

ELECTRICITY BILL 2017
(BILL NO. 7 OF 2017)

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BILL NO. 7 OF 2017**A BILL**

FOR AN ACT TO PROMOTE THE DEVELOPMENT OF THE ELECTRICITY INDUSTRY BY THE APPOINTMENT OF AN INDEPENDENT REGULATOR TO LICENSE THE GENERATION, TRANSMISSION AND SUPPLY OF ELECTRICITY AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji —

PART 1 — PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Electricity Act 2017.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette, provided however, that the Minister may, by notice in the Gazette, prescribe different dates as to when this Act comes into force with respect to a public agency.

Interpretation

2. In this Act, unless the context otherwise requires —

“Chief Inspector” means the Chief Inspector appointed by the Regulator under section 5(~~4~~) or by an agent of the Regulator;

“commencement date” means the commencement date of this Act, appointed by the Minister in accordance with section 1(2);

“Commission” means the Fiji Commerce Commission established under section 7 of the Commerce Commission Act 2010;

“Company” means a company registered under the Companies Act 2015, which is the successor entity of the FEA;

“Constitution” means the Constitution of the Republic of Fiji;

“disciplined force” has the meaning given to that term under section 163(1) of the Constitution;

“FEA” means the Fiji Electricity Authority established under section 3 of the Electricity Act 1966;

“Fund” means the fund prescribed by regulations, and if no fund is prescribed means the Consolidated Fund;

“Government company” means a company where the majority of the stock or shares in the capital is or are beneficially owned by the State, whether such shares are held in the name of a Minister, public officer, nominee of the State or otherwise;

“independent power producer” means an entity which is not a public utility, but which owns facilities to generate electric power for sale to utilities or end users;

“initial divestment transaction” means the proposed sale of an interest in the Company, which may include a transfer of shares by the Government, a general public offering of shares or the listing of the shares on a securities exchange;

“inspector” means an inspector appointed by the Regulator under section 5(34) or by an agent of the Regulator, including the Chief Inspector, or an inspector appointed by the Chief Inspector;

“installation” means the whole of any plant or apparatus under one ownership or, where a management, designed for the supply or use, of electricity, including prime movers, with all necessary plant, buildings and land in connection therewith, pipe lines, supply lines and consuming apparatus, and the Regulator, may either generally or specifically, by order, exclude any installation or classes of installations from the provisions of this definition;

“licensee” means any person that has been granted and holds a licence pursuant to this Act with regard to the purposes of the relevant licence;

“Merger Regulator” means the Commission exercising its powers in relation to mergers under the Commerce Commission Act 2010;

“Minister” means the Minister responsible for the administration of this Act;

“public agency” means—

- (a) an office created by, or continued in existence under, the Constitution or any written law;
- (b) an office in respect of which the Constitution makes provision;
- (c) a commission established by, or continued in existence under, the Constitution or any written law;
- (d) a Government ministry, department, division or unit;
- (e) a disciplined force;
- (f) a court or tribunal established by, or continued in existence under, the Constitution or any written law;
- (g) a statutory authority; or
- (h) a Government company;

“public electricity supplier” means the FEA and following the establishment of the Company as an electricity supplier, means the Company;

“Regulator” means the Regulator appointed by the Minister under section 5;

“self-supply” means the generation and supply of electricity within a person’s premises;

“tariff scheme” means the mechanism at which the price per kilowatt hour of electricity is being supplied by the public electricity supplier to its tariff customers and which must be approved by the Regulator in its discretion but including the rules in Schedule 1 and Schedule 2; and

“working day” means any day other than a Saturday, Sunday or public holiday.

Application

3. This Act binds the State in such manner, and subject to such limitations, as prescribed in this Act.

Objectives

4. The objectives of this Act are to—

- (a) give effect to the Company having exclusivity in the provision of transmission and **distribution supply** of electricity services in Fiji;
- (b) give effect to the Company having exclusivity as the licensed retail seller of electricity in Fiji under the procedures prescribed in this Act;
- (c) ensure that the Company is financially able to cover its capital and operational costs and receive a certain predicted revenue stream through a determined tariff scheme;

- (d) ~~recognise the predominant position that the Company has in power generation in Fiji while~~ creating opportunities for independent power producers to provide electricity if economical and, from a system integrity perspective, more beneficial to Fiji and the consumers of electricity;
- (e) improve competition and efficiency in the system operations and wholesale markets within the electricity industry, and thereby enhance customer services;
- (f) provide for an independent regulator for the electricity industry with powers to make regulations and grant licences and do such things as are necessary or desirable to ensure the efficient running of the electricity industry;
- (g) permit the Minister to enter into such agreements as may be required to achieve the initial divestment transaction and in each subsequent case achieve the objectives set out in this Act; and
- (h) remove from the FEA, or any subsequent successor, the direct responsibility to regulate the electricity industry and devolve all of the FEA's regulatory functions and responsibilities to the Regulator.

PART 2—ELECTRICITY SUPPLY

Regulator

5.—(1) The Minister must appoint a Regulator for the purpose of carrying out the functions assigned or transferred to the Regulator by this Act.

(2) ~~The Minister remains responsible for ensuring that the Regulator carries out its functions in accordance with its contractual and statutory duties.~~

(23) The Regulator must carry out its functions and duties as prescribed in this Act.

(34) The Regulator ~~or an agent of the Regulator~~ has the authority to appoint, remove and discipline all staff including the Chief Inspector, inspectors and administrative staff of the Regulator.

(45) The Regulator has the authority to determine all matters pertaining to the employment of all staff of the Regulator, including the—

- (a) qualification and requirements of appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;
- (b) terms and conditions of employment;
- (c) salaries, benefits and allowances payable; and
- (d) total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

(56) Anything authorised or required by or under this Act or any other enactment to be done by the Regulator, other than the making of a statutory instrument, may be done by any member of the staff of the Regulator who is authorised generally or specifically by the Regulator.

(67) Parliament must ensure that adequate funding and resources are made available to the Regulator, to enable it to independently and effectively exercise its powers and perform its functions and duties.

(78) The Regulator controls its own budget and finances, as approved by Parliament.

(89) The Regulator may delegate the functions and responsibilities of the Chief Inspector to such person as the Regulator deems appropriate, including an employee of the public electricity supplier, and the Chief Inspector may delegate the Chief Inspector's functions and responsibilities to inspectors with the approval of the Regulator.

Functions and duties of the Minister and the Regulator

6.—(1) The Minister and the Regulator each have a duty to exercise the functions assigned or transferred to the Minister or the Regulator by this Part in the manner which the Minister or the Regulator considers is best calculated to—

- (a) secure that all reasonable demands for electricity are satisfied;
- (b) secure that licensees are able to finance the carrying on of the activities which licensees are authorised by their licences to carry on; and
- (c) subject to subsection (2), promote competition in the electricity industry.

(2) The Minister and the Regulator each have a duty to exercise the functions assigned or transferred to the Minister or the Regulator by this Part in the manner which the Minister or the Regulator considers is best calculated to—

- (a) secure that the retail prices charged to tariff customers for electricity supplied once agreed by the Regulator are fixed in accordance with the tariff pricing methodology which may be set by the Regulator from time to time;
- (b) secure that the Company is not disadvantaged in competing with persons who may (subject to approval by the Regulator) decide to self-supply by generating their own electricity on their own premises;
- (c) promote the lowest cost solutions for generation and to require possible generation from renewable sources; and
- (d) either itself or through the Chief Inspector or inspectors, register, test, inspect and certify all electrical installations and equipment (including meters) that the Regulator deems necessary.

(3) Subject to subsection (1), the Minister and the Regulator each have a duty to exercise the functions assigned or transferred to the Minister or the Regulator by this Part in the manner which the Minister or **the** Regulator considers is best calculated to—

- (a) protect the interests of consumers of electricity which must (other than in situations of self-supply) be supplied by the Company in respect of the—
 - (i) prices charged and the other terms of supply;
 - (ii) continuity of supply; and
 - (iii) quality of the electricity supply services provided;
- (b) promote efficiency and economy on the part of persons authorised by licences to **generate**, supply or transmit electricity and the efficient use of electricity supplied to consumers;
- (c) promote research into, and the development and use of, new techniques by or on behalf of, persons authorised by a licence to generate, transmit or supply electricity;
- (d) protect the public from dangers arising from the generation, transmission or supply of electricity; and
- (e) secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity,

and a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the generation, transmission or supply of electricity.

(4) In performing the Minister's or the Regulator's duty under subsection (3)(a)(i), the Minister or the Regulator must take into account the interests of consumers of electricity with limited or restricted incomes.

(5) In performing the Minister's or the Regulator's duty under subsection (3)(a)(ii), the Minister or the Regulator must take into account the protection of the interests of consumers of electricity in rural areas.

(6) In performing the Minister's or the Regulator's duty under subsection (3)(a)(iii), the Minister or the Regulator must take into account the interests of **disabled** persons **with disabilities** and persons of pensionable age.

(7) The Minister in the performance of the duties specified in this Part delegates such duties (other than those specified in section 5) exclusively to the Regulator.

(78) In this section, references to the functions assigned to the Minister by this Part do not include references relating to the determination of disputes.

- (89) In this Part, unless the context otherwise requires—
“exemption” means an exemption under section 8; and
“licence” means a licence granted under section 9.

Prohibition on unlicensed supply

7.—(1) A person who—

- (a) generates electricity for the purpose of giving a supply of electricity to any premises or enabling a supply of electricity to be so given;
- (b) transmits electricity for the purpose outlined specified in paragraph (a); or
- (c) supplies electricity to any premises,

commits an offence unless the person is authorised to do so by a licence or exemption.

(2) No person other than the Company may supply electricity unless such supply was already occurring or planned in consultation with the FEA on the commencement date, or unless the Minister or the Regulator has granted an exemption under section 8.

(3) A person who commits an offence under this section is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(4) No proceedings may be instituted in respect of an offence under this section except by or on behalf of the Minister or the Regulator.

(5) In this Part, unless the context otherwise requires—

“supply”, in relation to electricity, means to supply through electric lines other than to premises occupied by a licensee for the purpose of carrying on the activities which the licensee is authorised to carry on; and

“transmit”, in relation to electricity, means to transmit by means of a transmission system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.

Exemptions from section 7

8.—(1) The Minister may, after consultation with the Regulator, by order grant exemption from section 7(1)(a) or (c), but subject to compliance with such conditions, if any, as may be specified in the order.

(2) An exemption may be granted to—

- (a) a particular person; or
- (b) persons of a particular class,

and an exemption granted to persons of a particular class will be published in such manner as the Minister considers appropriate for bringing the exemption to the attention of persons of that class.

(3) An exemption, unless revoked in accordance with any term contained in the exemption, continues in force for such period as may be specified in or determined by or under the exemption.

(4) The requirement to consult imposed by subsection (1) does not apply to the granting of any exemption which, having regard to the provisions of section 7, needs to be granted before the commencement of section 7.

