



Tonga

TONGA WATER BOARD ACT 2000

Act 32 of 2000



TONGA WATER BOARD ACT 2000

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TONGA WATER BOARD ACT 2000

Act 32 of 2000

AN ACT TO RECONSTITUTE AND EMPOWER THE TONGA WATER BOARD AND FOR RELATED PURPOSES

I assent,
TAUFA 'AHAU TUPOU IV,
8th August, 2001

[3rd October 2000]

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

PART I – PRELIMINARY

1 Short Title.

- (1) This Act may be cited as the Tonga Water Board Act 2000.
- (2) This Act shall come into force on a date to be appointed by His Majesty in Council.

2 Interpretation.

- (1) In this Act, unless the context otherwise requires —

- “**area**” means an area declared under section 23;
- “**authorised person**” means an employee or any other person duly authorised by the Board and in possession of a warrant of appointment;
- “**Board**” means the Tonga Water Board continued in existence by section 3;
- “**Board of Directors**” means the Board of Directors constituted under section 7;
- “**Chairman**” means Chairman of the Board of Directors;
- “**construct**” includes alter, improve, maintain and repair;
- “**consumer**” means any person contracting with the Board for the supply of water.
- “**Deputy Chairman**” means the Deputy Chairman of the Board of Directors;
- “**Director**” means persons appointed under section 7 and the General Manager;
- “**financial year**” means any 12 month period ending on 30 June;
- “**General Manager**” means the General Manager of the Board;
- “**land**” includes any tax or town allotments, any premises, buildings or structure, whether of a temporary or permanent nature and any vehicle or vessel;
- “**main**” means a main pipe forming part of a water supply system owned, operated or constructed by the Board and includes any valves, meters, hydrants, access shafts, chambers and other fittings as may be necessary for the proper functioning of that system;
- “**occupier**” means any person in occupation of land or any part of land;
- “**owner**” in relation to land means —
- (a) where the land is not the subject of a lease registered under the Land Act (Cap 132), the landholder, as defined in that Act; or
 - (b) where the premises are the subject of such a lease, the lessee;
- “**pollute**” means directly or indirectly to alter the physical, thermal, chemical, biological or radioactive properties of any water so as to render that water less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, fish or aquatic life, or other organisms or to plants and “**pollution**” has a corresponding meaning;

“**private water pipe**”, in relation to land, means any pipe on such land provided by the owner or occupier for the receipt of a supply of water under this Act, but does not include a water connection or main;

“**public authority**” includes Cabinet, any government department and any statutory authority;

“**waste**” includes sewage and any other matter or thing whether wholly or partly in solid, liquid or gaseous state, which if added to any water may cause pollution;

“**water connection**” means, in relation to land, a connection provided by the Board, or at its direction, for the conveyance of a water supply between a main and any private water pipe constructed on that land, at or near the boundary of such land;

“**works**” means any works whatever which are related to or may affect the investigation, use, control, management or administration of water and includes any works, excavations or boreholes whatsoever —

- (a) whereby water may be used, extracted, collected, diverted, stored, conducted, regulated, controlled, supplied, discharged, treated or measured; or
 - (b) whereby any such works may be constructed or protected.
- (2) This Act shall bind the Crown.

PART II – TONGA WATER BOARD

3 Board to Continue in Existence.

The Tonga Water Board established by the Tonga Water Board Act (Cap 92) continues in existence subject to the provisions of this Act, and the Board of Directors shall be deemed to hold offices as if appointed on the day this Act comes into force.

4 Tonga Water Board.

- (1) The Board —
- (a) continues to be a body corporate;
 - (b) has an official seal;
 - (c) may acquire, hold and dispose of property;
 - (d) may, sue and be sued in its corporate name; and

- (e) may do and suffer all such acts and things as bodies corporate may by law do or suffer.
- (2) The Regulations in the Schedule to this Act apply to the Board, the Board of Directors, Directors and proceedings of the Board of Directors, and may be amended by Regulations made under section 65.

5 Functions of the Board.

- (1) The functions of the Board are:
- (a) to provide water supply services for domestic, stock, horticultural, industrial, commercial, recreational, environmental and other beneficial uses, in any area in which it may be appointed to do so under this Act, or by regulations made under this Act;
 - (b) to provide its services efficiently and economically;
 - (c) to exercise its powers in accordance with —
 - (i) the economic, social and environmental policies of the Government; and
 - (ii) sound commercial practice, including the need to ensure that its revenues are sufficient to provide for all depreciation, and amortisation and interests costs; for all operation and maintenance costs; and for a reasonable return on investment.
- (2) His Majesty in Council may, from time to time, confer or impose upon the Board or Board of Directors additional functions or duties that are not inconsistent with the functions set out in sub-section (1) and the purposes of this Act.
- (3) A function or duty conferred or imposed under sub-section (2) has the same effect as if it were enacted in this section.

6 Powers.

- (1) The Board has power to do all things necessary or convenient to be done for, or in connection with, the achievement of its objectives and the performance of its functions.
- (2) Sub-section (1) can only be limited by a contrary provision in this Act.
- (3) The Board has the power, but not limited to do the following —
- (a) appoint agents and attorneys, and act as agent for other persons;
 - (b) engage consultants;
 - (c) provide consultancy and project management services;

- (d) participate in the formation of a corporation, trust, partnership or other body;
- (e) subscribe for or otherwise acquire, and hold and dispose of, shares in or debentures or other securities of a corporation;
- (f) subscribe for or otherwise acquire, and hold and dispose of, an interest in a partnership or other body;
- (g) enter into partnership or into any arrangement for sharing a profit, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or body carrying on or engaged in, or about to carry on or engage in, any business or transaction (whether within or outside the Kingdom) which is capable of being conducted so as to directly or indirectly benefit the Board;
- (h) organise and conduct training programmes for its employees and the public in connection with the provision of water supplies;
- (i) provide specialist assistance relating to water supply to any public authority on such terms as may be agreed between the Board and the public authority; and
- (j) carry on, within or outside the Kingdom, any business or activity that is capable of being conveniently carried on by the use of resources that are not immediately required in carrying out the Board's other functions under this Act.

PART III – THE BOARD OF DIRECTORS

7 Appointment of Board of Directors.

- (1) There shall be a Board of Directors of the Board.
- (2)
 - (a) The Board of Directors shall consist of not less than 7 nor more than 9 members to be appointed by His Majesty in Council. Such Members shall hold office for 3 years and shall be eligible for reappointment.
 - (b) A person who is —
 - (i) insolvent;
 - (ii) insane; or
 - (iii) convicted of any criminal offence or any offence under this Act, is not eligible to be, or to continue to be a member of the Board of Directors.

8 Appointment of Chairman and Deputy Chairman.

- (1) The Cabinet shall appoint a member of the Board of Directors to be Chairman of the Board of Directors for such period as the Cabinet determines.
- (2) The Chairman of the Board of Directors holds office as Chairman until the expiration of the period of his appointment or until he ceases to be a member of the Board of Directors, whichever first happens.
- (3) At the first meeting of each year, the members of the Board of Directors shall elect one of their members to be Deputy Chairman until the first meeting in the following year.

