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2008, No. 4

An Act - (a) To reform and restate the law relating to maritime transport; and
(b) To provide for related matters

(19 February 2008)

BE IT ENACTED by the Parliament of the Cook Islands in session assembled and by the authority of the same as follows:

PART 1
PRELIMINARY

1. Short Title and commencement - (1) This Act may be cited as the Maritime Transport Act 2008.

(2) This Act shall come into force on the day on which this Act receives the Royal assent.

2. Interpretation - (1) In this Act, unless the context otherwise requires,-

“Accident” means an occurrence that involves a vessel and in which -

- (a) A person is seriously harmed as a result of -
 - (i) being on the vessel; or
 - (ii) direct contact with any part of the vessel, including any part that has become detached from the vessel; or
 - (iii) direct exposure to the wash of the vessel or interaction (other than direct contact) between 2 vessels; or
 - (iv) Being involved in the salvage of any vessel - except where the injuries are self-inflicted or inflicted by other persons, or when injuries are to stowaways hiding outside the areas normally available to passengers and crew; or
- (b) The vessel sustains damage or structural failure that -
 - (i) adversely affects the structural strength, performance, or seaworthiness of the vessel; or
 - (ii) would normally require major repair or replacement of the affected component; or
 - (iii) poses a threat to the safety of people on board the vessel; or
- (c) There is a complete or partial failure of machinery or equipment that affects the seaworthiness of the vessel; or
- (d) There is a loss of, or damage to, or movement of, or change in the state of, the cargo of the vessel which poses a risk to the vessel or other vessels; or

- (e) There is a significant loss of, or significant damage to, property (not being the cargo carried by the vessel) or the property of any person (whether or not on board the vessel), whether or not the loss or damage arises from an interaction between 2 vessels; or
- (f) There is a loss or escape of any substance or thing that -
 - (i) may result, or has resulted, in serious harm to any person; or
 - (ii) may pose a risk, or has resulted in damage, to the vessel or other vessels; or
 - (iii) may pose a risk, or has resulted in damage, to any property (whether or not on board the vessel); or
- (g) A person is lost at sea (whether or not subsequently found) or is missing; or
- (h) The vessel is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board.

“Act” means this Act and includes any regulations, orders, rules, notices and directives made or given under this Act;

“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;

“Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1969; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by the Cook Islands, and CLC shall have the same meaning;

“CLC owner” means -

- (a) In the case of a registered CLC Vessel, the person registered as the owner of that vessel; or
- (b) In the case of an unregistered CLC Vessel, the person who owns the vessel; or
- (c) In the case of a CLC Vessel owned by a State and operated by a person registered as the vessel’s operator, the person registered as its operator;

“CLC Vessel” means -

- (a) Any vessel carrying oil in bulk as cargo; or

- (b) Any vessel on a voyage immediately following a voyage where that vessel was carrying oil in bulk as cargo (unless it is proved that it has no residues of the carriage of oil in bulk aboard), –

if the vessel is registered in, or (if unregistered) flying the flag of, a CLC State;

“Coastal cargo” means –

- (a) Passengers embarked by a vessel at any port or other place within the Cook Islands for carriage to and disembarking at any other port or place in the Cook Islands;
- (b) Goods loaded to a vessel at any port or place in the Cook Islands for carriage and unloading at any other port or place in the Cook Islands.

“Coastal shipping” means the use of any vessel in the commercial carriage of coastal cargo;

“Commercial vessel” means a vessel that is not a pleasure craft;

“Continental shelf or continental shelf of Cook Islands” has the same meaning as in the Continental Shelf Act 1964;

“Convention”, in relation to this Act, means any bilateral or multilateral, agreement, code, convention, or treaty relating to maritime transport, maritime security or maritime pollution, to the extent to which the Cook Islands is bound or has agreed to adopt, and includes any understanding concluded by the Cook Islands and the government of any other country;

“Cook Islands vessel” means a vessel that is registered under the Ship Registration Act 2007; and includes a vessel that is not registered under that Act but is required to be registered under that Act;

Cook Islands waters means –

- (a) The internal waters of the Cook Islands; and
- (b) The territorial sea of the Cook Islands; and
- (c) All rivers and other inland waters of the Cook Islands; and

“Crew” means the persons employed or engaged in any capacity on board a vessel (except a master, a pilot, or a person temporarily employed on the vessel while it is in port);

“Demise charter” has the same meaning as in section 2(1) of the Ship Registration Act 2007;

“Emergency rules” means emergency maritime rules or emergency marine protection rules;

“Employer” means a person who employs or engages any other person (other than a person temporarily employed on the vessel while it is in port or a pilot) to do any work for hire or reward on board a commercial vessel or pleasure craft;

“Fail” includes refuse; and failure includes refusal;

“Financial Secretary” means the person appointed under s4 of the Ministry of Finance and Economic Management Act 1995-96;

“Fishing vessel” means a vessel used for catching fish, or other living resources of the sea for profit; and includes a vessel that is engaged in fisheries research;

“Foreign vessel” means any vessel that is not a Cook Islands vessel or is not an unregistered Cook Islands vessel;

“Garbage” shall have the same meaning as under the Prevention of Marine Pollution Act 1998;

“Government vessel” and “Government aircraft” means a vessel or aircraft -

- (a) wholly owned by the Government of the Cook Islands; or
- (b) chartered by and under the management and control of the Cook Islands Government.