Process for licences

9.—(1) The Minister, after consultation with the Regulator, or the Regulator with the consent of, or in accordance with a general authority given by, the Minister, may grant a licence authorising any person to—

- (a) generate electricity for the purpose of giving a supply to any premises or enabling a supply of electricity to be so given;
- (b) transmit electricity for the purpose specified in paragraph (a) in that person's authorised area;
- (c) supply electricity to any premises in that person's authorised area; or
- (d) provide any service that the Minister or the Regulator deems to be subject to a licence.

(2) The Minister, after consultation with the Regulator, or the Regulator with the consent of, or in accordance with a general authority given by, the Minister, may—

- (a) grant a licence authorising any person to supply electricity to any premises specified or of a description specified in the licence; or
- (b) extend such a licence by adding to the premises or descriptions of the premises specified in the licence.

(3) An application for a licence or extension must be made in the prescribed manner and must be accompanied by such fee, if any, as may be prescribed, and within 14 working days after the making of such an application, the applicant must publish a copy of the application in the approved manner.

(4) Before granting a licence under subsection (1)(b) or (c), the Minister or the Regulator must give notice—

- (a) stating that the Minister or the Regulator, as applicable, proposes to grant the licence;
- (b) stating the reasons why the Minister or the Regulator proposes to grant the licence; and

- (c) specifying the time (not being less than 28 working days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and must consider any representation or objection made to the licence or its extension.

(5) Before granting any licence which might have any detrimental economic impact ~~on the public electricity supplier or~~ on the security of electricity supply or future tariffs to customers, the Minister or the Regulator must fully consider the objectives of this Act under section 4 and the Minister's and the Regulator's duties under section 6.

(6) A notice under subsection (4) must be given by publishing the notice in such manner as the Minister or the Regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.

(7) A licence must be in writing and, unless revoked in accordance with any term contained in the licence, continues in force for such period as may be specified in or determined by the licence.

(8) As soon as practicable after granting a licence, the Minister must send a copy of the licence to the Regulator and—

- (a) in the case of a licence granted under subsection (1)(b), to any licensee under that subsection whose authorised area previously included the whole or any part of the area designated in the licence;
- (b) in the case of a licence granted under subsection (1)(c), to the public electricity supplier whose authorised area previously included the whole or any part of the area designated in the licence; or
- (c) in the case of a licence or extension granted under subsection (2), to the public electricity supplier whose authorised area includes any premises specified or described in the licence or extension.

(9) As soon as practicable after granting any licence or extension falling within subsection (8)(a), (b) or (c), the Regulator must send a copy of the licence or extension to any person mentioned in that provision.

(10) The requirement to consult imposed by subsection (1), (2), (3) or (4) does not apply to the granting of any licence which, having regard to the provisions of section 6, needs to be granted before the commencement of section 6.

(11) Any money received by the Minister or the Regulator under this section ~~will~~ must be paid into the Fund.

(12) In this Part—

“authorised area”, in relation to a person authorised by a licence granted under subsection (1)(b) or (c) to transmit or supply electricity, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent licence under that subsection; and

“public electricity supplier” means any person who is authorised by a licence granted under subsection (1)(c) to supply electricity to premises in the person’s authorised area.

Conditions of licence—general

10.—(1) A licence may include —

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by section 6; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of subsection (1)(a), conditions included in a licence by virtue of subsection (1)(a) may —

- (a) require the licensee to enter into agreements with other persons for the use of any electric lines and electrical plant (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) include provisions determining the terms on which such agreements are to be entered into.

(3) The conditions included in a licence by virtue of subsection (1)(a) may require the licensee —

- (a) to comply with any direction given by the Regulator as to such matters as are specified in the licence;
- (b) except in so far as the Regulator consents to the licensee doing or not doing them, to do or not to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Regulator such questions arising under the licence as are specified in the licence or are of a description so specified; and
- (d) to refer for approval by the Regulator such things failing to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

(4) The conditions included in a licence by virtue of subsection (1)(a) may instead of —

- (a) specifying or describing any contract or agreement to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Minister or the Regulator; and

- (b) containing any provision which fall to be made, refer to provisions set out in documents so designated and direct that those provisions will have such effect as may be specified in the conditions.

(5) The conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(6) Any provision included by virtue of subsection (5) in a licence will have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(7) Any sums received by the Minister or the Regulator in consequence of the provisions of any condition of a licence must be paid into the Fund.

General duties of licensees

11.—(1) It is the duty of the public electricity supplier to develop and maintain an efficient, coordinated and economical system of electricity supply.

(2) It is the duty of the holder of a licence authorising the licensee to transmit electricity to—

- (a) develop and maintain an efficient, coordinated and economical system of electricity transmission; and
- (b) facilitate competition in the supply and generation of electricity.

(3) For the purposes of subsection (2), a person's competitors are other persons authorised, whether by a licence or exemption, to supply or, as the case may be, generate electricity.

Powers of licensees

12.—(1) Subject to subsection (2), section 30 applies to—

- (a) a public electricity supplier or a person authorised by a licence to transmit electricity; and
- (b) any other licensee to the extent that the authorised person's licence so provides.

(2) Where any provision mentioned in subsection (1) is applied to a licensee by the licensee's licence, it will have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) A licence under section 9(1)(b) or (c) may provide that, where any part of the licensee's authorised area is designated in a subsequent licence under that paragraph, then it will have effect in relation to the licensee as if any reference to the activities which the licensee is authorised by the licensee's licence to carry on included a reference to the activities which the licensee was previously so authorised to carry on.

Modification of licences

13.—(1) Subject to the following provisions of this section, the Regulator may modify the conditions of a licence.

(2) Before making modifications under this section, the Regulator must give notice which—

- (a) states that the Regulator proposes to make the modifications and sets out the effect of the modifications;
- (b) states the reasons for proposing to make the modifications; and
- (c) specifies the period (not being less than 28 working days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) must be given by—

- (a) publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) serving a copy of the notice on the licensee.

(4) The Regulator must also send a copy of a notice under subsection (2) to the Minister; and if, within the period specified in the notice, the Minister directs the Regulator not to make any modifications, the Regulator must comply with the direction.

Monopolies and mergers

14.—(1) The Regulator may refer a matter to the Merger Regulator for the Merger Regulator to investigate and report on, and the Merger Regulator must report on—

- (a) whether any matter specified in the reference, in relation to the generation, transmission or supply of electricity under a licence operates, or may be expected to operate, against the public interest; and
- (b) if so, whether the adverse effects to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.

(2) The Regulator may, at any time, by notice given to the Merger Regulator vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified, and on receipt of any such notice the Merger Regulator will give effect to the variation.

(3) The Regulator may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Merger Regulator in carrying out the investigation on the reference, any—

- (a) effects adverse to the public interest which, in the Regulator's opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) modifications of the conditions of the licence by which, in the Regulator's opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, the Regulator must—

- (a) serve a copy of the reference or variation on the licensee; and
- (b) publish particulars of the reference or variation in such manner as the Regulator considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Regulator must also send a copy of a reference under this section, or a variation of such a reference, to the Minister, and if, before the end of the period of 28 working days beginning with the day on which the Minister receives the copy of the reference or variation, the Minister directs the Merger Regulator not to proceed with the reference or, as the case may require, not to give effect to the variation, the Merger Regulator must comply with the direction.

(6) It is the duty of the Regulator, for the purpose of assisting the Merger Regulator in carrying out an investigation on a reference under this section, to give to the Merger Regulator—

- (a) any information in the Regulator's possession which relates to matters falling within the scope of the investigation and is—
 - (i) requested by the Merger Regulator for that purpose; or
 - (ii) information which, in the Regulator's opinion would be appropriate for that purpose to give to the Merger Regulator without any such request; and
- (b) any other assistance which the Merger Regulator may require, and which is within the Regulator's power to give, in relation to any such matters,

and the Merger Regulator, for the purpose of carrying out any such investigation, must take account of any information given to the Merger Regulator for that purpose under this subsection.

(7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Merger Regulator must take into account the duties that are imposed on the Minister and the Regulator by section 6.

(8) In relation to the initial divestment transaction, it is agreed that no such consideration is required since the willingness of the Government to agree to the sale of shares in the Company is deemed to be in the public interest.

Duty to supply electricity on request

15.—(1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supplier must, upon being requested to do so by the owner or occupier of any premises—

- (a) give a supply of electricity to those premises; and
- (b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both.

(2) In accordance with subsection (1), where any person requires a supply of electricity, the person must give to the public electricity supplier a notice specifying the—

- (a) premises in respect of which the supply is required;
- (b) day on which the supply is required to commence;
- (c) maximum power which may be required at any time; and
- (d) minimum period for which the supply is required to be given.

(3) Where a public electricity supplier receives from any person a notice under subsection (2) requiring the public electricity supplier to give a supply of electricity to any premises and—

- (a) the public electricity supplier has not previously given a supply of electricity to those premises;
- (b) the giving of the supply requires the provision of electric lines or electrical plant, or both; or
- (c) other circumstances exist which make it necessary or expedient for the public electricity supplier to do so,

the public electricity supplier must, as soon as practicable after receiving that notice, give to that person a notice under subsection (4).

(4) A notice under this subsection must—

- (a) state the extent to which the proposals specified in the other person's notice under subsection (2) are acceptable to the public electricity supplier and specify any counter proposals made by the public electricity supplier;
- (b) state whether the prices to be charged by the public electricity supplier will be determined by a tariff under section 18(1), or a special agreement under section 22(1), and specify the tariff or the proposed terms of the agreement;
- (c) specify any payment which that person is required to make under section 19(1), or under regulations made under section 19(2);

- (d) specify any security which that person is required to give under section 20;
 - (e) specify any other terms which that person is required to accept under section 21; and
 - (f) state the effect of section 23.
- (5) In this section, and sections 17 to 23, any reference to—
- (a) giving a supply of electricity includes a reference to continuing to give such a supply;
 - (b) requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and
 - (c) the provision of an electric line or an item of electrical plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

Self-supply

16.—(1) Where a person intends to self-supply, unless such self-supply was occurring before the commencement date, that person must provide details of the self-supply to the public electricity supplier and should the public electricity supplier decide that the public electricity **supply supplier** is able to provide the generation and supply at the price and terms legitimately proven as possible by the person, the public electricity supplier may elect to supply on such terms.

(2) If the public electricity supplier elects to supply under subsection (1), the person must not self-supply.

Exemptions from duty to supply electricity

17.—(1) Nothing in section 15(1) is to be taken as requiring a public electricity supplier to give a supply of electricity to any premises if—

- (a) such a supply is being given to the premises by a private electricity supplier; and
- (b) that supply is given (wholly or partly) through the public electricity supplier's electric lines and electrical plant,

and in this Part “private electricity supplier” means a person, other than a public electricity supplier, who is authorised by a licence or exemption to supply electricity.

