

SAMOA

PORTS AUTHORITY ACT 1998

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PORTS AUTHORITY ACT 1998

1998

No. 34

AN ACT to establish the Ports Authority of Samoa.

[Assent Date: 16 July 1998]

[Commencement Date: 28 August 1998]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Ports Authority Act 1998.

(2) This Act comes into force upon publication by the Minister of a notice to that effect in the Gazette or Savali, and different dates may be appointed for the coming into force of different sections of this Act.

2. Interpretation – In this Act, unless the context otherwise requires:

“approaches to a port” means any area of navigable channel adjacent to a port so declared under section 3;

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

“Authority pilot” means a pilot employed by the Authority under section 50;

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

“Chairperson” means the Chairperson of the Authority appointed under section 5;

“container” means a transportable, ISO standardised unit, designed for repeated use in the multi-modal transportation of goods and which is capable of being secured and moved by specialised equipment using standardised, in-built fittings;

“dangerous goods”:

(a) means any goods or substances classified as dangerous goods by the International Maritime Dangerous Goods Code; and

(b) includes goods or substances declared to be dangerous goods under section 51;

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

“General Manager” means the General Manager of the Authority appointed under section 19, and includes any

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- person for the time being performing the functions of General Manager;
- “goods” includes animals, carcasses, baggage, personal effects, general cargo, containers, and any other movable property of any kind whatsoever;
- “harbour craft” means any vessel which is used within the port for any purpose;
- “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 that Code, as issued by the International Maritime Organisation, and as amended from time to time;
- “ISO” means the International Standard Organisation;
- “master” includes a person, except a pilot, having command or charge of any vessel;
- “member” or “member of the Authority” means a member of the Board of the Authority;
- “Minister” means the Minister responsible for Transport;
- “Ministry” means the Ministry responsible for Transport;
- “marine navigational aid” means all buoys, beacons, marks, signs, lights and installation placed to assist marine navigation;
- “owner” includes:
- (a) when used in relation to goods, a 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;
 - (b) when used in relation to any vessel, a person acting as agent for the owner responsible for receiving freight or paying other charges for the vessel; and
 - (c) any part-owner, charterer, operator, or mortgagee in possession, or any duly authorised agent of the person
- “pilotage area” means the area of any port and the approaches to any port declared under section 3. A boarding area may be designated by a pilot in any instance to be a place within a circle of 5 miles radius

from the main wharf at a port, and in such an instance the pilotage area is taken to extend to that place of boarding;

“port” means any place in Samoa, and any navigable river or channel leading into such place, declared to be a port by or under section 3;

“Port Master” means the Port Master appointed under section 21;

“rates”:

- (a) means any rates or charges leviable by the Authority under this Act; and
- (b) includes any toll or rent; but
- (c) does not include dues;

“vessel”:

- (a) includes every description of ship, boat, ferry or craft used or capable of being used in navigation by water and includes any floating rig or platform; but
- (b) does not include 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 or onto which passengers or goods may be taken on board of or landed from a vessel.

3. Declaration of ports and approaches – (1) The ports and approaches to ports covered by this Act shall be those areas so designated in the Schedule 1 and declared under subsection (2).

(2) The Head of State, acting on the advice of Cabinet, may at any time by order:

- (a) declare any place in Samoa and any navigable river or waters leading into such place to be a port within the meaning of this Act; and
- (b) declare any area or navigable river or channel adjacent to a port to be the approaches to such port within the meaning of this Act.

(3)A declaration under subsection (2) shall define the limits of the port, or its approaches as the case may be.

PART 2
ESTABLISHMENT AND MEMBERSHIP OF
AUTHORITY

4. Establishment of Authority – (1) There is established an Authority to be called the Samoa Ports Authority which has 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 real and personal property, suing and being sued; and doing and suffering all such other acts and things that a body corporate may lawfully do and suffer.

5. Membership of Authority – (1) The Board of the Authority comprises 7 members who are to be selected in accordance with applicable law relating to the management of public bodies.

(1A) The members of the Board of the Authority shall be appointed by the Head of State, acting on the advice of Cabinet, and may be removed from office by Cabinet.

(1B) Cabinet shall appoint one of the directors to be Chairperson, and may appoint a Deputy Chairperson.

(1C) No person may be appointed or continue to hold office as a member, while that person is a full-time salaried employee of the Authority.

(1D) Unless the board decides otherwise, the General Manager must attend all board meetings but has no voting rights.

(2) No person by reason only of being a member of the Authority, is taken to be employed in the Public Service or in the “Service of Samoa” within the meaning of those terms as defined in Articles 83 and 111 respectively, of the Constitution of the Independent State of Samoa.

6. Term of Office of members – (1) A member of the Authority shall hold office for a term of 5 years and is eligible for reappointment for 1 further term.

(2) A member may at any time resign from office by notice in writing to the Minister.

(3) Cabinet may remove at any time a member of the Authority:

- (a) for disability, neglect of duty, misconduct, or bankruptcy; or
- (b) if satisfied that the member has left Samoa permanently; or
- (c) if the member is absent from 3 consecutive meetings of the Authority without the prior approval of the Chairperson or Minister.

