premises, pipes, sewers and any fittings, drains, fixtures, appliances or other works connected with those pipes or sewers and if, in his opinion, it is expedient to do so, may cause the ground to be opened up in any place necessary, and be careful to cause.

35. INTERFERENCE WITH PIPES OR SEWERS.

The owner or occupier of any land or premises supplied with water or provided with sanitation services by the Company, or any consumer of water supplied by the Company, who, unless authorised by the Company -

- (a) affixes or causes to be affixed any pipe or apparatus; or
- (b) makes any alterations or additions,

to any water main or sewer main or other pipe or sewer belonging to the Company, or to any connecting pipe or service pipe belonging to or used by that owner, occupier or consumer, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

36. SUMMARY PROCEDURE.

All proceedings for offences against this Act shall, unless otherwise indicated, be taken summarily.

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37. PERSON LIABLE FOR PENALTIES.

A penalty imposed by or under this Act may be recovered from or enforced against the person actually incurring the penalty or his principal or the person on whose behalf he acts.

38. METER REGISTER AS EVIDENCE.

(1) The register of a meter provided by the Company or a copy of that register certified to be true by an agent of the Company is *prima facie* evidence of water consumed.

(2) A consumer may, on the payment to the Company of the prescribed meter testing fee, by writing addressed to the Company, query the accuracy of a meter.

(3) If, on testing, the meter is found to register more than two percent in excess of the water passing through it, the fee paid under Subsection (2) shall be refunded to the consumer and the meter repaired or replaced at the expense of the Company.

39. EVIDENCE AS TO OWNERSHIP.

In all proceedings for recovery of rates, the fact that a person is in occupation of any rateable land is *prima facie* evidence that the person is the owner of the land.

40. EXISTENCE OF CONNECTING PIPE AS EVIDENCE.

The existence of a connecting pipe between a water main or sewer main, the property of the Company, and any land or premises in a water supply district or a sanitation district is *prima facie* evidence in any proceedings that the owner and the occupier of the land or the premises have severally contracted with the Company for the supply of water or the provision of sanitation services, as the case may be, to the land or premises in accordance with this Act.

41. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations made under Subsection (1) may prescribe penalties (including minimum penalties) for offences of fines not exceeding K10,000.00 and default penalties of fines not exceeding K500.00.

42. REPEAL.

The *National Water Supply and Sewerage Act 1986* is repealed.

PART VIII. - TRANSITIONAL AND SAVINGS.

43. INTERPRETATION.

In this Part -

“repealed Act” means the *National Water Supply and Sewerage Act 1986*;

“Waterboard” means the entity of that name established by the repealed Act.

44. APPLICATION OF SECTIONS 45 AND 46.

Sections 45 and 46 apply until the functions conferred upon the Company by those sections are taken over by another regulatory authority provided for by law.

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45. POLICIES AND STANDARDS.

The Company shall determine and periodically publish policies and standards, to be applicable throughout the country (including in the National Capital District) for -

- (a) water supply systems; and
- (b) sanitation systems.

46. LICENSING OF WATER SUPPLY AND SANITATION SYSTEMS.

(1) Before a water supply system to supply water to the public is brought into operation by a person other than the Company, the system must be inspected by the Company and the Company must be satisfied that it is technically fit for that purpose.

(2) Before a sanitation system to provide sanitation services to the public is brought into operation by a person other than the Company, the system must be inspected by the Company and the Company must be satisfied that it is technically fit for that purpose.

(3) Upon being satisfied in accordance with Subsection (1) or (2), the Company shall issue a licence to this effect to the person in respect of that water supply system or sanitation system, as the case may be.

(4) The Company may charge fees, approved by the Minister, for its inspection and licensing of water supply systems and sanitation systems under this section, which will be at a level sufficient to cover the Company's costs of providing those services but not so as to produce a profit for the Company.

(5) A person who, without reasonable excuse (onus of proof of which is on him), operates a water supply system to supply water to the public or a sanitation system to provide sanitation services to the public, without a licence under Subsection (3), is guilty of an offence.

Penalty: A fine of not less than K10,000.00 and not exceeding K50,000.00.

47. TRANSFER OF ASSETS AND LIABILITIES.

(1) All assets including -

- (a) State leases, but not the underlying land held by the State; and
- (b) choses in action and other rights,

which immediately before the commencement date were owned, occupied or held by the Waterboard are, on the commencement date, transferred to the Company.

(2) All obligations and liabilities of the Waterboard immediately before the commencement date are, on the commencement date, assumed by the Company.

