



Tonga

# **CIVIL AVIATION ACT 2014**

**Chapter 49.06**

**2016 Revised Edition**





## CIVIL AVIATION ACT 2014

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# CIVIL AVIATION ACT 2014

## AN ACT TO MAKE FURTHER AND FRESH PROVISION FOR CIVIL AVIATION<sup>1</sup>

Commencement [15<sup>th</sup> January 2015]

### PART I – PRELIMINARY

#### 1 Short title and commencement

- (1) This Act may be cited as the Civil Aviation Act.
- (2) Except for Part XI this Act shall come into force thirty days after its enactment.<sup>2</sup>
- (3) Part XI shall come into force on a date appointed by the Minister with the approval of Cabinet and notified in the Gazette.<sup>3</sup>

#### 2 Interpretation

In this Act, unless the context otherwise requires —

**“accident”** means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which —

- (a) a person is fatally or seriously injured as a result of —
  - (i) being in the aircraft;
  - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
  - (iii) direct exposure to jet blast,

except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew;

- (b) the aircraft sustains damage or structural failure that —
  - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
  - (ii) would normally require major repair or replacement of the affected component,

except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or

- (c) the aircraft is missing or is completely inaccessible;

**“act of violence”** means an act which, if committed in the Kingdom, would constitute —

- (a) culpable homicide as defined in sections 86 and 87 of the Criminal Offences Act;
- (b) any of the offences specified in sections 78, 109, 110, 112 and 113 of the Criminal Offences Act;
- (c) an offence against section 11 of the Counter Terrorism and Transnational Organised Crime Act; or
- (d) any of the offences specified in sections 22, 24, 44, and 45 of the Arms and Ammunition Act;

**“aerodrome”** —

- (a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and
- (b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

**“aerodrome control service”** means an air traffic control service provided for the control of aerodrome traffic;

**“aerodrome flight information service”** means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

**“aerodrome traffic”** means —

- (a) all traffic in the maneuvering area of an aerodrome; and
- (b) all aircraft flying in the vicinity of an aerodrome;

**“aerodrome traffic circuit”** means the pattern flown by aircraft operating in the vicinity of an aerodrome;

**“aeronautical product”** means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft; and includes fuel and other similar consumable items necessary for the operation of the aircraft;

**“aircraft”** means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

**“aircraft flying in the vicinity of an aerodrome”** means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

**“air navigation facility”** means premises used for the handling of cargo, baggage or mail, an aircraft hangar, a fuel storage area, an on board services preparation facility and any other premises, building, structure or place to which the public has no right of access and in which a service is rendered for the operation of a designated airport or aircraft or for the public at a designated airport or on board an aircraft, whether or not such premises, building, structure or place are situated within the boundaries of a designated airport;

**“air service”** means an air transport service or an aerial work service, whether regular or casual;

**“air traffic”** means all aircraft in flight or operating on any maneuvering area of an aerodrome;

**“air traffic control service”** means a service provided for the purposes of —

- (a) preventing collisions —
  - (i) between aircraft; and
  - (ii) between aircraft and obstructions on any maneuvering area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic;

**“air traffic service”** includes —

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service;
- (g) any other air traffic service considered by the Director to be necessary or desirable for the safe and efficient operation of the civil aviation system;

**“alerting service”** means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

**“approach control service”** means an air traffic control service for arriving or departing controlled flights;

**“approved organisation”** means —

- (a) an aeronautical authority of a contracting state of ICAO; or
- (b) an organisation or body declared to be an approved organisation by the Minister under section 5(1)(d);

**“area control service”** means an air traffic control service provided for controlled flights in controlled airspace;

**“aviation document”** means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

**“aviation related service”** means any equipment, facility, or service including any air traffic service (but excluding any accident or incident investigation service performed under Part VIII) operated in support of or in conjunction with the civil aviation system; and includes the provision of aeronautical products;

**“aviation security officer”** means a person for the time being employed as such by an aviation security service organisation pursuant to this Act and the Civil Aviation Rules made under this Act;

**“baggage”** in relation to any contract of carriage means checked baggage or baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier) whether the contract of carriage is for international carriage or domestic carriage;

**“cargo”** in relation to any contract of carriage means all kinds of movable property, including animals; but does not include baggage and mails or postal articles whether the contract of carriage is for international carriage or domestic carriage;

**“carrier”** in relation to any contract of carriage includes a contracting carrier and an actual carrier whether the contract of carriage is for international carriage or domestic carriage;

**“Civil Aviation Division”** means the Civil Aviation Division of the Ministry responsible for transport;

**“Civil Aviation Registry”** means the Registry established under section 28;

**“CEO”** means the person who is for the time being appointed as the Chief Executive Officer in charge of the administration of the Ministry responsible for transport;

**“commander”**, in relation to an aircraft, or **“commander of an aircraft”** means the pilot for the time being in lawful command of the aircraft;

“**contract**” in relation to any contract of carriage includes an arrangement made without consideration whether the contract of carriage is for international carriage or domestic carriage;

“**controlled airspace**” means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

“**controlled flight**” means any flight that is provided with or required by Rules made under this Act to make use of an air traffic control service;

“**Convention**” means the Convention on International Civil Aviation signed in Chicago on the 7<sup>th</sup> day of September 1944 and includes —

- (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and which has been ratified by the Kingdom;
- (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent adopted by the Kingdom; and
- (c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation under Article 37 of the Convention to the extent adopted by the Kingdom;

“**customs officer**” means any person employed and functioning as a customs officer within the meaning of the Customs Act;

“**dangerous goods**” means articles or substances that are capable of posing risk to health, safety, property, or the environment and —

- (a) are listed in, or classified in accordance with the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air; or
- (b) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify them for listing or classification as dangerous goods under the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air;

“**Directive**” means a written instruction issued under section 40(7);

“**Director**” means the person who is for the time being the Director of Civil Aviation appointed under section 14(1);

“**flight information service**” means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

“**foreign in-flight security officer**” means an enforcement officer or person with authorisation from a country other than the Kingdom who is —

- (a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted; and
- (b) subject to an in-flight security officer arrangement or agreement between the Kingdom and the State that has issued the air operating

certificate (or its equivalent) under which the air operation is conducted;

**“foreign licence”** or **“foreign medical assessment”** or **“foreign medical certificate”** means respectively a licence, medical assessment or medical certificate validly issued by the appropriate authority of an ICAO member state other than the Kingdom;

**“Hague Convention”** means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970;

**“holder”**, in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

**“ICAO”** means the International Civil Aviation Organisation established under the Convention; and includes any successor to the Organisation;

**“in-flight security officer”** means a member of Tonga Police authorised by the Commissioner of Police pursuant to section 128 to be an in-flight security officer;

**“incident”** means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

**“international airport”** means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

**“judicial officer”** means a Supreme Court Judge or a Magistrate;

**“Kingdom”** includes all waters within the outer limits of the territorial sea of the Kingdom;

**“maneuvering area”** —

- (a) means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing;
- (b) but does not include areas set aside for loading, unloading, or maintenance of aircraft;

**“Minister”** means the Minister who is for the time being responsible for civil aviation;

**“Ministry”** means the department of Government that is for the time being responsible for the administration of this Act;

**“Montreal Convention”** means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;



**“Montreal Protocol”** means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;

**“navigation installation”** —

- (a) means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and
- (b) includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

**“operate”**, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and **“operator”** has a corresponding meaning;

**“owner”** in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer;

**“passenger”** in relation to any contract of carriage means a person carried pursuant to a contract of carriage of that person whether the contract of carriage is for international carriage or domestic carriage and includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger;

**“PASO”** means the Pacific Aviation Safety Office established pursuant to the Pacific Islands Civil Aviation Safety and Security Treaty (PICASST);

**“PICASST”** means the Pacific Islands Civil Aviation Safety and Security Treaty opened for signature at Apia, Samoa on 7 August 2004 and ratified by the Kingdom on 24 August 2006;

**“pilot-in-command”**, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

**“prescribed”** means prescribed by this Act or by Regulations or Rules made under this Act;

**“prohibited item”** includes, in addition to the items described in section 207(1)(a) - (e), any blunt, pointed or bladed item capable of being used to cause injury; any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft; or any property or object capable, or appearing capable, of discharging a projectile or causing injury and further includes any items that —

- (a) are listed in, or classified in accordance with, the ICAO’s Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
- (b) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify them for

listing or classification as prohibited items under the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference or other document issued by ICAO after the commencement of this Act in replacement or substitution of the Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference;

**“Rules”** means ordinary Rules made by the Minister and emergency Rules made by the Director under Part IV;

**“security area”** means an area that the Director has declared to be a security area under section 99;

**“security designated aerodrome”** means an aerodrome for the time being designated as a security aerodrome under section 100;

**“security designated navigation installation”** means a navigation installation for the time being designated as a security navigation installation under section 100;

**“security enhanced area”** means an area that the Director has declared to be a security enhanced area under section 99;

**“Tokyo Convention”** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;

**“Tonga Register of Aircraft”** means the register of that name that is established under section 27; and

**“Tongan registered aircraft”** means any aircraft that is for the time being registered by the Director under section 58(1)(a) or required to be registered in the Kingdom under this Act.

### 3 Act to bind the Crown

- (1) Subject to subsection (2), this Act shall bind the Crown.
- (2) Subject to subsection (3) and except as otherwise expressly provided in this Act or any other Act, or in the Regulations or Rules concerned, nothing in this Act or in any Regulations or Rules made under this Act shall apply to His Majesty's Armed Forces.
- (3) This Act and Regulations and Rules made hereunder shall apply to aviation operations of His Majesty's Armed Forces which —
  - (a) are of a civilian character; and
  - (b) are not performed on operational service as defined in His Majesty's Armed Forces Act,as if persons performing such aviation operations were not members of His Majesty's Armed Forces.
- (4) For the purposes of subsection (3), a certificate by the Commander of His Majesty's Armed Forces regarding the use or non use of any aircraft on

operational service in any particular case shall be conclusive evidence of the fact certified.

#### 4 Application of Act

- (1) Except as provided in section 167, 182 and Part XV this Act and all Regulations and Rules made under this Act shall apply to the following —
  - (a) every person, aircraft, aerodrome, aeronautical product, air service, and aviation related service in the Kingdom;
  - (b) every Tongan registered aircraft whether within or outside the Kingdom;
  - (c) every holder of an aviation document while outside the Kingdom and exercising or purporting to exercise privileges accorded by that document;
  - (d) every foreign registered aircraft operating in the Kingdom.
- (2) Notwithstanding subsection (1), the Minister, acting on the recommendation of the Director, may, by agreement with the appropriate foreign aeronautical authority —
  - (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Tongan registered aircraft operated by that foreign operator that the Minister or the Director has under this Act or Regulations or Rules made under this Act;
  - (b) vest in the Minister or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Tongan operator that arises under this Act or Regulations or Rules made under this Act;
  - (c) grant exemptions from this Act, and from Regulations and Rules made under this Act, relevant to any exercise of the Minister's powers under this subsection.
- (3) Every Tongan registered aircraft shall, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
- (4) Except where an act or omission is required in order to comply with the laws of any foreign state, every holder of an aviation document who, while outside the Kingdom and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in the Kingdom, shall be deemed to have committed an offence under this Act and may be proceeded against in the Kingdom as if the act or omission had occurred within the Kingdom.
- (5) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.

- (6) Nothing in this Act shall be interpreted as limiting the privileges or immunities of —
- (a) any foreign military aircraft; or
  - (b) the officers and crew of any foreign military aircraft.
- (7) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until either —
- (a) the flight is cancelled;
  - (b) twenty-four hours after the aircraft, having commenced the flight, lands;
  - (c) the aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (2) assume responsibility for the aircraft and for persons and property on board the aircraft; or
  - (d) the aircraft, having commenced the flight, ceases to be in flight,
- whichever is the latest.

## PART II – MINISTER AND DIRECTOR

### 5 Functions and objectives of Minister

- (1) The functions of the Minister under this Act are to —
- (a) promote safety and security in civil aviation;
  - (b) administer the participation of the Kingdom in the Convention and any other international aviation convention, agreement, or understanding to which the Government of the Kingdom is a party;
  - (c) make ordinary Rules under this Act;
  - (d) declare an organisation or body to be an approved organisation;
  - (e) contract, in consultation with the Director, with one or more approved organisations for the provision of advice and recommendations to the Director in relation to the granting and renewal of aviation documents;
  - (f) contract, in consultation with the Director, with one or more approved regional or national institutions outside the Kingdom, for the provision of safety and security oversight services on behalf of the Kingdom;
  - (g) ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.
  - (h) appoint where required a Chief Investigator to investigate and review civil aviation accidents and incidents in accordance with Part VIII;
  - (i) maintain and preserve, in association with the Director, records and documents relating to activities within the civil aviation system, and in

- particular to maintain the Tonga Register of Aircraft and the Civil Aviation Registry;
- (j) provide to the Director or a Chief Investigator such information, advice, services and resource as may be required from time to time and which may assist in the implementation of this Act and Regulations and Rules made under this Act;
  - (k) enter into technical or operational arrangements, or both, with civil aviation authorities of other countries;
  - (l) carry out such other functions as may be conferred or imposed on the Minister by this Act, Regulations or Rules made under this Act or any other enactment or as have been delegated to the Minister under this Act.
- (2) The Minister shall carry out any other civil aviation functions and duties that are conferred on the Minister by this Act.
- (3) Without limiting subsections (1) and (2), the Minister shall also have the following objectives —
- (a) to undertake the Minister's functions in a way that contributes to the aim of achieving an integrated, safe, responsive and sustainable transport system; and
  - (b) to ensure that the obligations of the Kingdom under international civil aviation agreements are implemented.

## 6 Functions and Objectives of Director

- (1) Without prejudice to the functions and powers contained in section 14, the Director has the following functions —
- (a) to promote civil aviation safety and security in the Kingdom;
  - (b) to promote civil aviation safety and security beyond the Kingdom in accordance with the Kingdom's international obligations;
  - (c) to monitor adherence, within the civil aviation system, to any regulatory requirements relating to —
    - (i) safety and security, including but not limited to personal security;
    - (ii) access and mobility;
    - (iii) public health;
    - (iv) environmental sustainability;
    - (v) any other related matter;
  - (d) to ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security;
  - (e) to notify and advise the Minister in accordance with section 71, accidents and incidents notified to the Director, and to take such further actions as are specified under section 71;

- (f) to maintain and preserve, in association with the Minister, records and documents relating to activities within the civil aviation system, and in particular to maintain the Tonga Register of Aircraft and the Civil Aviation Registry;
  - (g) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information;
  - (h) to co-operate with, or to provide advice and assistance to any Government agency when requested to do so by the Minister but only if the Minister and the Director are satisfied that the performance of the functions and duties of the Director will not be compromised;
  - (i) to provide information and advice with respect to civil aviation, and to foster appropriate information education programmes with respect to civil aviation that promote its objective;
  - (j) to carry out such other civil aviation functions, and such civil aviation duties, as the Minister may from time to time prescribe by notice in the Gazette;
  - (k) to carry out such other functions as may be conferred or imposed on the Ministry by this Act, Regulations or Rules made under this Act or any other enactment or as have been delegated to the Minister under this Act.
- (2) Without limiting subsection (1), the Director shall also have the objective of undertaking the Director's functions in a way that contributes to the aim of achieving an integrated, safe, responsive and sustainable transport system.

## **7 Compliance with Government policy directions**

- (1) In the exercise of its functions and powers under this Act, the Director shall have regard to the policy of the Government in relation to civil aviation, and shall comply with any directions relating to that policy given to him in writing and signed by the Minister.
- (2) The Minister shall not give any direction under subsection (1) which requires the Director to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

## **8 Facilitation of formalities**

The Minister shall, in accordance with Article 22 of the Chicago Convention, adopt all practicable measures to facilitate and expedite navigation by aircraft between the Kingdom and the territories of other States and to prevent unnecessary delays in the clearance of aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, and customs.

## **9 Appointment of officers and employees**

There may from time to time be appointed to assist the Minister and the Director in the performance of their functions such officer or officers or employee or employees of the Civil Aviation Division as may be necessary.

## **10 Director to consider delegating or contracting out of functions and powers**

Subject to this Act, the Director shall, in the course of performing his functions and powers, consider whether he could most efficiently and effectively perform those functions and powers by means of his own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

## **11 Annual Report**

The Minister shall, as soon as practicable after the end of each year, cause to be prepared a report on the exercise of his functions in relation to civil aviation in the Kingdom during that year.

## **12 Power to remove dangerous obstructions**

- (1) The Minister may, by order, require the removal of any building, structure, erection, tree or other thing whatsoever on any land or water which may, in the opinion of the Minister on advice from the Director, constitute a danger to aircraft flying in accordance with normal aviation practice.
- (2) The Minister may, by order, authorise such persons as he may deem appropriate to remove or to alter to such extent as may be specified in the order, such building, structure, erection, tree or thing which is in contravention of an order made under subsection (1).
- (3) A copy of every order made under subsection (1) shall be served upon the owners or occupiers of all land affected by such order.
- (4) Any person suffering loss or damage in consequence of an order made under subsection (1) may apply for the payment of compensation therefore and, in default of agreement, the amount of such compensation shall be fixed by the Supreme Court.
- (5) Where any order is issued in relation to an airport owned by the government the compensation shall be paid by the government and where the order is issued in relation to any other airport the compensation shall be paid by the owner of that airport.
- (6) Notwithstanding the other provisions of this section, no compensation shall be payable for any loss or damage suffered in consequence of an order made under this section where the building, structure, erection, tree or thing has

been erected or planted in contravention of any Rule or Regulation made under this Act.

### 13 Restrictions in the use of land

- (1) For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice the Minister may make regulations restricting the use of land in the vicinity of airports and such regulations may provide for the prohibition and restriction of —
  - (a) the erection of buildings, structures or other things in any area specified;
  - (b) the planting of, or the limitation of the height of, any trees in any area specified;
  - (c) the sowing or growing of any plant or crop in any area specified;
  - (d) the bringing of vessels or vehicles into any area specified, or the anchoring or mooring of any vessel or vehicle therein.
- (2) Any owner or occupier of land who suffers loss or damage in consequence of any regulations made under subsection (1) shall be eligible for compensation if he submits a claim to the Minister in respect of an airport owned by the government, or to the owner in the case of any other airport, within a period of six months after publication of such regulations:

Provided that —

  - (a) such loss or damage shall be assessed having regard only to circumstances in existence at the time of the publication of such regulations; and
  - (b) the maximum amount of compensation payable under this subsection shall not exceed the amount by which the market value of such land is reduced as a result of making such Regulations.
- (3) In the event of disagreement as to the amount of compensation which shall be paid in respect of a claim under the provisions of subsection (2), the amount shall be fixed by the Supreme Court.

### 14 Director of Civil Aviation

- (1) The Minister, acting on advice from the CEO, shall appoint a person who shall be known as the Director of Civil Aviation.
- (2) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act, or Regulations or Rules made under this Act, and such functions and powers as may be delegated to the Director by the Minister under section 24.
- (3) Without limiting subsection (2), the Director shall—



- (a) exercise control over entry into the civil aviation system through the granting of aviation documents (including the validation of foreign aviation documents) and the issue of medical certificates or the granting of recognition to foreign medical certificates under this Act; and
  - (b) take such action as may be appropriate in the public interest to enforce the provisions of this Act and of Regulations and Rules made under this Act, including the carrying out or requiring of inspections and monitoring.
- (4) In performing or exercising any functions or powers in relation to—
- (a) the granting of aviation documents;
  - (b) the suspension of aviation documents;
  - (c) the revocation of aviation documents;
  - (d) the issue, suspension, or revocation of medical certificates;
  - (e) the issue of a validation permit for a foreign licence;
  - (f) the grant of recognition of a foreign medical assessment or certificate; or
  - (g) the granting of exemptions; or
  - (h) the enforcement of the provisions of this Act or any other Act, or of Rules or Regulations made under any such Act,

in respect of any particular case, the Director shall act independently and shall not be responsible to the Minister or the CEO for the performance or exercise of such functions or powers.

- (5) Without limiting subsection (2), where the Director believes on reasonable grounds —
- (a) that an unsafe condition exists in any aircraft or aeronautical product; and
  - (b) that condition is likely to exist or develop in any other aircraft or aeronautical products of the same design —

the Director may, by notice in writing, issue an airworthiness directive in respect of the aircraft or aeronautical products, as the case may be, of that design.

- (6) Notice of an airworthiness directive issued under subsection (5) shall be published in the Gazette.
- (7) An airworthiness directive issued under subsection (5) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the Gazette under subsection (6), if —
- (a) the Director considers that urgent action is required;
  - (b) the Director notifies the affected parties before the directive comes into force; and

- (c) notification of the issuing of the directive is published in the Gazette not later than 28 days after the directive comes into force.
- (8) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by —
- (a) any other employee for the time being directed by the Minister to exercise and perform them; or
- (b) any other person for the time being appointed by the Minister to exercise and perform them,
- whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.
- (9) No direction or appointment pursuant to subsection (8), and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.
- (10) Except as provided in this Act, the Director shall have —
- (a) the rights, powers, and privileges of a natural person; and
- (b) the power to do anything he is authorised to do by or under —
- (i) this Act;
- (ii) any other enactment; or
- (iii) any Rule of law.
- (11) The Director shall not exercise any of his rights, powers, or privileges except for the purpose of performing his functions.

## 15 Powers of Director in relation to examinations, and related matters

For the purposes of granting or renewing aviation documents under this Act, the Director may set, conduct, and administer examinations and tests, conduct flight testing, and carry out such other functions in relation to such examinations, tests, and flight testing as may be necessary.

## 16 Director may require or carry out safety and security inspections and monitoring

- (1) The Director may in writing require any person who —
- (a) holds an aviation document; or

- (b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure,

to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.

- (2) The Director may, in respect of any person described in subsection (1)(a) – (b), carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety and security.
- (3) For the purposes of any inspection or monitoring carried out in respect of any person under subsection (2), the Director may in writing require from that person such information as the Director considers relevant to the inspection or the monitoring.

## **17 Power of Director to investigate holder of aviation document**

- (1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director —
  - (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 54; or
  - (b) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) If the Director requires a holder to undergo an investigation, the Director shall —
  - (a) conclude the investigation as soon as practicable; and
  - (b) inform the holder, in writing, of —
    - (i) the date on which the investigation will begin; and
    - (ii) the results of the investigation, including any recommendations arising out of the investigation; and the grounds for those recommendations.

## **18 Power of Director to suspend aviation document or impose conditions**

- (1) The Director may suspend any aviation document issued under this Act or Rules made under this Act or impose conditions in respect of any such document, if he considers such action necessary in the interests of safety, and if he —
  - (a) considers such action necessary to ensure compliance with this Act or Rules made under this Act;

- (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 52;
  - (c) is satisfied the holder has contravened or failed to comply with section 169; or
  - (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) Without limiting the general provisions of subsection (1), the Director may suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions in respect of any such document, if he considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.
- (3) The suspension of any aviation document and any conditions imposed under subsections (1) or (2) shall remain in force until the Director determines what action, if any, referred to in subsection (4) is to be taken; but any such suspension or conditions expire 10 working days after the date that the suspension or conditions are imposed unless, before the expiry of that 10 working day period, the Director extends the suspension or conditions for a further specified period.
- (4) The Director may take one or more of the following actions —
- (a) impose conditions for a specified period;
  - (b) withdraw any conditions;
  - (c) suspend any aviation document for a specified period;
  - (d) revoke or partially revoke any aviation document under section 19.
- (5) If notice of a proposed revocation of an aviation document is given in accordance with section 57, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document under section 19.
- (6) Any person whose aviation document has been suspended or made subject to conditions under subsection (4) shall forthwith produce that document to the Director for appropriate endorsement.
- (7) The whole or any part of an aviation document may be suspended under this section.
- (8) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Supreme Court under section 230.

## **19 Power of Director to revoke aviation document or impose conditions**

- (1) The Director may, if he considers it necessary in the interests of aviation safety after an inspection, monitoring, or investigation carried out under this

- Act, revoke an aviation document or impose permanent conditions on an aviation document.
- (2) Revocation under this section may be in respect of the whole or any part of an aviation document.
  - (3) If the Director proposes to take action under this section, he shall give notice in accordance with section 57, which applies as if the proposed action were a proposed adverse decision under this Act.
  - (4) A person whose aviation document is revoked or made subject to permanent conditions under this section shall —
    - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement;
    - (b) if the whole document is revoked, immediately surrender the document to the Director.
  - (5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Supreme Court under section 230.

## **20 Criteria for action taken under section 18 or 19**

- (1) The provisions of this section shall apply for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 18, or revoked or made subject to conditions under section 19.
- (2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters —
  - (a) the person's compliance history with transport safety regulatory requirements;
  - (b) any conviction for any transport safety offence, whether or not —
    - (i) the conviction was in a Tongan court; or
    - (ii) the offence was committed before the commencement of this Act; or
  - (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any Rule made under this Act.
- (3) The Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.
- (4) The Director may —
  - (a) seek and receive such information as the Director thinks fit; or
  - (b) consider information obtained from any source.

- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), as soon as is practicable, but, in the case of the suspension of an aviation document or the imposition of conditions under section 18, no later than 5 working days after suspending the aviation document or imposing conditions, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) requires the Director to disclose —
  - (a) any information, the disclosure of which would endanger the safety of any person; or
  - (b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 18.

## **21 Power of Director to amend or revoke aviation document in other cases**

- (1) The Director may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested or revoke that document.
- (2) Subject to subsection (3), the Director may do any of the following —
  - (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
  - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder;
  - (c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.
- (3) Before taking any action under subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.
- (4) The power to amend an aviation document under this section includes —
  - (a) power to revoke the document and issue a new document in its place; and
  - (b) power to impose reasonable conditions.
- (5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

## **22 Powers of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions and powers in relation to dangerous goods**

- (1) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property, the Director may, if authorised by a warrant given by a judicial officer on written application on oath, do all or any of the following —
  - (a) detain the aircraft or any aircraft of that class;
  - (b) seize the aeronautical product or any aeronautical products of that class;
  - (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.
- (2) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following —
  - (a) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;
  - (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class;
  - (c) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.
- (3) Any detention or seizure under subsections (1) or (2) shall be maintained for only such time as is necessary in the interest of safety; but, if aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under this Act those aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.
- (4) The Director shall, if requested by the owner or the person for the time being in charge of an aircraft detained or an aeronautical product seized under subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Supreme Court under section 230.
- (6) For the purpose of subsections (1) and (2), the Director shall notify any prohibitions or conditions to such persons as he considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.
- (7) The Director may search any receptacle, container, package or goods, offered for carriage by air where the Director believes on reasonable grounds that the

- receptacle, container, package or goods, may contain dangerous goods that are —
- (a) forbidden for carriage under the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air;
  - (b) not classified, documented, certificated, described, packaged, marked or labeled in accordance with the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air; or
  - (c) not in the condition for shipment prescribed by the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air.
- (8) The Director may seize and detain any dangerous goods offered for carriage by air that are of a nature described in subsection (7)(a), (b) or (c) for the purpose of —
- (a) preventing the carriage by air of such dangerous goods;
  - (b) use as evidence in any prosecution under this Act or any other act; or
  - (c) the safe disposal of such dangerous goods, if authorised by this or any other Act.
- (9) Any seizure or detention under subsection (8) may be maintained only for such time as is necessary to achieve the relevant purpose or purposes in subsection (8).

