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Prices Regulation Act (Chapter 320)

**[Prices Regulation Act (Chapter 320) consolidated to No 11 of 2008]**

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**CHAPTER No. 320.**

***Prices Regulation Act.***

Being an Act to make provision for the monitoring and regulation of prices for the sale of certain goods and for the supply of certain services, and for related purposes.

**PART I.—PRELIMINARY.**

**1. Interpretation.**

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

"authorized officer" means a person appointed by the Commission to be an authorized officer for the purposes of this Act;

"Commission" means the Independent Consumer and Competition Commission established by the *Independent Consumer and Competition Commission Act 2002*;

"the Controller" . . . [Repealed]

"declared goods" means any goods declared under Section 10 to be declared goods for the purposes of this Act;

"declared monitored goods" means any goods declared under Section 32A to be declared monitored goods for the purposes of this Act;

"declared monitored services" means any services declared under Section 32A to be declared monitored services for the purposes of this Act;

"declared service" means any service declared under Section 10 to be a declared service for the purposes of this Act;

"LNG Project Operations" has the meaning given in the PNG LNG Gas Agreement;

"LNG Project Petroleum" has the meaning given in the PNG LNG Gas Agreement;

"PNG LNG Gas Agreement" means the PNG LNG Gas Agreement dated 22 May 2008 between the Independent State of Papua New Guinea and each of Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (PNG Petroleum), Inc., Ampolex (Highlands) Limited, Oil Search Limited, Oil Search (PNG) Limited, Oil Search (Tumbudu) Limited, Merlin Petroleum Company, Merlin Pacific Oil Company Limited, Santos Hides Ltd,

Lavana Limited, AGL Gas Developments (PNG) Pty Limited, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited and Eda Oil Limited, as amended, novated or replaced from time to time;

"Deputy Controller" . . . [Repealed]

"price" includes any valuable consideration, direct or indirect;

"proclaimed area" means an area declared under Section 9;

"service" means—

- (a) any service supplied or carried on by any person or body of persons, incorporated or unincorporated, engaged in an industrial, commercial business, profit-making or remunerative undertaking or enterprise (including a professional practice); or
- (b) any rights or privileges for which remuneration is payable in the form of royalty, stumpage, tribute or other levy based on volume or value of goods produced; or
- (c) any rights under an agreement—
  - (i) for the hiring of goods; or
  - (ii) for the hire, use or occupation of any wharf or dock; or
  - (iii) for the provision of lodging; or
- (d) any rights under an agreement (not being a lease) or licence for the hiring of a hall; or
- (e) any benefits under a contract of work and labour, or of work and labour and supply of materials.

(2) A person who receives (otherwise than as agent) any valuable consideration from any other person in respect of the enjoyment by that other person of a service shall for all purposes of this Act, be deemed to supply that service to that other person for the amount or value, or at the rate, as the case may be, of that valuable consideration.

(3) Where any agreement (including a lease) has at any time been entered into under which a person has become entitled to rights or privileges specified in Paragraph (b), (c) or (d) of the definition of "service" in Subsection (1), the person from whom the rights or privileges have been acquired shall, for all purposes of this Act, be deemed to be supplying those rights or privileges, at all times during which the rights or privileges continue, at the rate of the remuneration charged from time to time for them.

(4) Where, by virtue of any order or notice made or given after the making of an agreement referred to in Subsection (3), the maximum rate of the remuneration referred to in that subsection is fixed under this Act at a rate lower than the rate otherwise payable under the agreement, the agreement shall be deemed to be varied while that maximum rate is in force, by the substitution of the rate so fixed for the rate otherwise payable under the agreement in respect of the exercise or enjoyment of any such right or privilege after the date on which the rate was fixed.

## **2. Certain definitions relating to maximum prices, orders, etc.**

(1) In this Act, and in any order made under this Act fixing the maximum price for the sale of any declared goods, unless the contrary intention appears in this Act or the order—

"landed cost" means the cost of landing the declared goods—

- (a) in the store of the person to or for whom, or on whose behalf the declared goods were originally supplied or ordered; or
- (b) at such other point of delivery as is approved by the Commission;

"retail sale" in relation to any declared goods, means a sale for the purposes of consumption or use;

"wholesale sale", in relation to any declared goods, means sale or supply for the purposes of re-sale (including, but without affecting the generality of that expression, the sale or supply by an importer, manufacturer or producer to a manufacturer or a wholesale or retail trader).

(2) The maximum price fixed by or under an order referred to in Subsection (1) includes any charge for wrapping the goods.

## **3. Agency transactions.**

(1) The Commission may, by order in the National Gazette, declare that where a person—

- (a) purchases goods (whether declared goods or not) as agent, or purported agent, for another person; and
- (b) processes or treats the goods; and
- (c) delivers goods resulting from the processing or treatment to his principal,

the carrying out of the agency (or purported agency) and the performance of the other services by the agent or purported agent shall, for the purposes of this Act, be deemed to be a sale of the goods delivered by him to his principal at a price equal to the sum of the amounts paid or payable by the principal to the agent in respect of the agency and services (including the price paid by the agent for the goods purchased by him).

(2) The Commission may—

- (a) generally by order in the National Gazette; or
- (b) by written notice,

exempt a person or class of persons from the operation of an order under Subsection (1).

## **PART II.—ADMINISTRATION.**

***Division 1.—Price Controller and Deputy Price Controller, etc.  
[Repealed]***

***Division 2.—Declaration of Proclaimed Areas and of Goods and Services.***

**9. Proclaimed areas.**

For the purposes of this Act, the Commission may, by notice in the National Gazette, declare an area specified in the notice to be a proclaimed area.

**10. Declared goods and services.**

- (1) The Minister may, by notice in the National Gazette, declare—
  - (a) any goods, other than goods declared to be regulated goods for the purposes of the *Independent Consumer and Competition Commission Act 2002* to be declared goods; or
  - (b) any service, other than a service declared to be a regulated service for the purposes of the *Independent Consumer and Competition Commission Act 2002* to be a declared service,

for the purposes of this Act.

- (2) A declaration under this section may be made—
  - (a) generally; or
  - (b) in respect of—
    - (i) any part of the country or any proclaimed area; or
    - (ii) a person, body or association of persons.

(3) Notwithstanding any contrary provision of this Act, for the purposes of this Act, LNG Project Petroleum is not, and cannot be, declared goods and LNG Project Operations are not, and cannot be declared services.

***Division 3.—General Powers of Commission, etc.***

**11. Summoning witnesses, etc.**

- (1) The Commission or an officer authorized in writing for the purposes by the Commission may—
  - (a) summon witnesses; and
  - (b) take evidence on oath; and
  - (c) require the production of documents, books and papers.

(2) Witnesses summoned under Subsection (1) may be paid such fees and allowances as are fixed by the Minister or as are prescribed.

(3) A person who, having been summoned as a witness under Subsection (1), fails, without lawful excuse, to appear in obedience to the summons is guilty

of an offence.

(4) A witness before the Commission or an officer authorized in writing by the Commission, whether summoned to appear or not, who, without lawful excuse, refuses—

- (a) to be sworn or to make an affirmation; or
- (b) to produce documents, books and papers; or
- (c) to answer questions that he is lawfully required to answer,

is guilty of an offence.

