



REPUBLIC OF NAURU

PORT AUTHORITY ACT 2015

No. 9 of 2015

An Act to repeal the *Port Authority Act 2006* and for its replacement with a new law applying to all aspects of the structure, composition, functions and administration of the Port Authority of Nauru, to manage and operate the Port of Nauru and for related purposes

Certified: 12 May 2015

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the *Port Authority Act 2015*.

2 Commencement

This Act commences on the date on which it receives certification by the Speaker.

3 Act Repealed

The *Port Authority Act 2006* is hereby repealed.

4 Interpretation

In this Act, unless the context otherwise requires:

'Authority' means the Port Authority of Nauru established by section 6;

'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 under Part 10 of this Act;

'Harbour Master' means the office established by section 16;

'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 licenced pilot employed by the Authority under section 48;

'port' means any place described or declared to be a port under section 5;

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

'Republic' means the Government of the Republic of Nauru;

'RONPHOS' means the corporation established by the *RONPHOS Act 2005*;

'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 depositing 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.

5 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 by notice in the Gazette.

PART 2 - ESTABLISHMENT OF AUTHORITY

6 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*.

7 Board of Directors

- (1) There shall be established for the purpose of this Act, a Board of Directors of the Authority which shall, subject to the provisions of this Act, be responsible for the policy and general administration of the affairs of the Authority.

(2) The provisions of the Schedule shall have effect as to the constitution of the Board and other matters in relation to the affairs of the Board.

(3) Cabinet may, by notice in the Gazette, amend the Schedule to this Act.

8 Cabinet may give directions to the Board

The Cabinet may, after consultation with the Chairman, give to the Board such directions of a general character as to the policy to be followed by the Board in the performance of its functions as appear to the Cabinet to be necessary and the Board must give effect to such directions.

9 Liability of the Republic

(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

10 Objectives of the 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.

11 Functions of the 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 provisions 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.

12 Powers of the Authority

(1) Subject to any other provisions of this Act and to any directions of the Minister, the Authority shall have all the powers, rights and authority

necessary or expedient to enable it to exercise its functions including but not limited to:

- (a) operation or management of the port as a commercial undertaking and for that purpose the levying of port charges, fees and rates whatsoever arising from the management and operation of the port, and may similarly increase, decrease or abolish any charge, fee or rate 30 days after publication in the Gazette;
- (b) entering into any contract, covenant or agreement of any kind whatsoever for the provisions of reception facilities required by any other enactment;
- (c) authorising any person to carry out any work or perform any act in the performance of its functions and powers;
- (d) carrying on any business or activity which appears to the authority to be necessary and profitable for the discharge of its functions;
- (e) acquiring, hiring, procuring, constructing, erecting, manufacturing, providing, maintaining or repairing anything required by the Authority for the purposes of this Act or to sell or otherwise dispose of the same;
- (f) providing services for a fee within the port:
 - (i) berthing, towing, mooring, 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, warehouse 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;
- (g) appointing and regulating operators and other labour and equipment;
- (h) appointing and regulating commercial services provided at or within the port;
- (i) acquiring any undertaking affording and discharging or warehouse of goods in the port or of the bunkering of vessels;

- (j) 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;
 - (k) controlling the erection and use of wharves, docks and other works, whether above or below the high water mark, within the port;
 - (l) reclaiming, excavating, enclosing or raising any part of any land vested in the Authority, subject to the provisions of any other written law;
 - (m) adding to, altering or reconstructing the port or any part of the port;
 - (n) 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;
 - (o) sale, transfer, lease, hire or otherwise dispose of any of its property;
 - (p) doing anything for the purposes of:
 - (i) improving the skill of the workers of the Authority;
 - (ii) improving the equipment of the Authority and the manner in which such equipment is operated and maintained;
 - (q) 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;
 - (r) 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.
- (2) The Authority must not act as agent for any vessel, or owner or operator to any vessel.
- (3) The powers conferred under this section are in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other writing law.
- (4) The Authority may, if deems is necessary, publish by Notice in the Gazette any decision made under subsection (1).

PART 4 – PROCEDURES OF THE AUTHORITY

13 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 Chairman of the Board.

