



Tonga

TONGA FIRE AND EMERGENCY SERVICES ACT

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TONGA FIRE AND EMERGENCY SERVICES ACT

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TONGA FIRE AND EMERGENCY SERVICES ACT

AN ACT TO ESTABLISH A SERVICE RESPONSIBLE FOR FIRE AND EMERGENCY SERVICES TO PREVENT, SUPPRESS AND CONTROL FIRES AND EMERGENCIES AND ANCILLARY MATTERS¹

Commencement [9th January 2015]

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Tonga Fire and Emergency Services Act.

2 Interpretation

In this Act unless the context otherwise requires-

“**alarm**” means any call for assistance at a fire, accident, explosion or other emergency;

“**Appeals Commission**” means the commission established under section 60 of this Act;

“**brigade**” means a group of members organised and trained under this Act -

- (a) for the suppression and prevention of fires; and
- (b) to respond to an emergency,

and established by the Commissioner under section 12 of this Act;

“**building**” includes a building under construction;

“**career member**” means a member of a brigade who is employed by the Service and confirmed by the Commissioner under section 13;

“**Commissioner**” means the Tonga Fire and Emergency Commissioner appointed under section 10 of this Act”;

“**confirm**” means the induction ceremony where the member becomes a career member;

“**emergency**” means an actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, which destroys or damages, or threatens to destroy or damage any property or endangers or threatens to endanger the environment or any element of the environment, including, without limiting the generality of the foregoing, to-

- (a) a cyclone, earthquake, storm, storm surge, tornado, tsunami, volcanic eruption or other natural happening;
- (b) an explosion or fire, a chemical, fuel or oil spill, or a gas leak at land or sea;
- (c) an infestation, plague or epidemic;
- (d) a failure of an essential service or infrastructure;
- (e) a terrorist attack against the Kingdom;
- (f) a road, industrial or other accident;
- (g) land and sea search and rescue;
- (h) any other event similar to an event referred to in paragraphs (a) to (g);

“**employee**” means members of the Tonga Fire and Emergency Services;

“**fire area**” means a town, village or area so declared under this Act;

“**fire brigade**” means a self-contained unit created under section 12 of this Act;

“**fire fighter**” means a fire fighter appointed under this Act;

“**fire hazards**” has the meaning given in regulations;

“**fire risk area**” means a fire risk area declared under section 47 of this Act;

“**fire stations**” means all Fire Stations under the Service;

“**flammable goods**” means explosives, combustible liquids having a flashpoint below 61 degrees Celsius, or a substance or article prescribed as dangerous goods by regulations;

“**international emergency service organisation**” means an emergency service organisation, by whatever name called, established under a law of any place outside the Kingdom;

“**member**” means a career or volunteer member;

“**Minister**” means the Minister responsible for Tonga Fire and Emergency Services;

“**occupier**” includes, in relation to land –

- (a) a person who has or is entitled to have, immediate possession of the land; and
- (b) a person who is entitled, under any law in force in the Kingdom, to remove timber, minerals, petroleum or other things on or under the land, whether solely or jointly with another person;

“**officer**” means an officer who holds the rank of Fire Officer or higher rank in the Service;

“**owner**” means the person for the time being in receipt of or entitled to receive the rents and profits from land or buildings who, if such property were let to a tenant would be entitled to receive the rents and profits, whether as beneficial owner, trustee, administrator, mortgagee in possession, or as agent or attorney for any other person;

“**part-time member**” means any person appointed to be a part-time member under this Act;

“**prescribed industrial training notice**” means a notice under section 43 of this Act;

“**public purpose**” means utilisation of a building, venue, structure or land for any community, commercial, amusement or public event, or purpose including without limitation using buildings or structures for restaurants, cafes, theatres, cinemas, halls, hotels, bars, sporting facilities, shops, hospitals, schools, universities, supermarkets;

“**Regulations**” means the Regulations made under this Act;

“**risk abatement notice**” means a notice under section 41 of this Act;

“**standing orders**” means the standing orders made by the Commissioner under section 24;

“**Service**” means the Tonga Fire and Emergency Services;

“**trained staff**” means employees of a business within a designated industry who are trained under section 43 of this Act; and

“**volunteer member**” means a member of a brigade who is confirmed under section 14 of this Act.

PART II – ESTABLISHMENT OF THE SERVICE

3 Service established

- (1) There shall be established under this Act a Service responsible for fire and emergency services and to be known as the Tonga Fire and Emergency Services.

- (2) There shall be a Minister responsible for fire and emergency services who, shall be responsible for the organisation, administration and management of the Service, and also the administration of this Act.
- (3) The Minister may with the consent of Cabinet declare a fire area and establish a Fire Station in a fire area.

4 Functions of the Service

The functions of the Service are to-

- (a) provide fire suppression, prevention and investigation services;
- (b) provide emergency response services for the protection of life and property before, during and after an emergency;
- (c) issue any public warnings about fires and fire threats in the Kingdom for the purpose of protecting life and property;
- (d) carry out any other functions conferred on the Service by or under this Act or any other Act or by order made by the Minister;
- (e) perform activities to raise the profile of the Service or raise funds to support the Service in the performance of its functions; and
- (f) do anything necessary for, or incidental to, the exercise of its functions.

5 Assets of the Service

- (1) The assets of the Service shall consist of-
 - (a) all land, buildings, installations and improvements including fixtures located on or adjacent to or in the vicinity of the land which was used by the Tonga Fire Services immediately before the coming into force of this Act; and
 - (b) all vehicles, marine craft, plant, machinery, equipment, stores, furniture and apparatus which were used by the Tonga Fire Services on the date this Act comes into force.
- (2) In the event of any uncertainty, Cabinet shall determine if any asset has become or is the property or responsibility of the Service.

