



Tonga

# **PORTS MANAGEMENT ACT**

**Chapter 48.16**

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## PORTS MANAGEMENT ACT

### Arrangement of Sections

#### Section

<b>PART I - PRELIMINARY</b>	<b>7</b>
1 Short title .....	7
2 Interpretation .....	7
<b>PART II - ROLE OF THE MINISTRY IN THE MANAGEMENT OF PORTS</b>	<b>9</b>
3 Application and mandate .....	9
4 Appointments and responsibilities .....	10
5 Powers of the Ministry .....	10
<b>PART III - OPERATION AND MANAGEMENT OF HARBOURS</b>	<b>10</b>
6 Powers of the Minister with respect to harbours .....	10
<b>PART IV - OPERATION AND MANAGEMENT OF WHARVES</b>	<b>11</b>
7 Powers of the Minister with respect to wharves .....	11
<b>PART V - PORT OPERATIONS</b>	<b>12</b>
8 Powers or officers in relation to vessels .....	12
9 Fire on board a vessel in port .....	13
10 Power to board vessel .....	13
11 No liability of officers .....	14
<b>PART VI - PORT FEES AND RATES</b>	<b>14</b>
12 Stevedoring services .....	14

<b>PART VII - PILOTAGE</b>		<b>14</b>
13	Power to levy fees and rates .....	14
14	Fees .....	15
15	Person liable for fees .....	15
16	Rates .....	15
17	Power to board.....	15
18	Maritime and other liens .....	15
19	Lien on cargo and goods .....	16
20	Power to sell or dispose of goods .....	16
21	Shipping clearance to be withheld .....	17
22	Exemptions.....	17
23	Evasion.....	17
24	Interest on overdue accounts .....	17
25	Pilotage authority.....	17
26	Pilotage areas.....	18
27	Pilotage .....	18
28	Exemptions from pilotage .....	18
29	Compulsory pilotage.....	18
30	Vessel to be piloted by a pilot .....	19
31	Ministry to employ pilots .....	19
32	Pilot not personally liable.....	19
33	The role of pilot and master .....	19
34	Owner and master liable for damage .....	20
35	Civil liability for loss or damage .....	20
<b>PART VIII - DANGEROUS GOODS</b>		<b>20</b>
36	Dangerous goods .....	20
<b>PART IX - OFFENCES</b>		<b>21</b>
37	Penalty for obstructing Ministry .....	21
38	Reporting false information.....	21
39	False information as to vessel characteristics .....	21
40	Wilful damage to port works .....	21
41	Offences in connection with safety of vessels .....	21
42	Pollution within a port .....	22
<b>PART X - MISCELLANEOUS PROVISIONS</b>		<b>23</b>
43	Master, owner or agent liable for damage .....	23
44	Power to detain .....	23
45	Evidence of identity .....	23
46	Confidential documents .....	23
47	Equipment not subject to distraint .....	24
48	Regulations.....	24

<b>SCHEDULE I</b>	<b>27</b>
LEGAL DESCRIPTION OF HARBOURS AND HARBOUR AREAS	27
<b>SCHEDULE II</b>	<b>29</b>
LEGAL DESCRIPTION OF WHARVES AND WHARF AREAS	29
<b>ENDNOTES</b>	<b>30</b>

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# PORTS MANAGEMENT ACT

## AN ACT TO THE MANAGEMENT OF HARBOURS AND WHARVES<sup>1</sup>

Commencement [1st October, 2003]<sup>2</sup>

### PART I - PRELIMINARY

#### 1 Short title

This Act may be cited as the Ports Management Act.

#### 2 Interpretation

(1) In this Act, unless the context otherwise requires —

“**buoy**” includes a floating object of any size, shape and colour which is moored to the seabed and serves as an aid to navigation or any other specific purpose;

“**Chief Executive Officer**” means the Government chief executive officer responsible for marine and ports;<sup>3</sup>

“**container**” means an article of transport, equipment of a permanent character designed for repeated use, constructed to facilitate the multi-modal transportation of goods, capable of being secured and readily handle, having corner fitting for those purposes and being of International Standards Organisation (ISO) size;

“**dangerous goods**” means any goods or substances classified as dangerous goods by the International Maritime Dangerous Goods (IMDG) Code, and

also includes goods or substance declared to be dangerous goods pursuant to Part VIII;

“**fees**” include port fees, light dues and wharfage levied under this Act but does not include rates;

“**foreign going ship**” means a ship employed in trading between any port or place in Tonga and any other port or place outside Tonga or between any port or place outside Tonga;

“**goods**” includes animals, carcasses, baggage, personal effects, general cargo, containers, and any other movable property of any kind whatsoever;

“**harbour**” means any natural or manmade area of water for the shelter of ships in which they can anchor or moor and can safely load and discharge cargo or embark and disembark passengers, but does not include a “**port of refuge**” sought by ships in cases of *force majeure*;

“**International Maritime Dangerous Goods (IMDG) Code**” means the Code published by the International Maritime Organisation from time to time;

