



Tonga

# TELEGRAPH ACT

1988 Revised Edition





## TELEGRAPH ACT

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# TELEGRAPH ACT

*Acts Nos. 10 of 1958, 3 of 1960, 17 of 1983, 46 of 1988*

## AN ACT FOR THE REGULATION OF THE ACCEPTANCE, TRANSMISSION AND DELIVERY OF TELEGRAMS

Commencement [30th September, 1958]

### 1 Short title.

This Act may be cited as the Telegraph Act.

### 2 Interpretation.

In this Act—

“**Commission**” means the Tonga Telecommunications Commission;  
(*Inserted by Act 17 of 1983.*)

“**radio-telegram**” means any despatch, message or other communication originating in or destined for a ship or aircraft station, and which is transmitted over all or part of its route by means of the radio-communication service or the mobile service;

“**telegram**” means any despatch, message or other communication conveyed or transmitted, or presented at a telegraph office for transmission, by an electric line, or by any other means in which electricity is used, including radiocommunication, and includes a radio-

telegram unless otherwise specifically stated; (*Amended by Act 46 of 1988.*)

“**telegraph**” means an electric line or any other apparatus used for the purpose of telegraphic communication;

“**telegraph office**” means any office or place at which telegrams are received from, or transmitted to, any place;

“**telegraph officer**” means any person employed, whether permanently or temporarily, in the Telegraph Branch of The Tonga Telecommunications Commission. (*Amended by Act 17 of 1983.*)

### **3 Power to make regulations.**

The Prime Minister may, from time to time, with the consent of Cabinet, make regulations for the following purposes—

- (a) the management, working, and maintenance of any telegraph, and the conduct and employment of any officers or persons engaged in connection therewith;
- (b) the transmission of all telegrams by means of any electric line or by radio, and for the delivery thereof, and for the disposal of all unclaimed or undelivered telegrams;
- (c) prohibiting the transmission of telegrams of a nature or character to be defined by such regulations, and authorising officers of the Commission to determine in the case of any telegram whether such telegram is within the definition of any such prohibited class;
- (d) fixing and determining the fees and rates to be demanded and received for the transmission of telegrams, and for the forwarding thereof for delivery respectively, and the modes and times of payment, and by and from whom such fees and rates may be legally recovered;
- (e) for the destruction of all original and office copies of telegrams received or kept in any office under the charge or control of the Prime Minister after the expiration of such period of time as may be deemed expedient.

### **4 Additional powers.**

The powers to make regulations conferred by section 3 shall include, and be deemed at all times heretofore to have included, power to make regulations for any or all of the following matters—

- (a) the inspection of the original of any telegram or of an office copy of any telegram by the person to whom such telegram is addressed, or

by the person by whom or in whose name it is sent, or by the authorised agent of any such person;

- (b) the furnishing of certified copies of any telegram to any person entitled to inspect the original or an office copy thereof;
- (c) fixing fees to be paid for the inspection of any telegram or for a certified copy of any telegram.

## **5 Telegram having priority.**

All telegrams relating to matters affecting the Government or Public Service of Tonga presented for transmission by any officer in the Civil Service duly authorised to present such telegrams, and all telegrams relative to the arrest of criminals or accused persons, the discovery or prevention of crime, or matters connected with the administration of justice, may be transmitted in priority to any other telegrams except those relating to safety of human life.

## **6 Other telegrams to be sent in order received.**

Subject to section 5 it shall be the duty of all officers or other persons employed in the working of any telegraph to transmit all telegrams which may be lawfully transmitted under this Act or any regulations for the time being in force thereunder in the order in which they may be received, and every officer or person who offends against this provision is liable to a fine of not less than \$2 and not exceeding \$40.

## **7 Delaying telegrams.**

Any telegraph officer or other person employed in or about the working of any telegraph who, through neglect of his duty, unnecessarily delays the transmission or delivery of any telegram is liable to a fine of not less than \$10 or not more than \$40.

## **8 Telegrams to be prepaid.**

Unless otherwise directed by any regulation, no person shall be bound to transmit any telegram unless the fee or rate for transmission and delivery of such telegram, if demanded, has been previously paid.

## **9 Fees recoverable by civil action.**

In case of refusal or neglect of payment of any fee or rate authorized to be charged or received by or under this Act, or any part of any such fee or rate, on demand, to the person appointed or authorized to receive the same, the same

may be sued for and recovered by civil action in the name of the General Manager of the Tonga Telecommunications Commission, or such other officer as shall be authorized by the Prime Minister to take such action. (*Amended by Act 17 of 1983.*)

#### **10 Fraudulently marking time on telegram.**

Every person commits an offence and is liable to a fine not exceeding \$100 who fraudulently marks any telegram so as to lead any person to believe that such telegram was received for transmission or delivery, or was transmitted or delivered, at a time other than the time when it was in fact so received, transmitted, or delivered, or who counsels, procures, aids, abets, or incites any other person so to mark any such telegram.

