

No. 18 of 2020.

National Water Supply and Sanitation (Amendment) Act 2020.

Certified on : 02 NOV 2020



No. 18 of 2020.

AN ACT

entitled

National Water Supply and Sanitation (Amendment) Act 2020.

ARRANGEMENT OF SECTIONS.

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“PART IX. - MERGER OF NATIONAL CAPITAL DISTRICT WATER AND SEWERAGE LIMITED WITH THE COMPANY.

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No. of 2020.

AN ACT

entitled

National Water Supply and Sanitation (Amendment) Act 2020.

Being an Act -

- (a) to amend the *National Water Supply and Sanitation Act 2016*; and
- (b) to provide for the merger of National Capital District Water and Sewerage Limited trading as Eda Ranu and Water PNG Limited, the transfer of Eda Ranu's assets to Water PNG Limited and for the amalgamation of Eda Ranu with Water PNG Limited; and
- (c) to repeal the *National Capital District Water Supply and Sewerage Act 1996*, and for related purposes,

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

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended in the definition of "Company" by deleting the words "Water Papua New Guinea Limited" and replacing them with the words "Water PNG Limited".

2. NEW SECTION 2A.

The Principal Act is amended by inserting immediately after Section 2 the following new section:

"2A. APPLICATION.

This Act binds the State."

3. FUNCTIONS OF THE COMPANY (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended by -

- (a) deleting the number and symbols "(1)" in Subsection (1); and
- (b) repealing Subsection (2).

4. SUPPLY OF WATER (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

"(1) The Company may operate and maintain water supply systems in a water supply district -

- (a) in any city, town or rural area; and
- (b) for any city, town or rural area."

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5. SANITATION SYSTEMS (AMENDMENT OF SECTION 18).

Section 18 of the Principal Act is amended by repealing Subsections (1) and (2) and replacing them with the following new subsections:

“(1) The Company may operate and maintain a sanitation system in a sanitation district -
(a) in any city, town or rural area; and
(b) for any city, town or rural area.

(2) The Company may, upon certain conditions and standards as it considers appropriate, authorise a person or body to construct and operate sanitation system in a sanitation district -
(a) in any city, town or rural area; and
(b) for any city, town or rural area.”

6. LICENCING OF WATER SUPPLY AND SANITATION SYSTEMS (AMENDMENT OF SECTION 46).

Section 46 of the Principal Act is amended by -

(a) repealing Subsections (1) and (2) and replacing them with the following new subsections:

“(1) Before a person, other than the Company, brings a water supply system into operation, the Company must -
(a) inspect the system; and
(b) be satisfied that the system is technically fit to supply water.

(2) Before a person, other than the Company, brings into operation a sanitation supply system, the Company must -
(a) inspect the system; and
(b) be satisfied that the system is technically fit to provide sanitation services.”; and

(b) repealing Subsection (5) and replacing it with the following new subsection:

“(5) A person who, without reasonable excuse (onus of proof of which is on him), operates -
(a) a water supply system to supply water; or
(b) a sanitation system to provide sanitation services,
without a licence issued under Subsection (3), is guilty of an offence.

Penalty: A fine of not less than K10,000.00 and not exceeding K50,000.00.”

7. NEW PART IX.

The Principal Act is amended by inserting the following new part:

“PART IX. - MERGER OF NATIONAL CAPITAL DISTRICT WATER AND SEWERAGE LIMITED WITH THE COMPANY.

57. INTERPRETATION.

In this part, unless the contrary intention appears -

“Eda Ranu” means NCD Water and Sewerage Limited, a company incorporated under the *Companies Act 1997*;

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“repealed Act” means the *National Capital District Water Supply and Sewerage Act 1996*;

“transfer date” means the date on which Part IX commences.

