

Hon. Mark Brown



Utilities Regulation (Electricity, Water, and Sewerage Services) Bill 2023

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An Act to repeal the Energy Act 1998 and to provide for the regulation of the providers of utility services in the Cook Islands.

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Utilities Regulation (Electricity, Water, and Sewerage Services) Act 2023.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the assent of the King's representative.
- 3 Repeal**
The Energy Act 1998 is repealed.

Part 1

Preliminary matters

- 4 Purpose**
The purpose of this Act is to provide for the licensing and regulation of electrical workers and for regulation of the providers of utility services in the Cook Islands, including providers of electricity, water and sewerage services, and for related purposes.
- 5 Interpretation**
(1) In this Act, unless the context otherwise requires—
adjudicator has the meaning given in section 67(2)
associated person has the meaning given in section 28(4)
Authority means the authority established under the Competition and Regulatory Authority Act 2019
Consumer Protection Code has the meaning given in section 17(1)
Community Service Direction means a direction given under section 63(1)
Court means the High Court of the Cook Islands
customer equipment means any equipment that is intended to be connected to a utility network but does not include equipment that is intended to be used within the boundaries of a utility network
Disaster Plan has the meaning given in section 69(1)
disciplinary powers means the powers of the Authority under section 56
electrical inspector means a person appointed as such under section 51
electrical work has the meaning given in the Energy Regulations 2006 or regulations made subsequently under this Act
electrical worker means a person carrying out electrical work
electricity network means any of the infrastructure referred to in paragraph (a) that is used, or is intended for use, in relation to the purpose referred to in paragraph (b)—
(a) the infrastructure consists of—
(i) generators; poles; ducts; cables; conductors; {insert}; or
(ii) any other thing ancillary to any other part of the infrastructure;
(b) the purpose is the provision of electricity services by a person to premises of another person

electricity service means {the generation, transmission, and distribution} of electricity by means that include an electricity network

end-user means a person who is the ultimate recipient of a utility service or of another service the provision of which is dependent on that utility service

exempt network has the meaning given in Schedule 2

exempt service has the meaning given in Schedule 2

market means a market in or including the Cook Islands for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is responsible for the administration of this Act

network equipment means equipment used in a utility network and excludes customer equipment

prohibited equipment means any equipment prohibited under section 60

service charge means the amount payable by a customer for a utility service, whether specified as a price, or rate, or calculated in accordance with a formula, or otherwise

Service Pricing Principles mean principles made under section 39

Service Rates Determination has the meaning given in section 42(1)

Service Rates Review has the meaning given in section 40(1)

service quality indicator means an indicator under section 13

sewerage network means any of the infrastructure referred to in paragraph (a) that is used, or is intended for use, in relation to the purpose referred to in paragraph (b)—

- (b) the infrastructure consists of—
 - (i) sewerage storages, trunk sewers, mains, and treatment plants;
 - (ii) pumps, facilities, and equipment for conveying sewage, or monitoring or controlling the conveyance of sewage;
 - (iii) pipes or equipment;
 - (iv) any other thing ancillary to any other part of the infrastructure;
- (c) the purpose is the provision of sewerage services by a person to premises of another person

sewerage service means the conveyance, collection, treatment and disposal of sewage by a person from the premises of another person by means that include a sewerage network

transitional period has the meaning given in section 78

utility licence means a licence issued or deemed to have been issued under section 22(1)

utility network means any of the following—

- (d) an electricity network;
- (e) a sewerage network;
- (f) a water network;
- (g) a network declared by the Minister to be a utility network, by notice published in the *Gazette*

utility service means any of the following—

- (a) electricity services;
- (b) sewerage services;
- (c) water services;
- (d) a service declared by the Minister to be a utility service, by notice published in the *Gazette*

utility service provider means any person who provides or offers to provide a utility service in the Cook Islands

voting control has the meaning given in section 28(4)

water network means any of the infrastructure referred to in paragraph (a) that is used, or intended for use, in relation to any of the purposes referred to in paragraph (b)—

- (a) the infrastructure consists of—
 - (i) water storage, mains, and treatment plants;
 - (ii) pumps, facilities, and equipment for distributing water, or monitoring or controlling the distribution of water;
 - (iii) pipes or equipment;
 - (iv) any other thing ancillary to any other part of the infrastructure;
- (b) the purposes are—
 - (i) the collection and treatment of water for distribution by a person to premises of another person;
 - (ii) the distribution of water by a person for supply to premises of another person

water service means any of the following—

- (a) the collection or treatment of water, or both, for distribution through a water network;
 - (b) the distribution of water through a water network;
 - (c) the supply of water from a water network to premises for consumption;
 - (d) connection of a water supply;
 - (e) making a water network available for the distribution or supply of water or connection of a water supply.
- (2) To exclude doubt, none of the following are utility services—
- (a) broadcasting, as defined in section 2 of the Broadcasting Act 1989;
 - (b) radiocommunications, as defined in the Telecommunications Act 2019;
 - (c) telecommunications, as defined in the Telecommunications Act 2019;
 - (d) postal services;
 - (e) a service that is an exempt service or that is provided by means of an exempt network; and
 - (f) a service declared by the Minister not to be a utility service, by notice published in the *Gazette*.
- (3) If a provision of this Act and a provision of the Competition and Regulatory Authority Act 2019 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.

- 6 Act binds the Crown**
This Act binds the Crown.

Part 2 Authority

- 7 Competition and Regulatory Authority**
- (1) The Authority has the functions and powers conferred by or under this Act.
- (2) In exercising any power or performing any function under Parts 3, 4, 5, 6, 8, 9 or 10 of this Act, the Authority must have regard to the long term benefit of end-users in accordance with subsection (3).
- (3) The long term benefit of end-users will be promoted by:
- (a) efficient pricing and use of, and sustainable investment in, utility networks:
 - (b) innovation in, and in the use of, utility networks and utility services:
 - (c) outcomes for end-users in the Cook Islands that match or exceed those for end-users in comparable countries:
 - (d) effective and fair competition in the supply of utility services:
 - (e) efficient use of scarce resources required for utility networks and utility services:
 - (f) equitable access to utility services for end-users within the boundaries of a utility network:
 - (g) fair and transparent dealing between utility service providers and end-users.
- (4) In exercising any power or performing any function under Part 7 of this Act, the Authority must have regard to the safety of users of utility services in the Cook Islands.

Part 3 Competition and consumer protection

Subpart 1– Competition

- 8 Anti-competitive conduct**
- (1) A person must not engage in a practice or enter into a contract, arrangement, or understanding that has the effect or is likely to have the effect of substantially lessening competition in any market for a utility service, unless an authorisation under section 10 applies.
- (2) A practice or a contract, arrangement, or understanding is presumed, unless the contrary is proved, to have the effect of substantially lessening competition in a market for a utility service if it directly or indirectly–
- (a) fixes or controls the price or other terms on which a utility service is offered, where any 2 or more of the parties to that contract, arrangement, or understanding are in competition with each other; or
 - (b) shares, apportsions or divides up the market in a way that prevents or restricts any of the parties from competing with any 1 or more of the

other parties to the practice or contract, arrangement, or understanding;
or

- (c) prevents or restricts the supply or acquisition of a utility service to or from a person or class of persons; or
- (d) requires or induces a utility service provider to refrain from supplying a utility service to another service provider; or
- (e) imposes unreasonable restrictions on whom another person may deal with in a utility market; or
- (f) involves supply of a utility service at a price that is below a relevant measure of its cost for a substantial period of time such that a reasonably efficient competitor would be reasonably likely to be driven from a utility market, except where the person engaging in that conduct shows that it was commercially reasonable to do so in order to respond to price competition from rival suppliers; or
- (g) involves the adoption of technical specifications or standards with the purpose of preventing or hindering interoperability with another utility service provider's network or services.

9 Non-discrimination

- (1) A utility service provider must not discriminate between persons to whom it offers a utility service or customer equipment in the terms and conditions on which it offers that utility service or customer equipment, except—
 - (a) on commercially reasonable grounds which it can substantiate; or
 - (b) in accordance with an authorisation under section 10.
- (2) If a utility service provider is not able to substantiate its grounds for discrimination to the reasonable satisfaction of the Authority, the Authority may require it to desist from that discrimination by notice in writing.
- (3) For the purposes of subsection (1), commercially reasonable grounds might include, without limitation, the necessity to manage supply during periods of excess demand.

