



*Tonga*

# **TONGA ELECTRIC POWER BOARD ACT**

**1988 Revised Edition**





# TONGA ELECTRIC POWER BOARD ACT

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## TONGA ELECTRIC POWER BOARD ACT

Acts Nos. 9 of 1949, 4 of 1950, 18 of 1950, 12 of 1951, 4 of 1956, 11 of 1956, 8 of 1957, 5 of 1960, 14 of 1960, 3 of 1962, 22 of 1974, 29 of 1974, 7 of 1975, 3 of 1981, 14 of 1983, 46 of 1988.

### AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE TONGA ELECTRIC POWER BOARD FOR THE PRODUCTION, CONTROL AND DISTRIBUTION OF ELECTRIC POWER THROUGHOUT THE KINGDOM; AND FOR RELATED PURPOSES

Commencement [24th October, 1949]

#### 1 Short title.

This Act may be cited as the Tonga Electric Power Board Act. (*Amended by Act 46 of 1988.*)

#### 2 Definitions.

In this Act, unless the context otherwise requires —

“**Board**” means the Tonga Electric Power Board constituted under the provisions of this Act; (*Amended by Act 46 of 1988.*)

“**consumer**” means any person or body of persons supplied or entitled to be supplied with electricity by the Board;

“**electric line**” means a wire or wires, conductor or other means used for the purpose of conveying, transmitting or distributing electricity with any

casing, coating, covering, tube, pole or insulator enclosing, surrounding or supporting the same or any part thereof or any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity;

“**energy**” means electrical energy;

“**financial year**” means a period of twelve months ending on the thirtieth day of June in each year;

“**Government**” means the Government of the Kingdom of Tonga;

“**Manager**” means the Manager of the Tonga Electric Power Board; (*Amended by Act 46 of 1988.*)

“**Minister**” means the Minister of Works;

“**power**” means electric power or the rate per unit of time at which energy is supplied;

“**prescribed**” means prescribed by this Act or by regulations made hereunder;

“**Secretary**” means the Secretary of the Tonga Electric Power Board constituted under this Act; (*Amended by Act 46 of 1988.*)

“**service line**” means any electrical line or main through which energy may be supplied or intended to be supplied by the Board to any premises where the energy so supplied or intended to be supplied is generated;

“**telegraph line**” means any line used for telegraphic or telephonic communication;

“**transmission line**” means any electric line;

“**works**” means the works authorized by this Act or any of them and includes electric lines and also any buildings, machinery, mechanical appliances, engines, works, matters or things of whatever description required to supply electricity and to carry into effect the objects of the Board under this Act.

### **3 Licences to generate electricity.**

The Board has power to grant licences to generate electricity and may impose licence fees. (*Substituted by Act 46 of 1988.*)

### **4 Penalty and exemptions.**

- (1) A person shall not generate electricity unless he is the holder of a licence granted to him by the Board. (*Amended by Act 46 of 1988.*)



- (2) A person who commits an offence under this section shall be liable on conviction to a penalty not exceeding \$20.
- (3) The provisions of this section shall not apply to —
  - (a) Government Departments;
  - (b) The Tonga Broadcasting Commission;
  - (c) the Commodities Board; and
  - (d) the Tonga Telecommunications Commission. (*Inserted by Act 14 of 1983.*)
- (4) Notwithstanding anything contained in this Act, the Commodities Board may generate electricity anywhere for the purposes of its own undertaking. (*Substituted by Act 3 of 1962, and Amended by Act 46 of 1988.*)

## 5 Constitution of board.

- (1) His Majesty in Council may by Order in Council constitute the Tonga Electric Power Board. The Board shall have not less than 9 members consisting of 2 Ministers to be appointed by the Cabinet, the Chief Secretary and Secretary to Cabinet, the General Manager of the Telecommunications Commission and the Manager, who shall be ex officio voting members, together with 4 representatives of the consumers of the district and such other persons as His Majesty in Council may be pleased from time to time to appoint, all such representatives and other persons aforesaid to be appointed by His Majesty in Council on the nomination of the Prime Minister. (*Amended by Acts 4. of 1950, 18 of 1950, 14 of 1960, 22 of 1974, 14 of 1983 and 46 of 1988.*)

### Board to be body corporate.

- (2) The Tonga Electric Power Board shall be a body corporate by the name of “The Tonga Electric Power Board”, and shall have perpetual succession and a common seal with power to purchase, take, hold and dispose of real and personal property and to do and to suffer all that bodies corporate may lawfully do and suffer. (*Amended by Act 46 of 1988.*)

### Disqualifications.

- (3) Any person who is insolvent in fact or has been convicted of an indictable offence or is undergoing a sentence of imprisonment or has become insane or is found guilty upon inquiry of evading or misapplying the provisions of this Act shall be disqualified from being appointed or from continuing as a member of the Board.

