

No. 15 of 2002.

***Harbours Board (Amendment) Act 2002.***

Certified on : 10.05.02



**INDEPENDENT STATE OF PAPUA NEW GUINEA**

No. of 2002.

***Harbours Board (Amendment) Act 2002.***

**ARRANGEMENT OF SECTIONS.**

**PART I. – PRELIMINARY.**

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2. Amendment of *Harbours Board Act* (Chapter 240).

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SCHEDULE 1.

SCHEDULE 2.



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2002

AN ACT

entitled

*Harbours Board (Amendment) Act 2002,*

Being an act to amend the *Harbours Board Act* (Chapter 240),

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

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 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and

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- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the **Constitution**; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the **Constitution**; and
- (f) the right to reasonable privacy in respect of private and family life, communications with other persons and personal papers and effects conferred by Section 49 of the **Constitution**; and
- (g) the right of reasonable access to official documents conferred by Section 51 of the **Constitution**,

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 organization) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the 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 -

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- (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.

### **PART II. – AMENDMENT OF HARBOURS BOARD ACT (CHAPTER 240).**

#### **2. AMENDMENT OF HARBOURS BOARD ACT (CHAPTER 240).**

(1) The **Harbours Board Act** (Chapter 240) is amended as set out in Schedule 1 with effect from the commencement of this Act.

(2) The amendment of the **Harbours Board Act** (Chapter 240) shall not disturb the continuity of, status, operation or effect of any declaration, order, notice, approval, summons, right or other matter or thing made, issued or granted, existing or continuing before the commencement of the amendment.

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(3) On and after the commencement of this Act, any reference in any Act (other than this Act and the Acts referred to in Schedule 2), regulation (other than the Regulations referred to in Schedule 2), subordinate instrument or other document whatsoever to the Papua New Guinea Harbours Board is to be construed as a reference to the ***Harbours Act*** (Chapter 240) unless the contrary intention appears.

### **PART III. - AMENDMENT OF OTHER ACTS AND REGULATIONS.**

#### **3. AMENDMENT OF OTHER ACTS AND REGULATIONS.**

Each Act and Regulation that is specified in Schedule 2 is amended as set out in that Schedule with effect from the commencement of this Act.

### **SCHEDULE 1.**

#### **AMENDMENTS TO THE *HARBOURS BOARD ACT* (CHAPTER 240).**

##### **1. AMENDMENT OF SHORT TITLE.**

The short title of the ***Harbours Board Act*** (Chapter 240) is amended by repealing the word "Board".

##### **2. AMENDMENT OF LONG TITLE.**

The long title of the ***Harbours Board Act*** (Chapter 240) is repealed and is replaced with the following :-

"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

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- (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.”.

**3. NEW SECTION 1A.**

Part 1 of the *Harbours Board Act* (Chapter 240) is amended by inserting immediately before Section 1 the following new Section -

**“1A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
- (f) the right to reasonable privacy in respect of private and family life, communications with other persons and personal papers and effects conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

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

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- (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 organization) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the 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



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- (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."

### **4. INTERPRETATION (AMENDMENT OF SECTION 1).**

Section 1 of the **Harbours Board Act** (Chapter 240) is amended -

- (a) by inserting before the definition of "approved bank" the following new definition :-

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

- (b) by inserting after the definition of "approved institution" the following new definition :-

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

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- (d) by inserting before the definition of “declared port” the following new definition :-

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

- (e) by inserting after the definition of “declared port” the following new definitions –

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

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

“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;

“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;

“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;

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

- (f) in the definition of “Port Manager”, by repealing the word “Board” and replacing it with the following –

“Departmental Head of the Department responsible for transport matters”; and

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(g) by inserting after the definition of "Port Manager" the following new definitions :-

"Privatization Commission" means the Privatization Commission established under the **Privatization Act 1999**;

"privatization policy" has the meaning given to that term in the **Privatization Act 1999**;

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

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

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

"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;
- (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;

"Successor Company" means the company incorporated under Subsection 36A(1);

"transferee" means the body to which any assets or liabilities of the Board are transferred pursuant to Subsection 36B(1) or (2).".

**5. APPOINTMENT OF OFFICERS (AMENDMENT OF SECTION 9).**

Section 9 of the **Harbours Board Act** (Chapter 240) is amended -

- (a) in Subsection (1), by repealing the words "Port Managers and other"; and

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- (b) in Subsection (2) -
  - (i) by repealing the words "Port Managers and"; and
  - (ii) by inserting after "officers of the Board" the following :-  
"and Port Managers appointed under Section 15K(2)(f)".

