



Tonga

PORTS AUTHORITY ACT

Chapter 48.14

2016 Revised Edition



PORTS AUTHORITY ACT

Arrangement of Sections

Section

PART I - PRELIMINARY		7
1	Short title	7
2	Interpretation	7
3	Designation of ports	9
PART II - ESTABLISHMENT OF AUTHORITY AND MEMBERSHIP OF BOARD		10
4	Establishment of Authority	10
5	Board of Directors.....	10
6	Terms of office of Directors	10
7	Alternate Director	11
8	Remuneration.....	11
9	Liability	11
PART III - OBJECTIVES, FUNCTIONS AND POWERS OF AUTHORITY		12
10	Objectives of the Authority	12
11	Functions of the Authority.....	12
12	Powers of Authority	12
PART IV - PROCEDURE OF THE BOARD		14
13	Meeting	14
14	Minutes of meeting	15
15	Conflict of interest	15
16	Vacancy not to invalidate acts	15

17	Execution of documents, etc.....	16
----	----------------------------------	----

PART V - ASSETS, LIABILITIES AND ORIGINAL EMPLOYEES 16

18	Original assets of the Authority.....	16
19	Transfer of other property to Authority	16
20	Transfer of employees.....	17

PART VI - PROVISIONS RELATING TO GENERAL MANAGER AND STAFF 17

21	Appointment of General Manager	17
22	Duties and powers of the General Manager	18
23	Appointment of Port Master and Deputy Port Masters.....	19
24	Powers of Port Master in relation to vessels	19
25	Fire on board vessel	20
26	Power to board vessel	20
27	No liability	20
28	Staff of Authority.....	20
29	Port Users' Advisory Committees	21

PART VII - FINANCIAL PROVISIONS 22

30	Chief Financial Officer of the Authority.....	22
31	Purposes for which funds of Authority may be expended	22
32	Investment of funds	23
33	Borrowing powers	23
34	Annual operating plan and budget	23
35	Accounting procedures and financial statements.....	23
36	Audit procedures.....	24
37	Presentation of financial statements and audit reports	24
38	Other reports.....	25
39	Statement of accounts and Annual Report	25

PART VIII - PORT FEES AND RATES 25

40	Stevedoring services	25
41	Power of Authority to levy fees.....	26
42	Fees	26
43	Persons liable for fees	26
44	Rates	26
45	Powers to board onto vessels.....	26
46	Receipts.....	27
47	Maritime and other liens	27
48	Lien on cargo and goods	27
49	Powers to sell or dispose of goods	27
50	Shipping clearance to be withheld.....	28
51	Exemption, reduction, of fees and rates	28
52	Evasion.....	28

53	Interest.....	29
54	Application	29

PART IX - PILOTAGE **29**

55	Pilotage authority	29
56	Pilotage areas	29
57	Pilotage.....	29
58	Exemptions from pilotage	30
59	Compulsory	30
60	Vessel to be piloted by a pilot.....	30
61	Authority to employ pilots.....	31
62	Licensed pilot not personally liable	31
63	The presence of a licensed pilot does not diminish responsibility of master. 31	
64	Owner and master liable for damage.....	31
65	Civil liability for loss or damage	31

PART X - DANGEROUS GOODS **32**

66	Dangerous goods.....	32
----	----------------------	----

PART XI - OFFENCES **32**

67	Penalty for obstructing Authority	32
68	Reporting false information.....	33
69	False information as to vessel characteristics	33
70	Wilful damage to port works and property	33
71	Offences in connection with safety of vessels	33
72	Pollution within a port.....	34

PART XII - MISCELLANEOUS PROVISIONS **34**

73	Master, owner, liable for damage.....	34
74	Powers to detain.....	35
75	Evidence of identity	35
76	Confidential documents.....	35
77	Apparatus not subject to distress.....	35
78	Regulations	35
79	Standing Orders or Codes of Practice	35
80	Shipping Act	38
81	Binding on the Government	38

SCHEDULE **39**

LEGAL DESCRIPTION OF PORTS AND PORT AREAS	39
---	----



PORTS AUTHORITY ACT

AN ACT TO ESTABLISH A PORTS AUTHORITY TO MANAGE AND OPERATE CERTAIN PORTS IN THE KINGDOM OF TONGA TO MAKE PROVISIONS FOR MATTERS RELATED HERETO¹

Commencement [1st October, 1998]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Ports Authority Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Authority**” means the Ports Authority established under section 4;

“**Board**” means the Board of Directors appointed under section 5;

“**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 for other specific purposes;

“**Chairman**” means the Chairman of the Board appointed under section 5;

“**Chief Executive Officer**” means the Government chief executive officer responsible for marine and ports;²

“**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 handled, having corner fittings for those purposes and being of a standard 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 substances declared to be dangerous goods pursuant to Part X;

“**Director**” means a member of the Board appointed by the Minister under the provision of this Act;

“**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 of Tonga or between any port or place outside Tonga;

“**General Manager**” means the chief executive officer of the Authority appointed under section 22 of this Act and includes any person for the time being performing the functions of General Manager;

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

“**International Maritime Dangerous Goods Code**” means the Code regulating the packaging, labelling, handling, storage, stowage, separation and carriage by sea of dangerous goods as specified by the Code, as issued by the International Maritime Organisation, and amended from time to time;

“**ISO**” means the International Standards Organisation;

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

“**Minister**” means the Minister responsible for marine and ports;³

“**Ministry**” means the Ministry responsible for marine and ports;⁴

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

“**net realisable assets**” are the market value of the assets less the current liabilities and outstanding loans;

“**overseas vessel**” means, in respect of Part IX, 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;

“**pilot**” means a licensed pilot employed by the Authority pursuant to section 63 of the Act;

“**port**” means any place described or declared to be a port pursuant to section 3;

“**Port Master**” means the Port Master and any Deputy Port Master appointed under section 24;

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

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

“**stevedoring company**” means any organisation whether incorporated or not, which in the opinion of the General Manager 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 Board;

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

“**vessel**” includes every description of 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 excluding a canoe or other craft of traditional build;

“**warehouse**” includes any warehouse, shed or other building belonging to or under the control of the Authority 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.