## 23 General power of entry

- (1) For the purpose of carrying out his functions, duties, or powers under this Act or Regulations or Rules made under this Act, every person duly authorised by the Director shall have right of access at any reasonable time to the following —
- (a) any aircraft, aerodrome, building, or place;
  - (b) any document or record concerning any aircraft, aeronautical product, or aviation related service.
- (2) Without limiting the power conferred by subsection (1), every person duly authorised by the Director who has reasonable grounds to believe that —
- (a) any breach of this Act or of Regulations or Rules made under this Act is being or about to be committed;
  - (b) a condition imposed under any civil aviation document is not being complied with; or
  - (c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property,
- may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.



- (3) Every person who is authorised to enter any aircraft, aerodrome, building, or place under subsections (1) or (2) —
  - (a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act, to produce or surrender it; and
  - (b) shall, if a document is surrendered under paragraph (a), inform the relevant aviation document holders orally, as soon as practicable, and in writing that the document has been surrendered.
- (4) Nothing in subsections (1) or (2) shall confer on any person the power to enter any dwelling house, or any meeting hall or building associated with meetings unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (5) Every warrant issued under subsection (4) shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (6) Every person exercising the power of entry conferred by subsections (1) or (2) shall carry a warrant of authority issued by the Director specifying —
  - (a) the name and the office or offices held by the person; and
  - (b) that the person is authorised by the Director to exercise the power conferred by subsections (1) and (2) to enter aircraft, aerodromes, buildings, and places, and to carry out such inspection.
- (7) Every person exercising the power of entry conferred by subsections (1) and (2) shall produce the warrant of authority and evidence of identity —
  - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
  - (b) whenever subsequently reasonably required to do so.
- (8) Every sworn police officer shall have and may exercise all or any of the powers conferred on a person who has been duly authorised by the Director under this section.

## **24 Delegation of Minister's functions or powers to Director**

- (1) The Minister may from time to time, either generally or particularly, delegate to the Director all or any of the Minister's functions and powers under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate under this section.

- (4) The power of the Minister to delegate under this section —
  - (a) is subject to section 31(8) and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers;
  - (b) but does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given or conditions imposed by the Minister, the Director may exercise any functions or powers so delegated to the Director in the same manner and with the same effect as if they had been conferred on the Director directly by this section and not by delegation.
- (6) Where the Director purports to act pursuant to any delegation under this section, the Director shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

## **25 Delegation of Director's functions or powers to employees of the Civil Aviation Division**

- (1) The Director may from time to time, either generally or particularly, delegate to any employee of the Civil Aviation Division any of the Director's functions and powers under this Act or any other Act, or under any Regulations or Rules made under this Act, including functions or powers delegated to the Director under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate under this section.
- (4) Notwithstanding subsection (1), the Director shall not delegate —
  - (a) any functions or powers delegated to the Director by the Minister without the written consent of the Minister; or
  - (b) the power under section 19 to revoke an aviation document.
- (5) In any case where the Director has delegated any functions or powers to any employee of the Civil Aviation Division under this section, that employee may, with the prior approval in writing of the Director, delegate to any other employee of the Civil Aviation Division such of those functions or powers as are so approved.
- (6) No delegation of any functions and powers delegated to any employee of the Civil Aviation Division under this section shall be delegated by such employee under subsection (5) without the written consent of the Director.

- (7) Subject to any general or special directions given or conditions imposed by the Director, any employee of the Civil Aviation Division to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that employee directly by this Act and not by delegation.
- (8) Every employee of the Civil Aviation Division purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (9) Any delegation under this section may be made to a specified employee of the Civil Aviation Division or to employees of a specified class or to the holder or holders for the time being of a specified office or specified class of office.
- (10) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Director nor shall any such delegation affect the responsibility of the Director for the actions of any employee of the Civil Aviation Division acting under the delegation.
- (11) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the employee of the Civil Aviation Division by whom it was made may cease to hold office, and shall continue to have effect as if it was made by the employee for the time being holding that office.
- (12) Every employee of the Civil Aviation Division purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his authority to so act.

## **26 Delegation of Director's functions or powers to persons outside the Civil Aviation Division**

- (1) Subject to this section, the Director may from time to time, either generally or particularly, delegate to any person who is not an employee of the Civil Aviation Division any of the Director's functions and powers under this Act, or under any Regulations or Rules made under this Act.
- (2) Subject to this section, the Director may from time to time either generally or particularly delegate to any person who is not an employee of the Civil Aviation Division any of the Director's functions and powers under this Act, or under any Regulations or Rules made under this Act, other than —
  - (a) the power under section 19 to revoke aviation documents; or
  - (b) the power under section 50 to suspend or revoke aviation documents.
- (3) Every delegation under this section shall be in writing.
- (4) No delegation shall be made under this section without the written consent of the Minister.

- (5) In any case where the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.
- (6) Subject to any general or special directions given or conditions imposed by the Director any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (7) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.
- (8) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.
- (9) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Minister or by the Director, as the case may be, nor shall any such delegation affect the responsibility of the Minister or the Director, as the case may be, for the actions of any person acting under the delegation.
- (10) Every delegation under this section shall, until it is revoked or it expires, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office, and shall continue to have effect as if it was made by the person for the time being holding that office.
- (11) Every person purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his authority to so act.
- (12) Any person who exercises any function or power under a delegation made under this section may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

## **PART III – REGISTRIES AND INFORMATION SERVICES**

### **27 The Tonga Register of Aircraft**

- (1) The Director shall establish a register to be called the Tonga Register of Aircraft.
- (2) The Director shall enter in the Register such particulars as may be prescribed of every aircraft registered under section 58(1)(a).

## 28 Civil Aviation Registry

- (1) The Director shall establish a Civil Aviation Registry.
- (2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry —
  - (a) every current aviation document;
  - (b) the Tonga Register of Aircraft;
  - (c) every Regulation made under this Act, and every Rule notified in the Gazette and for the time being in force;
  - (d) any material incorporated into a Rule by reference under section 44;
  - (e) every accident and incident notification given under Part VIII;
  - (f) every airworthiness directive issued by the Director under section 14(5);
  - (g) every delegation, authorisation, and exemption granted in writing under this Act;
  - (h) the address for service of every current applicant for an aviation document and of every current aviation document holder;
  - (i) all information published under section 29.
- (3) Documents kept at the Registry shall be made available by the Director for inspection by the public free of charge.

## 29 Information services

- (1) The Ministry shall ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.
- (2) The Ministry shall ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Ministry.

# PART IV - RULES

## 30 Interpretation

In relation to any of the Minister's powers to make ordinary Rules in this Part “**make**” shall be deemed to include the power of the Minister to adopt by reference any civil aviation Rule part or Rule parts of a foreign jurisdiction pursuant to section 40 and “**make**”, “**making**” and “**made**” shall, in the context of ordinary Rules, have a corresponding meaning throughout this Act.

### 31 Power of Minister to make ordinary Rules

- (1) The Minister may from time to time make Rules (in this Act called ordinary Rules) for all or any of the following purposes —
  - (a) the implementation of the obligations of the Kingdom under the Convention;
  - (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programs and services;
  - (c) any matter related or reasonably incidental to any of the following —
    - (i) the Minister's functions under section 5;
    - (ii) the Director's functions under section 6;
  - (d) any other matter contemplated by any provision of this Act.
- (2) Any ordinary Rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances.
- (3) Any ordinary Rule may apply generally throughout the Kingdom or within any specified part or parts of the Kingdom.
- (4) The commencement of any ordinary Rule may be wholly suspended until it is applied by the Minister by notice in the Gazette.
- (5) No ordinary Rule shall be invalid because it confers any discretion upon or allows any matter to be determined or approved by the Minister or the Director or any other person, or allows the Minister or the Director or any other person to impose requirements as to the performance of any activities.
- (6) No breach of any ordinary Rule shall constitute an offence against this Act unless that offence is prescribed in Regulations made under this Act.
- (7) So far as the bylaws of any legally constituted organisation are inconsistent with or repugnant to any ordinary Rule made under this Act, the bylaws shall be construed subject to the Rules.
- (8) The Minister shall not delegate his power to make ordinary Rules under this Act.

### 32 Rules relating to safety and security

Without limiting the power conferred by section 31, in the interests of safety or security within the civil aviation system the Minister may make all or any of the following ordinary Rules —

- (a) Rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following —

- (i) the provision of identification procedures for persons, aircraft, and any other aviation related things;
  - (ii) the prevention of interference with aerodromes and other aviation related facilities;
- (b) general operating Rules, air traffic Rules, and flight Rules, including but not limited to the following —
- (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft;
  - (ii) the prevention of aircraft endangering persons or property;
- (c) Rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following —
- (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air;
  - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

### **33 Rules relating to airspace**

Without limiting the power conferred by section 31 —

- (a) in the interests of safety or security within the civil aviation system; or
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,

the Minister may make ordinary Rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by any Tongan disciplined force or a visiting force.

### **34 Rules for noise abatement purposes**

Without limiting the power conferred by section 31, the Minister may make ordinary Rules prescribing flight Rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

### **35 Rules relating to general matters**

Without limiting the power conferred by section 31, the Minister may make ordinary Rules for all or any of the following purposes —

- (a) the designation, classification, and certification of all or any of the following:
  - (i) aircraft;
  - (ii) aircraft pilots;

- (iii) flight crew members;
  - (iv) air traffic service personnel;
  - (v) aviation security service personnel;
  - (vi) aircraft maintenance personnel;
  - (vii) air services;
  - (viii) air traffic services;
  - (ix) aerodromes and aerodrome operators;
  - (x) navigation installation providers;
  - (xi) aviation training organisations;
  - (xii) aircraft design, manufacture, and maintenance organisations;
  - (xiii) aeronautical procedures;
  - (xiv) aviation security services;
  - (xv) aviation meteorological services;
  - (xvi) aviation communications services;
  - (xvii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system;
- (b) the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following —
- (i) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval;
  - (ii) the setting of standards for training systems and techniques, including recurrent training requirements;
  - (iii) the setting of medical standards for personnel;
  - (iv) the requirement for proof of access to appropriate weather services;
  - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products;
  - (vi) the requirements for notification of insurance coverage for air services;
  - (vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents;
  - (viii) the provision of information to the Director by applicants for or holders of aviation documents;



- (c) the conditions of operation of foreign aircraft and international flights to, from, or within the Kingdom;
- (d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system;
- (e) prescribing the design and colours of the Civil Air Ensign of the Kingdom, and where and by whom it may be flown.

### **36 Power of Director to make emergency Rules**

- (1) Subject to subsection (2), the Director may from time to time, in accordance with section 43, make such emergency Rules as may be necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property.
- (2) The Director shall not make emergency Rules unless it is impracticable in the circumstances of the particular case for the Minister to make ordinary Rules to effectively alleviate or minimise the risk concerned.
- (3) The Minister may revoke any emergency Rule made under subsection (1), and the revocation shall be notified as if it were an emergency Rule.

### **37 Procedures relating to Rules**

- (1) Every ordinary Rule (other than an ordinary Rule made by adoption pursuant to the provisions of section 40) shall —
  - (a) be signed by the Minister;
  - (b) contain a statement specifying the objective of the Rule and the extent of any consultation under section 39; and
  - (c) set out fully the requirements of the Rule, except where by reason of size or length certain information is incorporated in the Rule by reference under section 44.
- (2) Every emergency Rule shall —
  - (a) be signed by the Director;
  - (b) contain a statement specifying the objective of the Rule and the extent of the consultation under section 43 that took place before the making of the Rule; and
  - (c) set out fully the requirements of the Rule, except where by reason of size or length certain information is incorporated in the Rule by reference under section 44.

### **38 Matters to be taken into account in making Rules**

- (1) The ordinary Rules made by the Minister and the emergency Rules made by the Director shall not be inconsistent with the following —

- (a) the standards of ICAO relating to aviation safety and security, to the extent adopted by the Kingdom;
  - (b) the international obligations of the Kingdom relating to aviation safety and security.
- (2) In making any Rule the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he considers appropriate in each case to, the following —
- (a) the standards and recommended practices made under the Chicago Convention;
  - (b) the level of risk existing to aviation safety in each proposed activity or service;
  - (c) the nature of the particular activity or service for which the Rule is being established;
  - (d) the level of risk existing to aviation safety and security in the Kingdom in general;
  - (e) the need to maintain aviation safety and security;
  - (f) the costs of implementing aviation safety and security measures;
  - (g) the international circumstances in respect of aviation safety and security;
  - (h) such other matters as the Minister or the Director considers appropriate in the circumstances.

### 39 Procedure for making ordinary Rules

- (1) Before making any ordinary Rule, the Minister shall —
- (a) publish a notice of his intention to make the Rule in the Gazette;
  - (b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposed ordinary Rule; and
  - (c) consult with such persons, representative groups within the aviation industry or elsewhere, or Government departments as the Minister in each case considers appropriate.
- (2) Subject to subsection (3), every ordinary Rule shall be notified in the Gazette and be made available by the Ministry for purchase by members of the public at a reasonable price, and the notification shall specify a place where the Rule is available for inspection free of charge and for purchase.
- (3) Where for reasons of security it is inappropriate to notify a Rule under subsection (2), the Minister shall notify such persons as he considers appropriate or necessary in the circumstances and service of notification may be effected in such other manner as the Minister considers appropriate or necessary in the circumstances, and the Rule shall apply only to the persons so notified.

- (4) Every ordinary Rule shall come into force 28 days after the date of its notification in the Gazette or on such later day as may be specified in the Rule or under section 31(4) or, where notified by service on any person under subsection (3), immediately upon service of the Rule upon that person and in respect of that person only.
- (5) The requirements of subsections (1) to (3) shall not apply to the making of ordinary Rules by adoption under section 40.

#### 40 Making of Ordinary Rules by Adoption

- (1) Notwithstanding any other procedure by which the Minister may make ordinary Rules in accordance with the provisions of this Act the Minister may when he deems it appropriate make an ordinary Rule or Rules by adopting, with or without modification, a civil aviation Rule part or parts of a foreign jurisdiction pursuant to the provisions of this section. Any such adopted Rule part or parts shall be incorporated by reference as an ordinary Rule part or parts of the Kingdom and shall have full force and effect in the Kingdom notwithstanding that the foreign Rule part from which the Tonga Rule part is derived may at any time have ceased to be in force within the jurisdiction of its origin.
- (2) For the purposes of this section “**a civil aviation Rule part of a foreign jurisdiction**” shall mean any ordinary civil aviation Rule part which has been duly promulgated and published by any member state of ICAO other than the Kingdom and which may be readily accessed by the public in the Kingdom in electronic form or otherwise.
- (3) Any Rule part made by adoption under this section need not be reproduced in either electronic or printed form in the Kingdom but after determining to make any Rule pursuant to this section the Minister shall publish in the Gazette a notice of the making of a Rule by adoption which shall contain —
  - (a) a Rule Adoption Statement in accordance with Schedule 2 identifying by country of origin and part number in the country of origin the Rule part which has been adopted by reference and the part number by which it will be known in the civil aviation system of the Kingdom and specifying the date on which it shall become effective as a Rule in the Kingdom;
  - (b) a Rule Interpretation Statement in accordance with Schedule 2 containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted Rule in the context of the Tongan civil aviation system including but not limited to —
    - (i) any words (including place names) and numbers (including section numbers of the Tongan Acts to be substituted;
    - (ii) any part or parts of the adopted Rule which shall not apply in the Kingdom;

- (iii) any general exemptions which will apply in the Kingdom;
  - (iv) any forms to be used in the Kingdom;
  - (v) any equivalent documents to be substituted for documents referred to in the adopted Rule part;
  - (vi) any direction as to the application or non-application to the Kingdom of any amendment or repeal of an adopted Rule part in its country of origin;
  - (vii) any standards, requirements, recommended practices, Rules or other written material or document incorporated by reference under section 44;
  - (viii) any other matter to assist in the practical, clear and unambiguous interpretation of the adopted Rule in the Kingdom.
- (4) Any Rule Adoption Statement or Rule Interpretation Statement made under this section may, in consultation with the Director, be amended by the Minister after the Rule part has been brought into force pursuant to the provisions of section 42.
- (5) Where a Rule is adopted under this Act, all departments of government, judicial officers of the courts of the Kingdom, officials, participants in the Tongan civil aviation system, government officials or any other person before whom such Rule comes for consideration shall, in their interpretation of such Rule or decision or action to be taken under it, give effect to the adopted Rule according to its purpose and intent to the fullest extent practicable.
- (6) No adopted Rule, or part thereof, shall be rendered invalid, inoperative or unenforceable only because it contains a reference to any law, agency, authority, document, procedure, person or thing that is not in existence in, or is not applicable to the laws of the Kingdom, and any such reference —
- (a) shall be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within the Kingdom or under the laws of the Kingdom; and
  - (b) where there is no corresponding law, agency, authority, document, procedure, person or thing within the Kingdom or under the laws of the Kingdom shall be deemed to refer to the closest equivalent law, agency, authority, document, procedure, person or things within the Kingdom or under the laws of the Kingdom and in any such case regard shall be had to any Directive issued by the Minister under subsection (7).
- (7) For the purpose of the clarification and effective implementation of any adopted Rule the Minister may from time to time issue a Directive and shall forthwith publish, distribute or otherwise make the Directive available to participants within the Tongan civil aviation system.
- (8) Where any of the persons referred to in subsection (5), whether individual or an incorporated body, identifies any matter within an adopted Rule upon which uncertainty has arisen or might reasonably arise with regard to its meaning, interpretation or application, and in respect of which no Directive

has been issued, shall forthwith make written notification to the Director who shall consider the same and within 30 days of his receipt of notification make a recommendation to the Minister with regard to the issue of a Directive under subsection (7) or other appropriate action.

#### **41 No requirement for translation or sale of adopted Rules**

- (1) Notwithstanding anything to the contrary in this Act or any other Act there shall be no requirement that any adopted Rule be printed in the Tongan language or that it be made available for sale.
- (2) A copy of each adopted Rule and its Rule adoption statement and Rule interpretation statement and any Directive made under section 40(7) shall be kept at places determined by the Minister or the Director and shall be available for inspection.
- (3) Copies of individual Rules or provisions may be obtained if photocopying facilities are available and at a cost to be determined by the Director if copies are held under his control.

#### **42 Amendments to adopted Rules**

- (1) Where an adopted Rule is amended in its country of origin the amendment shall in the first instance be deemed to apply in the Kingdom from the date of its coming into force in the country of origin unless the Minister determines otherwise.
- (2) Where the Minister forms an opinion, on advice from the Director —
  - (a) that an amendment referred to in subsection (1) should not apply in the Kingdom;
  - (b) that such amendment should apply only in part or with modification or should come into to force in its entirety or in part on a date other than that applicable in the country of origin; or
  - (c) that any Rule previously adopted pursuant to the provisions of section 40 should be amended or modified,

the Minister shall comply with the procedures set out in section 39(1) as if the Minister's intention to make an amendment or to decline to adopt an amendment was an intention to make an ordinary Rule and after giving due regard to any written submissions from persons notified or entitled to notification, shall, if appropriate, issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement. Upon such issue and notification the Minister's determination shall take effect accordingly.

### 43 Procedure for making emergency Rules

- (1) Before making an emergency Rule, the Director shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and others as the Director in each case considers appropriate.
- (2) Subject to subsection (4), every emergency Rule shall be notified in the Gazette and given further notification as the Director may consider appropriate in each case and the notification shall specify a place where the Rule is available for inspection free of charge and for purchase.
- (3) Every emergency Rule shall come into force immediately upon its being notified in the Gazette, or, where notified by service on any person under subsection (4), immediately upon service of notification upon that person and in respect of that person only.
- (4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency Rule under subsection (2), the Director shall notify such persons as he considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.
- (5) An emergency Rule may be in force for a period not exceeding 90 days, and may be renewed by the Director once only for a further period not exceeding 90 days.
- (6) The Minister may, at any time while an emergency Rule is in force in accordance with subsection (5), by notice in the Gazette, renew the Rule in accordance with subsection (7) for a further period not exceeding 180 days from the date of the notification.
- (7) Before renewing an emergency Rule under subsection (6), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and others as the Minister thinks appropriate.
- (8) So far as any emergency Rule is inconsistent or repugnant to any ordinary Rule made under this Act, the emergency Rule shall prevail.

### 44 Incorporation by reference

- (1) The following may be incorporated by reference into a Rule made by the Minister or the Director —
  - (a) standards, requirements, or recommended practices of international aviation organisations;
  - (b) standards, requirements, or Rules prescribed under law by any other Contracting State of ICAO;

- (c) standards, requirements, or Rules of any aviation sport or aviation recreational organisation;
  - (d) any other written material or document that, in the opinion of the Minister or the Director, as the case may be, is too large or impractical to be printed as part of the Rule.
- (2) Any material incorporated in a Rule by reference under subsection (1) shall be deemed for all purposes to form part of the Rule; and, unless otherwise provided in the Rules, every amendment to any material so incorporated by reference that is made by the person or organisation originating the material shall, subject to subsections (3) and (4), be deemed to be part of the Rule.
  - (3) The Director shall, by notice in the Gazette, specify the date on which any amendment to material incorporated by reference under subsection (1) shall take effect.
  - (4) All material incorporated by reference under subsections (1) or (2) shall be made available at the Civil Aviation Registry for inspection by the public free of charge.
  - (5) Where material is incorporated by reference in an adopted Rule the material shall in the first instance be deemed to form part of the adopted Rule in the Kingdom from the date of its incorporation in the country of origin unless the Minister determines otherwise.
  - (6) Where the Minister determines that the material shall not apply in the Kingdom or apply only in part or with modification or shall be incorporated in its entirety or in part on a date other than that applicable in the country of origin the Minister shall issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement and that determination shall take effect accordingly.

#### **45 Exemption power of Director**

- (1) The Director may, if he considers it appropriate and upon such conditions as he considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any Rule made under sections 31, 32, 35 or 40.
- (2) Before granting an exemption under subsection (1), the Director shall be satisfied in the circumstances of each case that —
  - (a) the requirement has been substantially complied with and that further compliance is unnecessary;
  - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;
  - (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

- (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,  
and that the risk to safety will not be significantly increased by the granting of the exemption.
- (3) The number and nature of exemptions granted under subsection (1) shall be notified as soon as practicable in the Gazette.
- (4) Nothing in this section shall apply in any case where any Rule specifically provides that no exemptions are to be granted.

## PART V – REGULATIONS

### 46 Regulations

- (1) The Minister may, from time to time, make Regulations for all or any of the following purposes —
- (a) prescribing, or providing for the fixing of, fees, charges and levies payable under this Act;
  - (b) prescribing those breaches of Rules made under this Act that constitute offences against this Act;
  - (c) prescribing the penalty for each offence prescribed under paragraph (b), which —
    - (i) in the case of an individual, shall be a fine not exceeding \$5,000; or
    - (ii) in the case of a body corporate, shall be a fine not exceeding \$30,000;
  - (d) prescribing the matters in respect of which fees or charges are to be payable under Part XI, the amount of the fees or charges, and the persons liable to pay them;
  - (e) providing for the refund or waiver of any fee or charge payable under Part XI, in whole or in part, in any specified case or class of cases;
  - (f) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air services licences under Part XI, and the time within which such information or documents shall be supplied;
  - (g) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Any Regulations made under this Act may be so made that different Regulations shall apply with respect to different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, or aeronautical procedures, or with respect to the same class of person,



aerodrome, aircraft, aeronautical product, aviation related service, or aeronautical procedure in different circumstances.

#### **47 Fees, charges and levies**

- (1) Without limiting the power to make Regulations conferred by section 46, but subject to the provisions of this Act, the Minister may, from time to time make Regulations prescribing, or providing for the fixing of, fees, charges and levies payable for all or any of the following purposes —
  - (a) to provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act;
  - (b) to defray the costs and expenses incurred by the Ministry or the Director or any of their employees in the exercise of functions, powers, and duties, and in providing services, under this Act;
  - (c) generally for the purposes of civil aviation.
- (2) Different rates of fees, charges and levies may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.
- (3) Any such Regulations may —
  - (a) specify the persons by whom and to whom any fees, charges or levies are payable;
  - (b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays;
  - (c) prescribe additional charges for reimbursement of traveling time, accommodation, and other expenses;
  - (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns;
  - (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.
- (4) Fees and charges in respect of the use of any aerodrome shall not be prescribed, except on the advice of the Minister given after consultation with the operator of that aerodrome.
- (5) The power to prescribe, or provide for the fixing of, fees, charges and levies in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees, charges or levies, or all of them, in respect of any matter.

**48 Rebates**

- (1) The department, authority, organisation or person to whom any fees, charges or levies are payable under Regulations made under this Act may grant a rebate of such fees, charges or levies to any person who is liable to pay them.
- (2) Every rebate of fees, charges or levies granted under subsection (1) shall —
  - (a) be based on the quantity of services used by the person liable to pay the fees, charges or levies;
  - (b) be offered on an equal percentage basis to any other person using a similar quantity of such services; and
  - (c) be granted in accordance with Regulations made under this Act.

**49 Payment of fees and charges**

- (1) Except as otherwise provided in Regulations made under this Act, every application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.
- (2) Any Regulations made under this Act may —
  - (a) prescribe a date by which any such fee or charge is payable or authorise the Minister to fix the date by which the fee or charge is payable;
  - (b) provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

**50 Suspension or revocation of aviation document where prescribed fees, charges or levies unpaid**

- (1) Where any fee, charge or levy payable under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee, charge or levy relates.
- (2) Where any fee, charge or levy payable under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee, charge or levy, the Director may revoke the aviation document to which the fee, charge or levy relates.
- (3) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director shall notify the holder of that document of —
  - (a) the Director's intention to suspend or revoke the document; and
  - (b) the right of appeal available to the holder of that document in the event of the document being suspended or revoked.
- (4) Where a fee or a charge is payable in respect of an application under this Act or the provision of a service under this Act, the Minister or the Director or

other person asked to process the application or provide the service, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Ministry or the Director, as the case may be, for payment of the fee or charge have been made.

- (5) The holder of an aviation document that is suspended under subsection (1) or revoked under subsection (2) may appeal against that decision to the Supreme Court under section 230.

## **51 Recovery of fees and charges**

- (1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Ministry or the Director in respect of any aircraft, the person whose name appears on the register of aircraft in respect of that aircraft shall be deemed to be liable to pay that fee or charge.
- (2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of subsection (1) shall not be so liable if that person —
  - (a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
  - (b) has taken all reasonable steps to supply the Director with such information as would identify the actual user.

