

METEOROLOGICAL SERVICES ACT 2013

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An Act to make comprehensive provision in relation to the provision of meteorological and climate related services in Niue, and for all related purposes.

- 1 Title**
This Act is the Meteorological Services Act 2013.
- 2 [Spent]**

PART 1 PRELIMINARY

- 3 Interpretation**
In this Act, unless a contrary intention appears—
“authorised officer” means any officer appointed in accordance with section 13;
“climate change” means any change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere, and which affects the hydrosphere, biosphere, cryosphere and lithosphere, and which is in addition to natural climate variability observed over comparable time periods; and when referring to responses to the impacts of climate change, includes addressing adverse affects arising from climate change or the possibility of change on any part of the environment (such as the water resources and rainfall, coastal and foreshore areas, reefs and marine habitats), or from harmful weather events, exposure to

damaging sunlight, and any other event or impact on the environment or human health;

“climate related services” means any service or activity involving the dissemination of information about climate change, climate variability, trends and impacts assessed on local, national, regional, and global scales, and includes all of the following—

- (a) managing meteorological and related data collected in Niue or for use by the government of Niue;
- (b) developing products from the data that describe Niue's climate;
- (c) developing techniques for applying the data in a range of social, economic and environmental contexts;
- (d) providing information and advice to the general public and specialist users about the nature of climate in general, and Niue's climate in particular;

“convention” includes any meteorology or climate related treaty, instrument, protocol, agreement, project or programme undertaken or implemented on an international or regional basis, to which Niue is a party or participant;

“department” means the department that, with the authority of the Niue Public Service Commission, is established in accordance with article 64 of the Constitution, to be responsible for the administration of meteorology;

“Director” means the person holding office within the Niue Public Service as head of the department, and includes any person acting in that position;

“disaster management authorities” means the Disaster Management Council, and all other agencies having lawful responsibilities under the Niue National Disaster Plan approved by Cabinet;

“geohazard” means any geological state that represents or has the potential to develop further into a situation leading to damage or risk, and includes volcanic activity or eruptions, tsunamis, earthquakes, and other seismic events, and submarine or surface landslides;

“Minister” means the Minister who is responsible for the administration of meteorology and climate matters.

4 Act binds the government

This Act binds the government.

PART 2

FUNCTIONS AND POWERS OF THE DEPARTMENT

5 Functions of the department

(1) The functions of the department in relation to meteorology and climate matters include all of the following—

- (a) the taking and recording of meteorological observations and other observations required for the purposes of meteorology;
- (b) establishing and maintaining meteorology stations and other observation and research stations, and all other necessary technical installations and equipment;
- (c) forecasting weather, and monitoring the state of the atmosphere;
- (d) advising the government and its agencies on all matters relating to meteorology and supporting the roles and responsibilities of the disaster

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management authorities in relation to disaster management response and risk reduction;

- (e) making arrangements to secure the safety and welfare of staff of the department who are performing their duties during times of disaster or potential disaster;
- (f) collecting, collating, archiving, and making available meteorological data and information in accordance with this Act, and developing an observations data strategy;
- (g) publishing meteorological reports, bulletins, advisories, and data;
- (h) promoting the effective use of meteorological information, and arranging for programmes of public awareness and education;
- (i) promoting the advancement of meteorological science, by means of meteorological research, investigation, and by any other means;
- (j) providing general advice on meteorological and climate matters, and providing meteorological data and advice in support of specific national development projects and other important weather sensitive economic activities;
- (k) setting and applying standards for all observations used for aviation, maritime, and other general forecasts (and where such observations are used for legal purposes), and ensuring that all such standards conform to appropriate international specifications;
- (l) implementing policies international conventions, programmes, projects and initiatives in accordance with Part 3;
- (m) co-operating with the authorities administering the meteorological services of other countries, and with the World Meteorological Organisation, the International Civil Aviation Organisation, and any other relevant international organisations in relation to any of the functions and powers stated in this Part, and in particular, supporting the principle of free and unrestricted exchange of meteorological data between national meteorological services;
- (n) subject to government contracting procedures, entering into contracts or arrangements with any department, agency, or person in Niue or outside Niue to compile, record, or disseminate meteorological reports and information;
- (o) developing, facilitating, and providing training and instruction for persons whose duties and responsibilities concern matters relevant to meteorology or climate;
- (p) promoting the understanding and recognition of traditional practices and knowledge related to weather and climate through the observation of weather indicators occurring in nature, and by other means;
- (q) developing an effective communications strategy to ensure that advisories, bulletins, warnings, and alerts, and general meteorological information are broadcast and disseminated;
- (r) doing any other act which contributes to the capacities within Niue to provide effective and applicable meteorological and climate services, and to diminish the risks arising from adverse weather conditions.