3 Designation of ports

- (1) Ports to which this Act applies shall be those so designated in the Schedule to this Act.
- (2) The Minister with the consent of Cabinet may at any time declare any other place to be a port within the meaning of this Act.
- (3) Every port shall be defined by means of a legal description and chart or plan drawn up by the Ministry and published in the Gazette.

PART II - ESTABLISHMENT OF AUTHORITY AND MEMBERSHIP OF BOARD

4 Establishment of Authority

- (1) The Ports Authority is hereby established for the purpose of managing and operating the ports and assets in the Schedule, and any other ports under this Act, and shall have the powers and functions conferred upon it by this Act.
- (2) The Authority is a body corporate, capable of entering into contracts, acquiring, holding, disposing of property, suing and being sued, and doing all such other acts and things that bodies corporate may lawfully do.

5 Board of Directors

- (1) The Authority shall be governed by a Board of Directors which shall consist of a Chairman, a Deputy Chairman and 3 members, all of whom shall be appointed by the Minister, with the consent of Cabinet.
- (2) The Board shall be made up of persons who, in the opinion of the Minister, are capable, competent, industrious and responsible, preferably with experience in business, management, finance or marine operations.
- (3) Applications for membership in the Board shall be advertised in at least one local newspaper and over the radio at least one month before the appointment and the Minister shall take such applications into consideration before making the appointment.

6 Terms of office of Directors

- (1) Every Director shall hold office for a term of 3 years and shall be eligible for reappointment for one further term, but no Director shall serve for more than 6 years.
- (2) A Director may at any time resign his office by notice in writing to the Minister.
- (3) The Minister with the consent of Cabinet may remove at any time a Director —
 - (a) for disability, neglect of duty, misconduct, or bankruptcy; or
 - (b) if he is satisfied that the Director has left Tonga permanently; or
 - (c) if the Director is absent from 3 consecutive meetings of the Board without being able to prove severe mitigating circumstances.
- (4) If a Director dies, or resigns, or is removed from office, the Minister with the consent of Cabinet may appoint another person in place of that Director to

hold office until such former Director's term of office would have expired had he not ceased to be a Director.

- (5) The Minister with the consent of Cabinet may replace all or part of the Board for failure to comply with sections 14, 15 and 31 to 39.

7 Alternate Director

- (1) Two Alternate Directors shall be appointed by the Minister with the consent of Cabinet, to act as the alternate of any Director in accordance with subsection (2).
- (2) If any Director is temporarily incapacitated by illness, absence, or other severe mitigating circumstances from attending any meeting of the Board, an alternate Director may attend that meeting.
- (3) No Alternate Director shall act as Chairman of the Board.
- (4) An Alternate Director while attending a meeting in the place of the Director shall be deemed to be a Director and shall be entitled to exercise all the rights of a Director at that meeting.
- (5) No appointment of any Alternate Director, and no act done by him as such, and no act done by the Authority while any Alternate Director is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

8 Remuneration

Directors of the Authority may be paid out of the funds of the Authority such remuneration and other allowances as the Cabinet may from time to time determine.

9 Liability

- (1) The Government shall not be responsible for any debts incurred by the Authority after the date of its establishment.
- (2) The Authority shall only be liable for debts and claims to the extent of its net realisable assets.

PART III - OBJECTIVES, FUNCTIONS AND POWERS OF AUTHORITY

10 Objectives of the Authority

The objectives of the Authority are to promote, encourage and assist in the development of commercially viable and efficient ports in Tonga to which this Act applies.

11 Functions of the Authority

The functions of the Authority are to establish, improve, maintain, operate and manage ports, services and facilities in connection with the operation of any port, including, but not limited to —

- (a) the management and maintenance of adequate and efficient ports, facilities, Services and security in ports;
- (b) the provision of any goods or the performance of any services necessary to give effect to the objectives of the Authority;
- (c) the regulation of navigation and maintenance of navigation aids within ports;
- (d) the marketing and promotion of the use, improvement and development of ports; and
- (e) the co-ordination of all operations within ports.

12 Powers of Authority

- (1) Subject to this Act and any regulations made hereunder, the Authority shall have all the powers, rights and authorities necessary or expedient to enable it to exercise its functions.
- (2) Without limiting the generality of subsection (1), the Authority shall have the power to issue Standing Orders or Codes of Practice in respect of the following matters —
 - (a) operate or manage a port listed in the Schedule as a commercial undertaking and for that purpose may levy such port charges, fees and rates whatsoever arising from the management and operation of any port, and may similarly increase, decrease or abolish any such charge, fee or rate, 30 days after publication;
 - (b) appoint and employ such persons as it may consider necessary for the efficient performance of its functions;
 - (c) enter into any contract, covenant, or agreement of any kind whatsoever for the provision of reception facilities required by any other enactment;