## **12. Obtaining information generally.**

(1) The Commission, or an officer authorized in writing for the purposes by the Commission may require a person—

- (a) to furnish such information as the Commission or an authorized officer, as the case may be, requires; or
- (b) to answer any question put to him,

in relation to any goods or services or to any other matter arising under this Act.

(2) The Commission or an officer authorized in writing for the purpose by the Commission may require the information to be given, or the question to be answered, on oath, and orally or in writing, and for that purpose may administer an oath.

(3) The Commission or an officer authorized in writing for the purpose by the Commission may, by written notice, require the information to be given, or the question to be answered, in writing and at the place specified in the notice.

(4) A person who, when required under this section to furnish information or answer a question—

- (a) refuses or fails to furnish the information or to answer the question; or
- (b) gives information or makes an answer that is false in any particular,

is guilty of an offence.

(5) A person is not obliged to answer orally any question unless he has first been informed by the Commission or the officer authorized in writing for the purposes by the Commission asking the question that he is required to answer by virtue of this section.

## **13. Production of balance-sheets, etc.**

(1) A person who—

- (a) carries on a business of selling goods or supplying services; and
- (b) is required to do so by the Commission by written notice,

and who fails—

- (c) to produce, in accordance with the notice, to the Commission—
  - (i) all balance sheets, manufacturing, trading, profit and loss, production and revenue accounts and all production, financial and statistical and similar statements prepared by him or on his behalf in relation to the business, or to manufacture or production for the purposes of the business; and
  - (ii) all documents (including documents of the kind referred to in Section 58) which relate to the conduct of that business or to any such manufacture or production,  
that are specified in the notice; or
- (d) to leave them with the Commission, or furnish the Commission with copies,

is guilty of an offence.

(2) Where any balance-sheet, account, statement or document required to be produced under Subsection (1) is in the possession or control of any person other than the person to whose business it relates, the first-mentioned person, on being required to do so by written notice by the Commission, must produce to and leave with the Commission the balance-sheet, account, statement or document.

(3) A person who has been required to produce a balance-sheet, account, statement or document under this section must, if the Commission so requires, permit the Commission to make a copy of it, or to take an extract from it.

#### **14. Returns.**

(1) The Commission may, by written notice require a person to furnish to the Commission, in accordance with the notice, a return setting out, to the best of his knowledge and ability, the following particulars, or such of them as are specified in the notice—

- (a) the quantity of any goods in his possession or under his control at a specified date; and
- (b) the cost to him of those goods; and
- (c) the methods and the principles in accordance with which he arrives at the cost; and
- (d) where the maximum price of the goods is not fixed under this Act, the prices, wholesale or retail, at which, and conditions on which, he has sold, sells or proposes to sell the goods; and
- (e) the price, wholesale or retail, charged by him, on a date specified in the notice, for similar goods, and the conditions of any such sale; and
- (f) such further particulars as are specified in the notice.

(2) The Commission may, by written notice, require a person or body of persons engaged in the supply of any service to furnish to the Commission, in accordance with the notice, a return setting out to the best of his or its knowledge and ability the particulars relating to the service specified in the notice.

(3) A notice under this section may be given to a particular person or to a class of persons, and a notice to a class of persons may be given by publication of the notice in the National Gazette and in such newspapers (if any) as the Commission directs.

(4) A return under this section shall be verified by statutory declaration.

(5) In any proceedings under this Act, a return furnished by a person under this section is admissible in evidence against him.

(6) A person who—

(a) refuses or fails to comply with any of the requirements of a notice under this section; or

(b) wilfully furnishes a false or misleading return,

is guilty of an offence.

## **15. Securities.**

(1) The Commission may require and take securities for compliance with—

(a) this Act; or

(b) any order made under this Act; or

(c) a condition specified by the Commission under any such order.

(2) A security under Subsection (1) shall be—

(a) in the prescribed form (if any); and

(b) by bond or guarantee or cash deposit or all or any of those methods; and

(c) approved by the Commission.

(3) Where security is required for a particular purpose the security may, by the authority of the Commission, be accepted to cover all transactions for such time and for such amount as the Commission determines.

(4) If at any time the Commission is not satisfied with the sufficiency of any security, it may require a fresh security.

(5) Without the need for sealing, a security in the prescribed form binds its subscribers—

(a) as if sealed; and

(b) jointly and severally; and

(c) for the full amount.

(6) Where a security is put in suit by the Commission, the production of the security, without further proof, entitles the Commission to judgement for the stated liability against the persons appearing to have executed the security, unless the defendants prove—

- (a) compliance with the conditions of the security; or
- (b) that the security was not executed by them; or
- (c) release or satisfaction.

(7) Where it appears to the court that a non-compliance with the conditions of the security has occurred, the security is not invalidated or discharged, and the subscribers are not released or discharged from liability by reason of—

- (a) any extension of time or other concession; or
- (b) the Commission having consented to, or acquiesced in, a previous non-compliance with the conditions; or
- (c) the Commission having failed to bring proceedings against the subscribers on the occurrence of any previous non-compliance.

## **16. Entry and search.**

(1) The Commission or an authorized officer may—

- (a) enter and search any premises; and
- (b) inspect any documents, books and papers; and
- (c) inspect and take samples of any stocks of declared goods, or of any other goods.

(2) The Commission or an authorized officer may—

- (a) impound or retain any documents, books or papers produced to or inspected by the Commission or the authorized officer, as the case may be, under Subsection (1); and
- (b) make copies or abstracts of them, or of entries in them,

but the person entitled to them is entitled within a reasonable time, to a copy certified as correct by the Commission.

(3) A copy certificated in accordance with Subsection (2) shall be received in all courts as evidence of validity equal to the original.

(4) A person who prevents or attempts to prevent the Commission or an authorized officer from—

- (a) entering any premises; or
- (b) inspecting any documents, books and papers; or
- (c) inspecting or taking samples of any stocks or any goods; or
- (d) making copies or abstracts of or of entries in any documents, books

and papers,  
is guilty of an offence.

**17. Order for delivery of invoice with declared goods.**

The Commission may, by order in the National Gazette or served on the person to whom it applies, provide that a person who sells any declared goods shall deliver with the goods, or within such time after the delivery of the goods as is specified in the order, an invoice or docket containing such particulars as are specified in the order.

**18. Particulars to be exhibited.**

The Commission may, by order in the National Gazette or served on the person to whom it applies, require a person who carries on a business of selling declared goods or supplying declared services, to exhibit, in such position and in such manner as are specified in the order, such particulars relating to the goods or services as are specified in the order.

**19. Particulars in advertisements as to declared goods, etc.**

(1) The Commission may, by order in the National Gazette, make provision for the inclusion in advertisements, or in a class of advertisements, relating to declared goods or declared services published—

- (a) by persons generally; or
- (b) by any specified person; or
- (c) by persons included in any class of persons,

of such particulars (including particulars as to the maximum price fixed under this Act) as are specified in the order.

(2) A person who publishes, or causes to be published, an advertisement in relation to declared goods or services that does not include the particulars required by an order under this section that applies to the advertisement, is guilty of an offence.