(2) Nothing in section 15(1) must be taken as requiring a public electricity supplier to give a supply of electricity to any premises if and to the extent that—

- (a) the public electricity supplier is prevented from doing so by circumstances not within its control;
- (b) circumstances exist by reason of which the public electricity supplier's doing so would or might involve it being in breach of regulations under section 29, and the public electricity supplier has taken all such steps as it

was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or

- (c) it is not reasonable in all the circumstances for the public electricity supplier to be required to do so.

(3) Subsection (2)(c) may not apply in relation to a supply of electricity which is being given to any premises unless the public electricity supplier gives to the occupier, or to the owner if the premises is unoccupied, not less than 7 working days' notice of its intention to discontinue the supply under subsection (2)(c).

Power to recover charges

18.—(1) Subject to the following provisions of this section, the prices to be charged by a public electricity supplier for the supply of electricity **charges by it** under section 15(1) must be in accordance with such tariffs (which, subject to any condition included in its licence, may relate to the supply of electricity in different areas, cases and circumstances) as may be fixed from time to time by the Regulator.

(2) A tariff to be applied by a public electricity supplier under subsection (1) must be—

- (a) so framed as to show the methods by which and the principles on which the charges are to be made and the prices to be charged; and
- (b) published in such manner as in the opinion of the public electricity supplier will secure adequate publicity for it.

(3) A tariff to be applied by a public electricity supplier under subsection (1) may include—

- (a) a standing charge in addition to the charge for the actual electricity supplied;
- (b) a charge in respect of the availability of a supply of electricity; and
- (c) rent or other charges in respect of any electricity meter or electrical plant provided by the public electricity supplier,

and the charge in paragraph (b) may vary according to the extent to which the supply is taken up.

Power to recover expenditure

19.—(1) Where any electric line or electrical plant is provided by a public electricity supplier under section 15(1), the public electricity supplier may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the supply of electricity to such extent as is reasonable in all the circumstances.

(2) The Minister may, after consultation with the Regulator, prescribe regulations for entitling a public electricity supplier to require a person requiring a supply of electricity under section 15(1) to pay to the public electricity supplier, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose

of giving that supply, such amount as may be reasonable in all the circumstances if—

- (a) the supply is required within the prescribed period after the provision of the electric line or electrical plant; and
- (b) a person for whom the electric line or electrical plant was provided for the purpose of supplying electricity (“the initial contributor”) has made a payment to the public electricity supplier in respect of those expenses.

(3) Regulations under subsection (2) may require a public electricity supplier who, under this section or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant to—

- (a) exercise its rights under the regulations in respect of those expenses; and
- (b) apply any payments received by it in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.

(4) Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in maintaining it, in so far as they will not be recoverable by the public electricity supplier as part of the charges made by the public electricity supplier for the supply.

Power to require security

20.—(1) Subject to the following provisions of this section, a public electricity supplier may require any person who requires a supply of electricity under section 15(1) to give the public electricity supplier reasonable security for the payment to the public electricity supplier of all money which may become due to the public electricity supplier —

- (a) in respect of the supply; or
- (b) where any electric line or electrical plant is provided under section 15(1) in respect of the provision of the electric line or electrical plant,

and if that person fails to give such security, the public electricity supplier may if it thinks fit refuse to give the supply, or to provide the line or plant, for so long as the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1), or the security given by any person has become invalid or insufficient—

- (a) the public electricity supplier may by notice require that person, within 7 working days after the service of the notice, to give the public electricity supplier reasonable security for the payment of all money which may become due to it in respect of the supply; and
- (b) if that person fails to give such security, the public electricity supplier may if it thinks fit discontinue the supply for so long as the failure continues, and any notice under paragraph (a) must state the effect of section 23.

(3) Where money is deposited with the public electricity supplier by way of security under this section, the public electricity supplier must pay interest, at such rate as may from time to time be fixed by the public electricity supplier with the approval of the Regulator, on every sum of \$1 so deposited for every 3 months during which it remains in the hands of the public electricity supplier.

(4) The public electricity supplier is not entitled to require security under subsection (1)(a) if—

- (a) the person requiring the supply is prepared to take the supply through a prepayment meter; and
- (b) it is reasonably practicable in all the circumstances (including the risk of loss or damage) for the public electricity supplier to provide a prepayment meter.

Additional terms of supply

21. A public electricity supplier may require any person who requires a supply of electricity under section 15(1) to accept in respect of the supply any—

- (a) restrictions which must be imposed for the purpose of enabling the public electricity supplier to comply with regulations; and
- (b) terms restricting any liability of the public electricity supplier for economic loss resulting from negligence which is reasonable in all the circumstances for that person to be required to accept.

Special agreements with respect to supply

22.—(1) Notwithstanding anything in sections 15 to 21, a person who requires a supply of electricity in accordance with section 15(1)—

- (a) may enter into a special agreement with the public electricity supplier for the supply on such terms as may be specified in the agreement; and
- (b) must enter into such an agreement in any case where—
 - (i) the maximum power to be made available at any time exceeds 5 megawatts; or
 - (ii) it is otherwise reasonable in all the circumstances for such an agreement to be entered into.

(2) The Minister may by order provide that subsection (1) has effect as if for the wattage mentioned in subsection (1)(b)(i) were substituted such other wattage as may be specified in the order, but before making such an order, the Minister must consult with the public electricity supplier and with persons or bodies appearing to the Minister to be representative of persons likely to be affected.

(3) So long as any such agreement as is mentioned in subsection (1) is effective, the rights and liabilities of the parties to the agreement will be those arising under the agreement and not those provided for by sections 15 to 21, but nothing in this subsection

prejudices the giving of a notice under section 15(2) specifying the day on which the supply is required to commence and the day on which such an agreement ceases to be effective.

(4) In this Part and Schedule 3, “tariff customer” means a person who requires a supply of electricity under section 15(1) and is supplied by the public electricity supplier otherwise than on the terms specified in such an agreement as is mentioned in subsection (1).

Determination of disputes

23.—(1) Any dispute arising under sections 15 to 22 between the public electricity supplier and a person requiring the supply of electricity—

- (a) may be referred to the Regulator by either party; and
- (b) on such a reference, will be determined by order made either by the Regulator or, if the Regulator thinks fit, by a mediator appointed by agreement or under the rules of the Fiji Mediation Centre and if no agreement is reached through mediation by an arbitrator, appointed by the Regulator,

and the practice and procedure to be followed in connection with any such determination will be such as the Regulator may consider appropriate.

(2) Where any dispute arising under sections 15 to 22 between a public electricity supplier and a person requiring a supply of electricity to continue to be given which is to be determined under this section, the Regulator may give directions as to the circumstances in which, and the terms on which, the public electricity supplier is to continue to give the supply pending the determination of the dispute.

(3) Where any dispute arising under section 20(1) fails to be determined under this section, the Regulator may give directions as to the security, if any, to be given pending the determination of the dispute.

(4) Directions under subsection (2) or (3) may apply either in cases of particular descriptions or in particular cases.

(5) An order under this section—

- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
- (b) is final and enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the courts of the State.

(6) In including in an order under this section any such provision as the costs or expenses as is mentioned in subsection (5), the person making the order must have regard to the conduct and means of the parties and any other relevant circumstances.

Public Electricity Supply Code

24. All persons must comply with the provisions of the Public Electricity Supply Code set out in Schedule 3.

Orders for securing compliance

25.—(1) Subject to section 26(3) and (5), where the Regulator is satisfied that a licensee is contravening, or is likely to contravene, any relevant condition or requirement, the Regulator will by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to subsection (5), where it appears to the Regulator that—

(a) a licensee is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) it is requisite that a provisional order be made,

the Regulator will (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to the Regulator requisite for the purpose of securing compliance with that condition or requirement.

(3) In determining for the purposes of subsection (2)(b) whether it is requisite that a provisional order be made, the Regulator must have regard to the—

(a) extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and

(b) effect of the provisions of this section and section 27, which are to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.

(4) Subject to subsection (5) and section 26, the Regulator will confirm a provisional order, with or without modifications, if—

(a) the Regulator is satisfied that the licensee to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) the provision made by the order (with any modification) is requisite for the purpose of securing compliance with that condition or requirement.

(5) The Regulator must not make a final order or make or confirm a provisional order in relation to a licensee unless the Regulator is satisfied that—

(a) the duties imposed on the Regulator by section 6 preclude the making or, as the case may be, the confirmation of the order;

(b) the licensee has agreed to take and is taking all such steps as it appears to the Regulator for the time being to be appropriate for the licensee to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

- (c) the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the Regulator is satisfied pursuant to subsection (5), the Regulator must—
- (a) serve notice that the Regulator is so satisfied on the licensee; and
 - (b) publish the notice in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) may require the licensee to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) must take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the Regulator.
- (8) In this Part—
- “final order” means an order under this section other than a provisional order;
- “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) ceases to have effect at the end of a period not exceeding 3 months as is determined by or under the order;
- “relevant condition”, in relation to a licensee, means any condition of the licensee’s licence; and
- “relevant requirement”, in relation to a licensee, means any duty or other requirement imposed on the licensee by or under section 10 or sections 15 to 23.

Procedural requirements

26.—(1) Before the Regulator makes a final order or confirms a provisional order, the Regulator must give notice—

- (a) stating that the Regulator proposes to make or confirm the order and setting out its effect;
- (b) setting out the—
 - (i) relevant conditions or requirements for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) acts or omissions which, in the Regulator’s opinion, constitute or would constitute contraventions of those conditions or requirements; and

(iii) other facts which, in the Regulator's opinion, justify the making or confirmation of the order; and

(c) specifying the period (not being less than 28 working days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and must consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) must be given by—

(a) publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licensee to whom the order relates.

(3) The Regulator must not make a final order with modifications, or confirm a provisional order with modifications, except—

(a) with the consent to the modifications of the licensee to whom the order relates; or

(b) after complying with the requirements of subsection (4).

(4) The requirements mentioned in subsection (3) are that the Regulator must—

(a) serve on the licensee to whom the order relates such notice as appears requisite to the Regulator of the Regulator's proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than 28 working days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the Regulator must—

(a) serve a copy of the order on the licensee to whom the order relates; and

(b) publish the order in such manner as the Regulator considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) Before revoking a final order or a provisional order which has been confirmed, the Regulator must give notice—

- (a) stating that the Regulator proposes to revoke the order and setting out its effect; and
- (b) specifying the period (not being less than 28 working days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and must consider any representation or objection which are duly made and not withdrawn.

(7) If, after giving a notice under subsection (6), the Regulator decides not to revoke the order to which the notice relates, the Regulator must give notice of the Regulator's decision.

(8) A notice under subsection (6) or (7) must be given by—

- (a) publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) serving a copy of the notice on the licensee to whom the order relates.

Validity and effect of orders

27.—(1) If the licensee to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground that—

- (a) the making or confirmation of the order was not within the powers of section 25; or
- (b) any requirement under section 26 has not been complied with in relation to it,

the licensee may, within 42 working days from the date of service on the licensee of a copy of the order, make an application to the court under this section.

(2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licensee have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this section, the validity of a final or provisional order cannot be questioned by any legal proceedings whatsoever.

(4) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of the order.

