

C

T

POSTAL SERVICES ACT

2007 Revised edition

C

T

POSTAL SERVICES ACT

Arrangement of Sections

Section

PART 1 - PRELIMINARY	5
1 Short title	5
2 Interpretation	5
PART 2 - DUTIES, POWERS AND RIGHTS	7
3 Incorporation of Tonga Post.....	7
4 Designation of postal administrator	7
5 Compliance with International Obligations	7
6 Postal agreements	7
7 Duties of postal administrator	8
8 Reserved services	8
9 Power to compel transport operators to carry postal articles	9
10 Payment for carrying postal articles.....	9
11 Posting boxes.....	10
PART 3 PROTECTION OF POSTAL REVENUE, ITEMS AND PROPERTY	10
12 Postage Stamps.....	10
13 Stamp forgery	10
14 Revenue offences	11
15 Postal articles not to be opened	11
16 Undeliverable postal articles	11

17	Effect of time limit	12
18	Opening and examination of postal articles	12
19	Prohibited postal articles	12
20	Disclosure	13
21	Obligation to pass on postal articles	13

PART 4 - PROHIBITED ARTICLES & RELATED OFFENCES **13**

22	Prohibited articles	13
23	False claims	14

PART 5 - MISCELLANEOUS **15**

24	Interpretation	15
25	Transfer of assets and liabilities	15
26	Vesting of contracts and rights	15
27	Validity of postage stamps	15
28	State of emergency	15
29	Regulations	16

EXPLANATORY NOTE **ERROR! BOOKMARK NOT DEFINED.**

Supporting Documents

ENDNOTES **17**

Table of Legislation History	Error! Bookmark not defined.
Table of Renumbered Provisions	Error! Bookmark not defined.
Table of Endnote References	Error! Bookmark not defined.

C

T

POSTAL SERVICES ACT

AN ACT TO REGULATE THE PROVISION OF POSTAL SERVICES¹

Commencement [6th March, 2007]

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Postal Services Act.

2 Interpretation

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

“**article**” means a letter, box, parcel, package, packet, or other thing capable of transmission by post;

“**letter**” means any form of written communication that is to be conveyed other than by electronic means and is directed to a particular person or address, and includes —

- (a) any envelope, packet, package, container or wrapper containing such a communication;
- (b) any unenclosed written communication that is directed to a particular person or address;

“**Minister**” means the Minister of Finance;

“**postage**” means the amount chargeable for the transmission of an article by post and includes any special charge or fee for supplementary services supplied in connection with the transmission of the article by post;

“**postage stamp**” means any adhesive label, mark, design or impression authorised for the purpose of indicating payment of postage;

“**postal administrator**” means a postal operator designated under section 4 of this Act;

“**postal article**” means an article that is in the course of transmission by post, and includes any bag, box or other container in which postal articles are conveyed;

“**postal operator**” means Tonga Post Limited or a private postal operator;

“**postal service**” means a service provided by a postal operator for the acceptance, transmission and delivery of an article, message or information that may be accepted, transmitted or delivered by the postal operator using electronic or like means;

“**posting box**” means any box or other receptacle provided by a postal operator in a public or private place for the purpose of receiving postal articles;

“**post office**” means any building, house, room or vehicle under the control of a postal operator, where postal articles are received, dispatched or otherwise sorted;

“**Tonga Post**” means a company incorporated under section 3 of this Act, and includes any subsidiary of that company.

- (2) For the purposes of this Act, a postal article shall be deemed to be in the course of transmission by post from the time it is accepted by a postal operator for transmission or deposited in a posting box until such time as it is —
- (a) delivered to the address on the postal article;
 - (b) collected from the addressee’s private post office box;
 - (c) delivered by any other means specified in the terms and conditions of posting; or
 - (d) destroyed or disposed of according to law.

PART 2 - DUTIES, POWERS AND RIGHTS

3 Incorporation of Tonga Post

- (1) The Minister shall cause the incorporation of a company under the name of Tonga Post Limited under the Companies Act².
- (2) The Minister shall cause the company to comply with all the requirements of incorporation, under the Companies Act, prior to and on the incorporation of the company.

4 Designation of postal administrator

- (1) The Minister may designate Tonga Post Limited or any other postal operator as postal administrator for the Kingdom or any part of the Kingdom.
- (2) Any designation under subsection (1) may be —
 - (a) for such period as specified by the Minister;
 - (b) unconditional; or
 - (c) subject to such conditions set by the Minister.