9 Remuneration of Directors.

The Board may, out of its funds, pay to Directors such reasonable remuneration for their services as may be prescribed by resolution of the Board of Directors and to be confirmed by Cabinet.

10 Role of Board of Directors.

- (1) It is the role of the Board of Directors to —
 - (a) decide the policies and strategies to be followed by the Board in carrying out the functions specified under section 5; and
 - (b) ensure that the Board and the General Manager perform their respective functions and exercise their respective powers in a proper, efficient and economical manner, in accordance with the policies and strategies established by the Board of Directors.

11 Staff.

- (1) The Board of Directors may appoint a General manager and such employees as are necessary for the performance of its functions.
- (2) The terms and conditions of appointment including superannuation contributions, pension or retiring allowances of the General Manager and of other employees shall be determined by the Board of Directors.
- (3) The General Manager is the chief executive officer of the Board and, subject to this Act and directions of the Board of Directors, is responsible for planning, organising, managing and controlling the activities of the Board.
- (4) Notwithstanding section 7(2)(a), the General Manager shall be a member of and the Secretary for the Board of Directors.

PART IV – OPERATING PLAN

12 Operating Plan.

- (1) The Board of Directors shall cause to be prepared a three yearly operating Plan with financial projections forming the basis of each year's Annual Operating Plan and Annual Estimates.
- (2) The General Manager shall during the month of April in every year prepare an Annual Operating Plan and Estimates of Revenue and Expenditure for the next financial year for approval by the Board of Directors in June.
- (3) The approval Annual Estimates shall be the authority for the General Manager to expend the moneys of the Board for the purposes specified therein up to an amount not exceeding the sums specified and approved for each particular object.
- (4) The General Manager or any other officer of the Board shall not expend any funds belonging to the Board in excess of the amounts approved in the Estimates without first obtaining the approval of the Board of Directors.

PART V – ACCOUNTS AND AUDIT

13 Accounts and Records.

- (1) The Board of Directors shall ensure that proper accounts and records are kept of the transactions and affairs of the Board for each area in which it supplies water under this Act and any other records that are necessary sufficiently to explain the financial operations and financial position of the Board.
- (2) The Board of Directors shall do all things necessary to do each of the following:
 - (a) ensure that all money payable to the Board is properly collected and paid into one or more bank accounts in the name of the Board;
 - (b) ensure that all money expended by the Board is properly expended only for purposes authorised by or under this Act and that such expenditure is properly authorised;
 - (c) ensure that adequate control is maintained over assets owned by, or in the custody of, the Board;

- (d) ensure that all liabilities incurred by the Board are properly authorised;
- (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate financial and internal control system extending beyond those matters which relate directly to the functions of the Accounting System.

14 Annual Report.

- (1) The Board shall, in respect of each financial year, prepare an annual report containing —
 - (a) a report of its operations during the financial year; and
 - (b) audited financial statements for the financial year —and submit the report and the audited financial statements to the Prime Minister not later than 31 December after the end of the financial year.
- (2) The report of operations referred to in paragraph (1)(a) shall —
 - (a) report separately on the activities of the Board in each area in which it supplies water;
 - (b) be prepared in a form and contain information determined by the Board of Directors to be appropriate.
- (3) The financial statements referred to in paragraph (1)(a) shall —
 - (a) include an assessment of —
 - (i) the cost of carrying out the Board's community service obligations (including the cost of providing and of supplying water to, stand pipes and hydrants for fire fighting);
 - (ii) the cost of carrying out any other obligation that is imposed on the Board by or under this or any other Act and that requires it to act otherwise than in accordance with normal commercial practice;
 - (b) present fairly the results of the financial transactions of the Board during the financial year to which they relate and the financial position of the Board as at the end of that year;
 - (c) be signed by the Chairman and the General Manager who shall —
 - (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Board during the financial year to which they relate and

- whether they sufficiently explain the financial position of the Board as at the end of the financial year;
- (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any details included in the statements misleading or inaccurate and, if so, details of the circumstances; and
 - (d) be audited as required by section 15.
- (4) The Prime Minister shall cause the annual report submitted under this section to be laid before the Legislative Assembly.

15 Audit.

- (1) The financial statements referred to in section 14(1)(b) shall be audited by a duly qualified external auditor appointed by the Board.
- (2) The auditor's report shall state whether, in his opinion, the statements required by paragraph 14(3)(c) are correct and set out any matters falling within the scope of the normal duties of an auditor.
- (3) The Board shall pay the costs of any auditor engaged under sub-section (1).

PART VI – GENERAL POWERS

16 Declaration and acquisition of water supply areas.

- (1) The Board may, by notice published in the Gazette, declare any area where there is no established water supply to be an area within which the Board may supply water under this Act.
- (2) Any area within which the Board supplied water immediately before this Act came into force is deemed to be an area declared under sub-section (1).
- (3) The Board may, by notice published in the Gazette, amend the boundaries of, or abolish any area and may otherwise amend or revoke any declaration made under sub-section (1).
- (4) The Board may acquire or take over any existing water supply undertaking upon such terms as may be agreed between the Board and the water supply undertaking.
- (5) Where the Board acquires or takes over an existing water supply undertaking, the area of that undertaking is deemed to be an area declared under sub-section (1).

17 Borrowing Powers.

- (1) The Board may, with the prior approval of His Majesty in Council, borrow such sums and on such terms as may be required by it for —
 - (a) meeting any capital expenditure; and
 - (b) discharging any of its functions under this Act, from such sources within or outside the Kingdom.
- (2) The Board may, with the prior approval of His Majesty in Council —
 - (a) charge its assets, undertakings and revenues with the repayment of any money borrowed together with interest thereon, and may issue debentures, bonds or other securities in order to secure repayment of any money borrowed; and
 - (b) borrow up to such an amount as may be designated by His Majesty in Council from time to time, without reference to His Majesty in Council.
- (3) If His Majesty in Council so approves, the Government shall guarantee the performance of any obligation undertaken by the Board under this section.

18 Protection from Liabilities.

- (1) Except as expressly provided in this Act, the Board is not liable —
 - (a) for failing to make available or to continue to make available any service authorised by this Act; or
 - (b) for any action taken in connection with the beneficial treatment of water for human consumption, including disinfection or fluoridation.
- (2) Nothing in sub-section (1) protects the Board from any liability it may otherwise have for supplying water which does not comply with any water quality standards prescribed under this or any other Act for such a supply of water.
- (3) A Director and an employee of the Board is not personally liable for any act or omission occurring in good faith in the exercise, or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

19 Liability to Taxation

The Board is liable to taxation.

20 Dividends.

At the end of each financial year the Board shall declare a dividend to be paid out of net profit to the Government.

21 By-laws.

The Board may, with the approval of His Majesty in Council, make by-laws regulating —

- (a) the procedure to be followed at meetings of the Board of Directors;
- (b) the activities of the Board;
- (c) the exercise of any power delegated by the Board of Directors or the Board;
- (d) the procedure to be followed in relation to, and the contents of, any agreements for the provision of services by the Board under this Act (subject to section 55);
- (e) the procedure to be followed in the making of other contracts by or on behalf of the Board;
- (f) the duties, remuneration and conditions of service of employees of the Board; and
- (g) the establishment and control of any superannuation, pension or provident fund scheme or insurance scheme for the benefit of employees.