(5) Where a duty is owed by virtue of subsection (4) to any person, any breach of the duty which causes that person to sustain loss or damage will be actionable at the suit or instance of that person.

(6) In any proceedings brought against a licensee under subsection (5), it will be a defence for the licensee to prove that the licensee took all reasonable steps and exercised all due diligence to avoid contravening the order.

Power to require information etc

28.—(1) Where it appears to the Regulator that a licensee may be contravening, or may have contravened, any relevant condition or requirement of a licence, the Regulator may, for any purpose connected with such of the Regulator's functions under section 25 as are exercisable in relation to that matter, serve a notice under subsection (2) on any person.

(2) A notice under this subsection is a notice signed by the Regulator and requiring—

- (a) the person on whom it is served to produce, at a time and place specified in the notice, to the Regulator or to any person appointed by the Regulator for the purpose, any documents which are specified or described in the notice and are in that person's custody or under the person's control; or
- (b) that person, if the person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Regulator such information as may be specified or described in the notice.

(3) No person is required under this section to produce any document which the person could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which the person could not be compelled to give in evidence in any such proceedings.

(4) A person who fails to do anything required of the person by notice under subsection (2) commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(5) A person who intentionally alters, suppresses or destroys any document which the person has been required by any notice under subsection (2) to produce commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(6) If a person makes default in complying with a notice under subsection (2), the court may, on the application of the Regulator, make such order as the court thinks fit for requiring the default to be made good, and any such order may provide that all the costs or expenses of and incidental to the application must be borne by the person in default or by any officer of a company or other association who is responsible for the default.

Regulations relating to supply and safety

29.—(1) The Minister may make such regulations as the Minister thinks fit for the purpose of—

- (a) securing that the supply of electricity is regular and efficient;
- (b) protecting the public from dangers arising from the generation, transmission or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and

- (c) without prejudice to the generality of paragraph (b), eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in paragraph (b).

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) prohibit the supply or transmission of electricity except by means of a system approved by the Minister;
- (b) make provision requiring notice in the prescribed form to be given to the Minister, in such cases as may be specified in the regulations, of accidents and of failures of supply or transmission of electricity;
- (c) make provision as to the keeping, by persons authorised by a licence or exemption to supply or transmit electricity, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;
- (d) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed;
- (e) make provision requiring compliance with notices given by the Minister specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer of electricity, for the purpose of—
 - (i) preventing or ending a breach of regulations under this section; or
 - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
- (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements; and
- (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations.

(3) Regulations made under this section may provide that any person who—

- (a) contravenes any specified provision of the regulations; or
- (b) does so in specified circumstances,

commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both; but nothing in this subsection affects any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.

PART 3—ACQUISITION OF PROPERTY

General power to acquire land rights

30. Where any land is required for the purposes of the public electricity supplier, or by a licensee for the purpose of working or operating an installation, and such land cannot be acquired by agreement, the State may acquire such land compulsorily and lease the land to the public electricity supplier or the licensee for the purposes of working or operating an installation, and the provisions of the State Acquisition of Lands Act 1940 will apply to such acquisition.

Acquisition of installations by the public electricity supplier

31.—(1) Subject to the provisions of section 27 of the Constitution, upon the expiry of, or at any time during the continuance of, a licence for a public installation, the public electricity supplier may, by 6 months' notice in writing served on the licensee and on any mortgagee, encumbrance or lessee thereof or any person holding under the licensee who after reasonable inquiry must be made known to the public electricity supplier, acquire the installation to which the licence refers, or such part of such installation including lands, buildings, works, machinery, plant, materials and apparatus, as may be specified in the notice.

(2) All notices served under subsection (1) must, within one month of such service, be published at least once in the Gazette and in a newspaper circulating in Fiji inviting any person who has a charge on the installation to make a claim.

(3) The provisions of the State Acquisition of Lands Act 1940 applies *mutatis mutandis* to any proceedings for acquisition under the provisions of this section.

(4) Any claim made by any person having any charge on the installation is deemed to have priority over any claim made by the licensee and the court must in its order provide for the settlement of the claims of any such person out of any sum ordered to be paid as compensation to the licensee.

(5) Upon the court making an order for payment of compensation or in the event of an agreement having been reached between the public electricity supplier and the licensee as to the amount of such compensation, such lands, buildings, machinery, plant, materials and apparatus as may be specified in the notice referred to in subsection (1) will, without any conveyance, assignment or transfer whatsoever, be deemed to be transferred to and will vest in the public electricity supplier free from all debts and obligations of the licensee secured on such properties aforesaid and in the case of land subject to the Land Transfer Act 1971 the Registrar of Titles will, subject to section 30, upon application in writing by the public electricity supplier and on payment of the proper fees, register the Director of Lands as the registered proprietor of such land.

PART 4—GENERAL

Power to inspect

32. For the purpose of inspecting any part of an installation or fitting, removing meters or other instruments for measuring the quantity of electricity supplied, making or

removing connections between mains and private fittings, repairing damage, or for other proper cause, the public electricity supplier or the licensee, as the case may be, or any person authorised by the public electricity supplier or the licensee may at all reasonable times enter upon the lands, houses or buildings to which electricity has been, is or will be, supplied.

Reduction or cessation of supply

33.—(1) The public electricity supplier and any licensee may reduce, as they may think fit, the quantity of electricity supplied to any consumer if, by reason of any unforeseen circumstances beyond their control, it may appear that the supply of electricity generated is insufficient to enable the full quantity to be supplied.

(2) Where the quantity of electricity has been reduced as aforesaid and in each case the public electricity supplier or the licensee has acted in accordance with its licence conditions—

- (a) no liability will be incurred by the public electricity supplier or the licensee, as the case may be, in respect of any loss or damage caused by such reduction; and
- (b) in appropriate cases, an abatement in the charges for the supply of electricity will be made in proportion to the reduction made.

(3) The public electricity supplier or a licensee, their servants or agents, will not be liable (provided the damage is not caused by a breach of a licence condition) for any damage to persons or property or for any cessation of the supply of electricity which may be due to unavoidable accident, fair wear and tear, or overloading due to unauthorised connection of apparatus, or to the reasonable requirements of the system, or to defects in any installation not provided by the public electricity supplier or licensee, as the case may be, but will be liable when such damage or cessation is shown to have resulted from negligence on the part of the public electricity supplier, a licensee, their servants or agents, as the case may be, or from faulty construction of the installation.

Precautions in execution of work

34.—(1) The execution of all work in connection with the generation or supply of electricity which may affect any street, tramway, river or other waterway or any system of irrigation, drainage or water supply or any telegraphs, telephones, radio communications, harbour works or other public or private works, and the erection of any supply line crossing, whether overhead or underground, any such way or work as aforesaid, will be carried out in the prescribed manner and without prejudice to public or private safety.

(2) Any person who, without lawful excuse, contravenes any of the provisions of this section commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Registration of installations

35.—(1) Subject to the provisions of section 60, before the completion of a new installation, other than a public electricity supplier installation, the owner thereof or the

licensee will forward, in duplicate, to an inspector, an application for registration in the prescribed form. The inspector must cause inspection and tests to be made within the prescribed period and, if the installation satisfies the requirements of this Act and of the regulations made thereunder, must issue or cause to be issued a certificate of registration in the prescribed form.

(2) No installation except such as may be exempted under the provisions of section 60 will be operated unless the owner or licensee of such installation holds a valid certificate of registration.

(3) Certificates of registration must be surrendered by the owner or licensee to an inspector for cancellation if the installation is no longer required to be used. Thereafter, if the owner or licensee wishes to operate the installation again, the installation will be treated in all respects as if it were a new installation.

(4) A certificate of registration may be cancelled in accordance with the regulations made under this Act.

(5) Certificates of registration must not be transferred without the permission of the Chief Inspector.

Periodical inspections of installations

36.—(1) Subject to any exemption granted under the provisions of section 60, where a person is about to construct an installation, the person must give notice of the proposed installation to an inspector who may periodically inspect the installation during its construction.

(2) In addition to periodical inspections during construction and final inspections on completion, all installations, while in operation, will be subject to such periodical inspections as may be prescribed by regulations made under the provisions of sections 55 and 56.

(3) The licensee, management and persons in charge of any installation or of the construction of any installation must afford full facilities for inspection during working hours.

Installations completed or commenced before 21 June 1966

37. Except as may otherwise be provided by any exemption under the provisions of section 60, all installations which have been operated or whereof the construction has been completed or begun before 21 June 1966 is subject to this Act and the regulations made thereunder.

Electrical interference with Government signalling lines

38.—(1) If the Regulator is satisfied that the working or operation of any installation causes electrical interference with any radiocommunication, telecommunication, telegraph, telephone or other electrical signalling process or circuit owned or operated by or on behalf of the Government, the public electricity supplier or by any person specified by the Minister by notice in the Gazette, the Regulator will call upon the owner or licensee to abate the interference, and if, within a period of 14 working days or such longer period

as the Regulator considers reasonable in any particular circumstances, the interference has not been effectually abated, the Regulator will report the matter to the Minister who may, in the Minister's discretion, in the case of—

- (a) a licensed installation, order the modification or suspension of the licence;
- (b) an unlicensed installation, by order, prohibit the working or operation thereof; or
- (c) any installation, by order, prohibit the working or operation of such part thereof as causes the electrical interference, until arrangements have been made to the satisfaction of the Regulator for preventing the recurrence of such electrical interference as aforesaid, and if, in the case of a licensed installation, no such arrangements are so made, then the Minister may order that the licence for the said installation be revoked absolutely.

(2) For any loss caused to a licensee by the suspension or revocation of a licence under the provisions of this section, the licensee may claim compensation from the Government provided that no claim be allowed and no compensation be paid where the electrical interference referred to in subsection (1) has been caused by an installation which does not comply with the provisions of any regulations restricting electrical interference made under the provisions of any Act for the time being in force in the State, relating to telecommunications.

(3) If the claim is allowed, the compensation will, unless settled by mutual agreement of the Government and the licensee, be determined by arbitration.

Precautions against atmospheric electricity

39. Any consumer taking or using electricity from an installation must, if the Chief Inspector so requires, provide such means for obviating risk or damage to such installation by atmospheric electricity as may be directed by the Chief Inspector or as may be prescribed.

Restriction of connections with earth

40.—(1) No person may, in the generation, transmission, supply or use of electricity, permit any part of the person's supply lines to be connected with earth except as may be required by or under this Act or be expressly permitted by the Chief Inspector.

(2) In the event of any breach of the provisions of subsection (1), the Chief Inspector may by order require the licensee or owner to remove such connections and may prohibit the use of any supply line or works or installation until the order is complied with, and every such order will be complied with by the person concerned.

Protection of electrical works belonging to the public electricity supplier

41.—(1) No person may lay or carry any mains, pipes, conduits or wires in, along, through, across, over or under any street or place in a manner which is likely to interfere with or cause damage to any electrical works or apparatus of the public electricity supplier without first obtaining permission from the public electricity supplier.