6 Issuing weather bulletins and other warnings

(1) Subject to any law relating to disaster management, and in consultation with the Regional Specialised Meteorological Centre and other appropriate agencies, the department has principal responsibility for both—

- (a) issuing advisories, special weather bulletins, or warnings of strong winds, gales, storms, hurricanes, cyclones, and other weather conditions likely to endanger life or property (including weather conditions likely to give rise to floods or storm surges); and
- (b) determining when any such warnings are to be downgraded or terminated.

(2) The department is responsible for issuing alerts of tsunamis and the possible impacts of other geohazards when they are communicated to the department by regional monitoring agencies.

(3) Following the issue of a warning under subsections (1) and (2), the department must provide all necessary advice and assistance in accordance with the Niue National Disaster Plan, and if applicable, provide all necessary advice to the Disaster Management Council in relation to the issue of the appropriate Cyclone Alert.

(4) Any person who—

- (a) issues a false warning of a gale, storm, hurricane or cyclone, or of any tsunami or other geohazard; or
- (b) issues an advisory, special weather bulletin or warning of strong winds, gales, storms, hurricanes, cyclones and other weather conditions —
 - (i) in the name of the department, when not authorised by the department to do so; or
 - (ii) which purports to be issued with the authority of the department or the government of Niue, when no such authority has been given—

commits an offence against section 16(1)(a).

7 Specific powers of the Minister in relation to meteorology

(1) The Minister may exercise all the powers conferred by this Act, and all such other powers as may be necessary or convenient for the performance of the functions of the department stated in this Act.

(2) The Minister may delegate to the Director, officers of the department and to any authorised officer, such powers and functions conferred by this Act as the Minister considers appropriate.

(3) In addition to the powers conferred by subsection (1), the Minister has power to do any of the following—

- (a) to require aircraft or ships within Niue's territory that operators of make use of the meteorological services provided by the departments, and act in accordance with any warning issued by the department;
- (b) to restrict the rights of any other person or agency to undertake meteorological activities unless they are registered, licensed, or otherwise expressly approved to do so by the department;
- (c) to determine and apply standards, codes of ethics, or operating procedures in relation to any research or other activity related to meteorology and climate, which may be enforced by agreement, conditions placed upon any registration, licence, or approval, or by any other lawful means;

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- (d) to require that any data or information relevant to meteorology and climate that is obtained by any person by research activities or otherwise on Niue, be provided to the department;
- (e) to restrict the publication or dissemination of any meteorological report or bulletin if the Minister is of the opinion that is false, misleading, or not in accordance with the accepted science to which it relates;
- (f) to assert the rights of the department as the owner of all intellectual property rights in relation to all information and data generated by or on behalf of the department, and in relation to all publications made by or on the authority of the department;
- (g) to appoint committees to discharge any function related to the implementation of this Act, and specify and delegate in writing the powers, duties and responsibilities of such committees;
- (h) to determine and apply fees for any meteorological or climate related services provided by the department, where no such fees are imposed by regulations made under this Act.

(4) Any person who acts in any manner so as to breach any requirement imposed by the Minister in the exercise of a power under subsection (1), commits an offence against section 16(1)(a).

