

Port Authority Act 2006

REPUBLIC OF NAURU

PORT AUTHORITY ACT

(No. 4 of 2006)

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AN ACT

To establish the Port Authority of Nauru, to manage and operate the Port of Nauru and to make provisions for matters related thereto.

(Certified: 17th June 2006)

BE IT ENACTED by the Parliament of Nauru as follows:-

PART 1 - PRELIMINARY

SHORT TITLE

1. This Act may be cited as the Port Authority Act 2006.

INTERPRETATION

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

'Authority' means the Port Authority of Nauru established by Section 4;

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

'container' means an article of transport equipment of a permanent character designed for repeated use, constructed to facilitate the multi-modal transportation of goods, capable of being secured and readily handled, having corner fitting for those purposes and being of a standard ISO size;

'dangerous goods' means any goods or substances classified as dangerous goods by the *International Maritime Dangerous Goods (IMDG) Code*, and also includes goods or substances declared to be dangerous pursuant to Part X;

'Harbour Master' means the office established by Section 12;

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

'foreign going vessel' means a vessel employed in trading between Nauru and a place outside of Nauru or between any port or place outside Nauru;

'goods' includes livestock;

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

"ISO" means the International Standards Organisation;

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

"marine navigational aid" means buoys, beacon, mark and signs in aid of marine navigation, including electronic aids to marine navigation not carried on board a vessel;

"Minister" means the Minister responsible for this Act;

"net realisable assets" are the market value of the assets less the current liabilities and outstanding loans;

"overseas vessel" means, in respect of Part 9, a vessel whose last port of departure was outside Nauru or a foreign going vessel.

"owner" when used in relation to -

(a) goods, includes any person being, or holding himself or herself out to be, the owner, importer, exporter, consignor consignee, shipper or agent responsible for the sale, custody, loading, handling, discharge or delivery of such goods or any person entitled to possession; and

(b) when used in relation to a vessel, includes every person acting as agent for the owner responsible for receiving freight or paying other charges in respect of the vessel and any part-owner, charterer, operator, or mortgagee in possession, and any duly authorised agent of any such person;

"pilot" means a licensed pilot employed by the Authority under section 45;

"port" means any place described or declared to be a port pursuant to section 3;

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

"RONPHOS" means the corporation established by the *RONPHOS Act 2005*

"Secretary" means the public service head of the Department responsible for the administration of this Act;

"Secretary for Finance" means the public service head of the Department responsible for the management and control of the financial matters of the Republic;

"stevedoring company" means any organisation whether incorporated or not, and whether an instrumentality of the Republic or not, which in the opinion of the Harbour Master has all the necessary equipment to be capable of providing the full range of stevedoring services to all vessels using the port and other such arrangements as may be approved by the Minister;

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

"vessel" means any kind of ship, boat or other craft used or capable of being used in navigation by water but excluding a canoe or other craft of traditional build;

"warehouse" includes any warehouse, shed or other building belonging to or under the control of the Authority in which goods may be lawfully placed;

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

3. DESIGNATION OF PORT

(1) The port to which this Act applies shall be determined by the Minister.

(2) The Minister may at any time declare any other place to be a port within the

meaning of this Act.

(3) A port determined or declared shall be defined by means of a chart or plan drawn up by the Ministry and published in the Government Gazette.

PART 2 – ESTABLISHMENT OF AUTHORITY

4. ESTABLISHMENT OF AUTHORITY.

(1) The Port Authority is established.

(2) The Authority is required to manage and operate the port and assets of the Authority and has the objectives, powers and functions conferred upon it by this Act.

(3) The Authority is a body corporate, has a common seal, and may, enter into contracts, acquire, hold and dispose of property, and may be sued and sue in its own name and, subject to this Act and the directions of the Minister, do such other things as may be done by a corporation registered under the *Corporation Act 1971*.

5. LIABILITY

(1) The Republic is not responsible for any debts of the Authority.

(2) The Authority is liable only for debts and claims to the extent of its net realisable assets.

PART 3 – OBJECTIVES, FUNCTIONS AND POWERS OF AUTHORITY

6. OBJECTIVES OF AUTHORITY

The objectives of the Authority are to promote, encourage and assist in the development of a safe, secure, efficient, and commercially viable, port of Nauru.

7. FUNCTIONS OF AUTHORITY

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

- (a) the management and maintenance of adequate and efficient port, facilities, services and security in the port;
- (b) the provision of goods and services necessary to give effect to the objectives of the Authority;

- (c) the regulation of navigation and maintenance of navigation aids within the port;
- (d) the marketing and promotion of the use, improvement and development of the port;
- and
- (e) the co-ordination of all operations within the port.