6 Powers of the Service

- (1) Subject to this Act and any regulations made under this Act, the Service has all of the powers necessary to perform its functions.
- (2) Without limiting the provisions of subsection (1), the Service shall have the power to-

- (a) purchase or lease any building, land, equipment, plant or other property as the Service thinks necessary to carry out its function under this Act;
- (b) sell, exchange or let any property acquired by or which vests in it for the performance of its functions under this Act;
- (c) request Cabinet to compulsorily acquire any land under the Land Act which is required for the purposes of this Act;
- (d) do all things necessary or convenient to be done for or in connection with the performance of its functions;
- (e) performing activities to raise the profile of the Service or raise funds to support the Service in the performance of its functions; and
- (f) enter into any agreement or arrangement with any person or body for the provision of goods or services to the Service.

7 Delegation of Powers

- (1) The Minister may delegate to any member of the Service, any responsibility, power, authority, duty or function of the Minister provided under this Act or the regulations made under this Act, other than this power of delegation.
- (2) Such delegation will be made in writing under the common seal of the Service.
- (3) No delegation made under this section shall prevent the exercise of the powers by the Minister.
- (4) The Minister may delegate all or any of his powers and functions under this Act, other than this power of delegation, to any Police Officer in Command of a Police District for the express purpose of protection of life and property from fire and other emergencies, if that police district is a fire area and there is no fire station.
- (5) Every person purporting to act under a delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.
- (6) Any delegation made under this Act shall, until revoked in writing, continue in force according to its tenor unless the employee ceases to be employed by the Service.

8 Employees of the Service

- (1) The Minister, with the consent of Cabinet, may appoint any person on such terms and conditions as it considers necessary including employment for a probationary period, to assist in carrying out its functions under this Act or any other Acts or Regulations and transfer, promote, discipline or dismiss any employee.

- (2) The Minister may designate ranks and titles for members.
- (3) Members of Tonga Police under the provisions of the Tonga Police Act may be seconded to the Service for any period to be defined by Cabinet on the recommendation of the Minister. Any member so seconded shall not lose any pension benefits or other service privileges by the mere fact of such secondment.
- (4) All officers and employees of the Service shall be vested with all the powers and privileges of a police officer for the purposes of the Tonga Police Act.
- (5) A volunteer fire fighter or part-time member present at a fire on authorised duty shall have all the powers, function, duties, responsibilities and privileges of a fire fighter.

9 Liability of employees

No employee of the Service shall be personally liable for any act done or omitted to be done in good faith in the exercise or performance of the functions, powers or duties of the Service or for any debt or any other liability lawfully incurred by the Service or for any act or other activity.

PART III – MANAGEMENT AND ADMINISTRATION

10 Tonga Fire and Emergency Commissioner

- (1) The Minister, with the consent of Cabinet, shall appoint a chief executive officer of the Service, who shall be known as the Tonga Fire and Emergency Commissioner.
- (2) The Commissioner shall have proven expertise and qualifications in fire fighting and emergency response.
- (3) The Commissioner is responsible to the Minister for the carrying out of its functions, and he shall comply with the directions of the Minister.
- (4) The Minister may appoint such deputy or deputies to assist the Commissioner who may exercise such powers, duties and functions as are conferred on the Commissioner.
- (5) The Minister shall appoint an officer to be Acting Commissioner-
 - (a) while the office of Commissioner is vacant; or
 - (b) during any period when the Commissioner or is unable by reason of illness or absence to perform the functions of that office.
- (6) The Acting Commissioner appointed under subsection (5) shall have all the powers and functions of the Commissioner while he is Acting Commissioner,

and shall perform the duties of the Commissioner for the period he is Acting Commissioner.

- (7) The Commissioner may by written delegation confer any responsibility, power, duty or function provided under this Act or regulations made under this Act, except this power of delegation, on-
 - (a) any person by name; or
 - (b) a person who holds a position or office approved by the Minister.

11 Commissioner's powers

The Commissioner shall, subject to the provisions of this Act and regulations made under this Act, have order and control of all volunteer and career members and shall control all brigades.

12 Formation of brigades

- (1) The Commissioner may establish brigades for the purpose of carrying out the functions under this Act.
- (2) A brigade may consist of-
 - (a) career members confirmed under section 13 and employed by the Service on a full time basis;
 - (b) volunteer members confirmed under section 14;
 - (c) persons engaged under contract or arrangement entered into by the Service; or
 - (d) a collection of any of the above.

13 Career members

- (1) Career members shall be confirmed by the Commissioner subject to the provisions of this section.
- (2) The Commissioner shall prescribe in standing orders the training and qualifications required to be undertaken by a career member before confirmation.
- (3) Prior to confirmation a career member shall satisfactorily complete such training or have such qualifications or competencies as may be assessed by the Commissioner as necessary for confirmation under this section.
- (4) Career members shall be on probation until they are confirmed under this section.

14 Volunteer and part-time members

- (1) The Commissioner, with the consent of the Minister, may confirm a volunteer member subject to the provisions of this section.
- (2) The Commissioner shall prescribe in standing orders the training and qualifications required to be undertaken by a volunteer member before confirmation is to be effected and any probationary period to be served by volunteer members before confirmation.
- (3) Each volunteer member shall be attached to a brigade established by the Commissioner under section 12.
- (4) No association of persons shall operate as a brigade in the Kingdom, unless it is established under section 12 and its officers and members confirmed in accordance with this Act.
- (5) No persons who are operating without confirmation under this section shall have any of the powers or privileges or the benefit of any immunity conferred by this Act.
- (6) Volunteer members may be paid such allowances on such conditions as the Minister may determine from time to time and upon such determination the volunteer member shall become a part-time member.