PART VII – WATER SUPPLY

DIVISION 1 – CONSTRUCTION OF WATER SUPPLY WORKS

22 Right to Take Water.

The Board may take and use for the purposes of this Act such water to which it obtains lawful access.

23 Power to Construct and Operate Works.

- (1) The Board may acquire, construct or operate, or arrange for the construction or operation or operation of works to supply water and shall ensure that such works are maintained in good condition.
- (2) Works authorised by this section may be situated within or without an area for which the Board is authorised to supply water.

- (3) The Board may lease, acquire or obtain by agreement in accordance with the Land Act (Cap. 132), such interests in land, as it deems necessary or expedient to discharge its functions under this Act.

24 Power to Relocate Works.

- (1) The Board may —
 - (a) alter the capacity or location of any works; and
 - (b) temporarily or permanently discontinue or prohibit the use of any works either generally or for any specified purpose.
- (2) When discontinuing or prohibiting the use of any works the Board shall whenever practicable, give due notice in advance of the likely duration of the interruption to all persons who are likely to be affected thereby.

DIVISION 2 – WATER SUPPLY FOR PRIVATE AND PUBLIC PURPOSES

25 Declaration of Completed Supplies.

- (1) Whenever it becomes possible to provide a water supply to land in any area from works acquired or constructed under this Act, the Board may by notice declare the works to be effective in that area.
- (2) On and from the date of declaring works to be effective —
 - (a) the owner or occupier of any land in the area which is capable of being supplied from those works is liable to such tariff or charge as may be fixed by the Board under section 55(4)(a), when the land is connected to the works; and
 - (b) the Board may, on application by an owner of land or his agent, in the manner and form prescribed by the Board, agree to connect the land to the works on such terms and in such manner as it may determine.
- (3) An application made under paragraph (2)(b) shall not be unreasonably refused.

26 Board may Supply Water by Measure.

The Board may supply any person or any land with water for any purpose by measure or in any other manner, subject to such terms as the Board determines.

27 Metering.

- (1) The Board may, for the purposes of measuring the amount of water supplied by it, install a meter.
- (2) The Board shall keep a record of each meter installed.
- (3) It is a term of supply of any water in respect of which a meter is installed —
 - (a) that the person supplied shall not cause or permit the meter to be tampered with, altered, damaged or destroyed; and
 - (b) that the meter is properly protected and remains accessible to an authorised person and free from soil, vegetation or any other obstruction.
- (4) Subject to sections 38 and 40, an authorised person may enter the land where the meter is situated to repair any damage or remove any obstruction or alter the position of or replace the meter and the Board may recover the cost involved from the owner or occupier of the land provided fault is attributable to the owner or occupier for the damage, obstruction, alteration or replacement of the meter.
- (5) Any meter installed under this section remains the property of the Board.
- (6) If a meter has been damaged or interfered with, an authorised person may estimate a reasonable amount of water used for the period for which the meter was damaged or interfered with and the Board may direct that the amount so estimated be taken to be the amount used for that period.
- (7) A person requiring to remove or alter the position of a meter shall give seven days' notice in writing to the Board. A reading of the water used shall be taken before any meter is removed or altered.
- (8) No person other than an authorised person shall remove, disconnect, or alter the position of, or in any way interfere with, a meter.

28 Testing Meters.

- (1) Where a meter has been installed under section 27, the person supplied may request the Board in writing to test the meter. On receipt of the request and such fee as may be prescribed, the Board shall test the meter.
- (2) If the meter registers above 5 per cent more than was actually passed through the meter at the test, the Board shall refund the fee and remit, excuse or defer the payment of the whole or part of monies payable to the Board under this Act.

29 Power to Erect Fire Hydrants.

- (1) The Board may erect hydrants in any area for the supply of water for fighting fires.
- (2) Hydrants shall be erected in such conspicuous places and at such convenient distances as the Board considers appropriate and the Board shall keep them in effective order.

30 Power to Erect Standpipes.

Whenever it is impractical or inappropriate for the Board to supply a reticulated supply of water to particular premises, it may elect to supply water for such premises by a standpipe erected in such reasonably convenient location as the Board considers appropriate.

31 Public Facilities.

The Board may erect and maintain such public fountains, baths, washing places or other facilities or other facilities as the Board considers appropriate.

DIVISION 3 – WATER RESTRICTIONS**32 Water Restrictions.**

- (1) The Board may prohibit, regulate or restrict the consumption of water supplied, by issuing and publishing or broadcasting a notice under this section.
- (2) A notice issued and published or broadcast under this section shall specify —
 - (a) the area in which;
 - (b) the period during which;
 - (c) the manner in which; and
 - (d) the purpose in respect of which the use of water is prohibited, regulated or restricted.
- (3) A notice issued under this section must be —
 - (a) published in a newspaper circulating in the area to which the notice relates; or
 - (b) broadcast by radio in the area to which the notice relates.
- (4) Any person who knowingly fails to comply with, or causes or allows any person to fail to comply with, a notice issued and published or broadcast under this section, commits an offence.

- (5) In any proceedings for an offence against this section a certificate, signed by the person who was, at the time of the broadcast, in charge of the radio station from which it was made, stating that the broadcast —
- (a) was made at the time or times specified; and
 - (b) included a statement that the restrictions specified were to be observed during the periods and in the areas specified in the certificate
- shall be evidence of the broadcast of the matter so certified.

33 Non-Compliance with Part VII.

- (1) An owner or occupier of land shall execute any works or take any action required of him pursuant to this Part.
- (2) Whenever the owner of land fails to undertake work required of him under this Part the Board may execute the work and recover the cost thereof in the manner set out in section 57.

DIVISION 4 – EXTENSION OF BOARD'S WORKS

34 Power to Execute Works on Request.

- (1) The owner or occupier of any land which is incapable of being supplied by water from any water supply works operated by the Board may apply to the Board in writing for the extension of existing works in order to serve that land.
- (2) The Board may, at the cost of the owner or occupier, extend or arrange for the extension of existing works in order to serve that land.

DIVISION 5 – OPERATING POWERS

35 Notice to Connect.

- (1) The Board may, by notice to any owner or occupier of land within an area to which it supplies water, require the owner —
 - (a) to remove any existing connection between that land and the Boards works; or
 - (b) to carry out any work that the Board considers necessary for the provision of the service —

within the time specified in the notice, or any longer time allowed by the Board.

