



ANALYSIS

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1994-95, No. 30

An Act to establish the Ports Authority and to provide for its functions and powers

(8 June 1995)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Ports Authority Act 1994-95.
- (2) This Act shall come into force on the 1st July 1995.

2. Interpretation - (1) In this Act, unless the context otherwise requires -

"Authority" means the Ports Authority established by this Act;

"Ballast" includes any material or thing used for the ballasting of ships;

"Board" means the board of directors of the Authority;

"Boat" means every description of vessel used in navigation, not being a ship;

"Coastal light" means any light established or maintained by the Authority on the coasts of the Cook Islands and not being a harbour light;

"Goods" includes wares and merchandise of every description and all chattels, livestock and other articles;

"Harbour light" means any light erected in aid of navigation within port limits or near the approaches to any port, and which is declared by the Minister not to be a coastal light, and includes all fog signal apparatus, lightships, lightbouys or other fixed or floating lights erected, moored or placed for the purpose, and also any radio or other marine navigation;

"Harbourmaster" means a person appointed as a Harbourmaster pursuant to section 15 of this Act;

"Harbour works" includes generally any works for the improvement, protection, management or utilisation of a port, and in particular, without limiting the general meaning of the term, includes any basin, graving dock, slip, dock, pier, quay, wharf, jetty, bridge, viaduct, breakwater, embankment or dam, or any reclamation of land from the sea, or any excavation, deepening or dredging, or widening of any channel, reef entrance, or other part of a port, whether complete or incomplete, in the sea or in or near the shore of the sea or any lagoon; and any building thereon, and plant and machinery used in connection with any harbour works, and also includes the acquisition of land;

"Master" means the person, not being a pilot, having command or charge of a ship;

"Minister" means the Minister of Trade Labour and Shipping;

"Owner", when used in relation to goods, includes any consignor, consignee, shipper, or agent for sale or custody of the goods, as well as the actual owner;

"Pilot" means any person not belonging to a ship who has the conduct thereof;

"Pilot boat" means any ship or boat employed in pilotage service under this Act;

"Port" includes any harbour or port properly so called, whether natural or artificial, and any haven, estuary, navigable reef entrance, dock, pier, jetty, and work in or at which ships do or can obtain shelter or ship or unship goods or passengers, as defined in or pursuant to this Act; and when used in any provision of this Act relating to the jurisdiction or powers of the Authority, extends to and includes the limits within which that jurisdiction or power may be exercised;

"Publicly notified" and "published" mean, in relation to any island where a newspaper is circulated daily, notified or published in a newspaper circulated daily in those islands, and in any other island means notified or published by posting a notice in a public place generally used for the display of public notices;

"Port dues" and "dues" include any due, rate, fee, toll, pilotage rate, port charge, or payment in the nature thereof payable or leviable under this Act or any other Act;

"Ship" includes every description of vessel, whether used in navigation or in any way kept or used as a hulk or storeship, or for any other purpose, and not propelled exclusively by oars or paddles;

"Vessel" means a ship or boat or any other description of vessel used or designed to be used in navigation;

"Warehouse" includes all warehouses, buildings, and premises in which goods landed from or to be carried in vessels may be lawfully placed;

"Wharf" includes all wharves, quays, piers, jetties and premises in, on or from which passengers or goods may be taken on board of or landed from vessels;

(2) Notwithstanding the definition of "vessel" in subsection (1), the Queen's Representative may by Order in Executive Council exempt any category of vessel from all or any of the provisions of this Act.

3. Application - This Act shall apply to every port named or designated by Order in Executive Council.

4. Act to bind the Crown - This Act shall bind the Crown.

PART I

ESTABLISHMENT AND ADMINISTRATION

5. Ports Authority - (1) There shall be an authority called the Ports Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of real and personal property, suing and being sued and, subject to the provisions of this Act, of doing and suffering all such other acts and things as a body corporate may lawfully do and suffer.

6. Board of directors of Authority - (1) There shall be a Board of Directors of the Authority which shall comprise not less than 3 nor more than 5 persons to be appointed by the Minister, one of whom shall be appointed by the Minister as Chairman.

(2) The Board may from time to time elect one of their number to be vice-chairman who shall in the absence of the chairman have and perform all the functions and duties of the chairman.

(3) The powers of the Authority shall not be affected by any vacancy in its membership.

(4) No person shall be deemed to be employed in the Public Service for the purposes of the Public Service Act 1975 by reason only of being a director of the Authority.

(5) It shall be the duty of the Board to pursue the objectives and undertake the functions of the Authority.

7. Term of office of directors - (1) Except as otherwise provided by this Act, every director shall hold office for a period of not less than one year and not more than two years, as shall be specified in the instrument of appointment.

Provided that directors may from time to time be re-appointed for further terms.

(2) Every director of the Authority who is not an employee of the Public Service or any agency or ad-hoc body of the Government shall be paid from the funds of the Authority such remuneration and allowances as may from time to time be prescribed.

(3) Notwithstanding any other provision in this Act every director whose office is terminated by the effluxion of time shall continue to hold office until his successor is appointed.

8. Alternate directors - (1) Where the Minister is satisfied that a director is incapacitated by illness, absence, or other sufficient cause from performing the duties of that director's office, the Minister may appoint an alternate to act for that director while incapacitated.

(2) In the event of the chairman's incapacity and the absence of the vice-chairman, the remaining directors may elect one of their number to perform all the functions and duties of the chairman, in which case the Minister may appoint an alternate to act for the director so elected.

(3) Any alternate director appointed under this section shall, while he acting as such, be deemed to be a director.

(4) No appointment of an alternate and no act done by an alternate as such, and no act done by the Board while any alternate is acting as such, shall in any proceedings be questioned on the ground that the occasion for that appointment had not arisen or had ceased.

9. Extraordinary vacancies - (1) Any director including the Chairman may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Minister.

(2) A director may at any time resign his office by delivering a notice in writing to that effect to the Minister.

(3) If any director dies or resigns, or is removed from office, the vacancy thereby created shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy shall be filled by the appointment of a person in the same manner as the appointment of the vacating member.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

10. Meetings of Board - (1) The first meeting of the Board shall be held on a day to be appointed in that behalf by the Chairman.

(2) Subsequent meetings of the Board shall be held at intervals of not less than one month, at such times and places as the Board from time to time appoint.

(3) The Chairman, or any two directors, may at any time call a special meeting of the Board.

(4) At all meetings of the Board the quorum necessary for the transaction of business shall be not less than half the directors for the time being in office.

(5) The General Manager shall attend every meeting of the Board unless excused by the Board.

(5) The Chairman shall preside at all meetings of the Board at which he is present.

(6) At any meeting of the directors the Chairman or other person presiding shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.

(7) A resolution in writing signed or assented to by letter or facsimile by all directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

(8) The Authority shall cause minutes to be kept, in a book provided for the purpose of all resolutions and proceedings of its meetings.

(9) The minutes shall be signed by the Chairman at the next meeting subsequent to the passing thereof.

(10) A copy of the minutes of every meeting shall be furnished to every director.

(11) Subject to the provisions of this Act and of any regulations thereunder, the Board may regulate its procedure in such a manner as the directors think fit.

11. Disclosure of conflicting interest - (1) Any director who otherwise than as a director is directly or indirectly interested in any arrangement or agreement entered into or proposed to be entered into by the Authority, shall as soon as possible after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the director shall not take part after the disclosure in any deliberation or decisions relating to the arrangement or agreement, but shall be counted as present for the purposes of forming a quorum of the Board for any such deliberations or decision.

12. Committees - (1) The Board may from time to time by resolution appoint, discharge, alter, continue or reconstitute a committee or committees consisting of two or more directors to advise the Board on such matters as are referred to any committee by the Board.

(2) Any person may be appointed to be a member of any committee appointed under this section notwithstanding that he is not a director or employee of the Authority.

(3) Subject to the provisions of this Act, and any regulations, and any general or special directions of the Board, any such committee may regulate its procedure in such manner as it thinks fit.