“Gross tonnage or gross tons”, in relation to a vessel, means the gross tonnage of that vessel determined or recognised in accordance with the provisions of this Act or any maritime rules;

“Harbourmaster” means a Harbourmaster appointed pursuant to section 15 of the Ports Authority Act 1994-95;

“Harm” means illness, injury, or both; and “to harm” and “harmed” have corresponding meanings;

“Hazard” means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether or not arising or caused on board a vessel) that is an actual or potential cause or source of harm; and “hazardous” has a corresponding meaning;

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

“Load lines” means the marks indicating several maximum depths to which a vessel is permitted to be loaded in various circumstances prescribed by maritime rules or regulations made under this Act;

“Marine protection rules” means marine protection rules made by the Minister under Part 12; and includes emergency marine protection rules made by the Secretary under section 113:

“Marine protection product” means -

- (a) Anything that comprises, or is intended to comprise, any part of a ship, offshore installation, or pipeline, or that is or is intended to be installed on or fitted or supplied to a ship, offshore installation, or pipeline for the purpose of preventing, limiting, or controlling a discharge or the escape of a harmful substance, including (but not limited to) -
 - (i) any plant or equipment that treats or is intended to treat a harmful substance; and
 - (ii) Any plant or equipment that monitors or is intended to monitor the discharge or escape of a harmful substance; and
- (b) Any substance used or intended to be used for the dispersal or emulsification of a harmful substance in the sea;

and includes anything that is specified as a marine protection product for the purposes of this definition by the marine protection rules:

“Maritime document” -

- (a) Means any licence, permit, certificate or other document issued under Part 4 to or in respect of any person, vessel, cargo, maritime procedure, or maritime product; and
- (b) Includes any foreign licence, permit, certificate, or other document recognised by the Secretary under section 24 or accepted by the Secretary under section 25;

“Maritime product” means anything that comprises or is intended to comprise any part of a vessel or that is or is intended to be installed in or fitted or supplied to a vessel; and includes -

- (a) Safety equipment;
- (b) Nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a vessel;
- (c) Electronic navigational aids used or intended to be used in

- the operation of a vessel;
- (d) Radio and other communication equipment;
- (e) Fuel and other similar consumable items necessary for the operation of a vessel.

“Maritime rules” means maritime rules made by the Minister under Part 3; and includes emergency maritime rules made by the Secretary under section 20;

“Master” means any person (except a pilot) having command or charge of any vessel;

“Minister” means the Minister who is for the time being responsible for the administration of this Act or the relevant Part or provision of this Act;

“Ministry” means the Ministry of Transport or such other department of State that is for the time being responsible for the administration of this Act;

“Mishap” means an event that -

- (a) Causes any person to be harmed; or
- (b) In different circumstances, might have caused any person to be harmed.

“Nautical instruments and publications” means those instruments and publications (including computerised or electronic instruments and publications) used or intended to be used in the navigation of a vessel;

“Navigational aid” includes -

- (a) Any light vessel and any floating or other light exhibited for the guidance of vessels;
- (b) Any description of a fog signal not carried on a vessel;
- (c) All marks and signs in aid of marine navigation;
- (d) Any electronic, radio, or other aid to marine navigation not carried on board any vessel.

“Near the surface of the water”, in relation to a WIG craft, means in close proximity to the water such that the craft might come into contact with, or impede the navigation, of other vessels;

“Ombudsman”, means an Ombudsman appointed pursuant to the Ombudsman Act 1984;

“Operate”, in relation to a vessel, means to sail or use the vessel, or cause or permit the vessel to sail, be used, or be in any place, whether or not the person is present with the vessel; and “operating”, “operation”, and “operator” have corresponding meanings;

“Operating in Cook Islands waters” means any activity undertaken in Cook Islands waters that involves calling in to a Cook Islands port; but does not include the passage by a vessel through Cook Islands waters that does not involve calling in to a Cook Islands port.

“Owner”, -

- (a) In relation to a vessel registered in Cook Islands under the Ship Registration Act 2007, means the registered owner of the vessel;
- (b) In relation to a vessel registered in any place outside Cook Islands, means the registered owner of the vessel;
- (c) In relation to a vessel to which paragraph (a) or paragraph (b) of this definition applies, where, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the management of the vessel, includes the charterer or other person who is for the time being so responsible;
- (d) In relation to an unregistered vessel or a registered vessel that does not have a registered owner, means the person who is for the time being responsible for the management of the vessel.

“Passenger” means any person carried on a vessel, other than -

- (a) The master and members of the crew, and any other person employed or engaged in any capacity on board the vessel on the business of the vessel;
- (b) A person on board the vessel either in pursuance of an obligation laid upon the master to carry vessel-wrecked, distressed, or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;
- (c) A child under the age of 1 year.

“Pilot”, in relation to any vessel, means any person not being the master or a member of the crew of the vessel who has the conduct of the vessel:

“Plant” includes -

- (a) Appliance, equipment, fitting, furniture, implement, machine, machinery, tool, and vehicle;
- (b) Part of any plant, the controls of any plant, and anything connected to any plant.