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

PART 5 – ASSETS AND LIABILITIES

14 Assets of Authority

- (1) The original assets of the Authority shall consist of:
- (a) all buildings, installations and improvements, located on or adjacent to or in the vicinity of the port, which were until 17 June 2006 (commencement date of repealed Act) 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 were until 17 June 2006 (commencement date of repealed Act) the property of 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 shall continue to be vested in the Authority.
- (3) The land leased for the purposes of the port and transferred or assigned to the Authority on 17 June 2006 (commencement date of repealed Act) shall remain the property of the Authority.
- (4) 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.

PART 6 – PROVISIONS RELATING TO CHIEF EXECUTIVE OFFICER, HARBOUR MASTER AND STAFF OF THE AUTHORITY

15 Appointment of Chief Executive Officer

- (1) The Board shall, after consultation with the Minister, appoint a Chief Executive Officer on such terms and conditions as the Board may determine.
- (2) The appointment in subsection (1) shall be notified in the Gazette.
- (3) The Chief Executive Officer shall:
- (a) oversee and administer the operational and administrative roles of the Authority;

- (b) be responsible to the Authority for the proper administration and management of the functions and affairs of the Authority in accordance with any policy laid down by the Authority;
 - (c) in case of emergency, direct the execution of any work or the doing of any act which the Authority is empowered to execute and do and which he or she is not by the provisions of this Act expressly empowered to execute or do and the immediate execution or doing of which, in his or her opinion, is necessary for the operation of port services or the safety of persons on vessels, and he may direct that the expense of executing that work or doing that act shall be paid from the funds of the Authority;
 - (d) be responsible to the Authority for the administration and enforcement of, and collection of fees, charges and prescribed penalties under the Act; and
 - (e) perform such other functions or duties as the Authority, from time to time may determine.
- (4) Whenever the Chief Executive Officer is prevented from performing his duties due to illness, absence or other like cause, or when the office of the Chief Executive Officer is vacant, the Minister may appoint a person to perform the Chief Executive Officer's duties during the period of absence or vacancy.
- (5) Despite anything written in any other law, the Chief Executive Officer may delegate to any other officer or employee of the Authority any of his powers under this Act, except the power of delegation under this subsection.

16 Appointment of Harbour Master

- (1) The Chief Executive Officer shall, after consultation with the Board, appoint a Harbour Master and a Deputy Harbour Master as it considers necessary to carry out the purposes of this Act.
- (2) The terms and conditions of employment of the Harbour Master and Deputy Harbour Master, including the removal of, shall be determined by the Chief Executive Officer, in consultation with the Board and shall be included in a contract of service.
- (3) The powers and duties of the Harbour Master shall be exercised subject to the general direction and supervision of the Chief Executive Officer in consultation with the Minister, through the Board.
- (4) Whenever the Harbour Master is prevented from performing his duties due to illness, absence or other like cause, or when the office of the Harbour Master is vacant and if there is no person appointed in the position of Deputy Harbour Master, the Minister may appoint one person from within the Authority or with the approval of the Chief Secretary, the

public service, to perform the Harbour Master's duties during the period of absence or vacancy.

- (5) The Harbour Master upon consultation with the Chief Executive Officer may in writing, 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.
- (6) The Harbour Master's performance shall be evaluated by the Board 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 Board through the Chief Executive Officer; and
 - (d) such other criteria as provided in his or her contract of service.
- (7) 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 Chief Executive Officer, in consultation with the Board, 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.
- (8) 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.

17 Other Staff of the Authority

- (1) Subject to the provisions of this Act, the Board may appoint such employees as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit.
- (2) The Board may make regulations generally relating to the conditions of service of employees.

18 Employees Receiving Payments

- (1) Any employee of the Authority 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 and is liable upon conviction to 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 commits an offence and is liable upon conviction to a penalty of \$5,000.

- (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 and is liable upon conviction to a fine of \$10,000.

19 Liability of employees of the Authority

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 function, power and duties of the Authority except in cases of gross negligence and misconduct.

20 Fire on Board Vessel

- (1) If a 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 immediately carried out by the master of any vessel to whom 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, refuses or neglects to obey or comply with any order given under subsection (1) commits an offence and is liable upon conviction to imprisonment for 1 year or to a fine of \$10,000 or both.

