



Tonga

METEOROLOGY ACT 2017

Act 1 of 2017



METEOROLOGY ACT 2017

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METEOROLOGY ACT 2017

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AN ACT TO ESTABLISH THE TONGA METEOROLOGICAL SERVICE AND TO PROVIDE FOR OTHER MATTERS CONNECTED AND INCIDENTAL THERETO

I assent,
TUPOU VI,
30th March 2017.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Meteorology Act 2017.

2 Interpretation

In this Act, unless the contrary intention appears –

“**agreement**” means any agreement entered into by the Department that is necessary for any purpose of this Act;

“**authority**” means any ministry, department or agency of the government of the Kingdom, including the same of any foreign jurisdiction, and includes an individual person or persons, in the service of that authority;

“**authorised officer**” means any person who is not an officer of the Department, appointed under section 13(3);

“**CEO**” means the Government Chief Executive Officer responsible for meteorology;

“**climate**” means the measurement of the mean and variability of relevant quantities of certain variables of the atmosphere over a period of time, ranging from months to thousands or millions of years;

“**Conventions**” means any international or regional Convention or treaty, and includes –

- (a) the Convention of the World Meteorological Organization to which the Kingdom is a party; and
- (b) international standards and practices accepted and adopted by the World Meteorological Organization under and in addition to its Convention, as applicable to and accepted by the Kingdom as a party;

“**Department**” means the Tonga Meteorological Service established under section 4(1);

“**Director**” means the Director of the Tonga Meteorological Service;

“**emergency**” has the same meaning as adopted and defined in the Emergency Management Act 2007;

“**early warning system**” means a set of capacities needed for generating and disseminating timely and meaningful warning information, to enable individuals, communities and organisations threatened by a meteorological or an ocean related event, to prepare and to act appropriately and in sufficient time to reduce the risk of harm to human life, damage to property and the environment;

“**meteorology**” means the branch of science concerned with the processes of the atmosphere and its phenomena including weather and climate;

“**meteorological**” for the purpose of this Act, means of or pertaining to weather or climate phenomena;

“**meteorological forecast**” means a statement of expected meteorological conditions related to a specific time and location;

“**meteorological information**” means any meteorological observation, analysis, forecast or warning, including any other statement, relating to existing or expected meteorological conditions;

“**meteorological observation**” means a statement of meteorological conditions related to a specific time and location;

“**meteorological property**” means –

- (a) in the case of real property, any installed or erected facility, equipment, instrument and infrastructure on land or in the sea in the Kingdom, for the

performance of the functions of the Department under this Act or any Regulations made under this Act, or any other Act;

- (b) in the case of personal property, any property subject to copyright protection under this Act; and
- (c) any other acquired property, both real and personal, for and in the use of the Department for the performance of its functions under this Act or any other Act;

“**meteorological-related event**” means the following -

- (a) drought;
- (b) extreme temperature;
- (c) flash flooding;
- (d) fog;
- (e) hail;
- (f) heavy rain;
- (g) strong, gale, storm or hurricane force winds not associated with a tropical system;
- (h) thunderstorm (including lightening);
- (i) tornado;
- (j) tropical system (includes a tropical disturbance, tropical depression or tropical cyclone);
- (k) El Nino; and
- (l) La Nina;

“**meteorological services**” means the development and supply of any meteorological information by the Department, by or through any means prescribed under this Act, including those services derived from its functions under this Act;

“**meteorological warning**” means a statement on observed and expected conditions related to a meteorological-related event which requires a response to minimise the risk of harm to life, damage to property or the environment;

“**Minister**” means the Minister responsible for meteorology;

“**Ministry**” means the Ministry responsible for meteorology;

“**Nuku’alofa Maritime Radio**” means the Nuku’alofa Radio with the call sign A3A, providing coastal radio services and operating under the Department;

“**ocean forecast**” means a statement of expected ocean conditions relating to ocean temperature, sea level, tides and waves for a specific time and location;

“**ocean information**” means any ocean observation, analysis, forecast or warning relating to ocean temperature, sea level, tides and waves, including any other statement relating to the same;

“**ocean observation**” means a statement of ocean conditions relating to ocean temperature, sea level, tides and waves for a specific time and location;