## **PART VI - TONGA CIVIL AVIATION SYSTEM**

### **52 General requirements for participants in the Tonga civil aviation system**

- (1) Every person who does anything for which an aviation document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.
- (2) Every participant shall comply with this Act, the relevant Rules made under this Act, and the conditions attached to the relevant aviation documents.
- (3) Every participant shall ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

- (4) Every participant who holds an aviation document that authorises the provision of a service within the civil aviation system —
- (a) shall, if so required by Rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document;
  - (b) shall provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
  - (c) shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

### 53 Requirement for aviation document

- (1) Rules made under this Act may require that an aviation document shall be required by or in respect of all or any of the following:
- (a) Tonga registered aircraft;
  - (b) aircraft pilots;
  - (c) flight crew members;
  - (d) air traffic service personnel;
  - (e) aviation security service personnel;
  - (f) aircraft maintenance personnel;
  - (g) air services;
  - (h) air traffic services;
  - (i) aerodromes and aerodrome operators;
  - (j) navigation installation providers;
  - (k) aviation training organisations;
  - (l) aircraft design, manufacture, and maintenance organisations;
  - (m) aeronautical procedures;
  - (n) aviation security services;
  - (o) aviation meteorological services;
  - (p) aviation communications services;
  - (q) any persons, services, or things within any of the classes specified in paragraphs (a) to (p);
  - (r) such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical

products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the Rules;

- (s) any person who is an aviation examiner or medical examiner.
- (2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be prescribed by Rules made under this Act.
- (3) Subject to any Rules made under this Act, an aviation document may be issued by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.
- (4) Rules made under this Act may require that a validation permit shall be required in respect of foreign licenses in respect of all or any of the following —
  - (a) aircraft pilots;
  - (b) flight crew members;
  - (c) aircraft maintenance personnel.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Supreme Court under section 230.

#### **54 Application for aviation document**

- (1) Every application for the grant or renewal of an aviation document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.
- (2) Every applicant for an aviation document shall include in the application the applicant's address for service in the Kingdom including, where applicable, telephone and facsimile numbers.
- (3) It shall be the duty of every holder of an aviation document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, telephone number, or facsimile number.
- (4) The Director shall ensure that a record of all information provided under this section is maintained at the Civil Aviation Registry.
- (5) Service of any notification under this Act on a holder of, or applicant for, an aviation document shall be effective service if served on the address last provided by that holder or applicant under this section.

**55 Grant or renewal of aviation document**

- (1) After considering any application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application if he is satisfied that —
  - (a) all things in respect of which the document is sought meet the relevant prescribed requirements;
  - (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document —
    - (i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2);
    - (ii) is a fit and proper person to have such control or hold the document; and
    - (iii) meets all other relevant prescribed requirements; and
  - (c) it is not contrary to the interests of aviation safety for the document to be granted or renewed.
- (2) For the purpose of granting or renewing an aviation document, the Director may, subject to any provisions in the Rules, accept such foreign qualifications or recognise such foreign certifications as he considers appropriate in each case.
- (3) It shall be a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).
- (4) Where the Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against that decision to the Supreme Court under section 230.

**56 Criteria for fit and proper person test**

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director shall, having regard to the degree and nature of the person's proposed involvement in the Tonga civil aviation system, have regard to, and give such weight as the Director considers appropriate to, the following matters —
  - (a) the person's compliance history with transport safety regulatory requirements;
  - (b) the person's related experience (if any) within the transport industry;
  - (c) the person's knowledge of the applicable civil aviation system regulatory requirements;
  - (d) any history of physical or mental health or serious behavioural problems;

- (e) any conviction for any transport safety offence, whether or not —
    - (i) the conviction was in a Court in the Kingdom; or
    - (ii) the offence was committed before the commencement of this Act;
  - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any Rule made under this Act.
- (2) The Director shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.
- (3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act —
- (a) seek and receive such information (including medical reports) as the Director thinks fit;
  - (b) consider information obtained from any source;
  - (c) have regard to, and give such weight as the Director thinks appropriate to, any advice and recommendations provided by approved organisations contracted by the Minister under section 5(1)(e).
- (4) Subsection (1) applies to a body corporate with the following modifications —
- (a) subsection (1)(a), (b), (c), (e), and (f) shall be read as if they refer to the body corporate and its officers;
  - (b) subsection (1)(d) shall be read as if it refers only to the officers of the body corporate.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), disclose that information to that person and, in accordance with section 57, give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

## 57 Rights of persons affected by proposed adverse decisions

- (1) In this section, unless the context otherwise requires —
- “adverse decision”** means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act;
- “affected document holder”**, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the aviation document;

**“person directly affected”**, in relation to any adverse decision, means the person who would be entitled under section 230 to appeal against that adverse decision; and

**“person on the basis of whose character the adverse decision arises”**, in relation to any adverse decision made or proposed to be made on the grounds referred to in section 56, means the person whom the Director assesses as not being a fit and proper person.

- (2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall —
  - (a) notify the person directly affected by the proposed decision;
  - (b) subject to subsection (4), inform that person of the grounds for the proposed decision;
  - (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given;
  - (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given;
  - (e) notify the person of the person's right of appeal under section 230, in the event of the Director proceeding with the proposed decision; and
  - (f) specify such other matters as in any particular case may be required by any provision of this or any other Act.
- (3) Where the Director gives a notice under subsection (2), the Director —
  - (a) shall also supply a copy of the notice to —
    - (i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and
    - (ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
  - (b) may supply a copy of the notice to any other affected document holder.
- (4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 56(1), except to the extent that —
  - (a) the notice or copy is supplied to the person to whom the information relates; or
  - (b) that person consents to the supply of that information to any other person.
- (5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply —



- (a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2)(c), or within such further period as the Director may allow;
  - (b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify;
  - (c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).
- (6) After considering the matters referred to in subsection (5), the Director shall —
- (a) finally determine whether or not to make the proposed adverse decision; and
  - (b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of —
    - (i) the Director's decision and the grounds for the decision;
    - (ii) the date on which the decision will take effect; and
    - (iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in sections 55(4), 18(8) or 19(5)).

## 58 Requirement to register aircraft

- (1) Except as otherwise provided in this Act or Rules made under this Act, every person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within, or over the Tongan territory shall register that aircraft and hold a valid certificate of registration for that aircraft from —
- (a) the Director;
  - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
  - (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Kingdom which provides for the acceptance of each other's registrations.
- (2) No aircraft shall be registered in or remain registered in the Kingdom if it is registered in any other country.
- (3) The Director may decline to register any aircraft in accordance with the provisions of Rules made under this Act.

- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Supreme Court under section 230.

## 59 Responsibilities of pilot-in-command and operator

- (1) The pilot-in-command of an aircraft shall —
- (a) be responsible for the safe operation of the aircraft in flight, the safety and wellbeing of all passengers and crew, and the safety of cargo carried;
  - (b) have final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and
  - (c) subject to subsections (2) to (7), be responsible for compliance with all relevant requirements of this Act and Regulations and Rules made under this Act.
- (2) Subject to subsections (3) and (7), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act or of Regulations or Rules made under this Act.
- (3) For the purposes of subsection (2), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that —
- (a) the emergency involves a danger to life or property;
  - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;
  - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
  - (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.
- (4) Subject to subsections (5) to (7), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or of Regulations or Rules made under this Act.
- (5) For the purposes of subsection (4), a breach of any prescribed requirement is permitted only if —
- (a) the emergency involves a danger to life or property;
  - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;
  - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

- (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (6) Nothing in subsection (4) permits —
  - (a) the operation of an aircraft that is not registered in the Kingdom or elsewhere;
  - (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
  - (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.
- (7) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act or Regulations or Rules made under this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, shall —
  - (a) immediately after the emergency has abated notify the relevant air traffic control service of the action; and
  - (b) as soon as practicable, notify the Director of the action and the circumstances that necessitated it, and, if requested by the Director, provide to the Director a written report in respect of the action.

## **60 Nuisance, trespass, and responsibility for damage**

- (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any Rules made under sections 31, 32 or 35, so long as the provisions of the Rules are duly complied with.
- (2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as the provisions of this Act and of any Rules made under this Act are duly complied with.
- (3) Where material damage or loss is caused to property on land or water by an aircraft in flight, taking off, landing, or alighting, or by any person or article in or falling from any such aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.
- (4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which —
  - (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and

- (b) some person other than the owner is liable to pay damages in respect of the damage or loss,
- the owner shall be entitled to be indemnified by that other person against any claim in respect of the damage or loss.
- (5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the law relating to apportionment in respect of contributory negligence shall apply.
- (6) Damages shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute. Damages shall be recoverable from the person descending and the provisions of subsection (4) shall, with the necessary modifications, apply as if the person descending were the owner of the aircraft. This subsection shall not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.
- (7) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.
- (8) For the purposes of this section, the term “**fault**” means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from any statutory provision in respect of contributory negligence, give rise to the defence of contributory negligence.

## PART VII - MEDICAL CERTIFICATION

### 61 Interpretation

- (1) In this Part, unless the context otherwise requires —
- “**accredited medical conclusion**” means the conclusion reached by one or more medical experts acceptable to the Director for the purposes of the case concerned, in consultation with flight operations or any other experts that may be necessary;
- “**applicant**” means a person who has applied for recognition of a foreign medical certificate; and includes a licence holder who has reapplied for recognition of a foreign medical certificate;
- “**foreign medical certificate**” means a medical certificate validly issued by or on behalf of the aviation authority of any member state of ICAO other than the Kingdom;
- “**licence holder**” means a person who —

- (a) holds an aviation document or is a pilot; and
- (b) holds, or is required under the Rules to hold, a medical certificate;

“**medical certificate**” means —

- (a) a medical certificate issued by the Director under this Part to the applicant or licence holder; or
- (b) a foreign medical assessment or certificate granted recognition by the Director under this Part;

“**operator**” includes an air traffic service provider;

“**registered medical practitioner**” means a medical practitioner entitled, licensed or registered to practice medicine in the Kingdom; and

“**specified examination**” means —

- (a) an examination of visual and colour perception;
- (b) an examination of hearing;
- (c) a psychological examination; or
- (d) any other class of examination prescribed in the applicable Rules.

- (2) A medical certificate is not an aviation document.
- (3) The phrase “**privileges to which a medical certificate relates**”, and its variations, means those privileges under this Act that may be exercised by a person who —
  - (a) holds a current aviation document; or
  - (b) is permitted under the Rules to operate an aircraft solo as a pilot.

## **62 Power of Director to issue a medical certificate or to grant recognition to a foreign medical certificate or assessment**

- (1) The Director may designate, by issuing an aviation document under section 55, one or more registered medical practitioners to conduct specified examinations for the issue of medical certificates as may be required by the Director for the purposes of prescribed services in the civil aviation system provided within the Kingdom.
- (2) Before the Director issues a medical certificate in accordance with subsection (1) an applicant shall have a medical examination by a designated registered medical practitioner who shall forward his medical report to the Director.
- (3) After consideration of an application for a medical certificate and receipt of a report in accordance with the provisions of subsection (2), the Director shall, as soon as practicable issue a medical certificate where he is satisfied that the applicant meets the standards prescribed in the Rules unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.

- (4) Despite subsection (3), the Director may, relying on flexibility, issue a medical certificate to the applicant.
- (5) In subsection (4), “**flexibility**” means the use of medical judgment to issue a medical certificate if the following conditions are fulfilled —
  - (a) an accredited medical conclusion indicates that in special circumstances the applicant's failure to meet any medical standard prescribed in the Rules is such that the exercise of the privileges to which a medical certificate relates is not likely to jeopardise aviation safety;
  - (b) the relevant ability, skill, and experiences of the applicant and operational conditions have been given due consideration; and
  - (c) the medical certificate is endorsed with any conditions, restrictions, or endorsements when the safe performance of the applicant's duties is dependent on compliance with those conditions, restrictions, or endorsements.
- (6) For the purpose of issuing a validation permit in respect of foreign licenses for pilots, flight crews and aircraft maintenance personnel in the Kingdom, and subject to the provisions of this Act, the Director —
  - (a) shall grant recognition to, and treat as a valid medical certificate for the purposes of this Act and Rules made under it, any current and validly issued medical assessment or certificate of Australia, New Zealand, the United States of America and the United Kingdom; or
  - (b) may at his sole discretion grant recognition to, and treat as a valid medical certificate for the purposes of this Act and Rules made under it, a current and validly issued medical assessment or certificate of any member state of ICAO other than those referred to in paragraph (a) upon being satisfied (at the cost of the applicant) that the relevant standards of that issuing authority are comparable to those of Australia, New Zealand, the United States of America or the United Kingdom and substantially meet the medical requirements or standards in Rules made under this Act,

unless, regardless of whether paragraph (a) or (b) is applicable, the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical assessment or certificate relates.

- (7) The Director may impose any conditions, restrictions, or endorsements on a medical assessment or certificate either issued or granted recognition under this section.
- (8) Before issuing a medical certificate or granting recognition to a foreign medical assessment or certificate, the Director may require the applicant, at the applicant's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.

- (9) The Director shall maintain a register of current medical assessments or certificates either issued by him or to which he has granted recognition under this section.
- (10) Any decision made under this section by the Director in relation to a medical assessment or certificate other than a decision under subsection (8) is subject to right of appeal to the Supreme Court under section 230.

### 63 Changes in medical condition of licence holder

- (1) If a licence holder is aware of, or has reasonable grounds to suspect, any change in his medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his medical assessment or certificate relates, the licence holder —
  - (a) shall advise the Director of the change as soon as is practicable; and
  - (b) may not exercise the privileges to which the licence holder's medical assessment or certificate relates.
- (2) If a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical assessment or certificate relates, the registered medical practitioner shall, as soon as practicable —
  - (a) inform the licence holder that the Director will be advised of the condition; and
  - (b) advise the Director of the condition.
- (3) A registered medical practitioner is not subject to any civil or criminal liability for —
  - (a) doing an indemnified act in good faith in the course of carrying out his functions under this Part; or
  - (b) doing an indemnified act in good faith in the course of answering any questions put to him by the Director that —
    - (i) concern a licence holder; and
    - (ii) are relevant to any action the Director may take under this Part.
- (4) In this section, “**indemnified act**” means any of the following acts —
  - (a) advising the Director, whether in writing or otherwise, that a licence holder —
    - (i) may not meet the medical standards prescribed in the Rules; or
    - (ii) may be unable to exercise safely the privileges to which the licence holder's medical assessment or certificate relates;
  - (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who has been examined or treated may be unable

to exercise safely the privileges to which the licence holder's medical certificate relates because of —

- (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
  - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity;
- (c) stating to the Director, whether in writing or otherwise —
- (i) the nature of a licence holder's illness, infirmity, defect, incapacity, or risk of incapacity; or
  - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

#### **64 Medical disclosure**

The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to the applicant's medical condition or history for the purpose of determining whether or not the applicant is eligible for recognition of, or the continued holding of, a foreign medical assessment or certificate.

#### **65 Extension from expiry of medical certificate**

The Director may, upon receiving an application from a licence holder before the expiry of his existing medical assessment or certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

#### **66 Investigation of medical condition of licence holder**

- (1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of the licence holder's medical certificate, if the Director has reasonable grounds to believe that the licence holder —
- (a) may be unable to exercise safely the privileges to which the medical certificate relates; or
  - (b) has obtained his medical certificate fraudulently.
- (2) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate if



the Director has reasonable grounds to believe that the licence holder's medical assessment or certificate was issued in error.

- (3) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder —
  - (a) meets the medical standards prescribed in the Rules; or
  - (b) is able to exercise safely the privileges to which the medical assessment or certificate relates.

## **67 Revocation, suspension, amendment, and surrender of medical certificate**

- (1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder's medical assessment or certificate relates, the Director may, by written notice to the licence holder —
  - (a) suspend any medical assessment or certificate issued to the licence holder; or
  - (b) impose or amend any conditions, restrictions, or endorsements on any medical assessment or certificate issued to the licence holder.
- (2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder's medical assessment or certificate relates, the Director shall, by written notice to the licence holder —
  - (a) suspend any medical assessment or certificate issued to the licence holder;
  - (b) revoke any medical assessment or certificate issued to the licence holder; or
  - (c) impose or amend any conditions, restrictions, or endorsements on any medical assessment or certificate issued to the licence holder.
- (3) Any notice issued under this section shall state the grounds for the Director's decision.
- (4) A notice of suspension issued under subsections (1)(a) or (2)(a) remains in force until the Director determines what action, if any, referred to in subsection (7) is to be taken, but any such suspension expires 10 working days after the date that the suspension is imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days (the aggregate suspension period may not exceed 20 working days after the date on which the suspension is imposed).
- (5) Any conditions, restrictions, or endorsements that are imposed or made under subsections (1)(b) or (2)(c) remain in force until the Director determines what

- action, if any, referred to in subsection (7) is to be taken, but any of those conditions, restrictions, or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days (the aggregate period may not exceed 20 working days after the date on which the conditions, restrictions, or endorsements are imposed).
- (6) If a notice is issued under subsections (1) or (2), the Director may, by written notice, take one or more of the following actions —
- (a) impose or amend conditions, restrictions, or endorsements for a specified period;
  - (b) withdraw any conditions, restrictions, or endorsements;
  - (c) disqualify the licence holder from holding the medical assessment or certificate for a specified period;
  - (d) revoke the medical certificate;
  - (e) cancel the suspension.
- (7) A person who has had his medical assessment or certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical assessment or certificate for a specified period shall surrender the medical assessment or certificate to the Director, a person authorised by the Director, or to a police officer.
- (8) If the Director issues a notice under this section, the Director —
- (a) shall also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
  - (b) may notify any other affected aviation document holder.
- (9) The Director may, by written notice, revoke a medical assessment or certificate if a licence holder fails, without reasonable excuse, to comply with a demand under section 66 within a reasonable period of time.
- (10) Any licence holder may return his medical assessment or certificate to the Director and ask the Director, in writing, to cancel the medical assessment or certificate.
- (11) If a licence holder asks the Director to cancel his medical certificate, the Director shall —
- (a) cancel the medical certificate; and
  - (b) update the register of current medical certificates.

**68 Right of appeal to Supreme Court**

Any person affected by a decision of the Director under sections 62 (other than a decision made under section 62(3)), 62(6), and 62(9) has a right of appeal to the Supreme Court under section 230 of this Act.

**69 Savings**

Any medical certificate validly issued or granted recognition under the laws of the Kingdom before the commencement of this Act is deemed to be a medical certificate granted recognition under this Act.

**PART VIII – ACCIDENT AND INCIDENT INVESTIGATION****70 Obligation to notify all accidents and incidents**

- (1) The pilot-in-command of any aircraft that is involved in an accident shall notify the accident to the Director as soon as practicable.
- (2) Every person who —
  - (a) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and
  - (b) is involved in an incident,shall, where required to do so under Rules made under this Act, notify the incident to the Director.
- (3) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator shall provide the necessary notice.
- (4) The coordinator of any search and rescue operation for any aircraft shall notify the Director of the operation as soon as practicable.
- (5) The Director may, on being notified under any of subsections (1) to (4), request such additional information, in such form as it considers appropriate in each specific case, and the pilot-in-command, operator, or other person of whom the request is made shall provide the additional information forthwith.

**71 Director to further notify certain accidents and incidents**

- (1) The Director shall as soon as practicable notify the Minister of every notification received by the Director relating to —
  - (a) an accident involving aircraft; or
  - (b) a serious incident in accordance with the provisions of the Convention.

- (2) Without limiting subsection (1), the Director shall advise the Minister to appoint a Chief Investigator to investigate an accident or incident where it appears to the Director that the accident or incident —
  - (a) is required by the Convention to be investigated; or
  - (b) involves circumstances —
    - (i) which have, or are likely to have, significant implications for civil aviation safety; or
    - (ii) which may allow a Chief Investigator to establish findings or make recommendations that increase civil aviation safety.
- (3) If an aircraft to which an accident has occurred is registered in a State other than the Kingdom the Minister shall forward to the State of registry a copy of the relevant notification received by the Ministry and a copy of all relevant information held by the Ministry, together with advice as to the nature of the inquiry being conducted in respect of the accident.

## **72 Director to take further action**

- (1) Where an accident or incident is notified to the Director under section 70, the Director shall —
  - (a) consider what action, if any, to take under this Act or Regulations or Rules made under this Act;
  - (b) investigate and review the accident or incident; and
  - (c) take any other action appropriate in the circumstances.
- (2) If the accident or incident is referred to a Chief Investigator under section 73(3), subsection (1)(b) is subject to the limitations set out in section 77.

## **73 Appointment of Chief Investigator and referral of accident or incident**

- (1) The Minister shall appoint a Chief Investigator recommended by the Director where —
  - (a) the Director advises the Minister to do so under section 71(2); or
  - (b) the Minister considers that an accident or incident notified to the Minister under section 71(1) should be referred to and investigated by a Chief Investigator.
- (2) The Minister shall employ or engage the Chief Investigator —
  - (a) for the duration that the Ministry considers necessary for the Chief Investigator to properly discharge his functions under section 74 in relation to the accident or incident referred to him; and
  - (b) on terms and conditions determined by the Ministry, subject to this Act.

- (3) The Director shall refer the relevant accident or incident to the Chief Investigator by forwarding to the Chief Investigator the notification received and all relevant information held by the Minister.

#### **74 Functions of Chief Investigator**

- (1) The principal function of the Chief Investigator is to investigate the accident or incident referred to him under section 73(3) to determine the circumstances and causes of that accident or incident, with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person.
- (2) Without limiting subsection (1), the Chief Investigator also has and may exercise the following functions —
  - (a) to make such inquiries and conduct such investigation as he considers appropriate in order to ascertain the cause or causes of the accident or incident;
  - (b) to co-ordinate and direct the investigation and to determine which other parties, if any, should be involved in the investigation;
  - (c) to make available to the Minister any preliminary report or preliminary recommendation that has major consequences for civil aviation safety or security;
  - (d) to deliver a written report to the Minister following the investigation, setting out findings and any recommendations for changes and improvements that the Chief Investigator considers will ensure the avoidance, or minimise the risk, of such an accident or incident occurring in the future;
  - (e) to co-operate and co-ordinate with accident investigation organisations overseas, including taking evidence on their behalf;
  - (f) to perform any other function or duty conferred on him by this Act.
- (3) As soon as practicable after the expiry of 21 days from the date that the report referred to in subsection (2)(d) is delivered to the Minister, the Chief Investigator shall do the following in respect of that report —
  - (a) publish it;
  - (b) make it available for inspection by the public free of charge; and
  - (c) issue it to any person who asks for it on payment of a reasonable charge fixed by the Chief Investigator.

#### **75 General powers of Chief Investigator**

- (1) For the purposes of carrying out his functions and duties under this Act, the Chief Investigator has the powers of a royal commission under the Royal Commissions Act and subject to the provisions of this Act, the Royal Commissions Act shall apply with the necessary modifications.

- (2) The Chief Investigator also has and may exercise all such powers as may be —
  - (a) conferred on him by this Act; or
  - (b) reasonably necessary or expedient to enable him to carry out his functions.
- (3) For the avoidance of doubt, the Chief Investigator may investigate an accident or incident that involves any combination of military and non-military persons or things.

## 76 Powers of entry and investigation

- (1) Without limiting the powers conferred by section 75, for the purposes of carrying out the Chief Investigator's functions, duties, or powers under this Act, an authorised investigator may —
  - (a) enter any aircraft, aerodrome, building, or place, and inspect anything where the authorised investigator believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident;
  - (b) require the owner, operator, or occupier, of the aircraft, aerodrome, building, or place, to state, and produce satisfactory evidence of, his name and address;
  - (c) inspect, make copies of, or take extracts from, or retain any document or record that the authorised investigator believes on reasonable grounds is relevant to the investigation of an accident or incident;
  - (d) where the authorised investigator believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any place or thing involved in any manner in an accident or incident, prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any thing involved in the accident or incident;
  - (e) where the authorised investigator believes on reasonable grounds that anything is or contains evidence relevant to the investigation of any accident or incident, direct that the thing be taken to a place nominated by the authorised investigator;
  - (f) without limiting paragraphs (a) to (e), seize, detail, remove, preserve, protect, or test any place or thing that the authorised investigator believes on reasonable grounds will assist in establishing the cause of an accident or incident.
- (2) Nothing in this section confers on any person the power to enter any dwelling house unless the entry is authorised by a warrant given by a judicial officer on written application on oath; and such warrant shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

- (3) Every warrant issued under subsection (2) shall be directed to a named person and is valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (4) Every person exercising the power of entry conferred by subsection (1) shall carry, in the case of —
  - (a) the Chief Investigator, documentary evidence of his appointment as Chief Investigator;
  - (b) any other person, a warrant of authority issued by the Chief Investigator specifying —
    - (i) the name and the office or offices held by the person; and
    - (ii) that the person is authorised by the Chief Investigator to exercise the power conferred by this section to enter aircraft, aerodromes, buildings and places, and to carry out inspections.
- (5) Every person exercising the power of entry conferred by subsection (1) shall produce the document required to be carried, and where applicable the warrant issued under subsection (2) —
  - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
  - (b) whenever subsequently reasonably required to do so.
- (6) In this section, “**authorised investigator**” means —
  - (a) the Chief Investigator;
  - (b) any person appointed under section 78(1) and authorised in terms of subsection (4)(b) by the Chief Investigator.

## 77 Conduct of investigation

- (1) When an accident or incident is under investigation by the Chief Investigator, the Chief Investigator is in charge of that investigation.
- (2) The Chief Investigator shall permit the participation or representation of such foreign organisations in any investigation as is provided for in the Convention.
- (3) Except with the consent of the Chief Investigator, which consent shall not be unreasonably withheld, no other person (including the Minister or the Director) may —
  - (a) participate in any investigation being undertaken by the Chief Investigator;
  - (b) undertake any independent investigation at the site of any accident or incident being investigated by the Chief Investigator; or
  - (c) examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Chief Investigator.

- (4) Where the Chief Investigator refuses consent under subsection (3), he shall give the person refused consent a written statement of the reasons for his refusal.
- (5) Where any preliminary report issued by the Chief Investigator states or infers that the conduct of any person has contributed to the cause of an accident or incident being investigated by the Chief Investigator, the Chief Investigator shall, before issuing a final report on the matter —
  - (a) give that person an opportunity to comment on or refute that statement or inference, either in a written statement or at a hearing, or both; and
  - (b) have regard to that person's statement or other evidence.

## 78 Appointment of investigators or assessors

- (1) The Chief Investigator may, with the approval of the Director, appoint any suitably qualified person that he considers necessary to assist the Chief Investigator with any investigation under this Act.
- (2) With the approval of the Director, the Chief Investigator may, either generally or particularly, delegate to any person appointed under subsection (1) any function or power of the Chief Investigator under this Act, and —
  - (a) section 26(3), (6), (7),(8) and (11) with the necessary modifications shall apply to such a delegation;
  - (b) no such delegation shall affect or prevent the performance of any function or the exercise of any power by the person making that delegation; nor shall any such delegation affect the responsibility of the person making the delegation for the actions of the delegate.
- (3) The Director may, if the Director considers appropriate, employ or engage any person appointed under subsection (1) on terms and conditions determined by the Director, subject to this Act.