**6 Loans to board from surplus funds.**

It shall be lawful for the Treasurer, with the consent of His Majesty in Council, to lend from the Surplus Funds of the Kingdom a sum of money not exceeding \$350,000 to the Board for the purpose of carrying out the objects and provisions of this Act. The Treasurer shall require such loan to be repaid by the Board within 60 years from the date thereof and shall be entitled to charge compound interest thereon at a rate not exceeding 3 per centum per annum. (*Amended by Acts 12 of 1951, 11 of 1956, 8 of 1957.*)

## **THE CHAIRMAN**

**7 Chairman.**

- (1) The Cabinet shall appoint a Minister who is a member of the Board to be Chairman of the Board for such period as the Cabinet determines.
- (2) The Chairman of the Board holds office as Chairman until the expiration of the period of his appointment or until he ceases to be a member of the Board, whichever first happens. (*Substituted by Act 14 of 1960.*)

## **PROCEEDINGS OF THE BOARD**

**8 Constitution of meetings.**

- (1) All acts of the Board, and all questions coming or arising before the Board may be done and decided by the majority• of such members of ,the Board as are present and vote at a meeting held in pursuance of this Act or any by-law made hereunder.
- (2) A meeting shall be duly constituted if a quorum is present thereat.
- (3) At a meeting of the Board a quorum shall consist of not less than 5 members.
- (4) The Chairman shall have a deliberate vote, and in any case in which the votes are equal shall have also a casting vote.

**9 Voting.**

Every question coming before the Board shall be decided by open voting.

**10 Chairman to preside.**

- (1) The Chairman shall preside at every meeting of the Board at which he is present.
- (2) If the Chairman is absent from any meeting of the Board, then such member as the members of the Board then present shall choose shall be chairman of that meeting.

**11 Members may not vote where pecuniary interest involved.**

- (1) A member of the Board shall not vote on or take part in the discussion of any matter before the Board in which he or his partner in any business or calling has directly or indirectly any pecuniary interest otherwise than as the occupier or owner of private property, or as a member of a registered company in which there are not less than 10 members and of which he is neither a director nor the general manager.

**Penalty.**

- (2) A member who knowingly offends against this section is liable on summary conviction to a fine not exceeding \$100.

**Prosecution by Attorney-General.**

- (3) It shall be the duty of the Attorney-General to institute proceedings under this section, but nothing herein shall be so construed as to prevent such proceedings from being taken by any other person.

**12 Initial meeting.**

The first meeting of the Board shall be held at such time and in such place as the Minister by notice to the members may direct. (*Amended by Act 46 of 1988.*)

**13 Annual general meeting.**

- (1) The Board shall hold an Annual General Meeting in the month of January in each year.

**Ordinary meeting.**

- (2) The Board shall hold such ordinary meetings at such times and in such places as it from time to time appoints.

**Notice of meetings.**

- (3) The Secretary shall give notice in writing to each member of the Board of the time and place appointed for each ordinary meeting, and the members shall attend such meetings without further notice of each meeting.

**Special meetings.**

- (4) The Board may hold special meetings and the Chairman or any 3 or more of the members may call a special meeting by notification to the Secretary of their desire so to do.

**Notice of special meetings.**

- (5) The Secretary shall give notice in writing of any such special meeting, and no special meeting shall be held unless notice in writing thereof and of the business to be transacted thereat has been given to members, and no business shall be transacted at a special meeting unless notice thereof has been so given.

**14 Adjourned meetings.**

Any meeting of the Board may be adjourned to another day not later than 7 days thereafter, and notice of such adjourned meeting shall be given to each member.

**15 Extraordinary business.**

- (1) No extraordinary business shall be transacted at any ordinary meeting of the Board unless due notice of such business has been given at a prior meeting, or forwarded to the Secretary at least 10 days before the meeting at which it is to be brought up and at least 7 days notice in writing of such business has been sent to each member.
- (2) Subject to the by-laws of the Board, the Chairman shall determine what business shall be extraordinary within the meaning of this section.

**16 Meetings open to public.**

- (1) Meetings of the Board shall be open to the public but the Board for sufficient reason, of which it shall be the sole judge, may exclude strangers altogether from any meeting.
- (2) The Chairman at any meeting may order any police constable or officer of the Board to exclude or remove from the meeting any stranger on account of noisy or disorderly conduct.

**17 Revocation or alteration of resolutions.**

Any resolution of the Board may be revoked or altered at the same meeting by the unanimous vote of the members present when it was passed, or by a resolution passed at a subsequent meeting of the Board.

**18 Proceedings not invalidated for lack of notice.**

Not act or proceeding of the Board shall be invalidated in consequence of any failure to give to any member of the Board due notice of any meeting or of the business to be transacted thereat.

**19 Minutes to be kept by the secretary.**

- (1) The Secretary shall keep the minutes of the proceedings of the Board in a book, in which he shall enter the names of the members attending each meeting, and the names of the members voting on each question on which there is a division, and every resolution, order, or other proceeding of the Board, and any other matter directed by the Board to be entered upon the minutes.

**Minutes to be read and signed by chairman.**

- (2) The minutes of the proceedings of every meeting shall be read at the next ordinary meeting succeeding, and, if approved by the Board or when amended as directed by the Board, shall be signed by the Chairman of such succeeding meeting.

**Minutes book to be kept by secretary.**

- (3) The minute-book of the Board shall be kept by the Secretary in the office of the Board and shall be open to inspection during all office hours by any member of the Board.