PART 3

IMPLEMENTING CERTAIN REGIONAL AND INTERNATIONAL CONVENTIONS

8 Conventions to which this Part applies

(1) The provisions of this Part apply to any meteorology or climate related regional or international convention to which Niue is a party and for which the government of Niue has vested responsibility in the department.

(2) This Part also applies to any programme, project, or initiative relating to meteorology or climate undertaken on a regional or international basis with which the government of Niue has agreed to be involved.

(3) Nothing in this Part affects or restricts the lawful role of any other government department or agency in relation to a convention, programme, project, or initiative to which this Act applies, and the Director must ensure that the provisions of this Part are implemented in association with all other relevant department or agency.

9 Functions of the department in relation to certain conventions

(1) The functions, duties and responsibilities of the department in relation to a convention, programme, project, or initiative to which this Part applies include any of the following—

- (a) making arrangements for the attendance at any meeting of the Parties of a convention and other relevant meetings, of suitably qualified persons to represent the interests of the government of Niue;
- (b) liaising with relevant regional or international bodies to ensure that the representation of the government of Niue at any meeting concerning a convention, programme, project, or initiative is informed and effective;
- (c) appointing technical experts to represent the interests of Niue in relation to negotiations relating to conventions and ensuring that the rights of Niue are

- exercised in accordance with the conventions, including approving processes for the accreditation of such experts, and exercising controls over them;
- (d) accessing and utilising available funds and resources by preparing and submitting project proposals and undertaking programmes to implement the conventions;
 - (e) assisting all other government departments and agencies, and any government appointed committee, to implement any aspect of a convention, programme, project or initiative;
 - (f) preparing any necessary Report, and reporting on a regular basis to the Minister and the Cabinet in relation to the implementation of any convention, programme, project, or initiative;
 - (g) sharing information and otherwise providing such cooperation as is required by any convention, programme, project, or initiative;
 - (h) recommending that any law of Niue be amended or enacted in order to effectively implement any requirement of a convention, programme, project, or initiative;
 - (i) doing any other act or thing (in conjunction with all other relevant departments and agencies of government) to implement any obligation under a convention, programme, project, or initiative.

(2) In addition to the roles of the department under this Part, the department may act as the designated national authority or focal point for the purposes of any convention, programme, project, or initiative to which this Part applies.

(3) As the designated national authority or focal point, the department has responsibility and authority for performing such roles and duties as are necessary to implement any convention, programme, project, or initiative to which this Part applies.

PART 4

PROTECTION OF ASSETS

10 Powers to protect assets and operations

(1) If the Director is of the opinion that there is occurring, or may occur, an act or activity which involves an immediate threat or risk to an installation, facility or equipment relevant to the functions of the department under this Act, the Director may issue a notice under this section.

(2) A notice issued under this section must—

- (a) be directed to any person, organisation or body whom the Director believes is carrying out the act or activity, or apparently has some control over it; and
- (b) specify the act or activity and the nature of its effect upon the operations of the department; and
- (c) require that the act or activity cease, or not be done, until the Director is satisfied that the threat or risk no longer exists.

(3) A notice may be served under this section even if an approval, licence or permit has been granted in relation to the activity, but does not have the effect of preventing any department, agency or person from exercising any lawful function or power in accordance with law.

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(4) The Director, the department and the government are not liable in respect of any loss or damage arising from, or in any way connected with the issuing of a notice under this section.

(5) A person who—

- (a) having been served with a notice issued under this section, fails to comply with any of its requirements; or
- (b) having been served with a notice issued under this section, causes or permits any other person to act in breach of its requirements; or
- (c) knowingly acts in breach of the requirements of a notice given under this section, whether or not that person has been served with the notice—

commits an offence against section 16(1)(a).

11 Department may remove obstructions etc

(1) Subject to subsection (2), the Director may issue a notice to be affixed to any structure, object, matter, or thing requiring its removal within the period stated in the notice, and in a manner required by the Director, if the structure, object, matter, or thing causes an obstruction to, or otherwise affects the operation of, any installation, facility, or equipment installed or used by the department for the purposes of this Act.