“Pleasure craft” means a vessel that is used exclusively for the owner's pleasure or as the owner's residence, and is not offered or used for hire or reward; but does not include -

- (a) A vessel that is provided for transport or sport or recreation by or on behalf of any institution, hotel, motel, place of entertainment, or other establishment or business;
- (b) A vessel that is used on any voyage for pleasure if it is normally used or intended to be normally used as a fishing vessel or for the carriage of passengers or cargo for hire or reward;
- (c) A vessel that is operated or provided by any club, incorporated society, trust, or business;

“Port” has the same meaning as provided in section 2 of the Ports Authority Act 1994-95;

“Pollutant” shall have the same meaning as under section 2 of the Prevention of Marine Pollution Act 1998;

“Prescribed” means prescribed by this Act or by regulations or rules made under this Act;

“Privy Council” means the Judicial Committee of the Privy Council;

“Proper officer”, in relation to any country other than Cook Islands, means the person who is, by the law of that country, authorised or required -

- (a) To do or perform the act or duty to which reference is made in the provisions of this Act in which the expression occurs; or
- (b) To do or perform, in relation to vessels registered in or belonging to that country, any act or duty of the same nature as the act or duty to which reference is made in the provisions of this Act in which the expression occurs; -

and includes a consular officer of Cook Islands in any other country;

“Regulated oil tanker” means an oil tanker, wherever registered and of whatever nationality, carrying a quantity of oil in bulk in excess of 2,000 tonnes or such other quantity as may be fixed for the purpose from time to time by the Queen's Representative by Order in Executive Council;

“Regulated ship” means any ship, other than a regulated oil tanker, of a kind specified by regulations made under section 117;

“Reward”, -

- (a) In the definition of the term “employer” in this section and in the definition of the term “seafarer” in this section, means any remuneration, recompense, or other payment for service (whether of money or money's worth);
- (b) In the definition of the term “pleasure craft” in this section,-
 - (i) includes the payment (whether of money or money's worth and whether directly or indirectly), to or for the benefit of the owner or master of a vessel, of a contribution towards the expenses of a voyage by or on behalf of persons, or the owners of cargo, carried on board the vessel during the voyage; but
 - (ii) does not include the payment of any such contributions exclusively by part owners of the vessel or by persons engaged as bona fide crew members;

“Rules” includes maritime rules and marine protection rules;

“Safety equipment” means any equipment carried on a vessel for the health or safety of any person during the normal operation and working of the vessel or for fire or the abandonment of the vessel or other emergency; and includes anchors and chain cables;

“Seafarer” -

- (a) Means any person who -
 - (i) is employed or engaged on any vessel in any capacity for hire or reward; or
 - (ii) works on any vessel for gain or reward otherwise than under a contract of employment; but
- (b) Does not include a pilot or any person temporarily employed on a vessel while it is in port;

“Seaplane” includes a flying boat and any other aircraft designed to manoeuvre on the water;

“Secretary” means the person who is for the time being the Secretary of Transport;

“Serious harm” means -

- (a) Death; or
- (b) Harm of a kind or description referred to in Schedule 1 to this Act; or

(c) Harm of a kind or description declared by the Queen's Representative by Order in Executive Council to be serious harm for the purposes of this Act -
and "seriously harmed" has a corresponding meaning;

"System", in relation to a vessel, means any system incorporated in the vessel which contributes to the safe navigation and working of the vessel during normal operation or is required in the event of any emergency;

"Tonnage measurement" means measurement of a vessel in accordance with the requirements of maritime rules;

"Unit of account" means one special drawing right as defined by the International Monetary Fund, the calculation of which, in Cook Islands currency, is in accordance with section 66;

"Unregistered Cook Islands vessel" means a vessel that is not a Cook Islands vessel but is entitled to be registered under the Ship Registration Act 2007 and which is not registered elsewhere;

"Vessel" means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes -

- (a) A barge, lighter, or other like vessel;
- (b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (c) A submarine or other submersible.

"Voyage" means a journey by water from one port -

- (a) To another port; or
- (b) Back to the same port without calling at any other port.

"War Ship" means a vessel belonging to the armed forces of a State and bearing the external marks distinguishing the nationality of vessels of that State, being a vessel -

- (i) under the command of an officer duly commissioned by the Government of that State whose name appears in the appropriate service list or its equivalent; and
- (ii) Crewed by crew subject to regular armed forces discipline; and

"Waste" shall have the same meaning as under section 2 of the Prevention of Marine Pollution Act 1998.

“Wing-in-ground craft” or “WIG craft” means a multimodal craft that, in its main operational mode, flies –

- (a) In close proximity to, and without contact with, the water surface;
- (b) By using surface-effect action above the water; and
- (c) Supported in the air primarily by an aerodynamic lift generated on the wing(s) or the hull of the ship or their parts.

(2) Except as otherwise provided in this Act, the terms “Internal Waters”, “Territorial Sea” and “Exclusive Economic Zone” have the same meanings as given in the Territorial Sea and Exclusive Economic Zone Act 1977.

(3) The Queen’s Representative may, from time to time, by Order in Executive Council, declare -

- (a) That any specified international convention relating to maritime transport or marine pollution, to which the Cook Islands is a party, shall be a convention for the purposes of this Act, or any part of this Act, as may be specified in the order;
- (b) That any specified amendment to any such convention shall form part of that convention for any such purposes.