- (2) The Board may, by notice to a group of owners or occupiers of land require the owners or occupiers to connect the land, by a combined connection, to the Board's works within the time specified in the notice, or any longer time allowed by the Board.
- (3) A notice under this section shall be served on each of the owners or occupiers whose land is affected by the notice.
- (4) The owner or occupier to which a notice applies shall comply with the notice within the time specified or any longer time allowed by the Board.
- (5) If the owner or occupier to which a notice applies does not comply with the notice within the time specified, or any longer time allowed by the Board, the Board may —
 - (a) do the things the owner or occupier was required by the notice to do;
 - (b) recover from the owner or occupier its reasonable costs of so doing; and
 - (c) exercise the powers conferred on it by section 64.
- (6) The Board may apportion the costs or expenses to be paid by each owner of land in a group required to make a combined connection under subsection (2) in such a manner as the Board considers just and reasonable.

36 Notice to Repair.

- (1) The Board may, by notice in writing to the owner of land, require the owner to repair, within the time specified in the notice or any longer time allowed by the Board, any private water pipe or connected fittings on the land.
- (2) If land is connected to the works of the Board by a combined connection, a notice to repair may be served on any or all of the owners of that land.
- (3) An owner or occupier on whom a notice to repair is served shall comply with the notice within the time specified, or any longer time allowed by the Board.
- (4) If a notice to repair is not complied with within the time specified, or any longer time allowed by the Board, it may exercise the powers conferred on it by section 57.

37 Notice of Contravention.

- (1) The Board may, by notice in writing to a person who contravenes —
 - (a) any provision of this Act or any regulation, Code of Workmanship, or by-law made under this Act; or

- (b) a requirement made by the Board under this Act; or
 - (c) a term of any agreement for services supplied under this Act,
- require that person, or the owner of any land in relation to which the contravention occurs, to take any action specified in the notice within the time specified in the notice, or any longer time allowed by the Board, to remedy the contravention.
- (2) A person on whom a notice of contravention is served shall make sure that the notice is complied with within the time specified, or any longer time allowed by the Board.
 - (3) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Board, the Board may —
 - (a) carry out any works and take any other action it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served;
 - (b) remove or disconnect any service to the land in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served;
 - (c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice; and
 - (d) exercise the powers conferred on it by section 57.

38 Power to Enter Land without Giving Notice.

- (1) Subject to section 40, an authorised person may enter land without giving notice to the owner or occupier for the purpose of —
 - (a) installing, reading, replacing, testing, repairing or removing a meter on that land, whether or not at the request of the owner or occupier; or
 - (b) exercising any of the Board's powers under sections 35(5)(a), 36(4), 37(3)(a) or (b), 46(1), 61(6)(a), 62(3)(a); or
 - (c) inspecting any works, water connection, private water pipe or connected fittings; or
 - (d) taking any samples of water; or
 - (e) preventing the waste, misuse or pollution of any water; or
 - (f) finding out whether this Act is being complied with; or
 - (g) dealing with an emergency.
- (2) An authorised person shall not enter land under this section that is used primarily for residential purposes, except between 7.30 am and 6.30 pm unless —

- (a) that person has reasonable grounds for believing that —
 - (i) water is being wasted, misused or polluted on the land; or
 - (ii) an offence is or has been committed against the Act; or
- (b) there is an emergency; or
- (c) that person has been unable to obtain, or has been denied access between those hours.

39 Power to Enter Land for Other Purposes.

- (1) Subject to sections 40 and 52 the Board may, after giving seven days' notice in writing to the occupier, or if the land is not occupied, to the owner, enter and remain upon any land and carry out on that land any works or do any thing that the Board is empowered to carry out or do.
- (2) The Board need not give the notice required by sub-section (1) —
 - (a) if the occupier consents to the entry and the carrying out of the works or doing of the thing; or
 - (b) in any emergency.
- (3) Sub-section (1) does not relieve the Board from the obligation to acquire an appropriate interest in the land under section 23(3), if it wishes to remain on or occupy the land other than temporarily.

40 Obligations in Relation to Entry of Land.

- (1) In exercising powers to enter land under this Act, the Board or an authorised person shall —
 - (a) co-operate as much as possible with the owner and occupier of the land;
 - (b) cause as little harm and inconvenience as possible;
 - (c) stay on the land only for as long as is reasonably necessary;
 - (d) remove from the land on completing any works all plant machinery, equipment, goods or buildings brought on to the land, other than anything that the owner or occupier of the land agrees may be left there; and
 - (e) leave the land as nearly as possible in the condition in which it was prior to entry being made.
- (2) The Board is not exempt from liability for nuisance or other injury done in exercising powers to enter land, to the land of any person other than the person whose land is entered.

41 Board's Power to Undertake Works.

Subject to the provisions of this Act, the Board may —

- (a) enter upon any land, take its levels and set it out as the Board thinks necessary, dig, trench and break up the soil, and use or remove any material dug from the land;
- (b) sink such boreholes and construct, use or operate reservoirs, waterworks, cisterns, tanks, aqueducts, sluices, pipes, culverts, drains, machinery and other works to supply or treat water, and construct or use such buildings as the Board thinks fit;
- (c) divert, extract and impound the water from any watercourse or borehole or alter the course of any watercourse;
- (d) blast with explosives or otherwise break up any rock, clay, stone, soil or other geological formation or artificial structure in any manner whatsoever and remove or use all or any such material so obtained; and
- (e) construct or operate any works whatsoever for the extraction, conservation, supply or treatment of water.

42 Vesting of Land and Works in the Board.

- (1) Land acquired and works acquired or constructed by or on behalf of the Board, before or after the commencement of this Act, belongs to the Board.
- (2) Any main or water connection provided at the direction of, but not by the Board, before or after the commencement of this Act, belongs to the Board.
- (3) Water taken by the Board in accordance with section 22 and contained for the time being in any works controlled by the Board belongs to the Board.
- (4) Where immediately before this Act came into force any main, water connection or related works (other than a private water pipe) which were part of a water supply operated by the Tonga Water Board were on private land, such works shall be taken to have been installed with the consent of the owner and occupier for the time being of that land at the time they were installed and pursuant to a sufficient interest in the land created by that owner or occupier in favour of the Board to enable it to enter the land in order to repair, maintain, alter, extend, replace or remove such works in perpetuity.
- (5) Any main, water connection or related work attached to private land by, for on behalf of or at the direction of the Board or before or after the commencement of this Act does not become part of the land for the purpose of giving the owner or occupier of land a proprietary interest in it.

- (6) Works constructed by the Board on behalf of another person do not belong to the Board.

43 Power to Stop Traffic.

- (1) The Board subject to any other law may temporarily close all or any part of a road to traffic if it is necessary to carry out works on or adjacent to the road.
- (2) The Board shall give notice to the Ministry of Police –
- (a) in writing at least three days before the closure; or
 - (b) in an emergency, as soon as possible after the closure occurs.

44 Work on Roads.

- (1) If it is necessary for the construction or operation of any works, the Board subject to any other law may break up the surface of any road and open or break up any works under the road.
- (2) The Board shall —
- (a) while the surface is broken up, take appropriate safety precautions to minimise the possibility of injury to members of the public;
 - (b) remove from the site all rubbish resulting from the work;
 - (c) do as little damage as possible; and
 - (d) carry out the work as quickly and efficiently as practicable.
- (3) The Board shall —
- (a) return the site, so far as possible, to the state it was in before the work was started; and
 - (b) pay compensation for any damage which may have been done to the works of any public authority in the exercise of the powers.
- (4) The obligations created by sub-section (3) do not extend to any structures or works of any type whatsoever erected by a private person in or on a public road or adjacent road reserve.