(3) An advertisement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in a newspaper, periodical or other publication printed or published in the country; or
- (b) exhibited to public view in or on a building, vehicle or place (whether on land or water and whether or not the place concerned is a public place); or
- (c) contained in a document sent or delivered gratuitously to a person, or thrown or left on premises in the occupation of a person; or
- (d) broadcast by wireless transmission.

**20. Tickets, etc., to be attached to declared goods.**

The Commission may, by order in the National Gazette or served on the person to whom it applies, require a person who sells or has for sale any declared goods—

- (a) to attach to, or display with, such of those goods as the Commission specifies, a ticket or label in such form as the Commission determines, setting out such particulars relating to the goods as the Commission specifies; or
- (b) otherwise to mark the goods with those particulars in such manner as the Commission determines.

### **PART III—PRICE CONTROL**

#### ***Division 1.—General. Schedule 1***

##### **20A. Intention to determine maximum prices.**

(1) Where the Commission intends to make an order under Section 21(1), the Commission shall, at least 30 days prior to making the proposed order, publish a notice in a daily newspaper generally circulating in Papua New Guinea—

- (a) specifying that the Commission intends to make an order under Section 21(1); and
- (b) specifying in reasonable detail the declared goods or declared services to which the order is intended to apply; and
- (c) specifying in reasonable detail the proposed terms of the order; and
- (d) specifying the manner in which further details in relation to the proposed order may be obtained; and
- (e) inviting interested persons to make submissions to the Commission with respect to the proposed order, within the period and in the manner specified in the notice.

- (2) Prior to making and publishing an order under Section 21(1), the Commission shall consider any submissions received from interested persons with respect to the proposed order.

##### **20B. Duty to publish reasons.**

(1) The Commission shall publish a statement of reasons for any order made and published by the Commission under Section 21(1).

- (2) A statement of reasons published under Subsection (1) shall—
  - (a) be published on the same date as the order to which it relates; and
  - (b) specify in reasonable detail the reasons for which the Commission made the order.

##### **21. Determination of maximum prices.**

- (1) With respect to any declared goods or services the Commission, may, by

order in the National Gazette prior to the expiration of the Price Declaration Period—

- (a) fix the maximum price at which any such goods may be sold or any such services may be supplied, generally or in any part of the country or any proclaimed area; or
- (b) declare that the maximum price at which any declared goods may be sold, or any declared services may be supplied by—
  - (i) a person; or
  - (ii) a body or association of persons, or any member of any body or association of persons,prior to the expiration of the Price Declaration Period,

shall be such price as is fixed by the Commission by written notice to the person, or to the body or association.

(2) In particular, but without limiting the generality of Subsection (1), in the exercise of his powers under that subsection, the Commission, may fix—

- (a) different maximum prices—
  - (i) according to differences in quality or description, or in the quantity of goods sold or the value of services supplied or sold; or
  - (ii) in respect of different forms, modes, conditions, terms or localities of trade, commerce, sale or supply; and
- (b) different maximum prices for different parts of the country or for different proclaimed areas; and
- (c) maximum prices on a sliding scale; and
- (d) maximum prices on a condition; and
- (e) maximum prices—
  - (i) in the case of the sale of goods for cash, delivery or otherwise and in any such case inclusive or exclusive of the cost of packing or delivery; and
  - (ii) in the case of the supply of services for cash or on terms; and
- (f) in the case of the sale of goods, maximum prices based on landed or other cost plus a percentage or a specified amount, or both; and
- (g) maximum prices according to or on any principle or condition specified by the Commission; and
- (h) maximum prices relative to such standards (in the case of the sale of goods—by standards of measurement, weight, capacity or otherwise) as the Commission thinks proper, or relative to prices charged by individual traders or suppliers on any date specified by the Commission, with such variations (if any) as in the special circumstances of the case the Commission thinks proper or so that the

prices may vary in accordance with a standard, or time, or other circumstance, or with profits or wages, or with such costs as are determined by the Commission.

(2A) When making an order under Subsection (1), the Commission shall have regard to—

- (a) the need to protect consumers and users of the declared goods or services from misuse of market power in terms of prices, pricing policies (including policies relating to the level or structure of prices) and the standard of the declared goods or services; and
- (b) the cost of making, producing or supplying the declared goods or services; and
- (c) the desirability of encouraging greater efficiency in relation to making, producing or supplying the declared goods or services; and
- (d) the need to ensure an appropriate rate of return on any investment in relation to the declared goods or services; and
- (e) the borrowing, capital and cash flow requirements of persons making, producing or supplying the declared goods or services; and
- (f) considerations of demand management and least-cost planning; and
- (g) existing standards of quality, reliability and safety of the declared goods or services, and the desirability of encouraging improvements in those standards; and
- (h) the effect any proposed order on general price inflation over the medium term; and
- (i) the economic and social impact of any proposed order; and
- (j) any other matters the Commission considers relevant.

(3) The power conferred by Subsection (1)(a) to fix the maximum price at which any declared goods may be sold or any declared service may be supplied shall be deemed to be validly exercised for all purposes by an order in the National Gazette that fixes any such price by reference to a list of prices approved by the Commission and issued by a body or association of persons that is recognized by the Commission—

- (a) in the case of the sale of goods by a producer or manufacturer of goods—to be representative of the producers or manufacturer, as the case may be, of the goods in relation to the sale of which the price is fixed; and
- (b) in the case of the sale of goods by a trader in goods—to be representative of the traders in the goods in relation to the sale of which the price is fixed; and
- (c) in the case of the supply of services—to be representative of the persons who supply the services to which the order relates.

(4) Where the Commission makes an order in the form authorized by Subsection (3), the Commission shall, on application by a seller of the goods or a person who supplies the service to which the order relates, furnish him with a copy of the list of prices referred to in the order.

(5) The Commission shall not exercise the powers conferred by Subsection (1)(b) to fix by written notice to a body or association of persons the maximum price or rate at which the members of that body or association shall sell any goods or supply any service, unless the body or association—

- (a) is recognized by the Commission as representative of the producers or manufacturers of or traders in the goods, or of the persons who supply the service; and
- (b) has requested the Commission in writing to exercise those powers.

(6) Where, by written notice to a body or association of persons, the Commission fixes the maximum price or rate at which the members of that body or association may sell any goods or supply any service—

- (a) the secretary or other proper officer of the body or association shall—
  - (i) on receipt of the notice, without delay—
    - (A) acknowledge its receipt by telegram addressed to the Commission; and
    - (B) communicate to the members, by letter or telegram, its contents and the date on which he received it; and
  - (ii) make a record of the time at which and the manner in which he communicates to each member the matters specified in Subparagraph (i); and
  - (iii) produce the record for inspection on demand by the Commission; and
- (b) the contents of the notice, if communicated by letter, shall, unless the contrary is proved, be presumed to have been communicated to a member at the time at which the letter would be delivered to him in the ordinary course of post; and
- (c) the notice takes effect, in respect of any member, on communication to him of its contents or on the expiration of seven days from its receipt by the secretary or other proper officer of the body or association, whichever is the earlier.

(7) An order under this section may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the order.