(2) Such permission in subsection (1) may be granted or withheld upon such terms and conditions as the public electricity supplier fairly and reasonably determines.

(3) Any person who contravenes any of the provisions of this section commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Use of electricity supplied

42.—(1) No consumer may use electricity supplied to the consumer for purposes other than those for which such electricity is supplied.

(2) Any person who contravenes the provisions of this section commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Exemption of apparatus from distress and attachment

43. When any electric wires, meters, fittings, works or apparatus belonging to the public electricity supplier have been placed in or upon any private premises for the purpose of supplying or measuring electricity, and when any electric wires, meters, fittings, works or apparatus belonging to a licensee have been placed in or upon premises, not owned or occupied by such licensee, for the purpose of supplying or measuring electricity, such wires, meters, fittings, works or apparatus will not be subject to distress nor be liable to be taken in execution under any process of a court or in any bankruptcy or insolvency proceedings against any person.

Procedure in case of dangerous defect in installation or apparatus

44.—(1) In the event of an inspector finding in any installation or apparatus any defect which in the inspector's opinion is likely to cause danger, the inspector may, by notice in writing posted at the place where the installation or apparatus to which it relates is installed or working, or served upon the licensee or owner thereof, require such defect to be made good or removed within such period as may be specified in the notice, and in such case the installation or apparatus must not be operated or used after the expiration of such period unless the defect has been made good or removed to the satisfaction of the inspector, provided that if the inspector is of the opinion that the defect is likely to cause immediate danger, the inspector may, by notice posted or served as aforesaid, forthwith suspend the operation and use of such installation or apparatus until such defect is made good or removed, and in such case the installation or apparatus must not be operated or used so long as such notice of suspension remains unrevoked.

(2) Every licensee and every management and person in charge of an installation becoming aware of a defect therein which is likely to cause danger, and every consumer becoming aware of a defect in any apparatus which is likely to cause danger, must forthwith cause the defect to be made good or removed or must report thereon to an inspector.

(3) If in the opinion of the Chief Inspector any defect in an installation in respect whereof a licence is in force is of such a nature that it cannot be made good or removed, the Regulator may hold an inquiry and, if it considers it necessary so to do, must cancel the licence.

(4) Any person who contravenes any of the provisions of subsection (1) or (2) commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Entry on premises

45.—(1) Subject to subsection (2), an inspector may enter any premises, in or upon which any installation or apparatus may be, at any time between the hours of 6.00 am and 6.00 pm and also at any other time when the installation or apparatus may be at work, and may remove any article or thing which is reasonably suspected to be an article or thing which concerns an offence under this Act or by which such an offence has been committed.

(2) An inspector seeking to enter any premises under the powers conferred by subsection (1) must carry, and produce on demand, an official identification card or badge in such form as may be prescribed, and no person is obliged to admit to the person's premises any person purporting to be an inspector except upon production of such identification card or badge.

Serious accidents to be reported

46.—(1) Whenever any accident causing or resulting in loss of life or hurt to any person or serious injury to property has occurred in connection with any installation or electrical plant or apparatus, the owner or licensee thereof and the management thereof must report the accident to an inspector by the quickest means available, and subsequently with the least possible delay must report in writing to an inspector the facts of the matter so far as they are known, and the inspector must, as soon as practicable after receipt of the first report—

- (a) visit the place where the accident occurred;
- (b) make a preliminary investigation of the circumstances;
- (c) record in writing the inspector's findings upon such investigation;
- (d) forward the inspector's report to the Chief Inspector; and
- (e) if there has been any loss of life or there is reason to believe that any person has been fatally injured, send a copy of the inspector's findings to the nearest Magistrate.

(2) In the event of loss of life or grievous hurt to any person due to any accident in connection with any installation or electrical plant or apparatus, no alteration or addition will without the consent of an inspector be made to any part of such installation, plant or apparatus which may have contributed to cause such accident nor will any alteration be made, without such consent, to the site of the accident until an inspector has completed an investigation, provided that nothing herein contained will operate to interfere with rescue work or work necessary for the general safety of life or property.

(3) If, upon a preliminary investigation under the provisions of subsection (1), it appears to the officer making such investigation that there is reason to believe that the accident was due to any failure to comply with this Act or of the regulations made

thereunder or to neglect of any lawful order given by an inspector, or if the officer making such investigation is satisfied that the accident might have been prevented if proper precautions had been taken and observed in the working of any installation or electrical plant or apparatus, the Chief Inspector must further investigate the circumstances of the accident together with the inspector and report the matter to the Regulator and give the Chief Inspector's opinion thereon, and if the Regulator is of the opinion that criminal proceedings will lie against any person, the Regulator must forward to the Director of Public Prosecutions a copy of the inspector's report together with the Regulator's opinion on the circumstances and findings.

(4) Any person concerned in any investigation held under the provisions of this section will be entitled, upon payment of the prescribed fees, to receive a copy of the report of the inspector, of the opinion of the Chief Inspector, and of statements, if any, taken in evidence by the inspector or Chief Inspector, as the case may be.

(5) Any person who, without lawful excuse, contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Prohibition of employment of children

47.—(1) No licensee or management will employ or permit to be employed on any service involving management of or attendance on or proximity to live apparatus not effectively insulated, any person under the age of 18 years.

(2) Any person who contravenes this section commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Questions for decision by Chief Inspector subject to appeal to the Regulator

48.—(1) In the event of any difference of opinion between a licensee and an inspector other than the Chief Inspector or between the management or owner of any installation or apparatus and an inspector other than the Chief Inspector regarding any matter affecting the construction, erection, maintenance or operation of any installation or apparatus, the matter will be referred to and decided by the Chief Inspector.

(2) Any person who feels aggrieved by a decision made by the Chief Inspector may apply to the Regulator for reconsideration of the matter in dispute and such application must be made in writing within 21 working days from the date of the decision of the Chief Inspector, or within such further period as the Regulator may in special circumstances allow, and must contain the grounds of the grievance.

(3) Upon receipt of an application under the provisions of subsection (2), the Regulator must hold an inquiry into the matter and the Regulator may request any person having technical qualifications or special experience in the matter concerned in the inquiry to advise the Regulator during the holding of such inquiry.

(4) All questions in the inquiry will be determined by a majority of the members holding the inquiry.

(5) At the conclusion of the inquiry, the Regulator must inform all persons concerned of its decision. Any person concerned will be entitled, upon payment of the prescribed fees, to a copy of a summary of the evidence given at the inquiry and of the decision.

Powers of holding inquiry

49. For the purpose of holding inquiries under this Act, the Regulator or Chief Inspector, as the case may be, has the power to administer oaths and affirmations and to compel the attendance of witnesses.

Liabilities unaffected

50. Except as provided in sections 33 and 43, nothing contained in this Act will operate to relieve any licensee or management from any civil or criminal liability arising otherwise than under this Act.

Disconnection of supply of electricity

51.—(1) Where any person employed by the public electricity supplier or a licensee finds upon any premises evidence which in the person's opinion indicates that an offence has been committed under the provisions of section 52(2), the public electricity supplier or the licensee or any person duly authorised by the public electricity supplier or the licensee, as the case may be, may, upon giving not less than 24 hours' written notice thereof, in such form as may be prescribed, cause the supply of electricity to be disconnected from such premises.

(2) Notwithstanding subsection (1), where electricity is used ~~by the consumer~~ for business, professional or industrial purposes ~~by the consumer~~ and the disconnection of the supply of electricity would prevent the consumer from carrying on the consumer's business, profession or industry, the supply of electricity must not be disconnected without the approval of the Regulator endorsed upon the notice referred to in subsection (1).

(3) If the supply of electricity has been disconnected under the provisions of subsection (1), it must not be reconnected until the public electricity supplier or licensee, as the case may be, in the supplier's or the licensee's discretion, gives permission for reconnection.

(4) If the supply of electricity has been disconnected under the provisions of the preceding subsections, the public electricity supplier or licensee, as the case may be, may determine the period for which such disconnection will be enforced, provided that such period does not exceed one month.

(5) No action or suit can be instituted in any court against the public electricity supplier or a licensee or any officer or servant of the public electricity supplier or employee of a licensee in respect of any matter or thing arising or resulting from the operation of this section, however, an affected person may appeal to the Regulator who may amend the notice period.

Offences

52.—(1) Any person who wilfully tampers with or adjusts any installation or part thereof to cause or to be likely to cause danger to human life or limb or damage to any apparatus or other property commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(2) Any person who, in any manner whatsoever dishonestly —

- (a) abstracts electricity;
- (b) consumes electricity;
- (c) uses electricity;
- (d) alters the index of any meter or other instrument used on or in connection with any installation of the public electricity supplier or any licensed installation for recording the output or consumption of electricity; or
- (e) prevents any such meter or instrument from duly recording the output or consumption of electricity,

commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(3) Any licensee who, without express authority from the Regulator, supplies electricity or lays down any supply line or constructs any electrical works outside the area of supply specified in the licensee's licence commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both, and any such unauthorised line or works may, after conviction under this subsection in respect thereof, be removed by order of the Regulator, and the reasonable cost of such removal may be recovered from the licensee.

(4) Subject to the provisions of sections 33 and 51, any licensee who is authorised by the licensee's licence to supply electricity to other persons and who, in breach of any condition of the licensee's licence or of any regulation made under this Act and without reasonable cause (the burden of proving which will lie on the licensee), fails to supply electricity to any consumer whose premises lie within the area of supply specified in the licensee's licence, or discontinues the supply of electricity to any such consumer, commits an offence and is liable upon conviction to a fine prescribed by regulations and, if the failure is continued, to a fine prescribed by regulations for every day or part of a day during which the failure is continued after the date of conviction.

(5) Any person who wilfully damages any meter or other instrument used on or in connection with any installation of the public electricity supplier or any licensed installation for recording the output or consumption of electricity commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(6) Any person who wilfully or negligently —

- (a) causes electricity to be diverted from its proper course or to be wasted; or
- (b) breaks, throws down, causes to fall or damages any supply line or any post, pole or other apparatus connected with the supply of electricity,

commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(7) Any person who obstructs or impedes any officer or servant of the public electricity supplier or of a licensee in the exercise of the public electricity supplier's or the licensee's powers and duties under this Act, or fails to comply with any order lawfully given under this Act, commits an offence and is liable upon conviction to a fine prescribed by regulations and, if the failure is continued, to a fine prescribed by regulations for every day or part of a day during which the failure is continued after the date of conviction.

(8) Any licensee who fails to comply with any condition expressed, or, by virtue of this Act, implied, in the licensee's licence commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both and, if the failure is continued, to a fine prescribed by regulations for every day or part of a day during which the failure is continued after the date of conviction.