3. Act to bind the Crown - Except as provided in section 4, this Act shall bind the Crown.

4. Application of this Act - (1) Unless the context otherwise requires, nothing in this Act shall apply to -

- (a) A government vessel; or
- (b) A war ship of any other State; or
- (c) A government aircraft of the Cook Islands ; or
- (d) Aircraft of the defence forces of any other State; or
- (e) Any vessel owned or operated by a State other than the Cook Islands, if the vessel is being used by that State for wholly governmental (but not including commercial) purposes; or
- (f) The master or the crew of any vessel referred to in paragraph (a) or paragraph (b) or paragraph (e) of this section; or
- (g) Any area set aside for the exclusive use of the Government of the Cook Islands and to which public access is restricted.

(2) Where it is alleged that the Crown has contravened a provision of this Act, or any rules or regulations made under this Act, and such contravention constitutes an offence, -

- (a) Any person may apply to the High Court for a declaration that the Crown has contravened that provision; and

- (b) If satisfied beyond reasonable doubt that the Crown has contravened that provision, the Court may make a declaration to that effect.

(3) The provisions of this Act, if inconsistent with or do not provide for a convention or, if they do not apply to a situation or circumstance, may be amended, repealed and extended as may be prescribed by regulations or rules which may come into force either in part or whole on a date either before or after the date that they are made.

(4) Except as expressly provided, nothing in this Act shall derogate from any provision of the Ports Authority Act 1994-95 or the Civil Aviation Act 1985 and to the extent that there is any inconsistency between this Act and either of those Acts, the other Act shall prevail.

(5) This Act is supplementary to the Prevention of Marine Pollution Act 1998 and only to the extent there is any inconsistency between this Act and the Prevention of Marine Pollution Act 1998, shall this Act prevail

5. Application of International Obligations - This Act shall be interpreted and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act in a manner consistent with the Cook Islands' international obligations relating to -

- (a) Maritime transport and safety ; and
- (b) Protection of the marine environment.

6. Purposes of Act - The purposes of this Act are -

- (a) To provide for the maritime safety of the Cook Islands and Cook Islands vessels; and
- (b) To enable the implementation of Cook Islands' obligations under international maritime agreements; and
- (c) To ensure that participants in the maritime transport system are responsible for their actions; and
- (d) To protect the marine environment.

7. Functions of Minister - (1) The functions of the Minister under this Act are -

- (a) to promote safety in maritime transport;
- (b) to promote protection of the marine environment;
- (c) to administer Cook Islands' participation in the conventions;
- (d) to ensure Cook Islands' preparedness for, and ability to respond to, marine pollution;
- (e) to make maritime rules and marine protection rules under this Act.

(2) The provisions of Schedule 2 of this Act shall apply to the performance by the Minister of any functions or powers conferred under this Act.

- (3) The Minister may from time to time, by notice in the Gazette, give notice of –
- (a) any convention; or
 - (b) any other matter,
- relevant to the Cook Islands international obligations for the purposes of this Act.
- (4) A notice under subsection (3) is, for all purposes, conclusive evidence of its contents

PART 2
DUTIES IN RELATION TO MARITIME ACTIVITY
General duties

8. General requirements for participants in maritime system - (1) Every person who does anything for which a maritime document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate maritime documents and all the necessary qualifications and other documents are held by that person.

(2) Every participant shall comply with this Act, regulations made under this Act, maritime rules, and the conditions attached to the relevant maritime documents.

(3) Every participant shall ensure that the activities or functions for which the maritime 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 -

- (a) Shall, if so required by maritime rules, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document; and
- (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.

9. General requirements for persons other than participants - Every person, other than a participant (within the meaning of section 8), who -

- (a) Operates any vessel; or
 - (b) Is responsible for any maritime product; or
 - (c) Is otherwise engaged in any maritime activity -
- shall comply with the relevant provisions of this Act and any relevant rules.

10. Duties of master - (1) The master of a vessel shall -
- (a) Be responsible for the safe operation of the vessel on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried; and
 - (b) Have final authority to control the vessel while in command and for the maintenance of discipline by all persons on board; and
 - (c) Be responsible for compliance with all relevant requirements of this Act and regulations and maritime rules made under this Act, except in an emergency when, in the interests of safety, immediate action in breach of this Act or of regulations or maritime rules made under this Act is necessary; and
 - (d) Where an emergency requires that in the interests of safety an action is necessary that breaches this Act, or regulations or maritime rules made under this Act, as soon as practicable, notify the Secretary of the action and the circumstances which necessitated it and, if requested by the Secretary, provide to the Secretary a written report in respect of the action.
- (2) For the purposes of subsection (1)(c), a breach of any prescribed requirement is permitted only if -
- (a) The emergency involves a danger to life or property; and
 - (b) The extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (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.
- (3) Nothing in subsection (1)(c) permits -
- (a) The breach of any prescribed requirement as to the seaworthiness of a vessel; or
 - (b) The operation of a vessel by a person who does not hold the appropriate maritime document; or
 - (c) The operation of a vessel by a person who does not have authority to operate that vessel.
- (4) Every master commits an offence and is liable to a fine not exceeding \$10,000 who, without reasonable excuse, fails to comply with subsection (1)(d).

11. Duty to report dismissals - (1) The employer of any seafarer on a Cook Islands vessel shall report to the Secretary any dismissal from employment of a seafarer that is a dismissal related to violence, alcohol, the use, supply, or possession of any illegal or controlled drugs, or the misuse of prescription medicines, whether or not the act giving rise to the dismissal arose within the Cook Islands or constituted an offence against Cook Islands law.