- (d) authorise any person to carry out any work or perform any act in the performance of its functions and powers;
- (e) carry on any business or activity whatsoever which appears to the Authority to be necessary and profitable for the discharge of its functions;
- (f) acquire, hire, procure, construct, erect, manufacture, provide, maintain or repair anything whatsoever required by the Authority for the purposes of this Act or to sell or otherwise dispose of the same;
- (g) provide services for a fee within a port including —
 - (i) berthing, towing, mooring, moving, or docking of any vessel;
 - (ii) embarking or disembarking passengers to or from any vessel, including the provision of landing-places;
 - (iii) providing lighterage or to appoint, licence and regulate lighterage operators;
 - (iv) piloting any vessel;
 - (v) installing and maintaining marine navigation aids but subject to the powers of the Chief Executive Officer;
 - (vi) sorting, weighing, measuring, storing, warehousing or otherwise handling any goods; and
 - (vii) supplying fuel, water or telephone services or other goods and services to vessels; or for rendering assistance to any vessels or recovering property lost, sunk or stranded;
- (h) appoint and regulate operators and other labour and equipment; and any other operators that the Board may approve;
- (i) appoint and regulate commercial services provided at or within a port;
- (j) acquire any undertaking affording and discharging or warehousing of goods in a port or for the bunkering of vessels;
- (k) provide such fire and security services, both within a port or elsewhere, as may be deemed by the Authority necessary for the purpose of extinguishing fires and of preserving life and property;
- (l) control the erection and use of wharves, docks and other works, whether above or below the high water mark, within a port;
- (m) reclaim, excavate, enclose or raise any part of any land vested in the Authority, subject to the provisions of any other Act or statutory requirement;
- (n) add to, alter or reconstruct any port or any part of a port;
- (o) acquire such land and execute such works and do such acts and things as may be necessary or expedient in respect of the functions of the Authority under the provisions of this Act or of any other enactment;
- (p) sell, transfer, lease, hire or otherwise dispose of any of its property;

- (q) do anything for the purposes of —
 - (i) improving the skill of the employees of the Authority; or
 - (ii) improving the equipment of the Authority and the manner in which such equipment is operated and maintained;
 - (r) establish, control, manage and maintain, or contribute to any provident fund or other superannuation scheme for the benefit of its employees or the dependants of deceased employees;
 - (s) enter into and carry out any arrangement or agreement or contract necessary for the exercise of any power or function conferred upon the Authority by this Act;
 - (t) do all things necessary or convenient to be done in connection with or incidental to the performance of its functions under this Act or any other enactment.
- (3) Notwithstanding subsections (1) or (2), the Authority shall not act as agent for any ship, or owner or operator to any ship.
- (4) The powers conferred by subsection (1) shall be in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other enactment.

PART IV - PROCEDURE OF THE BOARD

13 Meeting

- (1) The Chairman, or in his absence, his Deputy, shall preside at every meeting of the Board. In the absence of the Chairman and his Deputy the members present shall appoint one of their number to be Chairman of that meeting.
- (2) The first meeting of the Board shall be held on a day, time and place to be appointed by the Chairman and subsequent meetings shall be held at such times and places as the Board may from time to time determine, provided that not more than two months shall elapse between one meeting and the next.
- (3) The Chairman or, if he is absent, his Deputy may at the request of the General Manager at any time convene a special meeting of the Board and shall, on the requisition in writing of any 3 Directors of the Board stating the business to be transacted, convene a special meeting of the Board within 7 days of the receipt by him of such requisition.
- (4) At every meeting the quorum shall be 3 Directors.
- (5) The proceedings at any meeting of the Board shall be decided by a majority of the Directors present.
- (6) Every question before a meeting of the Board shall be decided by a majority of the Directors present.

- (7) The Chairman at any meeting shall have a deliberative vote and in the event of an equality of votes, shall have a casting vote.
- (8) A resolution in writing signed or assented to by letter or facsimile by a majority of the Directors shall have the same effect and be as valid as if it has been duly passed at a meeting of the Board.
- (9) Any Director who has a pecuniary interest in any matter coming before the Board shall declare that interest to the Chairman and take no further part in the deliberations on that matter.
- (10) Subject to the provisions of this Act, the Board may regulate its meetings in such manner as it thinks fit.

14 Minutes of meeting

- (1) The Board shall cause minutes to be kept in a book provided for that purpose of all resolutions and proceedings of its regular and special meetings.
- (2) The minutes shall be produced to the next meeting of the Board and if approved, it shall be signed by the Chairman.
- (3) A copy of the minutes of every meeting shall be furnished to every Director.

15 Conflict of interest

- (1)
 - (a) Any Director or any employee of the Authority who has any pecuniary or other interest, direct or indirect, in any contract or proposed contract or other matter relating to the Authority shall not be permitted to submit a tender or be awarded a contract.
 - (b) The Authority shall not enter into any contract or engage in any business with any entity with which a Director or employee is associated.
- (2) Any Director or any employee of the Authority who has any undeclared interest in any matter relating to the Authority may be dismissed from that position without compensation.

16 Vacancy not to invalidate acts

- (1) No act or proceeding of the Board shall be invalidated or questioned only on account of the existence of a vacancy among the directors.
- (2) All acts done by a person acting in good faith as a Director shall be as valid as if he were a Director notwithstanding that some defect in his appointment be afterwards discovered.

17 Execution of documents, etc.

- (1) The common seal of the Authority shall not be affixed to documents relating to any contract, covenant or agreement except pursuant to a resolution of the Board and in the presence of the Chairman and one other Director, and such affixing shall be authenticated by the signature of such persons.
- (2) All documents relating to any contract, covenant or agreement to which the Authority is a party, other than those required by law or any regulations made pursuant to this Act or any resolution passed by the Board to be under seal, may be signed on behalf of the Authority by the Chairman or the General Manager, or by any Director or employee of the Authority generally or specially, authorised by a resolution passed at a meeting of the Board.