“**inward clearance**” means the clearance granted by the appropriate authorities for the vessel to enter and remain within the port;

“**master**” includes every person, except a pilot, having command or charge of any vessel;

“**Minister**” means the Minister responsible for marine and ports;<sup>4</sup>

“**marine navigational aid**” means all buoys, beacons, marks and signs in aid of marine navigation, including of any electronic aid to marine navigation, not carried on board a vessel;

“**overseas vessel**” means, in respect of Part VII, a vessel whose last port of departure was outside Tonga or a foreign going ship;

“**owner**” when used in relation to goods, includes any person being or holding himself out to be the owner, importer, exporter, consignor, consignee, shipper or agent responsible for the sale, custody, loading, handling, discharge or delivery of such goods or any person entitled to possession; and when used in relation of any vessel, includes every person acting as agent for the owner responsible for receiving freight or paying other charges in respect of the vessel and includes any part-owner, charterer, operator, or mortgagee in possession, or any duly authorised agent of any such person;

“**person**” means either an individual or a corporation as the context requires;

“**pilot**” means a pilot holding a licence issued under the Shipping (Pilotage) Regulations;

“**port**” means any harbour, wharf or other place declared to be a port pursuant to section 3;

“**publication**” means published in the Gazette;



“**rates**” means any rates or charges imposed by the Ministry under this Act and includes any toll or rent, but does not include fees;

“**stevedoring company**” means an organisation whether incorporated or not, which has all the necessary equipment to be capable of providing the full range of stevedoring services to all vessels using a port and other such arrangements as may be approved by the Minister;

“**stevedoring services**” in relation to a stevedoring company includes landing, handling, craning, storage or carriage of goods and the deposit or placing of goods in its care, custody or control;

“**vessel**” includes every ship, boat, ferry or craft used or capable of being used in navigation by water; and includes any hovercraft or non-displacement vessel or offshore mobile unit; but excludes a canoe or other craft of traditional build;

“**warehouse**” includes any warehouse, shed or other building belonging to or under the control of the Ministry in which goods may be lawfully placed;

“**wharf**” includes a quay, pier, jetty, ramp or other similar landing place from which passengers or goods may be loaded on or discharged from a vessel.

- (2) The Minister may in writing delegate to any person any of his powers, authority or functions under this Act and that person shall not further delegate that power, authority or function unless the initial delegation specifically allows for that further delegation.
- (3) The Port Safety Regulations shall apply to all persons, activities, ships and their equipment within all ports and any other places within the Kingdom where the loading, transfer or discharge of cargo occurs and to all Tongan ships and to all ships in Tongan waters.

## PART II - ROLE OF THE MINISTRY IN THE MANAGEMENT OF PORTS

### 3 Application and mandate

- (1) Ports to which this Act applies shall be those ports in Tonga not so designated in the Ports Authority Act.<sup>5</sup>
- (2) Every harbour named in Schedule I to this Act shall, where possible, be defined by means of a legal description and chart drawn up by the Ministry, published in the Gazette.
- (3) Every wharf named in Schedule II to this Act shall, where possible, be defined by means of a legal description or plan, including all earthworks, breakwaters and jetties extending into the harbour area and buildings,

installation and improvements located on the landward side or adjacent to or in the vicinity of the port.

- (4) The Ministry may, with the consent of Cabinet, at any time declare any other place to be a port within the meaning of this Act.
- (5) The Ministry shall have all the powers, rights, functions and authorities necessary or expedient to manage and operate ports governed by this Act.

#### **4 Appointments and responsibilities**

- (1) Such persons shall be appointed as may be required to supervise the operation of each port and collect any fees and rates payable under this Act.
- (2) The Chief Executive Officer is responsible for the efficient and effective management and operation of ports and shall have the power to issue directives on the following matters —
  - (a) operation and management of a port in accordance with Government policy;
  - (b) the manner of collection and reporting fees and rates in accordance with the current Government policy and practice;
  - (c) authorisation of any person to carry out any work or perform any act in the operation and management of a port.

#### **5 Powers of the Ministry**

- (1) Notwithstanding anything contained in Parts III or IV the Ministry shall not act as agent for any ship, or owner or operator to any ship.
- (2) The powers conferred by this Part shall be in addition to and not in derogation from any other powers conferred upon the Ministry by this Act or any other law.