(2) The Secretary shall not release the name of any person reported under subsection (1) of this section unless the person's name appears on a list maintained under section 35(4); and any release of such a name shall be made only to the extent provided for in section 35(4).

12. Pleasure craft departing for overseas - (1) No master of a pleasure craft shall permit that pleasure craft to depart from the Cook Islands for any place outside the Cook Islands unless -

- (a) The Secretary or, in relation to any Port, the Harbourmaster has been notified in an approved manner of the proposed voyage and the full name of the person who is in command of the pleasure craft; and
- (b) The Secretary or Harbourmaster is satisfied that the pleasure craft and its safety equipment are adequate for the voyage; and
- (c) The Secretary or Harbourmaster is satisfied that the pleasure craft is safely crewed for the voyage; and
- (d) The pleasure craft and the master comply with any relevant maritime rules.

(2) No pleasure craft shall be entitled to depart from the Cook Islands unless subsection (1) of this section has been satisfied.

(3) Every master commits an offence who fails to comply with subsection (1) of this section and is liable to a fine not exceeding \$5000.

Duties in relation to accidents, incidents, etc.

13. Recording and notification of accidents, incidents, and mishaps - Every employer of seafarers on a Cook Islands vessel shall maintain (in a form approved by the Secretary) a register of accidents, incidents, and mishaps; and shall record in the register particulars relating to -

- (a) Every accident or incident; and
- (b) Every mishap.

14. Obligation to notify all accidents, incidents, etc. (1) The master of -

- (a) Any Cook Islands vessel; or
- (b) Any foreign vessel in the Cook Islands waters -

that is involved in a mishap that results in serious harm to a person, an accident, or an incident, shall notify the mishap, accident, or incident to the Ministry as soon as practicable.

(2) If, due to injuries or death or for other good reason, the master of a vessel referred to in subsection (1) of this section is unable to give the necessary notice under that subsection, the operator of the vessel shall provide the necessary notice.

- (3) Every person who -
 - (a) Operates, maintains, or services, or does any other act in respect of any Cook Islands vessel, any foreign vessel in Cook Islands waters, or any maritime product; and
 - (b) Is involved in an accident, incident, or mishap resulting in serious harm, involving a Cook Islands vessel, or a foreign vessel in Cook Islands waters -

shall, where required to do so under maritime rules, notify the accident, incident, or mishap to the Ministry as soon as practicable.

(4) The coordinator of any search and rescue operation for any vessel or person missing at sea shall notify the Ministry of the operation as soon as practicable.

(5) The Ministry may, on being notified under this section, request such additional information in such form as it considers appropriate in each specific case, and the master or operator or person of whom the request is made shall provide the additional information forthwith.

15. Duty to assist persons in danger and to respond to distress calls - (1) The master of a Cook Islands vessel and the master of a foreign vessel in Cook Islands waters shall, so far as the master can do so without serious danger to the vessel and persons on board, -

- (a) Render assistance to any person found at sea in danger of being lost;
- (b) After a collision, render assistance to the other vessel, its crew, and its passengers;
- (c) After a collision, inform the master of the other vessel of the name of his or her own vessel, its port of registry, and the nearest port at which it will call.

(2) On receiving a signal that a vessel, aircraft, or survival craft is in distress, the master of a vessel referred to in subsection (1) of this section shall -

- (a) Proceed with all speed to the assistance of the persons in distress and, if possible, inform them of that fact; and
- (b) Comply with any requisition to the master's vessel by the master of the vessel in distress by continuing to proceed with all speed to the assistance of persons in distress.

(3) Subsection (2)(a) of this section does not apply if -

- (a) The master is unable, or, in the special circumstances of the case, considers it unreasonable or unnecessary, to proceed to the assistance of the persons in distress; or
- (b) The master is informed that one or more vessels have been requisitioned and are complying with the requisition.

(4) Neither subsection (2)(a) nor, if the vessel has been requisitioned, paragraph (b) of that subsection, shall apply if the master is informed by the persons in distress or by the master of another vessel which has reached the persons that assistance is no longer necessary.

(5) The master of a Cook Islands vessel that is required to carry a logbook shall enter in the logbook a record of every distress signal received and any reason for failing to go to the assistance of persons in distress in accordance with subsection (2)(a) .

(6) Every person commits an offence who fails to comply with this section and is liable to -

- (a) Imprisonment to a term not exceeding 12 months; or
- (b) A fine not exceeding \$100,000; or
- (c) Both.

16. Reporting of dangers to navigation - (1) The master of a Cook Islands vessel and the master of a foreign vessel in Cook Islands waters shall report to vessels in the vicinity, and the nearest radio communication station with which it is possible for the vessel to communicate, any danger to navigation, including the failure or displacement of any navigational aid.

(2) Every master commits an offence who fails, without reasonable excuse, to comply with this section and is liable to -

- (a) imprisonment to a term not exceeding 3 months; or
- (b) a fine not exceeding \$50,000; or
- (c) both.