15 Oaths

- (1) A person who is appointed or employed as a member of the Service shall, before exercising any powers as a Service member or a Service officer-
 - (a) take, before the Commissioner, the oath or affirmation of allegiance set out in Schedule I;
 - (b) take, before the Minister, the oath or affirmation of allegiance set out in Schedule I; and
 - (c) take, before a Magistrate, the official secrets oath set out in the Schedule to the Official Secrets Act.

16 Executive Committee

- (1) An Executive Committee is hereby established under this Act.
- (2) The Executive Committee shall consist of the following members-
 - (a) the Commissioner, who shall be the Chairman;
 - (b) the Deputy Commissioners;
 - (c) the officer commanding the operation division;
 - (d) the officer commanding the community safety division;
 - (e) the officer commanding the training and development division;

- (f) the officer commanding the administration and corporate services division;
 - (g) the officer commanding the emergency response division; and
 - (h) any other officer commanding any established division of the Service.
- (3) The Executive Committee shall hold such meetings as directed by the Commissioner.
- (4) Meetings of the Executive Committee shall be convened and conducted in accordance with procedures adopted by the Executive Committee.

17 Functions of the Executive Committee

The functions of the Executive Committee shall be to-

- (a) report, discuss and make recommendations, to the Commissioner who will advise the Minister, regarding the duties performed by each division of the Service and fire stations;
- (b) provide initiatives and recommendations for the development of the Service;
- (c) recommend to the Minister to appoint, transfer, promote, and discipline a member of the Service;
- (d) recommend to the Minister to dismiss a member of the Service; and
- (e) prepare the strategic and corporate plan of the Service.

18 Resignation

- (1) A member of the Service, apart from a volunteer member, may resign by giving the Commissioner 20 working days written notice.
- (2) The Commissioner shall submit a recommendation to the Minister for approval no later than 14 working days after receiving the notice.
- (3) The Commissioner may, refuse an application for resignation due to the member being subject to, or about to be subject to, disciplinary action under this Act.

19 Voluntary and Compulsory Retirement Age

- (1) Notwithstanding section 11(2) of the Pensions Act (Cap. 8), the minimum voluntary retirement age for a member is 55 years.
- (2) Notwithstanding section 11(3) of the Pensions Act (Cap. 8), the compulsory retirement age for a member is 60 years.

20 Employment Standards

- (1) The Commissioner with the consent of the Minister may, in writing determine employment standards for employment in the Service.
- (2) The Commissioner shall publish the employment standards in the manner the Commissioner considers appropriate and shall be made available to any member of the Service or public upon request.

21 Promotion Standards

- (1) The Commissioner with the consent of the Minister may, in writing determine promotion standards for a member to be eligible for promotion in the Service.
- (2) The Commissioner shall publish the promotion standards in the manner the Commissioner considers appropriate and shall be made available to any member of the Service or public upon request.

22 Code of Conduct

- (1) The Commissioner with the consent of the Minister shall, in writing, determine a Code of Conduct for members of the Service.
- (2) Every members of the Service shall conduct himself in accordance with the Service Code of Conduct.
- (3) The Code of Conduct shall be made available to all members of the Service.

23 Appointments, promotions, transfers on merit

All appointments, including acting appointments, promotions and transfers shall be based on merit.

24 Commissioner's standing orders

- (1) The Commissioner may issue written standing orders for training and qualifications, to authorise activities on an alarm, for the proper conduct or good order of members and brigades or any other purpose under this Act including prescribing by rank or otherwise senior members of the operational staff.
- (2) The Commissioner may specify-
 - (a) the senior members of the operational staff and other members; and
 - (b) the equipment and vehicles to be utilised on an alarm.
- (3) The Commissioner can vary any standing orders orally on an alarm.

- (4) Orders and general instructions may be of general application or limited to a specified Fire Brigade or to a class of fire officers, fire fighters or volunteer fire fighters.

25 Award for bravery

Awards may be recommended by the Minister to Cabinet for acts of bravery beyond the call of duty to be bestowed upon any member of the Service or, and in the event of his death, to be presented to his next of kin.

PART IV - FIRE AND EMERGENCY ABATEMENT AND PREVENTION

26 Powers of the Commissioner on an alarm

- (1) At the scene of an alarm the Commissioner or the senior member of the operational staff may exercise any of the following powers-
- (a) control and direction of all persons present at the fire or emergency who place their services at the senior operational staff member's disposal;
 - (b) enter on land, and if necessary, break into any building or premises to extinguish a fire or limit the effect of fire or an emergency;
 - (c) remove any flammable, explosive, or dangerous material found in such building or premises, without responsibility for any consequent loss or damage;
 - (d) for the purpose of extinguishing or preventing the spreading of any fire or the effects of any emergency, cause any building to be wholly or partially pulled down, to be destroyed or damaged;
 - (e) cause water to be shut off from any main or pipe in order to obtain a greater pressure and supply of water for the purpose of extinguishing fire;
 - (f) take water from any source, including without limitation rivers, lakes, private swimming pools and water storage areas;
 - (g) cause any street, private road, right of way, or thoroughfare in the vicinity of any emergency to be closed for traffic during the continuance of any emergency;
 - (h) shut off or disconnect or order any person having control to shut off or disconnect the supply of electricity, gas, oil or other substances to any building, structure or plant which is on fire or subject to an emergency or which is in the vicinity of any building which is on fire or subject to an emergency;

- (i) remove by force, if necessary, any person who by their presence or otherwise interferes with the operations of a brigade;
 - (j) do all other things which are reasonably necessary for the prevention or suppressing of fire or to limit the effects of any emergency or as appears necessary to preserve life or property.
- (2) Any person who without lawful excuse obstructs or hinders the Commissioner or any officer acting with the Commissioner's service in the performance of any of their duties under this section commits an offence.
- (3) A person acting under the instructions of the Commissioner or member shall not be liable to any penalty or claim by reason of any of the actions referred to in this section.