#### **11 Officer may not give evidence of contents of telegram.**

Except as hereinafter provided, no officer or other person employed in or about the working of any telegraph shall on the trial of any issue, whether criminal or civil or of any matter or question, or on any inquiry in any Court of Justice, or before any person by law or by consent of parties authorized to hear, receive, and examine evidence, be competent or compellable to give evidence of the contents of any telegram transmitted or conveyed or presented to be transmitted or conveyed by any such telegram, nor to produce under any writ of subpoena, summons, or order the original of any such telegram signed by or on behalf of the sender.

#### **12 Exceptions.**

The provisions of section 11 shall not apply—

- (a) if the person by or to whom any such telegram as aforesaid has been sent or addressed notifies the Prime Minister in writing that he desires that any such officer or other person aforesaid may give such evidence or make such production as aforesaid; or
- (b) to the case of any proceedings in respect of any offence, whether punishable on indictment or otherwise, if the Prime Minister is satisfied that such evidence or production is necessary or expedient in the interest of justice, and in writing directs accordingly.

#### **13 Prime Minister may by warrant require production of telegram.**

Where it appears to the Prime Minister that it is expedient in the public interest that any telegram or any copy of any telegram which is in the possession of or under the control of the Commission should be communicated to him he may by

warrant under his hand require the person for the time being in charge of the Commission to produce to him the said telegram or a copy thereof and all papers in connection therewith. On receipt of the said warrant signed by the Prime Minister as aforesaid the officer in charge of the Commission shall forthwith produce to the Prime Minister the documents specified therein. (*Added by Act 3 of 1960.*)

**14 Telegram to be stamped before delivery.**

Every telegram when received at its destination or a duplicate of such telegram shall before the delivery thereof to the person to whom the same is addressed be stamped or initialled by the officer receiving the same.

**15 Stamped telegram prima facie evidence of certain matters.**

Such telegram or duplicate purporting to have been so stamped or initialled shall be admissible in every Court of Justice and in every judicial or Ministerial examination or proceeding as prima facie evidence of the matter therein contained being the same as that stated in the original telegram left for transmission, and of such original telegram having been duly signed and delivered for transmission by the person by whom the same purports to be signed.

**16 Certain matters need not be proved.**

It shall not be necessary to prove the signature of the person purporting to have signed such original telegram, or that the same was left at any telegraph office for transmission, nor to prove the stamp or initials of the officer receiving such transcript for delivery.

**17 Protection of officer.**

No officer or person employed in or about the working of any telegraph shall be liable to any indictment, information, or other criminal proceedings, or to any action for damages, by reason of his having as such officer or other person transmitted or conveyed or taken part in transmitting or conveying by any such telegraph any defamatory matter.

**18 No malicious publication.**

Any communication transmitted by any telegraph which would be deemed a privileged communication if published only to the person to whom it is addressed, shall not be deemed to have been maliciously published by reason

merely of its having been published to any officer or other person employed as aforesaid for the purpose of being transmitted by such telegraph to the person to whom it is addressed.

### **19 Investigation if contents improperly divulged.**

His Majesty in Council may order any person or any committee of persons to investigate any allegation that the contents of any telegram have been improperly divulged or that any telegram has been unlawfully published.

### **20 No privilege in investigation.**

Provided the necessary permission is given by the Prime Minister pursuant to section 12 hereof no person shall be excused from answering a question put to him in any proceedings under section 22 on the ground of privilege or on the ground that the answer to such question may criminate or tend to criminate him.

### **21 Declaration by officers.**

Every telegraph officer shall, before entering on the duties of his office make and subscribe before a person authorized to take statutory declarations, a declaration in the form in the Schedule hereto.

### **22 Offence to divulge contents.**

Any officer or person employed in the working of any telegraph who improperly divulges in whole or in part the contents of any telegram transmitted or presented for transmission by any such telegraph, or the purport of such telegram, is liable to a fine not exceeding \$100 or to imprisonment with hard labour for a period not exceeding 6 months.

### **23 Saving.**

Nothing herein shall prevent the person duly authorized in that behalf from giving copies of any telegram to the person entitled thereto.