PART 3

FURTHER REGULATION OF MARITIME ACTIVITY

Maritime Rules

17. Maritime rules relating to maritime documents - (1) Maritime rules made under this Part may require that a maritime document be held by or in respect of any of the following -

- (a) Cook Islands vessels;
- (b) All vessels (including foreign vessels) operating in Cook Islands waters;
- (c) The owners and operators of, and seafarers on, Cook Islands vessels or foreign vessels operating in Cook Islands waters;
- (d) Persons or organisations having a direct involvement in vessel operations or vessel or maritime product safety services;
- (e) Maritime products used on, by, or in relation to Cook Islands vessels or foreign vessels operating in Cook Islands waters;
- (f) Persons or organisations that provide -
 - (i) maritime training; or
 - (ii) the testing, inspecting, audit, or certification of vessels or maritime products; or

- (iii) The design, manufacture, or maintenance of vessels or maritime products.
- (g) Shipping operations and management;
- (h) Shipping containers;
- (i) Navigational aid installations;
- (j) Such other persons, vessels, maritime products, maritime related services, facilities, and equipment as may be operated or engaged or used in Cook Islands waters or in support of the maritime system.

(2) The requirements, standards, and application procedure for each maritime document, and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by maritime rules.

(3) Subject to any maritime rules, a maritime document may be issued or a document may be recognised as a maritime document, as the case may be, by the Secretary for such period and subject to such conditions as the Secretary considers appropriate in each particular case.

(4) Any person in respect of whom any decision is taken under subsection (3) may appeal against that decision to the High Court under section 146 .

18. Application for maritime document - (1) Every application for the grant or renewal of a maritime document or the recognition of a document as a maritime document shall be made to the Secretary in the prescribed form or, if there is no prescribed form, in such form as the Secretary may require.

(2) Every applicant for a maritime document shall include in his or her application his or her address for service in the Cook Islands including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a maritime document to maintain the currency of the information provided under subsection (1) by promptly notifying the Secretary of any changes to the address, telephone number, or facsimile number.

(4) The Secretary shall ensure that a record of all information provided under this section is maintained at the Maritime Depository kept in accordance with section 85.

(5) Service of any notification under this Act on a holder of, or an applicant for, a maritime document shall be effective service if served at the address last provided by that holder or applicant under this section.

19. Maritime rules relating to other matters - The Minister may from time to time make maritime rules for all or any of the following purposes -

- (a) Classifying vessels as to type, nature of service, operating limits, or otherwise;
- (b) The implementation of technical standards, codes of practice, performance standards, and other requirements of the conventions;
- (c) Prescribing standards and requirements for the design and construction of, or major alteration to, any vessel;

- (d) Prescribing standards and requirements for the accommodation of seafarers or passengers on any commercial vessel;
- (e) Prescribing the provision of medical supplies and facilities on any vessel, their stowage, maintenance, and periodic inspection, and requiring medical officers on vessels;
- (f) Prescribing the requirements for the maintenance and periodic inspection or testing of the hull, machinery, and systems of any vessel, safety equipment, or any maritime products of any vessel;
- (g) Prescribing safe navigational and maritime operational and emergency procedures, including such procedures for any seaplane or wing in ground craft, and any training requirements in respect of such procedures;
- (h) Prescribing operational and emergency procedures for the assistance of persons in distress at sea and in respect of collisions;
- (i) Defining operating limits and pilotage limits; and specifying requirements concerning pilotage (including when and where pilotage is required or is not required, and the classes of vessels that must carry a pilot in circumstances described in the rules);
- (j) Prescribing standards and requirements for the safe management of commercial shipping operations;
- (k) Requiring the recording and retention of operational information and prescribing the details of any reporting that is required by this Act;
- (l) Prescribing criteria for determining the maximum number of passengers or persons that may be carried on any vessel and for assigning and marking load lines on any vessel;
- (m) Prescribing standards and requirements for the carriage on a vessel of any cargo, container, or personal property (including any item brought on to the vessel by a passenger or other person, or carried in or on a vehicle on the vessel); and prescribing standards and requirements concerning containers carried on a vessel;
- (n) Prescribing the minimum number of seafarers to be employed on any commercial vessel, their qualifications, and experience;
- (o) Prescribing standards, specifications, qualifications, restrictions, and licensing requirements for persons engaged in maritime activities, including any medical requirements and requirements relating to the keeping of records of qualifications, restrictions, and licences;
- (p) Prescribing technical standards or requirements relating to the health and safety of seafarers;

- (q) Prescribing the format of maritime documents, forms, and applications;
- (r) Prescribing the requirements and criteria for determining the tonnage measurement, length, and size of any vessel;
- (s) Prescribing the criteria and conditions under which foreign licences, permits, certificates, or other documents will be recognised by the Secretary under section 24;
- (t) Prescribing standards and requirements for maritime products (including safety equipment), and prescribing the maritime products to be carried on any vessel;
- (u) Prescribing standards and requirements for navigational aids;
- (v) Regulating the conduct of vessels in Cook Islands waters or the conduct of vessels in any defined part of Cook Islands waters, for the purpose of securing safe navigation in those waters;
- (w) Prescribing or providing for such matters as may be necessary -
 - (i) to enable the Cook Islands to become a party to any conventions;
 - (ii) to implement such practices or standards relating to conventions as may, from time to time, be recommended by the International Maritime Organisation.
- (x) assisting maritime safety and security, including (but not limited to) personal security;
- (y) assisting economic development;
- (z) improving access and mobility;
- (za) protecting and promoting public health;
- (zb) ensuring environmental sustainability;
- (zc) any matter related, or reasonably incidental, to any of the following -
 - (i) the purposes of this Act under section 6;
 - (ii) the Minister's functions under section 7;
- (zd) any other matter contemplated by a provision of this Act.