10 Authorisation

- (1) The Authority may, by written determination, authorise a practice, contract, arrangement, or understanding under this Part 3, if the Authority is satisfied that it—
 - (a) will in all the circumstances result, or be likely to result, in a benefit to the public; and
 - (b) the benefit would outweigh the lessening in competition that would result, or would be likely to result.
- (2) A practice, contract, arrangement, or understanding does not contravene section 8 if—
 - (a) the practice, contract, arrangement, or understanding is engaged in or entered into or given effect to within the terms and conditions of an authorisation that is in effect at the relevant time; and
 - (b) the person engaging in or entering into or giving effect to that practice, contract, arrangement or understanding complies with applicable terms and conditions of the authorisation.

11 Facilities sharing

- (1) A contract, arrangement, or understanding between utility service providers to use, own, or hold an interest together in any utilities network, or to lease or otherwise share any network equipment, does not contravene section 8.
- (2) The terms and conditions of the contract, arrangement, or understanding referred to in subsection (1) must not unreasonably preclude sharing the network equipment with other utility service providers on non-discriminatory terms and conditions.

Subpart 2 – Consumer protection

12 Misleading or deceptive conduct

A utility service provider must not make or cause to be made any claim or representation concerning its services, facilities, network, or equipment, or those of a competing utility service provider, that is misleading or deceptive or likely to mislead or deceive.

13 Service quality indicators

- (1) The Authority may, by written determination, require a service provider to—
 - (a) establish performance indicators for assessing the quality of any particular utility service offered to retail customers, including a specified method by which those indicators will be assessed; and
 - (b) submit proposed indicators, or proposed changes to indicators, to the Authority for its approval; and
 - (c) make any changes to indicators that are required by the Authority; and
 - (d) report to the Authority annually (or at any intervals that the Authority may reasonably require) on its performance against the applicable indicators.
- (2) If a utility service provider fails to establish, submit or make changes to indicators in accordance with paragraphs (1)(a), (b) and (c), the Authority may determine the applicable indicators by notice in writing and the service provider must comply with those indicators.
- (3) A utility service provider that has failed to report in accordance with paragraph (1)(d), may be deemed to have materially contravened a term or condition of its licence.
- (4) If a utility service provider fails to meet an applicable indicator it must—
 - (a) within 30 days of providing the relevant performance report, provide the Authority, for its approval, a draft remediation plan to address the performance failure; and
 - (b) if the Authority directs the service provider to revise the draft remediation plan, revise it as directed by the Authority and resubmit it for approval by the Authority.
- (5) If a utility service provider fails to provide the Authority with a draft remediation plan or a revised draft remediation plan, the Authority may, by written determination, make a remediation plan to address the performance failure.

- (6) A utility service provider must comply with any remediation plan approved by the Authority under subsection (4) or made by the Authority under subsection (5).

14 Customer Service Guarantee

- (1) The Authority may, by written notice published in the *Gazette*, specify minimum customer service guarantees which utility service providers must comply with in relation to any or all of—
- (a) making arrangements with customers about the period required to connect them to specified kinds of utility services;
 - (b) the periods that service providers may offer to customers when making those arrangements;
 - (c) compliance by service providers with the terms of those arrangements;
 - (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of utility services;
 - (e) keeping appointments to meet customers, or representatives of customers, where the appointment relates to a new service connection or rectification of a fault or service difficulty;
 - (f) any other matter concerning the supply, or proposed supply, of a utility service to a customer.
- (2) Before specifying any customer service guarantee under this section, the Authority must cause to be published a draft version of the proposed customer service guarantee and consult on it by—
- (a) giving notice of the proposed customer service guarantee in a manner the Authority considers appropriate to bring it to the attention of persons that the Authority considers likely to be affected by it; and
 - (b) allowing affected parties a reasonable opportunity to make comments on the proposed customer service guarantee; and
 - (c) considering all relevant comments received during the period for consultation.
- (3) A customer service guarantee must specify a scale of compensation for contraventions, including—
- (a) categories of contraventions; and
 - (b) the amount of compensation payable for a contravention in each of those categories, which must not exceed \$5,000.
- (4) If a utility service provider has contravened an applicable service guarantee, it must pay compensation to the customer in the amount specified in the scale under subsection (3) for a contravention of the relevant category.
- (5) A claim for compensation under this section must be instituted within 6 months after the customer became aware or ought reasonably to have become aware of the circumstances giving rise to the claim.
- (6) A customer may recover any compensation to which the customer is entitled under this section by action against the utility service provider, within 6 months after the customer became aware or ought reasonably to have become aware of the circumstances giving rise to the claim, in the Court.

15 Standard terms

- (1) A utility service provider must ensure that the standard terms and conditions on which it offers services to end-users are—
 - (a) fair and reasonable; and
 - (b) expressed in plain language.
- (2) A utility service provider must, at the time that it offers a utility service or customer equipment to end-users—
 - (a) publish on its website, and make available for inspection at its offices, the standard terms and conditions (including the price) for that service; and
 - (b) provide a copy to the Authority.
- (3) A utility service provider must, at the time that it changes any of the standard terms and conditions (including the price) on which it offers a utility service or customer equipment to end-users—
 - (a) publish on its website, and make available for inspection at its offices, the new standard terms and conditions (including the price) for that service; and
 - (b) provide a copy to the Authority.
- (4) The terms and conditions on which a utility service or customer equipment are supplied to end-users are—
 - (a) so far as the utility service provider and the end-user agree on those terms and conditions, the agreed terms and conditions; and
 - (b) if the utility service provider and the end-user do not agree on terms and conditions but standard terms and conditions are published on the service provider's website in accordance with subsection (3), those standard terms and conditions, so far as they are applicable to the relevant supply.

16 Complaints and disputes

- (1) A utility service provider must establish a procedure for dealing with complaints from and disputes with customers that—
 - (a) is expeditious, fair and reasonable; and
 - (b) is expressed in plain language; and
 - (c) provides for remedies, including refunds and compensation where circumstances warrant; and
 - (d) is available on its public website.
- (2) An end-user who considers that a complaint or dispute has not been handled by a utility service provider in accordance with its complaints and disputes procedure may apply to the Authority for an order—
 - (a) requiring the utility service provider to consider or reconsider the complaint or dispute in accordance with its complaints and disputes policy; or
 - (b) requiring the utility service provider to provide the end-user with any form of remedy permitted by its complaints and disputes policy.
- (3) A utility service provider must, within 3 months following each anniversary of the grant of its licence, report to the Authority—

- (a) the types and number of complaints and disputes received by the service provider; and
 - (b) the manner in which they were resolved.
- (4) A utility service provider may decline to deal with any complaint or dispute that it considers on reasonable grounds to be frivolous or vexatious.

17 Consumer Protection Code

- (1) The Authority may by written determination, in consultation with the public and utility service providers, make a code for the protection of end-users' rights as consumers of utility services or customer equipment (**Consumer Protection Code**).
- (2) A Consumer Protection Code may deal with any of the following activities of a utility service provider, so far as those relate to providing or offering utility services or customer equipment to end-users—
- (a) advertising and promotion, including the offering of discounts, rebates, gifts, or incentives:
 - (b) the supply, connection and use of customer equipment, including the right of customers to use customer equipment supplied by a third party:
 - (c) the nature, extent and availability of information about the pricing, quality, features, functions, or use of (including any restrictions on use of) a utility service or item of customer equipment:
 - (d) terms which must be included in a contract for supply of a utility service, including any circumstances in which a term may be waived or modified:
 - (e) limits on the waiver of a customer service guarantee:
 - (f) the nature, extent and availability to end-users of information, by means of SMS, email alerts or online metering, regarding their usage of a utility service and the credit consumed or charges incurred in use of a utility service:
 - (g) outbound telemarketing or email marketing:
 - (h) point of sale activities:
 - (i) billing, including requirements for itemised billing, and retention of documents, instruments and papers concerning utility services and customer equipment provided to end-users:
 - (j) the circumstances in which a utility service can suspended or disconnected by a service provider, and procedures for suspension and disconnection:
 - (k) transfer of end-users between utility service providers:
 - (l) services for end-users with disabilities or serious medical conditions:
 - (m) services to low income customers or customers with poor credit worthiness:
 - (n) credit policy, including checking of credit worthiness with, or reporting credit problems to, third parties:
 - (o) complaint processes.

- (3) Before making any Consumer Protection Code under this section, the Authority must cause to be published a draft version of the proposed Consumer Protection Code and consult on it by—
 - (a) giving notice of the proposed Consumer Protection Code in a manner the Authority considers appropriate to bring it to the attention of persons that the Authority considers likely to be affected by it; and
 - (b) allowing affected parties a reasonable opportunity to make comments on the proposed Consumer Protection Code; and
 - (c) considering all relevant comments received during the period for consultation.
- (4) A utility service provider must comply with an applicable Consumer Protection Code.