5 Compliance with International Obligations

- (1) The Minister may by written notice communicate to a postal administrator or a postal operator —
 - (a) the general policy of the Kingdom in relation to the Universal Postal Union and the Asian Pacific Postal Union; and
 - (b) international postal matters in respect of the Kingdom's international relations.
- (2) Every postal administrator or postal operator shall —
 - (a) have regard to such policies as are communicated to that postal administrator or postal operator under subsection (1); and
 - (b) comply with any directions given by the Minister to that postal administrator or postal operator by notice in writing pursuant to any such policy.

6 Postal agreements

The Minister may enter into agreements with any postal operator designated as a postal administrator for —

- (a) the scope of postal services offered by that postal operator;
- (b) any service standards to be adhered to by that postal operator; or
- (c) any other matter relating to that postal operator's designation as a postal administration for the Kingdom.

7 Duties of postal administrator

Tonga Post or a designated postal administrator shall —

- (a) act as a representative of the Kingdom at the Universal Postal Union and the Asian Pacific Postal Union;
- (b) comply with the Kingdom's obligations as a member of the Universal Postal Union and Asian Pacific Postal Union;
- (c) pay to the Universal Postal Union and the Asian Pacific Postal Union any fees, charges, and other payments that the Kingdom is required to pay; and
- (d) comply with any condition imposed by the Minister.

8 Reserved services

- (1) No person other than Tonga Post or a designated postal operator shall convey any letter within the Kingdom or from the Kingdom to places outside the Kingdom.
- (2) Nothing in subsection (1) shall apply to —
 - (a) letters that relate to goods, sent and delivered with those goods;
 - (b) letters exceeding a weight of 2 kilograms;
 - (c) catalogues, pamphlets and leaflets not addressed to any person;
 - (d) letters carried otherwise than for reward;
 - (e) letters for which a charge in excess of 10 times the rate of postage for a letter of the same characteristics to the same destination has been made;
 - (f) letters carried by the sender or an employee of the sender;
 - (g) letters sent or carried on behalf of Tonga Post under an agreement with it;
 - (h) letters carried to or from the nearest or most convenient post office;
 - (i) summons or other document issued by a court of law; or
 - (j) letters conveyed in terms of sections 9 and 10.
- (3) Any person who carries, sends, or takes charge of any letter contrary to the provisions of this section commits an offence and shall be liable on

conviction to a fine not exceeding \$500 in respect of every letter to which that breach relates.

- (4) Any person who is convicted of a second or more offences against this section shall be liable on conviction to a fine of \$1,000 in respect of every letter to which that breach relates or a term of imprisonment not exceeding one year or both.

9 Power to compel transport operators to carry postal articles

- (1) The chief executive officer of any designated postal operator may require the master or person in command of any ship, aircraft or vehicle to —
- (a) carry postal articles to a destination within the Kingdom specified by any designated postal operator, within a period of time that is reasonable in the circumstances; and
 - (b) deliver, as soon as reasonably practicable after arrival at the specified destination, any postal articles carried pursuant to this section to a person nominated by any designated postal operator as its representative.
- (2) The power in subsection (1) shall be limited to —
- (a) means of transport that are usually engaged in the carriage of goods or passengers for hire or reward and have the right to operate in the Kingdom or is engaged by the Kingdom;
 - (b) means of transport that are intending to make a voyage or flight to the place to which the postal articles are to be conveyed; and
 - (c) a weight and volume of postal articles that will not endanger the safety of the means of transport.
- (3) The masters or persons in command of ships, aircraft and road vehicles and like means of transport operated by the armed forces or security agencies of the Kingdom or any other nation are exempt from the provisions of this section.
- (4) Subject to subsection (3), any master or person in command of a ship, aircraft, road vehicle or like means of transport who refuses to carry postal articles when required to do so under the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding \$20,000 for every occasion in respect of which such a refusal has been made.

10 Payment for carrying postal articles

- (1) Where the power to compel transport operators to carry postal articles under this Act has been exercised —

- (a) the designated postal operator shall make fair and equitable payment for services rendered; and
- (b) the master or person in command of the relevant means of transport shall have a right of appeal to the Minister for review of —
 - (i) the payment and conditions of carriage of the postal articles;
 - (ii) the justification for a continued exercise of the power under subsection (1) in relation to the same route and the same master or person in control of the relevant means of transport:

Provided that the intention to exercise this right of appeal shall not be a reason to delay the carriage of, or refuse to carry, any postal articles.