8. POWERS OF THE AUTHORITY

(1) Subject to this Act and to any directions of the Minister, the Authority shall have all the powers, rights and authorities necessary or expedient to enable it to exercise its functions.

(2) Without limiting the generality of subsection (1), the Authority may, with the consent of the Minister, issue Standing Orders or Codes of Practice in respect of the following matters-

- (a) operation or management of the port as a commercial undertaking and for that purpose the levying of such port charges, fees and rates whatsoever arising from the management and operation of the port, and may similarly increase, decrease or abolish any such charge, fee or rate, thirty days after publication in the Government Gazette;
- (b) appointment and employment of such persons as it may consider necessary for the efficient operations of the port;
- (c) entering into any contract, covenant, or agreement of any kind whatsoever for the provision of reception facilities required by any other enactment;
- (d) authorizing any person to carry out any work or perform any act in the performance of its functions and powers;
- (e) carrying on any business or activity whatsoever which appears the Authority to be necessary and profitable for the discharge of its functions;
- (f) acquiring, hiring, procuring, constructing, erecting, manufacturing, providing maintaining or repairing anything whatsoever required by the Authority for the purposes of this Act or to sell or otherwise dispose of the same.
- (g) providing services for a fee within the port, including:
 - (i) berthing, towing, mooring, moving, or docking of any vessel;
 - (ii) embarking or disembarking passengers to or from any vessel, including the provision of landing places;
 - (iii) providing lighterage or to appoint, licence and regulate lighterage;
 - (iv) operate piloting any vessel;
 - (v) installing and maintaining marine navigation aids;
 - (vi) sorting, weighting, measuring, storing, warehousing or otherwise handling any goods; and
 - (vii) supplying fuel, water or telephone services or other goods and services to vessels, or for rendering assistance to any vessels or recovering property lost, sunk or stranded;
- (h) appointing and regulating operators and other labour and equipment;
- (i) appointing and regulating commercial services provided at or within the port;
- (j) acquiring any undertaking affording and discharging or warehouse of goods in the port or of the bunkering of vessels;

- (k) providing such fire and security services, both within the port or elsewhere, as may be deemed by the Authority necessary for the purpose of extinguishing fires and of preserving life and property;
- (l) controlling the erection and use of wharves, docks and other works, whether above or below the high water mark, within the port;
- (m) reclaiming, excavating, enclosing or raising any part of any land vested in the Authority, subject to the provisions of any other written law;
- (n) adding to, altering or reconstruct the port or any part of the port;
- (o) acquire such land execute such work and do such acts and things as may be necessary or expedient in respect of the functions of the Authority under the provisions of this Act or of any other written law;
- (p) sale, transfer, lease, hire or otherwise dispose of any of its property;
- (q) doing anything for the purposes of-
 - (i) improving the skill of the workers of the Authority; or
 - (ii) improving the equipment of the Authority and the manner in which such equipment is operated and maintained;
- (r) entering into and carrying out any arrangement or agreement or contract necessary for the exercise of any power or function conferred upon the Authority by this Act;
- (s) doing all things necessary or convenient to be done or agreement or with or incidental to the performance of its functions under this Act or any other enactment.

(3) Notwithstanding subsections (1) or (2), the Authority must not act as agent for any vessel, or owner or operator to any vessel.

(4) The powers conferred by subsections (1) and (2) are in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other written law.

PART 4 – PROCEDURE OF THE AUTHORITY

9. EXECUTION OF DOCUMENTS

(1) The common seal of the Authority shall not be affixed to documents relating to any contract, covenant or agreement except with the Minister's approval and such affixing shall be attested by the signature of the Minister and the Secretary.

(2) All documents relating to any contract, covenant or agreement to which the Authority is a party, other than those required by law or any regulations made pursuant to this Act to be under seal, or which may be made by the Harbour Master, may be signed on behalf of the Authority by the Secretary.

PART 5 – ASSETS AND LIABILITIES

10. ASSETS OF AUTHORITY

(1) The original assets of the Authority shall consist of-

- (a) all buildings, installation and improvements, located on or adjacent to or in the vicinity of the port, which are, at the date this Act comes into force, the property of RONPHOS for the maintenance and operation of the port or any part thereof; and
- (b) all vessels, vehicles, plant, machinery, equipment, stores, furniture and apparatus afloat or on shore which are, at the date this Act comes into force, owned by RONPHOS and used or intended to be used for or in connection with the maintenance and operation of the port.