(3) Where assets are transferred or obligations and liabilities are assumed under Subsection (1) or (2), the following provisions have effect:

- (a) by virtue of this subsection, the assets vest in the Company without the need for any conveyance, transfer, assignment or assurance and become the assets of the Company; and
- (b) by virtue of this subsection, the liabilities become the liabilities of the Company and cease to be liabilities of the Waterboard; and
- (c) all proceedings relating to the assets or liabilities pending by or against the Waterboard are taken to be proceedings pending by or against the Company; and

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- (d) any act, matter or thing done or omitted to be done by, to or in respect of the Waterboard 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 Company; and
 - (e) any chose in action that is vested in the Company may be sued on, recovered or enforced by the Company in its own name and it shall not be necessary for the Company or the Waterboard to give notice to any person of the transfer of the chose in action; and
 - (f) any right or obligation that becomes a right or obligation of the Company may be sued on, recovered or enforced by or against the Company in its own name and it shall not be necessary for the Company or the Waterboard to give notice to any person of the transfer of the right or obligation.
- (4) Nothing done, authorised or allowed under Subsections (1), (2) or (3) is to be regarded -
- (a) as constituting a breach of, or default under a statute or other law; or
 - (b) as constituting a breach of, or default under a deed, agreement or other instrument or as requiring any act to be done under a deed, agreement or other instrument; or
 - (c) as giving rise to any right or remedy of any party to any deed, agreement or other instrument, or causing or permitting the termination of any deed, agreement or other instrument; or
 - (d) as releasing any surety or other obligor wholly or in part from any obligation.
- (5) Where, by virtue of this section, the rights and obligations of the Waterboard under a deed, agreement or other instrument become the rights and obligations of the Company -
- (a) the Company becomes a party to the deed, agreement or other instrument in place of the Waterboard; and
 - (b) the deed, agreement or other instrument has effect as if the Company had always been a party to the deed, agreement or other instrument; and
 - (c) acts performed by the Waterboard under the deed, agreement or other instrument are deemed to have been performed by the Company.
- (6) Any register maintained under any Act on which any property which is transferred under Subsection (1) is registered in the name of the Waterboard is deemed to be amended, as from the commencement date, by substituting the Company for the Waterboard.
- (7) Without limiting the generality of Subsection (6) -
- (a) where the property which is transferred is land, the Registrar of Titles shall, on written application by the Company, without formal transfer, enter and register the Company as the proprietor of the 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 Company; and
 - (b) where the property which is transferred is an interest in land, the Minister responsible for land matters is deemed to have approved the transfer of that interest in land to the Company where such approval is otherwise required under the *Land Act 1996*; and
 - (c) where the property which is transferred is a company charge in favour of the Waterboard, the Registrar of Companies shall, on written application by the Company, without formal transfer, enter and register the Company as chargee of the property in the appropriate register maintained under the *Companies Act 1997*.

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48. TRANSFER OF EMPLOYEES.

(1) The Company shall offer all employees of the Waterboard as at the commencement date, by letter addressed to each employee, employment with the Company with effect from the commencement date, and each employee has the right -

- (a) to accept that offer and be transferred into employment by the Company; or
- (b) to retire from employment by the Waterboard, with effect from the commencement date, and to receive payment of his accrued benefits as at that date.

(2) On the acceptance of an offer under Subsection (1)(a), an employee's employment is transferred from the Waterboard to the Company, the employee ceases to be an employee of the Waterboard and becomes an employee of the Company on the same terms and conditions of employment, and those terms and conditions shall continue to have effect until varied either by agreement or otherwise in accordance with law.

(3) An employee to whom Subsection (2) applies is deemed to have an accrued entitlement to benefits in his employment by the Company that are equivalent to the benefits which he had accrued with the Waterboard immediately prior to the date of the transfer of his employment to the Company.

- (4) A transfer of the employment of an employee under Subsection (2) shall not -
- (a) be taken to be a breach, variation or termination of any contract of employment of, or to interrupt the period or continuity of employment for, that employee, or to create any new contract of employment or to create any entitlement with respect to employee benefits including leave and superannuation entitlements beyond those which would have been applicable to the employee had he continued to be employed by the Waterboard; or
 - (b) confer any entitlement on that employee 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.
- (5) A transfer of the employment of an employee under Subsection (2) shall not affect -
- (a) the employee's membership of an authorised superannuation fund; or
 - (b) any accrued entitlements of the employee in an authorised superannuation fund; or
 - (c) the right of an employee to elect to have retirement benefits paid to an authorised superannuation fund of his choice.

- (6) For the purposes of this section -
"authorised superannuation fund" has the meaning ascribed to it in the *Superannuation (General Provisions) Act 2000*.

49. TAXES AND DUTIES.

(1) For the purposes of the *Income Tax Act 1959*, the Company is deemed to have acquired the assets and liabilities transferred to or assumed by it under Section 47(1) or (2) at a value equal to the amount specified in the notice, either in relation to a particular asset or liability or in relation to a general category of asset or liability.

(2) A transfer of assets or liabilities under Section 47(1) or (2) shall be exempt from any tax, fee, levy, charge or duty payable under any Act.

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50. TRANSFER AND EXTENSION OF ENVIRONMENT PERMITS.

- (1) For the purposes of this section, “environment permits” means -
- (a) all environment permits under the *Environment Act 2000* (including permits originally issued as water investigation permits or water use permits under the repealed *Water Resources Act 1982*) held by the Waterboard immediately before the coming into operation of this Act; and
 - (b) all other environment permits granted to the Waterboard under the *Environment Act 2000* since the coming into operation of that Act which may have expired without being renewed.