### **6. CAPITAL AND PROFITS OF THE BOARD (AMENDMENT OF SECTION 11).**

Section 11(1) of the *Harbours Board Act* (Chapter 240) is amended -

- (a) in Paragraph (a), by repealing the words "Section 27" and replacing them with the following :-  
"this Act to the Board by the Minister responsible for land matters for use for port purposes"; and
- (b) in Paragraph (b)(i), by repealing the words "Section 28" and replacing them with the following :-  
"the *Land Act 1996* other than a lease referred to in Paragraph(a)"; and
- (c) in Paragraph (b)(ii), by repealing the words "granted otherwise than in accordance with Section 28" and replacing them with the following :-  
"referred to in Paragraph (b)(i)".

### **7. PILOTAGE DUES, ETC., TO BE COLLECTED BY THE BOARD (AMENDMENT OF SECTION 12A).**

Section 12A of the *Harbours Board Act* (Chapter 240) is amended -

- (a) in the heading, by repealing the words "by the Board"; and
- (b) by inserting at the beginning of that section the following :-  
"(1)"; and
- (c) by inserting at the end of that section the following new subsection :-  
"(2) Where the 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."

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### **8. NEW PART IIA.**

The **Harbours Board Act** (Chapter 240) is amended by inserting immediately after Section 15 the following new Part :-

#### **"PART IIA. – ADMINISTRATION.**

##### **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;
- (b) the licensing functions conferred by this Act;
- (c) providing economic monitoring, control, inspection and regulation of the essential port services industry;
- (d) ensuring that this Act is implemented with due regard to the public interest;
- (e) consulting, where appropriate, commercial, industrial and consumer organisations about any matter relating to the supply of essential port services;
- (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.

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### **"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.

"(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.

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"(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

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- (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 Department 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 connexion 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.

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### **"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 connexion 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).

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**9. REPEAL AND REPLACEMENT OF HEADING OF PART III.**

Part III of the *Harbours Board Act* (Chapter 240) is amended by repealing the heading and replacing it with the following :-

**"PART III.- OTHER POWERS AND FUNCTIONS."**

**10. AMENDMENT OF HEADING OF DIVISION III.1.**

The heading of Division 1 of Part III of the *Harbours Board Act* (Chapter 240) is amended by repealing the word "General" and replacing it with the following :-

**"Powers and functions of the Board."**

**11. GENERAL FUNCTIONS OF THE BOARD (AMENDMENT OF SECTION 17).**

Section 17 of the *Harbours Board Act* (Chapter 240) is amended -

(a) by repealing Subsection (1); and

(b) in Subsection (2) -

(iii) by repealing the words "In particular, and without limiting the generality of Subsection (1), the" and replacing them with the following -

"The"; and

(iv) by repealing Paragraphs (a), (f), (i), (j), (k), (m) and (n).

**12. REPEAL OF SECTION 18.**

Section 18 of the *Harbours Board Act* (Chapter 240) is repealed.

**13. GENERAL POWERS OF THE BOARD (AMENDMENT OF SECTION 20).**

Section 20(2) of the *Harbours Board Act* (Chapter 240) is amended -

(a) in Paragraph (a)(i), by repealing the words "(other than any moneys collected under Section 24)"; and

(b) by repealing Paragraphs (i), (k), (m) and (n).

**14. REPEAL AND REPLACEMENT OF SECTION 23.**

Section 23 of the *Harbours Board Act* (Chapter 240) is repealed and is replaced with the following :-

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### **"23. SPECIAL POWERS OF THE DEPARTMENTAL HEAD.**

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."

### **15. IMPOSITION AND COLLECTION OF CARGO LEVY (AMENDMENT OF SECTION 24).**

Section 24 of the ***Harbours Board Act*** (Chapter 240) is amended in Subsection (2) by repealing the word "Board" (twice occurring) and replacing it with the following :-

"Departmental Head of the Department responsible for transport matters".

### **16. DISPOSAL OF CARGO LEVY (AMENDMENT OF SECTION 25).**

Section 25 of the ***Harbours Board Act*** (Chapter 240) is amended by repealing the word "Board" (twice occurring) and replacing it with the following -

"Departmental Head of the Department responsible for transport matters".

### **17. NEW PART IIIA.**

The ***Harbours Board Act*** (Chapter 240) is amended by inserting after Section 25 the following new Part :-

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**"PART IIIA. - ESSENTIAL PORT SERVICES INDUSTRY.**

***"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.***

***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 authorizing the relevant operations.

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

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

"(2) The operations in the 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.

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"(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.

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"(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 authorizes 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 that 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.