(2) The assets referred to in subsection (1) of this section are hereby vested in the Authority.

(3) The land leased for the purposes of the port shall be transferred or assigned to the Authority forthwith upon this Act coming into force.

(4) A list of the assets of RONPHOS acquired by the Authority shall be prepared by or on behalf of RONPHOS and the Authority and shall be signed for each by the responsible Minister.

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

11. TRANSFER OF OTHER PROPERTY TO AUTHORITY

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

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

PART 6 – PROVISIONS RELATING TO HARBOUR MASTER AND STAFF

12. APPOINTMENT OF HARBOUR MASTER

(1) The Minister shall appoint a Harbour Master, who shall perform duties as outlined by the Minister with the advice of the Secretary.

(2) The terms and conditions of employment of the Harbour Master shall be

determined by the Minister and included in a contract of service.

(3) The Harbour Master shall not be removed from office without the consent of the Minister and in accordance with his or her contract of service.

(4) The Harbour Master 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 he or she may act as member of any authority, committee or commission established by the Republic and the Harbour Master must not directly or indirectly seek or receive any form of remuneration other than that from the Authority in accordance with his or her contract of employment.

(5) The Harbour Master shall pursue the objectives, perform the functions and may exercise, subject to the approval of the Minister, the powers vested in the Authority.

(6) The Harbour Master may make such Standing Orders or other Rules not inconsistent with this Act, for the management and good governance of the Authority as he or she thinks fit which must include a prohibition against any employee directly or indirectly seek or receive any form of remuneration other than that from the Authority in accordance with his or her contract of employment.

(7) All workers shall read the Standing Orders each year, signing to acknowledge their understanding and their acceptance of the matter contained therein.

13. POWER OF HARBOUR MASTER.

(1) The Harbour Master shall-

- (a) serve as Head of the Authority, responsible to the Minister through the Secretary for its management and the execution of its objectives and functions; and
- (b) subject to the provisions of this Act and to any advice and directions of the Minister, do all things 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 enactment including:
 - (i) entering into contracts on behalf of the Authority;
 - (ii) in any case of emergency and upon consultation with the Secretary, authorising and directing the execution of any work or the doing of any act which the Authority is empowered to execute and do 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 be paid from the funds of, or available to, the Authority;
 - (iii) report anything done under sub-paragraph (ii) to the Minister.

(2) Whenever the Harbour Master is prevented by illness, absence or other like cause from performing his or her duties or when the office of the Harbour Master is vacant,

the Minister may appoint one person from within the Authority or with the approval of the Chief Secretary, the public service, to perform his or her duties for as long as the Harbour Master is so prevented or the office is vacant.

(3) The Harbour Master upon consultation with the Secretary may from time by writing under his or her hand, either generally or particularly, delegate to any worker of the Authority as he or she thinks fit, all or any of the powers exercisable by him or her under this Act including any powers delegated to him or her by the Minister but not including this power of delegation.

(4) The Harbour Master shall ensure that the Authority complies with all directives from Cabinet through the Minister from time to time on financial accountability of the Authority.

(5) The Harbour Master shall be responsible for-

- (a) the day-to-day operations; and
- (b) the hiring and dismissal of workers after consultation with the Secretary.

(6) The Harbour Master's performance shall be evaluated by the Minister by:

- (a) the extent to which the Authority has achieved an agreed return on its investment;
- (b) customer relationships;
- (c) quality of information provided to the Minister; and
- (d) such other criteria as provided in his or her contract of service.

14. FIRE ON BOARD VESSEL

(1) If fire breaks out on board a vessel in port, the Harbour Master may proceed on the vessel with such assistance and persons as he or she considers proper to prevent danger to other vessels and for the taking of any other measures that he or she considers expedient for the protection of life and property, including requiring the master to take any measures that are deemed necessary (including leaving the port) and giving orders to any person capable of rendering assistance.

(2) if such measures are not forthwith carried out by the master of any vessel to whom such orders are given, the Harbour Master may in person proceed to carry them into effect.

(3) All expenses incurred in the exercise of the powers of the Harbour Master under this section shall be recoverable by the Authority from the master and owner of the vessel concerned.

(4) Any person who, without lawful excuse, refuse or neglects to obey or comply with

any order given under subsection (1) commits an offence.

Penalty: Imprisonment for 1 year or a fine of \$10,000 or both.

15 POWER TO BOARD VESSEL

(1) The Harbour Master may board any vessel within the port whenever he or she suspects that an offence against this Part has been or is about to be committed on any vessel, or whenever he or she considers it is necessary to do so in the discharge of any duty imposed upon him or her.