13. Directions by Minister - (1) The Minister may from time to time give the Authority in writing such general policy directions as he thinks fit as to the policy to be followed by the Authority in the exercise of its functions.

(2) The Authority shall, in the exercise of its functions and powers, give effect to any directions given to it by the Minister under subsection (1).

(3) A copy of every direction given by the Minister to the Authority under this section in any financial year shall be included in the annual report of the Authority for that year laid before Parliament under section 69 of this Act.

14. General Manager - (1) The Board may employ at such remuneration and on such terms and conditions as the Board with the approval of Cabinet may determine, a General Manager who shall be responsible to the Board for the control and management of the operations of the Authority.

(2) The Board may confer on the General Manager any of the powers exercisable by it, on such terms and subject to such restrictions as it thinks fit, and may from time to time revoke, withdraw, or vary any power so conferred or any such terms or restrictions.

15. Harbourmaster - The Board may appoint and engage at such remuneration and on such terms and conditions as the Board may determine, and either generally or in respect of any particular port, a person who in the opinion of the Board possesses suitable maritime qualifications to be a Harbourmaster, who shall have such functions and powers as are provided under this Act and such further powers and functions as shall be prescribed.

16. Other Employees - The Board may engage at such remuneration on such terms and conditions and in such number as it may determine, other employees for the conduct of the objectives and functions of the Authority.

17. Delegation of powers - (1) The Authority may from time to time, either generally or for any particular transaction or class of transactions or for any particular act of administration, control, or management, delegate any power conferred on it by this Act or by any regulation made under this Act on any of its directors, or a committee thereof, or to the General Manager.

(2) The General Manager may from time to time, with the written consent of the Authority, either generally or for any particular transaction or class of transactions or for any particular act of administration, control, or management delegate any power conferred on him by this Act or by any regulation made hereunder or by delegation from the Authority to any officer or employee, or to officers or employees of a specified class, or to the holder or holders for the time being of a specified office or class of office.

(3) No such delegation shall prevent the exercise by the Authority or the General Manager, as the case may be, of any of the powers conferred on it or him by this Act or by any such regulation or by delegation.

(4) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding any change in the membership of the Authority or of any committee or in the holder of any office.

18. Consultant and Specialist Personnel - (1) The Board may from time to time appoint consultants, advisers and such specialist personnel as it thinks necessary or appropriate to assist the Authority generally or specifically, and such persons shall be retained upon such terms and conditions as the Board thinks fit.

19. Personal Liability - No director or employee of the Authority shall be personally liable for any act or default done or made by the Authority or by any director or employee in good faith in the course of the operations of the Authority.

PART II
FUNCTIONS AND POWERS OF AUTHORITY

20. Objectives and functions of the Authority - (1) The objectives of the Authority are to promote, encourage and assist in the development of commercially viable and efficient ports in the Cook Islands to which this Act shall apply.

(2) The functions of the Authority are to establish, improve, maintain, operate and manage ports and services and facilities in connection with the operation of any port, and to carry on such other types of business as may be approved by the Minister.

21. Powers of the Authority - (1) Subject to this Act and any regulations made hereunder, the Authority shall have all the powers and authorities necessary for the effective performance of its functions as set out in this Act.

(2) Without limiting the provisions of subsection (1) of this section, the Authority shall have the following powers in respect of a port brought under its control -

- (a) to operate and manage any port as a commercial undertaking, and for that purpose levy such port charge, due, tax, levy or impost whatsoever arising from the management or operation of any port and any function ancillary thereto, and may similarly increase, decrease, or abolish any such charge due, tax, levy or impost;
- (b) to purchase, lease, rent, or otherwise acquire whether by way of gift or otherwise any land or buildings required for the purpose of establishing or maintaining any port, or for the purpose of providing office or technical equipment, accommodation or otherwise for the purpose of exercising any of its functions or powers or to sell or otherwise dispose of the same;
- (c) to establish, operate or manage or cause to be established operated or managed areas for the parking of vehicles, terminal buildings, buildings, and installations for the storage of baggage and cargo, restaurants, refreshment rooms, book stalls, booking and such other services and facilities as may be considered desirable;
- (d) to establish, improve, maintain and operate navigation installation facilities, and such other services and safety facilities, and such other services and facilities as the Authority considers necessary for the purposes of providing for the safe and efficient operation of vessels;
- (e) to add to, alter or reconstruct any port or any part of a port;
- (f) to 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.

22. Board may enter into contracts for certain works - The Board may enter into contracts with any person for the erection, construction, or execution of any harbour works permitted or authorised to be erected or constructed by the Authority, or for furnishing materials, or for the purchase or construction of machinery or appliances of any kind, and any other contracts necessary for the purpose of carrying out the functions for which the Board has been constituted.

23. Contracts to specify work to be done, etc. - Every such contract shall be in writing, and shall specify the work to be done or executed, the materials to be furnished, the price to be paid for the same, the time or times within which the work is to be completed, and the penalties to be suffered in case of non-performance thereof, or other the nature and terms of the contract entered into.

24. How contracts to be made - (1) Any contract which if made between private persons must be by deed shall, if made by the Authority, be in writing under the seal of the Authority.

(2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith shall, if made by the Authority, be either under the seal of the Authority or signed by two members of the Authority on behalf of and by direction of the Authority.

PART III HARBOUR DUES AND HARBOUR RATES

25. Existing dues to continue - Until other provision is made in that behalf under this Act, all harbour dues which at the commencement of this Act are payable by law to any department or authority within or in respect of any harbour shall continue to be levied and shall be payable to the Authority and are paid as if the same had been made payable to the Authority by this Act.

26. Prohibition of partiality as to dues - Harbour dues shall be made by bylaws in the manner provided by this Act, and shall be chargeable equally to all persons in respect of the same description of ships, the same description of voyage, and the same description of goods.

27. List of dues to be kept exhibited - The Authority shall, before taking any dues, publicly exhibit and at all times keep exhibited full particulars of the dues for the time being payable, and for this purpose shall -

- (a) put up in front of its principal office and on some conspicuous part of the principal wharf or quay under its control, boards having printed or affixed thereon of the dues payable; and
- (b) conspicuously display a copy or copies of the bylaws imposing dues in its principal office and in each of its offices where dues are collected, in such manner as to be readily available to the public for reference.

28. Liability for dues payable by ship - The following persons shall be liable to pay the dues payable by or in respect of any ship, that is to say: the owner and master, and any consignee or agent thereof who has paid or made himself liable to pay any other charge on account of the ship in the port of her arrival or discharge or in the port from which she clears outwards.

29. Liability for dues payable for goods - (1) The following persons shall be liable to pay the dues payable in respect of any goods carried in any ship, that is to say:

- (a) the owner of the goods; and
- (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; and
- (d) in the case of goods landed from a ship upon any wharf, and not claimed within seven days thereafter, the persons referred to in section 28; and
- (e) in the case of goods carried in a ship within but not beyond the limits of a harbour, the owner and the master of the ship.

(2) The consignor and consignee of any goods carried in a ship shall, until the contrary is shown, be deemed to be the persons so named in the ship's manifest.

30. Persons other than master or owner of ship liable for dues may retain certain moneys - Every consignor, consignee, shipper, or agent (not being the owner or master of any ship or goods) by this Act made liable for the payment of any dues in respect of that ship or goods, as the case may be, may, out of any moneys in his hands received on account of that ship or goods, or belonging to the owner thereof, retain the amount of dues so paid by him, together with any reasonable expenses he may have incurred by reason of the payment and liability.

31. Evasion of dues - If any master, owner, consignor, consignee, shipper, or agent evades or attempts to evade the payment of any dues, he commits an offence against this Act, and shall be liable to a fine, either not exceeding \$5,000 or 3 times the due that was payable whichever is the greater.

32. Goods on wharf - (1) No LCL cargo shall be devanned except by the Authority on the wharf, or by a person acting with the approval of the Authority at a place (whether on or off the wharf) approved by the Authority.