(4) If a member of the Authority dies, or resigns, or is removed from office, Cabinet, may appoint another person in place of that member to hold office until such former member's term of office would have expired had he or she not ceased to be a member.

7. Remuneration – Members of the Authority:

- (a) not being full-time salaried employees of the Government, may be paid out of the funds of the Authority, such remuneration and other allowances as the Cabinet may from time to time determine; and
- (b) shall be reimbursed out of the funds of the Authority for any expenses reasonably incurred by them in respect of their attendance at meetings of the Authority.

PART 3

FUNCTIONS AND POWERS OF AUTHORITY

8. Functions of Authority – The functions of the Authority include the following:

- (a) the provision, management and maintenance of adequate and efficient port services, facilities and security in ports and approaches;
- (b) the provision of any goods or the performance of any services to assist the Ministry in the exercise of a statutory function for which it may at its

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discretion enter into an agreement with the Ministry in respect of payment;

- (c) the regulation of navigation and maintenance of navigation aids within ports and approaches;
- (d) the promotion of the use, improvement and development of ports; and
- (e) the co-ordination of all activities of or within ports and approaches.

9. Powers of Authority – (1) Subject to this Act and any regulations made under it, the Authority has all the powers, rights and authorities necessary or expedient to enable it to exercise its functions.

(2) Without limiting subsection (1), the Authority the following powers:

- (a) to appoint and employ such persons as it may consider necessary for the efficient performance of its functions;
- (b) to enter into any contract, covenant, bond or agreement of any kind whatsoever for the purpose of this Act;
- (c) to authorise any person to carry out any work or perform any act in furtherance of its functions and powers;
- (d) to carry on any business or activity whatsoever which appears to the Authority to be necessary or advantageous for the discharge of its functions;
- (e) to acquire, hire, procure, construct, erect, manufacture, provide, maintain or repair anything whatsoever required by the Authority for the purposes of this Act;
- (f) to provide services within a port or its approaches, including—
 - (i) berthing, unberthing, towing, mooring, unmooring, moving, or docking any vessel;
 - (ii) embarking or disembarking passengers to or from any vessel; including the provision of landing-places;

- (iii) providing lighterage or to appoint, license and regulate lighterage operators;
- (iv) piloting any vessel;
- (v) installing and maintaining navigation installations, but subject to the powers of the Secretary contained in the Shipping Act 1998;
- (vi) sorting, weighing, measuring, storing, warehousing or otherwise handling any goods; and
- (vii) supplying fuel, water telephone and other services to vessels;
- (viii) rendering assistance to any vessel;
- (ix) recovering wrecks;
- (g) to appoint, license and regulate operators or suppliers of stevedores and other labour and equipment in a port;
- (h) to license and regulate commercial services provided at or within a port;
- (i) to acquire any undertaking, affording, or intending to afford facilities for the loading and discharging or warehousing of goods in a port or for the bunkering of vessels;
- (j) to 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 preserving life and property;
- (k) to control construction and use of wharves, docks and other works, whether above or below the high water mark, within a port or the approaches to a port;
- (l) subject to the provisions of any other act or statutory requirement, to reclaim, excavate, enclose or raise any part of any land vested in the Authority;
- (m) to do anything for the purposes of—
 - (i) improving the skill of the employees of the Authority; or

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- (ii) improving the equipment of the Authority and the manner in which such equipment is operated and maintained;
- (n) to provide accommodation and recreational facilities for employees of the Authority and generally to promote their welfare;
- (o) to establish, control, manage and maintain, or contribute to any provident fund or other superannuation benefits approved by the Minister for the benefit of its employees or the dependents of deceased employees;
- (p) to acquire such land and execute such works and do whatever may be necessary or expedient in respect of the functions of the Authority under the provisions of this Act or of any other enactment;
- (q) to sell, transfer, lease, hire or otherwise dispose of any of its real or other property;
- (r) subject to the provisions of this Act, to do everything necessary or convenient in connection with or incidental to the performance of its functions under this Act or any other enactment.

(3) The powers conferred by subsection (1) are in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other enactment.

10. Policy of Cabinet – (1) In the exercise of its functions and powers, the Authority must have regard to the general policy of Cabinet as communicated in writing by the Minister.

(2) The Authority shall comply with any lawful written direction by the Minister concerning any matter relating to the policy to be followed by the Authority in the performance of its functions.

PART 4 PROCEDURES OF THE AUTHORITY

11. Meetings – (1) The Chairperson shall preside at every meeting of the Authority. In the absence of the Chairperson, the

members shall appoint one of their numbers to be the Chairperson of that meeting.

(2) The first meeting of members of the Authority shall be held on a day and time and place to be appointed by the Chairperson and subsequent meetings shall be held at such times and places as the Authority may determine: **PROVIDED THAT** not more than 2 months shall elapse between two consecutive meetings.

(3) The Chairperson shall, at the request of the General Manager or on the requisition in writing of any 3 members stating the business to be considered, within 7 days of the receipt of such requisition, convene a special meeting.