(2) The master of a vessel who, without lawful excuse, refuses to allow the Harbour Master to board that vessel under the powers vested in subsection (1) commits an offence.

Penalty: imprisonment for 6 months or a fine of \$5,000, or both.

16. NO LIABILITY

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

17. STAFF OF AUTHORITY

(1) The Harbour Master may from time to time appoint and employ on such term and conditions workers upon advice and approval of the Secretary as may be necessary for the effective performance of its objectives and functions.

(2) The Harbour Master may with the approval of the Secretary make Standing Orders or other Rules, not inconsistent with this Act, for the manner of appointment, conduct and discipline, and the terms and conditions of service of the workers for the Authority.

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

PART 7 – FINANCIAL PROVISIONS

18. SECRETARY OF FINANCE TO MANAGE FINANCES OF THE AUTHORITY

(1) The financial management of the Authority shall be conducted and monitored by the Secretary for Finance upon consultation with the Minister or as directed by

Cabinet.

(2) The functions of the Secretary for Finance shall be to establish and maintain financial accounts and records of the Authority in accordance with Generally Accepted Accounting Principles and in accordance with the provision of this and all other applicable Acts.

(3) All of the income and expenditure of the Authority are deemed to be moneys of the Republic and must be received by and paid from the Treasury Fund in accordance with law but must be identified as income and revenue of the Authority to enable its financial performance to be readily calculated and known.

19. PURPOSE FOR WHICH FUNDS OF AUTHORITY MAY BE EXPENDED

The revenue of the Authority shall be paid to and form part of the Treasury Fund.

20. ANNUAL OPERATING PLAN AND BUDGET

(1) Every year the Authority shall, with the advice and assistance of the Secretary and the Secretary of Finance, cause to be prepared an Annual Operating Plan for the Authority (including financial projections) for the following financial year, the first year of which shall from the basis of the following year's operating plan and budget.

(2) Every year the Authority shall, with the advice and assistance of the Secretary and the Secretary for Finance, cause to be prepared and adopted a budget of the estimated income and expenditure of the Authority for the ensuing financial year.

21. ACCOUNTING PROCEDURES AND FINANCIAL STATEMENT

(1) The Secretary for Finance must, keep such proper accounts and records in relation to its business as the Secretary for Finance determines, and within 3 months after the end of each financial year, the Secretary for Finance 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 operation during that year.

(2) For the purposes of this section the value of all assets and liabilities vested in or assumed by the Authority pursuant to section 10 and 11 of this Act shall be fixed as at the time of their vesting or assumption at such amount or amounts as may be determined by the Minister in consultation with the Secretary for Finance.

22. PRESENTATION OF FINANCIAL STATEMENT

As soon as the financial statements of the Authority prepared in accordance with Generally Accepted Accounting Principles have been completed a copy shall be submitted to the Minister.

23. OTHER REPORTS

The Minister may from time to time require the Authority, through the Secretary, to provide such management report as he or she may deem necessary to more fully present the Authority's operational performance.

24. 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 an annual report consisting of -

- (a) a copy of the statement of accounts together with;
- (b) a report containing details of the activities of the Authority during the year, including statistical data and year-to-date operational and financial performance compared to Budget and a schedule of assets showing additions and deletions.

(2) The Minister shall cause copies of the annual report to be laid before the Parliament at the sitting next after its receipt.

PART 8 – PORT FEES AND RATES

25. POWER OF AUTHORITY TO LEVY FEES

(1) The Authority may levy fees for the use of any of its infrastructure, facilities, assets or equipment, or the provision of any service provided by its employees, agents or sub-contractors.

(2) Such fees shall be approved by Minister upon advice by the Secretary for Finance and shall come into effect 30 days after publication in the Government Gazette.

26. FEES

(1) A fee shall be payable by the owners, operators, charterers or agents of a vessel for services provided by the Authority at the port.

(2) A fee shall be payable to the Authority for a permit to operate stevedoring or shore handling activities within the jurisdiction, or under the control, of the Authority.

(3) The Authority may charge fees for the use by others of any building or space for the storage of cargo, containers or equipment.

(4) Such fees shall be prescribed by the Authority and shall come into effect upon

publication.

27. PERSONS LIABLE FOR FEES

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

28. RATES

The Authority may levy rates for services not included in the berthage fees for the use of any land, works and appliances belonging to it, and for services, goods and facilities provided by it.