21 Power to board vessel

- (1) The Harbour Master may board any vessel within the port whenever he or she suspects that an offence has been committed or is about to be committed on any vessel, or whenever he or she considers it 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 and is liable upon conviction to imprisonment for 6 months or a fine of \$5,000 or both and shall also forfeit the vessel.

22 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.

PART 7 – FINANCIAL PROVISIONS

23 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 in accordance with law must be identified as income and revenue of the Authority to enable its financial performance to be readily calculated and known.

24 Revenue of the Authority

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

25 Annual operating plan and budget

- (1) Every year the Authority shall, with the advice and assistance of the Chief Executive Officer 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 form the basis of the following year's operating plan and budget.
- (2) Every year the Authority shall, with the advice and assistance of the Chief Executive Officer 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.

26 Accounting Procedures and Financial Statement

- (1) The Secretary for Finance must, keep 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 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 purpose of this section, the value of all assets and liabilities vested in or assumed by the Authority under section 14 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.

27 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.

28 Other reports

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

29 Statement of accounts and annual report

- (1) No later than 90 days after the end of each financial year, 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 that 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 next sitting after its receipt.

PART 8 – PORT FEES AND RATES

30 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 of any service provided by its employees, agents or sub-contractors and shall include the following:
- (a) owners, operators, charterers or agents of a vessel for services provided by the Authority at the port;
 - (b) stevedoring or shore handling contractors seeking a permit to operate stevedoring or shore handling activities within the jurisdiction, or under the control of the Authority;
 - (c) any person entitled to possession of goods either as owner or agent for the owner seeking the use of any building or space belonging to the Authority for the storage of cargo, containers or equipment.

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

31 Rates

- (1) 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.
- (2) Such rates must be published by Notice in the Gazette.

32 Power 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, after Customs and Immigration clearance has been given to the vessel.

33 Receipts

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

34 Maritime liens

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

35 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 the satisfaction of the Authority.
- (3) Such lien shall have priority over all other liens and claims.
- (4) Any stevedore that releases for delivery any goods, after having received written notice from the Authority of a lien on the goods, commits an offence and is liable to a penalty of \$5,000 or an amount equal to the CIF value of the goods not exceeding \$5,000.

36 Powers to sell and dispose of goods

- (1) Subject to this Part, if any goods that have been placed in or on the premises of the Authority are not removed from there within a period of 60 days from the time they were so placed, the Authority may, at the expiration of that period, sell by public auction or otherwise dispose of all or any 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 a substituted period of 90 days; and
 - (b) if the goods are of a perishable nature the Authority may direct their removal within a shorter period, not being less than 24 hours after the discharge, as it may think fit, and if not so removed, the Authority may sell all or any of the 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 purpose of subsection (1), 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 any sale under this section, the Authority shall give at least 3 days' notice by advertisement in the local media or by open tender among persons likely to have an interest in their purchase unless the goods are of so perishable a nature that in the opinion of the Authority, their immediate sale is 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 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.

37 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 specified is due in respect of fees or rates levied under this Act in respect of that vessel, that public officer shall not grant clearance until the amount due has been paid or has been secured to the satisfaction of the Authority.

38 Exemption and reduction of fees and rates

(1) The Board may:

- (a) exempt any vessel or goods or classes of vessels or goods; or
- (b) reduce, refund or waive, in whole or in part, any fees or rates payable under this Act.

(2) The Board shall as soon as practicable after taking any action under subsection (1), submit to the Minister a written report detailing any exemption, reduction, refund or waiver and include the reason for doing so.

(3) The Board must also at the end of each financial year provide to the Minister a report containing a summary of every such report during the preceding 12 months.

39 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, he or she commits an offence and is liable upon conviction to 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.

40 Interest

The Authority may charge interest upon 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 it deems it fit, allow a discount on fees for payment within a specified time.

41 Application

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

PART 9 – PILOTAGE

42 Pilotage Authority

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

43 Pilotage Areas

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

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

44 Pilotage

(1) Subject to sections 47 and 48 of this Act, every vessel while navigating in any pilotage area shall engage the services of a licenced 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 the pilotage area shall be deemed to be a vessel navigating in a pilotage area.