Subpart 3 – Confidentiality and privacy

18 Confidential information

- (1) A utility service provider must not, except as authorised under this section use or disclose information about the affairs or particular details of a person except to the extent reasonably necessary for the purposes of conducting the service provider's business.
- (2) A utility service provider must ensure that information it uses or discloses about a person is accurate and complete for the purposes for which it is to be used.
- (3) A utility service provider must allow a person, for no charge, to inspect relevant records regarding that person and must correct or remove any information about the person that he or she shows to be incorrect.
- (4) A utility service provider must publish on its web site a statement disclosing—
 - (a) the purposes for which information about persons is used or disclosed by the utility service provider; and
 - (b) that any person is entitled to inspect relevant records regarding that person, free of charge; and
 - (c) that the utility service provider is required to correct or remove any information about a person that the person shows to be incorrect.
- (5) The Authority may, by written direction—
 - (a) prohibit or restrict the collection, use, maintenance, or disclosure of specified information relating to customers, including information about billing; and
 - (b) authorise or require the disclosure of specified information relating to customers in specified circumstances or to specified persons.
- (6) Subject to subsection (5), this section does not prohibit use or disclosure of particular information by a utility service provider if—
 - (a) the utility service provider believes on reasonable grounds that the use or disclosure of the information is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person; or
 - (b) the use or disclosure of the information is required by a lawful warrant or order of the Court or by or applicable law of the Cook Islands; or

- (c) the person to whom the information relates has consented to the disclosure or use in the circumstances concerned.

Subpart 4 –Industry Codes

19 Industry Codes

- (1) The Authority may by written determination, in consultation with the public and utility service providers, make a code for utilities service providers (**Industry Code**) setting out required practices, standards, and other matters relevant to the provision of a utility service.
- (2) Without limiting subsection (1), an Industry Code may deal with any of the following—
 - (a) the boundaries of a utility network;
 - (b) connection services;
 - (c) service standards;
 - (d) the protection of customers and consumers;
 - (e) the handling and resolution of complaints by customers and consumers;
 - (f) the metering of utility services;
 - (g) the provision of utility services generally;
 - (h) termination or suspension of utility services;
 - (i) disconnections from a utility network;
 - (j) arrangements between utility service providers concerning the use of a utility network;
 - (k) the development of a utility network.
- (3) Before making any Industry Code under this section, the Authority must cause to be published a draft version of the proposed Industry Code and consult on it by—
 - (a) giving notice of the proposed Industry Code in a manner the Authority considers appropriate to bring it to the attention of persons that the Authority considers likely to be affected by it; and
 - (b) allowing affected parties a reasonable opportunity to make comments on the proposed Industry Code; and
 - (c) considering all relevant comments received during the period for consultation.
- (4) The Authority may have regard to any failure to comply with an Industry Code when performing a function or exercising a power under this Act or the Competition and Regulatory Authority Act 2019.
- (5) A utility licence may include a condition requiring the licensee to comply with an applicable Industry Code or specific provisions of an applicable Industry Code.

Part 4

Utility Licensing

20 Requirement for a utility licence

- (1) Subject to subsection (2), a person must not construct, own, or operate a utility network or provide a utility service in the Cook Islands except in accordance with a utility licence issued by the Authority.
- (2) No utility licence is required—
 - (a) during the transitional period; or
 - (b) to construct, own, or operate any network that is an exempt network; or
 - (c) to provide any service that is an exempt service.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to—
 - (a) in the case of an individual, a fine not exceeding {\$20,000}, or imprisonment for a term not exceeding {24 months}, or both; or
 - (b) in any other case, a fine not exceeding {\$150,000}.

21 Application for utility licence

- (1) A person may apply in writing to the Authority for a utility licence of the type specified in the application—
 - (a) in a form approved by the Authority; and
 - (b) providing all information the Authority may reasonably require; and
 - (c) on payment of the prescribed fee, if any.
- (2) The Authority may, by notice published on its public website, specify—
 - (a) the types of utility licence available; and
 - (b) criteria for eligibility for issuance of each type of utility licence; and
 - (c) the process for applying for a utility licence; and
 - (d) the information required in support of an application for each type of utility licence; and
 - (e) the fees, if any, payable under regulations.

22 Authority may issue utility licences

- (1) The Authority may issue a utility licence authorising a person to construct, own, or operate a utility network, or to provide a utility service, or both.
- (2) The Authority must have regard to any applicable Utility Licensing Rules when determining whether to issue a licence under subsection (1).
- (3) If the Authority refuses to issue a licence to an applicant, the Authority must provide its reasons in writing to the applicant.
- (4) A decision by the Authority to refuse to issue a utility licence is reviewable by a Review Panel constituted under the Competition and Regulatory Authority Act 2019, on application by the licence applicant.

23 Utility Licensing Rules

- (1) The Minister may, acting on the advice of the Authority, make rules in relation to all or any of the following—
 - (a) the types of utility licence that may be issued and eligibility criteria:

- (b) technical requirements applying to the construction or operation of utility network or the provision of a utility service;
 - (c) requirements for the purposes of national security, law enforcement or revenue protection relating to the design, construction, and maintenance of utility network or the provision of utility services;
 - (d) the transfer of a utility licence;
 - (e) conditions the Authority must include in particular kinds of utility licences.
- (2) Before making any rules under this section, the Minister must cause to be published a draft version of the proposed rules and consult on them by—
- (a) giving notice of the proposed rules in a manner the Minister considers appropriate to bring them to the attention of persons that the Minister considers likely to be affected by them; and
 - (b) allowing affected parties a reasonable opportunity to make comments on the proposed rules; and
 - (c) considering all relevant comments received during the period for consultation.

24 Utility licence fees

- (1) The Authority may charge fees in relation to utility licences.
- (2) The amount of any fee chargeable under this section must be prescribed in accordance with regulations made under section 77.
- (3) The amount of any utility licence fee that may be prescribed in a regulation under section 77 is not limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to the application or right to which the fee relates.
- (4) A regulation under section 77 may provide for—
 - (a) the amount of any fee to be charged by reference to a scale set out in the regulation; and
 - (b) the payment of different fees by different persons or different classes or descriptions of person; and
 - (c) fees payable in relation to an application for a utility licence;
 - (d) fees payable on the issuance of a utility licence; and
 - (e) fees that must be paid annually or at different intervals; and
 - (f) the reduction, waiver or refund, in whole or in part, of any fee, either upon the happening of a certain event or in the discretion of the Authority.
- (5) The amount of any unpaid fee is recoverable in the Court as a debt due to the Crown.

25 Register of utility licences

- (1) The Authority must establish and maintain a register recording details about utility licences that the Authority considers necessary or convenient for the purposes of this Act.
- (2) The register must be made available to the public on the Authority's website.
- (3) The register must include—

- (a) utility service providers' names and contact details; and
 - (b) the dates of issuance and expiry of utility licences; and
 - (c) terms and conditions of utility licences.
- (4) Despite subsections (2) and (3), the Authority may exclude from the public register any details of a utility licence or utility service provider if the Authority is satisfied it would not be in the national interest (for example, for defence or security reasons) to make those details public.

26 Utility licence conditions

- (1) A utility licence issued under this Part is subject to conditions that the licensee must—
- (a) comply with this Act; and
 - (b) pay any applicable licence fees; and
 - (c) comply with any applicable determination of the Authority.
- (2) A utility licence issued under this Part may be subject to any conditions that the Authority considers are consistent with the long term benefit of end-users.
- (3) Without limiting the generality of subsection (2), the Authority may impose conditions relating to any of the following—
- (a) provision of utility services to disadvantaged persons in the Cook Islands within the boundaries of the licence holder's utility network;
 - (b) payment of money in support of (a) or (b);
 - (c) connection of the licensee's utility network with any other utility network, other infrastructure, or customer equipment;
 - (d) establishment and maintenance of information systems that are adequate to support customer billing;
 - (e) publication of charges and other terms and conditions applicable to utility services offered by the licensee;
 - (f) service quality indicators;
 - (g) technical standards or requirements, including service performance standards.