(8) The production of the National Gazette containing an order published under this section fixing, by reference to a list of prices, the maximum price by which any declared goods may be sold or any declared service may be supplied, is evidence in all courts that the list was, at the date of publication of the order in the National Gazette, approved by the Commission and issued by a body or association of persons recognized by the Commission to be representative—

- (a) of the producers or manufacturers of the goods; or
- (b) of the traders in the goods; or

(c) of the persons who supply the service,  
as the case requires.

(9) An order made under this section takes effect on the date specified in the order, or if no date is specified on the date of the publication of the National Gazette containing it.

(10) In this section, "Price Declaration Period" means the period of 90 days immediately following publication in the National Gazette of the notice which declared the goods or services to be declared services for the purposes of this Act, as extended from time to time by the Commission in accordance with Subsection (11).

(11) The Commission may, from time to time, by notice in the National Gazette prior to the expiration of the Price Declaration Period, extend the Price Declaration Period for a further period of 30 days from the date on which the Price Declaration Period would otherwise have expired.

## **22. Sale of goods and supply of service in one transaction.**

(1) The powers of the Commission of or in relation to fixing under Section 21 the maximum price at which any declared goods may be sold or at which any declared service may be supplied, extend to and in relation to the fixing and declaring of the maximum remuneration for the sale of any declared goods and the supply of any declared service for an undivided remuneration, and this Act, with the necessary modifications, applies accordingly.

(2) For the purposes of Sections 18, 34, 35, 36 and 58 and of Sections 33 and 37 so far as they relate to services—

(a) a transaction in respect of which a maximum remuneration has been fixed under Subsection (1) shall be deemed to be the supply of a declared service at a price equal to the undivided remuneration charged; and

(b) the maximum remuneration so fixed shall be deemed to be the maximum price fixed under this Act for the supply of that service.

(3) For the purposes of this Act and for any order or notice under this Act, unless the contrary intention appears—

(a) the sale of any goods shall be deemed to include the supply, in connexion with the sale (whether or not for a separate remuneration) of any service customarily supplied by vendors in connexion with such a sale without any separate remuneration; and

(b) the supply of any service shall be deemed to include the sale or supply, in connexion with the service (whether or not for a separate price or remuneration) of any goods customarily sold or supplied by persons supplying or carrying on such a service without any separate price or remuneration.

(4) For the purposes of this Act and of any order or notice under this Act, the sale of any declared goods and the supply of any declared service for an undivided remuneration in a case where—

- (a) no maximum remuneration applicable to the transaction as a whole is fixed under this Act; and
- (b) the transaction as a whole is not one that, by reason of Subsection (3), is deemed to be a sale of goods or the supply of a service,

shall be deemed to be—

- (c) a sale of the declared goods at a price equal to so much of the undivided remuneration as bears to the whole of the undivided remuneration the same proportion as the maximum price fixed under this Act for the sale of the goods bears to the sum of that fixed price and the maximum price fixed under this Act for the supply of the service; and
- (d) a supply of the service at a price equal to the remaining part of the undivided remuneration.

### **23. Suspension of prices orders.**

(1) Notwithstanding this Act, the Head of State, acting on advice—

- (a) may request the Commission to consider further—
  - (i) any matter dealt with by an order under Section 21; or
  - (ii) a part of any such order,

and the Commission shall report to the Minister within 28 days from the date of the request; and

- (b) may, by notice in the National Gazette, suspend, for a period not exceeding 28 days from the date of his request, the operation of an order or any part of an order, under Section 21.

(2) On the publication of the notice, the maximum price (if any) that prevailed before the making of an order suspended under this section applies during the period of the suspension.

(3) Within the period specified in a notice of suspension under this section, the Commission shall—

- (a) report on the suspension to the Minister; and
- (b) by order in the National Gazette, confirm, amend, vary or revoke the suspended order or part of the suspended order in conformity with its report to the Minister,

and, on receipt by the Minister of the report of the Commission, the Head of State, acting on advice, shall by notice in the National Gazette, remove the

suspension.

#### **24. Approved sales for export.**

Notwithstanding this Act, on application by an exporter of declared goods, and subject to such conditions as the Commission determines, the Commission may approve the sale of goods for export at a price exceeding the maximum price fixed for the goods under Section 21(1).

#### **25. Inter-retailer and inter-wholesaler transactions.**

- (1) In this section, "wholesaler", in relation to any goods, means a person who purchases the goods and sells or supplies them—
  - (a) for resale or for manufacture for sale; or
  - (b) to the State where in any one month the value of the goods is not less than K50.00.
- (2) For the purposes of this section, "cost" means—
  - (a) subject to Paragraph (b), in relation to any goods—the price paid or payable by the retailer or wholesaler who purchased the goods to the person from whom he purchased them, plus any expenses that—
    - (i) were specifically incurred by the purchaser in placing the goods at the point of delivery by him for the purpose of a sale by him; and
    - (ii) at the time of the sale or offer for sale by the purchaser, were recorded—
      - (A) on a copy of an invoice for the goods that is held by the purchaser; or
      - (B) in the books and accounts of the purchaser in such manner that they can be readily identified and clearly associated with the goods; or
  - (b) in relation to any goods to or in respect of which an order under Subsection (3) applies—cost as defined in that order.
- (3) For the purposes of this section, the Commission may, by order in the National Gazette, define the meaning of the expression "cost" in relation to any class of sale, goods or persons specified in the order.
- (4) This section applies in relation to purchases of declared goods—
  - (a) by a wholesaler from another wholesaler; or
  - (b) by a retailer from another retailer.
- (5) Subject to this section, the purchaser under a purchase to which this section applies who sells or offers for sale the goods the subject of the purchase at a price in excess of the cost to him is guilty of an offence.
- (6) A purchaser under a purchase to which this section applies who sells or offers for sale any goods the subject of the purchase at a price greater than the maximum price at which his vendor was entitled to sell them in similar quantities

at the time of sale is guilty of an offence.

(7) The onus of ascertaining the maximum price referred to in Subsection (6) is on the purchaser.

(8) A wholesaler who purchases any declared goods from a retailer and who sells or offers for sale the goods at a price in excess of the cost to the retailer is guilty of an offence.

(9) The onus of ascertaining the cost referred to in Subsection (8) is on the wholesaler.

(10) Notwithstanding Subsection (5), the purchaser under a purchase to which this section applies may sell or offer for sale any goods at a price not exceeding the maximum price that, on application by him, the Commission declares to him in writing.

(11) For the purposes of this section, the buyer may request the seller of any goods to supply him with such information as the buyer thinks necessary to enable him to comply with this section, and the seller must supply that information to the buyer in writing.

(12) The Commission may—

- (a) generally by order in the National Gazette; or
- (b) specifically by written notice,

exempt any person or class of persons from the whole or part of the requirements of this section.

### ***Division 1A.—Review of Price Control.***

#### **25A. Decision to review price control order.**

(1) In this Division, "reviewable order" means an order made under Section 21(1) that has not expired or been terminated.

(2) At any time after a reviewable order is made, the Minister or a supplier of the declared goods or services concerned may apply to the Commission for the order to be reviewed.

(3) An application under Subsection (2) shall state, with reasons, the variation that the applicant proposes should be made to the reviewable order, including the proposed new maximum price.