Onus of proof

53. In any prosecution for an offence under the provisions of section 52(2), proof of—

- (a) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, could be used for altering, or facilitating the alteration of, the index of any meter or instrument used for registering the quantity of electricity supplied;
- (b) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, would prevent, or facilitate the prevention of, any meter or instrument from duly registering the quantity of electricity supplied, or would facilitate the dishonest abstraction, consumption or use of electricity; or
- (c) the—
 - (i) fitting of any mechanical or other means to;
 - (ii) absence or removal of any part or connection from; or
 - (iii) interference with any part or connection of any apparatus in such circumstances that such fitting, absence, removal or interference would prevent or facilitate the prevention of any meter or other instrument from duly registering the quantity of electricity supplied, or would facilitate the dishonest abstraction, consumption or use of electricity,

is *prima facie* evidence that there has been dishonest alteration of the index of any meter or instrument, or prevention, abstraction, consumption or use of electricity, as the case may be, and that such dishonest alteration, prevention, abstraction, consumption or use, as the case may be, has been carried out by the—

- (A) person fitting such artificial, mechanical or other means as aforesaid;
- (B) person removing any such part or connection as aforesaid;
- (C) person interfering with any such part or connection as aforesaid;

- (D) consumer using such meter or instrument; and
- (E) person having control of the installation where it is fixed,

or that such person or consumer has abetted the offence of such alteration, prevention, abstraction, consumption or use, as the case may be.

Compensation for damage

54.—(1) Any person who, without lawful excuse, removes, destroys or damages, whether wilfully or otherwise, any installation or any part thereof, or any public lamp or any post, bracket or other means of support of a public lamp, or any instrument used in connection with any installation for recording the output or consumption of electricity, will, in addition to any penalty to which the person may be liable under the provisions of this or any other Act, be liable to pay full compensation for the damage the person has done and such compensation is recoverable by civil action or suit before any court of competent jurisdiction.

(2) Without prejudice to the provisions of subsection (1), any court before which a person is charged with an offence under this Act may assess the compensation payable under the provisions of this section and may make an order for the payment of the same and any such order may be enforced as if it were judgment in a civil action or suit.

PART 5—REGULATIONS

Powers to make regulations

55.—(1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating, otherwise than in relation to any court proceedings, any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—

- (a) as to the mode of proof of any matter;
- (b) as to parties and their representation;
- (c) for the right to appear before and be heard by the Minister, the Regulator and other authorities; and
- (d) as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards.

(2) Regulations made under any provision of this Part which prescribes a period within which things are to be done may provide for extending the period so prescribed.

(3) Regulations made under any provision of this Part may—

- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed by the regulations;

- (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (c) make such supplemental, consequential and transitional provision as the Minister considers appropriate.

Regulations or licences by the Regulator

56.—(1) The Regulator may, with the approval of the Minister, make regulations or licences to prescribe—

- (a) the duties of inspectors;
- (b) the intervals, times and manner in which any installations or apparatus must be inspected, the notice, if any, to be given in relation to inspections and the preparations to be made by the licensees and the management for such inspections;
- (c) the minimum standards and specifications which must be used in the design, construction, protection and maintenance of installations and apparatus, the conditions under which any installation or apparatus must be worked or operated and the prohibition of the use of dangerous apparatus;
- (d) the means which may be employed, to the exclusion of other means, for the generation, conversion, transmission, transformation, distribution and application of electricity;
- (e) the manner in which electricity must be measured and the standards of measurement which must be employed and the manner in which electricity is permitted to be, or is prohibited from being, supplied or used;
- (f) the standards to be adopted for measurement of dimensions of installations and apparatus;
- (g) the manner of regulation and the limits of variation of the nature, voltage and periodicity of the electricity supplied;
- (h) the class or design, or classes or designs, of wires, fittings and apparatus to be used by consumers, and the manner in which such wires, fittings and apparatus must be erected, fixed, arranged, protected, controlled, inspected, tested and maintained;
- (i) the fees to be paid for licences and certificates of registration of installations and any other fees which require to be prescribed under this Act;
- (j) the form and content of, and the conditions, terms, performance levels and key performance indicators to be prescribed in licences, the form and period of validity of certificates of registration and the conditions for suspension, extension and revocation of licences and certificates of registration;
- (k) the qualifications to be possessed by persons before they may be entrusted with the construction, erection, repair or alteration of any installation

or apparatus or with the charge of any installation or the control of the operation of apparatus;

- (l) the nature of tests to be employed for ascertaining whether persons possess the qualifications prescribed by regulations under the provisions of paragraph (k), the form and period of validity of certificates to be issued to persons found to possess such qualifications, the manner and conditions of the issue, suspension and revocation of such certificates;
- (m) the approval and registration by the Regulator or such person appointed by the Regulator of wiring contractors;
- (n) the measures to be taken and the fittings to be supplied and used in connection with installations in order to secure public and private safety;
- (o) the precautions to be taken on the relief of persons in control of apparatus;
- (p) the manner of calculating the power of generators and motors;
- (q) the manner of holding inquiries under this Act;
- (r) the forms of notices and the manner of service thereof;
- (s) the means to be adopted, whether by prohibition or otherwise, to prevent or abate any nuisance likely to arise or arising from the working of any installation or apparatus;
- (t) the time, place and manner for the payment of fees payable under this Act or the regulations made thereunder and the mode of collection and disposal thereof; or
- (u) any other matter required to be prescribed by this Act or which may appear to the Regulator expedient for the better carrying out of the provisions of this Act, or for securing the safety of the public or for ensuring a proper and sufficient supply of electricity.

(2) The Regulator may also make regulations to provide for—

- (a) prescribing the rate of charges to be made in respect of electricity supplied from the public electricity supplier public installations and of the hire of apparatus belonging to or operated by the public electricity supplier, and the fees payable in respect of the inspection, testing and maintenance of consumers' installations and apparatus, and in respect of the fixing and testing of meters, and in respect of any other services properly rendered on account of consumers;
- (b) prescribing the form of applications for electricity, the manner of effecting the supply of electricity, and the incidence of the charges in respect of the cost of connecting a consumer's premises with the mains;

- (c) prescribing the methods to be adopted for the supply and use of electricity, the security to be furnished by consumers and the conditions for the discontinuance of the supply in cases where the consumer fails to observe the requirements of this Act, or is in arrears with the payment of any proper charge, or uses defective fittings, and also in other cases where such discontinuance may be deemed necessary or advisable;
- (d) regulating the methods of wiring of premises, the types of apparatus that may be used, and such other matters as may appear expedient;
- (e) ~~any other matter necessary for the proper management of the supply of electricity~~ the establishment, format and rules of a procurement process, as it may be necessary to achieve any of the objectives or purposes of this Act; and
- (f) ~~the establishment, format and rules of a procurement process, as it may be necessary to achieve any of the objectives or purposes of this Act~~ any other matter necessary for the proper management of the supply of electricity.

(3) The Regulator may by licence or otherwise in writing require the public electricity supplier to provide various services as agent of the Regulator and those quasi regulatory functions identified under the Electricity Regulations 1968 at the commencement date.

Regulator may prescribe maximum charges

57.—(1) The Regulator may, for the purpose of preventing the charging of excessive rates for electricity, by order prescribe the maximum charges to be made by a licensee for the supply of electricity to consumers, and such order will take effect notwithstanding the existence of any licence or agreement relating to the charges to be made by such licensee for the supply of electricity to consumers.

(2) In determining the charges that apply, the Regulator may prescribe rules (from time to time) in relation to—

- (a) achieving the objectives, terms of appointment and duties of the Regulator;
- (b) the power of the Regulator to recover charges; and
- (c) the power of the Regulator to recover expenditure.

(3) The charges will be set for the period determined by the Regulator and published in such manner as the Regulator considers appropriate for the purpose of bringing the costs of the charges to the attention of the persons likely to be affected by it.

(4) Where any licensee is aggrieved by an order made by the Regulator under the provisions of this section, the Regulator may refer the matter to arbitration, and the arbitrator will determine whether or not the charges prescribed by the order are reasonable, and the order of the Regulator must, where necessary, be varied in accordance with the determination of the arbitrator.

Regulations by Minister

58. The Minister may make regulations not inconsistent with this Act prescribing penalties for any offence against this Act and any subsidiary legislation made under this Act to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years, or both.

PART 6—MISCELLANEOUS

Recovery of money due for electricity supplied by the public installation of the public electricity supplier

59.—(1) When any sum of money due in respect of electricity supplied from the public installations of the public electricity supplier or for hire of apparatus or for services rendered in connection therewith has not been paid—

- (a) by the date upon which the sum is due for payment in accordance with the terms of any agreement or, where any grace period is allowed in any such agreement, by the end of such grace period; or
- (b) where no special agreement exists, within 15 working days from the date of presentation of the invoice for such sum,

it will be lawful for a Magistrate, upon written request made by the public electricity supplier, to issue and cause to be executed a warrant for levying the amount with costs by distress and sale of the goods and chattels found on the premises of the person by whom such amount is payable, and such warrant will authorise the person executing the same or the person's assistant to remain on the premises during the interval between such distress and sale, whether such authority is expressed or not in the warrant.

(2) The exercise of the powers conferred by this section do not prejudice the exercise of the power of cutting off supply conferred by any regulations made under this Act or to the institution of an action or suit in the appropriate court for the recovery of any money due, and such power may be exercised or such action or suit instituted whether or not application has been made for a warrant under the provisions of this section.

Exemptions from provisions of Act

60. The Minister may exempt from any or all of the provisions in Parts 3 and 4 or any regulations made under this Act—

- (a) any installation, or part thereof, owned by or worked by or on behalf of the public electricity supplier;
- (b) any installation, or part thereof, constructed before 21 June 1966; or
- (c) any other particular class of installation or apparatus,

and may by similar notification cancel any exemption so notified.

Repeal

61.—(1) The Electricity Act 1966 and the Electricity Regulations 1968 are repealed.

(2) Notwithstanding subsection (1), any matter relating to the electricity industry, that is pending before the Minister or the FEA as regulator under the Electricity Act 1966 as at

the commencement date, or the relevant part thereof, will be transferred to the Regulator for resolution in accordance with the procedures established by this Act, subject to any modifications that the Regulator may deem appropriate and efficient, depending on the status of each case.

Special provisions—existing providers in the electricity industry

62.—(1) A person that immediately before the commencement date, was lawfully generating, transmitting, distributing or retailing electric power may continue to do so without a licence under this Act for up to 6 months following the commencement date, if within that period the person complies with subsection (3).

(2) A person that immediately before the commencement date, was lawfully engaged in generation or large-scale self-supply of electricity, may continue to do so for the 6-month period following the commencement date, if within that period the person complies with subsection (3).

(3) A person to whom subsection (1) or (2) applies may be granted a transmission, distribution licence or supply licence or a generation licence, as the case may be, if, within the period specified in subsection (1) or (2), as applicable, that person —

- (a) pays the authorisation fees required under the new licence, if any;
- (b) submits the information and documents required under the Act to the extent and in the manner required by written instructions from the Regulator; and
- (c) submits any further information reasonably requested under paragraph (b).

(4) Where immediately before the commencement date, a person was lawfully generating electric power as a distributed generator under the authority of a valid contract with the FEA, if any, that person may continue to do so without a standard contract —

- (a) for a period of 6 months from the commencement date; and
- (b) if, before the expiration of that period, the person seeks the approval of the Regulator for a standard contract.