(4) At every meeting the quorum shall be 4 members.

(5) The proceedings at any meeting shall not be invalidated by any defect in the appointment of a member.

(6) A decision at a meeting of members of the Authority shall be made by a majority of the members present.

(7) The Chairperson at any meeting has 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, telegram, telex, facsimile, e-mail, or cable by a majority of the members shall have the same effect and be as valid as if it had been duly passed at a meeting of the Authority.

(9) Subject to the provision of this Act, the Authority may regulate its meetings in such manner as it thinks fit.

12. Minutes of meetings – (1) The members of the Authority shall cause minutes of all resolutions and proceedings of its regular and special meetings to be kept in a book provided for that purpose.

(2) The minutes shall be signed by the Chairperson of the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be given to every member before the next meeting.

13. Disclosure of interest – If a member has any pecuniary or other interest, direct or indirect, in any contract or proposed contract or in any other matter relating to the Authority, the

member shall as soon as possible disclose to the Chairperson and members the fact and nature of such interest and thereafter the member shall not take part in any deliberation or decision making relative to such contract or proposed contract or other matter.

14. Vacancy not to invalidate acts – No act or proceeding of members of the Authority shall be invalidated or questioned only on account of the existence of a vacancy in the membership of the Authority.

15. Execution of Documents, etc. – (1) The common seal of the Authority shall not be affixed except pursuant to a resolution of the Authority and in the presence of the Chairperson and one member, and such affixing shall be authenticated by the signature of such persons.

(2) All documents to which the Authority is a party, other than those required by law to be under seal, may be signed on behalf of the Authority by the Chairperson or the General Manager, or by any member or employee of the Authority, generally or specially authorised by a resolution passed at a meeting of the Authority.

PART 5

ASSETS, LIABILITIES AND ORIGINAL EMPLOYEES

16. Original assets of the Authority – (1) The original assets of the Authority shall consist of:

- (a) all buildings, installations and improvements, located on or adjacent to or in the vicinity of the ports described in Schedule 1, 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 in use 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) are vested in the Authority.

(3) The Government shall cause the land described in Schedule 3 to be transferred to the Authority forthwith upon this Act coming into force.

(4) If any question arises as to whether any asset has become or is the property or responsibility of the Authority, that question is decided by Cabinet.

17. Transfer of other property to Authority – (1) Real or other property, vested in or belonging to the Government, is transferred to the Authority to enable it to perform its functions under this Act as Cabinet may determine.

(2) Upon such transfer, all debts, liabilities and obligations in connection with or pertaining to such property shall also be transferred to and vest in the Authority and are deemed to have been incurred by the Authority.

(3) Land acquired by the Government under the Taking of Land Act 1964 for the purposes of this Act may be vested in the Authority.

(4) Subsection (3) does not apply to land or property acquired and transferred under section 17A, which shall vest in the Samoa Shipping Corporation Limited.

17A. Transfer of property to Samoa Shipping Corporation Limited-(1) The ownership of the Mulifanua port and the Salelologa port belonging to the Authority is transferred to and vested in the Samoa Shipping Corporation Limited.

(2) All assets prescribed by regulations, debts, liabilities and obligations in connection with or pertaining to the Mulifanua port and the Salelologa port are transferred to and vest in the Samoa Shipping Corporation and are regarded to have been incurred by the Samoa Shipping Corporation Limited.

(3) For the purposes of subsection (1):

- (a) the port of Mulifanua means all that land described as Freehold Lot 1326 in Plan 7569 including fixtures on the land; and

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- (b) the port of Salelologa means all that land described as Freehold Lot 870 in Plan 7570 and Freehold Lot 863 in Plan 7570 including fixtures on the land.

18. Transfer of employees – (1) Upon the coming into force of this Act, such persons, as the Minister may think fit, who were employed by the Government immediately prior to the commencement of this Act and were engaged in discharging any of the functions vested in the Authority by this Act, is taken to be transferred to the service of the Authority on terms no less favourable than those they had enjoyed immediately prior to the commencement of this Act, and such terms which are determined by the Authority, shall take into account salaries and conditions of service enjoyed by them when in the employment of the Government.

(2) Nothing in this section precludes 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 6
GENERAL MANAGER AND STAFF

19. Appointment of General Manager – (1) The Authority shall, with the approval of the Minister as to all matters in this section, appoint a General Manager for such term, at such remuneration and upon such conditions as it may think fit.

(2) The General Manager shall not be removed from office without the consent of the Minister.

(3) The General Manager shall devote the whole of his or her working time to the Authority and shall not, without the written approval of the Minister, occupy any other office or employment, whether remunerated or not, except that the General Manager may act as member of any board, committee or commission established by the Government.

(4) The Authority may delegate any or all of its powers and functions to the General Manager.

(5) Subsection (4) does not prevent the exercise of any power or function by the Authority.