(2) No goods shall be allowed to remain upon any wharf or in the approaches thereto, or in any store or warehouse in which goods may be placed, for a longer time than is allowed by the bylaws of the Authority.

(3) If any goods so remain without the consent of the Authority, the Authority or any person appointed by the Authority for that purpose may remove the same to any of the premises of the Authority or other convenient place, and keep the same until payment to the Authority of the expenses of the removal and of the keeping of the goods (including a reasonable charge for the storage of the goods by the Authority after the expiration of the time allowed by its bylaws as aforesaid).

(4) If those expenses are not paid within seven days after demand thereof made upon the owner, or if the owner cannot be found or is unknown, or is unable to pay, then after the Authority has given public notice by advertisement at least once in each of two consecutive weeks in some newspaper circulating at the harbour where the goods are, the Authority may sell the goods by public auction or by tender, and out of the proceeds of sale pay all dues and charges payable thereon and the expenses of removal and of the sale thereof, and the surplus (if any) shall be rendered to the owner on demand.

(5) If the owner of the goods cannot be found or is unknown, then the surplus shall be paid into the Ports Authority Account and shall become the property of the Authority.

Provided that if the owner of the goods claims the surplus from the Board at any time within two years from the date when the same was paid into the Ports Authority Account it shall be paid to him by the Authority.

PART IV PILOTAGE

Pilots

33. Authority may define and vary pilotage districts - (1) The Authority may from time to time, define the limits of pilotage districts within which pilots may act for the purposes of this Act, and may from time to time in like manner alter or vary any such limits.

(2) The limits so defined, altered, or varied shall be notified in the Gazette.

34. Appointment of pilots - (1) The Board may from time to time appoint a pilot or pilots to act within the district attached to the harbour under the control of the Authority, and may at any time cancel or determine any such appointment.

(2) If the Board appoints a pilot or pilots, no person other than the appointed pilot or pilots shall act as pilot within the Authority's district.

(3) The appointed pilot or pilots shall receive either a fixed salary payable by the Board, or the whole or part of the pilotage rates payable within the district, or such other remuneration as the Board by the resolution appointing the pilot or pilots or by any subsequent resolution determines.

(4) The Board shall, in the manner prescribed by this Act, fix the pilotage rates within the said district.

(5) No liability shall be imposed on the Authority in respect of any act or omission of any appointed pilot by reason of the fact that the pilot was appointed or paid by the Authority.

(6) Where the Authority's Harbourmaster acts as a pilot and is a duly qualified pilot, the Authority shall not be further or otherwise liable for his acts or omissions whilst so acting than it would be for the acts or omissions of a duly appointed pilot.

35. Unauthorised person not to act as pilot - (1) No person other than a duly appointed pilot shall act as pilot within the district attached to any harbour under the control of the Authority.

(2) Every person who commits a breach of this section commits an offence against this Act, and shall be liable to a fine not exceeding \$2,000, in addition to any liability for damages.

36. Pilots to be examined - No person shall be appointed as a pilot at any harbour or port unless he has been approved by the Cook Islands Marine Board and has received and continues to hold a certificate of competency issued by that Board.

37. Masters and skippers may be granted pilotage exemption certificates - (1) A person who holds a certificate of competency as master or skipper may apply to the Marine Board to be examined as to his competency to pilot ships which he is the master within the pilotage district attached to the harbour under the control of the Authority or any part of that district.

(2) An applicant who so applies shall be examined by the Harbourmaster or some other person or persons appointed by the Board for the purpose, and, if he is found to be competent, shall be granted by the Board a pilotage exemption certificate for the pilotage district attached to the harbour under the control of the Board or a part thereof, as the case may require.

(3) The certificate shall show the name of the person to whom it was granted, the maximum size of the vessel to which it applies in terms of tonnage, draught, or length, and the pilotage district or part thereof to which it relates.

(4) The effect of the certificate is to allow that person, subject to this Act and the bylaws made thereunder, to pilot the ships to which it applies of which he is the master within the pilotage district, or part thereof, to which it relates, as if he were a duly appointed pilot.

(5) Notwithstanding anything in this Act or in bylaws made thereunder, a pilotage exemption certificate shall not extend to a vessel designed for the bulk carriage of oil, gas, or chemical cargoes, but the Board may, on the application exempt any particular vessel from the foregoing prohibition.

(6) If it appears to the Board that navigation within the pilotage district attached to the harbour under its control, or within any part thereof, has been significantly affected by the execution of harbour works or the occurrence of other changes, it may, resolve to cancel all pilotage exemption certificates relating to the district, or the affected part, granted by it before a date to be specified in the resolution, being a date before, in the opinion of the Board, navigation within the district or the part in question became significantly affected by the harbour works or other changes.

(7) A pilotage exemption certificate ceases to have any force at the expiration of any continuous period of 1 year (reckoned from a date not earlier than the date on which it was granted) if, during that period, the holder has not on at least 2 occasions exercised his authority to pilot a ship pursuant to the certificate.

(8) A master who pilots a vessel otherwise than in accordance with a subsisting pilotage exemption certificate commits an offence against this Act.

38. Harbourmaster may direct that pilot be taken on board - (1) The Harbourmaster may, where he considers that there is sufficient reason for doing so, direct the master to accept the services of an appointed pilot for any particular occasion, and thereupon any pilotage exemption certificate held by the master shall be suspended for that occasion.

(2) A master who refuses or neglects to comply with a direction duly given under subsection (1) of this section commits an offence against this Act.

39. Power to withdraw pilotage exemption certificate - If at any time it appears to the Board that any master to whom a pilotage exemption certificate has been granted has been guilty of gross neglect, drunkenness, or other misconduct, or has shown himself incompetent to pilot his ship, the Board may thereupon withdraw the pilotage exemption certificate and the certificate shall thenceforth cease to be of any effect whatever.

Pilotage Rates Exemption Certificates

40. Pilotage rates exemption certificates - (1) In the case of any ship to which pilotage exemption certificates apply, and the master of which holds such a certificate entitling him to pilot that ship, the owner or master of the ship shall, unless a pilot is employed, be entitled, after the ship has entered the port in respect of which the certificate was issued, and on payment of one full rate of pilotage in and out of that port in addition to the inward rate payable on that entry, to receive from the officer receiving the payment a certificate (hereinafter called a pilotage rates exemption certificate) exempting that ship from payment of pilotage rates for the period of 12 months computed from the date of that entry, except when a pilot is employed:

Provided that a pilotage rates exemption certificate shall remain in force only so long as the master of the ship in respect of which the certificate was issued is the holder of a pilotage exemption certificate entitling him to pilot that ship.

(2) The date of entry shall be specified in the pilotage rates exemption certificate, and the exemption from pilotage rates may be renewed for 12 months by the payment of one full rate of pilotage in and out on or before the date of expiration of the period for which the certificate was issued, and so on from year to year thereafter.

41. To whom pilotage rates payable - All pilotage rates leviable under this Act in respect of any ship shall be paid to the Authority.

General Exemption

42. Exemption from compulsory pilotage - All ships of less than 100 tons registered tonnage shall be exempted from compulsory pilotage:

Provided that the Authority may, subject to such terms and conditions as it thinks fit, exempt from compulsory pilotage any vessel plying regularly to and from between any port and any fixed point beyond the pilotage district of that port, notwithstanding that the vessel may be a ship of more than such length or tonnage as may be prescribed under bylaws.

Pilot Signals

43. Pilot boat and pilot signals - A pilot boat shall display in a conspicuous position such distinguishing marks or lights as shall be prescribed under bylaws -

- (a) when engaged in pilotage duty in the daytime, a large flag having a white upper horizontal half and a red lower horizontal half;
- (b) when so engaged at night, the lights required for that pilot boat by regulations for the prevention of collisions at sea for the time being in force,

or such other signals, marks or lights as may be prescribed under bylaws.