(3) An owner or master who fails to comply with any provision of this Part commits an offence and is liable upon conviction to 12 months imprisonment or a fine of \$10,000 or both.

45 Exemption from pilotage

Notwithstanding the provisions of section 47 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.

46 Compulsory pilotage

(1) Notwithstanding the provisions of section 47, 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) The following vessels must take on a qualified pilot when entering or leaving a compulsory pilotage area:

(a) every overseas vessel of over 45 metres in length or over 500 gross tonnes; and

(b) every overseas vessel of over 35 metres in length or over 200 gross tonnes, carrying oil or oil products or other hazardous liquid substances in bulk as cargo; and

(c) every vessel which has a defect in its hull, machinery or equipment which might materially affect its navigation.

(3) The Minister may by notice in the Gazette declare any area within a port a Pilot Boarding Station.

(4) The master of an inbound vessel shall inform the Authority by giving 72 hours notice of the Estimated Time of Arrival (ETA) of the vessel 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.

(5) The master of an outboard vessel shall advise the Authority at least 6 hours before the estimated time of departure of the vessel.

47 Vessel to be piloted by a pilot

(1) No vessel shall be piloted in a compulsory pilotage area by any person other than a licenced pilot.

(2) Notwithstanding subsection (1), the Authority may, if it considers expedient, authorise any person to pilot vessels in a compulsory pilotage area subject to such terms and conditions as it thinks fit.

48 Authority to employ pilots

(1) Subject to the provisions of this Act, and any other enactment, the Authority upon consultation with the Chief Executive Officer 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 compulsory pilotage area unless that person is in possession of a valid pilot licence issued by the Chief Executive Officer, in consultation with the Board.

(3) No person shall be issued with a pilot licence unless that person has demonstrated competence and proficiency as a pilot in the port for which the licence is to be issued.

49 Licenced pilot not personally liable

A licenced 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 licenced pilot unless that act or omission arose from his or her gross negligence, wilful neglect or misconduct.

50 Presence of licenced pilot not to diminish responsibility of master

- (1) Subject to the authority of the master of a vessel, the duty of a licenced pilot is to safely 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 licenced pilot.

51 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 licenced pilot was, or was required to be, on board the vessel at the time that the loss or damage was caused.

52 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 licenced pilot under this Part while acting as a pilot of a vessel.

PART 10 – DANGEROUS GOODS

53 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 Order:
 - (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, stowed or stored;
- (g) take steps as it deems necessary to protect persons and property from danger.

PART 11 – OFFENCES

54 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 and is liable upon conviction to 6 months imprisonment or a fine of \$5,000 or both.

55 Reporting False Information

Any person who makes, either knowingly or recklessly, any statement that is false in any way, particularly in any return, claim or other document, which is required or authorised to be made by or under the provisions of this Act, commits an offence and is liable upon conviction to 6 months imprisonment or a fine of \$5,000 or both.

56 False Information as to Vessel Characteristics

Any master, owner or agent of a vessel entering or leaving a port or coming alongside or departing from a wharf in a port who gives false information of the tonnage, draught, length or beam of such vessel to any employee of the Authority authorised to ascertain the same commits an offence and is liable upon conviction to 2 years imprisonment or a fine of \$20,000 or both.

57 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 is it intended to be used or operated commits an offence and is liable upon conviction to 2 years imprisonment or a fine of \$20,000 or both and in addition by way of compensation to the Authority, payment of such sum as the Court may determine.

58 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 of 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 kind on board any vessel; or
- (e) carries out any welding or cutting using gas or electrical appliances without the permission of the Authority; or
- (f) uses a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids of any kind on board any vessel; or
- (g) 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 and is liable upon conviction to 2 years imprisonment or a fine of \$5,000 or both.

59 Pollution within Port

- (1) Every person who throws, discharges, deposits, causes, suffers or allows to be thrown, discharged, or deposited any harmful substance into any waters of a port commits an offence against this Act.
- (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 imperilling life, or was caused by an unavoidable accident, collision or stranding.
- (3) Every person who contravenes any provision of this section commits an offence and is liable to a penalty of:
 - (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.
- (4) 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 users of the sea.