**20 Remuneration of members.**

The Board may, out of its funds, pay to members such reasonable remuneration for their services as may be prescribed by resolution of the Board. (*Amended by Act 5 of 1960.*)

**21 Offices of the board.**

The Board may from time to time provide public offices with fittings and furniture for the same for holding its meetings and transacting its business, and for the use of its officers, and for any other purpose, and may purchase or take on lease any land or buildings for such purpose, or may cause buildings to be erected on any land belonging to or leased by the Board, or any such building to be added to or improved. (*Amended by Act 46 of 1988.*)

**22 Officers of the board.**

The Board may by resolution from time to time appoint fit persons to be Secretary, Treasurer, Engineer, Surveyor, Manager, and all such other officers and servants as it thinks necessary to assist in the execution of the provisions of this Act, and may pay such persons such salaries and allowances as it thinks fit, and may establish and/or contribute to pension, superannuation or other schemes for the benefit of such persons. One person may hold two or more of such offices. (*Amended by Act 7 of 1975.*)

**23 Acting Officers.**

During the absence from duty of any officer of the Board by reason of illness, leave of absence, or other cause, the duties and powers of such officer may be performed and exercised by an acting officer appointed by resolution of the Board: and any such appointment may be either general or for some occasion only.

## **FINANCE**

**24 Board may borrow money.**

- (1) The Board may from time to time borrow such sums as are necessary for the undertakings authorized by this Act.

**Rate of interest on money borrowed.**

- (2) Such sums shall be borrowed in the manner prescribed or directed by His Majesty in Council, and the rate of interest payable in respect of any such loan shall be as approved by His Majesty in Council. (*Amended by Act 3 of 1981.*)

**25 Annual estimates.**

- (1) The Manager shall during the month of April in every year submit to the Board for approval an estimate —
  - (a) of the amount of expenditure during the forthcoming financial year;
  - (b) of the amount of income expected to accrue to the Board during the forthcoming financial year.

**Estimates to be considered before 15th June.**

- (2) Such estimates shall be submitted by the Manager to the Board at a Special Meeting to be held not later than 15th of June in every year and

shall thereat be considered by the Board with a view to their approval modification or otherwise.

**Estimates are authority for expenditure.**

- (3) Such estimates after approval by the Board shall be sufficient authority to the Manager or any other officer duly authorized in that behalf to expend the moneys of the Board for the purposes specified therein up to an amount not exceeding the sums specified therein as being required for each particular object.

**Estimates not to be exceeded.**

- (4) In no circumstances shall the Manager or any other officer of the Board expend any funds belonging to the Board in excess of the amounts specified and approved by the Board for inclusion in such estimates without the approval of the Board conveyed by resolution.

**26 Board may fix and levy rates.**

It shall be lawful for the Board to make and levy rates for the sale of power, for the installation and hire of equipment and for all works authorized by this Act. Such rates shall be fixed by resolution of the Board and shall be notified to the public by advertisement in the Tonga Chronicle and/or on Radio Tonga, before any new rate takes effect. (*Amended by Act 46 of 1988.*)

**27 Board may collect and recover in court any rate levied.**

Any rate made and levied by the Board may be collected by the Board, and may be recovered by it by action in its own name in a court of competent jurisdiction in the Kingdom.

**28 Special funds.**

- (1) The Board may appropriate in any year any moneys standing to the credit of its account, and not appropriated for any special purpose, towards the creation of a special fund to provide for the following contingencies —
- (a) destruction of or injury to any of the property of the Board;
  - (b) depreciation in the value of any of the property of the Board;
  - (c) claims which may be made upon the Board by employees or any other persons;
  - (d) the strengthening of any sinking fund of any loan, .or the depreciation of any of the investments thereof;
  - (e) any other exceptional loss or expenditure.

- (2) The Board may invest all moneys so appropriated and the interest and profits accruing therefrom in such securities as it from time to time determines.
- (3) The Board may, at any time, and from time to time repay into its general funds the whole or any part of the moneys so appropriated or invested and the accumulations thereof, except in the case of moneys set apart for the contingencies mentioned in paragraphs (a) and (b) of subsection (1) of this section.

## **29 Where fund account to be kept.**

- (1) All moneys belonging to the Board shall be paid into either the Treasury or the Bank of Tonga, in each case to an account to be called the Power Fund Account. (*Substituted by Act 22 of 1974.*)

### **Payments to be supported by vouchers.**

- (2) No money shall be drawn out of such account except pursuant to a resolution of the Board, and all moneys shall be paid by the Board in cash, such payments being supported by a payment voucher in the prescribed form signed by the Chairman or an officer duly authorized by the Board in that behalf.

## **30 Proper books of account to be kept.**

- (1) The Board shall cause books to be provided and kept and true and regular accounts to be entered therein of all sums received and paid by the Board, and of the several purposes for which such sums were received and paid.
- (2) Such books shall at all reasonable times be open for the inspection of any member of the Board.

## **31 Balance sheet.**

- (1) The Board shall, not later than the last day of July in any year cause its accounts for the preceding Financial Year to be balanced, and a true statement and account to be prepared.

### **Audit.**

- (2) All such accounts shall be audited by an Auditor duly appointed by the Board for that purpose.