“**ocean-related event**” means the following -

- (a) damaging swells;
- (b) extreme ocean temperature;
- (c) extreme tide;
- (d) sea flooding;
- (e) sea level rise;
- (f) storm surge; and
- (g) tsunami;

“**ocean services**” means the development and supply of any ocean information by the Department, by or through any means prescribed under this Act, including those services derived from its functions under this Act;

“**ocean warning**” means a statement on observed and expected conditions related to an ocean-related event which requires a response to minimise the risk of harm to life, damage to property and the environment;

“**precautionary principle**” means –

- (a) the taking of precautionary measures, including the making of any decision deemed appropriate and necessary in the circumstances, by any person having the power to act under this Act or any Regulations made under this Act, to anticipate, prevent or minimise the risks and impacts of any meteorological or ocean related event, that threatens to endanger or likely to endanger life, property and the environment; and
- (b) that limited scientific information on the status of a meteorological or ocean related event, shall not be a reason for postponing such measures or any such decision;

“**staff**” means the staff of the Department;

“**weather**” means the state of certain variables of the atmosphere at a particular place and time; and

“**WMO**” means the World Meteorological Organization established under the Convention of the World Meteorological Organization.

3 Act binds the Crown

This Act binds the Crown.

PART II – THE DEPARTMENT

4 Establishment of the Department

- (1) For the purpose of this Act, there shall be a Department of the Ministry called the Tonga Meteorological Service, and shall be the designated national authority for the provision of official meteorological and ocean information and services, under this Act or any Regulations made under this Act.
- (2) The Department shall be managed by the Director appointed under this Act.
- (3) Any warnings produced under subsection (1) for the Kingdom, shall be free of charge.
- (4) Any other meteorological information produced or service supplied by the Department under subsection (1), may be subject to a fee, charge or levy, under this Act or any Regulations made under this Act.

5 Appointment of Director and Staff

- (1) There shall be a Director for the Department appointed in accordance with the Public Service Act 2002.
- (2) The staff of the Department shall be appointed in accordance with the Public Service Act 2002.

6 Continuance of Staff

All employees serving in the Department at the commencement of this Act shall be deemed to have been appointed as employees of the Department in accordance with this Act.

PART III – FUNCTIONS AND POWERS

7 Functions of the Department

- (1) The Department shall have the following functions -
 - (a) the taking, recording, quality control, dissemination and storage of meteorological and ocean observations and other observations required for the purpose of meteorological and ocean services;
 - (b) to provide meteorological and ocean forecasts;
 - (c) to provide meteorological and ocean related warnings to minimise the risk of harm to human life, damage to property and the environment;
 - (d) supply meteorological and ocean information and services in accordance with this Act;

- (e) make publication of meteorological and ocean information;
- (f) promote the use of meteorological and ocean information and services;
- (g) promote the advancement of meteorological and ocean science, by means of research and investigation, or otherwise;
- (h) collecting, archiving and making available meteorological and ocean information in accordance with this Act or any Regulations made under this Act;
- (i) to develop, improve and strengthen communication systems with relevant authorities, including the mass media and communication service providers, for the provision of meteorological and ocean services under this Act or any other Act;
- (j) to provide general advice on meteorological and ocean related matters in accordance with this Act;
- (k) keeping a continuous watch of meteorological and ocean conditions and respond in a timely manner to a meteorological or ocean related event;
- (l) to implement policies, conventions, agreements, programmes, projects and initiatives in connection with the functions of the Department under this Act or any other Act;
- (m) to develop, provide and facilitate trainings and instructions for persons whose duties and responsibilities concern matters relevant to meteorological and ocean services or events;
- (n) promote the understanding, recognition and use of verified traditional practices and knowledge, related to meteorological and ocean related events and services, through the observation of indicators occurring in nature, and by other means;
- (o) liaise and coordinate with relevant authorities, including any person or persons of any organisation, to provide meteorological and ocean information for the purpose of disaster risk reduction and response to climate change, and any other related matters under this Act or any other Act;
- (p) provide public awareness on meteorological and ocean information and services;
- (q) exchange of meteorological data with Meteorological Services of other jurisdictions, free and unrestricted, in accordance with the Convention of the World Meteorological Organization for the purpose of meteorology;
- (r) operating the Nuku'alofa Maritime Radio, for the purpose of-
 - (i) communicating with ships operating within the boundaries of the Kingdom for safe navigation at sea;
 - (ii) broadcasting and receiving of meteorological and ocean information to and from ships operating within the boundaries of the Kingdom;