(2) Notwithstanding any law to the contrary, and notwithstanding that the environment permits referred to in Subsection (1)(b), may have expired, all of the environment permits are deemed to be in force on the commencement date and are, on the commencement date, transferred to the Company.

(3) The conditions relating to and governing the operation of the environment permits as continued in force and transferred pursuant to Subsection (2) shall be the same as the conditions originally imposed on the environment permits.

(4) Notwithstanding the terms for which the environment permits were originally granted, each of the environment permits will continue in force until it is surrendered or cancelled pursuant to the *Environment Act 2000*.

(5) The Conservation and Environment Protection Authority may serve notice on the Company requiring it to apply within a reasonable time specified in the notice for a new permit under the *Environment Act 2000* to replace one or more of the environment permits specified in the notice, and if the Company does not make application within the specified time for the new permit the Authority may cancel the specified environment permits.

51. STATUTORY EASEMENTS RELATING TO WORKS.

- (1) Notwithstanding the absence of a dominant tenement, the Company shall have an easement over land where -
- (a) works owned or operated by the Company are on, above or under the land and the land does not belong to the Company; and
 - (b) those works were, as at the commencement date, owned or operated by the Water-board and the land did not belong to the Waterboard.
- (2) The easement entitles the Company -
- (a) to maintain the relevant works on, above or under the land affected by the easement; and
 - (b) to enter the land, by its agents or employees, for the purpose of operating, examining, maintaining, repairing, modifying or replacing the relevant works; and
 - (c) to use the works for or in connection with the supply of water and the provision of sanitation services; and
 - (d) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.

(3) The Company shall make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

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(4) If the Company has an easement relating to works over another person's land otherwise than by virtue of this section, the application of the easement under this section to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.

(5) The Company may, by instrument in writing -

- (a) suspend or limit rights or impose conditions on the exercise of rights arising under the easement under this section; or
- (b) surrender (in whole or in part) the easement under this section, and such an instrument has effect according to its terms.

52. TRANSITIONAL TARIFFS, RATES, FEES AND CHARGES.

The tariffs, rates, fees and charges levied or charged by the Water-board prior to the commencement date shall be the tariffs, rates, fees and charges which the Company may levy or charge under this Act until such time as the Company sets new tariffs, rates, fees and charges pursuant to Section 25.

53. OUTSTANDING DEBTS AND CHARGES.

All debts or charges arising out of the repealed Act and remaining unpaid on the coming into operation of this Act may be prosecuted and recovered under the relevant provisions of this Act as if they were debts and charges incurred under this Act.

54. WATER SUPPLY DISTRICTS AND SANITATION DISTRICTS.

An area declared under the repealed Act, or deemed by Section 45 of the repealed Act to be declared -

- (a) a water supply district; or
- (b) a sewerage district,

shall be deemed to be a water supply district (in the case of a district referred to in Paragraph (a)) or a sanitation district (in the case of a district referred to in Paragraph (b)) declared under Section 6(1).

55. REFERENCES IN OTHER ACTS.

Where -

- (a) any Act or subordinate legislation other than this Act; or
- (b) any document or instrument whenever made or executed,

contains a reference to the repealed Act or to the Waterboard, that reference shall, after the commencement date, be deemed to be a reference to this Act or to the Company, as the case may be.

56. SAVING OF REGULATIONS.

(1) On the coming into operation of this Act, the *National Water Supply and Sewerage Regulation* (Chapter 393) which was saved and continued in force by Section 48 of the repealed Act, to the extent that it is not inconsistent with the provisions of this Act, continues in force as if it were a regulation made under this Act, and may be amended or repealed.

(2) Section 3 of the *National Water Supply and Sewerage Regulation* (Chapter 393) is not continued in force under Subsection (1).

(3) All references to "under this Regulation" in Sections 8, 9, 10 and 11 of the *National Water Supply and Sewerage Regulation* are changed to "under the *National Water Supply and Sanitation Act 2016*".

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SCHEDULE.

CATEGORIES OF TARIFFS, RATES, FEES AND CHARGES.

Section 25.

1. Water Supply -
 - (a) Water rates levied on rateable land; and
 - (b) Water usage tariffs or charges for different classes of users; and
 - (c) Water connection and reconnection fees; and
 - (d) Water standby fees; and
 - (e) Head work charges; and
 - (f) Meter rental fees; and
 - (g) Meter testing fees.

2. Provision of Sanitation Services -
 - (a) Sanitation rates levied on rateable land;
 - (b) Sanitation usage tariffs or charges for different classes of users;
 - (c) Sanitation connection and reconnection fees;
 - (d) Sanitation standby fees;
 - (e) Head work charges.

I hereby certify that the above is a fair print of the *National Water Supply and Sanitation Act 2016* which has been made by the National Parliament.

Acting Clerk of the National Parliament.



26 JAN 2017

I hereby certify that the *National Water Supply and Sanitation Act 2016* was made by the National Parliament on 8 November 2016.

Speaker of the National Parliament.



26 JAN 2017