### **PART III - OPERATION AND MANAGEMENT OF HARBOURS**

#### **6 Powers of the Minister with respect to harbours**

- (1) The Minister may —
  - (a) install and maintain marine navigation aids;
  - (b) control the erection and use of wharves, docks and other works, whether above or below the high water mark, within a port;
  - (c) reclaim, excavate, enclose or raise any part of any land vested in the Ministry, subject to be provisions of any other Act or statutory requirement;

- (d) add to, alter or reconstruct any port or any part of a port;
  - (e) acquire such land execute such work and do such acts and things as may be necessary or expedient in respect of the functions of the Ministry under the provisions of this Act or of any other law;
  - (f) acquire, hire, procure, construct, erect, manufacture, provide, maintain or repair anything whatsoever required for the purposes of this Act or to sell or otherwise dispose of the same;
  - (g) provide services within a port, including, berthing, towing, mooring, moving or docking of any vessel;
  - (h) provide lighterage or appoint, licence and regulate lighterage operators;
  - (i) provide pilotage services within any port.
- (2) No person shall lay down in any harbour any private buoy, mooring or anchor without permission in writing from the Chief Executive Officer and such permission may be withdrawn at any time, whereupon any such buoy, mooring or anchor shall be immediately removed by the owner thereof.
- (3) Any person who fails to remove such buoy, mooring or anchor when required to do so by the Chief Executive Officer commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or for a term of imprisonment not exceeding 6 months, or both.

## **PART IV - OPERATION AND MANAGEMENT OF WHARVES**

### **7 Powers of the Minister with respect to wharves**

- (1) The Minister may —
- (a) make provision for the embarking or disembarking of passengers to or from any vessel, including the provision of landing places;
  - (b) make provision for the loading and discharging of cargo to or from any vessel, including the provision of wharves;
  - (c) appoint officers in the Ministry to regulate commercial services provided at or within a port;
  - (d) regulate operators and other providers of labour and equipment;
  - (e) supervise and control the sorting, weighing, measuring, storing, warehousing or otherwise handling of any goods;
  - (f) supervise and control the supply of fuel, water or telephone services or other goods and services to vessels;
  - (g) render any immediate assistance to any vessel or assist in the recovery of any property lost, sunk or stranded;
  - (h) supervise and control the loading, discharging or warehousing of goods in a port or of the bunkering of vessels;

- (i) provide such fire and security services, both within a port or elsewhere, as may be deemed necessary for the purpose of extinguishing fires and preserving life and property;
  - (j) direct the manner in which the equipment is operated and maintained;
  - (k) do all things necessary for the performance of its functions under this Act or any other law.
- (2) The Minister may provide reception facilities required by any other law.

## PART V - PORT OPERATIONS

### 8 Powers or officers in relation to vessels

- (1) Any officer designated by the Minister by publication may within a port —
  - (a) direct where a vessel shall be berthed, moored or anchored and the method of berthing, mooring and anchoring;
  - (b) direct the removal of any vessel from any berth, wharf, terminal or anchorage and stipulate the time within which such removal is to be effected; and
  - (c) regulate the movement of vessels generally.
- (2) Any person who, without lawful excuse, refuses or neglects to obey or comply with any direction given under subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or for a term of imprisonment not exceeding 1 year, or both.
- (3) The Chief Executive Officer may require the removal of any vessel aground, stranded or wrecked within a port area that, in his opinion, constitutes a hazard to the safe navigation of other vessels.
- (4) If any person to whom a direction is given under subsection (1) or (3) refuses or neglects to comply with such direction or requirement, the Chief Executive Officer may, whether or not any proceedings have been instituted against any person for any offence, do or cause to be done all such acts as are in his opinion reasonable or necessary for the purpose of ensuring such compliance and may hire or employ such persons as he considers necessary for such purpose and all expense incurred in doing such acts shall be paid, borne by or recoverable from the person to whom the direction was given.
- (5) Notwithstanding anything contained in this Act, no vessel shall berth, moor or anchor in any navigable channel in a manner that impedes the safe navigation of other vessels.
- (6) The master of any vessel that berths, moors or anchors in a navigable channel so as to impede the safe navigation of other vessels, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

- (7) Notwithstanding anything contained in this Act, no person shall use a fishing net and no vessel shall fish in any navigable channel.
- (8) Any person who uses a fishing net to fish and the person in charge of a fishing vessel to fish so as to impede the safe navigation of other vessels, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.
- (9) No vessel shall be abandoned within the confines of a port area, and any vessel so abandoned may be removed by the Chief Executive Officer who shall claim the expenses of removal from the owner.

## **9 Fire on board a vessel in port**

- (1) In the event of fire breaking out on board a vessel in a port, any officer designated by the Minister may board the vessel within the port with such assistance and persons as he considers proper to prevent danger to other vessels and for the taking of any other measures that he considers expedient for the protection of life and property, including requiring the master to take any measures that are deemed necessary and giving orders to any person capable of rendering assistance.
- (2) If such measures are not forthwith carried out by the master of any vessel to whom such orders are given, the officer may himself proceed to carry them into effect.
- (3) All expenses incurred in the exercise of the powers of the officer under this section shall be recoverable from the person to whom the direction was given.
- (4) Any person who, without lawful excuse, refuses or neglects to obey or comply with any order given under subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 1 year, or both.

## **10 Power to board vessel**

- (1) Any officer designated by the Minister may board any vessel within a port whenever he suspects that an offence against this Act has been or is about to be committed on such vessel or whenever he considers it is necessary to do so in the discharge of any duty imposed upon him by this Act.
- (2) Any master of a vessel who, without lawful excuse, refuses to allow the officer to board that vessel under the powers vested in subsection commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months, or both.