29. POWERS OF ENTRY ONTO VESSELS

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

30. RECEIPTS

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

31. MARITIME LIENS

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

32. LIENS ON CARGO AND GOODS

- (1) The Authority has a lien on cargo and goods for the amount of all unpaid fees and rates levied under the provisions of this Act.
- (2) The Authority shall be entitled to seize and detain such cargo and goods until the fees and rates are fully paid or secured to satisfaction or the Authority.
- (3) Such lien shall have priority over all other liens and claims.

(4) Any stevedore that releases for delivery any goods, after having received written notice from the Authority of a lien on the goods, commits an offence.

Penalty: \$5,000 or an amount equal to the CIF value of the goods not exceeding \$5,000.

33. POWERS TO SELL AND DISPOSE OF GOODS

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

- (a) in the case of goods for which a through Bill of Lading has been produced, there shall be substituted a period of 90 days; and
- (b) if the goods are of a perishable nature the Authority may direct their removal within such shorter period, not being less than twenty four hours after the discharge thereof, as it may think fit, and if not so removed, the Authority may sell all or any of such goods by public auction or dispose of them as it may think fit; and
- (c) if the goods are perished, decayed or spoilt so as to be unusable, offensive, or a hazard to health, the Authority may summarily destroy or dispose of the goods without notice.

(2) For the purposes of the last preceding subsection, a sale shall not be rendered invalid by reason only that it takes place in any area to which the public is not admitted as of right.

(3) Before effecting of sale under this section, the Authority shall give at least 3 days' notice thereof by advertisement in a local newspaper circulating in Nauru or through radio or television or by open tender among persons likely to have an interest in their purchase unless the goods are of so perishable a nature as in the opinion of the Authority renders their immediate sale necessary.

(4) The proceeds of any sale under this section shall be paid to the Treasury Fund and applied upon advice and approval of the Minister in the following order:

- (a) first, in payment of any duty or tax owing to the Government by the consignee of the goods sold;
- (b) secondly, in payment of the expenses of the sale;
- (c) thirdly, in payment of all charges and costs due to the Authority under the provision of this Act in respect of the goods.
- (d) fourthly, in payment of freight or other claims or liens of which notice has been given under the provisions of any law; and

(e) fifthly, by paying upon demand any surplus to the person entitled to it, or, if no such claim is made within one year of the date of the sale, the Republic shall retain such surplus and all other rights to it are extinguished.

34. SHIPPING CLEARANCE TO BE WITHHELD

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

35. EXEMPTION REDUCTION OF FEES AND RATES

The Harbour Master may-

- (a) exempt any vessel or goods or classes of vessels or goods;
- (b) reduce, refund or waive, in whole or in part, any fees or rates payable under this Act and shall as soon as practicable thereafter submit a written report to the Minister of an exemption, reduction, refunded or waiver and the reason for so doing and at the end of each financial year provide the Minister with a report containing a summary of every such report during the preceding 12 months.

36. EVASION

- (1) If any master, owner or operator of any vessel or any owner, consignee or consignor of goods, by any means whatsoever, evades or attempts to evade any of the fees or rates chargeable under this Act that person commits an offence.

Penalty: Imprisonment for 6 months, a fine of \$50,000 and in addition an amount that is double the amount of fees or rates evaded or attempted to be evaded.

- (2) The tender to or acceptance by the Authority or any of its workers of any fees or rates the payment of which has been previously evaded or left unpaid, shall not release or discharge any person from his or her liability under the provisions of subsection (1) but may be taken into account in mitigation.

37. INTEREST

The Authority may charge interest upon and advice and approval from the Minister at the rate of 10% per annum on any account not paid within 30 days of the invoice being sent and may, if thought fit, allow a discount on fees for payment within a specified time.

38. APPLICATION

This Part does not apply to naval vessels of any country.

PART 9 - PILOTAGE

39. PILOTAGE AUTHORITY

The Authority is the pilotage authority for any pilotage area within the port.

40. PILOTAGE AREAS

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

(2) The pilotage areas for the port are those contained within the limits of the port.

41. PILOTAGE

(1) Subject to sections 44 and 45 of this Act, every vessel while navigating in any pilotage area shall engage the services of a licensed pilot and the owner, agent or master of the vessel shall comply with this requirement.

(2) A vessel while being moved within any area of the port which is part of a Pilotage Area shall be deemed to be a vessel navigating in a Pilotage Area.

(3) An owner or master who fails to comply with any provision of this Part commits an offence.

Penalty: 12 Months imprisonment or a fine of \$10,000 or both.