PART V - ASSETS, LIABILITIES AND ORIGINAL EMPLOYEES

18 Original assets of the Authority

- (1) The original assets of the Authority shall consist of —
 - (a) all buildings, installation and improvements, located on or adjacent to or in the vicinity of the ports described in the Schedule to this Act, which are in use by the Government at the date this Act comes into force for the maintenance and operation of any of those ports; and
 - (b) all vessels, vehicles, plant, machinery, equipment, stores, furniture and apparatus afloat or on shore which are owned by the Government for the maintenance and operation of any port at the date this Act comes into force.
- (2) The assets referred to in subsection (1) of this section are hereby vested in the Authority.
- (3) The Government shall cause the land described in the Schedule to this Act to be transferred to the Authority forthwith upon this Act coming into force under such terms and conditions as it deems fit.
- (4) If any question arises as to whether any asset has become or is the property or responsibility of the Authority, that question shall be decided by Cabinet.

19 Transfer of other property to Authority

- (1) There shall be transferred to the Authority, to enable it to perform its functions under this Act, such other property vested in or belonging to the Government as Cabinet may from time to time determine.

- (2) Upon such transfer, all debts, liabilities and obligations in connection with or pertaining to such property shall also be transferred to and vested in the Authority and shall be deemed to have been incurred by the Authority.
- (3) Land acquired by the Government under the Land Act for the purposes of this Act may be leased to the Authority.

20 Transfer of employees

- (1) Upon the coming into force of this Act and the establishment of the Authority, such persons as are required by the Authority who were employed by the Government immediately prior to the establishment of the Authority and were discharging any of the functions vested in the Authority by this Act, may, at their choice, be deemed to be transferred to the service of the Authority on terms which shall be determined by the Authority but no less favourable than those they had enjoyed immediately prior to their transfer to the Authority, taking into account salaries and conditions of service when they were employed by the Government.
- (2) In the event of any person employed by the Government in any pensionable office being transferred to the service of the Authority, such person shall retain all rights and privileges accrued to him under the Pensions Act and any regulations made thereunder.
- (3) Nothing in this section shall preclude the secondment to the Authority of officers in the employment of the Government on such terms as may be agreed upon by the Government and the Authority.

PART VI - PROVISIONS RELATING TO GENERAL MANAGER AND STAFF

21 Appointment of General Manager

- (1) The Board shall appoint a General Manager, who shall also act as secretary to the Board.
- (2) The terms and conditions of employment of the General Manager shall be determined by the Board and included in a contract of service.
- (3) The General Manager shall not be removed from office without the consent of the Board.
- (4) The General Manager shall devote the whole of his working time to the Authority and shall not, without the written approval of the Board, occupy any other office or employment, whether remunerated or not, except that he may act as member of any Authority, Committee or Commission established by the Government.

- (5) The General Manager shall pursue the objectives, perform the functions and may exercise, subject to the approval of the Board, the powers vested in the Authority.
- (6) The General Manager may make such Standing Orders or other rules not inconsistent with this Act, for the management and good governance of the Authority as he thinks fit.
- (7) All employees shall read the Standing Orders each year, signing to acknowledge their understanding and their acceptance of the matters contained therein.

22 Duties and powers of the General Manager

- (1) The General Manager shall —
 - (a) serve as chief executive officer of the Authority, responsible to the Board for its management and the execution of its objectives and functions; and
 - (b) subject to the provisions of this Act and to any resolution passed at a meeting of the Board, do all things necessary or convenient to be done in connection with, or incidental to, the performance of his duties under this Act or any other enactment and in particular, without limiting the generality of the foregoing, he shall —
 - (i) have the power to act or enter into any contracts on behalf of the Authority, subject to any directions of the Board;
 - (ii) in any case of emergency, have the power to authorise and direct the execution of any work or the doing of any act which the Authority is empowered to execute and do which is, in his opinion, necessary for the operation of port services or the safety of persons on vessels, and he may direct that the expense of executing that work or doing that act be paid from the funds of the Authority;
 - (iii) report anything done under sub-paragraph (ii) to the next meeting of the Board.
- (2) Whenever the General Manager is prevented by illness, absence or other like cause from performing his duties or when the office of the General Manager is vacant, the Board may appoint one person from management to perform his duties for as long as the General Manager is so prevented or the office is vacant.
- (3) The General Manager may from time to time by writing under his hand, either generally or particularly, delegate to any officer or employee of the Authority as he thinks fit, all or any of the powers exercisable by him under this Act including any powers delegated to him by the Board but not including this power of delegation.

- (4) The General Manager shall ensure that the Authority complies with sections 34 to 39.
- (5) The General Manager shall be responsible for —
 - (a) the day-to-day operations; and
 - (b) the hiring and dismissal of employees.
- (6) The General Manager's performance shall be judged by the Board by —
 - (a) the agreed return on investments;
 - (b) customer relationships;
 - (c) quality of information provided to the Board.
- (7) Failure to achieve the above prime responsibilities by the General Manager may be a cause for dismissal without compensation.

23 Appointment of Port Master and Deputy Port Masters

The General Manager shall appoint a Port Master and may also appoint such Deputy Port Masters as are necessary.

24 Powers of Port Master in relation to vessels

- (1) The Port Master may within a port —
 - (a) direct where any vessel shall be berthed, moored or anchored and the method of anchoring;
 - (b) direct the removal of any vessel from any berth, wharf, terminal or anchorage and 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 upon conviction shall be liable to a fine not exceeding \$10,000.
- (3) If any person to whom a direction given under subsection (1) refuses or neglects to comply with such direction the Authority 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 its opinion reasonable or necessary for the purpose of carrying out such compliance and may hire or employ such persons as it considers necessary for such purpose and all expenses incurred in doing such acts shall be paid, borne by or recoverable from the person to whom the direction was given.