**11 No liability of officers**

No designated officer shall be liable for any act, omission or default in the execution of his duty, except in cases of malice, gross negligence, wilful neglect or misconduct.

**PART VI - PORT FEES AND RATES****12 Stevedoring services**

- (1) Only a stevedoring company that has obtained a permit from the Ministry may provide stevedoring services within the port area.
- (2) No such permit shall be granted until the Chief Executive Officer is satisfied that the equipment provided by the stevedoring company necessary to discharge or load any vessel in an efficient and effective manner is completely safe in all respects.
- (3) Subject to subsection (2) above, the stevedoring company shall provide any equipment necessary to load or discharge a vessel in the most expeditious manner.
- (4) A stevedoring company permitted under this Act may contract with a shipping company or local agent to provide stevedoring services for a particular vessel during the time the vessel is in port.
- (5) Notwithstanding subsection (1), a vessel trading only between ports in Tonga is exempted from the services of a stevedoring company unless such services are requested by the master or owner.

**PART VII - PILOTAGE****13 Power to levy fees and rates**

- (1) It shall be lawful for the Ministry to levy fees and rates for the use of any of its infrastructure, facilities, assets or equipment, or the provision of any service provided by its employees, agents, or contractors.
- (2) Such fees and rates shall be determined by the Minister with the consent of Cabinet and shall be published in the Gazette.
- (3) Where a fee or rate is calculated on the basis of a vessel's tonnage, the gross tonnage to be used shall be that contained on the vessel's International Tonnage Certificate or, if a vessel is exempt from tonnage measurement, it shall be charged an equivalent fee based on the overall length of the vessel.

**14 Fees**

- (1) A berthage fee shall be payable by the owners, operators, charterers or agents of a vessel for services provided by the Ministry at any of the ports to which this Act applies.
- (2) A fee shall be payable to the Ministry for a permit to operate stevedoring or shore handling activities under the control of the Ministry.
- (3) The Ministry may charge Wharfage Fees for the use of the wharf by cargo owners.

**15 Person liable for fees**

- (1) Owners, operators, charterers or agents of a vessel shall be liable to pay fees in respect of any vessel using the port or its facilities or services.
- (2) Stevedores or shore handling contractors shall be liable for the payment of permit fees or charges that may be applied from time to time by the Ministry.
- (3) Any person entitled to possession of the goods either as owner or agent for the owner shall pay any cargo handling fees prior to receipt of goods.

**16 Rates**

The Ministry may levy rates for —

- (a) the use of any land, building, or space for the storage of cargo, containers or for the provision of any goods, services or facilities used;
- (b) the use of any slipway, marine railway or equipment for taking a vessel out of the water; and
- (c) the laying down of any private buoy, mooring or anchor for which permission has been granted.

**17 Power to board**

Any duly authorised employee of the Ministry may board and inspect any vessel within a port in order to ascertain the amount of the fees or rates payable in respect thereof after inward clearance has been granted.

**18 Maritime and other liens**

- (1) Any vessel, in respect of which a receipt for fees and rates payable is not produced when demanded by a duly authorised employee of the Ministry, may be detained until a receipt is produced or other satisfactory proof of payments has been given, and failure to pay any fees or rates payable under this Part shall give rise to a lien against the vessel or freight.

- (2) Any officer of the Ministry who receives fees or rates from a vessel or its agent, or from a cargo owner or his agent, shall issue an official receipt and any officer who fails to do so commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

## 19 Lien on cargo and goods

- (1) The Ministry shall have a lien on cargo and goods for the amount of all fees and rates levied under the provisions of this Act.
- (2) The Ministry shall be entitled to seize and detain such cargo and goods until the fees and rates are fully paid or secured to the satisfaction of the Minister.
- (3) Such lien shall have priority over all other liens and claims to the cargo and goods.
- (4) Any agent or stevedore that releases for delivery any goods, after having received written notice from the Chief Executive Officer of a lien on the goods, commits an offence and shall be liable upon conviction to a fine equal to the CIF value of the goods or up to \$5,000, whichever is the greater.

## 20 Power to sell or dispose of goods

- (1) Subject to the provisions of this Part, the Minister may sell or dispose of any goods which have been placed in or on premises of the Ministry and have not been removed within a period of 60 days:

Provided that —

- (a) the period shall be extended to 90 days; and
  - (b) if the goods are of a perishable nature the Minister may direct their removal within a shorter period, and if not so removed, the Minister may sell all or any of the goods or dispose of them as he may think fit.
- (2) The proceeds of any sale under this section shall be applied by the Minister in the following order —
    - (a) first, in payment of any duty or tax owing to the Government;
    - (b) secondly, in payment of the expenses of the sale;
    - (c) thirdly, in payment of all fees and rates due to the Ministry under the provision of this Act in respect of the goods;
    - (d) fourthly, in payment of freight or other claims or liens of which notice has been given under the provisions of any law; and
    - (e) fifthly, by paying upon demand any surplus to the person entitled to it, or, if no such claim is made within 1 year of the date of the sale, the Ministry shall be entitled to retain such surplus and all other rights to it are extinguished.