(4) Prior to the expiration of 12 months from the later of the date on which a reviewable order took effect and the date on which the outcome of the last review of the reviewable order was published under Section 25C(3), the Commission may, in its discretion, following an application under Subsection (2)—

- (a) decide to conduct a review of that order; or
- (b) decide not to conduct a review of that order.

(5) On or after the expiration of 12 months from the later of the date on which a reviewable order took effect and the date on which the outcome of the last review of the reviewable order was published under Section 25C(3), the

Commission shall, following an application under Subsection (2), conduct a review of that order in accordance with Section 25B.

(6) The Commission may at any time, on its own motion, decide to conduct a review of a reviewable order.

(7) If the Commission has received more than one application under Subsection (2) in respect of the same reviewable order, the Commission may treat the applications as a single application and such application shall be deemed for the purposes of Section 25C(1) to have been received by the Commission on the date that the Commission received the first application.

### **25B. Review of price control order.**

(1) If the Commission has decided, or been required by Section 25A(5), to conduct a review of a reviewable order, the Commission shall publish a notice in a daily newspaper generally circulating in Papua New Guinea—

- (a) specifying in reasonable detail the order to which the notice relates; and
- (b) specifying that the Commission intends to conduct a review of that order generally or in respect of particular matters, in the later case specifying in reasonable detail those matters; and
- (c) inviting interested persons to make submissions to the Commission with respect to the review of the order, within the period and in the manner specified in the notice.

(2) When conducting a review of a reviewable order, the Commission shall consider any submissions received from interested persons with respect to the review of that order.

### **25C. Review period.**

(1) In this section, "review period", in respect of a reviewable order, means the period of 90 days immediately following the date on which the Commission received an application under Section 25A(2), as extended from time to time by the Commission in accordance with Subsection (2).

(2) The Commission may, from time to time, by notice published in the National Gazette prior to the expiration of the review period, extend the review period for a further period of 30 days from the date on which the review period would otherwise have expired.

(3) If the Commission has decided, or been required by Section 25A(5), to conduct a review of a reviewable order, the Commission shall, prior to the expiration of the review period, by notice in the National Gazette, determine that the order should—

- (a) continue to operate in its present form; or
- (b) be varied; or
- (c) be terminated.

(4) An order made under this section takes effect on the date specified in the order or, if no date is specified, on the date of publication of the notice in the National Gazette.

(5) If, on the expiration of the review period, the Commission has failed to make a decision required by Subsection (3), the reviewable order shall be varied in the manner proposed by the applicant and the new maximum price shall be as proposed by the applicant or, if there is more than one applicant, the maximum price proposed by the first applicant.

***Division 2.—Associated Matters.***

**26. Subsidies on petrol in certain areas. [Repealed No. 57 of 1986].**

**27. Evasion of prices regulation.**

(1) Where the Commission is of opinion that it is necessary in order to prevent a person who carries on the business of selling declared goods or supplying declared services from continuing to operate a scheme that, in the opinion of the Commission—

- (a) involves a departure from his normal course of trading; and
- (b) would not be operated but for this Act or an order under this Act; and
- (c) taking into account losses involved in transactions connected with the scheme, has the effect that the real cost—
  - (i) to a purchaser of goods from him—of any declared goods; or
  - (ii) to any person to whom services are supplied by him—of any declared services,

is more than the maximum price fixed under this Act for the sale of the goods or the supply of the services,

the Commission may, by written notice directed to the vendor and published in the National Gazette, or served on the vendor, specify a class of transactions (being, in the Commission's opinion, a class of transactions that is being used for the purposes of the scheme) to be a class of transactions to which this section applies.

(2) If, without the consent of the Commission, a person to whom a notice duly published or served under this section is directed enters into a transaction that is included in a class of transactions specified in a notice under Subsection (1) is guilty of an offence.

(3) A notice under Subsection (1) shall specify the class of declared goods or declared services in relation to which, in the opinion of the Commission, the scheme is being operated, but need not specify or describe the scheme that, in the opinion of the Commission, makes the notice necessary.

**28. Prohibition of sale of goods before maximum price fixed.**

The Commission may, by order in the National Gazette or served on the person to whom it applies, provide that a person must not—

- (a) sell any declared goods; or
- (b) supply any declared service,

until he has made a written request to the Commission to fix the maximum price at which the goods may be sold or the service may be supplied, and the Commission has fixed the maximum price.

## **29. Control of sales by auction.**

(1) The the Commission may, by order in the National Gazette or by written notice to a person selling or offering declared goods for sale by auction, prohibit the sale or impose such terms and conditions as the Commission thinks proper in connexion with the sale.

(2) A person who sells, or offers to sell, by auction any declared goods in contravention of an order or notice under this section is guilty of an offence.

## **30. Requisitioning of declared goods.**

(1) Where, after receipt of a report from the Commission, the Minister is satisfied that it is necessary or expedient in order to ensure the fair distribution of declared goods amongst all members of the community, he may, by notice in the National Gazette or given to a person, direct any person who, whether as owner or otherwise, has in his possession or under his control any specified declared goods—

- (a) to hold the goods; or
- (b) to set aside and hold a specified quantity of the goods,

for and on behalf of the State.

(2) On the publication or giving of the notice, or on the setting aside of the goods, as the case may be, under Subsection (1)—

- (a) the title to and property in the goods are—
  - (i) divested from the owners; and
  - (ii) vested in the State freed from any charge and from any claim, contractual or otherwise; and
- (b) the holders and owners of the goods are discharged from any contractual engagements in respect of the goods; and
- (c) the title and property of the owners are converted into a right to receive payment of the value of the goods or the quantity of the goods as provided in this section.

(3) All persons and the agents and servants of all persons referred to in Subsection (2) shall, without delay, obstruction or objection, give immediate and peaceable possession of any goods requisitioned under this section to the Minister

or an authorized officer in accordance with this section.

(4) The production of a document or telegram purporting to be a demand or an authority to demand goods under this section, signed or sent by the Minister or the Commission, is sufficient authority for the delivery of the goods requisitioned under this section to which the document or telegram relates.

(5) The owner of any goods requisitioned under this section is entitled to be paid for the goods by the Minister—

(a) at such price as is agreed on; or

(b) in default of agreement, at such price as is determined by the Commission after hearing the parties concerned.

(6) In the event of any doubt or dispute as to—

(a) the person legally entitled to receive any moneys payable under this section; or

(b) any charge on, or any claim in respect of those moneys,

the Minister may, in default of agreement between the parties concerned, pay the moneys into the office of the Registrar of the National Court to abide an order of that Court.

(7) A person who, after the publication or giving of a notice under this section—

(a) attempts to dispose of or in any way deal with, the requisitioned goods, to the prejudice of the rights and powers of the State under this section; or

(b) refuses to deliver, or delays or obstructs the delivery of, the goods, or the quantity of the goods, in accordance with this section,

is guilty of an offence.

(8) Where goods have been acquired under this section, the Minister may store the goods and may sell or otherwise dispose of the goods to such persons or bodies, and at such times, in such manner, and on such terms and conditions, as he thinks fit.

#### **PART IV.—SPECULATING AND CORNERING.**

### **31. Speculating in declared goods.**

(1) A person, not being a bona fide wholesale or retail trader or a bona fide consumer or user, who purchases or agrees to purchase or otherwise acquires (except by way of bona fide security only) any declared goods, or any right or interest in any declared goods, is guilty of an offence.