42. EXEMPTION FROM PILOTAGE

Notwithstanding the provisions of section 44 of this Act, the Authority may, if it appears to the Authority to be necessary, exempt any vessel or class of vessel while navigating in any pilotage area from being subject to this Part but on such terms and conditions as it may think fit to impose.

43. COMPULSORY PILOTAGE

(1) Notwithstanding the provisions of section 44, any vessel under the command of a Master holding a valid Pilotage Exemption Certificate may be exempted from taking a pilot in a compulsory pilotage area.

- (2) Every overseas vessel of over 45 meters in length or over 500 gross tons, shall take on qualified pilot when entering or leaving a compulsory pilotage area.
- (3) Every overseas vessel of over of over 35 meters in length or over 200 gross tons, carrying oil or oil products or hazardous liquid substances in bulk as cargo, shall take on a qualified pilot when entering or leaving a compulsory pilotage Area.
- (4) Every vessel which has a defect in its hull, machinery or equipment which might materially affect its navigation must take on a qualified pilot.
- (5) The Minister may by notice in the Gazette declare any area within a port a Pilot Boarding Station.
- (6) The master of an inbound vessel shall inform the Authority by giving 72 hours notice of his or her Estimated Time of Arrival (ETA) at the pilot boarding station, which shall be confirmed not less than 4 hours prior to arrival, and provide such information concerning the vessel as required by the Authority.
- (7) The master of an outboard vessel shall advise the Authority at least 6 hours before the estimated time of departure of the vessel.

44. VESSEL TO BE PILOTED BY A PILOT

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

45. AUTHORITY TO EMPLOY PILOTS

- (1) Subject to the provisions of this Act, and any other enactment the Authority upon consultation with the Secretary may employ such number of pilots as it considers necessary or expedient for the purpose of providing an adequate and efficient pilotage service.
- (2) No person shall be employed as a pilot in a pilotage area unless that person is in possession of a valid pilot license issued by the Secretary.
- (3) No person shall be issued with a pilot license unless that person has demonstrated competence and proficiency as a pilot in the port for which the license is to be issued.

46. LICENSED PILOT NOT PERSONALLY LIABLE

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

- (a) damage done by him or her;
- (b) loss suffered as a result of any act done by him or her; or
- (c) failure to do anything required to be done by him or her;

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

47. PRESENCE OF LICENSED PILOT NOT TO DIMINISH RESPONSIBILITY OF MASTER

- (1) Subject to the authority of the master of a vessel, the duty of a licensed pilot is to safety pilot the vessel.
- (2) The master of a vessel is not relieved of his or her responsibility for the conduct and navigation of the vessel by reason of the vessel being in the charge of a licensed pilot.

48. OWNER AND MASTER LIABLE FOR DAMAGE

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

49. CIVIL LIABILITY FOR LOSS OR DAMAGE

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

PART 10 – DANGEROUS GOODS

50. DANGEROUS GOODS

- (1) The Authority shall ensure the safe movement, loading, discharging, handling and storage of dangerous goods within a port and may stipulate the conditions under which dangerous goods may be handled.
- (2) In particular without limiting the generality of the foregoing, the Authority may by Standing Order or Code of Practice:

- (a) declare any goods to be dangerous;
- (b) direct the navigation and place of berthing of any vessel;
- (c) require dangerous goods to be stowed in containers and on board vessels in accordance with the *International Maritime Dangerous Goods (IMDG) Code*;
- (d) issue orders for the operation and control of lightening, landing, loading, discharging, conveying, storing and handling of dangerous goods;
- (e) prohibit, or permit unconditionally, or subject to conditions and restrictions the movement storage, or stowage of any kind of dangerous goods with any other goods;
- (f) direct the times at which dangerous goods may be moved, stored or stowed;
- (g) take such steps as it deems necessary to protect persons and property from danger.

PART 11 - OFFENCES

51. PENALTY FOR OBSTRUCTING AUTHORITY

Any person who hinders, obstructs or molests any worker, agent or contractor of the Authority in the performance and execution of his or her duty or of anything which he or she is empowered or required to do by virtue or in the furtherance of the objectives, functions and powers of the Authority, commits an offence.

Penalty: 6 months imprisonment or a fine of \$5,000 or both.

52. REPORTING FALSE INFORMATION

Any person who makes, either knowingly or recklessly, any statement that 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.

Penalty: 6 months imprisonment or a fine of \$5,000 or both.

53. FALSE INFORMATION AS TO VESSEL CHARACTERISTICS

Any master, owner or agent of a vessel entering or leaving a port or coming alongside or departing from a wharf in a port who gives false information of the tonnage, draught, length or beam of such vessel to any worker of the Authority authorised to ascertain the same commits an offence.