45 Power to Establish Protective Measures.

Subject to section 52, the Board may establish such measures to protect land adjacent to or overlying and water, borehole, treatment or other works forming part of a water supply or from which a water supply is drawn and may —

- (a) erect and maintain such fences on or enclosing such land; and
- (b) prohibit such activities within the protected area as it sees fit.

46 Power to Restrict or Discontinue Water Supply.

- (1) The Board may, without prejudice to any other remedy it may have, restrict the quantity of water or discontinue the supply of water to any land —
 - (a) in the circumstance envisaged by section 57(2)(a); or if —
 - (b) the Board is, because of a shortage of water or for any other cause, unable to supply the quantity of water which would otherwise be supplied to the land; or
 - (c) the Board believes that the reduction or discontinuance is necessary to avoid future water shortages; or
 - (d) any private water pipe or other works on the land for the supply of water or any connected fittings is, in the opinion of the Board, inadequate or not properly constructed or maintained; or
 - (e) any person on the land contravenes this Act in relation to the waste, misuse, or pollution of water supplied to the land by the Board; or
 - (f) any person on the land contravenes any water restrictions in force; or
 - (g) any person on the land contravenes any Act in relation to the taking or use of water; or
 - (h) any person refuses entry to the land to an authorised person who intends to exercise powers conferred by or under this Act to find out whether an offence is being committed against this Act, or the Act is otherwise being complied with.
- (2) If the Board restricts or discontinues the supply of water in accordance with this section it is not liable to any claim or demand in respect of the restriction or discontinuance.
- (3) If the Board restricts or discontinues the supply of water under paragraph (1)(a), (d), (e), (f), (g) or (h), it may —
 - (a) charge a fee for restoring the supply; and
 - (b) refuse to restore the supply until all amounts then owing to the Board under this Act with respect to the land have been paid to the Board.

47 Notice of Intention to Affect Works.

- (1) Except as provided in section 44, if the Board intends to do anything that will affect the works of another public authority, it shall, except in an emergency, give at least 14 days written notice of its intention to that other public authority.

- (2) If the Board, in an emergency, affects the works of another public authority, it shall, as soon as practicable after the works are affected, notify the other public authority in writing.

48 Contracts and Agreements.

- (1) The Board may contract with any person or public authority with respect to —
- (a) the performance by either or both of the parties of their respective functions or the carrying out or providing by either party to the other of any works, equipment, facilities, expertise, services or staff; or
 - (b) the joint use by the parties of their respective works, equipment, facilities, services or staff.
- (2) The Board may, at the request of any person or public authority and at the expense of that person or public authority —
- (a) carry out, repair or alter any works;
 - (b) carry out any survey or investigation; or
 - (c) do anything else connected with, or incidental to, the functions of the Board.
- (3) The Board may also contract with any person or public authority for the use of its equipment, facilities, expertise, services or staff, notwithstanding that the contract is not relevant to the performance of other functions of the Board or the exercise of its other powers under this Act.

49 Intellectual Property.

The Board may —

- (a) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights;
- (b) assign or grant licences in respect of those intellectual property rights, with or without charge; and
- (c) enter into agreements and arrangements for the commercial exploitation of intellectual property rights.

DIVISION 6 – STANDARDS OF WORKMANSHIP**50 Codes of Workmanship.**

- (1) Codes of Workmanship may be prescribed under section 65 in respect of —
 - (a) any water supply or water treatment works to be executed by or on behalf of the Board under this Act; and
 - (b) any works relating to private water pipes and all connected plumbing, drainage and fittings on any land.
- (2) A Code of Workmanship may prescribe any matters concerning the design, construction, alteration, maintenance or repair of works, including the types of materials, fittings or appliances which may be used in works or connected thereto.
- (3) The Board may require that all or any part of the works referred to in a Code of Workmanship —
 - (a) may only be executed by, or under the direct supervision of, a person holding prescribed qualifications;
 - (b) may only be executed after giving the Board such notice as may be prescribed;
 - (c) may only be executed after obtaining the approval of the Board;
 - (d) may only be executed under the supervision and in the presence of an authorised person and according to his direction; and
 - (e) be inspected and approved by an authorised person before the work is used.
- (4) A person shall comply with and shall not cause or allow any other person to fail to comply with —
 - (a) any Code of Workmanship prescribed by the Board under this section; or
 - (b) any lawful direction issued by an authorised person under any such Code of Workmanship.

51 Power to conduct Training Courses.

The Board may, on its own account or in association with any other body —

- (a) arrange or conduct training courses for plumbers and drainers;
- (b) conduct examinations in relation to plumbing and draining; and
- (c) award certificates to persons who have attended training courses or passed examinations held under this section.

PART VIII – FINANCIAL PROVISIONS

52 Compensation to be Paid.

- (1) If damage is caused to land in the exercise of powers conferred on the Board by this Act, the Board shall, if required, compensate all parties interested in the land for all damage sustained by them in consequence of the exercise of such powers, subject to the provisions of the Act.
- (2) For the purposes of this Act, damage to land means loss suffered as a result of —
 - (a) deprivation of the possession of the surface of any land;
 - (b) damage to the surface of any land and to any improvements, crops or trees thereon;
 - (c) damage to stock; and
 - (d) all consequential damage.
- (3) In calculating compensation —
 - (a) for damage to land payable under this section; or
 - (b) in respect of the compulsory acquisition of any interest in land for the purposes of this Act,

no amount will be payable to the owner of any interest in, or the occupier of any land in respect of the taking or use of water on, adjacent to or beneath that land by the Board pursuant to this Act.
- (4) Compensation for damage to land shall not be paid under this section unless a written claim for compensation has been lodged with the Board, within six months of either the claimant learning of the act giving rise to the claim, or the completion of any works in respect of which compensation is sought, whichever is later.
- (5) A claim for compensation shall set out the following:
 - (a) the claimant's name and address;
 - (b) a description of the land in respect of which the claim is made;
 - (c) the claimant's interest in the land;
 - (d) the nature and extent of the interest of any other person in the land;
 - (e) the way in which the land has been damaged;
 - (f) the particulars of any other damage; and
 - (g) the total amount of the claim.
- (6) An award of compensation for damage to land may take the form of —
 - (a) a payment of money; or

- (b) the provision of compensation water to land on such terms as the Board may determine; or
- (c) the remission of tariffs, charges, fees, interest or penalties payable to the Board; or
- (d) any other type of award which the Board considers appropriate.

53 Costs of Relocating Authority's Works.

- (1) If it is necessary to re-locate or re-construct works vested in the Board as a consequence of the execution of work by any other public authority, the costs of any re-location or re-construction shall be paid to the Board by that public authority less such sum, if any, agreed between the Board and the public authority as representing any improvement to the works of the Board.
- (2) The Board may, at the request of a person with an interest in land upon which any works vested in the Board are located, agree to relocate those works at the cost of that person and upon such terms as the Board may prescribe.