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"(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 authorizing 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 or to the purchaser of the shares in the Successor Company, in accordance with specified requirements as to the term and conditions of such licence or licences and the rights conferred by such licence or licences.

"(2) The requirements of the Minister 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.



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"(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 authorized by the licence audited and to report the results of the audit to the Commission; and

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- (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 of which is authorized 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

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- (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.

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### **"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

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- (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.

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"(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 authorized by the licence; or
- (c) the licensee has ceased to carry on operations authorized by the licence; or
- (d) there has been any act or default or change of circumstances such that the 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

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- (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) authorizes 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.

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"(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."

### **18. REPEAL OF PART IV.**

Part IV of the *Harbours Board Act* (Chapter 240) is repealed.

### **19. REPEAL OF PART V.**

Part V of the *Harbours Board Act* (Chapter 240) is repealed.

### **21. CONSTITUTION OF PORT ADVISORY COMMITTEES (AMENDMENT OF SECTION 32).**

Section 32 of the *Harbours Board Act* (Chapter 240) is amended -

(a) in Subsection (2), by repealing the word "nine" and replacing it with the following :-

"ten"; and

(b) in Subsection (3) -

(i) by inserting after Paragraph (g) the following new paragraph : -

"(ga) the licensee;" and

(ii) in Paragraph (i) -

(A) by inserting the word "relevant" before the word "provincial"; and

(B) by repealing the words "body, Local Government authority or Local Government Council" and replacing them with the following :-

"or Local-level Government".



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**21. EX OFFICIO MEMBERS (AMENDMENT OF SECTION 33).**

Section 33 of the *Harbours Board Act* (Chapter 240) is amended in Subsection (1)(b) by repealing the word "Board" and replacing it with the following :-

"Departmental Head of the Department responsible for transport matters".

**22. PROCEDURES OF PORT ADVISORY COMMITTEES (AMENDMENT OF SECTION 35).**

Section 35 of the *Harbours Board Act* (Chapter 240) is amended in Subsection (2) by repealing the word "Board" and replacing it with the following :-

"Departmental Head of the Department responsible for transport matters".

**23. FUNCTIONS OF PORT ADVISORY COMMITTEES (AMENDMENT OF SECTION 36).**

Section 36 of the *Harbours Board Act* (Chapter 240) is amended -

(a) in Subsection (1), by repealing the word "Board" (twice occurring) and replacing it in each case with the following :-

"Departmental Head of the Department responsible for transport matters"; and

(b) in Subsection (2), by repealing the word "by-laws" and replacing it with the word "regulations"; and

(c) in Subsection (3)(b), by repealing the word "Board" and replacing it with the following :-

"Departmental Head of the Department responsible for transport matters"; and

(d) in Subsection (4) -

(i) by repealing the sum "K20.00" and replacing it with the following :-

"K500.00"; and

(ii) by repealing the sum "K4.00" and replacing it with the following :-

"K50.00".

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**24 NEW PART VIB.**

The **Harbours Board Act** (Chapter 240) is amended by inserting after Section 36 the following new Part :-

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

**"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.

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### **"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
- (f) 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

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- (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 -

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- (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

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- (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.

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"(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 Subsection 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.

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"(4) A transfer of assets or liabilities by a direction under Subsection 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 Subsection 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 Subsection 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 Subsections 36B(1) or (2) and of the last employee of the Board by a direction pursuant to Subsections 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 Subsections 36B(1) or (2) and of the last employee of the Board by a declaration pursuant to Subsections 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.



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"(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 Sections 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.

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"(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.

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"(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***."

### **25. OBSTRUCTION, ETC (AMENDMENT OF SECTION 37).**

Section 37 of the ***Harbours Board Act*** (Chapter 240) is amended by repealing the sum "K100.00" and replacing it with the following :–

"K500.00".

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**26. REPEAL OF SECTION 38.**

Section 38 of the *Harbours Board Act* (Chapter 240) is repealed.

**27. DIRECTIONS BY PORT MANAGER OR HARBOUR MASTER  
(AMENDMENT OF SECTION 39).**

Section 39 of the *Harbours Board Act* (Chapter 240) is amended -

- (a) in the heading, by repealing the words “or Harbour Master”;  
and
- (b) in Subsection (1), by repealing the word “The” and replacing it  
with the following :-  
“Subject to Subsection (1A), the”;
- (c) by inserting after Subsection (1) the following new subsection :-  
“(1A) The Port Manager may only give directions under  
Subsection (1) after consultation with the licensee providing  
essential port services within the declared port and to the extent  
necessary to ensure safety within the declared port.”; and
- (d) in Subsection (2), by repealing the sum “K400.00” and  
replacing it with the following :-  
“K2,000.00”.