**21 Shipping clearance to be withheld**

Notwithstanding the provisions of this Act or any other law, if the Minister gives to any public officer, whose duty it is to grant clearance to any vessel, a written notice stating that an amount therein specified is due in respect of fees or rates levied under this Act in respect of that vessel, that public officer shall not grant such clearance until the amount due has been paid or has been secured to the satisfaction of the Ministry.

**22 Exemptions**

The Minister by publication with his reasons may —

- (a) exempt any vessel or goods or classes of vessels or goods from the payment of any fee or rate that would otherwise be payable under this Act;
- (b) reduce, refund or waive, in whole or in part, any fees or rates payable under this Act.

**23 Evasion**

- (1) Any person who evades or attempts to evade any of the fees or rates payable by him under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months.
- (2) Any person found to have committed an offence under subsection (1) shall in addition to any penalty under that subsection be liable to pay to the Ministry, double the amount of fees or rates that person evaded or attempted to evade.
- (3) The tender to or acceptance by the Ministry of any fees or rates the payment of which has been previously evaded or left unpaid, shall not release or discharge any person from his liability under the provisions of subsection (1).

**24 Interest on overdue accounts**

The Ministry may charge interest at the rate of 10% per annum on any account not paid within 30 days of the invoice being sent.

**25 Pilotage authority**

The Ministry shall be the pilotage authority for any pilotage area within or adjacent to any port.

## 26 Pilotage areas

The Minister may by notice published in the Gazette proclaim an area within or adjacent to a port to be a pilotage area, in which the use of a licensed pilot shall be compulsory.

## 27 Pilotage

- (1) Subject to sections 30 and 31 of this Act, every vessel while navigating in any pilotage area shall engage the services of a licensed pilot.
- (2) A vessel while being moved within any area of a port that is part of a pilotage area shall be deemed to be a vessel navigating in a pilotage area.
- (3) An owner or master who fails to comply with any provision of this Part commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 1 year, or both.

## 28 Exemptions from pilotage

Notwithstanding the provisions of section 29, the Minister may, exempt any vessel or class of vessel from the services of a licensed pilot while navigating in any compulsory pilotage area, and on such terms and conditions as he thinks fit to impose, if there is no increased risk to the safety of the vessel, passengers, crew or cargo.

## 29 Compulsory pilotage

- (1) Notwithstanding the provisions of section 27, any vessel under the command of a master holding a valid Pilotage Exemption Certificate may be exempted from taking a pilot in a compulsory pilotage area.
- (2) Every overseas vessel of over 45 meters in length or over 500 gross tons shall take on a licensed pilot when entering or leaving a compulsory pilotage area.
- (3) Every overseas vessel of over 35 meters in length or over 200 gross tons, carrying oil or oil products or hazardous liquid substances in bulk as cargo shall take on a licensed pilot when entering or leaving a compulsory pilotage area.
- (4) Every vessel that has a defect in its hull, machinery or equipment, which might materially affect its navigation, shall take on a licensed pilot when entering or leaving a compulsory pilotage area.
- (5) The Minister may by notice in the Gazette declare any area within a port a Pilot Boarding Station.
- (6) The master of an inbound vessel shall inform the Ministry by giving 72 hours notice of his Estimated Time of Arrival (ETA) at the Pilot Boarding Station

and shall confirm it not less than 4 hours prior to arrival and provide such other information concerning the vessel as required by the Ministry.

- (7) The master of an outbound vessel shall advise the Ministry at least 6 hours before the estimated time of departure of the vessel.

### **30 Vessel to be piloted by a pilot**

- (1) No vessel shall be piloted in a pilotage area by any person other than a licensed pilot.
- (2) Notwithstanding subsection (1) the Chief Executive Officer may, if he considers expedient, authorise any person to pilot vessels in a pilotage area subject to such terms and conditions as he thinks fit.

### **31 Ministry to employ pilots**

- (1) Subject to the provisions of this Act, and any other law or regulation, the Ministry shall employ such number of pilots as is necessary for the purpose of providing an adequate and efficient pilotage service.
- (2) No person shall be employed as a pilot in a pilotage area unless that person is in possession of a valid pilotage licence issued by the Chief Executive Officer.

The Chief Executive Officer may issue a pilotage licence to any person who has demonstrated competence and proficiency as a pilot in the port for which the license is to be issued.

### **32 Pilot not personally liable**

A pilot shall not be personally liable in any civil proceedings for —

- (i) any damage done by him;
- (ii) for any loss suffered as a result of any act done by him; or
- (iii) for any failure to do anything required to be done by him,

while acting as a pilot, unless that act or omission arose from his malice, gross negligence, wilful neglect or misconduct.