58. TRANSFER OF ASSETS AND LIABILITIES.

- (1) All assets including -
- (a) State leases, but not the underlying land held by the State; and
 - (b) chose in action and other rights,
- which immediately before the transfer date, were owned, occupied or held by Eda Ranu are transferred to the Company on the transfer date.
- (2) All obligations and liabilities of Eda Ranu immediately before the transfer date are assumed by the Company on the transfer date.
- (3) Where assets are transferred or obligations and liabilities are assumed -
- (a) the assets vest in the Company without the need for any conveyance, transfer, assignment or assurance; and
 - (b) the liabilities become the liabilities of the Company and not the liabilities of Eda Ranu; and
 - (c) all proceedings relating to the assets or liabilities pending by or against Eda Ranu are taken to be proceedings pending by or against the Company; and
 - (d) any act, matter or thing done or omitted to be done by, to or in respect of Eda Ranu in relation to the assets or liabilities (to the extent that the Act, matter or thing has any force or effect) is taken to be done or omitted to be done by the Company; and
 - (e) the Company may, in its own company name -
 - (i) sue or may be sued for; or
 - (ii) recover or enforce,any chose in action that vests in the Company; and
 - (f) the company or Eda Ranu is not required to give notice of the transfer of the chose in action to any person; and
 - (g) the Company may, in its own name -
 - (i) sue or may be sued for; or
 - (ii) recover or enforce,any right or obligation that becomes a right or obligation of the Company and the Company or Eda Ranu is not required to give notice of the transfer of the right or obligation to any person.
- (4) Nothing done, authorised or allowed under Subsections (1), (2) or (3) is -
- (a) a breach of, or default under a statute or other law; or
 - (b) a breach of, or default under a deed, agreement or other instrument or as requiring any act to be done under a deed, agreement or other instrument; or
 - (c) regarded as giving rise to any right or remedy of any party to any deed, agreement or other instrument, or causing or permitting the termination of any deed, agreement or other instrument; or
 - (d) regarded as releasing any surety or other obligation wholly or in part from any obligation.
- (5) Where, the rights and obligations of Eda Ranu under a deed, an agreement or an instrument become the rights and obligations of the Company -

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- (a) the Company becomes a party to the deed, agreement or other instrument in place of Eda Ranu; and
 - (b) the deed, agreement or other instrument has effect as if the Company has always been a party to the deed, agreement or other instrument; and
 - (c) the acts performed by Eda Ranu under the deed, agreement or other instrument are deemed to be performed by the Company.
- (6) A register maintained under any Act that has any property registered under Eda Ranu must be amended on the transfer date by substituting Eda Ranu for the Company.
- (7) Without limiting the generality of Subsection (6) -
- (a) where the property transferred is land, the Registrar of Titles shall, on written application by the Company, without formal transfer, enter and register the Company as the proprietor of the land under the *Land Registration Act* (Chapter 191) and the Certificate of Title or State lease or other instrument evidencing title to the land must be issued in the name of the Company; and
 - (b) where the property transferred is an interest in land, the Minister responsible for land matters is deemed to approve the transfer of that interest in land to the Company in accordance with the *Land Act 1996*.
- (8) With effect from the transfer date, Eda Ranu is deemed to be amalgamated with the Company subject to Part XIV of the *Companies Act 1997* as follows:
- (a) the amalgamated company is Water PNG Limited; and
 - (b) the issued shares of Eda Ranu are cancelled; and
 - (c) the constitution, registered office, directors, secretary, and number of issued shares of the Company remain unchanged; and
 - (d) all approvals, consents, notices and certificates required by the *Companies Act 1997* shall be deemed to have been given; and
 - (e) the Registrar of Companies shall issue a certificate of amalgamation to the Company to be effective on the transfer date; and
 - (f) despite any other provisions of Part IX, Sections 238, 239 and 240 of the *Companies Act 1997* apply.

59. TRANSFER OF EMPLOYEES.

- (1) In this section -
“authorised superannuation fund” has the meaning given to it by Section 8 of the *Superannuation (General Provisions) Act 2000*.
- (2) With effect from the transfer date, all employees of Eda Ranu become employees of the Company -
- (a) holding such office or position specified by the Board of the Company; and
 - (b) on the same terms and conditions of employment as employed by Eda Ranu and the terms and conditions shall continue to have effect until varied by agreement or otherwise in accordance with law.

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(3) An employee mentioned in Subsection (2) is deemed to have an accrued entitlement of benefits in his employment by the Company that are equivalent to the benefits which he had accrued with Eda Ranu immediately before the date of the transfer of his employment to the Company.

(4) The transfer of the employee is not -

- (a) a breach, variation or termination of any contract of employment; or
- (b) to interrupt the period or continuity of employment for that employee; or
- (c) to create a any new contract of employment; or
- (d) to create any entitlement with respect to employee benefits including leave and superannuation entitlements beyond those which would have been applicable to the employee had he continued to be employed by Eda Ranu; or
- (e) to confer any entitlement on the employee to receive payment of any accrued entitlements; or
- (f) to confer any entitlement on that employee to make any claim by way of redundancy, retrenchment or otherwise as a result of the transfer of employment.

(5) The transfer of an employee shall not affect -

- (a) the employee's membership or any accrued entitlements in an authorised superannuation fund; or
- (b) the right of an employee to have his retirement benefits paid to an authorised superannuation fund of his choice.