44. Signals to be displayed by ships requiring a pilot - If any ship requires the services of a pilot the signal to be used by day or by night shall be the international code signal G. signifying "I require a pilot", or such other signal as may be prescribed by bylaws.

Defence of Compulsory Pilotage

45. Liability of owner or master in the case of a ship under pilotage - Notwithstanding anything in any Act, the owner or master of a ship navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as he would be if pilotage were not compulsory.

PART V **HARBOUR BYLAWS**

46. Subject-matter of bylaws - The Board may from time to time, by bylaws made under this Act, do all or any of the following things for and within the limits of any harbour or land under its control, namely:

Generally, -

- (1) provide for the more effectual carrying out of any of the objects of this Act;
- (2) regulate any of the subject-matter of this Act;
- (3) regulate the general conduct of business and proceedings of the Board.

In respect of harbour control, -

- (4) regulate the mode and place of mooring and anchoring of ships within the limits of the harbour, and their position and government in the harbour, and their unmooring and removal out of the harbour;
- (5) provide that no vessel shall be brought to any wharf, or moored to or unmoored from or removed from any wharf, unless the vessel is in charge of the Harbourmaster or of a pilot or of some person holding a permit from the Board so to do; and provide for the issue of those permits, and determine the scale of fees payable therefor according to the class, tonnage, dimensions, or character of vessels;
- (6) regulate the laying up of any vessel within the harbour, and fix charges for that laying up, and exempt vessels so laid up from port charges;
- (7) provide for the sealing up under the supervision of an officer of the Board of the ash ejector and garbage chute of any ship entering the harbour;
- (8) provide for the Harbourmaster ensuring the observance of the bylaws (in case of non-compliance therewith) by mooring, unmooring, placing, or removing a ship, and for that purpose casting off or loosing any warp or rope, or unshackling or loosing any chain by which the ship is moored or fastened (first putting on board a sufficient number of persons for the protection of the ship in case there is no person on board to protect it);

- (9) regulate the times, places, order, and mode of the shipping, unshipping, landing, warehousing, stowing, and depositing of goods (with special regulations and restrictions in the case of dangerous goods), and of the landing and embarking of passengers, and of the taking in and delivery of ballast; and of the landing and embarking of live stock, and the driving and control of the same while on any harbour works;
- (10) fix and authorise the levying of Harbourmasters' fees and of port charges;
- (11) regulate the use of wharves or docks, quays, landing stages, and other landing places, and land under the control of the Board, and generally regulate the traffic on the same;
- (12) fix scales of dues, tolls, and charges to be paid for the use of wharves or docks, and charges for labour supplied or services rendered in connection therewith, or on goods passing over or through the same;
- (13) fix scales of dues for the storage of goods, and charges to be paid for taking the same into and delivering the same from warehouses or buildings belonging to or in the occupation of the Authority, and provide for any services required to be rendered by the Authority in connection with goods of any kind, and fix scales of charges therefor;
- (14) regulate the use of cranes, weighing and other machines, weights and measures, conveniences or appliances, and all buildings, erections, and works belonging to the Authority, and fix charges for and set out the terms upon which the same may be used;
- (15) control and regulate the use of public weighbridges belonging to the Authority; and in particular compel the numbering of vehicles using the same, and require those vehicles to be submitted for taring and retaring, and fix scales of charges to be paid for the use of those public weighbridges;
- (16) fix a scale of charges for the use of any fire prevention appliances belonging to the Authority in extinguishing fires on board ships;
- (17) regulate the duties and conduct of all persons, including the servants of the Authority and other persons (not being officers of customs or of the Marine Board or of the Department of Agriculture) who are employed in the harbour or on any land under the control of the Board;
- (18) provide for the control and management of boats plying for hire at wharves or public thoroughfares;
- (19) regulate or prohibit the towage within the harbour of vessels containing passengers;
- (20) regulate the cleansing, repair, and effectual preservation of docks and wharves, and provide for keeping and maintaining the same in a fit state for the convenience of persons walking upon, or landing on, or embarking from the same;
- (21) make regulations for the guidance and control of porters, cab drivers, carters, carmen, and others carrying goods or driving horses or vehicles for conveying passengers or goods or other commodities on any wharf or any land under the control of the Board and provide for the licensing of any such persons, provided that when any licence fee is charged it shall not exceed the cost of providing such licence;

- (22) regulate and control the sale on any wharf or on any land under the control of the Board of any article by hawkers, newspaper vendors, or other persons, and provide for the licensing of any such person;
- (23) provide for licensing vehicles plying for hire on wharves or land under the control of the Board and prescribe fees for those licences;
- (24) in cases where the Board undertakes the business or duties of wharfinger or warehouse keeper, prohibit owners of goods from taking delivery of goods or cargo unloaded from any ship upon any wharf, or from delivering goods or cargo to any ship, except through the Authority;
- (25) with respect to any foreshore vested in or under the control of the Board, provide for the proper conduct of persons using the foreshore, and for regulating wheeled and other traffic thereon, and for limiting the parts of the foreshore that may be utilised for bathing;
- (26) on the occasion of boat races, yacht races, launch races, or swimming races in or upon waters under its control, provide for the prohibition or regulation of the use of steamers, sailing vessels, punts, boats, and vessels of any description upon those waters, and for regulating all traffic upon those waters, and upon the foreshore and banks of those waters, and make charges or authorise any sports association to make charges for admission to specific parts of those waters, foreshores, and banks;
- (27) prohibit the discharge or flow into the harbour from any tank, store ship, pipe line, barge, lighter, or vessel of any oil, or tar, or of any water containing or mixed with any such material, regulate the discharge into the harbour of the contents of ballast tanks on vessels; and regulate and control the storage, loading, and discharge of any oil or tar in, into, or from any tank, store ship, pipe line, barge, lighter, or vessel;
- (28) regulate and control the use of any anchorage (enclosed or otherwise) for yachts, boats, launches, and other small craft, and of any buildings or equipment provided by the Board in connection therewith; provide for the proper conduct of persons using or frequenting any such anchorage; and fix fees for moorings, mooring sites, sheds, or other structures provided or erected by the Authority in connection with any such anchorage;
- (29) fix and authorise the levying of dues, tolls, and charges to be paid for labour supplied or services rendered by the Authority in connection with goods and passengers unshipped or landed from or shipped or embarked on vessels from facilities provided by the Board within the limits of the harbour;
- (30) regulate and control the speed, use, and management of motor launches and outboard motor boats, and prohibit nuisances arising therefrom;
- (31) prescribe conditions relating to the use of the Board's tugs, and fix a scale of charges therefor;

- (32) regulate and control the speed and navigation of ships within the limits of the harbour;
- In respect of pilots and pilotage, -
- (33) fix pilotage rates, and determine the nature of the services for which those rates respectively shall be payable and the time of payment for pilotage services rendered to any ship, and the amount to be paid for detention of pilots on board ships under quarantine or otherwise;
- (34) determine at any time or from time to time whether pilotage shall be compulsory or optional;
- (35) determine what shore signals in aid of vessels entering or going out of harbour shall be deemed to be pilot service, and the rates to be paid therefor;
- (36) make regulations for the government of the pilots, and for ensuring their good conduct and constant attendance to and effectual performance of their duty on board ship and on shore;
- (37) make rules for punishing any breach of any such regulations by the dismissal, of the person guilty of the breach, or by the infliction of fines;
- In respect of dues payable or belonging to the Board, and the collection thereof, -
- (38) empower a director or employee of the Authority either alone or with other persons, to enter a ship in order to ascertain the dues payable in respect of the ship or of goods therein;
- (39) require the master of every ship to report his arrival within a specified time (not being later than twenty-four hours) after his arrival;
- (40) require the master of every ship to produce the certificate of registry on demand, and also, where cargo or goods are liable to the payment of dues, to the Authority;
- (41) require the master of every ship to give a copy or copies of the bill of lading or manifest of the cargo or other proper account of goods intended to be unshipped, and the name of the consignee or other person to whom they are intended to be delivered;
- (42) require the master of every ship to give if required, notice of the intended time of unshipment;
- (43) require from the shippers of goods accounts of the goods intended to be shipped;
- (44) regulate the time when dues on goods shipped or unshipped are to be payable;
- (45) prohibit masters of ships from receiving any goods on board their ships unless the goods are accompanied by a bill of lading, manifest, account, or other document, and by the prescribed evidence (whether stamped on the document or otherwise) that the document has been produced to the Authority and that the shipment of the goods has been authorised by the Authority;