20. Powers of the General Manager – (1) The General Manager shall:

- (a) serve as Chief Executive Officer of the Authority, responsible to it for its management and the execution of its policy; and
- (b) subject to the provisions of this Act and to any resolution passed at a meeting of the Authority do everything necessary or convenient to be done in connection with, or incidental to, the performance of his or her duties under this Act or any other written law and, in particular, and without limiting the generality of the foregoing, the General Manager may—
 - (i) with the approval of the Board, act in relation to or enter into any contracts on behalf of the Authority;
 - (ii) for emergency, direct the execution of any work or the doing of any act which the Authority is empowered to execute and do and the immediate execution or doing of which is, in his or her opinion, necessary for the operation of port services or the safety of persons on vessels, and he or she may direct that the expense of executing that work or doing that act is to be paid from the funds of the Authority:

PROVIDED THAT the General Manager shall report anything done under subparagraph (ii) to the next following meeting of the Authority.

(2) When the General Manager is prevented by illness, absence or other like cause from performing his or her duties or when the office of the General Manager is vacant, the Authority may appoint one of its officers to perform his or her duties during such period as he or she is so prevented from doing or the office is vacant.

(3) The General Manager may by writing signed by him or her either generally or particularly, delegate to any officer or

employee of the Authority as he or she thinks fit all or any of the powers he or she may exercise under this Act including any powers delegated by the Authority, but not including his or her power of delegation.

21. Appointment of Port Master and Deputy Port Masters – (1) The Authority shall appoint as one of its officers a Port Master for the purposes of this Act, and may also appoint as officers such number of Deputy Port Masters as it may consider necessary for all or any of the purposes of this Act.

(2) The term, remuneration and conditions of any appointment made under subsection (1) are to be determined by the Authority.

22 Powers of Port Master in relation to vessels – (1) Port Master may within a port or its approaches:

- (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) A person who, without lawful excuse, refuses or neglects to obey or comply with any direction given under subsection (1) commits an offence and on conviction is liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding twelve months, or both.

(3) If a person to whom a directions given under subsection (1) refuses or neglects to comply with such direction, the Authority may:

- (a) 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
- (b) hire or employ such persons as it considers necessary for such purpose and all expenses incurred in doing such acts shall be paid or borne by or recoverable from the person to whom the direction was given.

23. Fire on board vessel – (1) If fire breaks out on board a vessel in a port or the approaches to a port, the Port Master may:

- (a) proceed on board the vessel with such assistance and persons as the Port Master considers proper to prevent danger to other vessels; and
- (b) give orders and take any other measures that he or she considers expedient for the protection of life and property.

(2) If such orders are not forthwith carried out by the master of any vessel to whom such orders are given, the Port Master may 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) A 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 is liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding 12 months, or both.

24. Power to board vessel – (1) The Port Master may go onboard any vessel within a port or the approaches to a port whenever the Port Master suspects that any offence against this Part has been or is about to be committed in any vessel, or whenever he or she considers it necessary to do so in the discharge of any duty imposed by this Act.

(2) The master of a vessel who, without lawful excuse, refuses to allow the Port Master to enter that vessel under his or her powers in subsection (1) commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

25. Exclusion of liability – The Authority shall not be liable for any act, omission or default of the Port Master.

26. Staff of Authority – (1) The Authority may appoint and employ on such terms and conditions as the Authority may

determine such other officers and employees as may be necessary for the effective performance of its functions.

(2) The Authority may make 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 is personally liable for any act done or omitted to be done in the exercise or performance or purported exercise or performance of the functions powers and duties of the Authority.

PART 7 FINANCIAL PROVISIONS

27. Disbursement of Authority funds – (1) As approved by the Board, 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) the interest and capital repayments on any loan payable by the Authority;
- (b) the sums required to be paid to the Government towards repayment of any loan made by the Government to the Authority;
- (c) the salaries, fees, allowances, of the members of the Authority;
- (d) the salaries, fees, allowances, remuneration, provident fund and other superannuation benefits of the employees, agents and technical or other advisers of the Authority;
- (e) the working of establishment expenses, and the expenditure on, or provision for the maintenance of any of the installations of the Authority, and the discharge of the functions of the Authority properly chargeable to the revenue accounts;
- (f) such sums as the Authority may consider appropriate to set aside in respect of depreciation or renewal of property of the Authority, having regard to the amount set aside out of revenue under paragraphs (a) and (b);

- (g) the cost, or any portion thereof, of any new works, plant, vessels or appliances not being a renewal of the property of the Authority, which the Authority may determine to charge to revenue;
- (h) such sums by way of contribution for or to public or charitable purpose associated with the purpose of this Act as the Authority, with the approval of the Minister, may decide; and
- (i) any other expenditure authorised by the Authority and properly chargeable to revenue.

(2) Subject to subsection (3), the balance of the revenue of the Authority being the surplus revenue is to be applied for the creation of a general reserve or such other reserves or capital fund as the Authority may consider appropriate.

(3) Despite subsection (2), if in any year the Minister shall so direct there shall be paid to the Government by way of a dividend to the Treasury, such proportion not exceeding one-half of the surplus revenue of that year as the Minister may determine.