### **33 The role of pilot and master**

- (1) The duty of a pilot is to pilot the ship safely subject to the authority of the master.
- (2) The master is not relieved of his responsibility for the conduct and navigation of the ship by reason of the ship being in the charge of a pilot.

**34 Owner and master liable for damage**

The owner and the master of a ship shall be jointly and severally liable in civil proceedings for any loss or damage caused by the ship, or as a result of any fault in the navigation of the ship, notwithstanding that a pilot was, or was required to be, on board the ship at the time that the loss or damage was caused.

**35 Civil liability for loss or damage**

The Government, Ministry or any employee shall not be liable in any civil proceedings for any damage done by, or any loss suffered as a result of, any act or omission on the part of a pilot under this Part while acting as pilot of a ship.

**PART VIII - DANGEROUS GOODS****36 Dangerous goods**

- (1) The Ministry shall ensure the safe movement, loading, discharging, handling and storage of dangerous goods within a port and may direct the conditions under which dangerous goods may be loaded, discharged, handled or stored.
- (2) In particular, without limiting the generality of the foregoing, the Minister may —
  - (a) declare by publication any goods to be dangerous goods;
  - (b) direct the navigation and place of berthing of any vessel;
  - (c) require dangerous goods to be stowed in containers and on board vessels in accordance with the International Maritime Dangerous Goods (IMDG) Code;
  - (d) issue orders for the operation and control of lightering, landing, loading, discharging, conveying, storing and handling of dangerous goods;
  - (e) prohibit, or permit unconditionally or subject to conditions and restrictions, the movement, storage, or stowage of any kind of dangerous goods or any other goods;
  - (f) direct the times at which dangerous goods may be moved, stored or stowed;
  - (g) take such other steps as he deems necessary to protect persons and property from danger.

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## PART IX - OFFENCES

### 37 Penalty for obstructing Ministry

Any person who at any time hinders or obstructs any employee, agent or contractor of the Ministry in the performance and execution of his duty, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months, or both.

### 38 Reporting false information

Any person who makes, knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made by or under the provisions of this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or both.

### 39 False information as to vessel characteristics

Any master, owner or agent of a vessel entering or leaving a port who gives false information of the tonnage, draught, length or beam of such vessel to any employee of the Ministry authorised to ascertain the same commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years, or both.

### 40 Wilful damage to port works

Any person who wilfully removes, destroys or damages any port works or any property belonging to the Ministry or who wilfully hinders or prevents such port works or property from being used or operated in the manner in which it is intended to be used or operated commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both, and in addition shall pay compensation to the Ministry in such sum as the Court may determine.

### 41 Offences in connection with safety of vessels

Any person who in any port —

- (a) without lawful excuse loosens or removes from its moorings or from its fastenings in or alongside any anchorage or wharf, any vessel, canoe or traditional craft without leave or authority from the master or owner of such vessel or person in charge of such anchorage or wharf;

- (b) without the permission of the Chief Executive Officer or any lawful excuse, discharges any firearm except for the purpose of making a signal of distress or for other lawful purpose;
- (c) moves, damages or otherwise interferes with any marine navigational aid;
- (d) fumigates by whatever means any vessel in the port, or boils or heats any pitch, tar, resin, turpentine oil or other inflammable oils or liquids of any kinds on board any vessel; or carries out any welding or cutting using gas or electrical appliances without the permission of the Chief Executive Officer;
- (e) uses a naked light when drawing off sprits, turpentine oil or other inflammable oils or liquids of any kind on board any vessel; or
- (f) disables a ship while berthed or uses welding equipment for repairs at a berth, unless granted permission in writing by the Chief Executive Officer under such terms and conditions as he may set,

commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

## 42 Pollution within a port

- (1) Every person who throws, discharges, deposits, causes, suffers, or allows to be thrown, discharged, or deposited any harmful substance into any waters of a port commits an offence and shall be liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding 2 years or both and to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any harmful substance to which the offence relates.
- (2) It shall be a defence to any prosecution under subsection (1) if the defendant proves that the action complained of was necessitated by reason of an emergency imperilling life, or was caused by an unavoidable accident, collision or stranding.
- (3) No vessel shall emit smoke and other pollutants to the atmosphere in excess of those quantities permitted by international conventions and standards and every person who permits emissions of smoke and other pollutants from a vessel in excess of these standards commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 1 year, or both.
- (4) No vessel shall cause noise in the environment in excess of those levels permitted by international conventions and standards and every person who causes noise in the environment from a vessel in excess of these standards commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 1 year, or both.

- (5) For the purpose of this section, “harmful substance” means any substance that, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

## PART X - MISCELLANEOUS PROVISIONS

### 43 Master, owner or agent liable for damage

- (1) Where any damage is sustained to any property of the Ministry by any vessel or by any person employed thereon, the cost of making good the damage may be recovered by the Minister from the master, person in charge of the vessel, owner or agent.
- (2) The Minister may detain any such vessel until the cost of making good the damage has been paid or security in an amount and in the form agreed to by the Minister.