In respect of vehicles using any wharf, -

- (46) regulate the examination and checking of the contents of any vehicle, and of any parcel, package, case, bag, or luggage on any vehicle, where the Board or any officer thereof has reasonable cause to believe or suspect that any person is carrying on that vehicle any dutiable goods on which duty has not been paid, or any restricted, uncustomed, forfeited, pillaged, or otherwise unlawfully obtained goods, and regulate the seizure and detention of any goods found on any such examination which the officer conducting the examination has reasonable cause to believe or suspect to be dutiable goods on which duty has not been paid, or goods which are restricted, uncustomed, forfeited, pillaged, or otherwise unlawfully obtained.

47. Bylaws not to be repugnant to General Harbour Regulations - (1) Bylaws made under this Act shall not be repugnant to the provisions of this Act, or the General Harbour Regulations to be made hereunder, or to any Act and they shall not come into operation until after a copy under the seal of the Authority has been notified in the Gazette.

(2) A reference in any bylaw to any Act shall be construed as referring to any Act passed in amendment thereof or in substitution therefor unless a contrary intention appears from the context.

48. Conditions under which bylaws to be made - Bylaws shall be made only in the manner and subject to the conditions following:

- (a) the proposed bylaws shall be printed, and at least seven clear days before adoption thereof, a notification shall be published to the effect that the proposed bylaws have been printed and are open to public inspection during office hours at the office of the Board;
- (b) they shall be adopted at a special meeting, of which each member of the Board shall have notice in writing at least four clear days before the meeting, and the notice shall set forth the business to be brought before the meeting;
- (c) after the adoption of the bylaws or any amendment thereof, a like notification shall be published stating that they have been so adopted and the day on which they are to come into force; and
- (d) they shall have the common seal of the Authority affixed thereto.
- (e) a copy shall be delivered to the Minister.

49. Proof of bylaws - The production of any document purporting to be a printed copy of any bylaw made in whole or in part under the authority of this Act, and to be sealed with the common seal of the Authority, shall, until the contrary is shown, be sufficient evidence of the bylaw having been duly made, and that the same duly came into force on the day mentioned in that behalf in that copy of the bylaw.

50. Board to provide printed copies of bylaws - The Authority shall cause printed copies of all bylaws to be kept at the office of the Authority, and to be sold at a reasonable charge to any person applying for the same.

51. Disallowance of bylaws - Within six months after the delivery of any bylaw to the Minister, the Minister may with the concurrence of Cabinet disallow the same or any part thereof, and upon the disallowance being gazetted the bylaw or part thereof so disallowed shall cease to have any force; but the disallowance shall not affect the validity of anything theretofore done under the bylaw or part thereof so disallowed.

52. Penalty for breach of bylaws - (1) Every person who contravenes or fails to comply in any respect with any provision of any bylaw made under this Act commits an offence and shall be liable to a fine not exceeding \$5,000 and, where the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues.

(2) Where any person has been convicted under this section of a continuing offence, the Board may apply to the High Court for an injunction to restrain the further continuance of the offence by that person.

(3) The continued existence of any work or thing in a state contrary to any such bylaw shall be deemed a continuing offence for the purposes of this section.

53. Board may adopt regulations made by the Queen's Representative in Executive Council - (1) The Board may by resolution adopt any regulations made by the Queen's Representative in Executive Council and any regulations so adopted shall, subject to this Act, without further act or formality, be deemed to be bylaws of the Board in respect of the harbour under its jurisdiction, and shall come into force upon a day to be named in the resolution.

(2) A copy of the resolution adopting the regulations, attested by the signature of the Chairman, shall be forwarded to the Minister, and the resolution shall also be publicly notified at least seven clear days before the day fixed for the bylaws to come into force.

PART VI WRECKS, OBSTRUCTIONS, AND DAMAGES

54. Removal of wreck - (1) If any vessel or aircraft is sunk, stranded, or abandoned in any harbour or tidal water, or on the seashore, that vessel or aircraft, together with the tackle thereof and the goods (if any) therein (all of which are in this section hereinafter included under the term "the wreck"), may be removed in the following manner:

- (a) the Board having jurisdiction over the place where the wreck is shall give notice in writing to the owner of the vessel or aircraft, or to an agent of the owner, that he is required within a time specified in the notice either to remove the wreck in a manner satisfactory to the Board, or to undertake, under security satisfactory to the Board, to remove the wreck in a manner satisfactory to and within a time to be fixed by the Board;

- (b) where the owner or agent be found, or fails within the time specified in the notice to remove the whole of the wreck in a way satisfactory to the Board, or to enter into such undertaking as aforesaid to remove the same, or having undertaken to remove the wreck, fails to remove it in accordance with his undertaking, the Board may remove the wreck, and may recover from the owner, in any Court of competent jurisdiction, the expenses incurred in removing it (in this section referred to as the expenses of removal);
- (c) the Board may, for the purpose of removal, destroy the wreck or any part of it, and may remove and take possession of the wreck or any part of it, and may sell the same; and may out of the proceeds (if any) of the sale, without any reference to the part of the wreck from the sale of which those proceeds may accrue, reimburse itself for the whole of the expenses of removal, and shall after reimbursing itself pay over the surplus (if any) to the owner;
- (d) if the proceeds of the sale are insufficient to pay the whole expenses of removal the Board may recover the balance from the owner of the vessel or aircraft, if the vessel or aircraft was stranded or sunk by his fault or negligence, or from any other person by whose fault or negligence the vessel or aircraft was stranded or sunk;
- (e) if the Board fails, within fourteen days after notice in writing from the Minister, to remove or to take steps to cause the owner of the vessel or aircraft to remove the wreck, the Minister shall be deemed the proper authority to remove the same, and shall have all the powers hereby given to the Board under the foregoing provisions of this section;
- (f) the expenses of removal incurred by the Minister or any person by his direction or authority in pursuance of this section upon any default of the Board shall be recoverable from the Board, with full costs of suit, as a debt due to the Crown:

Provided that nothing in this section relating to aircraft shall derogate from any provision of the Civil Aviation Act 1985 or any regulations under that Act relating to the investigation of aircraft accidents.

(2) For the purposes of this section the term "owner" includes not only the owner of the wreck at the time of the sinking, stranding, or abandonment thereof, but also any purchaser of any such wreck, or the materials of which the same may be or may have been composed, so long as the same remains sunk, stranded, or abandoned.

55. Responsibility for injury to works of harbour - (1) Where any injury is done by any vessel, floating timber or material, or by any person employed about the same, to any part of the works or property of any Board, the following persons, namely -

- (a) whether the injury is caused through negligence or not, the owner of that vessel, floating timber, or material; and

(b) in case the injury is caused through the wilful act or negligence of the master of that vessel or of the person having charge of that timber or material, that master or person - shall each be answerable in damages to the Board for the whole injury; but neither the Board nor any person shall be entitled by virtue hereof to recover twice for the same cause of action.

(2) Where the owner of any vessel, floating timber, or material pays any money in respect of any injury done to any part of the works or property of any Board by any master or other person, or pays any fine by reason of any act or omission of any master or other person, he shall be entitled to recover the money so paid, with costs, from that master or other person.