- (2) The decision of the Minister in respect of a matter referred to the Minister under this section shall be final.

11 Posting boxes

Tonga Post may install posting boxes on public land and buildings if —

- (a) they do not interfere with the ordinary circulation of traffic; and
- (b) Tonga Post complies with any reasonable conditions specified by any person having jurisdiction over the land or buildings concerned.

PART 3 - PROTECTION OF POSTAL REVENUE, ITEMS AND PROPERTY

12 Postage Stamps

- (1) No person other than Tonga Post shall produce postage stamps.
- (2) Any person who produces postage stamps in contravention of this section commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding three years, or both.

13 Stamp forgery

- (1) No person shall —
 - (a) forge a postage stamp;
 - (b) knowingly possess, sell, use or attempt to use forged postage stamps;

- (c) possess without authority any of the means of production of postage stamps, including paper used for printing postage stamps; or
 - (d) reproduce a postage stamp without the prior written approval of Tonga Post.
- (2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding three years, or both.

14 Revenue offences

- (1) No person shall —
- (a) re-use a postage stamp with intent to defraud;
 - (b) remove a postage stamp from a postal article;
 - (c) remove a cancellation mark from a postage stamp or knowingly possesses a postage stamp from which the cancellation mark has been removed;
 - (d) evade the due postage on any article posted by that person; or
 - (e) sell a postage stamp below its retail price.
- (2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding three years or both.

15 Postal articles not to be opened

- (1) No person shall wilfully and without reasonable excuse —
- (a) open or cause to be opened any postal article that is not addressed to that person; or
 - (b) interfere with the proper carriage, acceptance or delivery by Tonga Post of a postal article or any contents thereof.
- (2) Any person who contravenes this section commits an offence against this Act and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years or both.

16 Undeliverable postal articles

- (1) Where a designated postal operator is unable to deliver a postal article to the addressee or return it to the sender, it shall deliver that postal article to Tonga Post.
- (2) Notwithstanding section 15, where Tonga Post has been unable to deliver a postal article to the addressee or return it to the sender, an officer

authorised under section 18 shall have the right to open and examine the postal article for the purpose of determining from its contents the identity and address of the addressee or sender.

- (3) If, after opening a postal article pursuant to subsection (2), Tonga Post is able to identify the address of the addressee or sender, it shall —
 - (a) re-seal the postal article with an explanation of the reasons and authority for opening it and deliver it to the addressee or return it to the sender without further delay; or
 - (b) hold the postal article for six months after the date of opening and upon being satisfied within that period as to the entitlement of any person enquiring for the postal article, deliver it to that person.

17 Effect of time limit

- (1) If no enquiry has been received after the expiration of the six months relating to an undeliverable article, Tonga Post may —
 - (a) destroy or dispose of the postal article or any part of the postal article; or
 - (b) sell any of the contents of the postal article and credit the proceeds of sale to its operating revenue.
- (2) Tonga Post shall maintain a record of the destruction or disposal of any postal article under this Act for a period of 12 months after the date of destruction or disposal.
- (3) The detention, destruction, or disposal under this Act of a postal article or any of its contents shall not relieve any person from liability for any offence against this Act or any other Act.

18 Opening and examination of postal articles

- (1) The opening and examination of postal articles under this Act may only be done by employees of Tonga Post specifically authorised in writing by the Chief Executive Officer of Tonga Post for such purpose.
- (2) Where a postal article opened pursuant to this Act is found to contain any perishable or noxious substance, the persons specified in subsection (1) may destroy or dispose of the postal article, or refer the postal article to the appropriate authority.

19 Prohibited postal articles

- (1) Where any postal operator has reason to suspect that a postal article has been posted in contravention of section 22 of this Act, the postal article

may be opened by an authorised employee of Tonga Post, the police, the defence forces or customs, and the postal article may be destroyed, disposed of or detained.

- (2) Where a postal article has been opened under this section, a written report shall be made to the Minister within 48 hours of opening and such report shall include the grounds on which the article was believed to have been posted in contravention of this Act, the contents that were discovered, and if the contents were destroyed or disposed of, the method and reasons for destruction or disposal.