Penalty: 2 years imprisonment or a fine of \$20,000 or both.

54. WILFUL DAMAGE TO PORT WORKS AND PROPERTY

Any person who wilfully removes, breaks, destroys or in any other way damages or injures any port works or any property belonging to the Authority or who hinders or wilfully prevents such port works or property from being used or operated in the manner in which it is intended to be used or operated commits an offence.

Penalty:

- (a) 2 years imprisonment or a fine of \$20,000 or both and
- (b) in addition by way of compensation to the Authority payment of such sum as the Court may determine.

55. OFFENCES IN CONNECTION WITH SAFETY OF VESSEL

Any person who in any port-

- (a) wilfully 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 or such anchorage or wharf; or
 - (b) without the permission of the Authority or any lawful excuse discharges any firearm except for the purpose of making a signal of distress or for other lawful purpose; 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 kinds on board any vessel; or carries out any welding or cutting using gas or electrical appliances without the permission of the Authority; 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; or
 - (f) disables a vessel while berthed or uses welding equipment for repairs at a berth, unless granted permission in writing by the Authority under such terms that may be set by the Authority;
- commits an offence.

Penalty: 2 years imprisonment or a fine of \$20,000, or both.

56. POLLUTION WITHIN PORT

(1) Every person commits an offence against this Act who throws, discharges, deposits, causes, suffers, or allows to be thrown, discharged, or deposited any harmful substance into any waters of a port.

(2) It shall be a defence to any prosecution under subsection (1) of the section if the defendant proves that the action complained of was necessitated by reason of an emergency imperiling life, or was caused by an unavoidable accident, collision or stranding.

(3) Every person who contravenes any provision of this section commits an offence

Penalty:

- (a) 2 years imprisonment or a fine of \$20,000 or both; and
- (b) in addition such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any harmful substance to which the offence relates.

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

57. HARBOUR MASTER OR OTHER EMPLOYEES RECEIVING OTHER PAYMENTS

(1) The Harbour master or any employee who accepts a payment or anything having pecuniary value from any person directly or indirectly connected with his or her employment with the Authority commits an offence.

Penalty: a fine of \$5,000.

(2) Any person referred to in subsection (1) who solicits for himself or herself or for any other person a payment or pecuniary benefit from a person who has contracted for services to the Authority.

Penalty: a fine of \$2,000.

(3) A person who intends or is in the course of or who has received services from the Authority in accordance with this Act who offers or pays to an employee of the Authority any money or pecuniary benefit commits an offence.

Penalty: a fine of \$10,000.

PART 12 – MISCELLANEOUS PROVISIONS

58. MASTER, OWNER LIABLE FOR DAMAGE

(1) In every case in which any damage is sustained to any property of the Authority by any vessel or by any person employed thereon, the cost of making good the damage may be recovered by the Authority from the master, the person in charge of the vessel, the owner or the agent.

(2) The Authority may detain any such vessel until the cost of making good the damage has been paid or security in an amount and in the form agreed by the Authority has been paid into the Supreme Court.

59. POWER TO DETAIN

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

60. EVIDENCE OF IDENTITY

Any employee of the Authority who reasonably believes that any person has committed an offence against the provisions of this Act may require that person to furnish evidence of identity. Any such person who refuses to furnish such evidence or who wilfully misstates such information commits an offence.

Penalty: 3 months imprisonment or a fine of \$1,000 or both.

61. CONFIDENTIAL DOCUMENTS

- (1) Documents that are marked "Given in Commercial Confidence" or "Commercially Confidential" shall not be accessible to the general public and must not be published to any person not entitled to sight them.
- (2) Notwithstanding subsection (1), the Minister may order the release of documents referred to in subsection (1) if in his or her opinion they are not commercially sensitive and it is in the public interest to do so.

62. APPARATUS NOT SUBJECT TO DISTRESS

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

63. REGULATIONS

Cabinet may make Regulations for giving effect to and carrying out the purposes of this Act.