PART VII FINANCE

56. Money constituting Ports Authority Fund - (1) There shall be a fund, to be termed the Ports Authority Fund, consisting of the money arising from the following sources:

- (a) port dues and pilotage rates, and all other dues the Board is empowered to levy or receive;
- (b) port improvement rates;
- (c) rents and profits of land vested in the Board;
- (d) proceeds and profits of land set aside as endowments for the Board;
- (e) fines recovered under this Act, or under any bylaw made by the Board under this Act, for any offences committed within the harbour of the Board;
- (f) all other money received by or becoming the property of the Board under the authority of this Act or a special Act or any other enactment.

(2) Any dues in respect of coastal lights the management and control of which is vested in the Authority.

57. Money to be banked - (1) All money belonging to the Ports Authority Fund shall be paid into such bank as the Board with the approval of the Minister of Finance from time to time determines, to an account to be called the Ports Authority Account.

(2) The Ports Authority Fund shall be applied by the Authority in payment of all charges and expenses incurred by the Authority in carrying this Act into execution, and in doing all acts and things which the Authority is by this or any other Act empowered or required to do.

(3) No money shall be drawn out of the bank except by authority of the Board; and all money shall be paid by the Authority in cash, or by cheque signed by two persons, being responsible officers of the Authority, who are from time to time authorised by the Board to countersign cheques or other instruments of payment.

Accounts and Audit

58. Authority to keep books - (1) The Authority shall cause books to be provided and kept, and true and regular accounts in accordance with generally accepted accounting principles to be entered therein of all sums received and paid by the Authority by virtue of this Act or any other Act, and of the several purposes for which those sums were received and paid; and those books shall at all reasonable times be open without fee or reward to the inspection of any of the directors of the Board and any debenture holder or creditor of the Authority.

(2) Any director of the Board and any debenture holder of the Authority may take copies of or extracts from the said books without paying anything for the same.

(3) Every officer or other person having the custody of those books commits an offence against this Act who does not, on the reasonable demand of any member of the Board or of any debenture holder, permit him to inspect the said books, or to take such copies or extracts as aforesaid.

59. Board may authorise an Imprest Account - (1) The Board may by resolution establish an Imprest Account, to be kept at the bank in which the Ports Authority Fund is kept, in the name of the Authority.

(2) The Board shall from time to time, by resolution, fix the maximum amount that may be held at any time in the Imprest Authority.

(3) Money in the Imprest Account shall be available only for the payment of salaries and wages and of emergency expenditure. A statement of all payments made from the Imprest Account shall be submitted to the Board for approval at its first ordinary meeting thereafter. The payment of money out of the Imprest Account for any purpose not hereby authorised shall be deemed to be the misappropriation of the funds of the Authority.

60. Board may deposit at interest money to credit of accounts - The Board may, in any case where it is deemed advisable that any sum of money at credit of any account should be placed on deposit at interest, deposit that sum of money with any bank approved by the Board.

61. Board may create a special fund - (1) Notwithstanding anything hereinbefore contained, the Board may appropriate in any year any part of the Ports Authority Fund, not appropriated for any special purpose, towards the creation of a special fund to provide for the following contingencies:

- (a) destruction of or injury to any of the property of the Authority;
- (b) depreciation in the value of any of the property of the Authority;
- (c) claims which may be made upon the Board by employees;
- (d) losses which may arise in the event of the dishonesty of employees of the Authority; and premiums payable on policies of insurance against any such losses;
- (e) any other exceptional losses or expenditure;
- (f) the strengthening of any sinking fund of any loan, or the depreciation of any of the investments thereof or the repayment of any loan or loans or any part thereof.

(2) Subject to the provisions of this Act, the Board may invest all money so appropriated, and the interest and profits accruing therefrom, in such securities as it from time to time determines.

(3) The Board may at any time and from time to time repay into the Ports Authority Fund the whole or any part of the money so appropriated or invested and the accumulations thereof, except in the case of money set apart for the contingencies mentioned in paragraph (f) of subsection (1) of this section.

62. Annual statement and accounts - The Board shall in every year cause the accounts of the Authority to be balanced to the 30th day of June in that year, and a true statement and accounts to be prepared -

- (a) of all money received and paid during the financial year;
- (b) of the income and expenditure of the Authority for the financial year; and
- (c) of all the assets and liabilities of the Authority at the end of the financial year.

63. Accounts to be audited - The statement and account required to be prepared by section 62 of this Act shall be audited by the Cook Islands Audit Office and for that purpose shall be delivered to that office not later than 3 months following the end of the financial year to which they relate.

Borrowing Powers

64. Borrowing powers of Authority - Subject to the provisions of this Act the Authority may, subject to the consent of Cabinet, borrow money for the purposes of enabling it to carry out its objectives, functions and powers.

65. Board may issue debentures in lieu of mortgaging land - Where power is given to the Authority to borrow money on the security of any land by mortgage, and it appears to the Board that the money could be more advantageously obtained by the issue of debentures, the Minister on being satisfied as to the nature of the transaction and the validity of the securities, may with the consent of Cabinet authorise the Board to issue debentures from time to time for any sums not exceeding the amount originally authorised to be borrowed or not exceeding the said amount less any portion thereof that is already borrowed.

PART VIII

ACCOUNTABILITY AND ANNUAL REPORT

66. Statement of corporate intent - (1) The Authority shall deliver to the Minister a draft statement of corporate intent approved by the Board -

- (a) within 3 months of the coming into force of this Act; and thereafter,
- (b) not later than 1 month after the commencement of each financial year of the Authority.

(2) Each statement of corporate intent shall specify for the Authority in respect of the financial year in which it is delivered, the following information -

- (a) the objectives of the Authority;
- (b) the nature and scope of the activities to be undertaken;
- (c) the accounting policies;
- (d) the financial and other performance targets and other measures by which the performance of the Authority may be judged in relation to its objectives;
- (e) such other matters as are required by the Minister.

(3) The Authority shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the Minister, and shall deliver the completed statement of corporate intent to the Minister within 3 months of the commencement of the financial year.

(4) A statement of corporate intent for the Authority may be modified at any time by written notice from the Authority to the Minister, so long as the Authority has first given written notice to the Minister of the proposed modification and considered any comments made thereon by the Minister within 1 month of the date on which that notice was given.

67. Annual report and accounts - (1) Within 2 months after the end of each financial year, the Board shall deliver to the Minister -

- (a) a report of the operations of the Authority during that financial year; and
- (b) consolidated financial statements for that financial year, consisting of statements of financial position, profit and loss, changes in financial position, balance sheets and such other statements as may be necessary to show the financial position of the Authority and the financial results of its operations during that financial year; and
- (c) an auditor's report on those financial statements, made by an auditor approved by the Minister.

(2) Every report under subsection (1)(a) and (1)(b) of this section shall contain such information as is necessary to enable an informed assessment of the operations of the Authority including a comparison of the performance of the Authority with the relevant statement of corporate intent.

68. Half-yearly reports - (1) Within one month after the end of the first half of each financial year, the Board shall deliver to the Minister a report of its operations during that half-year.

(2) Each report required by this section shall include the information required by the statement of corporate intent to be included therein.

69. Information to be laid before Parliament - (1) Within 1 month of receiving all the following documents in respect of a financial year of the Authority, the Minister shall lay before Parliament -

- (a) the statement of corporate intent of the Authority for that year; and
- (b) the annual report and audited financial statements of the Authority for the preceding financial year; and

(c) the auditor's report on those financial statements.

(2) Where a statement of corporate intent has been modified pursuant to section 66(4) of this Act, the Minister shall lay before Parliament a copy of the notice making the modification within 1 month after the date on which the Minister receives the notice.

70. Other information - The Authority shall supply to the Minister such information relating to the affairs of the Authority as the Minister from time to time requests after consultation with the Board, whether or not the information is of a kind referred to in the statement of corporate intent.