27 Action on alarm

- (1) On an alarm being received by a brigade, those members of the brigade shall, with the equipment specified by the Commissioner in the standing orders or otherwise, proceed with all practical speed to the scene of the alarm and use all reasonable means to save life, suppress, reduce or minimise the effects of the fire or other emergency.
- (2) Any person who wilfully or negligently hinders or obstructs the dispatching of Fire Engines or any operation vehicles responding to an alarm under this section commits an offence.

28 Police to assist at a fire or emergencies

All members of Tonga Police present at a fire or emergency shall support and assist the senior member of brigade present in the maintenance of his authority and in enforcing due obedience to his orders.

29 Destruction of buildings and other property by Commissioner

- (1) If a building or structure is damaged by fire or other emergency, the Commissioner may shore up, demolish, destroy or remove the building or structure if the Commissioner reasonably believes it is or may become dangerous to life or property.
- (2) The Service may sell or dispose of any material salvaged from the actions of the Commissioner under subsection (1).
- (3) The proceeds of sale from a disposal under subsection (2) shall be applied towards any reasonable expenses incurred by the Service in exercising its powers under subsection (2).

- (4) The owner of a building subject to this section shall pay the Service the sum remaining due after the application of the proceeds of a sale under subsection (3).
- (5) Where there has been no sale or disposal under this section, the whole of the expense incurred by the Service shall be paid to the Service by the owner.

30 Exercise of functions by officers and agents

The Commissioner may exercise his functions under this Act through appropriately qualified persons, including members of any fire brigade established under this Act.

31 Protection of the environment

The Commissioner shall have regard to the principles of ecological sustainability in carrying out any function under this Act that affects the environment.

32 Civil liability excluded

- (1) The Service, Commissioner or any officer or member shall not be liable to civil action for damage for anything done or omitted to be done in good faith—
 - (a) in the exercise of power or discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the discharge of a duty under this Act or regulations.
- (2) For the purposes of this section “**damage**” includes (without limiting the generality of that term), loss of or injury to property, personal injury and death.

33 Damage by Commissioner covered by insurance

Where any damage to property is caused by the Commissioner or an officer or member in the bona fide exercise of their duty, such damage shall be deemed to be by fire within the meaning of any policy of insurance against fire covering the damaged property.

34 Offence to give false alarm

- (1) Any person who interferes with a fire alarm without lawful justification or wilfully gives or causes to be given, or attempts to give or cause to be given a false alarm of fire commits an offence, and shall be liable upon conviction to imprisonment for a period not exceeding 3 years or to a fine not exceeding \$10,000 or both.

- (2) The Service may, with the approval of the Minister offer a reward not exceeding \$1,000 for information leading to the conviction of any person who commits an offence under subsection (1).
- (3) Any person, owner or occupier that has access or uses an electronic fire alarm system, that is wilfully, recklessly or negligently triggered as a result of failing to fix, maintain and safeguard that electronic fire alarm system commits an offence, and shall be liable to a fine not exceeding \$1,000.

35 Damaging or concealing fireplug or hydrant

Any person who –

- (a) wilfully damages a fireplug or fire hydrant;
- (b) covers up, encloses, or conceals any fireplug or fire hydrant rendering its position difficult to ascertain; or
- (c) obliterates or removes any marks, sign or letter used for the purposes of indicating the position of any fireplug or hydrant,

commits an offence under this Act.

36 Passages and exits in buildings used for public purposes

- (1) An owner and occupier shall ensure that all passages in and exits from a building used for a public purpose are free of obstruction.
- (2) The Commissioner or senior operational staff may remove or direct the removal of any such obstruction.
- (3) A person who, without lawful justification, fails to comply with a direction under subsection (2) or obstructs an officer from carrying out the officer's duties under subsection (2) commits an offence under this Act.

37 Powers of inspection

- (1) The Commissioner or any person authorised for this purpose by the Commissioner shall have free access at any reasonable time to any land, building, premises or other place for the purposes of performing any necessary investigations or ascertaining compliance with this Act and the regulations or any other law relating to-
 - (a) the storage of flammable substances;
 - (b) the prevention of fire or the protection of life or property in the case of fire, including without limitation the maintenance of fire detection and suppression systems or other equipment;
 - (c) the installation of electricity or its connection with the main electricity supply authority; or

(d) a building used for a public purpose,
are being complied with.

- (2) A person who, without lawful cause, fails to provide reasonable access to land, building, premises or any other place under subsection (1) or obstructs an officer from carrying out the officer's duties under subsection (1) commits an offence under this Act.

38 Approval of Fire Safety Requirements

- (1) The Commissioner shall approve all applications for a building permit.
- (2) The Commissioner may, establish such appropriate fees for the services to all building plans or design (maps) lodged with the Service for approval of a building permit.
- (3) In determining whether to provide approval, the Commissioner or any member of the Service shall assess whether the building apart from a dwelling house, has fulfilled all the fire safety requirements and is also in compliance with building codes and regulations in relation to the ability of the Service to respond and protect life and property in the building.
- (4) The Commissioner may report and direct on any additional works, measures or services to be installed or provided in the building and the reason for those measures.