(2) If a notice issued and affixed under subsection (1) is not complied with in accordance with its terms, the department may remove the structure, object, matter, or thing and deal with it in a manner approved by the Director.

12 Rules and operating procedures

(1) Regulations made under this Act may apply rules and operating procedures relevant to the management and operation of any installation, facility or equipment, and in relation to any other function under this Act.

(2) Without limiting the generality of subsection (1), the rules and operating procedures may prescribe any of the following—

- (a) controls over access to certain areas of the department's premises or lands;
- (b) measures to protect the department's assets and facilities;
- (c) requirements applying to the operation and management of any installation, facility, or equipment installed or used for a purpose under this Act.

(3) The department may display signs at its premises, lands, installations, facilities, and equipment, and on its vehicles, which give directions to be observed by all persons within the premises, lands, facilities or equipment, or in the vicinity of the vehicles.

(4) Officers of the department and authorised officers may give directions to any person within the premises, lands, installations, or facilities of the department, or within the vicinity of its equipment, for the purpose of ensuring compliance with any rule or operating procedure, or any sign made or displayed in accordance with this section.

(5) A person who—

- (a) interferes with the operation of any installation, facility, or equipment installed or operated by the department in accordance with this Act; or
- (b) does any act which adversely impacts upon the ability of the department to perform its functions under this Act; or

- (c) breaches any rule or operating procedure made under this section; or
- (d) fails to comply with any requirement or direction given under this section; or
- (e) fails to comply with a requirement stated in any sign displayed under this section—

commits an offence against section 16(1)(a).

PART 5

ENFORCEMENT OF THIS ACT

13 Appointment of authorised officers

(1) For the purposes of effectively implementing this Act, the Niue Public Service Commission may appoint persons who are not officers of the department to be authorised officers for any purpose related to the implementation or enforcement of this Act.

(2) All appointments made under this section must be in writing, and the powers, duties and responsibilities of any person appointed to be an authorised officer are those stated in the relevant instrument of appointment signed by the Niue Public Service Commission.

14 Powers of officers

(1) The powers provided for under subsection (2) may be exercised

- (a) the Director and any officer of the department; or
- (b) authorised officers appointed under section 13.

(2) For the purposes of implementing and enforcing the provisions of this Act, the persons referred to in subsection (1) may, for any lawful and necessary purpose, do any of the following—

- (a) enter upon any land for any purpose necessary under this Act, after obtaining permission from the owner of the land to do so;
- (b) conduct such investigations and examinations as are necessary to undertake any activity, matter, or thing in accordance with this Act, or to determine whether any offence has been committed;
- (c) install, operate and maintain observation stations, facilities, installations, and related equipment and instruments on all government land, and on private lands with the consent of the owner of the land;
- (d) erect public notice boards and information or warning signs on any government land, and on private land with the consent of the owner of the land;
- (e) take samples for the purpose of analysis and testing;
- (f) take photographs or measurements;
- (g) require any person who is believed to have committed an offence against this Act to state his or her full name, occupation and usual place of residence;
- (h) require the production of any document, data or information obtained from research into any matter to which this Act relates, or which is relevant to an activity, matter, or thing under investigation, including any licence or permit required by law;

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- (i) require the removal or seize any item which interferes with or obstructs any station, facility, installation, or equipment installed in accordance with this Act;
- (j) seize any item which has been used in the commission of an offence against this Act.

15 Restitution orders

In addition to imposing a fine for any offence against this Act, the court may order that the offender is to pay compensation arising from the loss of or damage to any equipment or property belonging to the department, or to any person or agency acting on behalf of the department.