28. Investment of Funds – Any funds not immediately required for expenditure by the Authority may be invested in any manner authorised by the Public Finance Management Act 2001 for the investment of balances in the Public Account.

29. Borrowing Powers – The Authority may, with the consent of the Minister, 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.

30. Cabinet Approval for borrowings and expenditure – Despite sections 27 and 29, the approval of Cabinet must be obtained in relation to any expenditure or the borrowing of an amount for which Cabinet approval is required in accordance with any policy or direction of Cabinet in force from time to time.

31. Annual Estimates – (1) The Authority shall every year cause to be prepared and shall adopt an annual budget of revenue and expenditure of the Authority for the ensuing year.

(2) Actual monthly financial statements and financial performance year to date are reviewed and compared to the budget at each and every Authority meeting.

(3) A copy of the annual budget and monthly financial statements, prepared under subsection (2), shall, upon their adoption by the Authority, be sent forthwith to the Minister.

(4) A summary of the annual budget, the end of the year financial and supplementary results, adopted by the Authority, is published in the *Gazette*.

32. Audit of accounts – (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, revenue statements and other accounts is to be audited by the Controller and Auditor General 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 under sections 17 and 18 shall be fixed as at the time of their vesting or assumption at such amount or amounts as determined by fair market valuation.

33. Presentation of financial statements and audit reports – As soon as the accounts of the Authority and the financial statements have been audited in accordance with the provisions of this Act, a copy of the audited financial statement signed by the Chairperson and certified by the the Controller and Auditor General together with a copy of any report made by the Controller and Auditor General on the request of the Minister, is to be submitted to the Minister.

34. Other reports – The Minister may require the Authority to provide any further financial or management reports which the Minister may deem necessary as an additional indication of the Authority’s financial and operational performance.

35. 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 the following:

- (a) a copy of the statement of accounts;
- (b) a copy of the report of the Controller and Auditor General; and
- (c) a report containing details of the activities of the Authority during the year, including statistically date and year to date operational performance compared to the budget.

(2) The Minister shall cause copies of the accounts and reports to be laid before Parliament as soon as practicable thereafter.

PART 8 DUES AND RATES

36. Dues payable in respect of vessels – The owner, agent or master of a vessel which enters, leaves, or uses any port in Samoa shall pay to the Authority prescribed port or other dues.

37. Dues payable in respect of goods – (1) The owner of any goods shall pay the Authority the prescribed due levied on goods brought into, loaded or discharged within a port or its approaches (including a wharf that is not owned but controlled by the Authority).

(2) Subsection (1) does not apply to goods brought into, loaded or discharged within or at the Salelologa or Mulifanua ports..

38. Persons liable for goods dues – In addition to the persons referred to in section 37 the following persons shall be liable to pay dues payable in respect of any goods passing through the port, that is to say:

- (a) the owner of the goods;
- (b) any consignor, consignee, shipper, or agent for the sale or custody of the goods; and
- (c) any person entitled to the possession of the goods either as owner or agent for the owner;

(2) The consignor and the consignee of any goods carried in a vessel are, until the contrary is shown, deemed to be the persons so named on the bill of lading and listed in the vessel's manifest.

39. Rates – (1) The Authority may, with the concurrence of the Board, propose the amount of rates, fees or charges for the use of any land, works and appliances belonging to it and for services, goods and facilities provided by it in pursuance of its powers under this Act or under any other enactment or under any regulations, and without prejudice to the generality of the foregoing, for any of the following matters:

- (a) the landing, handling, wharfage, storage or carriage of goods and the deposit with it or the placing of goods in its custody or control;
- (b) the provision of pilotage services to any vessel within Samoan territorial waters;
- (c) the use of any vessel, vehicle or person; or any land, works, installation or appliances, wharf or dock under its control;
- (d) the use of any gear, tackle, instruments, tools, utensils, staging or materials supplied by it for the purpose of any vessel using or any person working within its boundaries;
- (e) the use of any vessel or engine belonging to or maintained by the Authority for the extinction of fire;
- (f) the towing of, and rendering assistance to, any vessel;

- (g) the supply by the Authority of water, telephone services, fuel, electricity and other forms of energy;
 - (h) the laying of moorings, cables or pipes;
 - (i) the laying, lifting and servicing of buoys not owned by the Authority;
 - (j) the provision of priority berthing arrangements.
- (2) Any rate, fee or charge proposed under subsection (1):
- (a) shall be prescribed by regulations; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

40. Powers of entry on to vessels – Any duly authorised employee of the Authority may board and inspect any vessel within a port or the approaches to a port in order to ascertain the amount of the dues or rates payable in respect thereof.

41. Receipts – Receipts for dues and rates shall be given to the person paying them, and any vessel in respect of which such receipt 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.

42. Lien on goods – For the amount of all dues and rates levied under the provisions of this Act in respect of any goods, the Authority shall have a lien on the goods and shall be entitled to seize and detain them until the dues and rates are fully paid or secured to its satisfaction and such lien shall have priority over all other liens and claims except those to the Government.