**28. FAILURE TO COMPLY WITH DIRECTIONS OF PORT MANAGER OR  
HARBOUR MASTER (AMENDMENT OF SECTION 40).**

Section 40 of the *Harbours Board Act* (Chapter 240) is amended -

- (a) in the heading, by repealing the words “or Harbour Master”; and
- (b) in Subsection (3), by repealing the words “to the Board” and replacing  
them with the following :-  
“into the Consolidated Revenue Fund.”.

**29. NEW SECTIONS 40A AND 40B.**

The *Harbours Board Act* (Chapter 240) is amended by inserting after  
Section 40 the following new sections :-

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**"40A. FALSE OR MISLEADING INFORMATION.**

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

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

**"40B. OFFENCES BY CORPORATIONS OR FIRMS.**

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 authorizes or permits the commission of the offence, is also guilty of the offence."

**30. NEW PARTS VIIA AND VIIB.**

The *Harbours Board Act* (Chapter 240) is amended by inserting after Section 40 the following new Parts :-

**"PART VIIA – REVIEW.**

**"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

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- (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 the 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.

## **"PART VIIB. – EXEMPTIONS.**

### **"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.

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"(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."

### **31. REPEAL OF SECTION 42.**

Section 42 of the *Harbours Board Act* (Chapter 240) is repealed.

### **32. RECOVERY OF MONEY DUE (AMENDMENT OF SECTION 49).**

Section 49 of the *Harbours Board Act* (Chapter 240) is amended by repealing the words "the Board" (twice occurring) and replacing them in each case with the following :–

"a person or body".

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**33. REPEAL AND REPLACEMENT OF SECTION 50.**

Section 50 of the *Harbours Board Act* (Chapter 240) is repealed and is replaced with the following new section :-

**"50. IMMUNITY.**

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

**34. REPEAL AND REPLACEMENT OF SECTION 51.**

Section 51 of the *Harbours Board Act* (Chapter 240) is repealed and is replaced with the following :-

**"51. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K250.00 for offences against the regulations.

"(2) Without limiting Subsection (1), the regulations may deal with the following matters -

- (a) the security and facility of navigation in declared ports;
- (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;
- (c) the construction and the method of construction of -
  - (i) wharves, docks, piers, jetties or embankments; and
  - (ii) sheds, landing stages, slips, platforms, roadways, railways, tramways or hoisting shears and engines;
- (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;



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- (e) the supply and removal of ballast and water for shipping;
- (f) the improvement and management of declared ports and facilities in declared ports;
- (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);
- (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;
- (i) the regulation and control of the use of lights and fire on board vessels within declared ports;
- (j) the appointing of places for the loading or unloading, and the manner of loading or unloading, of any inflammable or explosive substance;
- (k) the storage within declared ports of inflammable or explosive substances;
- (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;
- (m) the control of lights within a declared port with a view to the safety of navigation;
- (n) technical, operational and safety requirements and standards in ports;
- (o) the exemption (conditionally or unconditionally) of persons or operations from the application of this Act or specified provisions of this Act;
- (p) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees;
- (q) conditions which the Commission is required to impose on the issue of a licence.

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"(3) Without limiting Subsection (1), the regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act or anything done under or for the purposes of this Act.

"(4) If the regulations grant an exemption from the requirement to hold a licence under Part 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 from time to time or as in force at a particular time."

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**SCHEDULE 2.**

**AMENDMENTS TO OTHER ACTS AND REGULATIONS.**

**1. DUMPING OF WASTES AT SEA ACT (CHAPTER 369).**

Section 1 of the *Dumping of Wastes at Sea Act* (Chapter 369) is amended by repealing the words "the Papua New Guinea Harbours Board established under the *Harbours Board Act* (Chapter 240)" in the definition of "harbour authority" and replacing them with the following :-

"the Departmental Head of the Department responsible for transport matters."

**2. INFLAMMABLE LIQUID ACT (CHAPTER 311).**

Section 2 of the *Inflammable Liquid Act* (Chapter 311) is amended -

(a) in Subsection(1), by repealing the words "Papua New Guinea Harbours Road" and replacing them with the following :-

"Departmental Head of the Department responsible for transport matters under the *Harbours Act* (Chapter 240)"; and

(b) in Subsection (2), by repealing the words "Harbours Board Act (Chapter 240)" and replacing them with the following -

"*Harbours Act* (Chapter 240)".