20 Disclosure

- (1) No officer, employee or agent of a postal operator shall disclose the contents or existence of any postal article except —
 - (a) as a court witness under summons;
 - (b) in the performance of that employee's duties as an employee of the postal operator; or
 - (c) when authorised by law and due process has been followed.
- (2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$20,000 or a term of imprisonment not exceeding four years or both.

21 Obligation to pass on postal articles

- (1) Where a postal article that has not been delivered comes into the possession of a person other than the addressee, that person shall either deliver it to the addressee or return it to Tonga Post.
- (2) Any person who, without reasonable excuse, fails to comply with this section commits an offence against this Act and is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 18 months.

PART 4 - PROHIBITED ARTICLES & RELATED OFFENCES

22 Prohibited articles

- (1) No person shall post or cause to be posted any article containing —

- (a) any matter that may expose any person to danger, or soil or damage other articles or property or equipment of the postal operator;
 - (b) any narcotic or psychotropic substance;
 - (c) live creatures except as expressly permitted by the postal operator;
 - (d) any explosive, flammable or other dangerous substance;
 - (e) any radioactive material;
 - (f) any content prohibited in the country of destination;
 - (g) except in an insured parcel, any coin, currency note, security payable to bearer, precious stones, jewels, or platinum, gold, or silver objects;
 - (h) any seditious communication or article; or
 - (i) any other matter prohibited by regulations made pursuant to this or any other Act.
- (2) Notwithstanding the provisions of subsection (1), medicines, biological substances and radioactive materials may be sent for professional purposes between —
- (a) recognised medical practitioners, clinics and institutions; and
 - (b) other persons or institutions authorised by the Minister,
- and such postal articles shall be packed and marked in accordance with relevant international standards and any regulations made pursuant to this or any other Act.
- (3) Any person who contravenes the provisions of subsections (1)(a) to (e) commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or a term of imprisonment not exceeding 25 years or both.
- (4) Any person who contravenes the provisions of subsections (1)(f) to (j) commits an offence and is liable on conviction to a fine not exceeding \$100,000 or a term of imprisonment not exceeding 10 years or both.

23 False claims

- (1) No person shall falsely claim to have —
- (a) sent a postal article containing any explosive, noxious or dangerous material; or
 - (b) placed any explosive, noxious or dangerous material in or on any premises, vehicles or other means of provision of a postal service.
- (2) Any person who contravenes the provisions of this section commits an offence against this Act and shall be liable upon conviction to a fine not exceeding \$100,000 or a term of imprisonment not exceeding 10 years or both.

PART 5 - MISCELLANEOUS

24 Interpretation

For the purposes of this Part —

“**succession date**” means the date of incorporation of Tonga Post;

“**The Post Office of the Kingdom**” means the Chief Post Office or other Post Office established under the Post Office Act³ in force immediately before the succession date.

25 Transfer of assets and liabilities

On the incorporation of Tonga Post, all properties, rights and liabilities to which the Post Office of the Kingdom of Tonga was entitled or subject immediately before that date, shall by virtue of this section, be transferred and vested in Tonga Post and become the properties, rights and liabilities of the company without any further conveyance or transfer.

26 Vesting of contracts and rights

- (1) All transactions entered into by the Kingdom in relation to the functions of the Post Office of the Kingdom before the succession date are to be regarded as having been entered into by Tonga Post at the time when they were entered into or performed by the Kingdom.
- (2) All contracts, leases or tenancy agreements entered into by and interests, rights, obligations, debts or liabilities of, and any right to recover any money by the Post Office of the Kingdom existing immediately before the succession date shall with effect from that date be deemed to belong to Tonga Post.

27 Validity of postage stamps

Postage stamps printed or sold by the Kingdom and valid immediately prior to the succession date shall continue to be valid for postage until such time as Tonga Post otherwise determines.

28 State of emergency

In the event of a state of emergency, the Minister may —

- (a) require Tonga Post or any postal operator to perform or suspend services as directed; and

- (b) authorise or require any person to perform any postal service.

29 Regulations

The Minister may, with the consent of the Privy Council, make Regulations for the following purposes —

- (a) arrangements for the opening, examination, disposal, destruction or detention of postal articles or the contents thereof;
- (b) arrangements with respect to undeliverable postal articles; and
- (c) any other matter that may, in the opinion of the Minister, be expedient or necessary for carrying out the proper and efficient administration of this Act.

ENDNOTES

¹ Act 15 of 2006

² Cap 40.06

³ Cap 95 of the 1988 Revised Edition