## PART IX - DISCLOSURE AND ADMISSIBILITY OF ACCIDENT AND INCIDENT INVESTIGATION INFORMATION

### 79 Interpretation

For the purposes of this Part, unless the context otherwise requires —

“**Chief Investigator**” —

- (a) means the Chief Investigator appointed under section 73; and
- (b) includes any person appointed by the Chief Investigator under section 78;

“**disclose**”, in relation to a record referred to in this Part, includes —



- (a) relating the whole or part of the contents of the record orally; and
  - (b) producing the record, or a copy of the record, in whole or in part in any form; and “disclosed” and “disclosure” have corresponding meanings;
- “proceedings” means —
- (a) proceedings before a court or tribunal, including a court of, or inquiry established in respect of, a disciplined force;
  - (b) an arbitration under the laws relating to arbitration in the Kingdom;
  - (c) proceedings before —
    - (i) a royal commission of inquiry; or
    - (ii) a body, other than the Chief Investigator, having the powers or any of the powers of a royal commission of inquiry;
  - (d) an inquiry or investigation by any person other than the Chief Investigator.

## **80 Circumstances of disclosure, and admissibility, of certain investigation records**

- (1) A record specified in subsection (2) —
  - (a) may only be disclosed by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; and
  - (b) is not admissible in any proceeding.
- (2) A record referred to in subsection (1) is —
  - (a) a statement or submission made to the Chief Investigator in the course of an investigation;
  - (b) a recording of an interview by a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation, or a transcript of such a recording;
  - (c) a note or opinion of a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation; or
  - (d) information relating to an investigation that is provided in confidence by the Chief Investigator to any other person (unless that information is a record specified in section 81(2)).
- (3) Notwithstanding subsection (1), a person who made a statement or submission referred to in subsection (2)(a), or who supplied any statement contained in a record referred to in subsection (2)(b) or (c), may disclose the information contained in the statement or submission to any person.
- (4) No judicial officer or registrar may issue a search warrant in respect of a record specified in subsection (2).

**81 Circumstances of disclosure of cockpit recordings and certain investigation records supplied to the Chief Investigator**

- (1) A record specified in subsection (2) may only be disclosed —
  - (a) by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; or
  - (b) by order of the Supreme Court under sections 83 or 84.
- (2) A record referred to in subsection (1) is —
  - (a) a cockpit voice recording from a non-military aircraft or a transcript of a cockpit voice recording from a non-military aircraft;
  - (b) a cockpit video recording from a non-military aircraft or a transcript of a cockpit video recording from a non-military aircraft; or
  - (c) a document or other record held by the Chief Investigator that contains information about an identifiable natural person that was supplied to the Chief Investigator in the course of an investigation (not being information included in any statement, submission, recording, transcript, or note referred to in section 80(2)(a), (b), or (c)).
- (3) Nothing in subsection (1) prevents a person who is recorded on a record referred to in subsection (2)(a) or (b), or who supplied information contained in a record referred to in subsection (2)(c), from making a statement to any person about the accident or incident.
- (4) No judicial officer or registrar may issue a search warrant in respect of a record specified in subsection (2).

**82 Admissibility of cockpit recordings and certain investigation records supplied to Chief Investigator**

- (1) A record specified in section 81(2) is not admissible in —
  - (a) civil proceedings other than proceedings of a kind to which section 86 applies;
  - (b) proceedings before a court of inquiry, or inquiry established in respect of, a disciplined force.
- (2) A record specified in section 81(2) is not admissible against a member of the flight crew of a military or a non-military aircraft in any proceedings.
- (3) Nothing in subsection (2) affects the admissibility of a record specified in section 81(2) against a person other than a member of the flight crew of a military or a non-military aircraft.
- (4) A record specified in section 81(2) is only admissible in particular civil proceedings of a kind to which section 84 applies if it was disclosed in relation to those proceedings in accordance with an order made under section 83 or 84.

- (5) Nothing in this section renders admissible any record that is inadmissible under any other enactment or rule of law.

### **83 Disclosure of record before civil proceedings commenced**

- (1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.
- (2) A person who is or may be intending to commence civil proceedings of the kind specified in subsection (1) may apply to the Supreme Court for the disclosure of a record specified in section 81(2).
- (3) The Court may order the disclosure of a record to a person who applies under subsection (2) if —
  - (a) it appears to the Court that —
    - (i) the person is or may be entitled to claim relief in the proceedings; and
    - (ii) it is impossible or impracticable for the person to formulate the person's claim without reference to the record sought; and
  - (b) the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

### **84 Disclosure of record in civil proceedings**

- (1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.
- (2) A party to any civil proceedings may apply to the Supreme Court for the disclosure of a record specified in section 81(2).
- (3) The Court may order the disclosure of a record under this section if the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

### **85 Provisions relating to application under section 83 or 84**

- (1) Subject to this section, an application under section 83 or 84 shall be made and dealt with in accordance with the rules of court applicable to interlocutory applications.
- (2) The applicant shall notify the following persons of the making of the application —

- (a) the person who has possession of the record;
  - (b) any natural person who is the subject of the record or, if that person is deceased, that person's next of kin; and
  - (c) the owner of the record.
- (3) A person who is served with a notice of an application, and any other person who satisfies the Court that he has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.
- (4) Only the following persons are permitted to be present at the hearing of an application under this section —
- (a) the presiding Judge;
  - (b) officers of the Court;
  - (c) the applicant and the applicant's counsel;
  - (d) other parties to the proceedings to which the application relates (or intended parties in the case of an application under section 83) and their counsel;
  - (e) witnesses; and
  - (f) any person referred to in subsection (3).
- (5) The Court may exclude any witness, or any person referred to in subsection (3), from any part of the hearing of the application.
- (6) The Court may adjourn the hearing of an application under section 83 or 84 at any time if it appears to the Court, on the application of any person or on the Court's own motion, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Chief Investigator.
- (7) Subsection (6) does not limit any other power of the Court to adjourn proceedings.

## **86 Court may order record to be produced**

- (1) For the purpose of determining whether a record should be disclosed under section 83 or 84, the Court may order any person who has possession of the record to produce it to the Court.
- (2) Subject to section 88, the Court may deal with the record as it thinks fit.

## **87 Restriction on publication of reports of proceedings**

- (1) No person may publish any report of an application under section 83 or 84 without the leave of the Court.
- (2) Despite subsection (1), a person may publish —
  - (a) the names and addresses of the parties;

- (b) the name of the presiding Judge; and
- (c) the order made by the Court.

## **88 Further provisions relating to disclosure of record**

- (1) If the Supreme Court makes a disclosure order under section 83 or 84, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any part of the record that is not relevant shall not be disclosed.
- (2) The record may be used only for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without the leave of the Court.
- (3) The record shall be returned to the person who produced the record to the Court when the record is no longer needed for the purpose for which the disclosure was ordered.
- (4) No record that is ordered to be disclosed under section 83 or 84 may be broadcast or published in the media.

## **89 Certain actions do not constitute disclosure**

The following actions do not constitute disclosure of a record referred to in section 80 or 81 —

- (a) the inclusion of the whole or part of a record in any finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator in the course of or following an investigation;
- (b) the return of a recording to its owner with the consent of all the individuals recorded on it;
- (c) the broadcast or publication in the media of any information disclosed to any person under section 80(3) or any statement made under section 81(3).

## **90 Admissibility of accident or incident findings, recommendations, or report**

No finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator following an investigation is admissible as evidence in any proceedings except an application for judicial review of a decision of the Chief Investigator.

## 91 Investigators not compellable to give opinion evidence in certain proceedings

No person engaged in an investigation by the Chief Investigator is compellable to give evidence in any proceedings to which the Chief Investigator is not a party as to —

- (a) that person's opinion concerning any aspect of an investigation; or
- (b) any matter included in any analysis, findings, or recommendations made in the course of or following an investigation.

## PART X - AVIATION SECURITY

### 92 Interpretation

For the purposes of this Part an aircraft is **“in flight”** from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation:

Provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

### 93 Provision of aviation security

The prevention of the commission of offences against this Act at any security designated aerodrome or security designated navigation installation, and the protection of persons and property from dangers arising from the commission or attempted commission of such offences, shall be the joint responsibility of Tonga Police and any authorised provider of aviation security services at that aerodrome or installation.

### 94 Responsibility of Minister to provide aviation security services

- (1) The Minister shall ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.
- (2) In order to provide the said aviation security services the Minister may establish and continue a service to be called the Aviation Security Service.

**95 Authorised aviation security service providers**

- (1) Subject to subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation may be provided by —
  - (a) an Aviation Security Service established under section 94(2); or
  - (b) the operator of that aerodrome or navigation installation.
- (2) No operator of an aerodrome or navigation installation, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome or installation, except pursuant to a current aviation document issued by the Director under this Act.
- (3) The holder of every such document shall comply with the relevant prescribed requirements and standards.

**96 Further provisions relating to Aviation Security Service**

- (1) Notwithstanding section 55 and 95, but subject to subsection (2), where an Aviation Security Service has been established pursuant to section 94(b), the Minister may from time to time by notice in the Gazette specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome or security designated navigation installation. Any such notice may be amended or revoked by the Minister by notice in the Gazette.
- (2) Where any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister shall not give a notice under subsection (1) in respect of that aerodrome or navigation installation without the consent of that person.
- (3) Notwithstanding anything in section 95, the Minister may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome or security designated navigation installation, notwithstanding that the operator of that aerodrome or navigation installation is providing aviation security services.
- (4) Any appointment made by the Minister under subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

**97 Functions and duties of other aviation security service providers**

- (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by Rules made under this Act.
- (2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise,

in relation to the aerodrome or navigation installation at which he is employed, all the powers of an aviation security officer under this Act.

## 98 Powers, functions and duties of aviation security services

Without limiting the powers, functions, duties, or responsibilities of Tonga Police under this Act or any other enactment, and without limiting the generality of section 94(1), aviation security services shall have the following powers, functions and duties —

- (a) to carry out —
  - (i) crew, passenger, and baggage screening of all international aircraft passenger services; and
  - (ii) the screening, reasonable searches, or seizures specified in section 102(1);
- (b) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes and navigation installations;
- (c) to carry out aerodrome security patrols and patrols of navigation installations;
- (d) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using it;
- (e) to prepare for every designated airport, with the concurrence and approval of the Director and the Commissioner of Police, an airport security program complying with the requirements of the national Airport Security Program (ASP) for the purpose of protecting the safety, regularity and efficiency of the airport and the safety of persons using the airport;
- (f) to undertake, or encourage or supervise such experimental or research work in respect of any aspect of aviation security as the Director may specify;
- (g) for the purpose of better carrying out any of its functions under this Act, to cooperate with Tonga Police, Government departments, airport authorities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation.

## 99 Security areas and security enhanced areas

- (1) The Director may declare, by a sign or signs affixed at the perimeter of the area, that an area within any security designated aerodrome or security designated navigation installation is a security area.
- (2) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.
- (3) No person other than a member of the police on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is —



- (a) wearing an airport identity card issued under the Rules (or other identity document approved by the Director under the Rules) and worn in accordance with the Rules; and
  - (b) authorised by the Director or the airport manager or other person having control of the area.
- (4) Every person in a security area or security enhanced area shall, on the request of an aviation security officer, state his name, address, the purpose of his presence in the security area or security enhanced area, and his authority to enter it, and shall produce satisfactory evidence of the correctness of his stated name and address.
- (5) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he is authorised to be there, the aviation security officer may order that person to leave the security area or security enhanced area.
- (6) An aviation security officer, and any person whom he calls to his assistance, may use such force as may be reasonably necessary to remove from any security area any person who fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so under subsection (5).
- (7) Any person who refuses to comply with subsections (4) or (5) and, after having been warned that he commits an offence, persists in its commission, may be detained by an aviation security officer and in that case he shall as soon as may be practicable be delivered to a Police officer.
- (8) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and any item, substance, or person in the vehicle.
- (9) The driver of a vehicle that is stopped by an aviation security officer shall remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.
- (10) Every person commits an offence and shall be liable upon summary conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to —
  - (a) stop a vehicle in a security enhanced area as soon as is practicable when required to do so by an aviation security officer; or
  - (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.
- (11) Notwithstanding subsection (3) —

- (a) a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without an airport identity card;
- (b) a person allowed under the Rules may pass through a security area or security enhanced area without an airport identity card.

## 100 Security designated aerodromes and navigation installations

- (1) The Minister may, by notice in the Gazette, designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.
- (2) Any designation under subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister by notice in the Gazette.

## 101 Right of access

- (1) Subject to subsections (2) and (3), an aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, vehicle, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his powers, functions, and duties under this Act.
- (2) Unless the aviation security officer is accompanied by a Police officer, the power of entry conferred by subsection (1) shall be limited to peaceful and non-forced entry.
- (3) Where Tonga Police has taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, vehicle, building, or place shall be subject to such limitations as the senior Police officer present at the aerodrome or navigation installation specifies.
- (4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (1) shall not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

## 102 Powers and duties of Director to require screening, search and seizure

- (1) The Director may, if the Minister considers it necessary to improve or enhance aviation security to enable the Kingdom to be part of a concerted international response to a threat to aviation security, or if the Minister considers it is in the public interest or national interest to do so, or if the

Director believes on reasonable grounds that a security risk exists, direct an aviation security service provider, by notice in the Gazette —

- (a) to screen —
  - (i) any person boarding an aircraft;
  - (ii) anything to be carried on an aircraft;
  - (iii) any person, item, or substance —
    - (aa) before the person, item, or substance enters a sterile area;
    - (bb) present in a sterile area;
  - (iv) any person, item, substance, or vehicle —
    - (aa) before the person, item, substance, or vehicle enters a security enhanced area;
    - (bb) present in a security enhanced area;
  - (v) any unattended item, substance or vehicle in a security enhanced area; or
  - (vi) at random, and on a proportional basis determined by risk assessment, any person who either has access to or, in the opinion of the Director, the potential to access any aircraft or any security area, security enhanced area or sterile area at any airport or navigation installation or air navigation facility; or
- (b) if necessary, to undertake reasonable searches of —
  - (i) any person boarding an aircraft;
  - (ii) anything to be carried by an aircraft;
  - (iii) any (as specified in the Gazette notice) —
    - (aa) aircraft or class of aircraft;
    - (bb) aerodrome or class of aerodrome;
    - (cc) navigation installation or class of navigation installation;
  - (iv) any person, item, substance, or vehicle —
    - (aa) before the person, item, substance, or vehicle enters a sterile area;
    - (bb) present in a sterile area;
  - (v) any person, item, substance, or vehicle —
    - (aa) before the person, item, substance, or vehicle enters a security enhanced area;
    - (bb) present in a security enhanced area;
  - (vi) any unattended item, substance or vehicle in a security enhanced area;
  - (vii) at random, and on a proportional basis determined by risk assessment, any vehicle within any security area, security

- enhanced area or sterile area or in any defined area adjacent to any such area; or
- (viii) at random, and on a proportional basis determined by risk assessment, any person, vehicle, facility or installation, having access to, or where, in the opinion of the Director, there exists with regard to such person, vehicle, facility or installation a potential to access any aircraft or any security area, security enhanced area or sterile area at any airport or navigation installation or air navigation facility; or
- (c) to seize any item or substance specified in the Gazette notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (2) An aviation security service provider directed under subsection (1) shall screen and search for any item or substance specified in the Gazette notice.
- (3) Before directing an aviation security provider under subsection (1), the Director shall, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate and practical, representative groups in the aviation industry, and any government department.
- (4) The Director may rescind a direction made under subsection (1).
- (5) A direction remains in effect until it is rescinded.
- (6) For the purpose of subsection (1)(b)(viii), “access” includes that which is attained or, in the opinion of the Director, is attainable —
- (a) directly by way of personal entry into or proximate approach to the said aircraft, security area, security enhanced area or sterile area at any airport or navigation installation or navigation facility;
- (b) indirectly by way of the delivery, placement or concealment of any item, thing, matter or substance, into, on, within, or in proximity to the said aircraft, security area, security enhanced area or sterile area at any airport or navigation installation or navigation facility.

### 103 Powers and duties of Director relating to security checks

- (1) The Director may carry out a security check of a person who falls within a category of persons specified in the Rules as requiring a security check if —
- (a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
- (b) the person consents.
- (2) If a person refuses consent to a security check under sub-section (1), the person may not be granted any authorisation under the Rules if the Rules require a favourable security check determination.

- (3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director.
- (4) For the purpose of determining whether a person poses a threat to aviation security, the Director may —
  - (a) seek and receive any information that the Director considers relevant;
  - (b) give weight to any component of the information as the Director considers appropriate in the circumstances.
- (5) If the Director determines that a person does not pose a threat to aviation security, the Director shall advise the person of the favourable security check determination.
- (6) The Director may reconsider any previous security check determination that the Director has made if —
  - (a) new information is made available; or
  - (b) the Director has reason to believe that the person may pose a threat to aviation security.
- (7) If the Director proposes to reconsider any previous security check determination, the Director shall —
  - (a) advise the person to whom the security check determination relates that the Director is reconsidering that determination;
  - (b) complete the reconsideration of that determination within 20 working days of advising the person under paragraph (a);
  - (c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in section 104;
  - (d) if a favourable security check determination is required for any previous authorisation granted to the person under the Rules, withdraw that authorisation for —
    - (i) the period of the reconsideration;
    - (ii) any subsequent review period under section 104; and
  - (e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for —
    - (i) the period of the reconsideration; and
    - (ii) any subsequent review period under section 104.
- (8) Nothing in this section limits the power of the Director to grant an exemption under section 45.

**104 Review procedures for security check determinations**

- (1) If the Director proposes to make an adverse security check determination with respect to a person the Director shall —
  - (a) advise the person of the proposed determination and the reasons for the proposed determination;
  - (b) give the person written notice that, within 20 working days of the date of the notice, the person may —
    - (i) seek legal advice or assistance with respect to the proposed determination;
    - (ii) respond to, comment on, or make submissions on the proposed determination;
    - (iii) provide new information relevant to the proposed determination;
  - (c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which shall be a date that is as soon as practicable after the expiry of the 20 working day period referred to in paragraph (b));
  - (d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and
  - (e) make a final determination and inform the person and any other affected party of —
    - (i) in the case of the person, the final determination and the reasons for the final determination; and
    - (ii) in the case of any other affected party, the final determination but not the reasons for the final determination.
- (2) If the Director makes a final adverse security check determination, the Director shall —
  - (a) revoke any authorisation granted to the person by the Director under the Rules, if a favourable security check determination is required under the Rules for the authorisation; and
  - (b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the Rules for the authorisation.

**105 Offence to carry out activity while authorisation withdrawn or after authorisation revoked**

- (1) Every person commits an offence who carries out an activity that requires an authorisation —
  - (a) during a period when that authorisation has been withdrawn under section 103(7)(d) or (e); or

- (b) if that authorisation has been revoked under section 104(2).
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$5,000.

### **106 Offence to fail to comply with Director's requirement to withdraw or revoke authorisation**

- (1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director's requirement to —
  - (a) withdraw an authorisation under section 103(7)(e); or
  - (b) revoke an authorisation under section 104(2)(b).
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000.

### **107 Powers and duties of aviation security officer relating to dangerous goods**

- (1) Without limiting sections 98(a) and (b), an aviation security officer may screen any person boarding an aircraft or anything to be carried by an aircraft for the purpose of detecting dangerous goods.
- (2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.
- (3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer shall notify the relevant operator or delivery service as soon as practicable and —
  - (a) may detain the dangerous good until they are dealt with in accordance with paragraphs (b) or (c);
  - (b) may deliver the dangerous goods to the operator or delivery service; or
  - (c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.
- (4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer shall, as far as practicable, return the dangerous goods to the owner of the dangerous goods.
- (5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.

- (6) The aviation security officer shall report the detection of dangerous goods in accordance with the Rules, or in the absence of Rules, as the Director may direct.

### **108 Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas**

- (1) Without limiting sections 98 or 118, an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under section 102, screen or search any person, item, substance, or vehicle —
  - (a) before the person, item, substance, or vehicle enters a sterile area;
  - (b) present in a sterile area.
- (2) A search undertaken under subsection (1) shall be carried out in accordance with the requirements for searches specified in section 118(4)(b) to (7).
- (3) If an item or substance specified in section 207(1) or in a direction under section 102(1) is detected in a search undertaken under subsection (1) or sections 98 or 118, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (4) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer shall —
  - (a) if practicable, return the item or substance to the person from whom it was seized; or
  - (b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.
- (5) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may —
  - (a) detain the item or substance until it is dealt with in accordance with paragraphs (b) or (c);
  - (b) dispose of or destroy the item or substance; or
  - (c) deliver the item or substance to a member of the police.
- (6) If an aviation security officer delivers an item or substance to a member of the police under subsection (5)(c), the aviation security officer shall record the delivery and the relevant details of the seizure.



- (7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

## **109 Further powers and duties of aviation security officers relating to security enhanced areas**

- (1) Without limiting section 98, an aviation security officer may, for the purpose of detecting any item or substance specified in section 207(1) or in a direction given under section 102(1), screen or search any person, item, substance, or vehicle —
  - (a) before the person, item, substance, or vehicle enters a security enhanced area; or
  - (b) present in a security enhanced area.
- (2) A search undertaken under subsection (1) shall be carried out in accordance with the requirements for searches specified in section 118(4)(b) to (7).
- (3) If any item or substance specified in section 207(1) or in a direction under section 102(1) is detected in a search undertaken under subsection (1) or section 98 and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area.
- (4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer —
  - (a) shall —
    - (i) detain the item or substance until it is delivered to a member of the police, or, if the Director agrees, destroyed or otherwise disposed of;
    - (ii) deny entry into the security enhanced area to any person in possession of the item or substance; or
    - (iii) direct the person in possession of the item to leave the security enhanced area, with or without —
      - (aa) the item or substance;
      - (bb) any vehicle used to transport the item or substance; and
  - (b) shall make a record of the item or substance and the person from whom the item or substance was seized (if any).
- (5) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation

security officer shall, if practicable, return the item or substance to the person from whom the item or substance was seized.

- (6) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

## **110 Consent to be screened or searched**

- (1) The powers specified in section 109(1) may only be exercised with respect to —
  - (a) a person to be screened or searched with the consent of the person;
  - (b) an item, substance, or vehicle to be screened or searched with the consent of the person in possession of the item, substance, or vehicle.
- (2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended.

## **111 Persons who refuse to consent to be screened or searched**

- (1) If a person refuses to consent to the screening or searching under section 109(1), an aviation security officer may —
  - (a) deny that person entry into the security enhanced area;
  - (b) require that person to —
    - (i) leave the security enhanced area;
    - (ii) remove any item, substance, or vehicle in that person's possession from the security enhanced area.
- (2) An aviation security officer may —
  - (a) prevent a person from entering a security enhanced area if the person is denied entry;
  - (b) remove a person from a security enhanced area if the person is required to leave.
- (3) An aviation security officer may detain a person who —
  - (a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his refusal (or attempt) after being warned that he commits an offence by not complying;
  - (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that —
    - (i) an offence against sections 199, 200, 207, 208, 209 or 210 has been, is being, or is likely to be committed, whether by that person or by any other person; or

- (ii) a search of the person refusing to consent is likely to disclose evidence that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or any other person.
- (4) A person detained under subsection (3) shall be delivered to a member of the Police as soon as practicable.
- (5) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to —
  - (a) prevent a person from entering a security enhanced area under subsection (2)(a);
  - (b) remove a person from a security enhanced area under subsection (2)(b);
  - (c) detain a person under subsection (3).

## 112 Searches of persons refusing consent to be searched

- (1) If a person refuses to consent to the screening or searching under section 109(1), a Police officer may, without a warrant, search the person and any item, substance, or vehicle in the person's possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in section 207(1), if the member of the police has reasonable grounds to suspect that —
  - (a) an offence against sections 199, 200, 207, 208, 209 or 210 has been, is being, or is likely to be committed, whether by that person or by any other person; and
  - (b) a search of the person refusing to consent, or any item, substance or vehicle in the person's possession, is likely to disclose evidence that an offence against sections 199, 200, 207, 208, 209 or 210 has been, is being, or is likely to be, committed, whether by that person or any other person.
- (2) The refusal of a person to consent to the searching of his person, or any item, substance, or vehicle in the person's possession, does not of itself constitute reasonable grounds for suspecting that an offence against sections 199, 200, 207, 208, 209 or 210 has been, is being, or is likely to be, committed.
- (3) A Police officer exercising the power of search under subsection (1) shall, before the search is conducted, and on any subsequent request —
  - (a) provide evidence of his identity to the person to be searched;
  - (b) inform the person to be searched that the search is authorised under this section; and
  - (c) if not in uniform, provide evidence, if asked, that he is a member of the police to the person to be searched.

- (4) If a Police officer exercises the power of search under subsection (1), he shall, within 3 days after the day on which he exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

### 113 Searches of persons

- (1) With respect to a search made under section 109(1) —
- (a) a person shall, if directed to do so by an aviation security officer —
    - (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any tao'vala, coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing;
    - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
    - (iii) allow an aviation security officer to carry out a pat down search;
  - (b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.
- (2) For the purposes of this section, “**pat down search**” —
- (a) means a search of a clothed person in which the person conducting the search may do all or any of the following —
    - (i) run or pat his hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person;
    - (ii) insert his hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched;
    - (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely —
      - (aa) open his mouth;
      - (bb) display the palms of his hands;
      - (cc) display the soles of his feet;
      - (d) lift or rub his hair; and
  - (b) includes the authority to search —
    - (i) any item or substance carried by, or in the possession of the person;
    - (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and

- (iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

## **114 Protection of aviation security officers**

Nothing done by an aviation security officer under sections 108, 109, 118, 119 and 121 may subject the aviation security officer to personal liability if done in —

- (a) good faith; and
- (b) the exercise of powers or the performance of duties under this Act.

## **115 Powers of arrest and seizure of items or substances**

- (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments —
  - (a) sections 199, 200, 207, 208, 209, or 210;
  - (b) sections 4, 22, or 24, of the Arms and Ammunition Act, section 11 of the Counter Terrorism and Transnational Organised Crimes Act, and sections 109 or 110 of the Criminal Offences Act.
- (2) An aviation security officer may —
  - (a) search a person arrested under subsection (1);
  - (b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that —
    - (i) the person has an item or substance hidden or in clear view on or about his person that is evidence of an offence against an enactment specified in subsection (1);
    - (ii) the item or substance poses a threat to the safety of the officer or any other person; and
    - (iii) immediate action is necessary to address the threat.
- (3) An aviation security officer may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to —
  - (a) arrest a person under subsection (1);
  - (b) search a person under subsection (2);
  - (c) seize an item or substance under subsection (2).
- (4) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under any other section of this Act

- (5) An aviation security officer who undertakes a search under this section shall, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (2)(b).
- (6) Any person called upon to do so by an aviation security officer is justified in assisting him in good faith to arrest any person.
- (7) An aviation security officer shall as soon as may be practicable deliver any person he arrests, and any item or substance he seizes to a member of the Police.
- (8) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in subsection (1).

### **116 Arrest of persons delivered to Police**

- (1) A Police officer shall accept delivery of a person whom an aviation security officer seeks to deliver to him under this Act if he has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against section 204 or any enactment specified in section 115(1).
- (2) A Police officer who accepts delivery of a person under subsection (1) may forthwith arrest that person.
- (3) An aviation security officer who detains any person in accordance with the provisions of section 99(7) and delivers him to a member of the Police, and any person who at his request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary in doing so.