20. Power of Secretary to make emergency maritime rules - (1) The Secretary may from time to time make emergency maritime rules for any purpose for which the Minister may make maritime rules under this Part, if the Secretary considers that -

- (a) Such rules are necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property; and
- (b) It is not practicable in the circumstances of the particular case for the Minister to make maritime rules to effectively alleviate or minimise the risk concerned.

(2) The Minister may revoke any emergency maritime rule and the revocation shall be notified as if it were an emergency rule.

21. Contravention of emergency maritime rule - (1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any emergency maritime rule made under section 20.

(2) Every person who commits an offence against subsection (1) is liable, -

- (a) In the case of an individual, to -
imprisonment to a term not exceeding 6 months; or
a fine not exceeding \$100,000; or
both.
- (b) In the case of a body corporate, to a fine not exceeding \$500,000.

Requirements in relation to maritime rules

22. Matters to be taken into account in making maritime rules - (1) In making any maritime rule, the Minister or the Secretary, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following -

- (a) The recommended international practices relating to maritime safety and to the health and welfare of seafarers;
- (b) The level of risk existing to maritime 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 maritime safety in the Cook Islands in general;
- (e) The need to maintain and improve maritime safety and security, including (but not limited to) personal security -
- (f) whether the proposed rule -
 - (i) assists economic development;
 - (ii) improves access and mobility;
 - (iii) promotes and protects public health;
 - (iv) ensures environmental sustainability;
- (f) the costs of implementing measures for which the rule is being proposed;
- (g) The international circumstances in respect of maritime safety;
- (h) Such other matters as the Minister or the Secretary, as the case may be, considers appropriate in the circumstances.

23. Further provisions relating to rules - The provisions of sections 158 to 162 apply in relation to rules made under this Part.

PART 4
POWERS AND DUTIES OF SECRETARY IN RELATION TO MARITIME
ACTIVITY

Powers in relation to maritime documents

24. Issue of maritime documents and recognition of documents - (1) After considering any application under section 18, the Secretary shall, as soon as practicable, grant the application if he or she is satisfied that -

- (a) All things in respect of which the document is sought or, in the case of an application for recognition of a document as a maritime document, all things to which the document relates, meet any relevant prescribed requirements; and
- (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 hold the relevant prescribed qualifications and experience or hold such qualifications as are acceptable to the Secretary under subsection (2); and
 - (ii) Are fit and proper persons to have such control or hold the document; and
 - (iii) Meet all other relevant prescribed requirements; and
- (c) It is not contrary to the interests of maritime safety for the document to be granted, renewed, or recognised.

(2) For the purpose of granting or renewing a maritime document, or recognising a document as a maritime document, the Secretary may, subject to any provisions in the maritime rules, recognise such qualifications or certifications as he or she considers appropriate in each case.

(3) In no case shall the Secretary recognise foreign qualifications or foreign certificates where -

- (a) The requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in the Cook Islands; and
- (b) The Secretary believes that to recognise such qualifications or certificates might pose a risk or danger to the safety of any person, to property, or to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Secretary under this section, the Secretary shall either -

- (a) Issue an equivalent maritime document under this section; or

- (b) Notify in writing such recognition.
- (5) It shall be a condition of every current maritime document issued or recognised by the Secretary that the holder shall continue to satisfy the fit and proper person criteria specified in subsection (1)(b)(ii).
- (6) Where the Secretary declines to grant an application under section 18, the applicant may appeal against that decision to the High Court under section 146.
- (7) Nothing in this section applies in respect of any vessel, crew, or maritime product in respect of which section 32 applies.

25. Acceptance of convention documents - (1) Subject to subsection (2), the Secretary shall accept every valid licence, permit, certificate, or other document issued or approved by a State, other than the Cook Islands, under a convention to which that State and the Cook Islands are both parties; and, for the purposes of this Act, such documents shall be deemed to be maritime documents.

(2) The Secretary shall not accept, or shall suspend acceptance of, any documents referred to in subsection (1) of this section where he or she has clear grounds for believing that -

- (a) The condition of the vessel or maritime product does not correspond substantially with the particulars of any document relating to the vessel or maritime product; or
 - (b) The condition of the vessel or maritime product has not been maintained in accordance with the provisions of any requirements leading to the issue of that document; or
 - (c) The vessel is not in all respects fit to proceed to sea without danger to the vessel or the persons on board or without presenting an unreasonable threat of harm to the marine environment; or
 - (d) The vessel or maritime product has been materially altered without the sanction of the State that issued or approved the document; or
 - (e) The document has been fraudulently obtained or the holder of the document is not the person to whom the document was originally issued.
- (3) Sections 18, 24, 26 to 34, 50, 51, 54 to 59, 129(b), and 129(c) shall not apply to any document referred to in subsection (1) of this section.
- (4) This section applies in respect of -
- (a) Every vessel, other than a Cook Islands vessel, registered in a country that is a party to any convention to which the Cook Islands is also a party;
 - (b) The crew of every vessel referred to in paragraph (a);
 - (c) The maritime products of every vessel referred to in paragraph (a).