### **Annual report.**



- (3) Such accounts shall be accompanied by a report prepared by the Manager setting out the works undertaken by the Board and any matters appertaining thereto during the preceding financial year.
- (4) The audited accounts mentioned in subsection (2) of this section and the report mentioned in subsection (3) of this section shall, as soon as practicable after their preparation, be furnished to the Prime Minister who shall cause a copy of the accounts and the report to be laid before the Legislative Assembly. (*Added by Act 14 of 1960.*)

## CONSTRUCTION OF ELECTRIC WORKS

### 32 Works to be authorized by order in council.

It shall not be lawful for the Board to commence the construction of any electric works, or to enter into any contract, matter or thing authorized by this Act to be done in or about the construction of electric works, except with the authority of His Majesty in Council by Order in Council. (*Amended by Act 46 of 1988.*)

### 33 Preliminary steps may be taken without order in council.

Notwithstanding anything contained in section 32 of this Act, the Board before obtaining the Order referred to therein may take all necessary preliminary steps for the future construction of electric works.

### 34 Procedure after grant of order in council.

- (1) On the issue of an Order in Council as aforesaid authorizing the construction of electric works the Board shall have the power to purchase, construct and maintain any electric works specified therein, and may enter into contracts with any person for the purchase, construction or maintenance of the electric works, or for any other purpose authorized by this Act or by any Order in Council made thereunder, or for furnishing materials or for any things necessary for the purposes of this Act.

#### **Board may contract with minister of works.**

- (2) The Board may enter into any such contracts with the Minister of Works, and the Minister of Works is hereby authorized to make any such contract with the Board, for the construction or maintenance of electric works by the Public Works Department at the cost and charge of the Board, or for any such purpose or matter as is referred to in subsection (1) hereof.

**35 Power to enter land for survey purposes.**

- (1) Any engineer, surveyor, or other officer appointed by the Board may from time to time enter upon any land within the electric power district or outer area, with such assistants as he thinks fit, for the purpose of making any survey or inspection for the proposed works and undertakings of the Board, and may fix or set up thereon survey pegs, marks, or poles, and dig or bore into such lands so as to ascertain the nature of the soil, and set out the lines of any works thereon.

**Notice of entry to be given.**

- (2) In all cases notice shall be given to the owner or occupier of the land to be entered upon before such entry is made, and the officer entering thereon shall, when required to do so, produce to the owner or occupier of the land the written authority of the Secretary or Chairman of the Board to make the survey.

**Board to make good damage.**

- (3) In any case where damage is done to the land by such officer entering thereon in exercise of the powers conferred upon him, the Board shall be liable to make good the same; and the amount payable in respect thereof shall be ascertained in the mode hereinafter provided as to the assessment of compensation for land taken or affected by any electric works.

## **ACQUISITION AND OCCUPATION OF LAND**

**36 Acquisition of land to be in accordance with Land Act.**

The Board is hereby authorized subject to the approval of His Majesty in Council to exercise the powers conferred upon the Minister of Lands under Part VIII of the Land Act for the acquisition of such land as it may require for the purpose of the works authorized by this Act.

**37 Occupation of adjacent land.**

Subject to the provisions of this Act, the Board may enter upon or cause to be entered upon all lands which it is authorized to use or acquire under this Act for the purpose of making such surveys as may be necessary, and, subject as aforesaid, may take and hold all the lands required for the electric works, and may from time to time temporarily occupy with the approval of His Majesty in Council and use such lands as may be necessary on either side of the electric works during the construction thereof, or for the purpose of the maintenance thereof.

**38 Right to erect poles, etc., without acquisition of land.**

In further addition to the powers conferred by the preceding sections of this Act, the Board may construct tunnels under any private land, or aqueducts or flumes over the same, and may erect poles thereon, and carry wires over or along any such land without being bound to acquire the same, with right of way by the best available route to and along such works and erections for the Board's servants, workmen and agents, from time to time and at all times, with or without any suitable means of conveyance, and with such tools, machinery, articles and materials as may be necessary for the construction of such works or for the maintenance or repairing of the same or for the doing of anything hereby authorized; and may also deposit and store from time to time upon any lands adjoining such works all such machinery and materials of any kind as may be used in the construction or repairing of such works:

Provided that nothing in this section shall affect the right of any owner or occupier of land to have all the rights to compensation given by section 44.

**39 Alterations to roads, etc., to cause minimum inconvenience.**

- (1) Where it is found necessary for the construction of electric works to alter any road, watercourse, sewer or drain, or any other public work, or any water pipe for the supply of water belonging to any private person or company, such alteration shall be made in such manner as to interfere as little as possible with the works so altered, and so as to afford to the public and to every person entitled to the use of the same equal use and convenience as before such alteration.
- (2) Before commencing any such alteration the Board or its duly authorized officer shall cause a plan thereof to be prepared and to be submitted to the Minister or to the owner of such sewer, drain, water-pipe, or other work as the case may be; and if the Minister or owner objects to the proposed alteration the Board shall appoint a competent engineer to confer with the Minister or owner and to agree with him as to the manner in which such alterations shall be made.
- (3) If no agreement can be reached between the parties the matter shall be referred to His Majesty's Cabinet who shall make such order therein as they think fit, and the alteration shall be made in accordance with such order.
- (4) All alterations made under the provisions of this section shall be made by and at the expense of the Board.