**3. LOAN (WORKS, SERVICES AND GOVERNMENT INSTRUMENTALITIES) ACT (CHAPTER 131).**

Section 2 of the *Loan (Works, Services and Government Instrumentalities) Act* (Chapter 131) is amended by inserting immediately after Subsection (2)(c)(ii) the following new subparagraph :-

"(iiA) the Departmental Head of the Department responsible for transport matters, for the purpose of performing his functions and powers under the *Harbours Act* (Chapter 240); or".

**4. LOANS (OVERSEAS BORROWINGS) ACT (CHAPTER 133).**

Section 2 of the *Loans (Overseas Borrowings) Act* (Chapter 133) is amended by inserting immediately after Subsection (1)(c)(ii) the following new subparagraph :-

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“(iiA) the Departmental Head of the Department responsible for transport matters, for the purpose of performing his functions and powers under the **Harbours Act** (Chapter 240); or”.

### **5. LOANS (OVERSEAS BORROWINGS) (NO. 2) ACT (CHAPTER 133A).**

Section 2 of the **Loans (Overseas Borrowings) (No. 2) Act** (Chapter 133A) is amended by inserting immediately after Subsection (1)(d)(ii) the following new subparagraph :-

“(iiA) the Departmental Head of the Department responsible for transport matters, for the purpose of performing his functions and powers under the **Harbours Act**, or”.

### **6. MERCHANT SHIPPING ACT (CHAPTER 242).**

The **Merchant Shipping Act** (Chapter 242) is amended –

- (a) by repealing Section 205;
- (b) in Section 206(1), by repealing the words “Subject to Section 205, a” and replacing them with the following :-

“A”; and

- (c) by repealing Section 217 and replacing it with the following :-

**“217. Pilotage Services.**

A pilotage authority may provide pilotage services.”; and

- (d) by repealing Section 218; and
- (e) in Section 263A, in the definition of “tidal water”, by repealing the words “**Harbours Board Act**” and replacing them with the following :-  
**“Harbours Act** (Chapter 240)”.

### **7. PORT CHARGES ACT (CHAPTER 114).**

The **Port Charges Act** (Chapter 114) is amended -

- (a) in Section 2, by repealing the words “**Harbours Board Act**” and replacing them with the following :-  
**“Harbours Act** (Chapter 240)”;

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- (b) in Section 8 –
  - (i) by repealing Subsection (4); and
  - (ii) in Subsection (5), by repealing the words “*Harbours Board Act*” and replacing them with the following -  
“**Harbours Act** (Chapter 240)”.

**8. TRANSPORT (COLLECTION OF INFORMATION) ACT (CHAPTER 248).**

Section 4 of the **Transport (Collection of Information) Act** (Chapter 248) is amended by inserting immediately after Subsection (3)(b) the following new paragraph :-

- “(ba) to the Departmental Head of the Department responsible for transport matters, for the exercise of his powers or the performance of his functions under the **Harbours Act** (Chapter 240); or”.

**9. WRONGS (MISCELLANEOUS PROVISIONS) ACT (CHAPTER 297).**

The **Wrongs (Miscellaneous Provisions) Act** (Chapter 297) is amended -

- (a) in Subsection 45(a), in the definition of “harbour works” , by repealing the words “or the Harbours Board; or” and replacing them with the following :-

“or any person or authority having under the laws of Papua New Guinea control and management of any harbour or port and of ships using the same, as the case may be.”; and

- (b) in Section 50, by inserting immediately after Paragraph (b) the following new paragraph :-

“(ba) any person or authority having under the laws of Papua New Guinea control and management of any harbour or port and of ships using the same, as the case may be, in relation to harbour works owned by it; or”.

**10. MERCHANT SHIPPING (NAVIGATIONAL AIDS) REGULATION (CHAPTER 242).**

Section 4(3)(a) of the **Merchant Shipping (Navigational Aids) Regulation** (Chapter 242) is amended by repealing the words “*Harbours Board Act*” and replacing them with the following :-

“**Harbours Act** (Chapter 240)”.

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**11. PHYSICAL PLANNING REGULATION 1990.**

Section 39(i) of the **Physical Planning Regulation 1990** is amended -

(a) in Subparagraph (i), by inserting after the words "Harbours Board" the following :-

"or the Departmental Head of the Department responsible for transport matters in the exercise of his functions and powers under the **Harbours Act** (Chapter 240)."; and

(b) in Subparagraph (iii), by repealing the words "**Harbours Board Act**" and replacing them with the following :-

**"Harbours Act** (Chapter 240)".

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

Clerk of the National Parliament.

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

Speaker of the National Parliament.