25 Fire on board vessel

- (1) In the event of fire breaking out on board a vessel in a port, the Port Master may proceed on board the vessel 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 Port Master may himself proceed to carry them into effect.
- (3) All expenses incurred in the exercise of the powers of the Port Master under this section shall be recoverable from the master and owner of the vessel concerned.
- (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 on conviction shall be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 1 year, or both.

26 Power to board vessel

- (1) The Port Master may go on board any vessel within a port whenever he suspects that an offence against this Part of the Act has been or is about to be committed on any 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 Port Master to board that vessel under the powers vested in subsection (1) 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.

27 No liability

The Authority shall not be liable for any act, omission or default of the Port Master or any other employee in the execution of his duty, except in cases of gross negligence or misconduct.

28 Staff of Authority

- (1) The General Manager may from time to time appoint and employ on such terms and conditions as the Board may determine, such other officers and employees as may be necessary for the effective performance of its objectives and functions.
- (2) The General Manager may make Standing Orders or other rules, not inconsistent with this Act, for the manner of appointment, conduct and

discipline, and the terms and conditions of service of the officers, and employees of the Authority.

- (3) No officer or employee of the Authority shall be personally liable for any act done or omitted to be done in good faith in the exercise or performance of the functions, powers and duties of the Authority except in cases of gross negligence or misconduct.

29 Port Users' Advisory Committees

- (1) Port Users' Advisory Committees shall be established in any port to which this Act applies, as the Board deems appropriate.
- (2) The primary function of the Port Users' Advisory Committee is to provide advice to management of the Authority on the operation of ports, drawn from representatives of the following users and other interested parties —
 - (a) overseas shipping companies;
 - (b) coastal shipping companies;
 - (c) stevedoring companies;
 - (d) labour interests;
 - (e) road transport operators;
 - (f) shippers and/or consignees;
 - (g) warehouse operators;
 - (h) bulk fuel handlers;
 - (i) local chambers of commerce or equivalent bodies;
 - (j) any other sector with a legitimate interest in port operations and infrastructure.
- (3) In order for Authority management to best respond to needs of parties with an interest in the port and its operation, the Port Users' Advisory Committee may recommend to management ideas and suggestions for the improvement of port operations.
- (4) The General Manager shall, upon receipt of a recommendation from the Port Users' Advisory Committee, enter the recommendation as a matter for deliberation at the meeting of the Board next occurring after such receipt.
- (5) The Board shall consider any recommendation of the Port Users' Advisory Committee and shall either:
 - (a) adopt the recommendation; or
 - (b) amend the recommendation and adopt it; or
 - (c) remit the recommendation to the Port Users' Advisory Committee with directions for further consideration; or
 - (d) refuse to adopt the recommendation.

- (6) Recommendations accepted by the Board shall be kept by the Port Master for that port.

PART VII - FINANCIAL PROVISIONS

30 Chief Financial Officer of the Authority

- (1) There shall be a Chief Financial Officer of the Authority who shall be appointed by the Board.
- (2) The functions of the Chief Financial Officer of the Authority shall be to establish and maintain financial accounts and records in accordance with generally accepted accounting principles and in accordance with the provision of this and all other applicable Acts.

31 Purposes for which funds of Authority may be expended

- (1) The revenue of the Authority in any year shall be applied in payment of the following expenses in accordance with generally accepted accounting principles —
- (a) interest and capital repayments on any loan payable by the Authority;
 - (b) sums required to be paid to the government towards repayment of any loan made by the Government to the Authority;
 - (c) salaries, fees and allowances of the Directors;
 - (d) salaries, fees, allowances, remuneration, provident fund and other benefits of the employees, agents and advisers of the Authority;
 - (e) capital, operating and maintenance expenses of any installation or facility of the Authority;
 - (f) such sums as the Authority is required or considers appropriate to set aside in respect of depreciation or renewal of property of the Authority;
 - (g) the capital cost, or any portion thereof, of any new works plant vessels or appliances not being a renewal of the property of the Authority;
 - (h) such sums as may be required for fuel, stores, provisions, uniforms and consumable for the operation of any equipment, including vessels, necessary for the efficient operation of the Port;
 - (i) such sums by way of contribution to public or charitable objects associated with the objects of this Act as the Authority, with the approval of the Board, may decide;
 - (j) corporate taxation;
 - (k) dividend payments;

- (1) any other proper and legitimate expense authorised by the Authority in the discharge of its objectives and functions.
- (2) Subject to subsection (3) the balance of the revenue of the Authority, being surplus to current year requirement, shall be applied for the creation of a general reserve or such other reserves or capital fund as the Authority may consider appropriate.
- (3) Notwithstanding the provisions of subsection (2), 50 per cent of the net profit of the Authority shall be paid annually as a dividend to the Government.

32 Investment of funds

Any funds not immediately required for expenditure by the Authority may be invested in any manner authorised by the Board.

33 Borrowing powers

The Authority may raise loans, either by charge or mortgage or by the creation and issue of debentures, debenture stock, bonds or otherwise, for the purpose of carrying out its functions under the provisions of this Act.

34 Annual operating plan and budget

- (1) The Authority shall every year cause to be prepared a three-year operating plan together with financial projections, the first year of which shall form the basis of the next year's annual operating plan and budget.
- (2) The Authority shall every year cause to be prepared and shall adopt an annual operating plan and budget of income and expenditure of the Authority for the ensuing year.
- (3) Actual monthly financial accounts and financial performance year-to-date shall be reviewed and compared to budget at each and every Board meeting.
- (4) A copy of the annual budget and financial accounts showing variations from budget shall, upon their adoption by the Authority, be sent forthwith to the Minister.