PART 12 – MISCELLANEOUS PROVISIONS

60 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, 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.

61 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 immediately be handed over to the Police.

62 Evidence of Identity

- (1) 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.
- (2) Any such person who is required by an employee under subsection (1) to furnish evidence of identity and refuses to do so or who wilfully misstates such information commits an offence and is liable upon conviction to 3 months imprisonment or a fine of \$1,000 or both.

63 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.

64 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.

65 Regulations

- (1) Cabinet may make Regulations for giving effect to and carrying out the purpose of this Act and 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 making 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 place of anchors or private moorings or buoys;
 - (h) regulating the use of anchorages, wharves and ferry terminals and the movement of vessels, person 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 to be delivered to the port;

- (l) specifying the information to be supplied by the masters, owners and other persons in respect of vessels arriving and departing, and of goods loaded or discharged in a port, and the time and manner in which such information is 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 licencing of;
- (n) prohibiting the loading or discharging of dangerous goods from a vessel or the movement within a port area, except in accordance with the *International Maritime Dangerous Goods Code* or any other Orders or Rules prescribed by the Authority;
- (o) regulating the reception, storage and removal of goods within and from the premises of the Authority, and for declaring the procedure to be followed for taking charge of goods which have been damaged before discharge or are alleged to have been so damaged;
- (p) regulating the examination and checking of any vehicle, case, bag, 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;
- (q) regulating towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (r) regulating the keeping clean of basins and other works of the Authority and the waters of any port and preventing oil, rubbish, or other things being discharged or thrown or entering in or on;
- (s) providing reception facilities as required by the *International Convention for the Prevention of Pollution at Sea (MARPOL 73/78)*, and arranging for the provision of these facilities by the private sector wherever possible, and ensuring that these services are provided in a timely manner;
- (t) prescribing the terms and conditions for the sale and supply of fresh water by the Authority;
- (u) providing for the cleaning, fumigating, and disinfecting of building, wharves, vessels and cargo;
- (v) regulating the safe and convenient use of the wharves, ferry, terminals, landing places and buildings maintained by the Authority;
- (w) regulating the use in the port of motor launches, yachts, pleasure craft, surf boards, jet skis and water skis;

- (x) regulating the time when fees on goods shipped or received are payable;
 - (y) settling the mode of payment of fees or rates chargeable under this Act, facilitating their collection and preventing their evasion;
 - (z) ensuring that perimeter fencing is erected where required to ensure that trespassers are excluded and that adequate security is provided to ensure that all goods within the port area are properly safeguarded and not liable to theft and/or damages;
 - (aa) prohibiting any 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 Order, Regulations or Rules made pursuant to the last preceding subsection.

66 Act to Bind the Republic

This Act binds the Republic.

67 Transitional Provisions

- (1) All by-laws, regulations, codes, orders, notices, declarations, appointments, licences and permits issued under the provisions of the repealed Act shall be deemed to have been made or issued under the corresponding provisions of this Act and shall remain in force and have effect until such time as they are revoked, renewed, extended or amended under this Act.
- (2) Any by-laws, regulations, codes, orders and notices made under the provisions of the repealed Act in respect of which there are no corresponding provisions in this Act, shall remain in force and have effect as though they had been made under the authority of this Act until such time as they have been revoked or amended under the provisions of this Act or any other Act.
- (3) Any appointment or delegation made under the repealed Act before the commencement of this Act continues until the appointment or delegation is revoked under this Act.
- (4) Any proceedings instituted or action begun under the repealed Act before the commencement of this Act and which has not been determined before the commencement of this Act continues until determined under the repealed Act.
- (5) Any contract, covenant or agreement entered into by the Authority under the repealed Act before the commencement of this Act shall remain in force until such time as they are rescinded or they expire.

- (6) Any assets or property transferred to the Authority under the provisions of the repealed Act, including all liabilities and obligations, shall be deemed to have been transferred under the provisions of this Act until they are disposed of by the Authority.