(2) In a prosecution for an offence against Subsection (1) it is a defence if the defendant shows that the purchase or agreement did not have the object or the effect of increasing, directly or indirectly, the price of the declared goods to the

consumer or user.

(3) This section does not apply in relation to the purchase or acquisition of declared goods at a sale of the goods by auction on the winding up of a business.

### **32. Cornering and restricting circulation of declared goods.**

(1) A person who, with intent to corner the market or to restrain trade, holds or buys up declared goods and stores or retains them in his possession or under his control is guilty of an offence whether or not the maximum price of the goods has or has not been fixed under this Act.

(2) In addition to any penalty that may be imposed for a contravention of Subsection (1), the court may order—

- (a) that the whole of the goods; or
- (b) such quantity of the goods as the court orders,

be forfeited to the State.

## **PART IVA.—DECLARED MONITORED GOODS AND SERVICES.**

### **32A. Declared monitored goods and services.**

(1) The Minister may, by notice in the National Gazette, declare—

- (a) any goods, other than goods declared by any other Act or by a regulation made under any other Act to be regulated goods for the purposes of the *Independent Consumer and Competition Commission Act 2002*, to be declared monitored goods; or
- (b) any service, other than a service declared by any other Act or by a regulation made under any other Act to be a regulated service for the purposes of the *Independent Consumer and Competition Commission Act 2002*, to be a declared monitored service,

for the purposes of this Act.

(2) A declaration under Subsection (1) may be made—

- (a) generally; or
- (b) in respect of—
  - (i) any part of the country or any proclaimed area; or
  - (ii) a person, body or association of persons.

(3) The Commission shall monitor the prices of declared monitored goods and declared monitored services, and matters connected with those prices, for the purpose of reporting to the Minister as required from time to time by the Minister on—

- (a) the prices at which those goods are sold or those services are supplied; and
- (b) the desirability or otherwise, having regard to the matters specified in Section 21(2A), of declaring those goods or services to be declared

goods or services.

**PART V.—GENERAL OFFENCES AND PENALTIES.**

***Division 1.—Offences.***

**33. Selling or supplying above maximum prices.**

(1) In this section, "prescribed date", in relation to the sale or offer for sale of any declared goods, or the supply or offers of supply of any declared service, means the date declared to be the prescribed date in any order made with respect to the goods or service under Section 21.

(2) A person who—

(a) sells or offers for sale declared goods, or supplies or offers to supply a declared service at a greater price than the maximum price fixed under this Act in relation to the goods or the service; or

(b) without the approval of the Commission (which in the case of goods must be a prior approval) sells or offers for sale declared goods, or supplies or offers to supply any declared service, on terms or conditions different from the terms or conditions on which substantially identical goods were sold, or a substantially identical service was supplied, by him on the prescribed date is guilty of an offence if the sale or supply on those terms and conditions would result directly or indirectly—

(i) in a greater price than the maximum price fixed in relation to the goods or service being obtained; or

(ii) in any other manner to the advantage of the seller or supplier.

(3) In addition to any penalty that may be imposed for a breach of Subsection (2), the court may order the defendant to refund to the purchaser or to the person to whom the service was supplied the difference between the maximum price fixed and the price at which the goods were sold or the service was supplied, and the same proceedings may be taken on the order as if it were a judgement of the court in favour of the purchaser or person.

(4) For the purposes of Subsection (3) in relation to any goods, a certificate by the Commission, specifying the difference between the maximum price fixed in relation to the goods and the price at which the goods were sold, is prima facie evidence of the matters stated in the certificate.

(5) For the purposes of this section, a person on whose behalf or at whose place of business any declared goods are sold or offered for sale, or any declared service is supplied, at a greater price than the maximum price fixed under this Act in relation to the goods or service shall be deemed to have contravened this section, whether or not the goods are sold or offered for sale contrary to his instructions, unless the court is satisfied that—

(a) the sale or offering for sale took place without his knowledge; and

(b) he has systematically used all due diligence to secure observance of this Act.

(6) For the purposes of this section, a person shall be deemed to offer goods for sale, or to offer to supply a service, at a particular price if he notifies that price as the price proposed by him for a sale of the goods or for the supply of the service—

- (a) by the publication of a price list; or
- (b) in the case of goods, by exposing the goods for sale in association with a mark indicating price; or
- (c) by furnishing a quotation; or
- (d) by any other manner.

**34. Sale of declared goods or services with undeclared goods or services.**

- (1) In this section—
  - "undeclared goods" means goods other than declared goods;
  - "undeclared service" means a service other than a declared service.
- (2) It is a defence to a charge of an offence against Section 33 if the person alleged to have contravened the section proves that—
  - (a) the declared goods or declared service, or both, were or was sold or supplied with undeclared goods or an undeclared service, or both, at a total price; and
  - (b) the price for the portion of the total sale or supply that was represented by the undeclared goods or undeclared service, as the case may be, was reasonable having regard to the cost or current market value of the undeclared goods or undeclared service.

**35. Sale, etc., subject to refund of excess.**

Unless the written consent of the Commission is obtained, a person who—

- (a) sells or offers for sale declared goods, or supplies or offers to supply any declared service, subject to a condition to the effect that, if the price at which the goods are sold or the service supplied is not approved at a later date by the Commission, a refund or adjustment will be made; or
- (b) sells or offers for sale any declared goods, or supplies or offers to supply any declared service, subject to a condition requiring the buying of any other goods or acceptance of the supply of any other service, whether declared or not declared,

is guilty of an offence.

**36. Offer to pay price above fixed price.**

- (1) A person who knowingly—
  - (a) pays or offers to pay; or
  - (b) holds himself out as being willing to pay, or to offer to pay, or as being willing or able to obtain another person to pay; or

(c) offers to act in connexion with the payment of, a price (whether by way of premium or otherwise) for any declared goods or declared service at a greater price than the maximum fixed under this Act for the sale of those goods or the supply of that service is guilty of an offence.

(2) Where the maximum price relevant to any prosecution for an offence against Subsection (1) is a price fixed by written notice to any person, or to a body or association of persons, it is a defence if the person charged proves that he was not aware of the fact that the price or rate had been so fixed.

### **37. Refusal to supply at fixed price.**

(1) A person who—

(a) has in his custody or under his control for sale any declared goods; or

(b) supplies a declared service,

in respect of which a maximum price has been fixed under this Act, and who fails on—

(c) demand of any quantity of the goods, or for the supply of the service; and

(d) tender of payment at the price fixed for the goods or service demanded,

to supply the goods in the quantity demanded, or to supply the service, is guilty of an offence.

(2) In a prosecution for an offence against this section, it is a defence to show that, on the occasion in question—

(a) the defendant supplied a reasonable quantity of the goods or a reasonable portion of the service, or, after making reasonable provision for private consumption or use, had not a sufficient quantity of the declared goods in his custody or under his control, or had not a sufficient service under his control, to supply the quantity or service demanded, or reasonable quantity or portion in addition to the quantity or service required to satisfy—

(i) all other contracts, then subsisting, under which he was obliged to supply quantities of the declared goods for use or consumption within the country or to supply the service within the country, as the case may be; and

(ii) the ordinary requirements of his business; or

(b) in the case of a demand for goods, the defendant was a wholesale trader in the declared goods and the person who demanded to be supplied was not a manufacturer of, or a retail trader in the goods or in any declared goods made or partly made from the goods; or

(c) the defendant was acting in accordance with a practice approved by the Commission.