27 Transfer of utility licence

- (1) A utility service provider must not, except with the written consent of the Authority, transfer to another person—
- (a) its utility licence; or
 - (b) ownership of, or an interest in, the whole or a substantial part of its utility network; or
 - (c) beneficial ownership or voting control, either alone or with any associated person, of more than 30 percent of the voting shares in the utility service provider.
- (2) An application to the Authority for consent to a transfer must—
- (a) be submitted in writing, in the prescribed form, if any; and
 - (b) set out any information that the Authority may reasonably require; and
 - (c) be signed by authorised representatives of the licensee and transferee.
- (3) The Authority shall be deemed to have denied consent to the transfer unless—

- (a) the Authority has given consent within {40} working days after the date on which application is made under this section; or
 - (b) the Authority and the applicant have agreed to a longer period for consideration of the application.
- (4) In deciding whether to consent to a transfer, the Authority must—
- (a) comply with any applicable Utility Licensing Rules; and
 - (b) have regard to all matters that it considers relevant including the long term benefit of end-users.
- (5) The Authority must, if it consents to the transfer—
- (a) revoke the existing licence; and
 - (b) issue a new licence in the name of the transferee; and
 - (c) record the particulars of the new licence in the register.
- (6) A decision by the Authority to give or deny consent under this section is reviewable, by a Review Panel constituted under the Competition and Regulatory Authority Act 2019—
- (a) on application by the licensee, if the decision is to deny consent; or
 - (b) on application by any other person who is materially affected by the decision, if the decision is to give consent.

28 Acquisition of utility network or shares in utility service provider

- (1) A person must not, except with the written consent of the Authority, acquire from another person—
- (a) a utility licence; or
 - (b) ownership of, or an interest in, the whole or a substantial part of a utility network; or
 - (c) beneficial ownership or voting control, either alone or with any associated person, of more than 30 percent of the voting shares in a utility service provider.
- (2) If the Authority considers that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a market for a utility service, the Authority must give consent.
- (3) If the Authority considers that the proposed acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market for a utility service, the Authority must—
- (a) deny consent; or
 - (b) give consent subject to any direction that the Authority considers necessary to eliminate or avoid the effect of substantially lessening competition (with which direction the person concerned must comply); or
 - (c) give consent without making a direction under paragraph (b), if the Authority is satisfied that the proposed acquisition would have, or be likely to have, a benefit to the public and that benefit would outweigh any detriment to the public that would result, or would be likely to result, from the effect of substantially lessening competition.
- (4) For the purposes of this Part—
- (a) a person (A) is an “**associated person**” of another person (B) if—

- (i) A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 30 percent or more of the voting shares of the body corporate (or vice versa); or
 - (ii) A and B are relatives or related bodies corporate; or
 - (iii) A and B are partners in a partnership; or
 - (iv) A is a director or manager of B (or vice versa); or
 - (v) A and B are acting jointly or in concert; or
 - (vi) A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa); or
 - (vii) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa); or
 - (viii) A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons; or
 - (ix) there is another person with whom A and B are both associated persons.
- (b) **“voting control”** means the control of, or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a utility service provider—
- (i) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote; or
 - (ii) by an entitlement to exercise such a right to vote; or
 - (iii) under a duty or obligation; or
 - (iv) through a nominee; or
 - (v) through or by means of a trust, agreement, arrangement, understanding, or practice, whether based on legal or equitable rights; or
 - (vi) as a charger of voting shares.

29 Decisions on acquisitions

- (1) The Authority must, in respect of a {transaction or proposed transaction} referred to in section 28, conduct such investigation as it considers necessary to enable it to make a decision under section 28 and in doing so may use any of its powers under the Competition and Regulatory Authority Act 2019.
- (2) The Authority must, before making a decision under section 28 in relation to the proposed acquisition—
 - (a) give notice of its investigation—
 - (i) to those it considers likely to be affected by the proposed acquisition; and
 - (ii) in a manner the Authority considers appropriate for that purpose; and
 - (b) allow affected parties a reasonable opportunity to make comments on the proposed acquisition; and

- (c) consider all relevant comments received during the period for consultation.
- (3) The Authority shall be deemed to have denied consent to the acquisition unless—
 - (a) the Authority has given consent within {40} working days after the date on which application is made under this section; or
 - (b) the Authority and the applicant have agreed to a longer period for consideration of the application.

30 Variation of utility licence

- (1) The Authority may, by written notice given to the licensee, vary a utility licence if the licensee has agreed in writing to the variation.
- (2) The Authority may, by written notice given to the licensee, vary a utility licence if—
 - (a) the Authority is satisfied that the licensee has—
 - (i) materially contravened a term or condition of the utility licence or in any other way contravened this Act; or
 - (ii) materially contravened or failed to comply with a direction, determination or order lawfully made by the Authority; or
 - (iii) provided a utility service in material contravention of any other law of the Cook Islands; and
 - (b) the licensee has not remedied the contravention within a reasonable period after being notified of it by the Authority.
- (3) The Authority may, by written notice given to the licensee, vary a utility licence if the Authority is satisfied that—
 - (a) there has been a material change in circumstances since the licence was issued; or
 - (b) the variation would promote the long term benefit of end-users.
- (4) The Authority must not give a notice under subsection (3) unless the Authority has—
 - (a) given the licensee 90 days' notice of the proposed variation; and
 - (b) stated the Authority's reasons for making the proposed variation; and
 - (c) considered any representations made by the licensee.
- (5) A decision by the Authority to give a notice under subsection (3) is reviewable by a Review Panel constituted under the Competition and Regulatory Authority Act 2019, on application by the licensee.
- (6) In this section, the power to vary a utility licence includes the power to change, add or remove any term or condition.

31 Suspension, cancellation and surrender of utility licence

- (1) The Authority may, by written notice given to the licensee, suspend or cancel a utility licence if the licensee has agreed in writing to the suspension or cancellation.
- (2) The Authority may, by written notice given to the licensee, suspend a utility licence for a specified period if—
 - (a) the Authority is satisfied that the licensee has—

- (i) materially contravened a term or condition of the utility licence or in any other way contravened this Act; or
 - (ii) materially contravened or failed to comply with a direction, determination or order lawfully made by the Authority; or
 - (iii) provided a utility service in material contravention of any other law of the Cook Islands; and
 - (b) the licensee has not remedied the contravention within a reasonable period after being notified of it by the Authority.
- (3) The Authority must not give a notice under subsection (2) unless the Authority has—
- (a) given the licensee 90 days' notice of the proposed suspension; and
 - (b) stated the Authority's reasons for the proposed suspension; and
 - (c) considered any representations made by the licensee.
- (4) The Authority may, by written notice given to the licensee, cancel a utility licence without compensation to the licensee if—
- (a) the Authority is satisfied that the licensee is not, or has ceased to be, eligible to be issued a utility licence of the kind that it holds; and
 - (b) the Authority has given the licensee a reasonable opportunity to make representations to the Authority; and
 - (c) the Authority has considered any representations made by or on behalf of the licensee.
- (5) A notice under subsection (2) or (4) must set out the Authority's reasons for suspending or, if applicable, cancelling the utility licence.
- (6) The Authority may, at any time, revoke a suspension of utility licence by written notice given to the licensee.
- (7) A licensee may, at any time, surrender a utility licence issued to it, by written notice given to the Authority.

32 Expiry and renewal of utility licence

- (1) A utility licence comes into effect on the day on which it is issued or on any later day that may be specified in the licence.
- (2) A utility licence continues in effect until it is revoked by the Authority or until expiry of the term specified in the licence, which may not exceed {15 years}.
- (3) A person who held a utility licence that has expired or been revoked may apply for a new utility licence.
- (4) The Authority may issue a new utility licence to a person who held a utility licence that has expired or been revoked but is not obliged to do so.
- (5) If a utility service provider applies, not less than 6 months before the expiry of its first network operator licence for a new utility licence, the Authority must issue a new utility licence to that person unless—
- (a) the Authority is satisfied that the licensee has—
 - (i) materially contravened a term or condition of the licence or in any other way contravened this Act; or
 - (ii) materially contravened or failed to comply with a direction, determination or order lawfully made by the Authority; or

- (iii) provided a utility service in material contravention of any other law of the Cook Islands, and
- (b) the licensee failed to remedy the contravention within a reasonable period after being notified of it by the Authority.

Part 5 Tariffs

33 Utility service must be tarified

- (1) A utility service provider must not supply or offer to supply a utility service to the public unless the service is included in a tariff that has been approved by the Authority.
- (2) A utility service provider may submit to the Authority a written tariff of each service offered by the utility service provider that complies with section 34.
- (3) The Authority must review a tariff submitted to it by a utility service provider and may approve a tariff that complies with section 34.
- (4) The Authority must, within {10} working days following the submission of a tariff to it, notify a utility service provider in writing if the Authority declines to approve that tariff.
- (5) If the Authority has not given notice under subsection (4) within {10} working days following the submission of a tariff to it, approval is deemed to have been given.