(5) For the purposes of subsection (4)(b), the Regulator may require modifications to any prior agreement in order to bring such contract into conformity with this Act.

(6) The Minister may, by order, extend the time period imposed pursuant to this section for further periods not exceeding 12 months in aggregate to enable compliance.

Consequential amendments

63. The Commerce Commission Act 2010 is amended by —

- (a) in section 2, inserting the following new subsection after subsection (2) —

“(3) Where the Commission has become the primary regulator of named industries and provides the service of an independent regulator to any such industry following the appointment by ministerial direction, the Commission is responsible for achieving the objectives set out in any relevant sectoral legislation.”;

(b) in section 3, inserting the following new subsections **after subsection (3)**—

“(4) Where the Commission ~~has become~~ **is appointed** the Regulator under the Electricity Act 2017, the relationship between this Act and the Electricity Act 2017 is that—

- (a) the Electricity Act 2017 is sectoral legislation intended to have primacy over the matters to which it relates;
- (b) to the extent possible, this Act must be construed consistently with the provisions of the Electricity Act 2017; and
- (c) in the event of an irreconcilable conflict between this Act and the Electricity Act 2017, the Electricity Act 2017 prevails.

(5) In terms of the relationship to other sectoral industries which the Commission may be appointed to regulate—

- (a) to the extent that sectoral legislation is enacted, it is intended to have primacy over the matters to which it relates;
- (b) to the extent possible, this Act must be construed consistently with the provisions of the relevant sectoral legislation; and
- (c) in the event of an irreconcilable conflict between the this Act and the relevant sectoral legislation, the latter prevails.”;

(c) **in section 4(1) in the definition of “rent”, deleting “Electricity Act 1966” and substituting “Electricity Act 2017”;**

(**ed**) in section 5, inserting the following new subsections **after subsection (3)**—

“(4) A Minister may, by direction, appoint the Commission as a regulator to monitor and regulate industries and whose function, authority and powers will be enshrined and prescribed by the relevant legislation and regulations underpinning the regulated industry.

(5) **Where the Commission is appointed the Regulator under the Electricity Act 2017, T**the Commission is to take on the role of the Regulator as fully detailed in the Electricity Act 2017 with all the rights, duties, obligations and powers as prescribed in the Electricity Act 2017.”;

(**de**) in section 15(1), inserting the following new paragraph after paragraph (m)—

“(ma) to issue authorisations and approvals by way of licences for the provision of goods and services in regulated industries to which the functions, authority and powers are granted by the legislation and regulations underpinning any regulated industry to which it is to become the principal regulator;”;

(*ef*) in section 44, deleting subsection (1) and substituting the following—

“(1) The Commission may, by order, fix and determine minimum and maximum prices or charges by any person (including the State, authority and regulated industries) in the course of business for the sale of goods or performance of services either generally or in any specified part of or place in Fiji.

(1A) The Commission’s function, authority and power to order, fix and determine minimum and maximum prices or charges will be enshrined and prescribed in the relevant legislation that governs the course of business and regulated industries and the licensed undertakings or businesses to which such prices, charges or terms of business apply.”; and

(*fg*) in section 158(1)—

- (i) deleting “The Minister may make regulations not inconsistent with this Act” and substituting “The Minister may, in consultation with the Commission, make regulations”; and
- (ii) deleting paragraphs (*a*) and (*b*) and substituting the following—

“(a) prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the objectives and purposes of this Act;”

SCHEDULE 1
(Section 2)

RULES FOR DETERMINING PRICE OF ELECTRICITY

1. The costs of production of a supply of electricity to or by the public electricity supplier is deemed to be the costs of production of electricity at the selected generating station.

2. The costs of production of electricity at a selected generating station will be ascertained by calculating the following costs, charges and allowances in respect of the year of account—

- (a) the sums expended for fuel, oil, water and stores consumed, for salaries, wages, and any contribution for pensions, superannuation and insurance of officers and servants, for repairs and maintenance, and for renewals not chargeable to capital account;
- (b) the sums paid as rents, rates and taxes (other than taxes on profits) and for insurance in respect of the station;
- (c) the proper proportion of management and general establishment charges attributable to the station;
- (d) any other expenses on revenue account attributable to the station;
- (e) interest (exclusive of interest payable out of capital) on money properly expended for capital purposes (whether defrayed out of capital or revenue) and attributable to the generating station and the plant suitable to and used for the purpose of generating electricity therein, and interest on working capital properly attributable to the station and the production of electricity therein and for the purposes of this subparagraph, the rate of interest will be—
 - (i) where the owner of a selected station is a City Council, Town Council or District Council, the average rate payable on the money raised by such council for the purpose;
 - (ii) where the owner of the station is a company, the average rate of dividends and interest paid by the company on its share and loan capital during the preceding year, provided that the rate must not be less than 5 nor more than 6.5 % per annum;
- (f) such other items and costs as may be deemed appropriate by the Regulator.

3. The costs of production ascertained in accordance with the provisions of paragraph 2 will be allocated as between fixed costs and running costs in accordance with such regulations as the Regulator, on behalf of the Minister, may prescribe.

4.—(1) One-twelfth of the amount of the fixed costs in the year of account, divided by the average of the monthly maximum demands in that year, must, subject to adjustment according to power factor in accordance with such regulations as the Minister may prescribe, be the fixed kilowatt charges component.

(2) For the purposes of this paragraph, the maximum demand in respect of any month is deemed to be twice the largest number of units of electricity supplied from the generating station during any consecutive 30 minutes in that month, provided that if the number of kilowatts of maximum demand ascertained for any particular month is less than the number of kilowatts of maximum demand for any previous month of the same year of account, the higher number will be taken as the maximum demand for the first mentioned month.

5. The amount of the running costs divided by the number of units supplied from the generating station during the year of account determines the running charges component.

6.—(1) The price to be paid is the sum of the following items—

- (a) the number of kilowatts of maximum demand in each month of the year of account multiplied by the fixed kilowatt charges component;
- (b) the number of units supplied during the year of account multiplied by the running charges component.

(2) For the purposes of this rule, the number of kilowatts of maximum demand for any month is deemed to be twice the largest number of units of electricity supplied during any consecutive 30 minutes in that month, provided that, if the number of kilowatts of maximum demand so ascertained will be less than the number of kilowatts of maximum demand in any previous month of the same year of account, payment may be made on the higher number.

7. The licence condition, in addition to paragraph 3 of this Schedule, may prescribe detailed rules for determining any charges that may apply.

8. The Regulator is entitled to modify costs in the event that the public electricity supplier or any relevant licensee is either providing efficient services, at, or below the expected standard of a reasonable and prudent operator in the provision of generation, transmission, supply, system operations and wholesale market operations. It is anticipated that good service would have price enhancement and poor service a reduction.

SCHEDULE 2

(Section 2)

RULES FOR DETERMINING AUTHORISED
CHARGES FOR USE OF SUPPLY LINES

1. Subject to the provisions of paragraph 2, (provided that the licensee has acted in accordance with reasonable and prudent operating standards and relevant licence conditions), the following are the charges and allowances to be paid in respect of the use of a main supply line—

- (a) the actual cost of the maintenance of the supply line including renewals thereof not chargeable to the capital account;
- (b) sums paid as rents, rates and taxes (other than taxes on profits) and for insurance in respect of the supply line;
- (c) a proper proportion of management and general establishment charges attributable to the supply line;
- (d) where electricity is purchased or received by the public electricity supplier from the owners of the supply line, subject to the provisions of paragraph 2, the cost of electricity lost in the course of transmission through the supply line;
- (e) any other expenses on revenue account reasonably attributable to the supply line;
- (f) interest on money properly expended for capital purposes (whether defrayed out of capital or revenue) and attributable to the supply line, and on such working capital as is properly attributable to the supply line at the following rates, that is to say—
 - (i) where the owner of the supply line is a City Council, Town Council or District Council, the average rate payable on the money raised by such council for the purpose of constructing the line;
 - (ii) where the owner of the supply line is a company, the average rate of dividends and interest paid by such company on its share and loan capital during the preceding year, provided that the rate must not be less than 5 nor more than 6.5 % per annum;
- (g) an allowance for depreciation,

provided that where the owner of the main supply line also uses such line, the charges and allowances are the proper proportion of the charges and allowances specified in this paragraph.

2. Where the public electricity supplier—

- (a) receives a supply of electricity from a supply line owned by a licensee, the supply line used by the public electricity supplier is deemed to be the supply line from the nearest generating station owned by such licensee to the point of connection of such supply line with the public electricity supplier's distribution system, provided that, where the nearest generating station is not capable of supplying etc all the electricity supplied to the public electricity supplier from such supply line, the amount of electricity so supplied in excess of the amount of electricity which the nearest generating station is capable of supplying is deemed to have been supplied from the next nearest generating station owned by such licensee, and, to the extent of such excess, the supply line from such next nearest generating station to the point of connection with the public electricity supplier's distribution system is deemed to be the line used by the public electricity supplier; and
- (b) receives and undertakes to supply an equivalent supply of electricity, the charges and allowances are limited to the cost of electricity lost in transmission, and that cost is deemed to be the additional cost of electricity lost in transmission, if any, incurred by the owners of the selected station over the cost of electricity lost in transmission which would have been incurred by the owners of the selected station had the owners of the selected station not sold such supply to the public electricity supplier.

SCHEDULE 3
(Section 24)

PUBLIC ELECTRICITY SUPPLY CODE

Recovery of electricity charges etc

1.—(1) Subject to subparagraph (2), a public electricity supplier may recover from a tariff customer any charge due to the public electricity supplier in respect of the supply of electricity, or in respect of the provision of any electricity meter, electric line or electrical plant.

(2) A public electricity supplier who, for the purpose of meeting the needs of a person with disabilities—

- (a) alters the position of any electricity meter which has been provided by the public electricity supplier; or
- (b) replaces such a meter with one which has been specially adapted,

must not make any charge for the alteration or replacement.

(3) If a tariff customer vacates any premises at which electricity has been supplied to the tariff customer by a public electricity supplier without giving notice thereof to the public electricity supplier so that it is received by the public electricity supplier at least 2 working days before the tariff customer vacates the premises, the tariff customer is liable to pay the public electricity supplier all charges in respect of the supply of electricity to the premises accruing up to whichever of the following occurs first, namely—

- (a) the second working day after the tariff customer gives such notice to the public electricity supplier;
- (b) the next working day on which the register of any meter falls to be ascertained; and
- (c) the working day on which any subsequent occupier of the premises requires the public electricity supplier to supply electricity to the premises.

(4) Subparagraph (3), or a statement of the effect thereof, must be endorsed upon every demand note for electricity charges payable to a public electricity supplier by a tariff customer.