35 Accounting procedures and financial statements

- (1) The Authority shall keep proper accounts and records in relation to its business and in accordance with generally accepted accounting principles and within 3 months after the end of each financial year, shall prepare a balance sheet, income statement and statement of source and application of funds, and such other statements of account as are necessary to show fully the financial position of the Authority and the financial performance of its operations during that year.

- (2) The balance sheet, income statement and other accounts shall be audited in accordance with generally accepted auditing principles.
- (3) For the purposes of this section the value of all assets and liabilities vested in or assumed by the Authority pursuant to sections 18 and 19 of this Act shall be fixed as at the time of their vesting or assumption at such amount or amounts as determined by fair market valuation.

36 Audit procedures

- (1) There shall be an Auditor of the Authority who shall be appointed by the Authority at the commencement of each financial year and report to the Chairman of the Board.
- (2) The functions of the Auditor shall be to conduct periodic independent appraisals of the activities of the Authority in order to —
 - (a) determine whether the Act, any other applicable legislation Standing Orders, resolutions of the Board, generally accepted accounting principles and any other applicable guidelines, standards or policies are being properly observed and implemented;
 - (b) assess the adequacy and application of the Authority's accounting, financial and other operating controls;
 - (c) ascertain the extent to which the assets of the Authority are accounted for, utilised and secured;
 - (d) determine the extent to which the assets and resources of the Authority are being efficiently and economically utilised;
 - (e) ascertain whether the results of the operations of the Authority are consistent with its established objectives and goals, and whether the operations are being carried out in accordance with the Annual Operating Plan;
 - (f) verify the accuracy of information received by management;
 - (g) conduct any further inquiry into the operations of the Authority as the Board may from time to time determine;
 - (h) report to the Chairman on his findings in respect of the matters specified in paragraphs (a) to (g) at such periods as the Board may direct.

37 Presentation of financial statements and audit reports

As soon as the accounts of the Authority and the financial statements prepared in accordance with generally accepted accounting principles have been audited in accordance with the provisions of this Act, a copy of the audited financial statement signed by the Chairman and certified by the Auditors shall be submitted to the Minister.

38 Other reports

The Minister may require the Authority, through the Chairman, to provide any further financial or management reports which he may deem necessary to more fully present the Authority's financial and operational performance.

39 Statement of accounts and Annual Report

- (1) As soon as practicable after the end of each financial year, but not later than 90 days after the end of the financial year or such later date as the Minister may approve, the Authority shall transmit to the Minister —
 - (a) a copy of the statement of accounts;
 - (b) a copy of the report of the auditors on the accounts; and
 - (c) an Annual Report containing details of the activities of the Authority during the year, including statistical data and year-to-date operational and financial performance compared to budget.
- (2) The Minister shall cause copies of the accounts and reports to be laid before the Legislative Assembly as soon as practicable thereafter.

PART VIII - PORT FEES AND RATES**40 Stevedoring services**

- (1) Only a stevedoring company which has obtained a permit from the Authority may provide stevedoring services within the port area.
- (2) A stevedoring company shall provide all the safe equipment, certified to ISO Standards or equivalent, necessary to discharge or load any vessel in an efficient and effective manner.
- (3) A stevedoring company permitted under this Act shall provide experienced and appropriate qualified personnel in the performance and discharge of its task.
- (4) Notwithstanding subsection (2) above, a stevedoring company shall provide any equipment necessary to load or discharge a vessel in the most expeditious manner.
- (5) 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.
- (6) Notwithstanding subsection (1), a vessel trading only between ports in Tonga is exempted from the services of a stevedoring company except if such services were requested by the vessel.

41 Power of Authority to levy fees

- (1) It shall be lawful for the Authority to levy fees for the use of any of its infrastructure, facilities, assets or equipment, or the provision of any service provided by its employees, agents or sub-contractors.
- (2) Such fees shall be determined by resolution of the Board and shall, subject to section 12, come into effect 30 days after publication of such fees.

42 Fees

- (1) A fee shall be payable by the owners, operators, charterers or agents of a vessel for services provided by the Authority at any of the ports to which this Act applies.
- (2) A fee shall be payable to the Authority for a permit to operate stevedoring or shore handling activities within jurisdiction under the control of the Authority.
- (3) The Authority may charge fees for the use by others of any building or space for the storage of cargo, containers or equipment.⁵
- (4) Such fees shall be prescribed by the Authority and shall come into effect upon publication.

43 Persons 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 Authority.
- (3) Any person entitled to possession of the goods either as owner or agent for the owner shall be liable to pay any cargo handling fees.

44 Rates

Subject to section 12 and upon publication, the Authority may levy rates for services not included in the berthage fee for the use of any land, works and appliances belonging to it, and for services, goods and facilities provided by it.

45 Powers to board onto vessels

Any duly authorised employee of the Authority 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 clearance has been given by the Departments of Customs and Immigration.

46 Receipts

Receipts for fees and rates shall be given to the person paying them.

47 Maritime and other liens

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 Authority, may be detained until such 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.

48 Lien on cargo and goods

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

49 Powers to sell or dispose of goods

- (1) Subject to the provisions of this Part, if any goods which have been placed in or on premises of the Authority are not removed from there within a period of 60 days from the time when they were so placed, the Authority may, at the expiration of that period, sell by public auction or dispose of all or any of such goods as it may deem fit:

Provided that —

- (a) in the case of goods for which a through Bill of Lading has been produced, there shall be substituted a period of 90 days for the period of 60 days referred to in this subsection; and
 - (b) if the goods are of a perishable nature the Authority may direct their removal within such shorter period, not being less than twenty four hours after the discharge thereof, as it may think fit, and if not so removed, the Authority may sell all or any of such goods by public auction or dispose of them as it may think fit.
- (2) For the purposes of the last preceding subsection, a sale shall not be rendered invalid by reason only that it takes place in any area to which the public is not admitted as of right.