34 Content of tariffs

- (1) A tariff must be in writing in a form approved by the Authority.
- (2) A tariff must state the period (in this section the “**term**”) for which it is intended to be in force, which must not begin:
 - (a) before 10 working days following submission of that tariff to the Authority; or
 - (b) before the expiry or termination of any other tariff that applies in respect of any service covered by the first mentioned tariff
- (3) A tariff must set out, in relation to each service that the utilities licensee proposes to offer during the term:
 - (a) a description of the service;
 - (b) the particulars of the service charges payable for the service and how those will be determined;
 - (c) the units of measurement in which the service will be supplied;
 - (d) the terms and conditions on which the service will be supplied;
 - (e) any discounts, allowances, rebates or credits to be given or allowed on the supply of the service;
 - (f) any goods or other services to be supplied in connection with the service;
 - (g) the prices payable for any goods or other services to be supplied in connection with the service, or the rates at which charges payable for such goods or other services will be determined;

- (h) any other relevant information the Authority may reasonably require to be set out.
- (4) A tariff must be written in plain language and must contain sufficient detail to enable an end-user to work out the charges payable for the supply of the service in particular cases.
- (5) If a tariff is accompanied by a document setting out terms and conditions on which the utility service provider proposes to supply a service described in the tariff, the document is taken to be part of the tariff.

35 Tariff rates

A tariff must not provide for a service charge that is higher than—

- (a) the maximum service charge that is permitted under a Service Rates Determination, if a Service Rates Determination applies; or
- (b) the service charge that applied on the date on which this {Act/Part} commenced.

36 Publication of tariffs

A utility service provider must as soon as reasonably practicable after a tariff has been approved or deemed to be approved by the Authority make that tariff available to the public free of charge on the utility service provider's website.

37 Supply in accordance with tariffs

- (1) A utility service provider must not supply or offer to supply a utility service—
 - (a) for a service charge that exceeds the maximum service charge specified in or calculated in accordance with the applicable tariff; or
 - (b) on terms and conditions that are less favourable in any respect than those set out in the tariff.
- (2) A utility service provider that has contravened subsection (1) may be deemed to have materially contravened a term or condition of its licence.
- (3) The Authority may, by written notice published in the *Gazette*, exempt (including on conditions) from subsection (1)—
 - (a) a specified utility service provider or class of utility service providers; or
 - (b) a specified utility service or kind of utility services.
- (4) The Authority must have regard to the long-term benefit of end-users when determining whether to give an exemption under subsection (3).
- (5) The Authority must, if it gives an exemption under subsection (3) publish as soon as reasonably practicable its reasons for doing so.

38 Withdrawal and revocation of tariffs

- (1) A utility service provider may withdraw a tariff at any time, by notice in writing to the Authority.
- (2) The Authority may revoke approval of a tariff at any time, by notice in writing to the utility service provider, if the Authority is satisfied on reasonable grounds that—
 - (a) the tariff is false or misleading in a material particular; or
 - (b) the tariff no longer complies with section 34.

Part 6

Service Pricing Principles, Reviews, and Determinations

39 Service Pricing Principles

- (1) The Minister may, acting on the advice of the Authority, determine principles to be applied by the Authority (**Service Pricing Principles**) when the Authority is carrying out a Service Rates Review or making a Service Rates Determination.
- (2) The Authority must, not later than {12 months} after the date on which this Act commences, provide the Minister with recommended Service Pricing Principles.
- (3) Service Pricing Principles may relate to all or any of the following—
 - (a) pricing methodologies;
 - (b) methodologies for evaluating or determining the following matters in respect of the supply of network services:
 - (i) cost of capital;
 - (ii) valuation of assets, including depreciation, and treatment of revaluations;
 - (iii) allocation of common costs, including between activities, businesses, consumer classes, and geographic areas;
 - (iv) treatment of taxation;
 - (c) procedures and rules in relation to Service Rates Reviews; and
 - (d) {other}
- (4) In the course of developing recommended Service Pricing Principles, the Authority—
 - (a) may publish, in whatever way it considers appropriate, further notices, consultations documents, or papers; and
 - (b) must give interested persons a reasonable opportunity to provide their views; and
 - (c) may hold one or more conferences; and
 - (d) must have regard to relevant views received from interested persons within any time frames set.
- (5) The Authority—
 - (a) must review the Service Pricing Principles no later than 7 years after the date on which they were made and, after that, at intervals of not more than 7 years; and
 - (b) may review the Service Pricing Principles from time to time on its own initiative; and
 - (c) must give interested persons a reasonable opportunity to provide their views; and
 - (d) may hold one or more conferences; and
 - (e) must have regard to relevant views received from interested persons within any time frames set; and
 - (f) may recommend to the Minister any variation to the Service Pricing Principles that the Authority considers necessary or desirable.

40 Review and determination of service rates

- (1) The Authority—
- (a) must review the service charges payable for a specified utility service (**Service Rates Review**) and make a Service Rates Determination if required to do so by the Minister; and
 - (b) may hold a Service Rates Review and make a Service Rates Determination on its own initiative.
- (2) The Minister must not require, and the Authority must not initiate, a Service Rates Review or a Service Rates Determination—
- (a) earlier than the {second anniversary} of the commencement of this Act; and
 - (b) in relation to any particular utility service more than once in any {three year} period.

41 Service Rates Review

- (1) The Authority must, when it commences a Service Rates Review publish in the *Gazette* a notice setting out—
- (a) in the case of a review required by the Minister, the Minister's requirements; and
 - (b) in the case of a review on the initiative of the Authority, the terms of reference for the review.
- (2) During the course of a Service Rates Review the Authority—
- (a) may publish, in whatever way it considers appropriate, further notices, consultations documents, or papers; and
 - (b) must give interested persons a reasonable opportunity to provide their views; and
 - (c) may hold one or more conferences; and
 - (d) must have regard to relevant views received from interested persons within any time frames set.
- (3) The Authority must, before the end of a Service Rates Review—
- (a) publish a draft Service Rates Determination for consultation; and
 - (b) have regard to relevant views received from interested persons within any time frames set.

42 Service Rates Determination

- (1) The Authority must, on completion of a Service Rates Review, make a determination in writing (**Service Rates Determination**) setting out—
- (a) for each utility service to which it applies, the maximum service charge payable for that service; and
 - (b) the Service Pricing Principles that the Authority has applied; and
 - (c) {other}.
- (2) A Service Rates Determination must not be inconsistent with applicable Service Pricing Principles.
- (3) The Authority must, as soon as practicable after making a Service Rates Determination—

- (a) give a copy of the determination to each utility service provider to whom the determination relates; and
 - (b) publish a summary in the *Gazette*; and
 - (c) make a copy of the determination available on the Authority's website.
- (4) The Authority may omit confidential information from any determination made available under this section and if confidential information has been omitted, must disclose that fact.

43 Variation of Service Rates Determination

- (1) A Service Rates Determination may only be varied on request by a utility service provider to whom it relates.
- (2) A Service Rates Determination may be varied—
- (i) in a material way, only after the Authority has consulted with interested parties; and
 - (ii) in a non-material way, without prior consultation.
- (3) The Authority must, as soon as practicable after varying a Service Rates Determination—
- (a) give a copy of the variation to each utility service provider to whom the determination relates; and
 - (b) publish the variation, or a summary of it, in the *Gazette*; and
 - (c) make the whole determination, as varied, available on the Authority's website.
- (4) The Authority may omit confidential information from any variation made available under this section and if confidential information has been omitted, must disclose that fact.

44 Determination not suspended

If a person brings judicial review proceedings in respect of any Service Rates Determination—

- (a) that determination remains effective until determined otherwise as a result of those judicial review proceedings; and
- (b) the Court may not stay the effect of that determination or grant any other kind of interim relief.

Part 7

Electrical workers

Subpart 1 — Certification

45 Certificates of competency

- (1) The Authority may issue a certificate of competency to any person who in the opinion of the Authority is eligible to hold the certificate and who—
- (a) has successfully completed the examinations prescribed by the Authority in relation to the certificate; or
 - (b) holds a certificate issued by an overseas counterpart of the Authority that is equivalent to the certificate.