39 Issuance of Official References

The Commissioner shall approve all applications for issuance of official references.

40 Service may carry out fire prevention work

- (1) The Service at the request of the owner or occupier of any land, including a request from a Government Ministry, department or agency may remove or abate fire hazards to prevent the occurrence or spread of fire.
- (2) Any work carried out under this section shall be paid for by the owner, occupier, or Government Ministry, department or agency requesting the work.
- (3) Any work carried out under this section shall be performed at the rates or fees prescribed by Regulations.
- (4) If such fees are not paid they are recoverable as a debt due to the Service.

41 Risk abatement notices

- (1) The Commissioner may serve a risk abatement notice on an owner or occupier of land in respect of anything on the land (including a building) which by its

nature, composition or location constitutes or may constitute a danger to life or property from the threat of fire or other emergency, including failure to comply with the provisions of any other Act or regulation and a failure to have adequate safeguards in place for a building or structure utilised for public purpose.

- (2) A risk abatement notice may be served only if the Commissioner forms the opinion that-
 - (a) the notice is necessary or may become necessary to protect life or property from the threat of fire or other emergency;
 - (b) there is no procedure under any other Act or regulation that is more appropriate in the circumstances to address the threat; or
 - (c) the threat is one to which is covered under this Act.
- (3) A risk abatement notice-
 - (a) shall be in the form prescribed by regulations made under this Act;
 - (b) may require the owner or occupier to take the steps specified in the notice to remove or minimise the threat of fire or other emergency;
 - (c) shall specify the time (not less than 7 calendar days) within which the owner or occupier shall comply with the notice; and
 - (d) shall comply with any regulations.
- (4) A risk abatement notice shall be served on the owner or occupier-
 - (a) by giving it to or serving it personally on the owner or occupier;
 - (b) by sending it by post to the owner or occupier at the person's usual or last known residential or business address;
 - (c) by leaving it at the usual or last known residential or business address of the owner or occupier with the person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
 - (d) in a manner prescribed by any other Act or law for service on a person or class or persons of the same type as the owner or occupier.
- (5) If the Commissioner-
 - (a) does not know who the owner or occupier for the land is;
 - (b) does not know the residential or business address of the owner or occupier; or
 - (c) believes that the owner or occupier is absent from the Kingdom,and has no agent known to the Commissioner, the risk abatement notice may be served in accordance with subsection (6).
- (6) If subsection (5) applies, the risk abatement notice may be served by-
 - (a) displaying it on the land; and

- (b) publishing a notice in the prescribed form and containing the prescribed particulars in a newspaper circulated generally throughout the Kingdom.
- (7) A notice served in accordance with subsection (6) is sufficient notice to the owner or occupier from the day of display or publication, whichever is later.
- (8) Unless the risk abatement notice is withdrawn or cancelled, the costs of serving the notice (including reasonable administrative, labour and overhead costs and expenses incurred) may be recovered from the person on whom it was served.
- (9) A person on whom a risk abatement notice has been served may lodge an objection with the Commissioner within 7 calendar days of service of the notice stating the grounds of objection.
- (10) If a person lodges an objection to the risk abatement notice with the Commissioner, the person shall genuinely attempt to resolve the matter by consultation.
- (11) Within 10 working days of lodging the objection the Commissioner shall-
 - (a) confirm the notice;
 - (b) if the Commissioner is satisfied a variation will appropriately address the threat of fire or other emergency, vary the notice; or
 - (c) withdraw the notice, if the Commissioner is satisfied there is no longer any cause for the notice to be served.
- (12) If the Commissioner confirms or varies the notice, the Commissioner shall specify a new time within which the person shall comply with the notice.
- (13) For the purposes of this section, a risk abatement notice includes a risk abatement notice as confirmed or varied in accordance with this section.
- (14) A person who without reasonable justification fails to comply with a risk abatement notice commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both and, where the contravention is a continuing offence, to a fine not exceeding \$100 for each and every day the offence continues.
- (15) Where a person fails to comply with a risk abatement notice within a reasonable time after the notice has been served and the person has not objected to that notice and the Commissioner or any Officer is of the opinion that the risk poses a threat to the safety of the public, the Commissioner or any Officer authorised by him may remove or abate the fire or other emergency hazards on that land that are the subject of the notice.
- (16) Any reasonable action undertaken by the Commissioner or any Officer so directed by him under subsection (15) shall be paid for by the person who fails to comply with the notice and may be recovered as a debt owing to the Service.

42 Appeal against notices

- (1) If a person has lodged an objection under section 41(9) and-
 - (a) the Commissioner has failed to confirm, vary or withdraw the notice within 10 working days; or
 - (b) the person is not satisfied with the confirmation or variation of the notice;

the person may appeal to the Minister within 5 working days of the end of the 10 working day period or the date of confirmation or variation under section 41(11).

- (2) When considering the appeal, the Minister shall take into account all relevant circumstances, including alternative means of addressing the threat of fire or other emergency.
- (3) After considering the appeal the Minister shall-
 - (a) confirm the notice;
 - (b) vary the notice in any way it thinks fit; or
 - (c) cancel the notice.
- (4) If the Minister confirms or varies the notice it shall specify a new time within which the person shall comply with the notice.
- (5) Subject to this section a person on whom a risk abatement notice has been served shall comply with the notice within the time specified. A failure to comply with the notice constitutes an offence against this Act and shall be liable upon conviction for a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000, or both.