54 Compensation to the Board.

If damage occurs to any works of the Board as a consequence of the commission of an offence against this Act, the court may, in addition to any penalty, order the offender to compensate the Board on such terms as the court may think fit.

55 Power to Fix Tariffs, Charges and Fees.

- (1) The Board may, by resolution of the Board of Directors, fix —
 - (a) tariffs, charges and fees, for commodities, services or facilities provided by the Board;
 - (b) rates of interest and penalties payable in respect of any amounts owing to the Board with respect to any tariff, charge, fee or other amount which remains unpaid after the due date for payment fixed by the Board; and
 - (c) security deposits to be paid by applicants for a water supply.
- (2) The Board may levy and demand tariffs, charges, fees, interest, penalties or security deposits payable under this section and may recover the same as a debt due to the Board,
- (3) Nothing in this section authorises the Board to fix, levy or demand any tariff, charge or fee in relation to the erection or maintenance of hydrants under section 29, or the supply of water from hydrants for fighting fire.

- (4) Without limiting sub-section (1), the Board may fix —
- (a) a tariff or charge to be paid in respect of any water supplied;
 - (b) minimum charges to be paid for water supplied;
 - (c) rents to be paid for meters installed by this Board; and
 - (d) the time within which charges, fees and rents shall be paid and the terms and conditions of payment, including the payment of security deposits.

56 Remission of Tariffs or Charges.

The General Manager may, by notice in writing to either or both of the occupier and owner of land, remit, excuse or defer the payment of the whole or any part of any amounts payable to the Board under section 55 with respect to that land —

- (a) with the approval of the Board of Directors; or
- (b) in accordance with any guidelines made by the Board of Directors; or
- (c) in accordance with any regulations.

57 Recovery of Outstanding Amounts.

- (1) Any tariff, charge, fee, interest or penalty payable under section 55 may be recovered by the Board as a debt due by the consumer.
- (2) Without prejudice to any other remedy available to the Board, where any tariff, charge or fee or any interest or penalty payable to the Board is outstanding for a period of 30 days from the day on which it became due, the Board may —
- (a) restrict or disconnect the supply of water to the land in question;
 - (b) demand the outstanding amount from either or
- both of the owner and occupier and if the amount demanded is not paid in full within seven days from the date of that demand, may recover any part of the amount which has not been paid as a debt due to the Board.

PART IX – OFFENCES

58 Unlawful Taking of Water.

- (1) Any person who takes or uses or causes or allows or attempts to cause or allow any person to take or use water from works vested in the Board except as provided for in this Act, commits an offence.
- (2) Any person who —
 - (a) takes, or causes, or attempts to cause or allows, any person to take water from a standpipe; or
 - (b) uses, or causes or allows any person to use water from a standpipe —except for human and household consumption or such other purposes as may be prescribed by the Board from time to time, commits an offence.
- (3) In any proceedings for an offence against this section, proof of the existence of any structure, obstruction or device on any land capable of allowing water to be taken or used is prima facie evidence that water was taken or used at the time that structure, obstruction or device is proved to have existed.

59 Interference with Works.

- (1) Any person who causes or allows or attempts to cause or allow any works acquired, constructed or operated under this Act to be interrupted, interfered with, altered, moved, damaged or destroyed, except as provided for in this Act, commits an offence.
- (2) Subject to sub-section (5), a person who attaches or who causes or allows any person to attach any hose, pipe, fitting or other device to any main pipe, water connection, hydrant or standpipe belonging to the Board, commits an offence.
- (3) In any proceedings for an offence against this section, proof of the existence of any structure, obstruction or device on land capable of causing an interruption, interference, alteration, movement, damage or destruction is prima facie evidence that such an interruption, interference, alteration, movement, damage or destruction occurred at the time that structure, obstruction or device is proved to have existed.
- (4) The Board may confiscate any structure, obstruction or device referred to in subsection (3).
- (5) Sub-section (2) does not apply to any person who lawfully attaches a hose to a hydrant for the purpose of extinguishing a fire.

60 Tampering with Works.

- (1) Any person who —
 - (a) uncovers or exposes any main, pipe, or other underground works belonging to the Board; or
 - (b) wilfully or negligently breaks, damages, injures, opens, alters or obstructs any main, pipe, meter or other works belonging to the Board; or
 - (c) alters the index of any meter or prevents or impedes any meter from duly registering the quantity of water supplied, except with the permission of the Board,commits an offence.
- (2) Where any person is convicted of an offence under this section, the court may, in addition to imposing the penalty, order that person —
 - (a) to meet the cost of making good any damage so caused; and
 - (b) to pay any other tariff, charges or fees which by virtue of the offence it may assess the Board to have lost,as the case may require.

61 Structures over Works.

- (1) Any person who without the Board's consent, causes or allows —
 - (a) any structure to be built or any filling to be placed on land in which the Board has an interest of any type whatsoever; or
 - (b) any soil, rock, or other matter that supports, protects or covers any works of the Board to be removed,commits an offence.
- (2) An application for the Board's consent shall be made in the manner prescribed by it and shall be accompanied by any plans and other information that the Board prescribes.
- (3) The Board may —
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent, subject to any terms it thinks fit.
- (4) Any person who, with the consent of the Board, causes or allows anything referred to in sub-section (1) to be done shall make sure that the thing is done in accordance with any conditions on which the Board gave its consent.

- (5) If a structure has been built or any filling placed on land contrary to this section, the Board may, by notice in writing to the owner or occupier of the land, require the owner or occupier to alter, remove or relocate such structure or filling within the time specified in the notice, whether or not the structure was built or the filling placed by or on behalf of the owner or occupier.
- (6) If the person to whom a notice given under sub-section (5) applies does not comply with the notice within the time specified, or any longer time allowed by the Board, the Board may —
 - (a) do the things the person was required by the notice to do;
 - (b) recover from that person its reasonable costs of so doing; and
 - (c) exercise the powers conferred on it by section 64.
- (7) Consent given by the Board under sub-section (3) is binding upon the applicant, his heirs, successors and assigns and the owner or occupier for the time being of the land, whether or not that person has notice of the consent or the conditions thereof.
- (8) Any person who contravenes or fails to comply with or causes or allows any person to contravene or fail to comply with —
 - (a) any terms attached to the Board's consent; or
 - (b) any requirement of a notice served on that person under sub-section (5),commits an offence.

62 Trees and Shrubs.

- (1) Where trees, crops or shrubs are wholly or partly located within 2 metres of the centre-line of any works belonging to the Board and the Board requires access to those works, subject to section 52 an authorised officer may, with due notice in writing to the owner or occupier of the land upon which such trees, crops or shrubs are wholly or partly located, cause them to be removed.
- (2) Where works belonging to the Board are damaged or blocked by any tree or shrub or the roots thereof, an authorised officer may, by notice in writing to the owner or occupier, require the owner or occupier of the land on which the tree or shrub is located to —
 - (a) remove the tree or shrub or the roots thereof;
 - (b) make good any damage or blockage to such works; and
 - (c) restore the service to the land –in such manner and within the time specified in the notice.