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

PROVIDED THAT:

- (a) for goods for which a through Bill of Lading has been produced, the period of 60 days referred to in this subsection shall be substituted by a period of 90 days; and
 - (b) if the goods are of a perishable nature the Authority may direct their removal within such shorter period, not being less than 24 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 subsection (1), a sale shall not be rendered invalid by reason only that it takes place in an 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 Samoa, unless the goods are of so perishable a nature as in the opinion of the Authority renders their immediate sale necessary or advisable in which event the Authority shall give such notice (if any) in whatever manner it considers the urgency of the case requires.
- (4) The proceeds of any sale under this section are to be applied by the Authority in the following order:
- (a) firstly, in payment of any duty owing to the Government;
 - (b) secondly, in payment of the expenses of the sale;
 - (c) thirdly, in payment of all charges and expenses 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 by rendering the surplus, if any, to the person entitled thereto on demand, and, in case no such demand is made within one year from the date of the sale of the goods, by paying the surplus to the account of the Authority, whereupon all rights to the same by such person shall be extinguished.

(5) If any inconsistency arises between the operation of this section and the exercise of any power under the Customs Act 1977, the Customs Act 1977 prevails.

44. Shipping clearance to be withheld, etc. – (1) A public officer responsible for clearance of any vessel, must not grant the clearance until the relevant due, rate, fee or charge is paid or secured to the satisfaction of the Authority.

(2) Subsection (1) does not apply to a vessel docked or harboured within or at the Salelologa or Mulifanua ports.

(3) Any due, rate, fee or charge required under subsection (1):

- (a) shall be proposed by the Authority with the concurrence of the Board; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001; and
- (c) shall be prescribed by regulations.

45. Exemption, reduction, etc., of dues, rates, etc. – The Authority on a valid reason may:

- (a) exempt any vessel or goods or classes of vessels or goods from the payment of dues; and
- (b) reduce, refund or waive, in whole or in part, any dues, or the rates under this Act.

46. Evasion – (1) If the master or owner of any vessel or any owner, consignee or consignor of goods, by any means whatsoever, evades or attempts to evade any of the dues or rates leviable under this Act, that person commits an offence and is liable on conviction to a fine not exceeding 20 penalty units 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 dues or rates he or she evaded or attempted to evade.

(2) The tender to or acceptance by the Authority or and of its employees of any dues or rates the payment of which has been previously evaded or left unpaid, shall not release or

discharge any person from his or her liability under subsection (1).

PART 9 PILOTAGE AND DANGEROUS GOODS

47. Compulsory pilotage – (1) This Part is in addition to and not in derogation of relevant provisions of the Shipping Act 1998.

(2) Subject to section 48, navigation of a vessel in any pilotage area is to be conducted by a person authorised under the section 49.

(3) A vessel while being moved within any area of a port which is part of a pilotage area is deemed to be a vessel navigating in a pilotage area.

48. Exemptions from pilotage – Despite section 47, 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 required to utilise the services of a licensed pilot subject to such terms and conditions as it may think fit to impose.

49. Vessel to be piloted by a licensed pilot – (1) No vessel is to be piloted in a pilotage area by any person other than a person appointed by the Authority to be a licensed pilot.

(2) Despite 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.

(3) The Authority is liable for any actions of pilots employed by it.

50. Authority to employ pilots – (1) Subject to the provisions of this Act, 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 is to be employed as a licensed pilot in a pilotage area unless the person is in possession of a valid licence to act as a pilot in such area issued pursuant to the Shipping Act 1998.

51. Dangerous Goods – The Authority shall control the movement, loading, discharging, handling and storage of dangerous goods within a port or its approaches and in particular and without limiting the generality of the foregoing may:

- (a) declare 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 Code;
- (d) direct and control lighterage, landing, loading, discharging, conveying storage 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 10 OFFENCES

52. Obstructing Authority in the performance of its duty – A person who at any time hinders, obstructs or molests the Authority or any of its employers, agents or contractors in the performance and execution of their duty or of anything which they are respectively empowered or required to do by virtue or in consequence of this Act, or removes any work set up for the purpose of indicating any level or direction necessary to the executing of works authorised by this Act, commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding 6 months, or both.

53. False returns – A 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 on conviction is liable to a fine of 100 penalty units or to imprisonment for a term not exceeding 6 months, or both.

54. False information as to tonnage, etc. – The 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 the vessel to any employee of the Authority authorised to ascertain the same commits an offence and on conviction is liable to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 6 months, or both.

55. Wilful damage to port works and property – A 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 is liable on conviction to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 1 year, and in addition shall pay by way of compensation to the Authority, such sum as the Court may determine.

56. Offences in connection with safety of vessels, etc. – A person who in any port or in approaches:

- (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; or
- (b) without the permission of the Port master or any lawful excuse discharges any firearm except for the purpose of making a signal of distress or for

- other purpose as may be allowed under any written law; or
- (c) moves, damages or otherwise interferes with any navigation mark; or
 - (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 Port Master; or
 - (e) uses a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids of any kind on board any vessel, – commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years, or both.