- (2) The Authority may issue any of the following certificates of competency:
- (a) {Electrician}:
 - (b) {Electrical Mechanic}:
 - (c) {Electrical Service Technician}:
 - (d) {Line Mechanic}:
 - (e) any other certificate provided for in regulations made by the King's Representative, by Order in Executive Council, on the advice of the Minister.
- (3) A certificate issued under this section may be in any form and subject to any terms and conditions that the Authority may from time to time determine.

46 Examinations and rules for certificates

The Authority may from time to time prescribe in relation to any certificate of competency—

- (a) qualifying examinations;
- (b) criteria for eligibility; and
- (c) rules to be observed by the holder of a certificate.

47 Suspension and revocation of certificate

The Authority may, by notice in writing to a certificate holder, suspend or revoke a certificate of competency if the Authority is satisfied on reasonable grounds that—

- (a) the certificate holder has breached a term or condition of the certificate and failed to remedy the breach within a reasonable time of being notified of it; or
- (b) the certificate holder has contravened, or been knowingly concerned in a contravention of, this Act or a determination by the Authority; or
- (c) the certificate holder has failed to pay prescribed fees; or
- (d) the certificate holder has ceased to be eligible to apply for, or qualified to hold, the certificate; or
- (e) it is desirable in the public interest to do so.

48 Review of suspension or revocation

A decision by the Authority to suspend or revoke a certificate of competency is reviewable by the Review Panel under the Competition and Regulatory Authority Act 2019.

Subpart 2 — Registration of electrical workers

49 Electrical work only by registered electrical worker

- (1) No person shall carry out any electrical work for fee or reward unless registered to do so under this Act.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to—
- (a) in the case of an individual, a fine not exceeding {\$20,000} or imprisonment for a term not exceeding {24 months}, or both; and

- (b) in any other case, a fine not exceeding {\$150,000}.

50 Register of electrical workers

- (1) The Authority must establish and maintain a register of electrical workers.
- (2) The Authority must include on the register—
 - (a) the details of persons whom the Authority is satisfied have the necessary qualifications, skills, training, and experience to be so registered; and
 - (b) any relevant limitations on the kinds of electrical work the person is qualified to carry out or the circumstances in which the person may carry out electrical work; and
 - (c) relevant particulars of any proceeding under or arising out of this Act, or regulations made under this Act, in which the person was convicted or held liable to pay a pecuniary penalty.
- (3) The Authority must, when determining whether to include the details of a person on the register, have regard to the criteria set out in relevant regulations made by the King's Representative, by Order in Executive Council, on the advice of the Minister.
- (4) The Authority must make the register available for inspection by any person free of charge—
 - (a) at the offices of the Authority during ordinary business hours; and
 - (b) by means of the Internet; and
 - (c) in any other manner the Authority considers appropriate.
- (5) The Authority may omit confidential information from any entry made in the register under this section and if confidential information has been omitted, that fact must be disclosed on the register.

Subpart 3 — Inspections and investigations

51 Electrical inspectors

- (1) The Authority must appoint suitably qualified persons as electrical inspectors.
- (2) The Authority must procure that electrical inspectors—
 - (a) promote the compliance of all electrical work and electrical installations with applicable regulations, standards, and codes; and
 - (b) inspect and examine all new electrical work and electrical installations for compliance with applicable regulations, standards, and codes; and
 - (c) recommend to the Authority whether or not the Authority should give new electrical work and electrical installations any approval required under relevant regulations, standards, or codes; and
 - (d) investigate and report to the Authority on matters referred to them by the Authority under sections 53 or 55.

52 Powers of electrical inspectors

- (1) An electrical inspector may enter, inspect, and examine any place or vessel that the inspector has reason to believe—
 - (a) is a place at which or vessel on which electrical work is being, or has recently been, carried out; or

- (b) is a place at which or a vessel on which generation equipment is installed; or
 - (c) has been the site of an accident referred to in section {53}; or
 - (d) is a place or vessel to which the inspector reasonably requires access in order to perform a function under this Act or any relevant regulations.
- (2) A person must not obstruct or interfere with an electrical inspector exercising a power under this section.
- (3) A person who, without reasonable excuse, contravenes subsection (2) is guilty of an offence and liable on conviction—
- (a) in the case of an individual, a fine not exceeding {\$5,000}, or imprisonment for a term not exceeding {6 months}, or both; or
 - (b) in any other case, a fine not exceeding {\$50,000}.

53 Electrical work accidents

- (1) If an electrical worker or any other person has been killed or injured in the course of electrical work being carried out—
- (a) that person's employer must report the accident as soon as practicable to the Authority; and
 - (b) the Authority must investigate the accident and report its findings to the Minister, if requested by the Minister; and
 - (c) the Authority may investigate the accident and report its findings to the Minister, on its own initiative.
- (2) The Authority must, each year, provide the Minister with—
- (a) a summary of all accidents investigated by the Authority; and
 - (b) any recommendations the Authority may have for improving the safety of electrical workers, electrical work and electrical installations.

Subpart 4 — Offences and disciplinary matters

54 Offences

- (1) Proceedings in relation to an offence against or arising under this Act or regulations made under this Act may be commenced and continued by the Authority or a person authorised in writing by the Authority to do so.
- (2) Subsection (1) does not limit the operation of any other law or the power of the Attorney-General under section 10 of the Crown Law Office Act 1980 relating to the institution and conduct of proceedings.

55 Disciplinary procedures

- (1) If a person has been convicted of an offence against or arising under this Act or regulations made under this Act, or has incurred a pecuniary penalty under this Act, the Authority must determine whether or not to exercise its disciplinary powers.
- (2) The Authority must not exercise its disciplinary powers unless the Authority has fulfilled the requirements of natural justice, including by—
- (a) serving on the person concerned a notice—

- (i) containing a statement to the effect that the Authority has reason to believe that a ground exists for the Authority exercising its disciplinary powers; and
 - (ii) setting out the particulars that are reasonably necessary to inform the person of the substance of the grounds believed to exist; and
 - (b) giving the person concerned a reasonable opportunity to appear and be heard by the Authority before it determines the matter, either personally or by the person's representative.
- (3) A person against whom the Authority has determined to exercise its disciplinary powers may appeal to the Court against that determination, or against any order made by the Authority under section 56.

56 Disciplinary powers

- (1) If a person has committed an offence against this Act or regulations made under this Act, the Authority may order —
- (a) that the person's registration be cancelled; or
 - (b) that the person's registration be suspended for any period the Authority thinks fit; or
 - (c) that the person's registration be suspended until such time as the person has—
 - (i) completed any specified course of training;
 - (ii) passed any specified examination; or
 - (d) that the person's registration be restricted for any period the Authority thinks fit—
 - (i) by limiting the kinds of electrical work that the person can carry out; or
 - (ii) by limiting the circumstances in which the person can carry out electrical work; or
 - (e) {other...}
- (2) The Authority must promptly amend the register to give effect to any order under this section.
- (3) To exclude doubt, the Authority must not order the person to pay any fine or costs.

Subpart 5 — Electrical Code of Practice

57 Authority may issue Code

- (1) The Authority may from time to time issue, amend, or revoke an Electrical Code of Practice.
- (2) The Authority must make a current version of any Electrical Code of Practice available to the public free of charge on its website.
- (3) An Electrical Code of Practice may make provision for any matter falling within the functions and powers of the Authority under this Act, including without limitation—
- (a) standards or specifications for electrical works and electrical installations:

- (b) inspection and assessment of electrical works and electrical installations:
 - (c) the safety of persons and property:
 - (d) {other...}
- (4) An Electrical Code of Practice is {not} binding on persons to whom it applies.
- (5) Without limiting other matters to which the Authority may have regard, the Authority must, when the Electrical Code of Practice is relevant to a determination being made under this Part, have regard to the Electrical Code of Practice.

Part 8

Technical standards

58 Determination of technical standards

- (1) The Authority may, by written notice published in the *Gazette*, make technical standards for—
- (a) utilities networks; and
 - (b) network equipment; and
 - (c) customer equipment; and
 - (d) features of customer equipment that are designed to cater for the special needs of persons with disabilities; and
 - (e) interconnection of utility service providers' utility networks.
- (2) The Authority may, by written notice published in the *Gazette*, prescribe an approval process, including conditions, for approval of utility equipment for importation to the Cook Islands.
- (3) The Authority may adopt or incorporate, with or without modifications, any technical standards or approval processes of other countries.
- (4) They Authority must make any technical standards and approval processes available to the public free of charge on the Authority's website.
- (5) Before making any technical standard or prescribing any approval process under this section, the Authority must cause to be published a draft version of the proposed technical standard or approval process and consult on it by—
- (a) giving notice of the proposed technical standard or approval process in a manner the Authority considers appropriate to bring it to the attention of persons that the Authority considers likely to be affected by it; and
 - (b) allowing affected parties a reasonable opportunity to make comments on the proposed technical standard or approval process; and
 - (c) considering all relevant comments received during the period for consultation.
- (6) In making any technical standard or prescribing any approval process, the Authority must have regard to the need to ensure against or minimise—
- (a) damage to utility networks; and
 - (b) quality degradation to utility services; and
 - (c) public nuisance; and
 - (d) risk to public health and safety.