**40 Notice and appeal against occupation of land.**

- (1) The engineer or other person having charge of the electric works shall, before occupying or using any land as herein provided, and except in the case of accident to the electric works requiring immediate repair, give to the owner or occupier thereof not less than 21 days notice in writing and shall state in such notice the use to be made of such land.

**Right of appeal to judge of the land court.**

- (2) The said owner or occupier may within 10 days of receipt of such notice, and after giving notice to the said engineer or other person of his intention so to do, apply to the Judge of the Land Court, who may thereupon summon such engineer or other person to appear before him at a time and place to be named in the summons.
- (3) If it appears to the Judge of the Land Court that the use proposed to be made of the said lands is unreasonable or unnecessary, or that other neighbouring lands are more fitting to be used for the purpose proposed, he may order that the land in question shall not be occupied or used in the manner proposed.
- (4) If it appears to the Judge of the Land Court that the use proposed to be made of the said land is reasonable and necessary, he may in like manner order that the said land may be occupied and used, in such manner and to such extent only and subject to such limitations and restrictions as he thinks fit; and all persons concerned shall be bound by such order.

**41 Land not required to revert to original estate and be disposed of according to Land Act.**

If it is found that any land taken or acquired Under this Act is not required for the purpose of the electric works it shall, if situated on Crown Land revert to the Crown, or if situated on the estate of a tofi'a holder revert to such tofi'a holder, and be disposed of in accordance with the provisions of the Land Act.

**42 Removal of trees etc., injurious to lines.**

If the engineer or other person having charge of the electric works is of the opinion that any line is, or is likely to be, in any manner injured or obstructed by any tree or shrub, whether ornamental or otherwise, growing or being on any land adjoining such line or over which any such line passes or is carried, he may by himself or his agents remove such tree or shrub or part thereof; And it is hereby provided that compensation shall only be paid on the first occasion on which any such tree or shrub shall be removed from any such land, but shall not be payable for any removal of any tree or shrub from the same land on a subsequent occasion. (*Inserted by Act 22 of 1974.*)

**43 Board may lease lands.**

The Board may, with the consent of the Minister of Lands, and subject to such conditions as he may impose, let or lease any land or buildings not required for the immediate use of the Board, but which it is not deemed expedient should be relinquished under section 41.

**44 Compensation**

Every person having any estate or interest in any land taken under the authority of this Act, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Board, subject always to the terms of section 42. In the event of any dispute as to the payment or the amount of such compensation, the matter shall be determined in the manner provided by the Land Act.

## **GENERAL POWERS OF ELECTRIC POWER BOARD**

**45 Exclusive rights of power board.**

Subject to any restrictions hereinafter specified the Board shall have the sole right to do the following things in respect of any electric works authorized to be constructed under this Act —

- (a) to erect generating works, transmission lines, transformer stations, and all other works authorized by this Act on, over, or under any land necessary for the construction thereof, and in the case of transmission lines on, over or under the foreshore and sea beds; and for these purposes may construct works of every description and of every material necessary to the working thereof; (*Amended by Act 29 of 1974.*)
- (b) to erect transformer stations in such places as may be found necessary for the distribution of the electric energy generated by the Board;
- (c) to erect a transmission line or transmission lines along, on, over, or under any road or public reserve, and to alter the level of any road for such purpose;
- (d) to alter the course or level of any river, stream, watercourse, ditch or drain;
- (e) to make and maintain any drain or conduits on or under any land adjacent to, and for the purpose of carrying water from, the works and undertakings of the Board;

- (f) to trim back to the boundary line the branches of trees the roots of which are on any privately occupied land and which overhang any roadway in such a manner as to prevent the construction of or endanger any electric works; and the Board shall not be liable to pay any compensation to any person as a result of anything done under this sub-paragraph. (*Added by Act 4 of 1956.*)
- (g) to erect works and install all needful machinery and plant for the utilization of the by-products of any fuel used in the generation of electricity;
- (h) to provide all such buildings, engines, stations, machinery, piers, wharves, roads, bridges, approaches and other works in connection with the undertakings of the Board as may be thought necessary;
- (i) to enter into contracts with any Government Department, public or private company, or any private individual for the supply to them of electric power in bulk or otherwise, and on such terms and conditions as it deems fit;
- (j) to make such arrangements as it may deem expedient to consumers, either individually or collectively, whose point of consumption is within an outer area, for the erection and maintenance of a transmission line or transmission lines, and the supply of electric power;
- (k) generally to do all acts necessary for constructing maintaining, altering, repairing and using the works and all the undertakings of the Board.

(*Amended by Act 46 of 1988.*)

#### **46 Board to undertake works without delay.**

The Board shall, as soon as may be after the issue of the Order in Council referred to in section 32, commence the construction of the electric works in accordance with the plans approved by His Majesty in Council, and shall prosecute the same to completion without delay or intermission unless hindered or prevented by some unforeseen cause.

#### **47 Power of minister to order inspection.**

During the construction of the electric works and the execution of works connected therewith, and after the completion thereof the Minister of Works shall be at liberty to direct any qualified engineer to inspect the works, transmission lines, and other works of the Board; and upon or after such inspection may require that such additions, alterations, or repairs shall be made by the Board as, in his opinion, are necessary or desirable for the utility and

safety of the undertaking and the public. All such additions, alterations, or repairs shall be made in a manner to be approved by an officer appointed for the purpose by the Minister.