(5) If a tariff customer vacates any premises at which electricity has been supplied to the tariff customer by a public electricity supplier without paying all charges due from the tariff customer in respect of the supply, or the provision of any electricity meter, electric line or electrical plant for the purposes of the supply, the public electricity supplier—

- (a) may refuse to furnish the tariff customer with a supply of electricity at any other premises until the tariff customer pays the amount due; but
- (b) is not entitled to require payment of that amount from the next occupier of the premises.

(6) If a tariff customer has not, within the requisite period, paid all charges due from the tariff customer to a public electricity supplier in respect of the supply of electricity to any premises, or the provision of any electricity meter, electric line or electrical plant for the purposes of that supply, the public electricity supplier, after the expiration of not less than 2 working days' notice of the public electricity supplier's intention, may—

(a) cut off the supply to the premises, or to any other premises occupied by the tariff customer, by such means as the public electricity supplier thinks fit; and

(b) recover any expenses incurred in so doing from the tariff customer.

(7) In subparagraph (6), “requisite period” means—

(a) in the case of premises which are used wholly or mainly for domestic purposes, the period of 20 working days after the making by the public electricity supplier of a demand in writing for payment of the charges due; and

(b) in the case of any other premises, the period of 15 working days after the making of such a demand.

(8) The powers conferred by subparagraph (6) are to be exercisable in respect to any amount which is genuinely in dispute.

(9) In this paragraph, a reference to the provision of any electric line or item of electrical plant is a reference to the provision of such a line or item by the installation of a new one or by the modification of an existing one.

Restoration of supply by public electricity supplier

2.—(1) Where a public electricity supplier has cut off the supply of electricity to any premises in consequence of any default on the part of a tariff customer, the public electricity supplier must resume the supply of electricity before the end of the period of 2 working days from the day the requirements of subparagraph (2) are satisfied.

(2) A tariff customer in default is entitled to the resumption of the supply of electricity if the tariff customer—

(a) makes good the default;

(b) pays the reasonable expenses of disconnecting and reconnecting the supply; and

(c) gives such security as may reasonably be required under the Act.

(3) The obligation imposed on the public electricity supplier by subparagraph (1) is a duty owed to any person who may be affected by a failure to comply with the obligation.

(4) Where a duty is owed by virtue of subparagraph (3) to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person.

(5) In any proceedings brought against a public electricity supplier under subparagraph (4), it is a defence for the public electricity supplier to prove that the public electricity supplier took all reasonable steps and exercised all due diligence to avoid failing to comply with the obligation imposed by subparagraph (1).

(6) Without prejudice to any right which any person may have by virtue of subparagraph (4) to bring civil proceedings in respect of any failure to comply with the obligation imposed by subparagraph (1), compliance with that obligation is enforceable by civil proceedings by the Regulator for an injunction or for any other appropriate relief.

Restoration of supply without consent

3.—(1) Where a supply of electricity to any premises has been cut off by a public electricity supplier otherwise than in the exercise of a power conferred by regulations under section 29, no person may, without the consent of the public electricity supplier, restore the supply.

(2) Any person who contravenes subparagraph (1) commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both, and the public electricity supplier may again cut off the supply.

Damage to electrical plant etc

4.—(1) If any person intentionally or by culpable negligence damages or allows to be damaged—

- (a) any electrical plant or electric line; or
- (b) any electricity meter,

belonging to a public electricity supplier, the person commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

(2) Where an offence has been committed under subparagraph (1)(a), the public electricity supplier may discontinue the supply of electricity to the person so offending until the matter has been remedied.

(3) Where an offence has been committed under subparagraph (1)(b), the public electricity supplier may—

- (a) discontinue the supply of electricity to the person so offending until the matter has been remedied; and
- (b) remove the meter relating to the offence that was committed.

(4) Where a public electricity supplier removes a meter under subparagraph (3), the public electricity supplier must keep it safely until the Regulator authorises the public electricity supplier to destroy or otherwise dispose of it.

Entry during continuance of supply

5.—(1) Subject to subparagraphs (2) and (3), any officer authorised by a public electricity supplier may at all reasonable times, on the production of some duly

authenticated document showing the officer's authority, enter any premises to which a supply of electricity is being given by the public electricity supplier, or by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, for any of the following purposes, namely—

- (a) inspecting any electric line or electrical plant belonging to the public electricity supplier;
- (b) ascertaining the register of any electricity meter and, in the case of a prepayment meter, removing any money or tokens belonging to the public electricity supplier; or
- (c) removing, inspecting or reinstalling any electricity meter or installing any substitute meter.

(2) Except where a supply of electricity is being given to the premises by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, subparagraph (1)(a) and (b) does not apply if—

- (a) the consumer has applied in writing to the public electricity supplier for the public electricity supplier to cease to supply electricity to the premises; and
- (b) the public electricity supplier has failed to do so within a reasonable time.

(3) Subparagraph (1)(c) does not apply in relation to the removal of a meter unless 2 working days' notice is given to the occupier or the owner of the premises which is unoccupied.

Entry on discontinuance of supply

6.—(1) Where a public electricity supplier is authorised by paragraph 4(3) to—

- (a) discontinue the supply of electricity to any premises; and
- (b) remove the electricity meter relating to the offence that was committed under paragraph 4(3),

any officer authorised by the public electricity supplier may at all reasonable times, on production of some duly authenticated document showing the officer's authority, enter the premises for the purpose of disconnecting the supply and removing the meter.

(2) Where—

- (a) a public electricity supplier is authorised by any other provision of this Act or of regulations made under it to cut off or discontinue the supply of electricity to any premises;
- (b) a person occupying premises supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, ceases to require such a supply;

- (c) a person entering into occupation of any premises previously supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, does not require such a supply; or
- (d) a person entering into occupation of any premises previously supplied with electricity through a meter belonging to a public electricity supplier does not hire or borrow that meter,

any officer authorised by the public electricity supplier, after one working days' notice to the occupier, or to the owner of the premises which is unoccupied, may at all reasonable times, on production of a duly authenticated document showing the officer's authority, enter the premises for the purpose of disconnecting the supply or removing any electrical plant, electric line or electricity meter.

Entry for replacing, repairing or altering lines or plant

7.—(1) Any officer authorised by a public electricity supplier, after 5 working days' notice to the occupier of any premises, or to the owner of any premises which is unoccupied, may at all reasonable times, on production of a duly authenticated document showing the officer's authority, enter the premises for the purpose of—

- (a) placing a new electric line or new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or
- (b) repairing or altering any such existing line or plant.

(2) In the case of an emergency arising from faults in any electric line or electrical plant, entry may be made under subparagraph (1) without the required notice provided that the notice must be given as soon as possible after the occurrence of the emergency.

Provisions as to powers of entry

8.—(1) Where pursuant to any powers of entry conferred by this Schedule, entry is made on any premises by an officer authorised by a public electricity supplier—

- (a) the officer must ensure that the premises is left no less secure by reason of the entry; and
- (b) the public electricity supplier must make good, or pay compensation for, any damage caused by the officer, or by any person accompanying the officer in entering the premises, in taking any action therein authorised by this Schedule, or in making the premises secure.

(2) Any officer exercising powers of entry conferred by this Schedule may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of subparagraph (1).

(3) If any person intentionally obstructs any officer exercising powers of entry conferred by this Schedule, the person commits an offence and is liable upon conviction to a fine prescribed by regulations or to a term of imprisonment prescribed by regulations, or both.

Electrical plant etc not to be subject to distress

9. Any electrical plant, electric line or electricity meter owned by or let for hire or lent to a consumer of electricity by a public electricity supplier and marked or impressed with a sufficient mark or brand indicating the public electricity supplier as the owner thereof—

- (a) is deemed not to be landlord's fixtures, notwithstanding that they may be fixed or fastened to any part of the premises in which they may be situated; and
- (b) will not be subject to distress or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession they may be.

ELECTRICITY BILL 2017

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Electricity Bill 2017 (**‘Bill’**) is a result of Government’s intention to corporatise the Fiji Electricity Authority (**‘FEA’**) and create a company (**‘Company’**) that will be registered under the Companies Act 2015. The Company will subsequently be partially divested.
- 1.2 Under the Electricity Act 1966 (**‘Electricity Act’**), the FEA is currently enjoying monopolistic status in the retail, transmission and distribution of electricity in Fiji. Additionally, the FEA also performs regulatory functions of approval of licences and compliance with safety standards. A key feature of this Bill is the proposed regulatory reform in the electricity industry of Fiji.
- 1.3 Given the proposed partial divestment, it is not appropriate for the Company to regulate the electricity industry or to issue electricity related licences. The objective of establishing an independent regulator (**‘Regulator’**) is to deregulate the electricity industry and to further enhance Government’s policy for good governance, transparency and accountability.
- 1.4 The primary roles and responsibilities of the Regulator will be to issue licences in relation to retail, generation, transmission and distribution of electricity, to determine tariffs and price methodology for electricity and the administration, enforcement and regulation of the electricity industry.
- 1.5 The Bill includes consequential amendments to the Commerce Commission Act 2010 (**‘Commerce Commission Act’**) to give effect to the proposed role of the Fiji Commerce Commission (**‘Commission’**) as the Regulator.

2.0 CLAUSES

- 2.1 Part 1 of the Bill provides for the preliminary provisions such as the short title, commencement, interpretation, application and objectives provisions.

- 2.2 Part 2 of the Bill provides for the establishment of the Regulator. It also provides for the functions and duties of the Regulator and the Minister which include the issuance of electricity related licences, and their modification if the need arises. Part 2 also prescribes the Regulator's function in relation to setting tariffs and price methodology for electricity, and the general administration and regulation of the electricity industry. This Part of the Bill also outlines the procedure for the determination of disputes and the validity and effect of orders made by the Regulator. It also empowers the Minister to make regulations relating to supply and safety.
- 2.3 Part 3 of the Bill provides for the acquisition of land for the purposes of the supply of electricity. Additionally, Part 3 deals with the acquisition by the public electricity supplier of the installations of a licensee and the compensation payable.
- 2.4 Part 4 of the Bill sets out general provisions to provide general elements of the Bill. These include powers to make inspections, procedures relating to installations, precautionary work measures, offences and compensation for damages etc.
- 2.5 Part 5 of the Bill empowers the Regulator, with the approval of the Minister, to make regulations. It also empowers the Minister to prescribe penalties for any offences to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years, or both.
- 2.6 Part 6 of the Bill provides for the repeal of the Electricity Act and the Electricity Regulations 1968. It also provides for the recovery of money due for the electricity supplied by the public electricity supplier and empowers the Minister to make exemptions from any provision in Parts 3 and 4 of the Bill. Furthermore, Part 6 provides for the transitional provisions and consequential amendments to the Commerce Commission Act to enable the Commission to perform the functions of the Regulator.
- 2.7 Schedule 1 to the Bill provides for the rules for determining the price of electricity while Schedule 2 to the Bill provides for the rules for determining authorised charges for the use of supply lines. Schedule 3 to the Bill outlines the Public Electricity Supply Code.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new Act comes under the responsibility of the Minister responsible for the administration of the Act.

A. SAYED-KHAIYUM
Attorney-General