- (iii) keeping a continuous watch on relevant international distress frequencies for the purpose of safety of life at sea;
 - (iv) assisting relevant authorities in search and rescue operations at sea under this Act or any other Act; and
 - (v) provide public information as necessary, on the movement of ships within the boundaries of the Kingdom, to any person including any authority;
 - (s) make arrangements with any authority for the advancement of meteorological and ocean information and services for the Kingdom; and
 - (t) such other functions as are conferred on the Department by any other Act.
- (2) The Department shall perform its functions under this Act in the public interest generally and in particular –
- (a) for the purposes of navigation and shipping and of civil aviation; and
 - (b) for the purposes of assisting persons and authorities engaged in primary production, industry, trade and commerce, subject to the provisions of this Act or any Regulations made under this Act.

8 Functions of the Minister

The Minister shall have the following functions -

- (a) to be responsible for the general administration of this Act and in accordance with the provisions of this Act; and
- (b) to perform any other functions as conferred upon the Minister by this Act, or any other Act relating to the Department.

9 Powers of the Minister

- (1) The Minister shall have the following powers under this Act -
- (a) to direct the CEO as necessary on any matter which the Minister may from time to time consider necessary for the performance of his functions under this Act or any other Act; and
 - (b) to delegate to the CEO, as necessary, any ministerial power or function conferred upon him by this Act.
- (2) A delegation made under subsection (1) shall be in writing.
- (3) A power delegated to the CEO under subsection (1) shall not be further delegated by the CEO.

10 Functions of the Chief Executive Officer

The CEO shall have the following functions –

- (a) to make appropriate allocation of financial or other resources, to enable the Department to perform its functions and provide its services under this Act or any Regulations made under this Act, or any other Act;
- (b) to ensure that the Department performs its functions under this Act and in accordance with the provisions of this Act; and
- (c) to perform any other functions as conferred upon the CEO by any other Act relating to the functions of the Department, subject to the provisions of this Act.

11 Powers of the Chief Executive Officer

The CEO shall exercise the following powers in accordance with the provisions of this Act -

- (a) to allocate and mobilise financial and other resources that are necessary for the Department, to respond to meteorological and ocean related events;
- (b) to provide support, upon a request from the Director, for the safety of immediate family members of staff on duty before or during the occurrence of a meteorological or ocean related event; and
- (c) subject to the approval of the Minister, may delegate to the Director as necessary, any functions or powers of the CEO under this Act.

12 Functions of the Director

- (1) The Director shall have the following functions -
 - (a) to establish meteorological offices and any observing stations as necessary for the purpose of meteorological and ocean services;
 - (b) to supervise and control the collection and preservation of meteorological and ocean information and records;
 - (c) to arrange with any person or persons, including an organisation, institution or authority, to collect, take, record, quality control and disseminate, including the safe storage of meteorological or ocean information;
 - (d) to arrange for training of any person or persons of the Department or any organisation, including an institution, authority or body, to carry out any meteorological or ocean services under this Act;
 - (e) to formulate policies, plans and procedures for the implementation of this Act;
 - (f) to develop cost recovery measures and arrangements as necessary or appropriate for the maintenance of equipment;
 - (g) to establish quality management systems as appropriate for the provision of quality based meteorological and ocean services, under this Act or any other Act;

- (h) to provide an annual work plan and budget proposal for the Department;
- (i) to provide an annual report for the Department;
- (j) to report to and advise the CEO on matters of the Department;
- (k) to effectively and efficiently administer the operations of the Department and the performance of its functions; and
- (l) to perform such other functions as conferred by any other Act relating to the functions and services of the Department.