(3) For the purpose of determining what is, for the purposes of this section, a reasonable quantity of any goods, or a reasonable portion of a service, regard shall be had to all the circumstances of the case, including whether—

- (a) in the case of a demand for goods—the person who demanded to be supplied was or was not, at the time of the demand, carrying on business as a trader in the declared goods demanded, alone or with other goods; and
- (b) in the case of a demand for the supply of a service—the portion of the service demanded represents the normal requirements of the person who demanded to be supplied.

### **38. Delivery of less or inferior goods.**

(1) Subject to Subsection (2), in relation to the sale of any declared goods the maximum price of which has been fixed by or under this Act, a person who, without the consent of the Commission, knowingly delivers or offers to deliver, or knowingly accepts or offers to accept, delivery of—

- (a) a quantity of the goods less than the quantity agreed to be sold; or
- (b) goods inferior in quality to the goods agreed to be sold,

is guilty of an offence.

(2) Where the agreement for the sale of the goods provides for delivery of the goods by instalments over a period, the goods may be so delivered if the whole of the goods are delivered within the time specified in the agreement.

### **39. Lowering of quality, etc., of declared goods.**

A person who, without the written consent of the Commission—

- (a) manufactures declared goods of a quality inferior to the quality of goods of the same kind manufactured by him or a predecessor in business on or immediately before the date of the fixing of the maximum price of the declared goods; or
- (b) sells or offers for sale as declared goods any goods that are adulterated or that are falsely described, packed or enclosed for sale or labelled as declared goods,

is guilty of an offence.

### **40. Advertisement of price as being approved or subsidized.**

(1) Subject to Subsection (2), a person who—

- (a) publishes, prints, circulates, announces by way of broadcast by wireless transmission or makes public in any other manner, or causes to be published, printed, circulated, announced by way of broadcast by wireless transmission or made public in any other manner, a notification relating to any goods or service; or
- (b) sells or offers for sale any goods having affixed to, or associated with, them any label, brand or other mark,

containing words stating or implying that—

(c) any specified price with respect to any such goods or service has been approved by the Commission; or

(d) any such goods or services have been subsidized by the State,

is guilty of an offence.

(2) With the approval of the Commission, a person may include in a notification referred to in Subsection (1) a statement in a form approved by the Commission (including an approval number allotted by the Commission to the particular approval), stating that a price specified in the statement has been approved by the Commission.

#### **41. General offence.**

A person who contravenes, or fails to comply with—

(a) any provision of this Act; or

(b) any order, notice, direction, requirement or other instrument made or given—

(i) under this Act; or

(ii) under any order made under this Act,

is guilty of an offence.

#### **41A. Interpretation.**

In this Division, unless the contrary intention appears—

"Counsel" means a lawyer who is entitled, as of right, to appear before the Supreme Court or the National Court;

"the State" includes statutory authorities, and instrumentalities of the State.

#### **41B. Commission to prosecute offences.**

(1) With respect to all offences created by this Act, the Commission—

(a) may control and exercise the prosecution function of the State; and

(b) may provide Counsel—

(i) to prosecute persons charged with any offence; and

(ii) to appear on behalf of the State in any appeal before the National or Supreme Court; and

(c) may advise the National Executive Council, through the Minister, to exercise its power under Section 151(2) (*grant of pardon, etc.*) of the *Constitution* to advise the Head of State to grant pardons, free or conditional, to accomplices who give evidence leading to the conviction of principal offenders.

(2) Notwithstanding the provisions of any other Act, the Commission may prosecute offences under this Act without the consent of the Public

Prosecutor.

***Division 2.—Enforcement, Penalties, etc.***

**42. Prosecution of offences.**

(1) An offence against this Act may be prosecuted summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(2) . . . [Repealed]

(3) For the purpose of the trial of a person for an offence against this Act, the offence shall be deemed to have been committed—

- (a) at the place in which it was actually committed; or
- (b) at any place in which the person may be.

**43. General penalty, etc.**

(1) The penalty for an offence against this Act is—

- (a) if the offence is prosecuted summarily—a fine not exceeding K600.00 or imprisonment for a term not exceeding six months; or
- (b) if the offence is prosecuted on indictment—a fine not exceeding K3,000.00 or imprisonment for a term not exceeding two years.

(2) In addition to any other punishment that it may impose, a court may, if it thinks fit, order the forfeiture of any money or goods in respect of which an offence against this Act has been committed.

**44. Offences by corporations.**

Where a person convicted of an offence against this Act is a corporation, every person who, at the time of the commission of the offence, was a director or officer of the corporation shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

**45. Recognizances.**

(1) Where a person is convicted of an offence against this Act, in addition to or in lieu of any punishment provided for the offence the court before which he is convicted may require him to enter into recognizances, with or without sureties, to comply with this Act, or with the order, notice, direction or requirement in relation to which the offence was committed.

(2) If a person fails to comply with an order of the court requiring him to enter into a recognizance, the court may order him to be imprisoned for a term not exceeding six months.

**46. Enforcement of orders for refunds under Section 33(3).**

(1) Where an order is made by a court under Section 33(3), a certificate of the order in the prescribed form—

- (a) shall be granted by the clerk of the court; and
- (b) may be presented for registration to the proper officer of a court having jurisdiction in civil proceedings to the amount of the order; and
- (c) shall be registered by that officer.

(2) From the date of registration, a certificate under Subsection (1)—

- (a) is a record of the court in which it is registered; and
- (b) has the same force and effect in all respect as a judgement of that court,

and the same proceedings (including insolvency proceedings) may be taken on the certificate as if the order had been a judgement of the court in favour of the purchaser or of the person to whom the service was supplied.

(3) The costs of registration of the certificate and of other proceedings under Subsection (2) shall be deemed to be payable under the certificate.

#### **47. Forfeiture by order of Minister.**

If the Minister, on a report by the Commission, is satisfied that a person—

- (a) is buying up, storing or retaining in his possession or under his control any goods, with intent to corner the market or to restrain trade in such goods, whether or not a maximum price has been fixed for those goods under this Act; or
- (b) has purchased or acquired, or agreed to purchase or acquire, any such goods in contravention of Section 31; or
- (c) has in his possession or under his control any such goods, and has failed, on demand and tender of the maximum price, to supply, in accordance with Section 37 any particular person or persons with those goods,

the Minister may make an order that the goods, or any specified quantity of the goods, be forfeited and, on publication of the order in the National Gazette, the goods, or the specified quantity of the goods, are or is forfeited to the State.

#### **48. Seizure and disposal of forfeited goods.**

(1) Where goods have been forfeited under Section 32 or 47, an authorized officer or a member of the Police Force may—

- (a) seize any goods that he has reasonable cause to believe are forfeited; and
- (b) store any such goods in a place approved for the purpose by the Commission; and
- (c) sell or otherwise dispose of the goods to such persons or bodies, at such times, in such manner and on such terms and conditions as the Minister directs.