57. Pollution of waters of a Port – (1) A person who throws, discharges, or deposits, or causes, suffers, or procures to be thrown, discharged, or deposited into any waters of a port, any harmful substance commits an offence.

(2) It is 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 unavoidable accident, collision or stranding.

(3) A person who is convicted of an offence against this section is liable upon conviction:

- (a) if the case involves a vessel with GRT (Gross Registered Tonnage) in excess of 200 tons, to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 2 years or both; or
- (b) in any other case, to a fine not exceeding 250 penalty units or to imprisonment for a term not exceeding 2 years or both; and
- (c) to pay to the Authority such amount as the Court assesses in respect of—

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- (i) the expenses and costs incurred by the Authority or any other responsible person or agency in the process of locating, investigating and establishing causation and responsibility for the offence; and
- (ii) the removal, clean up or dispersal of the harmful substance; and
- (iii) any other expenses or costs for prevention measures used or proposed to be used to reduce or eliminate any danger to human life, the environment or property caused by or contributed to by the offence.

(4) In this section, “harmful substance” has the meaning given to it in the Shipping Act 1998.

**PART 11
MISCELLANEOUS**

58. Master, owner, etc., answerable for damage – (1) In every case in which any damage is done 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, owner or person-in-charge of the vessel.

(2) The Authority may detain any such vessel until the cost of making good the damage has been paid, or security, therefor has been given to the Authority or paid into the Court.

59. Powers of arrest – (1) The Authority shall make proper provision for the security of ports and the premises and property of the Authority, and any employee of the Authority authorised in writing by the General Manager, either generally or in any particular case, may arrest without warrant any person found committing, or whom the employee has reason to believe has committed, an offence under this Act.

(2) A person arrested under this section shall forthwith be handed over to the Police.

60. Power to compromise – The Authority may compound or compromise, for or in respect of any claim or demand made

against it, for such sum of money or other compensation as it considers sufficient.

61. Evidence of identity – An employee of the Authority who reasonably believes that a person has committed an offence against the provisions of this Act may require that person to provide evidence of his or her identity. A person who refuses to provide evidence or who wilfully misstates such information commits an offence and on conviction is liable to a fine not exceeding 5 penalty units.

62. Authorised employee of Authority may prosecute – An authorised employee of the Authority may conduct a prosecution under this Act on behalf of the Authority.

63. Apparatus, etc., not subject to distress, etc. – When any apparatus or equipment belonging to the Authority is placed in or upon a place not being under control of the Authority, the apparatus or equipment shall not be subject to distress nor be taken in execution under process of any Court or in any proceedings in bankruptcy.

64. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations for the maintenance, control and management of any port or the approaches thereto, to deal with any other transitional matter to give effect to the transfer of property under section 17A and generally for giving effect to and carrying out the purposes of this Act including 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;
- (ba) prescribing dues, rates, fees and any other charges for the purposes of this Act;
- (c) regulating, declaring and defining the wharves and ferry terminals where goods are discharged from

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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 using machinery and appliances (including machinery and appliances carried on a vessel) deployed in loading or unloading of goods;
- (f) keeping free passages of such width as considered necessary within a port and along or near the wharves, passenger jetties, moorings and other similar works in or adjoining the same and 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 anchorage, 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 a vessel to report arrival of the vessel, to produce the certificate of registry

on demand, and to deliver a copy of the 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 vessels 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) regulating, controlling and supervising all activities carried on within a port and, if found satisfactory, providing for the licensing thereof;
- (n) regulating the reception, storage and removal of goods within and from the premises of the Authority, and declaring the procedure to be followed for taking charge of goods which have been damaged before landing or are alleged to have been so damaged;
- (o) regulating the examination and checking of any vehicle, case, bag or luggage where there is reason to believe that any person has in his or her possession any goods on which duties or dues or fees have not been paid;
- (p) regulating the keeping clean of basins and other works of the Authority and the waters of any port and the approaches to any port and preventing oil, rubbish or other things being discharged or thrown or entering therein or thereon;
- (q) regulating towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (r) licensing any vessels, canoes or traditional craft for any purpose and fixing fees to be paid for licensing of any such vessels, canoes or traditional craft;
- (s) prescribing the terms and conditions for the sale and supply of fresh water by the Authority;

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- (t) providing for the cleaning, fumigating, and disinfecting of buildings, wharves, containers, vessels and cargo;
- (u) regulating the safe and convenient use of the wharves, ferry terminals, landing places and buildings maintained by the Authority;
- (v) regulating the use or occupation of the foreshore and the bed of any lagoon tidal area or navigable waters forming part of a port or included in the approaches to a port;
- (w) regulating the use in ports of motor launches, yachts, pleasure craft, surfboards, and water skis and other craft (including aircraft);
- (x) limiting the waters of any port that may be utilised for bathing, and regulating bathing on or near any foreshore;
- (y) regulating the time when dues on goods are to be paid;
- (z) settling the mode of payment of dues or rates leviable under this Act, facilitating their collection and preventing their evasion;
- (aa) prohibiting any operation which in the opinion of the Authority is undesirable;
- (bb) prescribing offences in respect of the contravention of or non-compliance with any regulation made under this Act or any requirement or direction made or given pursuant to any such regulation and prescribing penalties not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months or both, for such offences;
- (cc) excluding or limiting the liability of the Authority in respect of anything done pursuant to any Regulations made under this Act.