### 44 Power to detain

- (1) Any employee of the Ministry may detain any person found committing or whom he has reason to believe has committed, an offence under this Act.
- (2) A person detained under this section shall forthwith be handed over to the Police.

### 45 Evidence of identity

Any employee of the Ministry who reasonably believes that any person has committed an offence against the provisions of this Act required that person to furnish evidence of his identity. Any person who refuses to furnish such evidence or who wilfully mis-states such information commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

### 46 Confidential documents

- (1) Documents that are marked “Given in Commercial Confidence” or “Commercially Confidential” shall not be accessible to the general public.
- (2) Notwithstanding subsection (1), the Minister may order the release of documents referred to in subsection (1) if in his opinion they are not commercially sensitive or it is in the public interest to do so.

## 47 Equipment not subject to distraint

When any equipment, fixed or movable, belonging to the Ministry is in a place outside the property of the Ministry, such equipment shall not be subject to distraint nor be taken in execution of any legal process against any other person.

## 48 Regulations

The Minister, with the consent of Cabinet, may make regulations for giving effect to and carrying out the purposes of this Act, including but not limited to, the following —

- (a) regulating vessel and vehicular traffic;
- (b) prescribing all such things as may be necessary with respect to harbour lights, buoys, beacons and signals and preventing and providing for the removal of obstructions or impediments to navigation;
- (c) designating, declaring, defining and regulating the operation of wharves and ferry terminals on and from which goods shall be discharged or loaded or into vessels and the manner in which and the conditions under which such discharging and loading shall be carried out, and for varying the position of vessels discharging or loading;
- (d) regulating the erection or construction of wharves and ferry terminals in a port or encroaching in any way on the waters thereof;
- (e) providing minimum standards for machinery and appliances (other than machinery and appliances carried on a vessel) used in loading or unloading of goods;
- (f) keeping free passages of such width as it considers necessary within a port and along or near to the wharves, passenger jetties, moorings and other similar works in or adjoining the same and for marking out the spaces so to be kept free;
- (g) regulating the anchoring, fastening, mooring and unmooring, and warping of all vessels and the use of warps, mooring buoys, chains and other moorings and the granting of permission, on such conditions as the Ministry may think fit for the keeping or placing of anchors or private moorings or buoys;
- (h) regulating the use of anchorages, wharves and ferry terminals and the movement of vessels, persons and vehicles and preventing obstruction at anchorages and on wharves and ferry terminals and ensuring the safety of the same and any cargo thereon;
- (i) regulating the use by vessels of whistles, sirens and other like instruments and the signals to be used and measures to be taken in case of fires in a port;
- (j) enforcing and regulating the use of navigation lights, signals and signal lights by vessels and the steps to be taken by vessels navigating in the waters of a port for the avoidance of accidents;



- (k) requiring the master of every vessel to report his arrival, to produce the Certificate of Registry on demand, and to deliver a copy of every bill of lading or manifest of the cargo or other account of goods intended to be discharged;
- (l) specifying the information to be supplied by the masters, owners and other persons in respect of vessel arriving and departing, and of goods loaded or discharged in a port, and the time and manner in which such information is to be divulged;
- (m) supervising, regulating and controlling stevedoring and other activities carried on within a port and if he thinks fit, providing for the licensing thereof;
- (n) prohibiting the loading or discharging of dangerous goods from a vessel or the movement within a port area, except in accordance with the International maritime Dangerous Goods Code or any other law or regulation;
- (o) regulating the reception, storage and removal of goods within and from the premises of the Ministry, and for declaring the procedure to be followed for taking charge of goods which have been damaged before discharge or are alleged to have been so damaged;
- (p) regulating the examination and checking of any vehicle, case, bag or luggage where there is reason to believe that any person has in his possession any goods on which duties or fees have not been paid;
- (q) regulating towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (r) regulating the keeping clean of basins and other works of the Ministry and the waters of any port and preventing oil, rubbish or other things being discharged or thrown or entering therein or thereon;
- (s) providing reception facilities as required by the International Convention for the Prevention of Pollution at Sea (MARPOL 73/78), arranging for the provision of these facilities by the private sector and ensuring that these services are provided in a timely manner;
- (t) prescribing the terms and conditions for the sale and supply of fresh water by the Ministry;
- (u) providing for the cleaning, fumigating and disinfecting of building, wharves, vessels and cargo;
- (v) regulating the safe and convenient use of the wharves, ferry terminals, landing places and buildings maintained by the Ministry;
- (w) regulating the use in ports of motor launches, yachts, pleasure craft, surf boards and water skis;
- (x) regulating the time when fees on goods shipped or received are to be payable;

- (y) settling the mode of payment of fees or rates chargeable under this Act, facilitating their collection and preventing their evasion;
- (z) ensuring that perimeter fencing is erected where required to ensure that trespassers are excluded and that adequate security is provided to ensure that all goods within the port area are properly safeguarded and not liable to theft or damage.