- (3) Before effecting a sale under this section, the Authority shall give at least 3 days' notice thereof by advertisement in a local newspaper circulating in Tonga unless the goods are of so perishable a nature as in the opinion of the Authority renders their immediate sale necessary.
- (4) The proceeds of any sale under this section shall be applied by the Authority 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 charges and costs due to the Authority 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 one year of the date of the sale, the Authority shall be entitled to retain such surplus and all other rights to it are extinguished.

50 Shipping clearance to be withheld

Notwithstanding the provisions of this or any other enactment, if the Authority 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 Authority.

51 Exemption, reduction, of fees and rates

The General Manager may —

- (i) exempt any vessel or goods or classes of vessels or goods from the payment of fees; or
- (ii) reduce, refund or waive, in whole or in part, any fees or rates payable under this Act and shall submit a written report to the next Board meeting indicating every occurrence of exemption, reduction, refund or waiver and the reason for so doing.

52 Evasion

- (1) If any master, owner or operator of any vessel or any owner, consignee or consignor of goods, by any means whatsoever, evades or attempts to evade any of the fees or rates chargeable under this Act that person 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, and shall in addition be

liable to pay to the Authority as penalty, double the amount of fees or rates that person evaded or attempted to evade.

- (2) The tender to or acceptance by the Authority or any of its employees 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).

53 Interest

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

54 Application

This Part shall not apply to naval vessels.

PART IX - PILOTAGE

55 Pilotage authority

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

56 Pilotage areas

- (1) 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.
- (2) The pilotage areas for the ports to which this Act applies are those contained within the limits of those ports.

57 Pilotage

- (1) Subject to sections 60 and 61 of this Act, every vessel while navigating in any pilotage area shall engage the services of a licensed pilot and the owner, agent or master of the vessel shall comply with this requirement.
- (2) A vessel while being moved within any area of a port which is part of a pilotage area shall be deemed to be a vessel navigating in a pilotage area.
- (3) Notwithstanding subsections (1) and (2) every vessel holding a coasting licence and trading between ports in Tonga to which this Act applies, is

exempted from the services of a licensed pilot, except if the services have been requested by the vessel.

- (4) 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 one year, or both.

58 Exemptions from pilotage

Notwithstanding the provisions of section 59 of this Act the Authority may, if it appears to the Authority to be necessary, exempt any vessel or class of vessel while navigating in any pilotage area from being subject to this Part but on such terms and conditions as it may think fit to impose.

59 Compulsory

- (1) Notwithstanding the provisions of section 57, 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 metres in length or over 500 gross tons, shall take on a qualified pilot when entering or leaving a compulsory pilotage area.
- (3) Every overseas vessel of over 35 metres in length or over 200 gross tons, carrying oil or oil products or hazardous liquid substances in bulk as cargo shall take on a qualified pilot when entering or leaving a compulsory pilotage area.
- (4) Every vessel which has a defect in its hull, machinery or equipment which might materially affect its navigation shall be subject to compulsory pilotage.
- (5) The Board 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 Authority by giving 72 hours notice of his Estimated Time of Arrival (ETA) at the pilot boarding station which shall be confirmed not less than 4 hours prior to arrival, and provide such information concerning the vessel as required by the Authority.
- (7) The master of an outbound vessel shall advise the Authority at least 6 hours before the estimated time of departure of the vessel.

60 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 Authority may, if it considers expedient, authorise any person to pilot vessels in a pilotage area subject to such terms and conditions as it thinks fit.

61 Authority to employ pilots

- (1) Subject to the provisions of this Act, and any other enactment the Authority may employ such number of pilots as it considers necessary or expedient 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 pilot license issued by the Chief Executive Officer.
- (3) No person shall be issued with a pilot license unless that person has demonstrated competence and proficiency as a pilot in the port for which the license is to be issued.

62 Licensed pilot not personally liable

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

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

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

63 The presence of a licensed pilot does not diminish responsibility of master

- (1) Subject to the authority of the master of a ship, the duty of a licensed pilot is to safely pilot the ship.
- (2) The master of a ship 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 licensed pilot.

64 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 licensed pilot was, or was required to be, on board the ship at the time that the loss or damage was caused.

65 Civil liability for loss or damage

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

PART X - DANGEROUS GOODS

66 Dangerous goods

- (1) The Authority shall ensure the safe movement, loading, discharging, handling and storage of dangerous goods within a port and may stipulate the conditions under which dangerous goods may be handled.
- (2) In particular without limiting the generality of the foregoing, the Authority may by Standing Order or Code of Practice —
 - (a) declare any goods to be dangerous;
 - (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 with any other goods;
 - (f) direct the times at which dangerous goods may be moved, stored or stowed;
 - (g) take such steps as it deems necessary to protect persons and property from danger.

PART XI - OFFENCES

67 Penalty for obstructing Authority

Any person who at any time hinders, obstructs or molests any employee, agent or contractor of the Authority in the performance and execution of his duty or anything which he is empowered or required to do by virtue or in consequence of this Act, or removes any work equipment or apparatus established by the Authority in the furtherance of its objectives, functions and powers authorised by 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.

68 Reporting false information

Any person who makes, either 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 to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or both.