13 Powers of the Director

- (1) Notwithstanding the powers conferred by other parts of this Act, the Director shall in consultation with any authority, make recommendations in accordance with established criteria or otherwise, to the Minister responsible for emergency management –
 - (a) that an evacuation of the public in any part of the Kingdom, is necessary, having regard to a meteorological or ocean related event that threatens to endanger or likely to endanger life, property and the environment; or
 - (b) that a declaration of a state of emergency is necessary, to prevent –
 - (i) loss of human life;
 - (ii) illness or injury to humans;
 - (iii) property loss or damage; or
 - (iv) damage to the environment,by a meteorological or ocean related event.
- (2) Without prejudice to the powers under subsection (1), the Director shall issue any warning without delay, including any advice for actions to be taken, in response to any meteorological or ocean related event, that threatens to endanger or likely to endanger life, property and the environment.
- (3) The Director may also -
 - (a) appoint an authorised officer under this section in consultation with the CEO, to act for and on behalf of the Department, to perform any function under this Act; and
 - (b) engage consultants in consultation with the CEO, for the purpose of assisting the Department to perform its functions.

14 Delegation of power by the Director and the exercise of delegated power

- (1) The Director may delegate any powers under section 13(1) and (2) to any staff on duty.

- (2) A delegation made under subsection (1) may be made in writing or by any other means, as the Director deems appropriate.
- (3) A power delegated by the Director under subsection (1) shall not be further delegated by the person to whom the delegation was made.
- (4) Any person who exercises any power or does any act in pursuance of any function under this Act, shall at all times exercise such power or perform such function, with due care.

PART V – STAFF

15 Suitably qualified and competent staff

All staff shall be suitably qualified and competent to carry out the functions of the Department under this Act, or any Regulations made under this Act.

16 Arrangements for continuity of service

- (1) Subject to established procedures of the Public Service Commission, the Director shall require any number of staff to work on shift, including extended working hours, for the purpose of –
 - (a) providing a continuous watch pursuant to section 7 of this Act; or
 - (b) in preparation for and during the occurrence of a meteorological or ocean related event.
- (2) The continuity of shift work under subsection (1) shall be a priority for the Ministry, and to provide the necessary resources to enable shift work under this Act.
- (3) Subject to the approval of the CEO, the Director shall supply the essential needs that are necessary for the maintenance of staff on duty –
 - (a) during an extended period of time in which the staff shall be required to carry out their functions in preparation for, and in the event of a meteorological or ocean related event, threatening to endanger or likely to endanger life, property and the environment in the Kingdom; and
 - (b) during an extended period of time requiring the assistance of the Nuku’alofa Maritime Radio, for any response related to safety of life at sea under this Act or any other Act.

17 Staff Development

- (1) The Ministry shall promote and strengthen the capability and effectiveness of meteorological staff through continuous staff development.

- (2) Staff development shall be for the purpose of enhancing the service and subject to the needs of the Department, attend specialised courses and trainings, workshops and meetings, organised by and through special arrangements with other regional meteorological offices and including development partner organisations, or any other authority.

18 Immunity

- (1) No staff or an employee of the Department, including any other person authorised to exercise any power or does any act in pursuance of any function or the exercise of any power under this Act or any Regulations made under this Act, shall be personally liable, except in the case of gross negligence or misconduct.
- (2) Without limiting subsection (1), the Ministry or the Department shall not be subject to any civil or criminal liability for meteorological information or services produced and supplied by the Department, arising from the lawful exercise of its functions under this Act or any Regulations made under this Act.
- (3) Immunity from any liability under this section shall extend and apply to the application of the precautionary principle under this Act or any Regulations made under this Act.

PART VI – PROTECTION AND OWNERSHIP OF METEOROLOGICAL PROPERTY

19 Copyright over meteorological and ocean information and publication

Subject to any intellectual or copyright laws of the Kingdom, the Department shall have copyright over all meteorological and ocean related data collected, generated and archived, including all works developed or published by the Department or by any person authorised to do such works for and on behalf of the Department.

20 Ownership of meteorological property

The Government of the Kingdom of Tonga shall have ownership of all meteorological property of the Department.

PART VII – COMMUNICATION ARRANGEMENTS FOR DISSEMINATION OF METEOROLOGICAL AND OCEAN INFORMATION AND WARNINGS

21 National interest

The Director shall in consultation with the Minister and CEO, make arrangements in the national interest, which the Director deems necessary, subject to any provision of existing communications laws of the Kingdom –

- (a) to enable the Department to perform its functions and provide its services; and
- (b) for maintaining the early warning system in the Kingdom, under this Act or any other Act.