43 Prescribed industrial training notice

- (1) Subject to Regulations, the Minister may designate industries where personnel employed by or managing a business are required as part of their employment to undertake mandatory training in fire prevention and suppression and emergency response and management.
- (2) The Minister, with the consent of Cabinet, may by regulations prescribe the costs associated with such training.
- (3) The Commissioner or a senior member of the operational staff may serve a prescribed industrial training notice on a business in a designated industry where the Commissioner has formed the opinion that-
 - (a) there is a threat of fire or other emergency; and
 - (b) due to the nature of the industry and its geographical location the Service cannot provide a satisfactory emergency response in the circumstances.
- (4) A prescribed industrial training notice shall-

- (a) be in the form prescribed by the Regulations;
 - (b) specify the number of staff employed within the business who shall train;
 - (c) set out the details of the training required and its duration and frequency;
 - (d) prescribe the competencies to be obtained by the trained staff; and
 - (e) comply with any other Regulations.
- (5) A prescribed industrial training notice shall be served on the owner of the business-
- (a) by giving it or serving it personally on the business owner;
 - (b) by sending it by post to the business owner and the business owner's usual or last known residential or business address;
 - (c) by leaving it at the usual or last known residential or business address of the business owner with a person on the premises who is apparently over 18 years old and apparently residing or employed by the business owner; or
 - (d) in any manner prescribed by any other Act for lawful service on a person or class of persons of the same type as the owner.

44 Appeals against Prescribed Industrial Training Notices

- (1) If a business owner lodges an objection to the prescribed industrial training notice with the Commissioner, the business owner shall genuinely attempt to resolve their objection in consultation with the Commissioner.
- (2) Within 10 working days of lodging the objection the Commissioner shall-
- (a) confirm the notice;
 - (b) if the Commissioner is satisfied that a variation will appropriately address the prevention or mitigation of a fire or other emergency, vary the notice; or
 - (c) withdraw the notice if the Commissioner is satisfied the proposed prescribed training is unnecessary.
- (3) For the purposes of this section a prescribed industrial training notice includes a prescribed industrial training notice confirmed or varied in accordance with this section.
- (4) If-
- (a) a person has lodged an objection under subsection (1) and the Commissioner has failed to confirm, vary or withdraw the notice within 10 working days of receipt of the objection; or
 - (b) the business owner is not satisfied with the confirmation or variation of the notice,

the business owner may appeal to the Minister within 5 working days of the end of the 10 day working day period or the date of confirmation of the variation under subsection (2).

- (5) When considering the appeal the Minister shall vary the notice under this section if-
 - (a) the risk posed by fire or other emergency within the business does not warrant the training prescribed;
 - (b) the business does not have the required number of staff to be trained to provide the prescribed services; or
 - (c) the number of staff to be trained and the training prescribed is in the circumstances unwarranted.
- (6) After considering the appeal the Minister shall-
 - (a) confirm the notice;
 - (b) vary the notice in any way it thinks fit; or
 - (c) withdraw the notice.
- (7) If the Minister confirms or varies the notice it shall specify a new time within which the business owner shall comply with the prescribed industrial training notice.
- (8) Subject to this section a person on whom a prescribed industrial training notice has been served shall comply with the notice in the time specified. A person who fails to comply with the notice commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

45 Owner to give information as to insurance

- (1) The owner of any premises where an emergency occurs shall on a request by the Commissioner inform the Commissioner whether the premises are insured and furnish full particulars of the insurance, if any, including the names of the companies with which the insurance is effected and the amount of insurance.
- (2) The owner of any personal property in any premises where an emergency occurs which is destroyed or damaged during an emergency shall on the request of the Commissioner furnish the particulars of insurance, if any, as are required by subsection (1) of this section to be given with respect to the premises.
- (3) Any owner who refuses to comply with any request by the Commissioner under this section commits an offence against this Act.
- (4) Any person who wilfully gives false information or incorrect particulars with regard to such insurance shall be liable upon conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding \$10,000, or to both.

46 Setting fire by negligence

Any person who negligently sets fire to-

- (a) a crop of cultivated produce whether standing or cut;
- (b) a crop of hay or grass whether the natural or indigenous product of the soil or not and whether under cultivation or not and whether standing or cut; or
- (c) any standing trees, saplings or shrubs whether indigenous or cultivated,

and thereby injures or destroys the property of any other person, commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding \$10,000, or to both.

47 Fire Risk Areas

The Minister on the advice of the Commissioner may, declare, by notice published in the gazette, an area or areas to be known as fire-risk areas under this Act.

48 Clearing fences of inflammable material in fire-risk areas

- (1) Any person who, being the occupier or if there be no occupier, the owner, of land in a fire-risk area fails to clear such land and keep it clean of inflammable grass, rubbish or other such materials for the space of 5 metres from the boundaries of such land, commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
- (2) If the other owner or occupier neglects or omits to clear his land and damage from the fire happens to the dividing fence through that neglect or omission, the owner or occupier so neglecting or omitting to clear shall at his own cost and charges cause the fence to be repaired and re-erected within the space of one month after it has been so damaged.
- (3) If the owner or occupier so neglecting or omitting to clear, refuses or omits to repair or re-erect the fence within the space of one month from the date of the damage, the owner or occupier of the land contiguous to the fence who has cleared the land of inflammable material in accordance with subsection (1) may repair or re-erect the dividing fence, and recover all sums of money expended thereon from the owner or occupier in default as a debt.

49 Power to enforce clearing of land boundaries in fire-risk areas

- (1) Where the owner or occupier of land in a fire-risk area fails to clear land as required by section 48, the Commissioner so directed by him may, by force and with assistance if necessary, enter and clear the land and keep it clear of inflammable grass, rubbish and other such materials for the space of 5 metres

from the boundaries of the land and the expense of so doing may be recovered from the occupier, or if there be no occupier, from the owner, as a debt.