**SCHEDULE I***(Section 3(2))***LEGAL DESCRIPTION OF HARBOURS AND HARBOUR AREAS****1. 'OHONUA HARBOUR - 'EUA**

'Ohonua Harbour comprises of all areas within as that defined below.

A straight line joining the following positions commencing as —

from Latitude 21°21.0'S Longitude 174°58.0'W

to Latitude 21°21.0'S Longitude 174°58.5'W

to Latitude 21°20.0'S Longitude 174°58.5'W

to Latitude 21°20.0'S Longitude 174°57.12'W

and then a line southwards on the contour of the high water mark until the point of commencement at Latitude 21°21.0'S Longitude 174°58.0'W.

Refer to Chart B.A. 1385

**2. LIFUKA HARBOUR - HA'APAI**

Lifuka Harbour comprises of all areas within as that defined below. A straight line joining the following positions commencing as —

from Latitude 19°49.5'S Longitude 174°22.92'W

to Latitude 19°49.5'S Longitude 174°24.0'W

to Latitude 19°46.0'S Longitude 174°24.0'W

to Latitude 19°46.0'S Longitude 174°21.0'W

to Latitude 19°46.3'S Longitude 174°21.0'W

and then a line southwards on the contour of the high water mark until the point of commencement at Latitude 19°49.5'S Longitude 174°22.92'W.

Refer to Chart B.A. 473.

**3. NEIAFU HARBOUR - VAVA'U**

Neiafu Harbour comprises of all areas within as that defined below. A straight line joining the following positions commencing as —

from Latitude 18°39.64'S Longitude 174°00.5'W

to Latitude 18°39.25'S Longitude 174°01.22'W

and then a line northwards on the contour of the high water mark until Latitude 18°38.85'S Longitude 174°01.27'W and then a straight line to Latitude 18°38.36'S

Longitude 174°00.67'W and then a line northwards on the contour of the high water mark until Latitude 18°38.15'S Longitude 174°00.2'W and then a straight line to Latitude 18°38.18'S Longitude 174°00.0'W and then a line southwards on the contour of the high water mark until Latitude 18°38.36'S Longitude 173°59.93'W and then a straight line to Latitude 18°38.54'S Longitude 173°59.86'W and then a line southwards on the contour of the high water mark along the coast until Latitude 18°40.5'S Longitude 173°59.4'W and then a straight line to Latitude 18°40.53'S Longitude 173°59.5'W and then a line along the coast on the contour of the high water mark towards the west until the point of commencement at Latitude 18°39.64'S Longitude 174° 00.5'W.

Refer to Chart B.A. 3097

#### **4. FALEHAU HARBOUR - NIUA TOPUTAPU**

Falehau Harbour comprises of all areas within at that defined below, excluding islands from their high water marks. A straight line joining the following positions commencing as —

from Latitude 15°56.7'S Longitude 173°45.0'W

to Latitude 15°55.0'S Longitude 173°45.0'W

to Latitude 15°55.0'S Longitude 173°43.15'W

to Latitude 15°55.75'S Longitude 173°43.15'W

and then a line southwards on the contour of the high water mark until the point of commencement at Latitude 15°56.7'S and Longitude 173° 45.0'W.

Refer to Chart B.A. 968

#### **5. FUTU HARBOUR - NIUA FO'OU**

Futu Harbour comprises of all areas within as that defined below. A straight line joining the following positions commencing as —

from Latitude 15°35.5'S Longitude 175°40.32'W

to Latitude 15°35.5'S Longitude 175°40.5'W

to Latitude 15°35.0'S Longitude 175°40.5'W

to Latitude 15°35.0'S Longitude 175°40.18'W

and then a line southwards on the contour of the high water mark until the point of commencement at Latitude 15°35.5'S Longitude 175°40.32'W.

Refer to Chart B.A. 968

**SCHEDULE II**

*(Section 3(3))*

**LEGAL DESCRIPTION OF WHARVES AND WHARF AREAS**

**1. 'EUA**

1. New Nafanua Wharf - 'Ohonua
2. Old Nafanua Wharf - 'Ohonua

**2. HA'APAI**

1. Taufu'ahau Wharf - Pangai
2. Pulotu Wharf - Ha'afeva

**3. VAVA'U**

1. Queen Halaevalu Mata'aho Wharf - Neiafu

**4. NIUA TOPUTAPU**

1. Pasivulangi Wharf - Falehau

**5. NIUA FO'OU**

1. Futu Wharf – Futu

**ENDNOTES**

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<sup>1</sup> **Act 26 of 2001**, GS 18/2004

Amended by Act 5 of 2012, commencement 30 July 2012

<sup>2</sup> GS 24/2003

<sup>3</sup> Inserted by Act 5 of 2012

<sup>4</sup> Amended by Act 5 of 2012

<sup>5</sup> Cap 48.14