### **117 Powers of Police**

Every sworn Police officer shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or Regulations or Rules made under this Act.

### **118 Search of passengers and baggage**

- (1) Any Police officer, any aviation security officer, or any Customs officer or any employee or agent of the carrier authorised by the carrier for the purpose, may, with the consent of the passenger, search a passenger and the passenger's baggage, personal effects, or other articles in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger) before the passenger boards any aircraft in the Kingdom pursuant to any contract providing for the carriage of the passenger

- by air from any place in the Kingdom to any other place (whether in the Kingdom or elsewhere).
- (2) If the passenger declines to allow himself or his baggage to be searched the carrier shall refuse to carry —
    - (a) the passenger;
    - (b) his baggage;
    - (c) the passenger, where embarkation is refused under the preceding subparagraph, may be directed in writing by an aviation security officer to leave the airport for a period of up to 24 hours;
    - (d) the passenger may be placed under surveillance at the airport by an aviation security officer.
  - (3) A carrier shall not be liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry
    - (a) a passenger who has declined to allow himself or his baggage to be screened or searched;
    - (b) the baggage of a passenger who has declined to allow himself or his baggage to be screened or searched.
  - (4) With respect to any search made pursuant to subsection (1) —
    - (a) by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger shall not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched;
    - (b) by a Police officer, an aviation security officer, or a Customs officer, the passenger shall, if directed to do so —
      - (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any tao'vala, coat, jacket, jumper, cardigan, or similar article that the passenger is wearing to enable the search to be carried out, except where the passenger has no other clothing, or only underclothing, under the outer clothing;
      - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
      - (iii) allow a member of the Police, an aviation security office, or a Customs officer to carry out a pat down search;
    - (c) by a Police officer, an aviation security officer, a Customs officer, or an employee or agent of the carrier authorised for the purpose, a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.
  - (5) Subject to subsection (6) with respect to a search made under subsection (1), a Police officer, an aviation security officer, or a Customs officer, may use any aid or device that is reasonably necessary to facilitate the search, including

- (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.
- (6) Notwithstanding subsection (5), with respect to a person searched under subsection (1), a Police officer, an aviation security officer, a Customs officer, or an agent of the carrier authorised for the purpose may not, unless prior written authorisation has been obtained from the Minister or advice from the Director, use an aid or device that produces an unclothed image of the person.
- (7) For the purposes of this section, “**pat down search**” —
- (a) means a search of a clothed person in which the person conducting the search may do all or any of the following —
- (i) run or pat his hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person;
  - (ii) insert his hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched;
  - (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely —
    - (aa) open his mouth;
    - (bb) display the palms of his hands;
    - (cc) display the soles of his feet;
    - (dd) lift or rub his hair; and
- (b) includes the authority to search —
- (i) any item or substance carried by, or in the possession of the person;
  - (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
  - (iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

## 119 Proportional screening and search of other persons and things

- (1) Any aviation security officer may, at random and at minimum on a proportional basis determined by risk assessment screen and search any person who, in the opinion of the Director, has access to or the potential to access any aircraft or any security area, security enhanced area or sterile area at any airport or navigation installation or air navigation facility.
- (2) For the purpose of this section “**access**” includes that which is attainable —
- (a) directly by way of personal entry into or proximate approach to an aircraft, area, installation or facility in subsection (1);



- (b) indirectly by way of the placement, concealment or delivery of any item, thing, matter or substance, into, on, within, or in proximity to an aircraft, area, installation or facility referred to in subsection (1).
- (3) Any aviation security officer may, at random and at minimum on a proportional basis determined by risk assessment, search any place of work or installation whose personnel have in the opinion of the Director, access to any aircraft or any security area, security enhanced area or sterile area at any airport or navigation installation or air navigation facility.
- (4) Any search of a person made pursuant to subsection (1) shall be carried out in accordance with the requirements for searches specified in section 118(4)(b) to (7).

## **120 Search of persons declining to allow screening or search**

- (1) Where —
  - (a) pursuant to section 118(2) a carrier refuses to carry a person who has declined to allow himself or his baggage to be screened or searched; or
  - (b) a Police officer has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or by any other person —

the Police officer may, without warrant, search that first-mentioned person and his baggage and any articles in his possession, and may detain him for the purposes of that search, and may take possession of any article referred to in section 207(1)(a),(b),(c),(d),(e) or (f) found in the course of that search.

- (2) Every Police officer exercising the power of search conferred by subsection (1) shall identify himself to the person searched, and shall also tell him that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a Police officer.
- (3) With respect to a search made under subsection (1) a Police officer may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.

## **121 Screening and search of checked baggage, cargo and mail**

- (1) Any aviation security officer, or any employee or agent of the carrier authorised by the carrier for the purpose, may screen, search or examine any checked baggage, cargo or mail before it is loaded on to any aircraft in the Kingdom pursuant to a contract providing for the carriage of the checked baggage, cargo and mail by air from a place in the Kingdom to any other place (whether in the Kingdom or elsewhere).
- (2) With respect to a search made under subsection (1) a Police officer, an aviation security officer or a Customs officer may use any aid or device that is

reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.

- (3) Where any aviation security officer, upon screening or examination of any checked baggage, cargo or mail, has reasonable grounds to suspect that an offence against this Act or breach of any Rules made or adopted under this Act in relation to the aircraft on which that checked baggage, cargo or mail was to be carried has been, is being, or is likely to be, committed, whether by a passenger, consignor of cargo or by any other person, the aviation security officer may take possession of any article referred to in section 207(1)(a),(b),(c), (d), or (e) found in the course of that search.

## 122 Evidence of offences

Nothing found in the course of a screening, search or examination made pursuant to sections 98, 108, 109, 118, 119, 120, or 121 shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been screened, searched or examined, or, as the case may be, the consignor of any cargo that has been screened, searched or examined, other than proceedings in respect of an offence against this Act or the criminal offence of treason or any offence punishable by imprisonment for life or for a term of 3 years or more, or in respect of an offence against sections 4, 22, or 24 of the Arms and Ammunition Act, an offence against section 11 of the Counter Terrorism and Transnational Organised Crime Act, offence against sections 109 or 110 of the Criminal Offences Act or in respect of an offence against the Illicit Drugs Control Act.

## 123 Powers of aircraft commander

- (1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft —
- (a) anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination); or
  - (b) anything (whether an offence or not) which jeopardises or may jeopardise —
    - (i) the safety of the aircraft or of persons or property on board the aircraft; or
    - (ii) good order and discipline on board the aircraft ;
 the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary —
    - (aa) to protect the safety of the aircraft or of persons or property on board the aircraft;

- (bb) to maintain good order and discipline on board the aircraft;  
or
  - (cc) to enable the commander to disembark or deliver that person in accordance with subsections (4) or (5).
- (2) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) to restrain. Any member of the crew and any other person on board the aircraft may, without the commander's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.
- (3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsections (1) or (2) shall not be continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued —
  - (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsections (4) or (5); or
  - (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.
- (4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise —
  - (a) the safety of the aircraft or of persons or property on board the aircraft;  
or
  - (b) good order and discipline on board the aircraft,he may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.
- (5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, he may deliver that person —
  - (a) in the Kingdom, to any Police officer; or

- (b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of an officer of Tonga Police.
- (6) If the commander of an aircraft disembarks any person pursuant to subsection (4), or to enable an in-flight security officer to deliver a person under section 131(4) in the case of a Tongan registered aircraft, in any country, or, in the case of any other aircraft, in the Kingdom, he shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in the Kingdom, a Police officer).
- (7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) or intends to enable an in-flight security officer to deliver a person under section 131(4) in the Kingdom or, in the case of a Tongan registered aircraft, in any other country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country (being, in the Kingdom, a Police officer).
- (8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsections (6) or (7) commits an offence and shall be liable upon conviction to a fine not exceeding \$4,000.
- (9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

#### **124 Arrest of persons delivered to Police**

- (1) Any Police officer shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him in accordance with section 123(5) if he has reasonable grounds to suspect that person of having done or omitted on board that aircraft anything that is a crime against sections 199, 200, 207, 208, 209, or 210 or a crime against any other Act.
- (2) Where any Police officer accepts delivery of a person under subsection (1), he shall forthwith arrest that person.

#### **125 Power to search persons on aircraft**

If the commander of an aircraft in flight has reasonable grounds to suspect that a offence against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, he, or any member of the crew of the aircraft or any other person on board the aircraft authorised by him to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against sections 199, 200, 207, 208, 209, or 210.

**126 Director may approve firearms, weapons, ammunition, and other equipment for carriage and use by in-flight security officers**

The Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer.

**127 Foreign in-flight security officers**

- (1) Despite section 207 the Director may, in consultation with the Commissioner of Police and other affected parties that the Director considers appropriate, and in accordance with any Rules made under this Act, authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a Police officer and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to —
  - (a) disembark from an aircraft;
  - (b) board an aircraft;
  - (c) pass through a —
    - (i) security area;
    - (ii) security enhanced area;
    - (iii) sterile area.
- (2) To avoid doubt, the authorisation of a foreign in-flight security officer by the —
  - (a) Director is not an aviation document;
  - (b) State that has issued the air operating certificate (or its equivalent) for the aircraft operator only applies while the aircraft is in flight.

**128 Commissioner of Police may authorise members of police to be in-flight security officers**

- (1) The Commissioner of Police may authorise any Police officer to be an in-flight security officer.
- (2) When providing authorisation under subsection (1), the Commissioner of Police shall have regard to the views of the Director.
- (3) When forming his views, the Director shall, as he considers appropriate and practical, have regard to the views of representative groups in the aviation industry.

**129 In-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances**

Notwithstanding section 207, an in-flight security officer may, on board an aircraft operated by an operator certified under the applicable Civil Aviation Rules, possess,

carry, and use a firearm, weapon, ammunition, or other equipment that the Director has approved under section 126 if —

- (a) the officer is on duty; and
- (b) the aircraft is in flight.

### **130 In-flight security officers may take action or measures reasonably necessary to restore or preserve control of aircraft**

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 123, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the commander's control of the aircraft, including, but not limited to, the use of —

- (a) reasonable force; or
- (b) assistance that is reasonably necessary in the circumstances.

### **131 In-flight security officers may arrest persons in certain circumstances**

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person —
  - (a) without a warrant;
  - (b) with the use of —
    - (i) reasonable force; or
    - (ii) assistance that is reasonably necessary in the circumstances.
- (2) Despite subsection (1), an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer shall —
  - (a) inform the commander of the arrest as soon as practicable; and
  - (b) seek the commander's approval to keep the person under arrest.
- (4) An in-flight security officer who arrests a person under this section shall, as soon as practicable, deliver the person to a —
  - (a) Police officer, if the arrested person is in the Kingdom; or
  - (b) person exercising the functions corresponding to those of a Police officer, if the arrested person is in a country, other than the Kingdom, that is a party to the Tokyo Convention.
- (5) To avoid doubt, nothing in this section limits the justifications for the use of force under the Criminal Offences Act or the Tonga Police Act.

**132 In-flight security officers may restrain persons under arrest in certain circumstances**

- (1) An in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances, restrain a person arrested under section 131 until the person is delivered as required under section 131(4).
- (2) Despite subsection (1), an in-flight security officer may not restrain a person without the prior approval of the commander of an aircraft unless —
  - (a) seeking prior approval is not practicable; or
  - (b) the in-flight security officer has reasonable grounds to believe that the person shall be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft.
- (3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer shall —
  - (a) inform the commander of the restraint as soon as practicable; and
  - (b) seek the commander's approval to keep the person under restraint.

**133 In-flight security officers may search certain persons and seize items or substances in certain circumstances**

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances —
  - (a) search —
    - (i) the person for any item or substance that has been, is being, or may be used to commit an offence under this Act;
    - (ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under sections 199, 200, 207, 208, 209, or 210; and
  - (b) seize that item or substance.
- (2) Despite subsection (1), an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer shall inform the commander of the search as soon as practicable.
- (4) With respect to a search made under subsection (1), an in-flight security officer, may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

### 134 Circumstances in which person assisting in-flight security officer may use reasonable force

A person assisting an in-flight security officer under section 131, 132 or 133 is justified in using force if —

- (a) the person acts in good faith; and
- (b) the force is reasonable.

## PART XI – INTERNATIONAL AND DOMESTIC AIR SERVICES

### 135 Interpretation

In this Part of this Act —

“**capacity**”, in relation to a scheduled international air service, means —

- (a) with respect to the transport of passengers, the number of seats provided per week on each route followed (expressed either as a number of seats or in terms of aircraft equivalents); and
- (b) with respect to the transport of cargo, the amount of cargo space provided per week on each route followed (expressed in terms of cargo aircraft equivalents);

“**foreign international airline**” means an air transport enterprise of a country or territory other than the Kingdom that is offering or operating a scheduled international air service or intends to offer or operate such a service;

“**licensee**” means the holder for the time being of a licence issued under this Part;

“**Tongan international airline**” means a Tongan air transport enterprise that is offering or operating a scheduled international air service or intends to offer or operate such a service;

“**scheduled domestic air service**” means a series of flights performed by aircraft for the transport of passengers, cargo, or mail within the Kingdom, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public;

“**scheduled international air service**” means a series of flights performed by aircraft for the transport of passengers, cargo, or mail between the Kingdom and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and, in relation to a Tongan international airline, includes a seventh freedom service;



“**seventh freedom service**” means a series of flights between one or more points in one country or territory other than the Kingdom and one or more points in another country or territory other than the Kingdom, if —

- (a) the airline is designated by the Kingdom under the air services agreement (or similar arrangement) between the Kingdom and each country or territory in which the service is being performed;
- (b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and
- (c) the service is a scheduled service.

### **136 Scheduled domestic and international air service not to be carried on except pursuant to licence**

No person shall carry on in the Kingdom any scheduled international or domestic air service otherwise than pursuant to and in conformity with the terms of a scheduled international air service licence or a scheduled domestic air service licence, or, as the case may be, an open aviation market licence.

### **137 Application for licence**

- (1) Every application for a licence under this Part shall be lodged with the Minister.
- (2) Every applicant for a licence shall, when making the application —
  - (a) supply such information and documents as may be required by Regulations made under this Act or as may be specified by the Minister; and
  - (b) pay the prescribed fees and charges (if any).

### **138 Minister to be licensing authority for Tongan domestic and international airlines**

The Minister shall be the licensing authority to grant scheduled domestic and international air service licences to Tongan airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

### **139 Notice of application**

- (1) Where an application for a scheduled international air service licence is lodged by a Tongan international airline in accordance with section 137, the Minister shall give notice in the Gazette that the application has been received.

- (2) Every notice under this section shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

#### **140 Consideration of application for scheduled international air service licence by Tongan international airline**

- (1) In considering any application for a scheduled international air service licence made by a Tongan international airline the Minister shall take into account the following matters —
  - (a) any relevant international agreement, convention, or arrangement to which the Kingdom is a party;
  - (b) the safety and security requirements of the Director;
  - (c) the financial ability of the applicant to carry on the proposed service;
  - (d) the likelihood of the applicant carrying on the proposed service satisfactorily;
  - (e) any written representations received by the Minister in relation to the application;
  - (f) such other matters as the Minister thinks fit.
- (2) If the granting of the licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

#### **141 Scheduled domestic and international air service licence may be granted subject to conditions**

- (1) The Minister, after giving consideration to the application in accordance with section 137, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) The scheduled domestic or international air service licence shall be in such form as the Minister thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service —
  - (a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed;
  - (b) the maximum capacity that may be provided;
  - (c) a date not later than which the service shall be commenced.

**142 Duration of domestic and scheduled international air service licences**

- (1) Every scheduled domestic or international air service licence granted under section 141 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case.
- (2) Where an application is made under section 143 for the renewal of a scheduled domestic or international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

**143 Renewal of scheduled international air service licence**

- (1) The Minister may, from time to time, renew a domestic or scheduled international air service licence granted under section 141.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 141 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.
- (3) Section 137(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.
- (4) The Minister shall give notice in the Gazette of the Minister's intention to consider exercising the power conferred on the Minister by subsection (1).
- (5) The notice given under subsection (4) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (6) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 140 as if the application were an application for a new licence.
- (7) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted, and may be for such term as the Minister considers appropriate in the particular case.

**144 Variation of terms and conditions of scheduled international air service licence**

- (1) The Minister, while a scheduled international air service licence granted under section 141 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) Where any proposed variation involves —
  - (a) a change or addition to the route or routes to be operated; or
  - (b) an increase in the capacity of the service to be provided,pursuant to the licence, the Minister shall, by notice in the Gazette, give not less than 21 clear days' notice of the Minister's intention to consider exercising the power conferred on the Minister by this section.
- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations regarding the proposed variation.
- (5) In considering any application referred to in subsection (3), the Minister shall take into account all the matters referred to in section 140 as if the application were an application for a new licence.
- (6) Where the Minister has varied the terms or conditions of any scheduled international air service licence under this section, the Minister shall give notice in the Gazette of the fact of, and the terms of, that variation.

#### **145 Transfer of scheduled international air service licence**

- (1) Any scheduled international air service licence granted under section 141 may, subject to the provisions of this section, be transferred to any person.
- (2) Every application for the transfer of a scheduled international air service licence shall be lodged with the Minister not less than 3 months before the date of the proposed transfer.
- (3) The Minister shall give notice in the Gazette of the Minister's intention to consider the application for the transfer of the licence.
- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (5) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 140 as if the application were an application for a new licence.

#### **146 Minister to be licensing authority for foreign international airlines**

The Minister shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

**147 Consideration of application for scheduled international air service licence by foreign international airline**

- (1) In considering any application for a scheduled international air service licence made by a foreign international airline the Minister shall take into account the following matters —
  - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which the Kingdom is a party;
  - (b) the safety and security requirements of the Director;
  - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the licence would be contrary to any agreement, arrangement, or convention referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

**148 Scheduled international air service licence may be granted subject to conditions**

- (1) The Minister, after giving consideration to the application in accordance with section 147, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) The scheduled international air service licence shall be in such form as the Minister thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service —
  - (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed;
  - (b) the maximum capacity that may be provided;
  - (c) the date not later than which the service shall be commenced.
- (4) Where the Minister grants a licence in accordance with this section, the Minister shall give notice in the Gazette that the licence has been granted.

**149 Duration of scheduled international air service licence**

- (1) Every scheduled international air service licence granted under section 148 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.
- (2) Where an application is made under section 150 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue

in force until the application is disposed of, unless the Minister otherwise directs.

### **150 Renewal of scheduled international air service licence**

- (1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 148.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 148 shall be lodged with the Minister not less than 1 month before the date on which the licence expires.
- (3) Section 137(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.
- (4) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 147 as if the application were an application for a new licence.
- (5) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.

### **151 Variation of terms and conditions of scheduled international air service licence**

- (1) The Minister, while a scheduled international air service licence granted under section 148 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.
- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) Where any application under subsection (1) seeks approval for —
  - (a) a change or addition to the route or routes to be operated; or
  - (b) an increase in the capacity of the service to be provided,pursuant to the licence, the Minister shall take into account all the matters referred to in section 147 as if the application were an application for a new licence.
- (4) Where the Minister has varied the terms or conditions of any licence under this section, the Minister shall give notice in the Gazette of the fact of, and the terms of, that variation.

**152 Minister may designate countries or territories for open aviation market licences**

The Minister may from time to time, by notice in the Gazette, designate any one or more countries or territories in respect of which —

- (a) scheduled international air services; and
- (b) non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire,

may be carried on pursuant to and in conformity with an open aviation market licence.

**153 Minister to be licensing authority for open aviation market licences**

The Minister shall be the licensing authority to grant open aviation market licences to the Tongan international airlines and foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

**154 Consideration of application for open aviation market licence**

- (1) In considering an application for an open aviation market licence made by a Tongan international airline or a foreign international airline the Minister shall take into account the following matters —
  - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which the Kingdom is a party;
  - (b) the safety and security requirements of the Director;
  - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the open aviation market licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

**155 Open aviation market licence may be granted subject to conditions**

- (1) The Minister, after giving consideration to the application in accordance with section 154, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) Without prejudice to the generality of subsection (1), the Minister, in granting any open aviation market licence, shall prescribe, in respect of any scheduled international air service and non-scheduled international flight carried on pursuant to the licence, the countries or territories that may be served.
- (3) The open aviation market licence shall be in such form as the Minister thinks fit.

- (4) Where the Minister grants an open aviation market licence under this section, the Minister shall give notice in the Gazette that the licence has been granted.

### **156 Duration of open aviation market licence**

- (1) Every open aviation market licence granted under section 155 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.
- (2) Where an application is made under section 157 for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

### **157 Renewal of open aviation market licence**

- (1) The Minister may, from time to time, renew an open aviation market licence granted under section 155.
- (2) Every application for the renewal of an open aviation market licence granted under section 155 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.
- (3) Section 137(2) shall apply to every application for the renewal of an open aviation market licence as if it were an application for a new licence.
- (4) No person shall be entitled as of right to a renewal of an open aviation market licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 154 as if the application were an application for a new licence.
- (5) The renewal of the open aviation market licence shall take effect from the date of expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

### **158 Variation of terms and conditions of open aviation market licence**

- (1) The Minister, while an open aviation market licence granted under section 155 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.
- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the



licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

- (3) Where any application under subsection (1) seeks approval for a change or addition to the country or countries, or territory or territories, to be served pursuant to the open market aviation licence, the Minister shall take into account all the matters referred to in section 154 as if the application were an application for a new licence.
- (4) Where the Minister has varied the terms or conditions of an open aviation market licence under this section, the Minister shall give notice in the Gazette of the fact of, and the terms of, that variation.

### **159 Transfer of open aviation market licence**

- (1) Any open aviation market licence granted to a Tongan international airline under section 155 may, subject to the provisions of this section, be transferred to any other Tongan international airline.
- (2) Every application for the transfer of an open aviation market licence shall be lodged with the Minister not less than 3 months before the date of the proposed transfer.
- (3) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 154 as if the application were an application for a new licence.
- (4) Where the Minister transfers any open aviation market licence under this section, the Minister shall give notice in the Gazette that the licence has been transferred.

### **160 Holder of open aviation market licence may operate non-scheduled international flights without authorisation under section 165**

The holder of an open aviation market licence under this Part shall be entitled to carry on, to or from the countries or territories that may be served pursuant to the licence as prescribed under section 155(2), non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire without authorisation under section 165.

### **161 Insurance cover against liability**

The Minister may, before granting or renewing any licence under this Part, or at any other time while the licence is in force, call upon the applicant or the licensee, as the case may be, to furnish to the satisfaction of the Minister, proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property is covered by insurance.

**162 Returns to be furnished**

Every person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence under this Part shall furnish to the Minister such financial and statistical returns and statements as the Minister may from time to time require by notice in writing addressed to that person.

**163 Suspension of licences**

Where the Minister is satisfied that a licensee has wilfully committed a breach of any of the conditions of a licence granted under this Part, the Minister may suspend the licence for such period as the Minister thinks fit.

**164 Revocation of licences**

The Minister may revoke a licence granted under this Part if —

- (a) the service authorised by the licence is not commenced on the date specified in the licence;
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence;
- (c) the service authorised by the licence has been terminated;
- (d) the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Kingdom and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement, or arrangement has been terminated or has ceased to bind the Kingdom or the Government of that other country; or
- (e) the licence has been granted under or in accordance with any such convention, agreement, or arrangement referred to in paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of the Kingdom, has become entitled under or in accordance with the convention, agreement, or arrangement, to revoke the licence.

**165 Commercial non-scheduled international flights not to be operated except as authorised by Minister**

- (1) Subject to section 160, no person shall operate a non-scheduled international flight engaged in the carriage of passengers, cargo, or mail for remuneration or hire between the Kingdom and one or more points in any other country or territory, except as authorised by the Minister and in accordance with such conditions as the Minister may impose in accordance with guidelines specified by the Minister in accordance with subsection (2).
- (2) For the purposes of this section, the Minister may issue guidelines for the regulation of flights described in subsection (1).

- (3) The Minister may from time to time review and amend the guidelines referred to in subsection (2).
- (4) The Minister shall, when requested by any person, make a copy of the guidelines issued in accordance with subsection (2) available to that person.

## 166 Provisions of this Part in addition to requirements of Regulations and Rules

No aircraft being used in connection with any scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any Regulation or Rules made or adopted under this Act.

## 167 Minister may prohibit smoking on international air routes

- (1) For the purposes of this section and section 226 —  

“**Tongan international airline**” means a Tongan air transport enterprise that is offering or operating a scheduled international air service or a non-scheduled international flight; and

“**to smoke**” means to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant; and “**smoked**” and “**smoking**” have corresponding meanings.
- (2) The Minister may from time to time, by notice in the Gazette —
  - (a) designate any one or more international air routes, or class or classes of international air routes, or all international air routes generally, as non-smoking routes; and
  - (b) exempt any specified route or part of a route from any designation imposed by the Minister in accordance with paragraph (a), subject to any conditions that the Minister thinks fit.
- (3) The Minister shall, before giving any notice under subsection (2), consult with Tongan international airlines.
- (4) A Tongan international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that —
  - (a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and
  - (b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.
- (5) No Tongan international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall permit any person to smoke on that aircraft.

- (6) No person shall smoke while on any aircraft operated by a Tongan international airline carrying passengers on any route designated as a non-smoking route pursuant to this section.

## PART XII - GENERAL OFFENCES

### 168 Applying for aviation document while disqualified

- (1) Every person commits an offence who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such a document and any such document so obtained shall be of no effect.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$20,000,
- and the Court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the Court thinks fit.

### 169 Communicating false information or failing to disclose information relevant to granting or holding of aviation document

- (1) Every person commits an offence who —
- (a) by any means, provides to the Director information relevant to the Director's exercise of powers under this Act, or under Regulations or Rules made under this Act, knowing the information to be false;
- (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person which is relevant to the Director's exercise of powers under this Act, or under Regulations or Rules made under this Act; or
- (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person which is relevant to the condition specified in section 55(3).
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**170 Carrying on scheduled international air service without licence or contrary to licence**

- (1) Every person commits an offence who —
  - (a) carries on a scheduled international air service in the Kingdom without a licence granted under Part XI; or
  - (b) being the holder of a licence granted under Part XI, carries on a scheduled international air service in the Kingdom in a manner contrary to the terms and conditions of the licence.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**171 Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence**

- (1) Every person commits an offence who—
  - (a) operates a non-scheduled international flight to which section 165 applies contrary to the provisions of that section; or
  - (b) being the holder of an open aviation market licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$3,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.

**172 Obstruction of persons duly authorised by Director**

- (1) Every person commits an offence who obstructs or impedes any person who is duly authorised by the Director and acting in the performance or exercise of any functions, duties, or powers conferred on him by this Act, or by any Rules made under this Act, and shall be liable upon conviction —
  - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (2) Subsection (1) shall apply only where the person obstructed or impeded is in uniform or produces evidence of his authority.

**173 Failure or refusal to produce or surrender documents**

- (1) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with section 23(3).
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$1,000.