64. STANDING ORDERS AND CODES OF PRACTICE

- (1) So long as they are not inconsistent with any rules or Code of Practice issued by the Authority, the Minister may make Standing Orders and Codes of Practice for the management, control and maintenance of, and for the preservation of the good condition of the port and generally for giving effect to and carrying out the purposes of this Act and in particular, and without prejudice to the generality of the foregoing, may make Standing Orders and Codes of Practice in respect of the following matters:-

- (a) regulating vessel and vehicular traffic;
- (b) prescribing all such things as may be necessary with respect to harbour lights, buoys, beacons and signals and preventing and providing for the removal of obstructions or impediments to navigation;
- (c) designating, declaring, defining and regulating the operation of wharves and ferry terminals on and from which goods shall be discharged from or loaded on or into vessels and the manner in which and the conditions under which such discharging and loading shall be carried out, and for varying the position of vessels discharging or loading;
- (d) regulating the erection or construction of wharves and ferry terminals in a port or encroaching in any way on the waters thereof;
- (e) providing minimum standards for machinery and appliances (other than machinery and appliances carried on a vessel) used in loading or unloading of goods;
- (f) keeping free passages of such width as it considers necessary within a port and along or near to the wharves, passenger jetties, moorings and other similar works in or adjoining the same and for marking out the spaces so to be kept free;
- (g) regulating the anchoring, fastening, mooring and unmooring, and warping of all vessels and the use of wraps, mooring buoys, chains and other moorings and the granting of permission, on such conditions as the Authority may think fit for the keeping or placing of anchors or private moorings or buoys;
- (h) regulating the use of anchorages, wharves and ferry terminals and the movement of vessels, persons and vehicles and preventing obstruction at anchorages and on wharves and ferry terminals and ensuring the safety of the same and any cargo thereon;
- (i) regulating the use by vessels of whistles, sirens and other like instruments and the signals to be used and measures to be taken in case of fires in a port;
- (j) enforcing and regulating the use of navigation lights signals and signal lights by vessels and the steps to be taken by vessels navigating in the waters of a port for the avoidance of accidents;
- (k) requiring the master of every vessel to report his or her arrival, to produce the Certificate of Registry on demand, and to deliver a copy of every bill of lading or manifest of the cargo or other account of goods intended to be discharged, and to deliver a list of the number and description of each container intended to be delivered to the port;
- (l) specifying the information to be supplied by the masters, owners and other persons in respect of vessel arriving and departing, and of goods loaded or discharged in a port, and the time and manner in which such information to be discharged;
- (m) supervising, regulating and controlling stevedoring and other activities carried on within a port and if it thinks fit, providing for the licensing thereof;
- (o) prohibiting the loading or discharging of dangerous goods from a vessel or the movement within a port area, except in accordance with the International Maritime Dangerous Goods Codes or any Standing Orders, Codes of Practice incorporated in any special Port Rules prescribed by the Authority;
- (p) regulating the reception, storage and removal of goods within and from the premises of the Authority, and for declaring the procedure to be followed for taking charge of goods which have been damaged before discharge or are alleged to have been so damaged;

- (q) 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 fees have not been paid;
- (r) regulating towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (s) regulating the keeping clean of basins and other works of the Authority and the waters of any port and preventing oil, rubbish or other things being discharged or thrown or entering therein or thereon;
- (t) providing reception facilities as required by the International Convention for the Prevention of Pollution at Sea (MARPOL 73/78), arranging for the provision of these facilities by the private sector wherever possible, and ensuring that these services are provided in a timely manner;
- (u) prescribing the terms and conditions for the sale and supply of fresh water by the Authority;
- (v) providing for the cleaning, fumigating, and disinfecting of building, wharves, vessels and cargo;
- (w) regulating the safe and convenient use of the wharves ferry terminals, landing places and buildings maintained by the Authority;
- (x) regulating the use in Port of motor launches, yachts, pleasure craft, surf boards jet-skies and water skis;
- (y) regulating the time when fees on goods shipped or received are to be payable;
- (z) settling the mode of payment of fees or rates chargeable under this Act, facilitating their collection and preventing their evasion;
- (aa) ensuring that perimeter fencing is erected where required to ensure that trespassers are excluded and that adequate security is provided to ensure that all goods within the port area are properly safeguarded and not liable to theft and/or damages;
- (bb) prohibiting and operation which in the opinion of the Authority is undesirable.

(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 Standing Orders, Rules or Codes of Practice made pursuant to the last proceeding subsection.

65. ACT TO BIND THE REPUBLIC

This Act binds the Republic.

I hereby certify that the above is a fair print of a Bill for an Act entitled **Port Authority Act 2006**, has been passed by Parliament of Nauru and is now Presented to the Speaker for his Certificate under Article 47 of the Constitution.

.....
Clerk of Parliament
17th June 2006

Pursuant to Article 47 of the Constitution, **I, VALDON K. DOWIYOGO**, Speaker of Parliament, **hereby certify** that the **Port Authority Act 2006** has been passed by Parliament of Nauru.

.....

Speaker

17th June 2006