SCHEDULE – THE BOARD OF DIRECTORS OF THE AUTHORITY

1 Members of the Board

- (1) The Board shall consist of not more than 5 members as follows:
 - (a) 3 directors appointed by Cabinet for their knowledge of commerce, industry, finance or administration generally;
 - (b) the head of the department for the time being responsible for financial matters or a representative nominated by him with the approval of the Minister, as an *ex officio* member; and
 - (c) a director appointed by Cabinet with experience in shipping and port operations.
- (2) The Chief Executive Officer as appointed under section 15 shall be an *ex officio* member of the Board but shall not have any voting rights.

2 Appointment of Chairman and Deputy Chairman

- (1) The Minister shall appoint one of the members of the Board to be Chairman and another to be Deputy Chairman.
- (2) In the event that both the Chairman and the Deputy Chairman are absent or unable to act, the Minister shall appoint another member to perform the functions of the Chairman until such period that the Chairman is able to resume his or her functions.
- (3) The Chairman or in his absence, the Deputy Chairman, shall preside at meetings of the Board.
- (4) The Chairman shall have such powers as the Board shall determine but the powers must not conflict with that of the Chief Executive Officer under this Act.

3 Method and period of appointment

- (1) The appointment of every member (other than *ex officio* members) shall be evidenced by instrument in writing, and such instrument shall state the period of office of the member, which shall not exceed 3 years.
- (2) Every member of the Board shall be eligible for re-appointment.
- (3) The Cabinet may at any time revoke the appointment of any member of the Board.

4 Resignation

- (1) Any member of the Board, may at any time resign from his office by instrument in writing, to the Minister and such resignation shall take effect from the date of receipt by the Minister of such instrument.

5 Names of Board Members to be gazetted

The names of all members of the Board as first constituted and every change in the membership after shall be published in the Gazette.

6 Disqualification

(1) Any member of the Board who:

- (a) has within the last preceding 2 years of being appointed has been or is declared a bankrupt under the law of any country; or
- (b) has been within the last 2 preceding years of being appointed been or is sentenced in any country to imprisonment for 3 months or more for a criminal offence; or
- (c) fails to attend 3 consecutive meetings of the Board;

shall be ineligible to be appointed to the Board, or immediately upon such declaration, sentencing or failure cease to be a member of the Board, whichever the case may be.

- (2) The Minister shall publish a notice in the Gazette of the removal of a person pursuant to subparagraph (1).
- (3) A person removed from the Board pursuant to subparagraph (1) shall not be eligible for re-appointment for a period of 2 years immediately after.
- (4) If a declaration of bankruptcy or sentence is set aside by a court then subsection (1) shall not apply.

7 Meetings of the Board

- (1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business, so however, that it shall not be less than 4 meetings in any calendar year.
- (2) The Chairman or Deputy Chairman may at any time call a meeting of the Board and the Chairman shall call a special meeting to be held within 7 days of a written request for that purpose addressed to him or her by 2 or more members of the Board.
- (3) The Chairman or Deputy Chairman shall preside at all meetings of the Board and in the case of absence of both from any meeting, subject to subparagraph 2(2) of this Schedule, the members present and form a quorum and elect one of their members to preside at the meeting.
- (4) The decision of the Board shall be by a majority of votes.
- (5) Such officers of or consultants to the Authority as the Chairman decides, shall attend meetings.

(6) There shall be a person appointed from the Board who shall keep in proper form minutes of each meeting of the Board.

(7) The Board shall determine its quorum for any particular meeting.

(8) The validity of any proceedings of the Board shall not be affected by any vacancy amongst members or by a defect in the appointment of a member.

8 Confidentiality

A member of the Board may not disclose any information about the business of the Authority except as permitted by law.

9 Remuneration of Board members

(1) Members of the Board who are not employees of the Public Service shall be entitled to receive such compensation for the services as the Board may determine.

(2) Members of the Board shall be entitled to receive travel expense at such rates and upon such terms and conditions as may be determined by the Board when travelling on business of the Authority.

(3) Such rates in subparagraph (2) shall not exceed the government rates.

10 No legal proceedings in respect of *bona fide* actions

No action, suit or prosecution or other proceedings shall be brought against any member of the Board in respect of any bona fide act done in pursuance or execution or intended execution of the proceedings of this Act.

11 Board members not Public Servants

The office of the Chairman and that of members of the Board shall not be a public office for the purposes of the Constitution of Nauru or of the *Public Service Act 1998*.