**174 Trespass**

Every person commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by a person duly authorised by the Director in writing for that purpose, a Police officer, or an aviation security officer, or by notice posted by one of those persons.

**175 Failure to maintain accurate records**

- (1) Every person commits an offence who contravenes any provision of this Act or any Rule made under this Act that requires that person —
  - (a) to make accurate entries in a record;
  - (b) to maintain an accurate record; or
  - (c) to produce to the Minister or the Director an accurate record.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**176 Failure to notify emergency breach of Act or Regulations or Rules**

Every pilot-in-command commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 who, without reasonable excuse, fails to comply with section 59(7).

**177 Failure to notify accident or incident**

- (1) Every pilot-in-command or operator commits an offence who, without reasonable excuse, fails to comply with section 70(1), (2) or (3).
- (2) Every pilot-in-command or operator who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**178 Offences relating to disclosure of records**

- (1) Every person commits an offence who discloses a record specified in sections 80(2) or 81(2) in breach of sections 80 or 81.
- (2) Every person commits an offence who contravenes section 88(2).
- (3) Every person who commits an offence against this section shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

**179 Offences relating to publication of reports of proceedings or publication of records**

- (1) Every person commits an offence who contravenes sections 87 or 88(4).
- (2) Every person who commits an offence against this section shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

**180 Failure to provide identifying information**

- (1) Every operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with section 233.
- (2) Every operator or holder of a certificate of registration who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**181 Contravention of emergency Rule, prohibition, or condition**

Every person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency Rule made under section 36 or any prohibition or condition notified under section 22 commits an offence and shall be liable upon conviction —

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

**182 Flight over foreign country without authority or for improper purpose**

- (1) This section applies to —

- (a) any aircraft that is registered or required to be registered in the Kingdom under this Act;
  - (b) any other aircraft operated by a person who is a permanent resident of the Kingdom or whose principal place of business is in the Kingdom.
- (2) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory.
- (3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the aircraft was being so used.
- (4) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where —
  - (a) the flight is not duly authorised; or
  - (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.
- (5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the direction had been given.
- (6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.
- (7) For the purposes of this section, “**appropriate aeronautical authority**” includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.
- (8) Every person who commits an offence against subsections (2) or (4) shall be liable upon conviction —



- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

## PART XIII – SAFETY OFFENCES

### 183 Endangerment caused by holder of aviation document

- (1) Every holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any Regulations or Rules made under this Act.
- (4) When any question arises as to whether or not the offence in subsection (1) is committed it shall be a relevant consideration that any ordinary rule or emergency rule made under this Act was not complied with by the person charged with the offence.

### 184 Operating aircraft in careless manner

- (1) Every person commits an offence who operates any aircraft in a careless manner.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to a fine not exceeding \$7,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$35,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any Regulations or Rules made under this Act.

### 185 Dangerous activity involving aircraft, aeronautical product, or aviation related service

- (1) Every person commits an offence who —
  - (a) operates, maintains, or services; or

- (b) does any other act in respect of, any aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to any other person or to any property.
- (2) Every person commits an offence who —
- (a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
- (b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to any other person or to any property.
- (3) Every person who commits an offence against subsections (1) or (2) shall be liable upon conviction —
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) The provisions of this section shall be in addition to and not in derogation of any Regulations or Rules made under this Act.

### **186 Failure to comply with inspection or monitoring requirement**

- (1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under section 16(1) or (3).
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
- (a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence is continued.

### **187 Court may disqualify holder of aviation document or impose conditions on holding of document in respect of certain offences**

- (1) In addition to any penalty the Court may impose under sections 183, 184, 185 or 186, the Court may, on convicting any person of an offence against either of those sections —
- (a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or

- (b) impose on any aviation document held by or issued to the person convicted such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit,  
for such period not exceeding 12 months as the Court thinks fit.
- (2) Nothing in subsection (1) shall affect or prevent the exercise by the Director of his powers under section 55.

### **188 Acting without necessary aviation document**

- (1) Every person commits an offence who —
  - (a) operates, maintains, or services; or
  - (b) does any other act in respect of,  
any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —
  - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

### **189 Acting without required medical certificate**

- (1) Every person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person —
  - (a) does not hold an appropriate current medical certificate issued or granted recognition by the Director under Part VII;
  - (b) knows or has reasonable grounds to suspect that he can no longer exercise safely the privileges to which his medical certificate relates; or
  - (c) fails to comply with any conditions, restrictions, or endorsements specified by the Director under sections 62(2) or section 67(1)(b), (2)(c) or (6).
- (2) Every person who commits an offence under subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.

### **190 Fraudulent, misleading, or intentionally false statements to obtain medical certificate**

- (1) Every person commits an offence who makes or causes to be made —

- (a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under Part VII;
  - (b) any fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under Part VII;
  - (c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under Part VII; or
  - (d) any fraudulent, misleading, or intentionally false statement during an investigation under section 66.
- (2) Every person who commits an offence under subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.

### **191 Failure to disclose information required by Director**

- (1) Every person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under sections 63(1) or 66.
- (2) Every person who commits an offence under subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000.

### **192 Additional penalty for offences involving commercial gain**

- (1) In addition to any penalty the Court may impose under sections 183, 185, 186 or 188, the Court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of subsection (1), the value of any gain shall be assessed by the Court, and shall be recoverable in the same manner as a fine.

### **193 Effect of disqualification**

- (1) Where the holder of an aviation document is disqualified by an order of a Court from holding or obtaining an aviation document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.
- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes

and passes such tests and fulfils such requirements as the Director may from time to time specify.

### **194 Commencement of period of disqualification**

Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the Court making the order directs that the period of disqualification shall commence on a later date.

### **195 Retention and custody of document**

- (1) Where by an order of a Court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to the Director.
- (2) Where an aviation document is so surrendered, the Director shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom section 193(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

### **196 Removal of disqualification**

- (1) Subject to this section, any person who by order of a Court is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the Court by which that order was made to remove the disqualification.
- (2) On an application under this section the Court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.
- (3) Where the disqualification was ordered by a Court, every application under this section shall be made to a Judge exercising jurisdiction in the Court by which the order was made.
- (4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

## 197 Particulars of disqualification orders, and related matters, to be sent to Director

Where a Court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under section 196 removing any disqualification, particulars of the order shall be sent by the Registrar of the Court to the Director.

## PART XIV – SECURITY OFFENCES

### 198 Application

For the purposes of this Part “**airport**” has the meaning given to “**aerodrome**” in section 2 and further includes all areas comprising, and any defined area adjacent to, any airport in the Kingdom, and “**at an airport**” and “**in an airport**” have corresponding meanings.

### 199 Offences relating to international airports

- (1) A person commits an offence who, whether in or outside the Kingdom, using any device, substance, or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport —
  - (a) at the international airport, commits an act of violence that causes or is likely to cause serious injury or death;
  - (b) destroys or seriously damages the facilities of the international airport;
  - (c) destroys or seriously damages an aircraft that is not in service and is located at the international airport; or
  - (d) disrupts the services of the international airport.
- (2) Subject to subsection (3), a person who commits an offence against this section shall be liable upon conviction to imprisonment for a term not exceeding 14 years.
- (3) A person who commits an offence against subsection (1)(a) —
  - (a) in circumstances where the conduct concerned is the same as conduct described as murder under section 87 of the Criminal Offences Act, shall be liable upon conviction to imprisonment for life; and
  - (b) in circumstances where the conduct concerned is the same as conduct described as manslaughter under section 88 of the Criminal Offences Act, shall be liable upon conviction to imprisonment for life.
- (4) No proceedings for the trial and punishment of any person charged with an offence against this section shall be instituted in any Court except with the consent of the Attorney General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

## **200 Offences relating to airports not being international airports**

- (1) A person commits a criminal offence who, whether in or outside the Kingdom, using any device, substance, or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of any airport not being an international airport —
  - (a) at the airport, commits an act of violence that causes or is likely to cause serious injury or death;
  - (b) destroys or seriously damages the facilities of the airport;
  - (c) destroys or seriously damages an aircraft that is not in service and is located at the airport; or
  - (d) disrupts the services of the airport.
- (2) Subject to subsection (3), a person who commits an offence against this section shall be liable upon conviction to imprisonment for a term not exceeding 7 years.
- (3) A person who commits an offence against subsection (1)(a) —
  - (a) in circumstances where the conduct concerned is the same as conduct described as culpable homicide under the Criminal Offences Act shall be liable upon conviction to imprisonment for life; and
  - (b) in circumstances where the conduct concerned is the same as conduct described as grievous bodily harm resulting in permanent damage or death under the Criminal Offences Act shall be liable upon conviction to imprisonment for life.

## **201 Offences against section 199 and 208 deemed to be included in extradition treaties**

- (1) For the purposes of the Extradition Act each offence described in sections 199 and 208 is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between the Kingdom and any foreign country which is a party to the Montreal Protocol.
- (2) When subsection (1) deems an offence to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act in respect of an act or omission which amounts to that offence is liable to be surrendered in accordance with the provisions of that Act, whether the act

or omission occurred before or after the date on which the offence was deemed to be an offence described in the extradition treaty.

- (3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of the Kingdom, would not at that time have constituted an offence under Tongan law.
- (4) A certificate given under the hand of the Minister that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.
- (5) For the purposes of this section —  
**“offence”** includes —
  - (a) an attempt to commit that offence;
  - (b) aiding, abetting, inciting, counselling, or procuring a person to commit that offence;
  - (c) inciting, counselling, or attempting to procure a person to commit that offence when it is not in fact committed;
  - (d) being an accessory after the fact to that offence; and

**“foreign country”** includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Montreal Protocol extends.

## 202 Acts endangering the public at an airport

- (1) A person commits an offence who acts in a manner that endangers any member or members of the public at an airport.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$5,000.

## 203 Disruptive or alarming conduct at an airport

- (1) Every person commits an offence who, while in an airport, and in a manner contrary to public order or safety at the airport —
  - (a) uses any threatening, offensive or insulting words or gestures;
  - (b) behaves in a threatening, offensive or insulting manner;
  - (c) without justification makes an alarming statement or uses alarming words or behaves in an alarming manner;
  - (d) behaves in a manner that interferes with the performance by aircrew, airline officials or airport workers of their duties; or
  - (e) behaves in a manner that interferes with or is likely to interfere with the performance by aviation security officers of their duties.



- (2) Every person who commits an offence against subsection (1)(a), (b),(c) or (d) shall be liable upon conviction to a fine not exceeding \$5,000.
- (3) Every person who commits an offence against subsection (1)(e) shall be liable upon conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$5000.

#### **204 Security area offences**

- (1) Every person commits an offence who, on being found in a security area —
  - (a) refuses to state his name, address, and authority to enter the security area after —
    - (i) having been informed that he is in a security area; and
    - (ii) having been requested by an aviation security officer to state those particulars; or
  - (b) refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

#### **205 Offence of impersonation or obstruction of authorised persons**

- (1) Every person commits an offence who, not being an authorised person —
  - (a) by words, conduct, demeanour, or the assumption of the dress, name, designation, or description of an authorised person, holds himself out as being an authorised person; or
  - (b) wilfully obstructs, or incites or encourages any person to obstruct an authorised person in the execute of his duty.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

#### **206 Communicating false information affecting safety**

- (1) Every person commits an offence who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction —

- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) Where the commission of an offence against subsection (1) causes financial loss to any person and where the Court imposes a fine under subsection (2) in respect of that offence, the Court may order that such part of the fine as it thinks fit, but in any event not more than one-half of the fine, be awarded to that person.

## 207 Taking firearms, explosives, and related matters, on to aircraft or into a security area

- (1) Everyone commits a criminal offence and shall be liable upon conviction to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft or into any sterile area or security enhanced area —
- (a) any firearm;
  - (b) any other dangerous or offensive weapon or instrument of any kind whatsoever;
  - (c) any ammunition;
  - (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft;
  - (e) an imitation of an item or substance specified in paragraphs (a) to (d); or
  - (f) any other prohibited item.
- (2) For the purposes of this section, the term “**firearm**” means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.
- (3) For the purposes of this section the term “**prohibited item**” has the meaning given to it in section 2.
- (4) For the purposes of subsection (1) “**lawful authority**”, “**reasonable excuse**” and “**permission**” is deemed to have been established in respect of any person who —

- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and
  - (b) takes any of the items in subsection (1)(a), (b), (c), (d), (e) or (f) on board any aircraft or into any security area for the purposes of his or her duties as an in-flight security officer.
- (5) No proceedings for the trial and punishment of any person charged with an offence against this section shall be instituted in any Court except with the consent of the Attorney General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

## 208 Hijacking

- (1) Everyone commits the offence of hijacking and is liable on conviction to imprisonment for life, who, while on board an aircraft in flight, whether in or outside the Kingdom, unlawfully, by force or threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.
- (2) No proceedings for the trial and punishment of any person charged with an offence against this section shall be instituted in any Court except with the consent of the Attorney General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

## 209 Offences in connection with hijacking

- (1) Everyone who, while on board an aircraft in flight outside the Kingdom, does or omits anything which, if done or omitted by that person in the Kingdom, would be a criminal offence, commits that offence if the act or omission occurred in connection with the offence of hijacking.
- (2) Without limiting the generality of subsection (1), an act or omission by any person shall be deemed to occur in connection with the offence of hijacking if it was done or omitted with intent—
- (a) to commit or facilitate the commission of the offence of hijacking;
  - (b) to avoid the detection of himself or of any other person in the commission of the offence of hijacking; or

- (c) to avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the offence of hijacking.
- (3) No proceedings for the trial and punishment of any person charged with an offence against this section shall be instituted in any Court except with the consent of the Attorney General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

## 210 Other offences relating to aircraft

- (1) Everyone commits a criminal offence, and shall be liable upon conviction to imprisonment for a term not exceeding 14 years, who, whether in or outside the Kingdom —
- (a) on board an aircraft in flight, commits an act of violence which is likely to endanger the safety of the aircraft;
  - (b) destroys an aircraft in service;
  - (c) causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight;
  - (d) places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight;
  - (e) destroys, damages, or interferes with the operation of any air-navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or
  - (f) endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false.
- (2) No proceedings for the trial and punishment of any person charged with an offence against this section shall be instituted in any Court except with the consent of the Attorney General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

**211 Offences deemed to be included in extradition treaties**

- (1) For the purposes of the Extradition Act and any Order published in the Gazette under that Act, the offence of hijacking, if not already described in an extradition treaty is deemed to be a relevant offence for the purposes of section 5(1) of the Extradition Act and shall further be deemed to be an offence described in any extradition treaty for the time being in force between the Kingdom and any country that is a party to the Hague Convention.
- (2) For the purposes of the Extradition Act and any Order published in the Gazette under that Act, each offence in section 210 if not already described in an extradition treaty is deemed to be a relevant offence for the purposes of section 5(1) of the Extradition Act and shall further be deemed to be an offence described in any extradition treaty for the time being in force between the Kingdom and any country that is a party to the Montreal Convention.
- (3) If, under subsections (1) or (2), an offence is deemed to be an offence described in an extradition treaty or deemed to be a relevant offence for the purposes of section 5(1) of the Extradition Act, a person may be surrendered for that offence in accordance with the provisions of the Extradition Act even if the act or omission occurred before the date on which the crime was deemed to be an offence described in the extradition treaty.
- (4) Subsection (3) does not apply in respect of an act or omission that, had it occurred within the jurisdiction of the Kingdom, would not at that time have constituted an offence under the law of the Kingdom.
- (5) For the purposes of this section —  
**“country”** includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention, extends; and  
**“Offence”** includes —
  - (a) aiding, abetting, inciting, counselling, or procuring any person to commit that offence;
  - (b) inciting, counselling, or attempting to procure any person to commit that offence when it is not in fact committed; and
  - (c) being an accessory after the fact to that offence.
- (6) A certificate given by the Minister that a country is a party to the Hague Convention or the Montreal Convention, as the case may be, is sufficient evidence of that fact.

**212 Application of sections 208, 209, and 210**

- (1) Nothing in section 208, or 209 or 210 shall apply if both the place of take-off and the place of actual landing of the aircraft (not being a Tongan registered aircraft) are in the territory of the country in which the aircraft is registered,

- or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless —
- (a) the alleged offender is a Tongan subject or a person ordinarily resident in the Kingdom;
  - (b) the act or omission occurred in the Kingdom;
  - (c) the alleged offender is present in the Kingdom; or
  - (d) the aircraft is leased without crew to a lessee —
    - (i) whose principal place of business is in the Kingdom; or
    - (ii) in any other case, who is a Tongan subject or a person ordinarily resident in the Kingdom.
- (2) Nothing in section 210(1)(a),(b),(c),(d), (e) or (f) shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Tongan registered aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless —
- (a) the alleged offender is a Tongan subject or a person ordinarily resident in the Kingdom;
  - (b) the act or omission occurred in the Kingdom;
  - (c) the alleged offender is present in the Kingdom; or
  - (d) the aircraft is leased without crew to a lessee —
    - (i) whose principal place of business is in the Kingdom; or
    - (ii) in any other case, who is a subject of the Kingdom or a person ordinarily resident in the Kingdom.
- (3) Nothing in section 208, 209 or 210(1)(a),(b),(c),(d), (e) or (f) shall apply to aircraft used in military, customs, or police service unless —
- (a) the alleged offender is a subject of the Kingdom or a person ordinarily resident in the Kingdom; or
  - (b) the act or omission occurred in the Kingdom.

### **213 Application of certain provisions relating to jurisdiction in respect of offences on aircraft beyond the Kingdom**

Nothing in this Act or any other Act of the Kingdom relating to jurisdiction in respect of offences on ships or aircraft beyond the Kingdom shall apply to limit the application of the provisions of this Act or the application of the criminal law of the Kingdom with respect to the offence of hijacking or to any of the offences described in section 210 or to any offence referred to in section 209 committed in connection with the offence of hijacking.

## PART XV - UNRULY PASSENGER OFFENCES

### 214 Application of this Part

- (1) This Part applies to any unruly passenger offence committed —
  - (a) on an aircraft in the Kingdom, regardless of the nationality of the aircraft; or
  - (b) outside the Kingdom on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in the Kingdom.
- (2) For the purposes of this Part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Notwithstanding subsection (2), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

### 215 Liability for unruly passenger offences despite extraterritoriality

Any person who commits an act or omission on an aircraft in flight outside the Kingdom that would be an offence against this Part if it occurred within the Kingdom is, subject to this Act, liable as if the act or omission had occurred in the Kingdom.

### 216 Liability for other offences despite extraterritoriality

- (1) Any person who commits an act or omission on an aircraft in flight outside the Kingdom that would, if it occurred in the Kingdom, be an offence of disorderly behaviour or fighting in a public place or common assault or wilful damage or indecent exposure is liable as if the act or omission had occurred in the Kingdom.
- (2) For the purposes of any of the provisions referred to in subsection (1), any reference to public place includes an aircraft.

### 217 Certified consent of Attorney-General

- (1) No proceedings for an unruly passenger offence may be commenced without the certified consent of the Attorney-General if —
  - (a) the offence has been committed on a foreign aircraft outside the Kingdom; and

- (b) the offence carries a maximum sentence of more than 3 months imprisonment.
- (2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney-General decides whether or not to consent to proceedings.

### **218 Strict liability for acts endangering safety**

- (1) A person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

### **219 Disruptive conduct towards crew member**

- (1) Every person commits an offence who, while in an aircraft —
  - (a) uses any threatening, offensive, or insulting words towards a crew member;
  - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member;
  - (c) behaves in a manner that interferes with the performance by a crew member of his duties; or
  - (d) intentionally interferes with the performance by a crew member of his duties.
- (2) Every person who commits an offence against subsection (1)(a), (b) or (c) shall be liable upon conviction to a fine not exceeding \$5,000.
- (3) Every person who commits an offence against subsection (1)(d) shall be liable upon conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

### **220 Interference with aircraft**

- (1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000.



**221 Intoxicated persons on aircraft**

- (1) Every person (except a person under medical care) commits an offence who —
  - (a) is intoxicated and boards an aircraft; or
  - (b) becomes intoxicated on an aircraft.
- (2) Every person who commits an offence against —
  - (a) subsection (1)(a) shall be liable upon conviction to a fine not exceeding \$5,000.
  - (b) subsection (1)(b) shall be liable upon conviction to a fine not exceeding \$3,000.
- (3) For the purposes of this section, a person is intoxicated if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to —
  - (a) be incapable of properly conducting himself;
  - (b) present a hazard or potential hazard to the aircraft or to persons on the aircraft; or
  - (c) offend against the good order and discipline required on an aircraft.
- (4) For the purposes of this section, “**person under medical care**” means a person who —
  - (a) is under the supervision of an attendant; and
  - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

**222 Non-compliance with commands given by pilot-in command**

- (1) Every person commits an offence who fails to comply with any commands given to the person directly by the pilot-in command, or indirectly by the pilot-in-command through a crew member, in accordance with his duties under section 59, or Rules made under this Act.
- (2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$5,000.

**223 Offensive behaviour or words**

- (1) Every person commits an offence who, on any aircraft —
  - (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
  - (b) uses threatening, offensive, or insulting words.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$2,500.

**224 Portable electronic devices not to be operated**

- (1) Every person commits an offence who operates a portable electronic device on board an aircraft in breach of the Rules made under this Act.
- (2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$2,500.

**225 Non-compliance with seating and seatbelt instructions**

- (1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information signs, or placards to —
  - (a) occupy a seat or berth; and
  - (b) fasten and keep fastened about the person any installed safety belt or safety harness.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$2,500.

**226 No smoking**

- (1) Every person commits an offence who smokes —
  - (a) when instructed not to smoke by a crew member, passenger information signs, or placards;
  - (b) while on any aircraft that is carrying passengers for hire and reward on any internal flight; or
  - (c) in contravention of section 167.
- (2) Every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$2,500.
- (3) In this section “**to smoke**” has the meaning set out in section 167(1).

**227 Dangerous goods**

- (1) Every person commits an offence who, in breach of the Rules, carries or causes to be carried on an aircraft any dangerous goods.
- (2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) shall be liable upon conviction to a fine not exceeding \$2,500.

**228 Procedure for certain unruly passenger offences**

- (1) If any offence specified in sections 218 to 227 is alleged to have been committed by any person (in this section, the “**defendant**”), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified —

- (a) an aviation security officer; or
  - (b) a Police officer.
- (2) If an aviation security officer or a member of the police has reasonable cause to suspect that a person has committed any offence specified in sections 218 to 227, he may require the person to give his full name, address, and date of birth.
- (3) If the aviation security officer or the Police officer has reasonable grounds to suppose that any details provided under subsection (2) are false or misleading, he may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.
- (4) If the person, without reasonable excuse, refuses or fails to comply with a request under subsections (2) or (3), and persists in that refusal or failure after being warned by the aviation security officer or member of the police that he may be arrested for committing an offence by that refusal or failure, a Police officer may arrest that person without warrant.
- (5) Every person commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 who, without reasonable excuse —
- (a) refuses or fails to comply with a request under sub-sections (2) or (3); or
  - (b) gives details that are false or misleading in a material respect to an aviation security officer or Police officer in response to such a request.
- (6) Evidence produced by the defendant to the aviation security officer or member of the police under subsection (3) shall be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.

## PART XVI – RIGHTS OF APPEAL

### 229 Appeals against disqualification

- (1) An order of a Court by which any person is disqualified from holding or obtaining an aviation document shall be deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, the Court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.
- (2) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the Supreme Court that is or includes an order of disqualification, the Supreme Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.

- (3) Where an appeal to the Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the Supreme Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.
- (4) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section shall be disregarded.

### **230 Appeal to Supreme Court**

- (1) A person may appeal to the Supreme Court against a decision made under this Act by the Director if another section of this Act gives that person a right of appeal under this section, and —
  - (a) the person —
    - (i) is a person in respect of whom the decision was made; and
    - (ii) is dissatisfied with the decision; or
  - (b) the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.
- (2) The Supreme Court may confirm, reverse, or modify the decision appealed against.
- (3) Every decision of the Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with, in accordance with the provisions of this Act, any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the Supreme Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

## **PART XVII - MISCELLANEOUS PROVISIONS**

### **231 Evidence and proof**

- (1) In any proceedings for an offence against this Act, the following provisions shall apply —

- (a) a copy of any aviation document which is certified correct by the Minister or the Director shall be sufficient, in the absence of proof to the contrary, to prove that document;
  - (b) evidence of the contents of the Tonga Register of Aircraft maintained under section 27 may be given by a certificate signed by the Director and every such certificate shall be sufficient evidence of the matters stated in it, until the contrary is proved;
  - (c) the production of a certificate signed by the Director to the effect that on a specified date a person or organisation was or was not the holder of any aviation document or any specified type of aviation document shall be sufficient evidence of the matter certified, until the contrary is proved;
  - (d) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a current medical certificate issued or granted recognition under Part VII, or otherwise validated or issued or recognized before the commencement of this Act, is sufficient evidence of the matter stated, until the contrary is proved;
  - (e) until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Director;
  - (f) any licence granted under Part XI may be proved by the production of a copy of that licence certified to be correct by the Minister.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of —
- (a) any ordinary Rule purporting to have been made by the Minister under Part IV; or
  - (b) any emergency Rule purporting to have been made by the Director under section 43,

shall, in the absence of proof to the contrary, be sufficient evidence of the Rule and of the fact that it has been made in accordance with the provisions of that Part.

## **232 Evidence of air traffic services provider**

- (1) Any document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services shall be admissible in every Court and in every judicial examination or proceeding as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.
- (2) A document certified by an employee of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the

particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, shall be admissible as if it were a document to which subsection (1) applies.

- (3) For the purposes of this section, the expression “**computer record**” includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

### **233 Obligation to identify pilot-in-command**

- (1) If a pilot in command of an aircraft is alleged to have committed an offence under this Act or the Rules, the Director or a Police officer may —
  - (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
  - (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration (as the case may be) shall comply with the request within 10 working days.
- (3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.

### **234 Exemption of aircraft from seizure on patent claims**

- (1) Any lawful entry into the Kingdom, any lawful transit across the Kingdom, with or without landings, of an aircraft to which this section applies shall not entail any seizure or detention of the aircraft or any proceedings being brought against the owner or operator thereof or any other interference therewith by or on behalf of any person in the Kingdom on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.
- (2) Subject to sub-section (3), the importation into, and storage in, the Kingdom of spare parts and spare equipment for an aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in the Kingdom on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

- (3) Sub-section (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in the Kingdom or are exported from the Kingdom for sale or distribution.
- (4) This section applies —
  - (a) to an aircraft registered in a contracting state other than an aircraft used in military, customs or police services; and
  - (b) to such other aircraft as the Minister may with the consent of Cabinet specify.

### **235 Right of access over private lands to wrecked or damaged aircraft**

- (1) Where an aircraft is wrecked or damaged at any place in the Kingdom all persons may, for the purpose of rendering assistance to the aircraft or its occupants, or of saving the lives of the occupants of the aircraft, or of saving the aircraft or its contents, unless there is some public road equally convenient, pass and re-pass, either with or without vehicles, over and land without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and also, on the like conditions, deposit on those lands any goods or other article recovered from the aircraft.
- (2) Any owner or occupier who suffers direct injury or loss in consequence of the exercise of the rights given by sub-section (1) shall be entitled to receive compensation therefore, the amount of the compensation to be fixed by agreement with the Minister with the concurrence of the Minister of Lands, or in default of agreement by the Supreme Court.