69 False information as to vessel characteristics

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

70 Wilful damage to port works and property

Any person who wilfully removes, breaks, destroys or in any other way damages or injures any port works or any property belonging to the Authority or who hinders or wilfully 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 imprisonment for a term not exceeding 2 years or both, and in addition shall pay by way of compensation to the Authority such sum as the Court may determine.

71 Offences in connection with safety of vessels

Any person who in any port —

- (a) wilfully and without lawful excuse loosens or removes from its moorings or from its fastenings in or alongside any anchorage or wharf, any vessel 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 Authority 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 navigation mark;
- (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 kind on board any vessel; or carries out any welding or cutting using gas or electrical appliances without the permission of the Authority;

- (e) uses a naked light when drawing off spirits, 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 Authority under such terms that may be set by the Authority,

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.

72 Pollution within a port

- (1) Every person commits an offence against this Act who throws, discharges, deposits, causes, suffers, or allows to be thrown, discharged, or deposited any harmful substance into any waters of a port.
- (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) Every person who contravenes any provision of this section commits an offence and is liable upon conviction to a fine not exceeding \$25,000 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.
- (4) For the purposes of this section, “harmful substance” means any substance which, 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 XII - MISCELLANEOUS PROVISIONS

73 Master, owner, liable for damage

- (1) In every case in which any damage is sustained to any property of the Authority by any vessel or by any person employed thereon, the cost of making good the damage may be recovered by the Authority from the master, person in charge of the vessel, owner or agent.
- (2) The Authority 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 by the Authority has been paid into the Court of competent jurisdiction.

74 Powers to detain

- (1) Any employee of the Authority 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.

75 Evidence of identity

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

76 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 and it is in the public interest to do so.

77 Apparatus not subject to distress

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

78 Regulations

The Minister with the consent of Cabinet may make regulations for giving effect to and carrying out the purposes of this Act.

79 Standing Orders or Codes of Practice

- (1) The Board may make Standing Orders or Codes of Practice for the management, control and maintenance of, and for the preservation of the good condition of any port and generally for giving effect to and carrying out the purposes of this Act and in particular, and without prejudice to the generality of the foregoing, may make Standing Orders or Codes of Practice in respect of the following matters —
 - (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 from or loaded on 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 Authority 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 shall be supplied;
- (m) supervising, regulating and controlling stevedoring and other activities carried on within a port and if it 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 Standing Orders, Codes of Practice incorporated in any special Port Rules prescribed by the Authority;
 - (o) regulating the reception, storage and removal of goods within and from the premises of the Authority, 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 Authority 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 wherever possible, 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 Authority;
 - (u) providing for the cleaning, fumigating, and disinfecting of buildings, wharves, vessels and cargo;
 - (v) regulating the safe and convenient use of the wharves ferry terminals, landing places and buildings maintained by the Authority;
 - (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 and/or damage;
 - (aa) prohibiting any operation which in the opinion of the Authority is undesirable.
- (2) The Authority may, with the approval of the Board exempt any vessel or any class or description of vessel from all or any of the provisions of any Standing

Orders, Rules or Codes of Practice made pursuant to the last preceding subsection.

80 Shipping Act

Except as otherwise provided, nothing in this Act shall exempt the Authority or the wharves, terminals or other works belonging to it from the provisions of the Shipping Act.⁶

81 Binding on the Government

This Act shall bind the Government.

SCHEDULE

LEGAL DESCRIPTION OF PORTS AND PORT AREAS

NUKU'ALOFA PORT—TONGATAPU

Nuku'alofa Port comprises of all areas within as that defined below, excluding islands from their high water marks.

A straight line joining the following positions commencing —

from	latitude	21°06.8'S	longitude	175°14.3'W
to	"	21°05.0'S	"	175°14.3'W
to	"	21°05.0'S	"	175°14.8'W
to	"	21°03.0'S	"	175°14.8'W
to	"	21°02.7'S	"	175°15.0'W
to	"	21°02.7'S	"	175°15.3'W
to	"	21°03.0'S	"	175°15.6'W
to	"	21°04.6'S	"	175°15.6'W
to	"	21°04.6'S	"	175°17.0'W
to	"	21°04.0'S	"	175°17.0'W
to	"	21°04.0'S	"	175°17.5'W
to	"	21°05.0'S	"	175°17.5'W
to	"	21°05.0'S	"	175°19.4'W
to	"	21°03.8'S	"	175°19.4'W
to	"	21°03.8'S	"	175°20.0'W
to	"	21°01.6'S	"	175°20.0'W
to	"	20°56.5'S	"	175°11.0'W
to	"	21°01.5'S	"	175°07.0'W
to	"	21°05.8'S	"	175°07.0'W
to	"	21°05.8'S	"	175°04.0'W
to	"	21°07.7'S	"	175°04.0'W

to	"	21°07.1'S	"	175°06.0'W
to	"	21°07.5'S	"	175°09.1'W

Then, southward to a point on Latitude 21°08.5'S Longitude 175°09.1'W and then a line westward following the contour of the high water mark until the point of commencement at Latitude 21°06.8'S Longitude 175°14.3'W.

And the port land leased to the Authority.

ENDNOTES

¹ **Act 8 of 1998**

Amended by Act 5 of 2012, commencement 30 July 2012

² Inserted by Act 5 of 2012

³ Amended by Act 5 of 2012

⁴ Amended by Act 5 of 2012

⁵ By GS 17/2003 the Ports Authority notified — “all persons that, as from the date of publication of this notice, it shall levy usage charges for its facilities.

Charges for the use of buildings and other facilities will be based on a charge of \$5.00 per square metre per annum which may be increased from time to time upon 30 days written notice.”

⁶ Cap. 48.18