PART IX MISCELLANEOUS

71. Transfer of Crown assets and liabilities - (1) Notwithstanding any Act, rule of law or agreement to the contrary, the Minister may on behalf of the Crown, for such consideration and on such terms and conditions as shall be approved by Cabinet, do any one or more of the following:

- (a) transfer or assign to the Authority either in part or in whole, the assets and liabilities relating to the operation of a port for the purpose of enabling the Authority port facilities to provide, operate and maintain;
- (b) grant to the Authority leases (whether by way of transfer or assignment), licences, easements, permits or rights of any kind in respect of any assets or liabilities of the Crown (being assets and liabilities relating to the operation of a port) for the purpose of enabling the Authority to provide, operate and maintain port facilities.

(2) Every transfer, assignment, authorisation or grant made (whether before or after the coming into force of this Act) with the intention that such transfer, assignment, authorisation or grant give effect to the provisions of subsection (1) shall notwithstanding the date that it shall take effect be deemed to take effect on the date that the principal Act came into force.

(3) Assets that are fixed to, or are under or over, any land may be transferred or assigned pursuant to this Act whether or not any interest in the land is also transferred or assigned. Where any such asset is so transferred or assigned, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(4) Any asset or liability of the Crown may be transferred or assigned pursuant to this Act whether or to any Act or agreement relating to the asset or liability permits such transfer or assignment or requires any consent to such a transfer or assignment.

(5) Where a transfer or assignment of the kind described in subsection (4) takes place -

- (a) the transfer or assignment shall not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown, the transferee or assignee under any Act or agreement;

- (b) where the transfer or assignment is registrable, the person responsible for keeping the register shall register the transfer or assignment forthwith after written notice of the transfer or assignment is received by him or her from any person authorised for this purpose by the Minister;
- (c) any satisfaction or performance by the transferee or assignee in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown;
- (d) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the transferee or assignee shall be deemed to be also to the benefit of the Crown.

(6) No provision in any agreement limiting the Crown's right to either sell, transfer, assign or provide the use or benefit of any assets to third parties, or for determining the consideration for or in respect thereof, or obliging the Crown to account to any person for the whole or part of the proceeds therefrom, or obliging the Crown to pay a greater price than otherwise by reason of or as a consequence of the sale, transfer, assignment or the provision of the use or benefit of any assets to third parties, shall have any application or effect in respect of any agreement entered into or effected pursuant to or under this Act.

(7) Where -

- (a) rights or obligations to provide goods or services to third parties are transferred to the Authority; and
- (b) those goods or services have previously been provided by the Crown in terms and conditions wholly or partly prescribed by any Act; and
- (c) the Queen's Representative has by Order in Executive Council declared that this subsection shall apply in respect of those goods or services;

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the Crown and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the transferee and the third parties (whether or not the Act is repealed). Each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the Order in Executive Council;

- (d) a condition permitting termination at any time by the third party on giving 14 days notice to the transferee; and
- (e) a condition permitting variation or termination at any time by the transferee on giving to the third party 1 month's notice in such manner (including newspaper advertising) as the transferee thinks fit.

(8) Where -

- (a) land, interests in land, licences, permits, or rights created on terms and conditions wholly or partly set out in any Act are transferred or assigned to the Authority pursuant to this Act; and

- (b) the Queen's Representative has by Order in Executive Council declared that this subsection shall apply in respect of that land or those interests, licences, permits or rights -

then, whether or not the Act is repealed, such of the terms and conditions set out in the Act as are specified in the Order in Executive Council (with all necessary modifications) shall continue to apply in respect of that land or those interests, licences, permits, or rights after the transfer or assignment unless the transferee or assignee, as the case may be, and the holders of that land or those interests, licences, permits, or rights otherwise agree.

72. Taxation - The income of the Authority shall be exempt from all taxes, duties, levies and fees whatsoever.

73. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made in respect of -

- (a) providing for the more effectual carrying out of any of the objects of this Act;
- (b) regulating any subject-matter of this Act;
- (c) regulating the general conduct of business of the Authority or proceedings of the Board.

74. Transitional - (1) Upon the date of coming into force of this Act, -

- (a) all assets and liabilities of the Waterfront Commission shall be transferred to and vest in the Authority without further assurance than this section and the Authority shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities;
- (b) every agreement, whether in writing or not and every deed, bond or other instrument to which the Waterfront Commission was a party or which affected the Waterfront Commission and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the Waterfront Commission as if for every reference (however worded and whether express or implied) therein to the Waterfront Commission there were substituted in respect of anything to be done on or after such date of coming into operation a reference to the Authority.
- (c) all officers and employees of the Waterfront Commission shall become the corresponding officers and employees of the Authority and shall continue in office for the period for which they were appointed or employed as officers or employees of the Waterfront Commission.

(2) Every person who is a member of the Waterfront Commission prior to the coming into force of this Act shall, continue to be a member of the Board until either -

- (a) a person is appointed in his stead by the Minister acting pursuant to section 6 of this Act; or
- (b) he receives written notice from the Minister that his appointment has been determined.

(3) In this section, "the Waterfront Commission" means the Waterfront Commission established by section 3 of the Waterfront Industry Act 1973-74.

75. Revocations - The regulations set out in the First Schedule are revoked.

76. Repeals - The Acts set out in the Second Schedule are repealed.

77. Consequential amendments - In every enactment, unless the context otherwise requires, a reference to the Waterfront Commission shall be deemed a reference to the Ports Authority.

This Act is administered by the Ports Authority.

FIRST SCHEDULE

(s. 75)

(Regulations revoked)

Waterfront Commission (Delivery and Acceptance of Cargo) Regulations 1975
Harbour Control Regulations 1975

SECOND SCHEDULE

(S. 76)

(Acts repealed)

Waterfront Industry Act 1973-74
Waterfront Industry Amendment Act 1987
Waterfront Industry Amendment Act 1989
Rarotonga Harbour Charges and Fees Act 1973-74
Rarotonga Harbour Charges and Fees Amendment Act 1976
Rarotonga Harbour Charges and Fees Amendment Act 1980



PARLIAMENT OF THE COOK ISLANDS

PORTS AUTHORITY AMENDMENT BILL

EXPLANATORY NOTE

This note does not form part of the Bill but is intended to indicate its general effect.

The Bill contains amendments to the principal Act which are consequent upon the passing of the Cook Islands Investment Corporation Act 1998. The amendments ensure consistency between the Ports Authority Act 1994-95 and the provisions of the Cook Islands Investment Corporation Act 1998

Clause 1 is the Short title.

Clause 2 provides for the Schedule in which the amendments to the principal Act appear.

SCHEDULE

Section 2 is amended by inserting the definitions of "Corporation", "Crown" and "Financial year" Corporation is defined as the Cook Islands Investment Corporation and financial year is defined as the year ending 30th day of June.

Sections 6, 8 and 9 relate to the appointment of directors, alternate directors and extraordinary vacancies. Those sections are amended to enable the Board of the Corporation to appoint directors, alternate directors and fill extraordinary vacancies of the Authority's Board.

Section 13 of the principal Act provided for the Authority to have regard to general policy directions of the Minister. That section is repealed and substituted with a new section that requires the Authority to have regard to general directions as to management strategies provided by the Corporation.

New Section	a new section 13A is inserted into the principal Act. That section relates to performance by the Authority of Government's social responsibilities. Where the Minister with the concurrence of Cabinet requires the authority to give effect or greater emphasis to Government's social policy in the exercise of its functions and powers which has the result of the Authority's stated return on investment being reduced, then the amount of that reduction is to be recovered by way of appropriation and if not, the Authority can recover that reduction from dividends to be paid by the Authority to the Corporation and the Corporation to the Crown. This section reflects the cost to the Authority of implementing Government's social policies.
Section 20(2)	this section required the Authority to establish, improve, maintain, operate and manage ports and services and facilities in connection with the operation of any port and to carry out such other type of business as approved by the Minister. That subsection is amended to require the Authority to carry out such other business consistent with the Authority's statement of corporate intent.
Section 21	which provides for the powers of the Authority is amended by adding a subsection (3). That subsection empowers the Authority to pay to the Corporation a dividend.
Sections 62 and 63	are repealed. They provided for an annual statement and accounts and audit of those accounts. The matters dealt with by those two sections are reflected in the amendment to section 68.
Section 64	this section empowered the Authority to borrow money with the consent of Cabinet. That section is amended and requires any borrowing to be in consultation with the Board of the Corporation.
Section 65	this section enabled the Authority to provide security for any borrowing. The security provided was subject to the consent of Cabinet. The requirement for Cabinet's consent has been removed by the amendment.
Sections 66, 67, 68 and 69	those sections dealt with accountability and the annual reports of the Authority. Those sections have been repealed and replaced with a requirement for the Authority to provide to the Corporation a statement of financial position within 3 months of the Bill becoming law.