### **236 Penalties**

Any person who commits an offence against this Act for which no penalty is specifically provided shall be liable upon conviction to either a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year, or both.

### **237 Repeals, revocation, amendments, and savings**

- (1) The enactments and regulations specified in Schedule 1 are hereby repealed and revoked but otherwise any regulations or notices made under the Civil Aviation Act 1990 shall continue in force until amended or revoked by the Minister with the approval of Cabinet under this Act.
- (2) Every licence, rating, certificate, permit, authorisation, approval, or other document validly issued by an authorised senior officer of the Ministry prior to the commencement of this Act in accordance with the Civil Aviation Act 1990 and the Civil Aviation Regulations 1992 and that is in force immediately before the commencement of this Act, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions of this Act accordingly.

- (3) Every aviation document, licence, rating, certificate, permit, authorisation, approval, or other document issued by an authorised senior officer of the Ministry prior to the commencement of this Act and which is in accordance with the intents, purposes and procedures of the New Zealand Civil Aviation Rules is hereby validated, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions of this Act accordingly.
- (4) For the purposes of subsection (3) “**New Zealand Civil Aviation Rules**” means the ordinary Rules promulgated from time to time pursuant to the provisions of the New Zealand Civil Aviation Act 1990 as amended.
- (5) Notwithstanding the repeal of the Civil Aviation Act 1990 by this Act, sections 9, 10, 11 and 12 of the Civil Aviation Act 1990 relating to airports shall continue in full force and effect as if part of this Act and any powers exercised by the Minister including any instruments of delegation shall continue in force and be valid and effective.



**SCHEDULE 1**

**ENACTMENTS REPEALED**

Civil Aviation Act 1990

Aircraft Offences Act

Civil Aviation Regulations 1992

Civil Aviation (Passenger Service Charge) Regulations 1996

## SCHEDULE 2

### FORM OF ADOPTION STATEMENT AND INTERPRETATION STATEMENT

#### NOTICE OF MAKING OF ORDINARY RULES BY ADOPTION PURSUANT TO SECTION [ ] OF THE CIVIL AVIATION ACT 2013

Pursuant to the Civil Aviation Act 2013 section [ ] I, Honourable [*full name*], Minister responsible for civil aviation, hereby give notice of the making of Ordinary Civil Aviation Rules by adoption.

#### **Tonga Civil Aviation Rule Part [ ]** **[*name*]**

##### **Adoption Statement**

The Rule Part, which shall be cited as Tonga Civil Aviation Rule Part [ ], comprises an adoption of the Rules contained in New Zealand Civil Aviation Rule Part [ ] as modified hereunder and shall be read subject to the following Interpretation Statement.

##### **Interpretation Statement**

##### **(i) Words and numbers to be substituted: Throughout**

*[list of words or phrases that may appear in several Rules]*

##### **Rule [ ]      [*name*]**

*[sections or sub-sections that are to be deleted from the stated Rule]  
followed by*

*[sections or sub-sections that are to be inserted into the stated Rule]*

##### **(ii) Any subpart, Rule or appendix of the adopted Rule Part which shall not apply in Tonga**

*[text]*

##### **(iii) Any general exemptions which will apply in Tonga**

*[text]*

##### **(iv) Any additional provisions or requirements not found in the New Zealand Rule Part but which will apply in Tonga**

*[text]*

- (v) **Any direction as to the application or non application to Tonga of any amendment or repeal of an adopted Rule Part by its country of origin**

*[text to include:*

“This Rule Part shall adopt all New Zealand amendments unless otherwise stated.”]

- (vi) **Any other matter which would assist in the practical, clear and unambiguous interpretation and application of the adopted Rule Part in Tonga.**

*[text to include:*

“Unless the Director issues specific acceptable means of compliance for this Tonga Rule Part, the standards, practices and procedures that the Director has found to be acceptable are those published in the associated Advisory Circulars issued by the Civil Aviation Authority of New Zealand. Interpretative or explanatory material for this Rule Part may also be found in the New Zealand Advisory Circulars.”

*or, where Advisory Circulars are not published by CAA NZ in respect of the Rule:*

“If further guidance regarding acceptable means of compliance for this Tonga Rule Part is required, the Director may issue such guidance as required.”

“This Rule Part, as modified above, comes into force on *[date]*”]

**Dated this [ ] day of *[month]* *[year]***

## **Explanatory Notes <sup>4</sup>**

**(This note does not form part of the Bill and is intended only to explain its purpose and effect.)**

The new 2014 Civil Aviation Act is substantially bigger and more detailed than the old 1990 Act that will be repealed.

It is divided into 17 Parts each of which comprises sections that deal with a particular topic or a group of sections that are most conveniently placed together. Examples are PART I – PRELIMINARY which covers some preliminary matters at the outset of the Act. Other examples that appear later in the document and cover specific topics include PART VII – MEDICAL CERTIFICATION and PART X – AVIATION SECURITY (which of course is of particular importance today).

### **PART I – PRELIMINARY**

This Part comprises sections 1 to 4 inclusive.

#### **Section 1**

This section provides the title of the new Act and provision for a date of commencement.

#### **Section 2**

This section covers definitions and interpretations of many specific words used in the Act (eg. “aircraft” or “security designated aerodrome”).

#### **Section 3**

This section makes the Act binding on the Kingdom of Tonga. It also contains, on request from the His Majesty’s Armed Forces, a unique provision for the use of aircraft by the His Majesty’s Armed Forces on non military operations within the civil aviation system.

#### **Section 4**

This section provides that the Act and regulations and rules made under it will apply, in defined circumstances, to persons and aircraft of Tonga, whether they are inside or outside the Kingdom.

### **PART II – MINISTER AND DIRECTOR**

#### **Section 5**

This section sets out the functions and objectives of the Minister, notably promotion of safety in civil aviation, making of Rules and administering this country’s obligations under international aviation treaties and agreements.

**Section 6**

An important section, this sets out some functions and objectives of the Director of Civil Aviation (appointed by the Minister under section 14). This section should be read in conjunction with section 14 which describes further the role of the Director as conceived for the Civil Aviation Authority in the NZ regulatory model. Given the presence in Tonga of a CAD (Civil Aviation Division within the Ministry of Infrastructure) rather than an Authority (used in New Zealand which no longer has a CAD) most of the operational functions and duties of the Authority in the New Zealand Act have been transposed to the Director in Tonga. The Minister of course retains the most senior position and generally the functions and duties of the Minister (and sometime Secretary) under the New Zealand model have been imposed upon the Minister in Tonga in this Act.

In this section however note particularly the overall function of the Director to promote aviation safety and security in Tonga.

**Section 7**

The Director must comply in general terms with government policies. That does not mean that any direction can be given regarding any particular person or to achieve a particular result in respect of an individual. The statutory independence of the Director is maintained in key regulatory areas such as granting and withdrawing “aviation documents” (licenses and certificates and so on) since independence of the Director in these decisions is a key feature of the NZ regulatory model.

**Section 8**

This section brings into Tongan domestic law the requirement to which Tonga is committed by reason of its being a party to the Chicago Convention to facilitate and expedite the international navigation of aircraft to and from Tonga. This section has been retained from the current Civil Aviation Act 1990 of Tonga.

**Section 9**

This section provides for assistance to the Minister and Director in the form of employed personnel and has been retained from the current Civil Aviation Act 1990 of Tonga.

**Section 10**

This is an important provision from the NZ model with particular relevance to Tonga. In practice it will be necessary for Tonga to outsource skills not available locally and this section requires the Director to consider doing so. This could for example be a mechanism to take advantage of PASO regional civil aviation regulatory facilities.

**Section 11**

This section has been retained from the current Civil Aviation Act 1990 of Tonga and requires the Minister to prepare an annual report.

**Section 12**

This section does not originate in the New Zealand model but instead is carried over from usage in other Pacific Island states. It empowers the Minister to order, with compensation where appropriate, the removal of dangerous obstructions affecting the flight of aircraft. It should be read in conjunction with section 13.

### **Section 13**

This section enables the Minister to restrict the use of land near airports. It does not originate in the New Zealand model but instead is carried over from usage in other Pacific Island states. It should be read in conjunction with section 12.

### **Section 14**

This provision formally creates the position of Director of Civil Aviation by appointment of the Minister acting on advice from the Chief Executive Officer for Infrastructure.

Of central importance subsection (3) charges the Director with control over entry into and exit from the “civil aviation system” by power to issue and withdraw “aviation documents” (such as licenses, certificates and operating approvals).

Under subsection (4) the Director has statutory independence in relation to powers to issue or withdraw aviation documents, to grant “exemptions” from statutory requirements and to enforce the Act or Rules made under it (eg commence legal proceedings, prosecutions etc.).

### **Section 15**

As part of his duties the Director is empowered to administer flight tests and examinations to industry participants.

### **Section 16**

In the interests of aviation safety the Director is empowered to carry out safety and security monitoring and inspections.

### **Section 17**

The Director has the power to investigate any aviation document holder to ensure compliance with the requirements imposed by them.

### **Section 18**

The Director is able to suspend an aviation document or impose conditions in the interests of safety. This is a key control in the regulation of safety.

### **Section 19**

The Director may revoke an aviation document if the circumstances require it. A serious step to be taken where, for example, attempts to raise safety standards by an operator have not succeeded.

### **Section 20**

An important regulatory provision, this section sets out the criteria to which the Director must adhere when considering suspension, revocation or the imposition of conditions on an aviation document.

It also provides wide powers for the Director to seek and consider relevant information before making such a decision.

### **Section 21**

This section enables the Director to amend or revoke an aviation document upon request by the holder of it.

### **Section 22**

Further powers are given to the Director in relation to detention of aircraft, imposition of conditions and seizure of dangerous goods in the interests of aviation safety.

### **Section 23**

The Director is given powers to enter buildings and aircraft in certain circumstances such as where on reasonable grounds he suspects the breach of regulations or conditions.

### **Section 24**

Powers of delegation are an important feature of this model. The Minister is here given powers to delegate his functions under the Act to the Director subject to certain limitations. Delegations must be in writing

### **Section 25**

The Director may also delegate any of the Director's functions under this Act to any other employee of the Civil Aviation Division of the Ministry of Infrastructure. Delegations must be in writing

### **Section 26**

In certain cases the functions or powers of both the Director may be delegated in writing to persons outside the CAD. This is likely to occur for example where a particular type of expertise is not otherwise available. Note however that under subsection (9) no such delegation can operate to relieve the Minister or the Director from their own statutory responsibilities under the Act.

### **PART III – REGISTRIES AND INFORMATION SERVICES**

#### **Section 27**

This provides for the establishment and operation of an aircraft registry for aircraft registered under the law of Tonga.

#### **Section 28**

Another important Registry is known as the Civil Aviation Registry which keeps records of many critical documents affecting the regulation of civil aviation in Tonga.

#### **Section 29**

There is also a need for the Ministry to gather and make available certain aeronautical information.

### **PART IV – RULES**

#### **Section 30**

A cornerstone of this legislative model for Pacific Island “PASO” states is the power to adopt foreign civil aviation rules written in New Zealand by the Ministry of Transport of that country. The New Zealand Act focuses on the Minister “making” (ie. ”writing”) original aviation rules. In Tonga, as elsewhere in the Pacific, the same rules are adopted and modified for local conditions. This interpretation section makes it clear that the use of the words “make” or “making” of rules throughout the Act also includes, in the case of Tonga, the adoption of foreign rules under section 40.

#### **Section 31**

This section contains the basic empowerment of the Minister to make (which in this country will normally be by adoption) ordinary rules for the specified wide range of aviation regulatory purposes.

#### **Section 32**

Without limiting the powers to make rules under the preceding section this provides a further category in respect of which ordinary rules may be made.



**Section 33**

This section provides for ordinary rules covering classification etc. of airspace.

**Section 34**

Ordinary rules may be made to abate noise in the area of aerodromes.

**Section 35**

This section specifies, without limiting the general powers given to the Minister under section 31, may areas in civil aviation in respect of which rules may be made. In effect virtually every aspect of aviation activity is covered.

**Section 36**

Under this model the Director may make in the interests of aviation safety what are known as “emergency rules” where it would not be practical in the circumstances to make and “ordinary” rule. Often this would be where something must be regulated urgently and the ordinary process of making or adopting a rule would be too length or impracticable for some other reason.

**Section 37**

This section deals with the procedure for making ordinary rules and emergency rules. It is not expected that ordinary rules would be made in this country other than by the process of adoption contained in section 40.

**Section 38**

All rules made must be consistent with the international regulatory standards and recommended practices of ICAO (that consistency can be normally assumed where existing NZ rules are adopted by this country).

The Minister (in the case of ordinary rules) and the Director (in the case of emergency rules) must take into account the principles and guidelines set out in this section.

**Section 39**

This section sets out the procedure for making ordinary rules. Note that some of these procedures shall not apply where an ordinary rule is made by adoption pursuant to the procedures in section 40.

**Section 40**

This is a central provision of this Act in its special application to the circumstances of Tonga. This section is not found in the New Zealand Act on which this legislation is based.

It provides a unique mechanism for adopting foreign rules as civil aviation rules of Tonga. Key features are:

- 1 An adopted rule shall remain in full force and effect here even if subsequently ceases to be in force in its country of origin. (subsection (1)).
- 2 Although it is currently foreseen that the rules adopted will be New Zealand rules it is possible to adopt a rule of any ICAO member state if it is readily accessible in this country in electronic or other form. (subsection (2)).
- 3 The adopted rules need not be printed in this country (in practice the New Zealand Rules are freely downloadable from the internet by any prospective user).
- 4 The Minister need only publish in the Gazette the form in which the rule will apply in Tonga. Often there will need to be differences noted (place names, official positions, local legislation and the like) to make the adopted rules clear, sensible and workable in this country. This last function is done through the publication by the Minister of a Rule Interpretation Statement. See subsection (3) (b).
- 5 The Rule Interpretation Statement may be amended from time to time as necessary. See subsection (4) and section 42.
- 6 Sometimes, notwithstanding the publication of a Rule Interpretation Statement, the adopted rule may not exactly fit the circumstances found in Tonga. In such cases the Courts and officials of this country are required to interpret and give effect to the adopted rule “according to its purpose and intent to the fullest extent practicable”. See subsections (5) and (6). The Minister may also where there is uncertainty, publish a Directive to achieve clarification and effective implementation of any adopted rule. See subsections (7) and (8).

## **Section 41**

There is no requirement that any adopted rule be printed in the languages of Tonga or sold. However copies of the Rule Adoption Statements and Rule Interpretation Statements must be made available for inspection.

## **Section 42**

The New Zealand rules are “dynamic” in that they are constantly subject to review and revision in their country of origin. This is a major advantage of adoption by Tonga because the adopted rules are subject to updating constantly and free of any cost to this country. This will normally take effect here automatically (subsection (1)). However there may be occasions where this country does not need or want the update. In that case there is an

option for the Minister to notify that decision by issue of a revised Rule Adoption Statement or Rule Interpretation Statement (subsection (2)). The Minister may also amend any previously adopted rule at any time.

### **Section 43**

This section sets out procedures for the Director where an emergency rule must be made. Note the limitation on time that an emergency rule can remain in force in subsections (5) and (6). They are expected to be temporary measures only to quickly cover a gap. Emergency rules are not therefore suitable where a permanent measure is required.

### **Section 44**

This is a standard feature of the New Zealand model and enables certain matters (documents and manuals often too lengthy to be reproduced in full) to be incorporated by reference into any rule. Once again this country has discretion as to the extent that an incorporation by reference may be followed in this country in any particular case. See subsections (5) and (6).

### **Section 45**

The power of exemption is an important responsibility of the Director. Sometimes in practice it would be impracticable or unjust to require strict compliance with every aspect of a rule. In such cases the Director may on strict conditions ensuring that safety is not significantly compromised, grant an exemption upon such conditions as are considered appropriate.

## **PART V – REGULATIONS**

### **Section 46**

Section 46 provides a wide range of subjects in respect of which the Minister may make regulations under the Act. They include regulations prescribing fees and charges (see section 47) and prescribing breaches of rules which constitute offence under the Act.

### **Section 47**

This important provision is designed to enable the imposition of fees and charges under regulations for the purposes of funding activities under this Act. The likely need for additional funding for CAD under this new legislation which provides for enhanced aviation safety and security in Tonga should not be underestimated. This draft follows exactly the provision in the NZ Act and it may need to be adapted for the requirements of Tonga.

### **Section 48**

This provides for the possibility of rebates in respect of fees and charges imposed under regulations on the basis of quantity of services used and equality with others using a similar quantity.

**Section 49**

This provides, as a simple means of enforcing payments, that unless otherwise provided, payment of all relevant fees and charges must accompany every application under the Act.

**Section 50**

This is another mechanism to ensure timely payment of fees and charges. The Director may suspend or revoke an aviation document if related fees and charges are not paid by the date prescribed. There is a right of appeal to the Supreme Court. The Director can in some cases refuse to process an application under the Act until fees or charges are paid.

**Section 51**

This provides that in respect of any fee or charge relating to an aircraft, the owner or user of that aircraft, with some exceptions, is deemed liable to pay.

**PART VI – TONGA CIVIL AVIATION SYSTEM****Section 52**

These are critical requirements imposed on all “participants” in Tonga civil aviation system. Whenever an activity requires an aviation document (which is the case for almost all aviation activities) one must be held along with other qualifications and documents.

Every participant must comply with the Act, rules made under it and conditions attached to aviation documents.

All activities must be carried out safely and in accordance with the relevant prescribed safety standards and practices.

There must be established management systems, training and supervision and sufficient resources to ensure compliance with prescribed safety standards and conditions.

**Section 53**

This section prescribes the many things and activities in aviation that the Rules may require to be authorized by and accompanied by an aviation document. They may be issued for such period and on such conditions as the Director considers appropriate. There is a right of appeal against any decision taken under this section.

**Section 54**

The basic requirements for the application for an aviation document are set out here. The Director can prescribe the forms to be used. The applicant must supply and keep up to date contact information for service of documents and other purposes. Information provided under this section must be maintained at the Civil Aviation Registry (see section 28).

### **Section 55**

The Director must grant any application for an aviation document as soon as practicable once he is satisfied that certain criteria set out in this section have been met. A central requirement is that the applicant is and continues at all times to be a “fit and proper” person to hold and control the document. This is a key criterion for entry into the civil aviation system and removal from it at the discretion of the Director

### **Section 56**

The Director is given very explicit guidelines on the matters to which weight may be given in considering whether an applicant meets the requirement to be a “fit and proper person”. At the same time the Director can also take into account any other relevant matters and evidence.

### **Section 57**

The decision of the Director that a person is a fit and proper person is critical to obtaining an aviation document and working within the civil aviation system. An adverse decision therefore should be open to challenge by the person affected. This section requires the Director to give advance notice of any adverse decision with reasons. The person affected may make submissions before a final decision is taken and may appeal the final decision.

### **Section 58**

This confirms that all aircraft must be registered either in Tonga or elsewhere by “every person lawfully entitled to possession [of the aircraft] for a period of 28 days or longer”. Note that while not stated in this section the registration of aircraft is not similar to motor vehicle registration ie. it does not provide evidence of *ownership* or *title* in the aircraft.

### **Section 59**

This section imposes an important operational requirement on pilots who are made responsible for the safe operation of the aircraft and the safety and wellbeing of passengers, crew and cargo. The pilot in command must obey all the relevant provisions of this Act or regulations or Rules made under it. The only lawful exception is where there is an emergency that justifies departure from the normal requirements. Such departure must however be notified to the Director.

### **Section 60**

This section enacts historic and widely found protections to civil aviation against the inevitable noise and vibration caused by aircraft at aerodromes. However in addition to such protections it also makes the owner of an aircraft generally liable for damage caused by the operation of aircraft (including things falling from the aircraft).

## PART VII – MEDICAL CERTIFICATION

### Introduction

Medical certification is an extremely important part of allowing personnel (notably pilots, aircraft maintenance personnel and air traffic controllers) to undertake responsible activities where sudden medical failure could have a seriously adverse impact on aviation safety. Medical checks call for highly specialized medical skills which are found only in a relatively small number of doctors with special qualifications as aviation medical examiners.

This Part of the Act departs in some aspects significantly from the New Zealand model which assumes the presence in that country of the specialized medical examiners and testing equipment needed to undertake medical testing to ICAO standards. It can be assumed that neither of these resources will be available in this country. In practice certification of pilots has normally occurred in overseas jurisdictions such as Australia, New Zealand and the United Kingdom. Given that the medical certification processes in these countries comply with ICAO standards it makes sense for certain classes of aviation personnel within Tonga to be tested and certified overseas and to have the resulting overseas certifications recognized in this country. Therefore a key feature of Part VII is the ability of Tongan Director of Civil Aviation to grant recognition to overseas certifications..

### Section 61

This section sets out some preliminary definitions for the purposes of Part VII.

### Section 62

This section empowers the Director to grant recognition to foreign medical certificates in Tonga. The Director may still require further tests and examinations and may impose conditions, restrictions and endorsements on a foreign medical certificate. Such decisions are subject to appeal to the Supreme Court.

### Section 63

Any license holder becoming aware of a change in their medical condition must cease to act under their medical certificate and notify the Director. Further, any medical practitioner in Tonga must notify the Director where a medical condition is detected that may interfere with a license holder's ability to carry out their duties safely.

### Section 64

The Director is empowered to require disclosure of medical conditions or history by an applicant for recognition of a foreign medical certificate.

### **Section 65**

Sometimes it will be difficult to arrange a new certificate just before expiry of an existing one. This section enables the grant of an extension of the existing certificate for up to 60 days to overcome the difficulty.

### **Section 66**

If the Director has certain specified concerns the Director may require further testing and investigation during the currency of a medical certificate. This will be at the cost of the license holder.

### **Section 67**

The Director may in certain conditions, suspend or revoke a current medical certificate and it must then be surrendered.

### **Section 68**

This section provides a right of appeal against certain (but not all) decisions of the Director in relation to medical certification.

### **Section 69**

This section ensures that preexisting medical certificates in Tonga will be recognized when the new Act comes into force. While it will not be necessary to be recertified under the new laws the certificates will of course be subject to the Director's powers under this Act.

## **PART VIII – ACCIDENT AND INCIDENT INVESTIGATION**

### **Introduction**

This Part is not found in the New Zealand legislative model because in that country the function of accident investigation is performed by a separate body (TAIC) that investigates accidents in all transport modes under separate legislation. Therefore what follows is the model used elsewhere in PASO states (eg. the Cook Islands Civil Aviation Act, the Civil Aviation Act of Kiribati and the Civil Aviation Act of the Solomon Islands).

### **Section 70**

The first sections including this one require notification of all aircraft accidents to be made by the pilot or the operator to the Director. Incidents must also be notified. The meaning of "accident" and "incident" is found in the definitions in section 2 of this Act.

**Section 71**

This provides that the Director must in turn notify the Minister of an accident involving an aircraft and a serious incident.

In certain cases the Director must advise the Minister to appoint of a Chief Investigator (see section 71(2)).

Where a foreign registered aircraft is involved that country's authorities will be copied with the notification and advised as to the nature of the enquiry being conducted in Tonga .

**Section 72**

This specifies the further actions that the Director must take once he is notified of an accident or incident.

**Section 73**

In certain circumstances specified in this section a Chief Investigator must be appointed.

**Section 74**

This sets out the principal functions of the Chief Investigator. Note it the intention to avoid similar occurrences in the future rather than to ascribe blame to any person.

**Section 75**

This sets out the general powers of the Chief Investigator.

**Section 76**

This sets out specific powers of entry and investigation but also with certain restraints, protections and limitations.

**Section 77**

In general the Chief Investigator has control over the investigation. He must permit the participation or representation of foreign organizations as provided in the Convention.

An important protection is found in subsection (5). It requires the Chief Investigator to give any person whose conduct might be found to have contributed to the accident the opportunity to comment or refute before a final report is issued.

**Section 78**

The Chief Investigator may, with the Director's approval, appoint suitably qualified persons to assist with any investigation.

**PART IX – DISCLOSURE AND ADMISSIBILITY OF ACCIDENT AND  
INCIDENT INVESTIGATION INFORMATION**



## **Introduction**

This Part sets out important (and sometimes contentious) limitations on the use of evidence gained in the course of investigations. The primary objective of these investigations is to find out the cause of an accident in the interests of aviation safety – they are not intended to ascribe blame or to provide evidence for court proceedings claiming damages for example.

## **Section 79**

Some critical definitions relevant to this Part are given in this section.

## **Section 80**

Subject to one exception, statements (including recordings of interviews, notes or opinions and information provided in confidence) made to the Chief Investigator in the course of an investigation can only be disclosed with the consent of the Chief Investigator and are not admissible in any proceeding and cannot be the subject of a search warrant.

The exception is that statements or submissions made to the Chief Investigator may be disclosed to any person by the person who made them.

## **Section 81**

Certain specified records such as cockpit voice recorders and other records concerning individuals are also given statutory protection and may only be disclosed by the Chief Investigator or by order of the Supreme Court. They are not subject to search warrant.

This limitation does not however prevent the person recorded from making a statement to any person about the accident.

## **Section 82**

The type of records referred to in section 81(2) may only be disclosed under a court order under section 83 or section 84.

## **Section 83**

There is also a power to obtain disclosure of information before proceedings (claiming damages over a certain amount) are commenced by application to the Supreme Court.

## **Section 84**

This section empowers the Supreme Court to order disclosure of section 81(2) records after proceedings (claiming damages over a certain amount) are commenced.

## **Section 85**

This section sets out procedures for applications under sections 83 and 84.

**Section 86**

The Court, in dealing with applications for disclosure under sections 83 and 84, may order production of the record to the Court.

**Section 87**

This sets limitations on the scope of what can be published about an application under sections 83 and 84.

**Section 88**

Further limitations are placed on the use of records under a disclosure order of the Supreme Court the most significant being that no record ordered to be disclosed may be broadcast or published in the media.

**Section 89**

The restrictions on disclosure contained in this Part are clarified by making express that certain actions in relation to records do not constitute disclosure.

**Section 90**

This section defines the limits on disclosure of the Chief Investigator's findings or report (as distinct from the investigation records (dealt with under the previous sections). In summary the report of the Chief Investigator can only be admissible in a coroner's inquest or where there is a judicial review of the Chief Investigator's decision itself.

**Section 91**

This provision gives protection to persons engaged in an investigation to the extent that they may not be compelled to give evidence in unrelated proceedings.

**PART X – AVIATION SECURITY****Introduction**

Aviation security is one of the most critically important aspects of all aviation regulatory activities today. This Bill aims to bring in to Tonga the latest ICAO requirements and even some not yet strictly in force (but likely to come into force soon). Part X is based on the New Zealand Aviation Crimes Act 1972 and the Civil Aviation Act 1990 as extensively amended in New Zealand in 2007. In those amendments, which responded to ICAO requirements internationally, the powers of search and screening of passengers and personnel has been considerably extended. There is now a clear definition to aviation security officers regarding what can and cannot be done in the search and screening

process. There is also statutory protection for avsec officers in the course of their duties where they might be called upon to undertake a contentious but essential search.