59 Network equipment

- (1) A utility service provider must ensure compliance with any applicable technical standard of—
 - (a) its utility network; and
 - (b) its network equipment; and
 - (c) any customer equipment offered by it.
- (2) A utility service provider must ensure that its utility services comply with any applicable technical standard.

60 Prohibited equipment

- (1) The Authority may, by written determination, identify specified equipment or equipment of a specified kind or class to be prohibited equipment.
- (2) The Authority must cause a determination under subsection (1) to be published on the Authority's website and in newspapers, within 14 days after it has been made.
- (3) A person must not, without reasonable excuse—
 - (a) operate or supply any equipment that the person knows, or ought reasonably to have known, is prohibited equipment; or
 - (b) have possession of equipment that the person knows, or ought reasonably to have known, is prohibited equipment for the purpose of operating or supplying it.
- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to—
 - (a) in the case of an individual, a fine not exceeding {\$5,000}, or imprisonment for a term not exceeding {6 months}, or both; or
 - (b) in any other case, a fine not exceeding {\$50,000}.

**Part 9
Community Service**

61 Purpose of this Part

- (1) The purposes of this Part are—
 - (a) to ensure the provision of utility services by utility service providers in accordance with Government policy objectives;
 - (b) to promote agreement between Government and utility service providers on provision of utility services;
 - (c) where agreement is not reached, to oblige utility service providers to provide utility services by directions under this Part; and
 - (d) to reimburse utility service providers for costs reasonably incurred by them in providing utility services pursuant to directions under this Part.

62 Agreement to be sought

The Minister must, before making a Community Service Direction, make reasonable efforts to negotiate agreement with a utility service provider

regarding provision by it of the utility service sought by the Government and liability for the costs associated with that.

63 Community Service Direction

- (1) The Minister may, by written direction (**Community Service Direction**), require a utility service provider to—
 - (a) construct, maintain, or operate utility network in particular areas; and
 - (b) provide utility services in particular areas or to particular groups of end-users, on specified terms and conditions, including as to price.
- (2) The Minister must not make a direction under subsection (1) unless the Minister—
 - (a) is satisfied that section 62 has been complied with; and
 - (b) has consulted with any utility service provider that would be affected by the proposed direction; and
 - (c) has given affected utility service providers a reasonable opportunity to comment on the proposal; and
 - (d) has had due regard to all relevant comments made by or on behalf of affected utility service providers during the period of consultation; and
 - (e) is satisfied that undertaking the activities required by the proposed direction would not be in the commercial interest of the utility service provider.
- (3) A Community Service Direction must set out the Minister’s estimate of the reasonable cost likely to be incurred by an affected utility service provider in complying with the direction.
- (4) The Minister must, as soon as reasonably practicable after it has been made, cause a Community Service Direction to be—
 - (a) provided to the relevant utility service provider;
 - (b) published in the *Gazette*; and
 - (c) tabled in Parliament.

(Note: A Community Service Direction may, for example, require a utility service provider to provide particular services to a particular group of people free of charge, at stated charges, or subject to stated discounts or rebates.)

64 Determination of costs

The cost of giving effect to a Community Service Direction is—

- (a) in relation to a utility service of a kind currently provided by the utility service provider — the reasonable cost that would be avoided by the utility service provider if it did not give effect to the direction; and
- (b) in relation to a proposed utility service — the additional reasonable cost that would be incurred by the utility service provider in providing the utility service in accordance with the direction.

65 Liability for costs

- (1) A Community Service Direction has no effect unless the {Financial Secretary} certifies in writing that the Government has appropriated or will appropriate the funds required to pay to the utility service provider the amount of the costs—

- (a) stated in the direction; or
 - (b) in the event of a dispute, as determined by adjudication pursuant to section 67.
- (2) Where a Community Service Direction is given to a utility service provider, the amount of the costs fixed in accordance with subsection (1) is a debt due to the utility service provider by the Government.

66 Compliance with direction

A utility service provider must comply with a Community Service Direction given to it under section 63.

67 Adjudication

- (1) If the Minister and the utility service provider concerned dispute the costs of complying with a Community Service Direction, either of them may submit the dispute to the Authority for adjudication.
- (2) The Authority, or a person appointed by the Authority for the purpose, (**adjudicator**) must determine by adjudication a dispute submitted to the Authority under subsection (1).
- (3) A determination under subsection (2)—
- (a) may be on such terms and conditions as the adjudicator determines; and
 - (b) must be consistent with any applicable Service Pricing Principles made under this Act.
- (4) The adjudicator may determine the procedure for adjudication of any dispute referred to it provided that all parties to the dispute are given a reasonable opportunity to be heard.
- (5) The parties must comply with the terms and conditions of any adjudication decision under this section.
- (6) A party to an adjudication may appeal to the Court on a question of law only.

Part 10

Status of Utility Service Providers under the Infrastructure Act 2019

68 Utility service providers

- (1) A utility service provider—
- (a) is an infrastructure manager for the purposes of the Infrastructure Act 2019; and
 - (b) has all the powers and duties of an infrastructure manager.
- (2) The provisions of the Infrastructure Act 2019 apply, accordingly, to a utility service provider.

Part 11

General and miscellaneous provisions

Disasters and emergencies

69 Disaster Plans

- (1) The Authority may, by written direction, require a utility service provider to prepare a plan (**Disaster Plan**) setting out the actions the utility service provider will take to—
 - (a) cope with disasters and civil emergencies; and
 - (b) improve the resilience of its utility network and utility services to the adverse impacts of climate change.
- (2) In preparing a Disaster Plan (or any variation) a utility service provider must—
 - (a) consult with police and emergency services authorities;
 - (b) consult with the Authority; and
 - (c) consult the public on the proposed plan by—
 - (i) publishing it on the utility service provider’s website; and
 - (ii) allowing interested parties a reasonable opportunity to provide comments; and
 - (iii) having due regard to all relevant comments received during the period for consultation.
- (3) The utility service provider must publish its Disaster Plan, and any variations to it, on its website and must implement that plan.
- (4) A utility service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with its Disaster Plan.

70 Powers of Government during disaster or emergency

- (1) If, in the event of a public emergency, the Minister considers it necessary in the interests of public security or national defence, the Minister may, give directions in writing to any utility service provider or any specified agent or employee of a utility service provider.
- (2) A direction under subsection (1) must be published in the *Gazette* as soon as reasonably practicable after it is made.
- (3) A direction under subsection (1) may require a utility service provider or its specified agent or employee—
 - (a) to enable, provide or facilitate:
 - (i) the temporary control or use for official purposes of a utility network;
 - (ii) the stoppage, delay, or interruption of utility services; or
 - (b) to do or omit to do any specified action that the Minister considers reasonably necessary in the interests of public security or national defence.
- (4) The Government must—

- (a) pay compensation for any loss or damage caused to a utility service provider by reason of any act or omission in compliance with a direction under subsection (1); or
- (b) make grants to utility service providers, or owners of utility infrastructure, as the case may be, for defraying or contributing towards any losses which they may sustain by reason of their compliance with a direction under subsection (1).

Enforcement

71 General penalty for offences

A person who commits an offence against this Act, or regulations made under this Act, for which no penalty is otherwise provided by this Act or by the regulations is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding {\$20,000}, or imprisonment for a term not exceeding {24 months}, or both; or
- (b) in any other case, a fine not exceeding {\$150,000}.

72 Regulatory infringements

(1) A person must not fail to comply with an obligation imposed on that person under—

- (a) this Act;
- (b) regulations made under this Act;
- (c) a technical standard made under this Act; or
- (d) a licence issued under this Act;
- (e) {any lawful direction or determination given by the Authority under this Act}.

(2) The Authority may, if it has grounds to consider that a person has infringed subsection (1), apply to the Court for any of the following—

- (a) pecuniary penalties;
- (b) management banning orders;
- (c) any other orders the Court has jurisdiction to make.