**48 Board may install electric equipment and charge rent.**

The Board upon application by the owner, may install motors, electric wires, electric lamps and other fittings and equipment in public or private buildings, works, dwellings, and other places, and may charge rent for the use thereof, or may accept payment thereof by instalments.

**49 Cost of equipment and rent recoverable in court.**

Where in exercise of the powers conferred upon it by section 48 the Board has installed any such fittings or equipment specified therein on any land, or in any building thereon, the cost of such fitting or equipment and of the installation thereof, or any rent payable for the use thereof, shall be deemed to be a debt owing to the Board and may be recovered as such by action in a Court of competent jurisdiction of the Kingdom.

**50 Board may purchase and deal in electric fittings.**

The Board may purchase motors, fittings, machinery, and all other equipment for the use of electric energy as applied to industrial, domestic and other purposes; and may sell either for cash or on terms or lease, with or without purchasing clauses, such motors, fittings, machinery, and equipment to users of electric power; and generally may do all things which it deems necessary to encourage such industries within the district.

**51 Power of entry for ascertaining quantity of electricity consumed, etc.**

Any officer appointed by the Board may at all reasonable times enter any premises to which electricity is or has been supplied by the Board in order to inspect the electric lines, meters, accumulators, fittings, works and apparatus for the supply of electric power belonging to the Board and for the purpose of ascertaining the quantity of electricity consumed or supplied or, where a supply of electric power is no longer required or where the Board wish to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, meters, accumulators, fittings, works or apparatus belonging to the Board.

**52 Protection of telegraph lines.**

The Board and their agents shall take all reasonable precautions in constructing, laying down, and placing transmission lines and other works of all descriptions, and in carrying out such works so as not to affect injuriously, whether by induction or otherwise, the working of any line from time to time used for the purpose of telegraphic, telephonic or signalling communication:

Provided that the Board shall not be held pecuniarily liable for any damage to such line aforesaid arising from the faulty or defective construction of such telegraphic or telephonic line.

**53 Penalty for interruption of telegraphic communication**

The Board and their agents shall comply with such reasonable requirements as may be made by the Prime Minister for the purpose of preventing any properly constructed line as in section 52 from being injuriously affected by the said electric works, and if the Board without good reason fail to comply with such reasonable requirement they shall be liable on conviction by a court of competent jurisdiction to a fine not exceeding \$50 if telegraphic or telephonic communication is thereby interrupted, and not exceeding \$10 for every day during which such offence continues.

**54 Liability of board to defray expenses of alterations.**

In the event of it being necessary in consequence of the construction of any transmission line or the execution of any work by the Board or their agents to make any alteration in any existing telegraphic or telephonic line as aforesaid, it shall be lawful for the General Manager of the Tonga Telecommunications Commission with the consent of the Prime Minister to make such alteration by himself or to consent to the work being done by the Board under the supervision and to the satisfaction of himself or a member of his staff duly appointed in that behalf; and provided such alteration is not occasioned by the faulty or defective erection or construction of the said telegraphic or telephonic line, the Board shall, at the discretion of the Prime Minister, be liable to pay either the whole or any portion of the expenses incurred in connection therewith or incidental thereto having due regard to all the circumstances necessitating such alteration.  
*(Amended by Act 14 of 1983.)*

**55 Electric line not to be used for telegraphic purposes without permission.**

No electric line maintained under the provisions of this Act shall be used for the purpose of telegraphic, telephonic or signalling communication except with the



permission of His Majesty in Council, and subject to any conditions and stipulations attached to such permission.

## **POWER OF PURCHASE BY GOVERNMENT**

### **56 Government may acquire works.**

The Government of Tonga, hereinafter referred to as the Government, shall be entitled at any time after the date on which the electric works provided for in the Order in Council referred to in section 32 have been completed, upon giving 12 months notice in writing to the Board, to purchase the electric works at a price to be determined by arbitration, the award being that of 3 arbitrators or any 2 of them, 1 arbitrator being appointed by the Prime Minister, and another by the Board, and a third arbitrator appointed by the 2 other arbitrators.

### **57 Works to be conveyed to government on payment of compensation**

On payment of the compensation to be determined as provided in section 56 the Board shall convey, assign, and transfer to the Government the whole of the electric works and everything appurtenant thereto, free from all encumbrances.

### **58 Compensation to be in full satisfaction of board's claims.**

- (1) The compensation so ascertained as aforesaid shall be accepted by the Board in full satisfaction of all claims and demands in respect of the purchase of the electric works, and all rights, powers and privileges of the Board in respect thereof, and shall be paid out of moneys appropriated for that purpose by the Legislative Assembly of the Kingdom.
- (2) Until the Legislative Assembly has appropriated money for such purpose no agreement made by the Government to purchase any electric works constructed under this Act shall be binding on the Government.