Another significant development is the ability for Tonga to accept, if it wishes and when it wishes, the introduction of armed in flight security officers as is occurring in some parts of the world in response to increased threats to aviation. It is to be understood that these provisions empower Tonga to authorize in flight security officers but it does not compel this country to accept them.

Overall this section of the new Act represents one of the largest changes to the civil aviation legislation in Tonga and gives the country an up to the minute suite of legislative empowerments.

### **Section 92**

There is a definition of “in flight” for the purposes of this section.

### **Section 93**

The basic functions of aviation security are a joint responsibility of Tonga Police and the authorized provider of aviation security services at designated aerodromes and navigation installations.

### **Section 94**

The Minister is charged with ensuring that aviation security services are provided at all security designated aerodromes and navigation installations.

### **Section 95**

This section provides that aviation security services must be provided by specified parties pursuant to aviation documents issued by the Director.

### **Section 96**

Section 94 empowers the creation of a statutory service known as the Aviation Security Service as one means of providing aviation security services. This has not been used in Tonga which has a certificated aviation service provider in a division of Tonga Airports Limited. However the New Zealand model provides for a choice and therefore it has been retained in this Act even though there are no plans in Tonga to authorize any service other than the TAL service. This section is of provisional application only.

### **Section 97**

The functions and duties of an aviation security services such as that provided by TAL in Tonga are set out in rules made under the Act. See for example Rule Part 140 which will be formally adopted under this Act when this Act comes into force in Tonga.

**Section 98**

This section describes some of the main powers and functions of an aviation security service to undertake screening and search.

**Section 99**

Certain areas in security designated aerodromes or navigation installations may be declared by the Director to be “security areas”. There are strict limits on who may be in these areas and powers of removal and detention. Embarking and disembarking passengers are expressly exempted.

**Section 100**

This section permits the Director to designate by notice any aerodrome or air navigation installation as “security designated”. Such designation brings into effect certain powers on the part of aviation security officers, for example the rights of access set out in section 101.

**Section 101**

For the purposes of exercising their powers, functions and duties, aviation security officers (alone or with Police) may enter any security designated aerodrome or air navigation installation.

**Section 102**

This key section for aviation security reflects the equivalent provision in the New Zealand Act which in turn reflects significant amendments in 2007 to increase and better define powers of screening and search.

The powers given to the Director here are also slightly more extensive and provide for random screening of any person (not just passengers) with access to an aircraft. Random screening on a proportional basis is a process actively promoted by ICAO at present and likely to become a requirement in the near future. This part of the section is original and not yet found in the New Zealand legislation.

**Section 103**

This provision empowers the Director to carry out security checks of defined (in the Rules) persons – there are certain limitations and protections for the person whom the Director wishes to check.

**Section 104**

This section sets out review procedures with regard to the checks authorized under the preceding section 103. In the event of a final adverse determination against any party the Director must revoke any authorisation granted by the Director and require any other entity who has granted an authorisation to revoke it.

**Section 105**

If the Director has withdrawn or revoked an authorization in the course of a security check it is an offence for the person whose authority has been withdrawn to carry out the activity in question.

**Section 106**

This section makes it an offence to comply with a requirement of the Director to revoke an authorisation under section 104.

**Section 107**

This section follows the New Zealand precedent and sets out specific powers and duties of aviation security officers in relation to dangerous goods.

**Section 108**

Aviation security officers are empowered to screen or search any person, item, substance or vehicle before that person, item, substance or vehicle enters a sterile area (being an area designated by the Director as an area at an airport requiring high security).

**Section 109**

This section enlarges the powers in the preceding section to apply to areas at an airport designated as “security enhanced” areas in terms of section 99.

**Section 110**

Protections are given in respect of these searches and screenings to the extent that the person to be screened or searched must consent to the process.

**Section 111**

This section is linked to the principle of consent in the preceding section but goes on to provide that refusal to consent may cause an aviation security officer to require that person to leave the security enhanced area or risk being detained.

**Section 112**

Refusal to be searched may in certain circumstances result in a Police officer searching that person without a warrant and detaining any item found where certain offences are suspected.

**Section 113**

This is an important new provision which sets out in some detail precisely how searches of persons can be conducted including what clothing may or may not be removed. It includes a definition of what is known as a “pat down” search and makes it clear that a female may only be searched by another female unless the searching is mechanical or electronic.

#### **Section 114**

This section is very important in the statutory protection that it provides to aviation security officers from personal liability when performing their screening and search functions in good faith

#### **Section 115**

This section provides every aviation security officer with the power to arrest without warrant any person on or in the vicinity of a security designated aerodrome or navigation installation where certain serious offences (including under the Arms and Ammunition Act and terrorism offences under the Counter Terrorism and Transnational Organised Crimes Act) are suspected. There are also powers of search and seizure.

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**Section 116**

Where an arrest under the preceding section is made by an aviation security officer or a person is detained under section 99 a Police officer must accept delivery of that person and may arrest him also.

**Section 117**

This section affirms that every sworn Police officer has and may exercise the same powers as an aviation security officer under this Act or rules made under it.

**Section 118**

This section defines in some detail the powers to search passengers and their baggage. Any refusal means the carrier (airline) must refuse to carry the passenger and there are other adverse consequences. The section repeats provisions as to how searches of persons can be conducted including what clothing may or may not be removed. It again includes a definition of what is known as a “pat down” search and makes it clear that a female may only be searched by another female unless the searching is mechanical or electronic.

**Section 119**

This section allows for random searching on a proportional basis determined by risk assessment of the Director in a range of sensitive facilities that serve aviation including off site facilities that have access to aircraft by delivering for example food or fuel. This

section anticipates ICAO promotion of random proportional screening and is not yet enacted in New Zealand legislation.

### **Section 120**

Police officers are here given powers of search and detention where a passenger has refused to be searched or the commission of an offence against this Act is suspected.

### **Section 121**

Authorized persons are here given powers of screening and search of checked baggage, cargo and mail.

### **Section 122**

The objective of this provision is to restrict the use of evidence gained in the various screening and search procedures allowed in the interest of aviation security. In this way evidence so gained may only be used in proceedings for offences under this Act or certain serious firearms or terrorist provisions in other Tongan criminal legislation.

### **Section 123**

The powers given to an aircraft commander are extensive and long recognized in international aviation law. The role of the commander is particularly important in the current climate of threat to aviation. The section itself is largely self explanatory. The commander of an aircraft may take such reasonable measures, including restraint, as may be necessary to protect the safety of the aircraft and persons on board the aircraft. Any person on board may be called upon to assist in restraining another person and is protected from subsequent civil proceedings.

An important feature of this section is the power of the commander to arrange to disembark any person whom he reasonably believes may have done or may do anything to jeopardise the safety of the aircraft and passengers and good order and discipline on board the aircraft. . In such a case he must notify a police officer of Tonga or any other country which is party to the Tokyo Convention (almost every country worldwide) of his intention to disembark the person.

The powers set out in this section are consistent with the wording of the NZ Aviation Crimes Act of 1972 which in turn is no more than an expression of the principles contained in the Tokyo Convention of 1963. Tonga is a party to that treaty and it is appropriate that those principles appear in this Act.

Note also in section 124 that the police officer must accept delivery of and must arrest that person when the commander delivers him in accordance with section 123.

### **Section 124**

This section provides that a Police officer must accept delivery of and must arrest that person when there is reason to suspect and offence and the commander delivers him in accordance with section 123.



**Section 125**

This section permits the commander or crew or any other person authorized by the commander, to search any person or baggage on board the aircraft where there are reasonable grounds to suspect the commission of an offence against this Act.

**Section 126**

This section allows the Director to approve weapons to be carried by in flight security officers.

**Section 127**

The Director, in consultation with the Commissioner of Police, and in accordance with any rules, may authorize foreign in flight security officers to board or leave an aircraft or pass through security points.

**Section 128**

The authorization of armed in flight security officers is a potentially contentious one. In this Act there are restraints in the form of a requirement that the Commissioner of Police, who is the only person who can authorize them, must have regard to the Director of Civil Aviation who in turn must have regard for the views of representative groups in the aviation industry.

**Section 129**

This provision makes it clear that an in flight security officer may be armed with weapons approved by the Director under section 126 above.

**Section 130**

In flight security officers are here given the power to take all measures reasonably necessary to restore control of an aircraft to the commander using reasonable force and assistance.

**Section 131**

The power of in flight security officers includes the power of arrest with the use of force and without a warrant where commission of an offence is reasonably suspected. The arrested person must as soon as practicable be delivered to the Police.

**Section 132**

In flight security officers are here given the power to forcibly restrain an arrested passenger until delivery to the Police under section 131.

**Section 133**

With the approval of the commander of the aircraft (or without if seeking approval is not practicable) in flight security officers are permitted to conduct searches of persons on board for prohibited items that may be used in the commission of an offence.

**Section 134**

A person assisting an in-flight security officer under section 131, 132 or 133 is justified in using force if the person acts in good faith; and the force is reasonable.

**PART XI – INTERNATIONAL AND DOMESTIC AIR SERVICES****Introduction**

This Part brings into effect in Tonga the same model as used in New Zealand. It closely adopts the NZ model in providing for the licensing of international air services in this country by the Minister. This Part of the Act does differ from the New Zealand model to the extent of applying to scheduled domestic services as well as international services whereas the New Zealand Act covers international services only.

The reason for this departure is that New Zealand no longer has any licensing of domestic air services while Tonga still does. Note that this Part does specify broad criteria for obtaining an international air service license and in all cases is concerned with procedures of application, grant and renewal of licenses. The policy guiding the issue of domestic air service licenses is not set out in this Act and remains within the discretion of, and to be determined by, the Minister who grants all air service licenses.

**Section 135**

This section contains a number of definitions relevant to this Part.

**Section 136**

It is a requirement under this Act that scheduled domestic and international air services must only be conducted under either a scheduled international air services license or an open aviation market license.

**Section 137**

All applications for licenses under this Part must be made to the Minister along with required information and prescribed fees and charges.

**Section 138**

The Minister is the licensing authority and exercises jurisdiction in respect of licenses issued under this Part to Tongan airlines.

### **Section 139**

The Minister must give notice in the *Gazette* of any application that has been received.

### **Section 140**

This important section sets out the criteria that the Minister must take into account when considering an application for a license by a Tongan international airline.

### **Section 141**

This section specifies the discretions of the Minister in granting or refusing wholly or in part an application for a license after considering the criteria in section 140. He may also impose conditions on any license granted.

### **Section 142**

The Minister has the discretion to grant a license for such period as he considers appropriate in the particular case.

### **Section 143**

This section sets out the procedures and criteria for the grant of a renewal of a license.

### **Section 144**

This section sets out the procedures and criteria for the variation of a license whether on application by a licensee or on the Minister's initiative.

### **Section 145**

This section sets out the procedures and criteria for the transfer of an existing scheduled international air service license to another party.

### **Section 146**

The Minister is the licensing authority and exercises jurisdiction in respect of licenses issued under this Part to foreign international airlines.

### **Section 147**

This important section sets out the criteria that the Minister must take into account when considering an application for a license by a foreign international airline.

**Section 148**

This section specifies the discretions of the Minister in granting or refusing wholly or in part an application for a license after considering the criteria in section 147. He may also impose conditions on any license granted.

**Section 149**

The Minister has the discretion to grant a license for such period as he considers appropriate in the particular case or an indefinite term.

**Section 150**

This section sets out the procedures and criteria for the grant of a renewal of a license of a foreign international airline.

**Section 151**

This section sets out the procedures and criteria for the variation of a license whether on application by a licensee or on the Minister's initiative.

**Section 152**

The Act provides for the issue of "open aviation market licenses" or licenses issued in respect of scheduled and unscheduled air services to and from certain designated countries. The criteria are less onerous than those applicable in the case of non open aviation market licenses.

**Section 153**

The Minister is the licensing authority and exercises jurisdiction in respect of open aviation market licenses granted to either Tongan or foreign international airlines.

**Section 154**

This section sets out the criteria that the Minister must take into account when considering an application for an open aviation market license by either a Tongan or a foreign international airline.

**Section 155**

This section specifies the extent of the Minister's powers in granting or refusing wholly or in part an application for a license after considering the criteria in section 154. He may impose conditions on any license granted.

The Minister must specify the countries which can be served and give notice of the grant of any such license in the *Gazette*.

**Section 156**

The Minister has the discretion to grant an open aviation market license for such period as he considers appropriate in the particular case or, in the case of a foreign international airline, for an indefinite term.

This section sets out the procedures and criteria for the grant of a renewal of a license of a foreign international airline.

### **Section 157**

This section sets out the procedures and criteria for the grant of a renewal of an open aviation market license of a foreign international airline. The criteria are essentially the same as applicable to new license.

### **Section 158**

This section sets out the procedures and criteria for the variation of an open aviation market license whether on application by a licensee or on the Minister's initiative.

### **Section 159**

This section sets out the procedures and criteria for the transfer of an existing open aviation market license to another party.

### **Section 160**

This provision allows the performance, by the holder of an open aviation market license, of *non scheduled* international flights without the authorization that would otherwise have been required under section 165.

### **Section 161**

The Minister may require proof of adequate insurance against death or bodily injury before granting or renewing any license under this Part.

### **Section 162**

The Minister may, in writing, require the provision of financial and statistical returns by every person carrying on a scheduled international air service or non scheduled international flight.

### **Section 163**

The Minister may suspend any license under this Part where the conditions of the license have been willfully breached by the licensee.

### **Section 164**

Licenses under this Part may be revoked by the Minister in a number of circumstances set out in this section.

### **Section 165**

This section deals with authorization by the Minister of non scheduled international flights. The Minister may issue guidelines for the regulation of such flights.

### **Section 166**

This section makes clear that the issue of a license under Part XI does not exempt any aircraft from compliance with the Act or Rules or regulations made under it.

### **Section 167**

The Minister may designate any one or more international air routes as non smoking routes. Smoking is defined in this section. Once designated all Tongan international airlines must display notices indicating that smoking is not permitted and must not permit passengers to smoke. Failing to comply may result in an offence under section 226 of this Act.

## **PART XII - GENERAL OFFENCES**

### **Section 168**

It is a serious offence punishable by imprisonment for a disqualified person to apply for an aviation document and any such document shall be of no effect.

### **Section 169**

It is a serious offence for anyone to provide false information to the Director, or for the applicant for or holder of an aviation document to withhold relevant information known to that person.

### **Section 170**

This section makes it an offence to carry on a scheduled international air service without a license under Part XI or contrary to the terms and conditions of such license

### **Section 171**

This section makes it an offence to carry on an unauthorized non-scheduled international flight contrary to the terms of section 165 or to carry on a non –scheduled international flight contrary to the terms and conditions of an open aviation market license.

### **Section 172**

This section makes it an offence to obstruct any person authorized by the Director and acting in the course of his duties.

### **Section 173**

Section 23(3) empowers certain authorized persons to take possession of documents under the general power of entry pursuant to that section. This section makes it an offence to refuse to surrender such documents.

### **Section 174**

This provision makes it an offence to trespass in defined areas including aerodromes and buildings and areas containing technical facilities when directed not to by the Director, the police or an aviation security officer.

### **Section 175**

The importance of making, maintaining and producing accurate records in accordance with the requirements of the Act or Rules is the rationale for this offence.

### **Section 176**

The Act permits the breach of the Act and rules by a pilot in command in an emergency on condition that he notifies the Director as soon as practicable of his actions or omissions. This section makes it an offence to fail to give the necessary notification.

### **Section 177**

Under section 70 the Director must be notified of all accidents and incidents. If a pilot in command fails to give notification without reasonable excuse an offence is committed.

### **Section 178**

This section makes it an offence to disclose certain accident investigation information specified in sections 80 and 81 or to use it outside the boundaries set in section 88.

### **Section 179**

It is an offence to publish reports of accident investigations or records where prohibited by sections 87 and 88.

### **Section 180**

It is an offence for an operator to fail to provide the identifying information relating to the pilot in command of an aircraft that is specified in section 235.

### **Section 181**

The Director has powers to make emergency Rules. This section makes it an offence to fail to comply with any such Rule. It is also an offence to fail to comply with any condition or prohibition imposed by the Director under section 21 (detention and seizure of aircraft and aeronautical products).

### **Section 182**

The operator or pilot in command of an aircraft may not fly over a foreign territory for certain specified purposes and activity failing to comply is an offence under subsections (2) and (4) of this section.

## **PART XIII – SAFETY OFFENCES**

### **Introduction**

Part 13 covers so called “safety offences”, following the term used in the New Zealand model. These are general offences against aviation safety such as “endangerment” or “careless operation of an aircraft” and so on. For the most part the section titles and intent are self explanatory. They are closely similar to the wording used in the New Zealand Act and therefore, incidentally, provide a benefit, to Tongan lawyers, of access to legal decisions on the same wording from the New Zealand courts.

### **Section 183**

Note the concept of “unnecessary danger” which is widely found in aviation legislation. The reference to the requirement that the danger be “unnecessary” in order for an offence to be committed derives from the recognition of the fact that there is an element of “unavoidable” danger in many aviation activities (such as flying) which have a degree of “inherent danger”. To avoid legal debate the prosecution must find that the danger complained of was avoidable or “unnecessary”.

Note also the very wide application to the whole range of aviation activities for which an “aviation document” is required.

### **Section 184**

This section covers careless operation of an aircraft.

### **Section 185**

This section makes it an offence for any person, not just an aviation document holder, to cause unnecessary danger to aircraft or in a range of aviation activities.

### **Section 186**

This section refers to the Director’s powers of monitoring and inspection under section 16.

### **Section 187**



This significant section introduces further penalties (such as disqualification) or conditions that the Court might impose in respect of the preceding sections.

### **Section 188**

The holding of an aviation document for most aviation activities is a central safety requirement under the NZ model. This section makes it a serious offence to participate without one.

### **Section 189**

The holding of a current medical certificate and compliance with it in all aspects including any restrictions or conditions imposed by the Director is critically important. The failure to observe the requirements of Part VII are offences under this section.

### **Section 190**

It is an offence to make a false or misleading statement under Part 7 for the purpose of obtaining a medical certificate or in other specified cases or to make a false entry or alteration for fraudulent purposes.

### **Section 191**

It is an offence to fail to disclose certain specified medical information required by the Director.

### **Section 192**

This is an important regulatory provision and is new to Tonga. There will be instances where the fines imposed in the commission of an offence will be outweighed, in financial terms, by, for example, the cost saving benefits of committing the offence. A participant in the aviation industry might calculate that it would be worth taking the chance of conducting an activity without the expense of obtaining the required aviation document because the profit of the venture would make the risk worthwhile. To deal with such situations this section allows a sentencing court to impose an additional penalty by ordering the offender to pay up to three times the value of any commercial gain realized from the commission of an offence where that offence was committed in the course of producing a commercial gain.

### **Section 193**

Where there is a disqualification imposed the aviation document is deemed to be suspended and the holder of the aviation document must, where the disqualification ends before the expiry of the aviation document, pass tests and satisfy the Director before the document can be regarded as again having effect.

### **Section 194**

This section defines the commencement of any period of disqualification.

### **Section 195**

This section provides that where the court has imposed a disqualification the aviation document is to be surrendered to the Director who shall retain it until the former holder is entitled to its return in terms of this section.

### **Section 196**

Where a disqualification period exceeding 6 months has been imposed it is possible after 6 months to apply to the court that made the order to remove the disqualification. The Director has a right to be heard on such applications.

### **Section 197**

The Director must be kept informed by the courts of disqualifications imposed or lifted by the courts so that the Director's abreast at all times of the status of aviation documents

## **PART XIV – SECURITY OFFENCES**

### **Introduction**

This Part is substantially comprised of provisions modeled on the New Zealand Aviation Crimes Act of 1972 as amended in 2007. There are some additions and updates. These can be found in section 203 (which extends the provisions of section 201 to non – international airports as well as international airports), section 205 (which is a new original section designed to discourage, in the current security climate, disruptive and alarming conduct at an airport and section 210 which extends the prohibition on taking firearms etc onto aircraft (section 209) to impose the same prohibition in relation to security areas. These sections are largely self – explanatory and can be read in conjunction with Part X (Aviation Security).

### **Section 198**

Defines the use of the word “airport” as equivalent to “aerodrome”, an older term widely used elsewhere in aviation legislation.

### **Section 199**

This section imports into the Kingdom of Tonga's domestic law the principles of the Montreal Convention of 1971 as modified by the Protocol of 1988 which create serious international offences in respect of attacks on international airports.

### **Section 200**

This section imports into Tongan domestic law the principles of the Montreal Convention of 1971 as modified by the Protocol of 1988 and applies them to domestic airports also.

### **Section 201**

The nature of these international offences and the transient character of likely offenders means that this type of offence should be included within extradition provisions in order to gain maximum effectiveness.

### **Section 202**

This section makes it an offence to endanger any member of the public at any airport.

### **Section 203**

This section is not in the New Zealand Act but has been used elsewhere in the Pacific. It is included because in the current security climate it is recognized that public order and safety at any airport is worthy of the protections which are likely to follow from prohibitions on such activities as false bomb threats or other alarming or threatening conduct.

### **Section 204**

It is an offence to refuse to give identification details or to leave a security area when requested by an aviation security officer.

### **Section 205**

It is important that “authorized persons” as defined in section 2 are neither obstructed nor impersonated by other persons. This section makes it an offence to do either.

### **Section 206**

The integrity of aviation safety information is vital and communicating false information knowingly or recklessly is here made an offence punishable by fines or imprisonment.

### **Section 207**

This is a key provision from the New Zealand Aviation Crimes Act 1972 as amended in 2007 to add in “security enhanced or sterile area”. That amendment itself reflects the developing international aviation security treaties. Note however that the New Zealand provision has been expanded by the inclusion, in a new subparagraph (e), of “any other prohibited item” in order to deal with new or yet to emerge threats to air carriage. As to “prohibited item” see the definition in section 2.

### **Section 208**

This provision imports the principles of the Hague Convention of 1970 in which the problem of hijacking was first addressed as a matter of international aviation law. The penalty for an offence against this section is appropriately severe.

### **Section 209**

This section is an adjunct to the preceding section on hijacking and covers associated offences.

**Section 210**

This section provides expressly for another range of offences against aviation safety. Note the serious penalty regardless of whether or not the offence was committed within Tonga.

**Section 211**

The provisions in this section are aimed at ensuring that Tonga can exercise its rights of extradition where it wishes to prosecute an offender such as a hijacker and that offender is now in another country.

**Section 212**

The significance of this section lies in the intention that Tonga will not ordinarily have an interest in prosecuting a hijacker or similar offender unless there is a direct connection between the offence and this country – for example if the offender was a Tongan citizen. In this way there is no potential for interference in events that are entirely the concern of another country.

**Section 213**

This provision is aimed to ensure that any existing provisions under Tongan law preventing extraterritorial legal proceedings do not impede the ability of this country to take effective action in respect of hijacking and similar offences.

**PART XV – UNRULY PASSENGER OFFENCES****Introduction**

The problem of unruly passengers is a recent phenomenon and unheard of when the current aviation laws in this country were enacted. In the climate of increased awareness of aviation security generally there has developed a focus on the control of an emergent problem of unruly passengers. The following provisions are an adaptation of a relatively recent amendment to the New Zealand Civil Aviation Act and are therefore compatible with the design of this Act.

**Section 214**

This section defines the application and scope of the unruly passenger provisions as they relate to Tonga

**Section 215**

As in the case of the hijacking provisions in the previous Part it is necessary, in relation to offences committed on an aircraft capable of international travel, to expressly assure they are all of extraterritorial application (which is not the case for most non aviation offences).

**Section 216**

This section makes sure that certain other offences which can in legal terms only be committed in a “public place” are still able to be brought where they occur on an aircraft.

**Section 217**

The Attorney General must consent to the bringing of this type of prosecution.

**Section 218**

Any action endangering an aircraft or a person on board is a strict liability offence.

**Section 219**

It is an offence to act in a disruptive way towards any crew member while in an aircraft.

**Section 220**

Tampering with or interfering with any part of an aircraft is now an offence punishable by fine.

**Section 221**

With a medical exception, it is an offence to be or become intoxicated on board an aircraft. It is the opinion of the crew that is decisive in such a situation.

**Section 222**

The pilot in command has responsibilities and powers and may issue commands under this Act and the rules. It is an offence to fail to comply with any such command.

**Section 223**

Threatening or offensive behaviour on board results in the commission of an offence.

**Section 224**

It is an offence to breach rules prohibiting the operation of electronic devices on board.

**Section 225**

It is an offence to breach seating and seatbelt instructions.

**Section 226**

It is an offence to breach instructions not to smoke.

**Section 227**

It is an offence to breach rules prohibiting the carrying on board of any dangerous goods.

**Section 228**

This section sets out procedures for dealing with certain unruly passenger offences. It includes the pilot in command notifying the police or aviation security officers by any available means.

**PART XVI – RIGHTS OF APPEAL****Section 229**

Where a holder of an aviation document is disqualified from holding or obtaining such document there is an automatic right of appeal to the Supreme Court. The Director must be notified and has a right to be heard on the appeal.

### **Section 230**

A number of the decisions of the Director on a range of critical matters affecting participants are always subject to a right of appeal to the Supreme Court. This section is an important one in the protection offered to participants in the Tongan civil aviation system who may be aggrieved by a decision of the Director or Minister.

## **PART XVII - MISCELLANEOUS PROVISIONS**

### **Section 231**

This section sets out the means by which certain critical regulatory steps can be proved in proceedings for offences against this Act.

### **Section 232**

This section sets out the means by which documents recording aircraft movements and other aspects of air traffic services may be admitted as evidence in court.

### **Section 233**

An important enforcement provision which enable the Director or the Police to require the provision of information as to the identity of the pilot of an aircraft where that pilot is alleged to have committed an offence.

### **Section 234**

This section does not appear in the New Zealand civil aviation legislation but nevertheless has been carried over from Tonga's current Civil Aviation Act of 1990 where it appears as section 31.

### **Section 235**

This section provides for the right of access over private lands to wrecked or damaged aircraft.

### **Section 236**

This section provides a "catch all" provision setting a penalty for offences in the Act for which no specific penalty has been provided.

### **Section 237**

This section is a standard provision specifying repeals and savings consequential upon the introduction of this Act. Note the important transitional provisions in subsections (3) and (4). The intent of subsection (3) is to validate for the purposes of the this new Act all the aviation licenses and permits that were issued under the old 1990 Act and Regulations that

will be repealed by this Act. They will be deemed to be “aviation documents” for the purposes of this Act.

The intent of subsection (4) is to validate for the purposes of this new Act any aviation documents that may have been issued in the process of moving to the New Zealand Rules system but before the commencement of this Act.

**ENDNOTES**

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<sup>1</sup> Act 24/2014

<sup>2</sup> Enactment upon Royal Assent 16 December 2014

<sup>3</sup> No such Gazette seen at date of preparation of this revised edition

<sup>4</sup> Explanatory Notes are not usually included in a revised edition of the laws; but they have been retained in this edition because the law is complicated and these notes help to explain what the various provisions were intended to mean.