(1A) The amount of any due, rate, fee or charge prescribed under subsection (1)(ba):

- (a) shall be proposed by the Authority with the concurrence of the Board; and

(b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

(2) The Authority may, with the approval of the Minister, exempt any vessel or any class or description of vessel from all or any of the provisions of any regulations made under subsection (1).

65. No effect to Shipping Act – Except as otherwise provided, nothing in this Act extends to, repeal or alter any of the provisions of the Shipping Act 1998, or to exempt the Authority from the provisions of that Act.

66. Act to bind State – This Act binds the State.

67. Repeal and savings – (1) The regulations referred to in Schedule 2 continue in force as if made under this Act.

(2) Where in any regulations there appears a reference to a Harbourmaster or to a Port Administrator that reference is read as if it were a reference to a Port Master.

SCHEDULE 1
(Sections 3 and 16)

PORTS

Port of Apia
Port of Asau

SCHEDULE 2
(Section 67)

REGULATIONS CONTINUING IN FORCE

Port Control Regulations 1939 (Gazette 1939 p.737)
 Port Control Amendment Regulations 1960 (1960/14)
 Port Control Regulations 1939 Amendment No.1 (1970/8)
 Port Control Regulations 1939 Amendment No.2 (1976/1)
 District Wharf Fees Regulations (Mulifanua and Salelologa)
 1959 (1959/8) as amended by the Fa'asaleleaga Water Supply
 Act 1969
 District Wharf Regulations (Salelologa) 1959 (1959/9) as
 amended by the Enactments Amendment and Repeal Ordinance
 1960 (sec.2), Reprint of Statutes Act 1972 (sec.3 (f)) and the
 Ministerial Portfolios Act (1976) (sec.2 (1))
 District Wharf Regulations (Salelologa) 1959 Amendment
 No.2 (W.S.R. 1966/5)
 Port Charges Regulations 1984 - (1984/4A)
 Port charges Amendment Regulations 1987 - (1987/2)

SCHEDULE 3

(Section 16(3))

LAND TO BE TRANSFERRED TO THE AUTHORITY

All that land (and fixtures thereon) comprising –
 Parcels 820(0.2.27), 585(1.2.30.9), 605(0.1.28.9),
 633(0.0.02.9), 536(0.0.11.6), 963(1.1.28.7) and
 604(0.2.18.2) and

 Part of Parcel 584 comprising 11.0.25.8
 Part of West 44 comprising 0.3.00
 Part of East 44 comprising 1.2.04

REVISION NOTES 2008 – 2018

This is the official version of this Act as at 31 December 2018.

This Act has been revised by the Legislative Drafting Division from 2008 – 2018 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) References to the male gender made gender neutral
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an” Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “shall have” changed to “has”
 - “hereby” and “from time to time” removed
 - (ii) Removal/replacement of obsolete and archaic terms with plain language
 - “notwithstanding” changed to “despite”
 - “pursuant to” or “in accordance with the provisions of” changed to “under”
 - “under the hand of” changed to “signed by”
 - “furnish” changed to “provide” or “given”
 - “for the purposes of” changed to “in”
 - “deemed” changed to “taken”
 - (iii) Numbers in words changed to figures
 - (iv) Removal of superfluous terms
 - “the generality of”
 - “against this Act”
 - “of competent jurisdiction”
 - “the provisions of”
 - (v) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
 - (vi) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections
 - (vii) Interpretation of certain words paragraphed – “dangerous goods”, “owner”, “rates” and “vessel”.
 - (viii) Sections divided and re-paragraphed: 18 (new subsection (2)), 19 (new subsection (5))
 - (ix) Empowering provisions for the Schedules inserted
 - (x) Sections 22(3) and 23(1) paragraphed
 - (xi) Part numbers changed to decimal

The following amendments were made to this Act since the publication of the *Consolidation and Revised Statutes of Samoa 2007*:

- The Composition of Boards of Public Bodies Act 2012, No.15.
- The Audit Act 2013, No. 22.

By the Ports Authority Amendment Act 2015, No. 29, commenced on 1 July 2014:

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Section 17: New subsection (4) is inserted after subsection (3).
New section 17A is inserted after section 17.

Section 64(1): inserted “, to deal with any other transitional matter to give effect to the transfer of property under section 17A” after “approaches thereto” in subsection (1).

Schedule 1: Deleted “Port of Mulifanua” and “Port of Salelologa” from Schedule 1.

By the Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13:

Amendments made to this Act reflect that fees charged under this Act are to be prescribed by Regulations. Amendments are made to sections 36, 37, 39, 44 and 64.

*This Act is administered by
the Ministry of Works, Transport and Infrastructure.*