60. TAXES AND DUTIES.

(1) For the purposes of the *Income Tax Act 1959*, the Company is deemed to acquire the assets and liabilities transferred to or assumed by it under Section 58(1) or (2) at a value equal to their value in the last financial statements of Eda Ranu immediately prior to the transfer date.

(2) The transfer of assets or liabilities under Section 58(1) or (2) shall be exempted from any tax, fee, levy, charge or duty payable under any Act.

61. TRANSFER AND EXTENSION OF ENVIRONMENT PERMITS.

(1) In this section, "environment permit" means -

- (a) an environment permit under the *Environment Act 2000* (including permits originally issued as a water investigation permit or a water use permit under the repealed *Water Resources Act 1982*) held by Eda Ranu immediately before the coming into operation of this Act; and
- (b) all other expired environment permits granted to Eda Ranu under the *Environment Act 2000* since the coming into operation of that Act.

(2) An environment permit referred to in Subsection (1)(b), is deemed to be in force and transferred to the Company on the transfer date.

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(3) The conditions of the environment permits relating to and governing the operations continue in force and transferred subject to Subsection (2) shall be the same as the conditions originally imposed on the environment permits.

(4) Notwithstanding the terms originally granted for the environment permits, the environment permits continue in force until the permits are surrendered or cancelled under the *Environment Act 2000*.

(5) The Conservation and Environment Protection Authority may serve notice on the Company requiring it to apply within a reasonable time specified in the notice for a new permit under the *Environment Act 2000* to replace one or more of the environment permits specified in the notice and if the Company does not make application within the specified time for the new permit the Authority may cancel the specified environment permits.

62. STATUTORY EASEMENTS RELATING TO WORKS.

(1) Notwithstanding the absence of a dominant tenement, the Company shall have an easement over land where -

- (a) works owned or operated by the Company are on, above or under the land and the land does not belong to the Company; and
- (b) those works were, as at the transfer date, owned or operated by Eda Ranu and the land did not belong to Eda Ranu.

(2) The easement shall entitle the Company -

- (a) to maintain the relevant works on, above or under the land affected by the easement; and
- (b) to allow its agents or employees to enter the land and operate, examine, maintain, repair, modify or replace the relevant works; and
- (c) to use the works for the supply of water and the provision of sanitation services; and
- (d) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the purposes, under this section.

(3) The Company must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.

(4) If the Company has an easement relating to works over another person's land otherwise than by virtue of this section, the application of the easement under this section to the land is excluded to the extent necessary to avoid the same part of the land being subject to both easements.

(5) The Company may, by instrument in writing -

- (a) suspend or limit rights or impose conditions on the exercise of rights arising under the easement; or
- (b) surrender (in whole or in part) the easement and in accordance with the terms of the instrument.

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63. TRANSITIONAL TARIFFS, RATES, FEES, CHARGES AND REGULATORY CONTRACTS.

(1) The tariffs, rates, fees and charges levied or charged by Eda Ranu before the transfer date shall be the tariffs, rates, fees and charges which the Company may levy or charge under this Act within the National Capital District until such time as the Company sets new tariffs, rates, fees and charges subject to Section 25.

(2) Any regulatory contract made under Part III of the *Independent Consumer and Competition Commission Act 2002* continues in force as a contract with the Company for the National Capital District until the contract is replaced under the *Independent Consumer and Competition Commission Act 2002*.

64. OUTSTANDING DEBTS AND CHARGES.

All debts or charges arising out of the repealed Act and remains unpaid on the coming into operation of this part, cannot be prosecuted, but can be recovered under the provisions of this Act as if they were debts and charges incurred under this Act.

65. WATER SUPPLY DISTRICT AND SANITATION DISTRICT.

With effect from the transfer date, the National Capital District is declared to be a water supply district and a sanitation district for the purposes of this Act.

66. REFERENCES IN OTHER ACTS.

Where -

(a) any Act or subordinate legislation other than this Act; or

(b) any document or instrument whenever made or executed,

contains a reference to the repealed Act or to Eda Ranu, that reference shall, after the transfer date, be deemed to be a reference to this Act or to the Company, as the case may be.

67. REPEAL.

The *National Capital District Water Supply and Sewerage Act 1996* is repealed.”

I hereby certify that the above is a fair print of the *National Water Supply and Sanitation (Amendment) Act 2020*, which has been made by the National Parliament.

Clerk of the National Parliament.

02 NOV 2020

I hereby certify that the *National Water Supply and Sanitation (Amendment) Act 2020*, was made by the National Parliament on 8 August 2020.

Speaker of the National Parliament.

02 NOV 2020