### **59 Government may assume control in case of inexcusable delay or failure to supply power.**

- (1) In the event of any unreasonable or inexcusable delay by the Board in the prosecution of the electric works authorized by this Act or if, after completion of the said electric works in whole or in part so that the whole or any completed part or section of such works may be used for the purpose of supplying electric power, the Board fails for the space of 21 clear days, without reasonable excuse, to supply such power the

Government may take possession and assume the management of the electric works, and if expedient, complete the same and supply the electric power, charging the Board with all outlay and expenditure which may be entailed, and crediting the Board with all earnings and receipts.

- (2) In any such case there shall be paid by the Board to the Treasurer, and by the Treasurer on behalf of the Government to the Board, the balance from time to time found to be due from one to the other of them, the accounts being computed and rendered at intervals of not less than 6 months; or the Government may restore the possession of the electric works to the Board, or waive any breach in contract as aforesaid, on such terms and conditions as His Majesty in Council may determine.

## **60 Appeal.**

- (1) If the Government, acting through the Prime Minister with the consent of His Majesty in Council, exercises the powers conferred by section 59, the Board may apply to the Supreme Court as hereinafter provided.
- (2) Every such application shall be heard and determined by the Supreme Court in a summary manner; and such application shall be limited to the question whether there has been such unreasonable or inexcusable delay, or such failure to supply power as aforesaid, as to justify the exercise of such powers by the Government.
- (3) The Supreme Court shall, in such manner as is deemed fit by the Court, hear and receive evidence, either oral or by affidavit, as to the matters upon which its decision is sought; and any order made by the Court shall be final and conclusive.

## **61 Prime Minister may give notice of permanent retention.**

If the Board, for the space of one year after the Government has taken possession as aforesaid, fails to repay all sums of public money which have been expended in or towards completing the electrical works and the equipment thereof, and all sums of public money which have been expended on the repair or management of the electrical Works or in connection therewith in excess of the receipts therefrom, it shall be lawful for the Prime Minister, with the consent of His Majesty in Council, at any time after the expiration of that year, to give 3 months' notice in writing to the Board that the Government intends to retain the electric works permanently as Government property.

## **62 Works to be vested in government.**

On the publication of an Order in Council, at any time after the expiration of the said 3 months, to the effect that possession has been taken as aforesaid and will

be retained permanently by the Government, the said electrical works, and all plant, equipment, and appurtenances belonging thereto, shall, unless a satisfactory arrangement is made in the meantime between the Government and the Board, become and be vested absolutely in His Majesty's Government without any conveyance or transfer whatsoever.

### **63 Customs duties.**

All plant, machinery, mechanical appliances, iron and steel works, cement, engines, boilers, dynamos, motors, transformers, insulators and all materials, apparatus and equipment of every kind whatsoever imported into the Kingdom for the original construction of any and every part of the works authorized by or under the provisions of this Act shall be free of all Customs duties and Port and Service Tax whatsoever thereon imposed by any Act.

## **BY-LAWS**

### **64 By-laws.**

The Board may from time to time, with the approval of His Majesty in Council, make by-laws in respect to any electrical works for the following purposes, that is to say —

- (a) regulating the use and management of any electric works so as to secure the safety of persons from injury by reason of such use;
- (b) protecting electric works or other property belonging to the Board from damage or injury;
- (c) regulating the sale or hiring out by the Board to any person of electricity or electrical fittings, accessories, apparatus, meters and other devices and the charges therefor, and the Board may prescribe that the register of any meter installed or authorized by the Board for ascertaining the quantity of electricity supplied shall be prima facie evidence of such quantity;
- (d) regulating the nature, quality and use in any premises of electrical installations connected or intended to be connected to the Board's transmission lines and the inspection and testing of such installations by the Board;
- (e) regulating the licensing by the Board of persons competent to make electrical installations in any premises or to connect the same to the Board's transmission lines;
- (f) prohibiting unlicensed persons from making, altering, interfering with or injuring any electric installations or any part thereof or any

transmission line, street main, lamp, pole or other accessory whatsoever;

- (g) regulating the type of structure and the condition of repair of premises which may be connected or continue to be connected to the Board's electric lines;
- (h) regulating the conditions under which the Board may make electrical installations in any premises on behalf of the owner and prescribing the charges therefor;
- (i) stipulating the minimum return to be guaranteed by persons in any outer area before the Board constructs or extends transmission lines therein or thereto and imposing any special conditions which the Board may deem necessary in connection therewith;
- (j) regulating the fixing, altering and collecting of any charges aforesaid, the demanding of guarantees for the payment thereof when deemed expedient, and the cutting off of the supply of electricity in cases of failure or pay any charges due;
- (k) providing generally for the more effectual carrying out of any of the objects of this Act.

## **65 Penalties.**

- (1) Any by-laws made under section 64 may be enforced by pecuniary penalties prescribed by the Board for any neglect or breach thereof:

Provided that no such penalty shall exceed \$20.

- (2) Every such by-law, when confirmed by His Majesty in Council and published in the Tonga Government Gazette, shall have the force and effect of law.
- (3) The production of the Tonga Government Gazette with any such by-law so published as aforesaid, shall in any suit or proceeding whatsoever, be sufficient evidence that such by-law has been made, confirmed and published as herein provided.