Section 67 requires the Authority to deliver its statement of corporate intent to the Minister for the purposes of enabling the Minister to make a determination under section 13A, and to the Corporation for approval.

Section 68 requires the Authority to prepare and deliver to the Corporation an annual report within 3 months after the end of each financial year for inclusion and consolidation with the Corporation's update.

Section 69 requires the Authority to deliver to the Corporation fiscal update reports in accordance with the Ministry of Finance and Economic Management Act 1995-96

Section 70

which required the Authority to deliver to the Minister information as requested is amended by substituting the Board of the Corporation for the Minister.

HON. TUPOU FAIREKA
PORTS AUTHORITY AMENDMENT

ANALYSIS

1	Title Short title	2	Consequential amendments Schedule
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A BILL INTITULED

An Act to amend the Ports Authority Act 1994-95 to ensure consistency between its provisions and the provisions of the Cook Islands Investment Corporation Act 1998.

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Ports Authority Amendment Act 1999 and shall be read with and deemed part of the Ports Authority Act 1994-95 (the principal Act).
2. Consequential amendments - The provisions of the principal Act set out in the first column of the Schedule are amended in the manner set out in the second column of that Schedule

This Act is administered by the Ports Authority

RAROTONGA, COOK ISLANDS: Printed under the authority of the Government of the Cook Islands - 1999

Ports Authority Amendment

Section 2

SCHEDULE

Section 2

By inserting in alphabetical order the following definitions -

"Corporation" means the Cook Islands Investment Corporation established by the Cook Islands Investment Corporation Act 1998;

"Crown" means the Crown in right of the Government of the Cook Islands;

"Financial year" means the period of 12 months ending with the 30th day of June";

Sections 6, 8 and 9

By deleting the word "Minister" and substituting the words "Board of the Corporation".

Section 13

By repealing that section and substituting the following section -

"13. Directions by Corporation - (1) The Board of the Corporation may from time to time give the Authority in writing general directions as to management strategies to be followed by the Authority in the performance of the Authority's objectives, functions and powers and which directions shall be consistent with the Corporation's statement of corporate intent

(2) The Authority shall in the exercise of its functions and powers give effect to any directions given to it by the Corporation under subsection (1) of this section.

(3) A copy of every direction given by the Corporation to the Authority under this section in any financial year shall be included in the annual report of the Authority for that year."

New Section

By inserting after section 13 the following new section -

"13A. Authority's social responsibilities - (1) The Minister may from time to time review the Authority's performance for the purposes only of determining if the Authority is giving effect to the social policies of Government insofar as the functions and powers of the Authority permit it to do so.

(2) Where the Minister with the concurrence of Cabinet requires the Authority to give effect or greater emphasis to Government's social policy in the exercise of its functions and powers and that requirement will result in the Authority's stated return on investment being reduced then the amount of the reduction shall be quantified and included as part of the Crown's debt management responsibilities pursuant to section 24 of the Ministry of Finance and Economic Management Act 1995-96 for the purposes of being appropriated to the Authority under the next Appropriation Act and in the absence of all or part of that reduction not being appropriated and paid to the Authority then any future dividend to be paid by the Authority to the Corporation and by the Corporation to the Crown shall be reduced by the unpaid amount until the unpaid amount of the reduction is recovered by the Authority."

Section 20(2) By omitting the words "as may be approved by the Minister" and substituting the words "consistent with the Authority's statement of corporate intent".

Section 21 By adding after subsection (2) the following new subsection –

"(3) The Authority shall have the power to pay to the Corporation a dividend calculated in accordance with the principles required by section 67(2)(f) of this Act and as may be stated in the annual report of the Authority in accordance with section 68(3) of this Act."

Sections 62 and 63 By repealing those sections.

Section 64 By omitting the words "subject to the consent of Cabinet" and substituting the words "in consultation with the Board of the Corporation".

Section 65 By omitting the word "Minister" and substituting the words "the Board of the Corporation";

By omitting the words "may with the consent of Cabinet".

Ports Authority Amendment

Sections 66, 67, 68 and 69

By repealing those sections and substituting the following sections –

“66. Statement of financial position - Within 3 months of the coming into force of this Act, the Board will deliver to the Corporation, in accordance with generally accepted accounting practice, a statement of financial position of the Authority that shall include the estimated value of assets and the estimated value of the Crown’s investment in the Authority.

67. Statement of corporate intent - (1) The Board will on behalf of the Authority deliver to the Minister for the purposes of enabling the Minister to make a determination under section 13A of this Act and to the Corporation for approval a statement of corporate intent of the Authority not later than 1 month before the commencement of each financial year, the first statement to be delivered within 21 days of the date of this Act coming into force, or such other period as the Board of the Corporation may allow.

(2) The Authority shall be bound by and adopt in its statement of corporate intent the Corporation’s policies including policies as to asset management set out in the Corporation’s statement of corporate intent where they affect the Authority and in addition the statement shall specify, in respect of the next financial year and each of the two immediately succeeding financial years, the following information –

- (a) the objectives of the Authority; and
- (b) the nature and scope of the activity to be undertaken; and
- (c) estimates of the current commercial value of the Crown’s investment in the Authority, and a statement of the manner in which the value was assessed; and
- (d) the accounting policies; and
- (e) the performance targets and other measures by which the performance of the Authority may be judged in relation to the objectives; and
- (f) a statement of the principles adopted in determining the annual dividend of the Authority together with an estimate of the amount that is to be paid to the Corporation;

and

- (g) the intention of the Authority regarding the sale and purchase of assets; and
- (h) the costs to the Authority in recognising Government's social policy in the management and any proposed disposal of assets and what appropriation by Parliament is required; and
- (i) such other matters as are agreed by the Corporation and the Authority.

(3) The Authority shall not proceed to implement its statement of corporate intent until it is approved by the Board of the Corporation under subsection (1) of this section.

68. Annual report - (1) Within 3 months after the end of each financial year the Board shall deliver to the Corporation a report of the operations of the Authority during the financial year including -

- (a) a statement of financial position;
- (b) a statement of financial performance;
- (c) a statement of cashflows;
- (d) a statement of borrowings;
- (e) a statement of commitments;
- (f) a statement of specific fiscal risks;
- (g) a statement of accounting policies;
- (h) the auditor's report of the statements referred to in paragraphs (a), (b), (c), (d) and (e);
- (i) other statements as are required to be consistent with generally accepted accounting practice.

(2) The annual report under subsection (1) of this section, shall state the information necessary to enable an informed assessment of the operations of the Authority having regard to the matters set out in section 67(2) of this Act including a comparison of the performance of the Authority with the statement of corporate intent.

Ports Authority Amendment

(3) The annual report under subsection (1) of this section shall state the dividend payable to the Corporation by the Authority for the financial year to which the report relates having due regard to the necessity to maintain adequate reserves and the principles referred to in section 67(2)(f) of this Act and the amount of the dividend payable to the Corporation shall not be more than that amount estimated in the statement of corporate intent except as otherwise agreed to by the Board and the Corporation.

69 Fiscal updates - The Authority shall deliver to the Corporation fiscal update reports of the kind referred to in the Ministry of Finance and Economic Management Act 1995-96."

Section 70

By omitting the word "Minister" wherever it appears and substituting the words "Board of the Corporation".
