



Tonga

BUILDING CONTROL AND STANDARDS ACT 2002

Act 39 of 2002



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BUILDING CONTROL AND STANDARDS ACT 2002

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AN ACT TO CONTROL AND STANDARDISE BUILDING PRACTICE

I assent,
TAUFA'AHAU TUPOU IV,
4th March, 2004

[25th November, 2002]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short title

This Act may be cited as the Building Control and Standards Act 2002,

2 Act binds the Crown

This Act shall bind the Crown.

3 Interpretation

In this Act, unless the context otherwise requires—

“**Authority**” means the Building Control Authority established under section 4;

“**building**” means any temporary or permanent building in the ordinary and natural meaning of that word and includes any structure fulfilling the same functional requirements as a building regardless of whether it is temporary or permanent, movable or immovable and includes any structure associated with a building;

“**structures associated with a building**”, include but are not limited to:—

- (a) retaining walls more than 1.5 metres high;
- (b) fences and free standing walls more than 2 metres high;
- (c) masts more than 6 metres high;
- (d) tanks of 5000 litres or more capacity on the ground and tanks of any size if above ground and their supporting structures;
- (e) grandstands;
- (f) septic tanks, and other such treatment facilities; and
- (g) earthwork;

“**Code**” means the National Building Code;

“**Division**” means the Building Control Division of the Ministry of Works;

“**erection of a building**” includes the—

- (a) re-erection of a building;
- (b) reconditioning of a building;
- (c) making of any structural alteration, addition or repair to a building excluding non-structural maintenance work; and
- (d) removal either in part or in whole of a building from one place to another;

“**Minister**” means the Minister of Works.

4 Appointment of Authority

- (1) There shall be a Building Control Authority and it shall have such powers and functions as are conferred on it by this Act.
- (2) The Minister shall, with the consent of Cabinet, appoint not more than 5 persons to constitute the Authority.

5 Powers of the Authority

The Authority shall—

- (a) hear any appeals from any decision of the Building Controller made under this Act or any Regulations made thereunder;

- (b) periodically review the Code and the Regulations under this Act and advise the Minister of any amendment it considers appropriate; and
- (c) consider any other matter which may be referred to the Authority by the Minister.

6 Building Controller

There shall be a Building Controller who shall be the Director of Works.

7 Functions of Building Controller

The Building Controller shall be responsible for:

- (a) issuing all permits for buildings in the Kingdom as prescribed by Regulations;
- (b) advising the Authority as to the practicality and range of the Code and projected Regulations made under this Act;
- (c) reporting to the Authority on the operation of the Regulations and Code; and
- (d) examining applications received by the Division for exemptions from specific provisions of the Code.

8 Delegation of functions and powers

The Building Controller may delegate in writing to any person employed in the Division any function or power conferred upon him under this Act.

9 Disclosure of interest

The Building Controller or any person to whom he has delegated his functions or powers and any member of the Division, who is directly involved with any decision making or application where he has a personal, pecuniary or any other interest in a permit application, shall disclose the fact to the Minister and be immediately disqualified.

10 Building Permits

- (1) Subject to section 20 of this Act every person intending to erect a building shall first obtain a building permit from the Building Controller as prescribed by the Regulations.

- (2) The Building Controller shall require the payment of a prescribed fee before issuing a building permit.

11 Exemptions from building permits

A building permit shall not be required for the following—

- (a) traditional Tongan buildings limited to a plan area of not more than 25 square metres, and substantially using traditional methods and materials of construction;
- (b) any scaffolding, false work, timbering or other temporary construction work in respect of building maintenance;
- (c) any tent or marquee not exceeding 360 square metres in plan area;
- (d) a mast, pole or radio or television aerial, that does not exceed 6 metres in height above the point of its attachment or base support;
- (e) a caravan, vehicle or chattel whether fixed or movable when used at a site for not more than 30 days during any 6 months; and
- (f) minor repairs whether structural or otherwise.

12 Stop-work notice

Where the Building Controller is satisfied that any person is erecting or has erected any building, structure, or part thereof subsequently to this Act without the required building permit or in breach of the Code or any building permit, he shall issue a stop-work notice in the prescribed form.

13 Notice of Compliance

- (1) Where any person has—
- (a) constructed, affixed or provided any building or any part of a building or work or material of any description, contrary to the provisions of this Act; or
 - (b) omitted to construct, affix or provide any such work, appliance or material in accordance with this Act;

the Building Controller may issue a notice requiring that person to comply with this Act.

- (2) Every notice of compliance shall be in the prescribed form.

14 Demolition

- (1) The Building Controller shall issue in writing a notice to demolish any building or structure or part thereof which has been erected subsequently to the operation of this Act without the required building permit.

Provided that in any such case a notice shall first be given to the person responsible for the building, structure or part thereof.

- (2) A person who receives a notice under subsection (1) shall demolish such building or structure, or part thereof within the period specified in the notice.
- (3) The Building Controller may require the demolition of any building whether erected before or after the operation of this Act if in his opinion it constitutes a public danger.
- (4) The Building Controller may demolish the building or structure or part thereof if a person who receives a notice under subsection (1) does not demolish the building or structure or any part thereof within the period specified in such notice.
- (5) The cost of any demolition carried out by the Building Controller under subsection (4) and any expenses in connection therewith shall be paid to the Division by the person served with a notice.

15 Fees

All fees and other moneys paid under this Act shall be paid to the Ministry of Finance.

16 Appeals against Building Controller

- (1) Any person who is dissatisfied with a decision or notice given by the Building Controller may appeal to the Authority within 28 days of receiving the decision or notice.
- (2) The Authority shall have the power to call evidence in an appeal under subsection (1).

17 Further appeal to the Minister

- (1) There shall be a further right of appeal to the Minister within 28 days of receiving the decision of the Authority.
- (2) The decision of the Minister shall be final.

18 Penalty

- (1) Any person who contravenes or fails to comply with any of the provisions of this Act or any Regulations made under this Act, or of any order, notice or requirement made or given thereunder shall be liable upon conviction to a fine not exceeding \$2000 or to a term of imprisonment not exceeding 2 years or to both.
- (2) Every person who is convicted under subsection (1) shall be liable to a further penalty of \$50 for every day the contravention continues after the date of conviction

19 Regulations

The Minister may, with the consent of Cabinet, make Regulations—

- (a) prescribing a National Building Code;
- (b) prescribing forms and fees required under this Act; and
- (c) for the proper and efficient administration of this Act.

20 Application of the Act

The Minister may by notice in the Gazette, designate areas in the Kingdom or particular classes of buildings as defined in the Code to which this Act shall apply.

Passed by the Legislative Assembly this 25th day of November, 2002.