16 Offences and penalties

(1) A person who—

- (a) commits an offence provided for in this Act; or
- (b) otherwise acts in contravention of any provision of this Act, or who acts in contravention of any requirement imposed under this Act; or
- (c) aids or abets any person in contravening any provision or requirement of this Act; or
- (d) conspires with any person to do any act in contravention of any provision or requirement of this Act—

commits an offence and is liable on conviction—

- (i) in the case of an individual, to a fine not exceeding 5 penalty units, or imprisonment for a term not exceeding 3 months, or both; or
- (ii) in any other case, to a fine not exceeding 20 penalty units.

(2) A person who—

- (a) hinders or obstructs a person exercising powers provided for under this Act in the performance of his or her duties; or
- (b) induces or incites any other person to hinder or obstruct a person exercising powers provided for under this Act; or
- (c) by words or conduct falsely represents that he or she is entitled to exercise powers under this Act, or who otherwise impersonates an officer of the department or an authorised officer; or
- (d) provides false or misleading information in any application made under this Act or to an officer of the department or an authorised officer who is exercising a power under this Act —

commits an offence and is liable on conviction—

- (i) in the case of an individual, to a fine not exceeding 10 penalty units, or imprisonment for a term not exceeding 3 months, or both; or
- (ii) in any other case, to a fine not exceeding 50 penalty units.

(3) If a corporation commits an offence under this Act, any officer, director, or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and is to be liable to the penalty provided for the offence.

PART 6

MISCELLANEOUS PROVISIONS

17 Protections from liability

(1) The government and the department are not subject to any civil or criminal liability arising from the lawful exercise of a function or the performance of a power in accordance with this Act.

(2) Any person who lawfully exercises any power or performs any function under the authority of this Act is not liable for any loss or damage, or subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

18 Forms and fees

(1) The Minister may approve any form to be used for any purpose under this Act.

(2) In the absence of any fee prescribed by regulations made under this Act, the Cabinet may determine and apply any fee for any matter under this Act, and any charge for the provision of any service by the department in accordance with this Act.

(3) The Director may enter into arrangements for the collection by any other person or agency, of fees and charges due under this Act.

(4) Any fees which are prescribed by regulations made under this Act are automatically adjusted for each financial year by the addition of 5% of the fee payable in the previous financial year, unless the regulation imposing a specific fee provides otherwise.

19 Regulations

(1) Cabinet may make all such regulations as may be necessary or expedient for giving effect to the provisions of this Act, and for its due administration.

(2) Without limiting the generality of subsection (1), regulations may be made in relation to any of the following matters—

- (a) to provide for the classification and issuing of weather related warnings and alerts (including declarations of drought conditions and warnings of high fire danger), and prescribe the consequences of such warnings, alerts and declarations, including necessary restrictions, prohibitions, and obligations applying during the period that they are current;
- (b) to require any person, operation or project undertaking any activities related to meteorology or climate related matters to be licensed, registered, or permitted in accordance with any prescribed procedures and conditions;
- (c) to provide for additional roles, responsibilities, and powers of authorised officers, and to otherwise deal with any matter related to their involvement in the implementation and enforcement of this Act;
- (d) to clarify the roles, functions, and powers of any advisory or technical committee to which this Act relates, and to make any other necessary provision for such committees to contribute to the effective implementation of this Act;
- (e) to facilitate the implementation of any policy, convention, programme, project, or initiative to which this Act applies;

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- (f) to address any issue or matter related to responses to climate change, including any mitigation or adaptation measure or requirement, and any other process, system, or financial mechanism to be implemented in Niue as part of any international or regional scheme, policy or programme approved by Cabinet;
- (g) to facilitate or regulate the implementation of any project or programme relating to any function under this Act, including matters dealing with the involvement of the department and its officers in such projects and programmes, and the terms and conditions applying to such involvement;
- (h) to secure the protection of any installation, facility, and equipment used by the department in accordance with this Act, or any data collected for any purpose under this Act;
- (i) to implement the department's communications strategies for the broadcast and publication of advisories, bulletins and warnings, including requirements and procedures for such broadcasts and publications to be made.

(3) Regulations made under this section may prescribe offences and impose penalties being fines not exceeding 10 penalty units, or imprisonment for a period not exceeding 3 months, or both.