## **66 Regulations.**

- (1) His Majesty in Council may from time to time make regulations for effectually carrying out any of the provisions of this Act in respect whereof the Board is not by this Act empowered to make by-laws or regulations, and also providing for and regulating any matter in respect whereof any power, authority, or discretion is conferred on His Majesty in Council by this Act and more particularly for —

- (a) prescribing the terms of any licence granted under section 3 of this Act;
  - (b) ensuring a proper and efficient supply of power;
  - (c) ensuring the safety of the public from personal injury or from fire or otherwise, and for the protection of property from injury by reasons of contact with or the proximity of, or by reason of the defective or dangerous condition of, any electric works;
  - (d) authorizing inspection and testing and for the inquiry into the causes of accidents;
  - (e) the height, dimensions and the distances from one another of any posts, poles, or pillars which may be used for the suspension of any wires, or lines, for the purpose of transmitting electric currents, the materials of such posts, poles or pillars, the efficient fixing in the ground thereof, and the height above the surface of the ground of such wires or lines;
  - (f) the keeping of such records and the maintenance of such apparatus as may be necessary for the detection of any failure to comply with the requirements of any regulation made under • this section;
  - (g) prescribing the qualifications to be required of electrical engineers and inspectors;
  - (h) enforcement of the due performance of the duties and obligations of the Board;
  - (i) the precautions to be taken to prevent the falling of any wires, cords or lines used to convey electric power or their coming into contact with any other wires or lines used for a similar purpose;
  - (j) the prevention of injurious electrolytic action on, or the fusion of gas, water, or other metallic pipes, structures or substances;
  - (k) the use of underground conduits for the purpose of enclosing therein conductors or other wires required in connection with 'the supply of electric power;
  - (l) generally any other matters in connection with the establishment and maintenance of electric works. (2) Such regulations may impose penalties for offences against the same or for the failure or omission to observe or comply with the provisions of the same or any of them, provided that such penalties shall not exceed a fine of \$50 for each offence.
- (3) All such regulations, after publication in the Tonga Government Gazette shall be binding on the Board and the general public and shall have the force and effect of law.
- (4) The production of the Tonga Government Gazette with any such regulations published therein shall in any suit or proceeding whatsoever

be sufficient evidence that such regulations have been made and published as herein provided.

## **GENERAL PENALTIES**

### **67 Penalty for damage.**

Every person who damages electric works, appliances, or conveniences erected, constructed or used under this Act shall be liable at the suit of the Board in a court of competent jurisdiction for the amount of such damage, and if such damage is done wilfully shall be liable in addition to a fine not exceeding \$200.

### **68 Penalty for obstructing.**

Every person who wilfully obstructs any engineer, surveyor, overseer, workman or other person in the performance of any duty or in doing any work which he is lawfully authorized to do under the provisions of this Act, is guilty of an offence and on conviction is liable to a fine not exceeding \$100.

### **69 Wasting electricity.**

Every person who maliciously causes to be wasted or diverted any electric power shall be guilty of an offence and on conviction shall be liable to a fine not exceeding \$50.

### **70 Damaging apparatus, etc.**

Every person who wilfully or fraudulently or by culpable negligence injures or suffers to be injured any transmission line, meter or other apparatus belonging to the Board or alters the index of any meter or prevents any meter from duly registering the quantity of power supplied, or fraudulently abstracts, consumes or uses power supplied by the Board shall (without prejudice to any other right or remedy for the protection of the Board or the punishment of the offender) for every such offence be liable on conviction to a fine not exceeding \$50 and to a further fine not exceeding \$10 for every day after the first day during which any such offence continues, and the Board may in addition thereto recover from the consumer using the said meter the amount of any damage by them sustained and may also discontinue the supply of electricity to such consumer (notwithstanding any agreement or contract previously existing to the contrary); and the existence of artificial means for causing such alteration or prevention or for fraudulently abstracting, consuming or using power supplied by the Board when such meter is under the custody or control of the consumer shall be prima facie evidence

that such alteration, prevention, abstraction or consumption as the case may be has been fraudulently, knowingly and wilfully caused by the consumer using such meter. (*Substituted by Act 5 of 1960.*)

**71 Transmission lines, etc., not to be subject to distress, etc.**

Where any transmission lines, meters, accumulators, fittings, works or apparatus belonging to the Board are placed in or upon any premises not being in the possession of the Board for the purpose of supplying power, such transmission lines, meters, accumulators, fittings or apparatus shall not be subject to distress or to a landlord's remedy for rent of the premises where the same may be, nor be taken in execution under any process of a court of justice or under any proceeding in bankruptcy or insolvency against the person in whose possession the same may be.

**72 Protection of board against claims by consumers.**

No person who is a consumer of electric energy supplied by the Board shall have any claim against the Board in the event of any failure of the supply of any energy through accident, drought or other unavoidable cause.

**73 Recovery of rates and charges.**

All rates and charges under this Act or any by-laws or regulations made in pursuance of this Act may be sued for and recovered before any court of competent jurisdiction in the Kingdom.

**74 Recovery of fines.**

All fines recoverable under the provisions of this Act or any by-laws or regulations made thereunder, may be recovered in a summary manner in a court of competent jurisdiction of the Kingdom and when recovered shall if so recovered at the suit of the Board be the property of the Board, and if so recovered at the suit of any of His Majesty's Ministers of the Crown be the property of the Government.