22 National emergency

- (1) Notwithstanding any arrangement made under section 21, the Director shall with the approval of the Minister and CEO, make necessary arrangements with any service provider licensed under existing communications laws of the Kingdom, to provide any service free of charge, for the purpose of disseminating warnings during the occurrence of a meteorological or ocean related event.
- (2) Any such arrangement made under subsection (1) shall include the supply of qualified or competent persons by the service provider, to fulfil the requirements of any such arrangement.
- (3) Nothing in this Part shall affect any existing arrangement between the Department or the Ministry and any service provider, in respect of any other matter of interest to either or both parties, under any other Act.

PART VIII – REGIONAL AND INTERNATIONAL OBLIGATIONS

23 Appointment of Permanent Representative with the WMO

- (1) There shall be a permanent representative of the Kingdom to the WMO, who shall act on technical matters relating to the WMO in accordance with WMO Regulations.
- (2) Unless Cabinet decides otherwise, the Director shall be the permanent representative of the Kingdom to the WMO in accordance with WMO Regulations.

- (3) The Director may, in consultation with the CEO, appoint a Hydrological Adviser who shall advise the permanent representative with respect to WMO activities in operational hydrology and water resources, in accordance with WMO Regulations.

24 Fulfilling Regional and International Obligations

- (1) The Minister shall in consultation with the CEO and Director, comply with regional and international obligations, to which the Kingdom is a party, as appropriate.
- (2) The Minister shall make decisions in consultation with the CEO and Director, on technical matters, in respect of any matter under subsection (1).

PART IX - REGULATIONS

25 Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations to give effect to the provisions of this Act.
- (2) The Minister may, with the consent of Cabinet, impose penalties for offences under any Regulations made under subsection (1), but such penalties shall not exceed a fine of \$10,000 or imprisonment for a term not exceeding three years, or both.

26 Fees, charges and levies

- (1) Notwithstanding the powers conferred by section 25, but subject to the provisions of this Act, the Minister may make Regulations prescribing, or providing for the fixing of fees, charges and levies payable for all or any of the following purposes –
 - (a) to provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act;
 - (b) making payments for costs and expenses incurred by the Ministry or the Director or any of their employees, in the exercise of their powers and the performance of functions and duties, and in providing services, under this Act.
- (2) Any such Regulations may –
 - (a) specify any person or persons, organisation, institution or any authority, by whom and to whom any fees, charges or levies are payable;
 - (b) require returns to be made by any person or persons, organisation, institution or any authority, by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns;

- (c) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases; and
 - (d) prescribe forms to be used for any purpose under this Part.
- (3) The power to prescribe, or provide for fixing of fees, charges and levies in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees, charges or levies, or all of them, in respect of any matter.

PART X - MISCELLANEOUS PROVISIONS

DIVISION 1 - PROVISION OF OTHER SERVICES AND OTHER MATTERS

27 Precautionary principle

Any person, including any authority exercising any power or performing any function under this Act, shall at all times consider the precautionary principle in the exercise of such power or the performance of any such function, to reduce the risk of harm to human life, damage to property and the environment, as the paramount consideration.

28 Provision of aviation meteorological services

Subject to any requirements under existing civil aviation laws of the Kingdom, the Department may provide aviation meteorological services, subject to the provisions of this Act, or any Regulations made under this Act.

DIVISION 2 - OFFENCES AND PENALTIES

29 Offences and Penalties

- (1) Any person, including an organisation or a body corporate, who –
- (a) hinders or obstructs any staff or any person authorised under this Act in the performance and execution of their duty;
 - (b) acts or attempts to act in such a way contrary to this Act or the Regulations made under this Act; or
 - (c) unlawfully moves, removes, interferes or tampers, or damages any meteorological property,
- commits an offence under this Act.
- (2) Any person including an organisation or a body corporate, convicted of an offence under subsection (1) shall be liable–
- (a) in respect of subsection(1)(a) and (1)(b), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding five years, or both; or

- (b) in respect of subsection (1)(c), to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 7 years, or both.

Passed by the Legislative Assembly this 13th day of February 2017.