(2) Where forfeited goods have been sold under Subsection (1)(c), the Minister may, under special circumstances, direct that the whole or any portion of

the proceeds of the sale of the goods, less any expenses incurred in connexion with their seizure, storage and sale, be returned to the person who was the owner of the goods before their forfeiture.

## **PART VI.—EVIDENCE, ETC.**

### **49. Averments.**

(1) In a prosecution for an offence against this Act, a written averment of the prosecutor served on the defendant as Provided by this section is prima facie evidence of the matter or matters averred.

(2) This section does not apply to an averment of the intent of the defendant.

(3) Subsection (1) applies to any matter so averred even if—

(a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or

(b) the matter averred is a mixed question of law and fact,

but in a case referred to in Paragraph (b) the averment is prima facie evidence of the fact only.

(4) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of the evidence is not increased or diminished by this section.

(5) An averment shall not be made under this section unless the Commission is satisfied that the averment is reasonably necessary for the due administration of justice and will not impose hardship on, or occasion injustice to, the defendant, and certifies in writing accordingly on the paper containing the averment.

(6) An averment is not evidence for the purposes of this section unless a copy of the paper containing the averment has been served on the defendant in the same manner as the process requiring his attendance before the court.

(7) Service of a copy of the paper containing the averment may be proved in the same manner as service of the process requiring the defendant's attendance before the court.

(8) Subject to Subsection (9), on the hearing of any information or complaint in respect of an offence against this Act, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to be made in the writing containing an averment as appear to it to be desirable or necessary to enable the real question in dispute to be determined.

(9) If the court considers that the defendant has been misled by the form of the averment, it may—

(a) refuse to allow an amendment; and

(b) adjourn the hearing of the case for such period as it thinks proper; and

(c) make such order as to the costs of the adjournment as it thinks proper.

### **50. Prosecutions where price is fixed as lower of more prices than one.**

(1) For the purposes of prosecution for an offence against this Act, where a maximum price fixed under this Act is expressed to be the lower or lowest of two or more prices, the prosecutor may, in the information, complaint or indictment, recite as the maximum price any one of those prices.

(2) For the purposes of the prosecution in a case where a maximum price is recited in accordance with Subsection (1) (including proof of the maximum price recited), and for any purpose arising out of the prosecution, the order or notice by which the maximum price was so fixed shall be deemed to have fixed as the relevant maximum price the price so recited.

### **51. Ministers, etc., as witnesses.**

The Minister or a person who is or has been a member of the Commission, is not a compellable witness—

- (a) in proceedings against a person for an offence against this Act; or
- (b) in proceedings to which the State, the Commission or an officer of the Commission is a party, in relation to any matter arising under this Act; or
- (c) in proceedings in which the validity of an order under this Act is in issue.

### **52. Evidence by certificates.**

In a prosecution for an offence against this Act, a certificate under the hand of any person that a document annexed to the certificate is a true copy of a letter or notice sent by him to the defendant is prima facie evidence—

- (a) of the matters certified; and
- (b) that the original letter or notice of which the document purports to be a copy was received by the defendant on or about the time at which it would be delivered in the ordinary course of post if it had been sent on the date borne by the document; and
- (c) that the signature on the certificate is the signature of the person by whom it purports to have been signed.

### **53. Evidence of orders, etc.**

For the purposes of this Act—

- (a) the production of the National Gazette purporting to contain an instrument is prima facie evidence that the instrument was duly made, given or issued in the terms set out in the National Gazette and that the instrument is in force; and
- (b) the production of a document purporting—
  - (i) to be an extract from the National Gazette; and
  - (ii) to be printed or published by the Government Printer; and
  - (iii) to contain an instrument,is prima facie evidence that the instrument—

- (iv) was duly made, given or issued to the effect of or in the terms set out in the extract; and
- (v) was published in the National Gazette; and
- (vi) is in force.

**54. Evidence of certain instruments.**

(1) A document purporting to be an instrument made or issued by the Minister, the Commission or any other person under this Act, or of an order made under this Act, and to be signed by or on behalf of the Minister or person shall—

- (a) be received in evidence; and
- (b) until the contrary is proved, be deemed to be an instrument made or issued by the Minister, Commission or person.

(2) In any legal proceedings, prima facie evidence of an instrument referred to in Subsection (1) may be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister the Commission or the other person having power to make or issue the instrument.

**55. Evidence given under compulsion.**

Where by this Act a person is obliged to answer questions orally, he shall not refuse to answer any question on the ground that the answer might tend to criminate him or make him liable to a penalty, but the answer given by him is not admissible in evidence in any proceedings against him other than proceedings in respect of—

- (a) the falsity of the answer; or
- (b) the refusal or failure to answer any question.

**PART VII.—MISCELLANEOUS.**

**56. Application of orders, etc.**

An order, declaration or notice authorized to be made or given under this Act may be made or given so as to apply, according to its tenor, to—

- (a) persons generally; or
- (b) all or any persons included in a class of persons; or
- (c) in the case of an order—a person to whom a notice is given under the order; or
- (d) all or any persons in any area; or
- (e) a particular person; or
- (f) the sale of goods or supply of a service to a particular person by a particular person; or
- (g) goods or services generally; or
- (h) a class of goods or a class of services; or
- (i) all or any goods or services in any area; or
- (j) specific goods or a specific service.

**57. Giving of written notice.**

A written notice for the purposes of this Act may be given—

- (a) to a person—by being delivered by hand or sent by post in a letter addressed to him at his last-known or usual place of abode or place of business; or
- (b) to a body or association of persons—by being delivered by hand to the secretary or other proper officer of the body or association, or by being sent by post in a letter addressed to him at the last-known or usual place of business of the body or association; or
- (c) to persons generally, to persons included in a class of persons or to persons in any area—by notice in the National Gazette.

**58. Keeping of books, accounts, etc.**

(1) For the purposes of this Act, a person who, in the course of, for the purposes of, in connexion with or as incidental to a business carried on by him—

- (a) produces, manufactures, sells or supplies goods; or
- (b) supplies a service,

must—

- (c) keep proper books and accounts, and, where applicable, stock and costing records; and
- (d) preserve them, together with all copies of invoices and all vouchers, agreements, correspondence, cables, telegrams, stock sheets and other documents relating to his purchases of stock, costs and sales of any goods or relating to any service supplied by him, until their destruction is authorized by the Commission.

(2) Without affecting the generality of Subsection (1), the Commission may, by written notice, direct a person to whom that subsection applies to keep such books, accounts and records as are specified in the notice.

(3) A person to whom a direction is given under Subsection (2) must comply with the direction and preserve the books, accounts and records required to be kept by him in accordance with the direction until their destruction is authorized by the Commission.

**59. Entry and search for forfeited, etc., goods.**

An authorized officer or a member of the Police Force may, at any time of the day or night, enter and search any premises or vessel, or any part of any premises or vessel, where any goods forfeited or liable to seizure under this Act are, or are supposed to be, and if necessary for that purpose may—

- (a) break into and use force to enter the premises, vessel or part; and
- (b) break open and search any chests, trunks, packages or other things in which the goods are or are supposed to be.

**60. Regulations.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for prescribing penalties of fines not exceeding K200.00 for offences against the regulations.