- (3) If the person to whom a notice given under sub-section (2) applies does not comply with the notice within the time specified, or any longer time allowed by the authorised officer, the authorised officer may —
 - (a) do the things the person was required by the notice to do; and
 - (b) recover from that person the reasonable costs of so doing.
- (4) Any person who contravenes or fails to comply with or causes or allows any person to contravene or fail to comply with any requirement of a notice served on that person under sub-section (2), commits an offence.

63 Obstruction of Officers.

- (1) Any person who assaults, threatens, resists, obstructs, hinders, delays or allows or encourages any other person to assault, threaten, resist, obstruct, hinder or delay any authorised officer or person in the performance of powers, functions or duties under this Act, commits an offence.
- (2) Where a person is convicted of an offence against this section the court may, in addition to any penalty, order the offender to pay by way of compensation a sum sufficient to cover any damage which any authorised person or other person has suffered as a result of such assault, threat, resistance, obstruction, hindrance or delay and any sum so awarded may be recovered in the same manner as the penalty.

64 Offences Against the Act.

- (1) Any person who contravenes or fails to comply with or causes or allows any person to contravene or fail to comply with any provision of this Act, commits an offence.
- (2) Any person who fails to comply with section 33(1), 36(3) or 37(2) commits an offence and is liable in respect of each offence to a fine of not more than \$200 and, in the case of a continuing offence, to an additional fine of not more than \$20.
- (3) Any person who commits the offence set out in section 32(4), 61(1), 61(8) or 62(4) is liable in respect of each offence to a fine of not more than \$300 and, in the case of a continuing offence, to an additional fine of not more than \$30.
- (4) Any person who commits the offence set out in section 58(1), 58(2), 59(1), 59(2), 60(1) or 63(1) is liable in respect of each offence to a fine of not more than \$500 and, in the case of a continuing offence, to an additional fine of not more than \$50.
- (5) Any person who fails to comply with regulation 9 or 10 of the Schedule commits an offence and is liable in respect of each offence to a fine of not

more than \$1000 or to a term of imprisonment not exceeding 3 years, or to both such fine and imprisonment and, in the case of a continuing offence, to an additional fine of not more than \$100.

- (6) Where no penalty is expressly provided for any offences in the Act, any person guilty of such offence is liable to penalty of \$200.
- (7) Where, in this section, a fine is specified for a continuing offence against a section, it means that a person who is convicted of an offence in relation to that section or part of a section is guilty of a further offence if the offence continues either —
 - (a) after the date on which the first offence was committed; or
 - (b) after the date of a complaint alleging the commission of that offence has been issued by the Board,

and is liable to a fine for each day during which the offence continues of not more than the amount expressed as the amount of the fine for a continuing offence.

PART X – MISCELLANEOUS

65 Regulations

- (1) His Majesty in Council may make regulations not inconsistent with this Act generally to carry out and give effect to the purposes and provisions of this Act and to prescribe all matters that may be prescribed in relation to this Act.
- (2) Without limiting sub-section (1), regulations may —
 - (a) prescribe procedures for applying for and making connections with the Board's water supply;
 - (b) prescribe the terms upon which the Board will supply water to land or to any person;
 - (c) prescribe procedures and terms for extending the Board's works under section 34(2);
 - (d) make provision for the circumstances in which security deposits are to be paid to and refunded by the Board;
 - (e) prescribe standards of service to be provided by the Board, including water quality standards;
 - (f) prohibiting activities within protected areas declared under section 45;

- (g) prescribing any Codes of Workmanship under section 50 and penalties for any breach of such Codes;
- (h) make provisions about the calculation, collection and payment of tariffs, charges, fees, interest, penalties or security deposits payable section 55;
- (i) prescribing circumstances in which the General Manager may remit, excuse or defer amounts under section 56;
- (j) prescribe means of calculating amounts payable by persons who unlawfully take or use water from the Board's works, in lieu of tariffs, charges or fees fixed under section 55; or
- (k) create offences and appoint penalties not exceeding \$1000 or \$200 for a continuing offence, for contravening regulations.

66 Service of Documents by the Board.

- (1) If by or under this Act a document (including any statement or invoice) is required or permitted to be served by the Board on a person, then the document may be served —
 - (a) by delivering it personally to the person to be served; or
 - (b) by leaving it at that person's usual or last known place of residence; or
 - (c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or
 - (d) in the case of service on an owner of any land whose name and address are not known to the Board, or on any occupier, by —
 - (i) delivering it personally to the occupier of the land; or
 - (ii) leaving it at the land with a person apparently over the age of 16 years and apparently residing or working there; or
 - (iii) if no person over 16 is apparently present on the land, by putting it up on a conspicuous part of the land or putting it under a door of any building on the land; or
 - (e) in the case of service on an occupier of land whose name and address are not known to the Board, by putting it up on a conspicuous part of the land or putting it under a door of any building on the land.
- (2) A document that is to be served on the owner or occupier of any land may be addressed by the description of "the owner" or "the occupier" of the land concerned, and naming the land, without further name or description.

- (3) If a document is properly served on the owner or occupier of any land, that service is binding on every subsequent occupier to the same extent as if it had been served on that subsequent owner or occupier.
- (4) A statement signed by an authorised person that a document was served by that person and specifying the manner, date and approximate time of service is proof of its service, unless the contrary is proved.

67 Repeal.

The Water Board Act (Cap 92) is repealed.

68 Transitional Provisions.

- (1) Section 67 does not —
 - (a) affect the previous operation of the Water Board Act (Cap 92) or anything duly done or suffered under that Act; or
 - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Act; or
 - (c) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against that Act or a failure to observe a provision of that Act; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as is mentioned in paragraphs (b) and (c),
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.
- (2) Upon the commencement of this Act, any tariff, charge, fee, rate of interest or penalty fixed under the Water Board Act (Cap 92) continues to apply as if it had been fixed under section 60 of this Act, until the Board of Directors fixes a different tariff, charge, fee, rate of interest or penalty under that section.

SCHEDULE

[Section 492]

The following regulations apply to the Board, the Board of Directors, Directors and proceedings of the Board of Directors, respectively:

1. Official Seal

- (1) The official seal of the Board shall be kept in such custody as the Board of Directors directs and shall not be used except as authorised by the Board of Directors —
- (2) All courts shall take judicial notice of the seal of the Board affixed to a document and, until the contrary is proved, shall presume it was duly affixed.

2. Delegation

- (1) The Board may, by instrument under its official seal delegate any of its powers, other than its power to make by-laws or regulations, and its power to fix tariffs, charges, fees and rates of interest, to a Director or an officer of the Board.
- (2) A delegation under sub-regulation (1) is revocable in writing at will and does not prevent the exercise of a power, function, authority or discretion by the Board.
- (3) A power delegated under this regulation shall be exercised or performed in accordance with the terms of the instrument of delegation.
- (4) Wherever any power is delegated, the delegate has all necessary power to exercise that power, notwithstanding that the delegate would not be legally empowered to do so, were it not for the provisions of this sub-regulation.
- (5) Any delegate exercising a delegated power under this regulation may receive written or oral submissions from any person on any matter within the competence of the delegate.
- (6) Where the exercise or performance by the Board of a power is dependent upon the opinion of the Board in relation to a matter and the power is delegated under this regulation, the delegate may, unless the contrary intention appears, exercise or perform the power upon his own opinion in relation to that matter.