73 Pecuniary penalties

(1) An application for a pecuniary penalty must be made within {three years} after the breach or offence occurred.

(2) In a proceeding for a pecuniary penalty—

- (a) the standard of proof is the standard of proof applying in civil proceedings; and
- (b) the rules of court and rules of evidence and procedure are those applying in civil proceedings.

(3) The Court may impose a pecuniary penalty on a utility service provider and any person knowingly concerned in the breach or offence.

(4) A person on whom a pecuniary penalty is imposed must not be convicted of an offence under this Act in respect of the same conduct.

- (5) An application for a pecuniary penalty must be stayed if a criminal proceeding in respect of the same conduct is commenced or has already commenced before the application is determined.

74 Amount of pecuniary penalty

- (1) For an offence under this Act or regulations made under this Act, the maximum pecuniary penalty is 50 percent of the maximum penalty for the offence.
- (2) For a contravention against or arising out of this Act, or regulations made under this Act, that is not an offence the maximum pecuniary penalty is—
- (a) in the case of a penalty imposed on an individual {\$10,000}; and
 - (b) in the case of a penalty imposed on a body corporate {\$75,000}.

75 Management banning orders

- (1) The Court may, on application by the Authority, make a management banning order against an individual if—
- (a) the defendant—
 - (i) has engaged in qualifying conduct; or
 - (ii) has been convicted of an offence under this Act in the five-year period before the application is determined; and
 - (b) the Court is satisfied that the order is necessary having regard to the risk of a breach to which {this Part} applies or the commission of an offence under this Act by any corporate or unincorporated body in which the defendant has or might have a management function or role.
- (2) For the purposes of subsection (1)(a), a defendant has engaged in qualifying conduct if the defendant—
- (a) has engaged in conduct that is a breach to which {this Part} applies; and
 - (b) has engaged in the same or substantially similar conduct on two or more separate occasions in the five-year period before the application is determined.
- (3) A person who is the subject of a management banning order must not, without the leave of the Court, and for the period specified in the order, be a director of, or otherwise involved in, the management of a corporate or unincorporated body in the Cook Islands.
- (4) The period specified in the order must not exceed five years.

76 Other orders

- (1) The Court may make such orders as it sees fit if it is satisfied that a person has engaged, is engaging, or is proposing to engage in conduct that breaches or is likely to breach {this Act}.
- (2) Without limiting subsection (1), the Court may make any or all of the following orders—
- (a) an order requiring a person to cease or refrain from engaging in specified conduct:
 - (b) an order requiring the provision of corrective information or other information to the public, or to classes of persons, about relevant services or service charges:

- (c) an order requiring that money paid by customers for utility services be refunded to them:
 - (d) an order requiring the repair or replacement of goods or the re-provision of utility services or the provision of corrective services:
 - (e) an order declaring any relevant agreement void or voidable at the election of the person who has been supplied relevant utility services:
 - (f) an order varying any agreement for the supply of utility services:
 - (g) an order that the defendant pay all or part of the costs incurred by the Authority in investigating the breach or offence and bringing the proceedings:
 - (h) an order directing a person who has contravened section 27 or 28 to dispose of such assets or shares as shall be specified in the order:
 - (i) {other}.
- (3) An order under paragraph (h) of subsection 2 may be made at any time within 2 years from the date on which contravention occurred.

Regulations

77 Regulations

The King's Representative may, by Order in Executive Council, on the advice of the Minister given in accordance with a recommendation of the Authority, make regulations for all or any of the following purposes:

- (a) prescribing forms to be used for the purposes of this Act:
- (b) prescribing matters for which fees are payable under this Act and the amounts of those fees:
- (c) prescribing grounds for an exemption from fees, in whole or in part:
- (d) prescribing licence fees or the means by which fees must be calculated:
- (e) inspection or approval of electrical work or electrical installations:
- (f) the registration of electrical workers:
- (g) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

Amendments, savings and transitional provisions

78 Transitional period and related terms

- (1) For the purposes of Part 4, and subject to subsection (2), “**transitional period**” means the period beginning on the commencement of this Act and ending on the {second} anniversary of that date.
- (2) The King's Representative may, by Order in Executive Council, on the advice of the Minister, determine that the transitional period ends on a specified date that is earlier than, or later than, the second anniversary of commencement of this Act.

79 Amendments to other enactments

The Acts listed in Schedule 1 are amended as set out in that schedule.

80 Saving of Energy Regulations

- (1) Subject to subsection (2), the Energy Regulations 2006 continue to have full force and effect, notwithstanding anything in this Act.
- (2) The Energy Regulations 2006 shall apply with such modifications as may be necessary to ensure consistency with this Act.

81 Saving of licences and certificates

- (1) A licence or a certificate issued under the Energy Act 1998 is a “continuing instrument” for the purposes of subsection (2) if it—
 - (a) is referred to, or is an instrument of a kind referred to, in column 2 of the table set out in Schedule 3; and
 - (b) was in force immediately before the commencement of this Act.
- (2) A continuing instrument—
 - (a) continues in force after commencement of this Act as if, at the time it had been made, it had been made by the Authority in the same terms as an instrument of the kind referred to in the corresponding item in column 3 of the table set out in Schedule 3; and
 - (b) is taken, for all purposes, to have been issued by the Authority as such an instrument.

82 Revocation of regulations

The following regulations are revoked—

- (a) {to be determined}

83 Certificate of competency examinations during transitional period

- (1) {The Energy Division} must, subject to subsection (2), continue to conduct certificate of competency examinations—
 - (a) for the duration of the transitional period; and
 - (b) at fees that are not higher than those that were payable as at 1 January 2023; and
 - (c) in accordance with the Energy Regulations 2006.
- (2) {The Energy Division} is not required to comply with subsection (1) from the date that the Minister gives notice in writing that the Authority (or a person or body nominated by the Authority) will conduct certificate of competency examinations.
- (3) The Minister must not give notice under subsection (2) except in accordance with the advice of the Authority.

Schedule 1 Amendments to Acts

1. Control of Prices Act 1966

The Control of Prices Act 1966 is amended by inserting immediately after section the following new section:

28A Act does not apply to utility services

This Act does not apply to any utility service under the Utilities Regulation (Electricity, Water, and Sewerage Services) Act 2023.

2. Te Aponga Uira O Tumu-Te-Varovaro Act 1991

Immediately after section 2 the following new section is inserted—

2A Inconsistency

If a provision of this Act and a provision of the Utilities Regulation (Electricity, Water, and Sewerage Services) Bill 2023 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.

Subsection 17(2) is amended by inserting at the end of paragraph (c) the following—

"tariffs and schedules must comply with the Utilities Regulation (Electricity, Water, and Sewerage Services) Act 2023;"

3. To Tatou Vai Act 2021

Immediately after section 5 the following new section is inserted—

5A Inconsistency

If a provision of this Act and a provision of the Utilities Regulation (Electricity, Water, and Sewerage Services) Bill 2023 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.

Subsection 26(2) is repealed and the following new subsection is substituted—

- (2) Subject to subsection (2A), the Authority may—
 - (a) set and charge tariffs to customers for the supply of water; and
 - (b) set and impose charges for the connection of a water supply.

Immediately after subsection 26(2) the following new subsection is inserted—

- (2A) tariffs and charges must comply with the Utilities Regulation (Electricity, Water, and Sewerage Services) Act 2023.

Subsection 26(6) is repealed and the following new subsection is substituted—

- (6) If the Authority imposes tariffs or charges, they—
 - (a) must be reviewed in advance on an annual basis; and
 - (b) may be varied at any time in accordance with section 31; and
 - (c) may be varied at any time for the purpose of ensuring compliance with the Utilities Regulation (Electricity, Water, and Sewerage Services) Act 2023.

Schedule 2 Exemptions

1. Exempt network defined

“**Exempt network**” means any utility network that is—

- (a) declared in writing by the Authority to be exempt from this Act or specified provisions of this Act; or
- (b) {other...}

2. Exempt service defined

“**Exempt service**” means any utility service that is—

- (c) declared by the Authority in writing to be exempt from this Act or specified provisions of this Act; or
- (d) {other...}

Schedule 3
Continuing Instruments

Column 1	Column 2	Column 3
Item	Instrument made under Energy Act 1998 or {insert}	Instrument made under this Act
1	Energy supply licence under section 6	
2	Energy transmission licence under section 6	
3	Certificate of registration under section 18	
4	Practising license under section 19	

This Act is administered by the Ministry of Finance and Economic Management.

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