- (2) Nothing in subsection (1) affects the liability of a person under section 48.

50 Destroying bridge or culvert

Any person who, by carelessness in the use of fire, in any way injures or destroys a bridge or culvert (whether over a stream of water or not) or an approach thereto, or a causeway or crossing along or over a public road, commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

51 Maintenance of fire protection equipment in premises

If the Commissioner, when undertaking an inspection under section 37, determines that-

- (a) the requirements of fire safety inspection for a building permit are not or have not been complied with;
- (b) fire detection or suppression and maintenance equipment is not functional and places the lives of building occupants or property at risk; or
- (c) a building owner or third party has interfered with such equipment in a manner which undermines its proper performance,

the Commissioner may report any non-compliance to the relevant Authority responsible for regulation of building works, and a copy of such report shall be copied to the owner.

PART V - MISCELLANEOUS PROVISIONS

52 Badges or distinguishing marks

Badges, uniforms or other distinguishing marks or articles as the Minister may determine in the Regulations shall be provided for members of the Service, and a person who wears or bears about him any such badge or other distinguishing mark or article shall, unless the contrary be proved, be deemed to be a member of the Service.

53 Member to return equipment on resignation or dismissal

- (1) Any member who resigns or is dismissed from the Service, and does not immediately return to the Commissioner, all equipment and accoutrements supplied to a member at public expenses commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

- (2) The Commissioner may have all discretion in granting a member leave to keep the uniform and insignia as prescribed in the regulations for the purposes of memorabilia.

54 Annual report

The Commissioner shall, by the end of May of each year, cause to be prepared, an annual report to be submitted to the Minister.

55 International assistance in an emergency

A member of an international emergency service organisation who is present at an emergency within the Kingdom for the purpose of mitigating or responding to that emergency may be approved by the Commissioner to perform all or some of the functions that the Commissioner would have and be capable of exercising and performing under this Act.

56 Offences relating to impersonation

- (1) A person shall not-
 - (a) use any name, title or description to imply an association with the Service, without the written authority of the Service;
 - (b) represent that a person is associated with the Service unless such an association exists;
 - (c) impersonate an officer of the Service or a member of the Service; or
 - (d) use any insignia or Service uniform described or set out in the regulations in any manner contrary to the manner set out in the regulations without the written authority of the Service.
- (2) Any person who undertakes the conduct described in subsection (1) commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 2 years or a fine not exceeding \$5,000.

57 Recovery of costs

- (1) The owner or occupier of property damaged or destroyed by fire shall be liable to pay the Service the reasonable costs and expenses incurred by the Service in providing fire services to him in relation to that property.
- (2) The amount payable under subsection (1) shall be determined by the Minister, upon recommendation of the Commissioner.
- (3) Notice of the amount determined under subsection (2) shall be sent by post or directly in person to the owner or occupier concerned.

- (4) The amount specified in the notice shall be payable to the Service by the owner or occupier within 28 days after receipt of the notice.
- (5) The amount specified shall be reasonable in all the circumstances and represent the net cost of providing fire fighting and emergency services.
- (6) Where an owner is insured, the Service may put the insurance company on notice of the amount payable under this section and before disbursing the proceeds of any policy of insurance the insurance company shall pay such sum to the Service.
- (7) An owner who receives a notice under this section may apply to the Minister for a review of the decision of the Service in the determining of the amount payable by the owner within 14 calendar days.

58 Charges for other services

If the Commissioner or a member of a fire brigade, on request made by or on behalf of any person-

- (a) inspects any premises;
- (b) inspects, tests, services or repairs any equipment;
- (c) furnishes any advice or report concerning fire prevention or protection, fire fighting equipment or other matters;
- (d) conducts any training course;
- (e) responds to any alarm (if it is afterwards discovered that the alarm was false);
or
- (f) performs any other service specified in the regulations,

the Service is entitled to payment by the person of the charge prescribed by Regulations, in respect of the service performed.

59 Waiver or reduction of charges

The Commissioner may with the consent of the Minister, waive any charge payable under section 58.

60 Disciplinary procedures

- (1) Any member who is-
 - (a) guilty of a breach of the regulations made under this Act;
 - (b) guilty of any misconduct including but not limited to a breach of the standing orders;
 - (c) guilty or careless in the discharge of their duties;

- (d) inefficient or incompetent and such inefficiency or incompetence arises from causes within their own control; or
 - (e) guilty of any dishonourable or improper conduct,
- shall be guilty of a disciplinary offence.
- (2) A member of the senior operational staff after an investigation may lay a charge for an offence under subsection (1).
 - (3) The Commissioner may suspend a career member from duty without pay if the career member has been charged under subsection (1) until the charge is dealt with under this section.
 - (4) The Commissioner may suspend a volunteer member from duty who has been charged under subsection (1) until the charge has been dealt with in accordance with this section.
 - (5) The Commissioner shall hear any charge laid under this section.
 - (6) When hearing the charge the Commissioner is not bound by the rules of evidence.
 - (7) The Commissioner may either-
 - (a) dismiss the charge;
 - (b) find the charge proven and sanction the member;
 - (c) recommend to the Minister, to discharge the member from the brigade and remove their name from the confirmed list of members;
 - (d) place the member on a period of probation subject to such terms and conditions as the Commissioner deems appropriate; or
 - (e) demote any member regardless of rank to a rank lower than the rank that member holds.
 - (8) If a career member has their name removed from the Confirmation list, they shall be dismissed from the employment of the Service but shall retain any benefits which have accrued to them as a result of their employment.
 - (9) If a member is aggrieved by a decision of the Commissioner he may appeal the Commissioner's decision made under this section.
 - (10) The appeal will be to an Appeals Commission constituted by a Magistrate, an officer from the Public Service Commission and a person appointed by the Minister.
 - (11) When hearing an appeal the Appeals Commission will not be bound by the rules of evidence and may either-
 - (a) uphold the decision of the Commissioner;
 - (b) dismiss the decision of the Commissioner and dismiss the charge; or
 - (c) impose some other penalty as prescribed in subsection (7) of this section.