3. Deputy Chairman

- (1) When —
 - (a) the office of Chairman is vacant; or
 - (b) the Chairman is absent from the Kingdom or is, for any reason, unable to attend meetings of the Board of Directors or otherwise unable to perform the duties of the office,the Deputy Chairman shall act as Chairman.
- (2) While the Deputy Chairman is acting as Chairman, the Deputy Chairman has and may exercise all the powers, and shall perform all the duties, of the Chairman.

4. Acting appointments

The Board of Directors may appoint a Director to act as Deputy Chairman —

- (a) during a vacancy in the office of Deputy Chairman; or
- (b) during any period, or during all periods, when the Deputy Chairman is acting as Chairman or is unable, for any reason, to attend meeting of the Board of Directors.

5. Acting General Manager

- (1) The Board of Directors may appoint a person in the employment of the Board to act as General Manager during a vacancy in the office of General Manager.
- (2) The Board of Directors may appoint a person in the employment of the Board to act as General Manager during any period, or during all periods when the General Manager is absent from duty or from the Kingdom or is, for any other reason, unable to perform the duties of the office.
- (3) A Director is not eligible for appointment under this section.

6. Vacancies, resignations, removal from office

- (1) The office of a Director becomes vacant if the Director —
 - (a) fails to attend three consecutive Ordinary monthly meetings of the Board of Directors without the prior approval of the Chairman; or
 - (b) ceases to be eligible to serve as a Director under section 7(2).
- (2) A Director, other than the General Manager or an ex officio Director, may resign by writing delivered to His Majesty in Council but the resignation is not effective until it is accepted by His Majesty in Council.

- (3) The General Manager may resign by giving written notice of six months delivered to the Chairman. The resignation will not be effective until it is accepted by the Board of Directors.
- (4) If a Director —
 - (a) is convicted of an offence relating to his duties as a Director; or
 - (b) fails, without reasonable excuse, to comply with regulation 9 —His Majesty in Council or, in the case of the General Manager, the Board of Directors, shall remove the Director from office.
- (5) His Majesty in Council may remove a Director, other than the General Manager, from office if, in the opinion of His Majesty in Council, the Director —
 - (a) is incompetent; or
 - (b) has acted improperly; or
 - (c) has failed to act with appropriate or attention in discharging the duties of a Director; or
 - (d) is no longer capable of carrying out the duties of a Director effectively, whether through illness, age or some other cause.
- (6) The Board may remove the General Manager from office.

7. Validity of decisions

- (1) An act or decision of the Board of Directors is not invalid merely because of —
 - (a) a defect or irregularity in, or in connection with, the appointment of a Director; or
 - (b) a vacancy in the membership of the Board of Directors.
- (2) Anything done by or in relation to a person purporting to act as Chairman or as a Director is not invalid merely because —
 - (a) the occasion for the appointment has not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

8. Delegation to the Chairman and General Manager

- (1) The Board of Directors may, in writing, delegate to either or both of the Chairman and the General Manager any of the Board of Directors' powers under this Act, other than this power of delegation.

- (2) The provisions of regulation 2(2) to 2(6) applies to any delegation made under this regulation.

9. Disclosure of interests

- (1) For the purposes of this regulation, a pecuniary interest includes any direct or indirect pecuniary or other material interest of the Director, the Director's spouse, father, grandfather, son, grandson, brother, father-in-law, brother-in-law or son-in-law, or a corresponding female relation.

- (2) If —

- (a) a Director has a pecuniary interest in a matter being considered, or about to be considered by the Board of Directors or any of its committees; and
- (b) the interest could conflict with the proper performance of the Director's duties in relation to the consideration of the matter —?

the Director, as soon as possible after the relevant facts come to the Director's knowledge, shall disclose the nature of the interest at a meeting of the Board of Directors.

- (3) A disclosure under sub-regulation (2) shall be recorded in the minutes of the meeting and, unless the Board otherwise determines, the Director —
 - (a) shall not be present during any deliberation of the Board of Directors or any of its committees in relation to the matter; and
 - (b) shall not take part in any decision of the Board of Directors or ally of its committees in relation to the matter.
- (4) If the Director does vote on the matter, the vote shall be disallowed.
- (5) Sub-regulation (2) does not apply in relation to a matter relating to the supply of goods or services to the Director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

10. Duties of Directors

- (1) A Director shall at all times act honestly in the performance of the functions of that office.
- (2) A Director shall at all times exercise a reasonable degree of care and diligence in the performance of his functions.
- (3) A Director or former Director shall not make improper use of information acquired by virtue of his position as a Director to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Board.

- (4) A Director shall not make improper use of his position as a Director to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Board.
- (5) This regulation has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

11. Proceedings for breach

If a person contravenes regulation 9 or 10 the Board may recover from that person as a debt due to the Board in a court of competent jurisdiction either or both of the following —

- (a) an amount equal to that profit if that person, or any other person, made a profit as a result of the contravention;
- (b) an amount equal to that loss or damage if the Board has suffered loss or damage as a result of the contravention.

12. Indemnity not permitted

The powers of the Board do not include a power to exempt, whether directly or indirectly, a Director from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a Director against, any liability that by law would otherwise attach to the Director in respect of a wilful breach of duty or breach of trust of which the Director may be guilty in relation to the Board.

13. Proceedings of the Board of Directors

- (1) Subject to sub-regulations (2) and (3), the Board of Directors shall meet at least once a month.
- (2) Subject to sub-regulation (3), meetings of the Board of Directors shall be held at such times and places as the Board of Directors determines.
- (3) The Chairman may at any time convene a special meeting but shall do so when requested by at least 3 Directors.
- (4) The Chairman shall preside at the meeting of the Board of Directors. In the absence of the Chairman the Deputy Chairman shall preside and if they are both absent a Director appointed by the Board of Directors shall preside.
- (5) A majority of the Directors for the time being constitute a quorum of the Board of Directors.

- (6) A question arising at a meeting shall be determined by a majority of votes of Directors present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.
- (7) The Board of Directors shall ensure that minutes are kept of each meeting.
- (8) Subject to this Act, the Board of Directors may regulate its own proceedings.

14. Resolutions other than at meetings

- (1) If a majority of the Directors for the time being sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Board of Directors held on the day on which the document is signed or, if the Directors do not sign it on the same day, on the day on which the last Director signs the document.
- (2) If a resolution is, under sub-regulation (1), taken to have been passed at a meeting of the Board of Directors, each Director shall immediately be advised of the matter and given a copy of the terms of the resolution.
- (3) For the purposes of sub-regulation (1), two or more separate Documents containing a statement in identical terms, each of which is signed by one or more Directors, shall be taken to constitute one document.

Passed in the Legislative Assembly this 3 day of October 2000.