### **24 Offences.**

Every person is liable to a fine not exceeding \$100 or to imprisonment for any term not exceeding one year, or to both such fine and imprisonment who—

- (a) wilfully sends or delivers or causes to be sent or delivered to any public officer, operator, clerk, or servant, for the purpose of being

- transmitted as a telegraphic message, any telegram or writing which purports to be signed or sent without such person's authority; or
- (b) wrongfully signs any telegram with the name of any other person without such person's authority, or with the name of some fictitious person; or
  - (c) wilfully and without the authority of the sender alters any telegram or writing.

## **25 Copyright in press telegram.**

Where any person, in the manner hereinafter mentioned, publishes in any newspaper, or other printed paper published in Tonga, any telegram lawfully received by such person from any place outside Tonga for publication, no other person shall, without the consent in writing of such first-mentioned person or his agent thereto lawfully authorized, print or publish, or cause to be printed or published, such telegram or the substance thereof or any extract therefrom until after the period of 18 hours from such first-mentioned publication.

## **26 Period of copyright.**

Such period shall not extend beyond 24 hours, or, if Sunday intervenes, beyond 48 hours, from the time of receipt of such telegram; and the publication of the whole or any part of such telegram, or of the substance thereof, or (excepting the publication of any similar telegram in like manner sent from the same place) of the intelligence therein contained shall be deemed to be a publication of the same.

## **27 Multiple press telegrams.**

The simultaneous publication of the same telegram in two or more newspapers or other printed papers shall not be deemed to authorize the publication of the same in any other newspaper or printed paper without the consent in writing of one of the original receivers as hereinbefore provided, or in case such telegram has been furnished to such papers by any company or association, and has printed above it words showing that it has been so supplied, without the written consent of such company or association.

## **28 Time of receipt to be published.**

Every telegram published under the protection of this Act shall be printed with the heading "By Telegraph-Copyright", and shall bear the date and hour of its receipt, and such statement shall be prima facie evidence of the time of receipt of such telegram.

**29 Wrongful publication.**

Every person who wilfully prints and publishes any matter contrary to this Act is liable to a fine not less than \$2 and not exceeding \$10 for the first offence, and to a fine of not less than \$10 and not exceeding \$40 for any subsequent offence.

**30 Proceedings to be commenced within one month.**

Any proceedings under section 29 of this Act shall be commenced within one month after the date of the commission of the alleged offence.

**31 Evidence.**

In any prosecution under this Act the production of any document which purports to be a telegram, and which contains the intelligence published in the newspapers or other printed papers as aforesaid, and which has been delivered to some person entitled to receive the same by the proper officer of the Commission, shall be prima facie evidence that the telegram as hereinbefore described in any newspaper or other printed paper is a telegram within the meaning of this Act; and proof that any person is, or is acting or appears to be acting as, editor, sub-editor, or manager of any newspaper in which there has been any publication contrary to this Act shall be prima facie evidence that such person has wilfully caused such wrong publication.

**32 Offences by officers.**

Every officer or other person employed in or about the working of any telegraph who offends against or wilfully neglects or omits to comply with any of the provisions of this Act in respect of which no penalty is provided elsewhere than in this section is liable to a fine of not more than \$100, or to imprisonment for any period not exceeding 2 years.

**33 Wrongful use of forms.**

Every person is liable on conviction to a fine not exceeding \$100 who uses any telegraph form or other forms provided for the use of the public in connection with the business of the Department for any purpose other than the purpose for which such forms have been so provided.

**34 Prosecution before Magistrate.**

All offences against this Act may be prosecuted and all fines and other moneys payable under this Act may be recovered before a Magistrate as provided by the Magistrates' Courts Act.

**SCHEDULE**

(Section 21)

**DECLARATION BY TELEGRAPH OFFICER**

I, A.B. do solemnly and sincerely declare that I will be true and faithful in the execution of the trust committed to my charge, and that I will not, otherwise than in the due performance of my official duties, willingly or knowingly divulge the contents of any telegraphic or telephonic message or communication, or the purport thereof, coming to my knowledge in my official capacity, or suffer any other officer in the service wrongfully to divulge the contents of any telegraphic or telephonic message or communication, or the purport thereof, coming to his knowledge in his official capacity; and I do further declare that I will not detain or delay, or willingly or knowingly suffer any other officer in the service to detain or delay, any telegraphic or telephonic message or communication entrusted to the charge of the Commission for delivery, except in such cases and to such extent as may be lawfully provided in that behalf; and I do further declare that I will not willingly intercept any telegraphic or telephonic communications other than those which I am authorized to receive.

And I make the solemn declaration under the provisions of the Telegraph Act.

Declared at ....., this day of ..... 19....

(Signature of Declarant);.....

before me:.....

Magistrate.....