- (12) At a hearing before the Appeals Commission a member may be represented by a law practitioner.

61 Regulations

- (1) The Minister, with the consent of Cabinet, may make regulations for or with respect to the following-
- (a) to impose a levy, charges or fees as may be required to implement and administer this Act;
 - (b) to prescribe the meaning of a fire hazard;
 - (c) to prescribe the training services able to be performed by the Service and the charges for these training services;
 - (d) to govern fundraising activities by members and brigades for the subscription and raising of funds collected from the public;
 - (e) to prescribe the form and content of risk abatements notices including the things or classes of things in respect of which a notice may be served;
 - (f) to prescribe the form and content of prescribed industrial training notices and to manage, provide for and regulate industry training and trained staff;
 - (g) the confirmation of brigades;
 - (h) the confirmation of members and probationary members and the cancellation of such confirmation;
 - (i) to require members to undertake medical or other work related tests;
 - (j) for the provision of training and training facilities and the issue of certificates or qualifications after the completion of any such course of training;
 - (k) for the establishment or management of brigades;
 - (l) for prescribing the insignia, uniform and distinguishing marks to be worn by members or classes of members;
 - (m) for the discipline and good conduct of members and probationary members;
 - (n) to prescribe the fees and charges to be paid to the Service for services provided under this Act, including preparation of reports in building and related matters, or other services relating to any other emergency not otherwise prescribed;
 - (o) the declaration of, transportation, location, storage, packaging, inspection and disposal of flammable goods;
 - (p) to prescribe the fire prevention, emergency and abatement measures to be installed or located in a complex for the storage of flammable goods;
 - (q) to prescribe health and safety regulations; and

- (r) to prescribe death benefits to members of the Service and benefits for acts for bravery.
- (2) Without limiting the generality of subsection (1) the regulations made under that subsection may provide for conferring powers on the Minister or Commissioner to-
 - (a) remove or suspend confirmed members and probationary members where not otherwise provided in the Act;
 - (b) enforce penalties by the Service;
 - (c) empower brigades and senior operational members to lay charges against confirmed members and probationary members;
 - (d) provide rights of any confirmed member or probationary member to appeal to the appeals commission.
- (3) The power conferred by this Act to make regulations may be exercised-
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class or cases; and
 - (b) so as to make, as respects the case in relation to which is it exercised –
 - (i) the same provision for all cases in relation to which the power is exercised or different provisions for different classes or classes of case, or different provisions for the same class or class of case for different purposes; or
 - (ii) any such provision either unconditional or subject to any specified condition.
- (4) Regulations made under this Act may be made so as to leave any matter or thing to determined, applied, dispensed with, or regulated by the Service or any officer or employee thereof.

62 General penalty

A person who commits an offence against this Act for which no specific penalty is provided shall be liable upon conviction to a fine not exceeding \$10,000 and if the offence is a continuing one then to a fine not exceeding \$100 for every day during which the offence continues.

63 Recovery of debts

- (1) Any sum payable to the Service by virtue of regulation, or the provisions of this Act or any other Act may be recovered by the Service in any court of competent jurisdiction as a debt due to the Service.

- (2) The Service may on application of any person who is liable in respect of any amount for any services or sums due and payable to the Service if the Service considers it appropriate-
- (a) remit or excuse the payment of the amount or any part of the amount; or
 - (b) defer the payment of the amount or any part of the amount to such time as the Service thinks fit.

PART VI - CONSEQUENTIAL REPEAL AND AMENDMENTS

64 Officers and employees of the Tonga Fire Services

- (1) Upon the coming into force of this Act and the establishment of the Service, such persons as are required by the Service who were employed by the Government immediately prior to the establishment of the Service and were discharging any of the functions vested in the Service by this Act, may, at their choice, be deemed to be transferred to the service of the Service on terms which shall be determined by the Service but no less favourable than those they had enjoyed immediately prior to their transfer to the Service.
- (2) The Fire Service established under the Fire Services Act shall be deemed to be the Tonga Fire and Emergency Service established under this Act.

65 Consequential amendments

The Fire Services Act (Cap. 94) is hereby repealed.

SCHEDULE I

TONGA FIRE AND EMERGENCY SERVICES MEMBERS AND OFFICER'S OATH

(Sections 15)

I.....solemnly swear before God and His Majesty King Tupou VI, that I will righteously uphold the Constitution of Tonga and all Laws and Regulations which are currently or to be enforced in the future as Member of the Tonga Fire and Emergency Services. I do pledge, that I will serve the Government and the people of Tonga to the best of my ability and will strive to uphold the professional standards of the Tonga Fire and Emergency Services. I swear/affirm that I will not resign from Tonga Fire and Emergency Services unless in accordance with governing Laws and Regulations thereof.

.....

Witness Signature

Sworn/Affirmed before me on the.....day of the month of.....20.....

ENDNOTES

¹ Act 21 of 2014

Commencement 9 January 2015, GE 3-15