26. Suspension of maritime documents or imposition of conditions - (1) The Secretary may from time to time -

- (a) Suspend any maritime document issued by the Secretary under this Act or under any maritime rules, or impose conditions in respect of any such maritime document; or
- (b) Suspend the Secretary's recognition as a maritime document of any document issued by another person or any organisation, or impose conditions in respect of such recognition,-

if he or she considers such action necessary in the interests of maritime safety, and if he or she -

- (c) Is satisfied that the holder has failed to comply with any conditions of the relevant maritime document or with the requirements of section 8; or
- (d) Is satisfied the holder has contravened or failed to comply with section 129; or
- (e) Is satisfied such action is necessary to ensure compliance with any provisions of this Act or any regulations or maritime rules made under this Act; or
- (f) Considers that the privileges or duties for which the document has been granted, or the relevant document has been recognised as a maritime document, are being carried out by the holder in a careless or incompetent manner.

(2) Without limiting the general provisions of subsection (1), the Secretary may suspend any maritime document, or the recognition of any document as a maritime document, relating to the use of any vessel, or maritime product, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the seaworthiness of the vessel or as to the quality or safety of the maritime product to which the document relates.

(3) Unless the suspension or the imposition of conditions is extended under subsection (4) or remains in force by virtue of subsection (6), the suspension of a maritime document, the suspension of recognition of a document as a maritime document, or the imposition of conditions under this section remains in force until -

- (a) The close of the 14th day after the date of the imposition of the suspension or conditions; or
- (b) The Secretary decides what action (if any) under subsection (4) or section 51 is to be taken, -

whichever happens first.

(4) Before the expiry of the 14-day period referred to in subsection (3)(a), the Secretary may, on the grounds set out in subsection (1) for action the Secretary may take under that subsection, do 1 or more of the following -

- (a) Extend the period of a suspension, or the period during which conditions apply, by a specified further period:
- (b) Impose, vary, or lift conditions;

- (c) Suspend the maritime document, or recognition of the document as a maritime document, for a specified period.
- (5) When a maritime document or recognition of a document as a maritime document is suspended or a maritime document is made subject to conditions under this section, the holder of the document or recognition must immediately produce the maritime document or the document of recognition to the Secretary, and -
 - (a) The Secretary must endorse the document to indicate the action taken under this section; and
 - (b) The Secretary may retain a document while it is suspended.
- (6) If notice of a proposed revocation of a maritime document or recognition of a document as a maritime document is given in accordance with section 34 either at the same time as the suspension of the document or recognition under this section is imposed or while the suspension is in force, the document or recognition to which the notice relates remains suspended until the Secretary finally decides whether to revoke the document or recognition under section 34.
- (7) The whole or any part of a maritime document, or the recognition of the whole or any part of a document recognised as a maritime 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 High Court under section 146.

27. Revocation of maritime documents - (1) If, at any time after an investigation is carried out to decide whether any action should be taken under section 26, the Secretary believes that any relevant maritime document or the recognition of a document as a maritime document should be revoked, the Secretary may revoke that document or the recognition of that document.

(2) Where the Secretary proposes to revoke a maritime document or the recognition of a document as a maritime document, the Secretary shall give notice in accordance with section 34, which shall apply as if the proposed revocation were a proposed adverse decision under this Act.

(3) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Secretary.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 146.

28. Amendment or revocation in other cases - (1) The Secretary may, -

- (a) If so requested in writing by the holder of any maritime document issued by the Secretary, amend or revoke the document as requested;
- (b) Amend any maritime document issued by the Secretary to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3), the Secretary may do any of the following -

- (a) Amend any maritime document issued by the Secretary 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 maritime document issued by the Secretary, or revoke the recognition of any document as a maritime 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.

(3) Before taking any action under subsection (2), the Secretary 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 a maritime 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 a maritime document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Secretary.

29. Suspension or revocation of maritime document where prescribed fees or charges unpaid - (1) Where any fee or charge payable under this Act or any regulations made under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Secretary may suspend the maritime document, or suspend recognition of the document as a maritime document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act or any regulations made under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Secretary may revoke the maritime document, or revoke recognition of the document as a maritime document, to which the fee or charge relates.

(3) Before undertaking any action under subsection (1) or subsection (2), the Secretary shall notify the holder of that document of -

- (a) The Secretary's intention to act under subsection (1) or subsection (2) of this section; and
- (b) The right of appeal available to the holder of that document in the event of the Secretary taking such action.

(4) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Secretary.

(5) Where a fee or charge is payable to the Ministry or the Secretary in respect of an application or the provision of a service, the Ministry or the Secretary, 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 Secretary, as the case may be, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 146.

30. Exemption - (1) The Secretary may, if, and upon such conditions as, he or she considers appropriate, exempt any person, vessel, or maritime product from any specified requirement in any maritime rule.

(2) The Secretary shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that -

(a) The granting of the exemption will not breach Cook Islands' obligations under any convention; and

(b) Either -

(i) the requirement has been substantially complied with and that further compliance is unnecessary; or

(ii) 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; or

(iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(c) The risk to safety will not be significantly increased by the granting of the exemption.

(3) Nothing in this section shall apply in any case where any maritime rule specifically provides that no exemptions are to be granted.

31. Powers of Secretary in relation to examinations, etc. - For the purposes of granting or renewing maritime documents in respect of personnel under this Act, the Secretary may set, conduct, and administer examinations and tests, and carry out such other functions in relation to such examinations and tests as may be necessary.

32. Criteria for action under section 26 or section 27 - (1) The provisions of this section shall apply for the purpose of determining whether a maritime document, or recognition of a document as a maritime document, should be suspended or made subject to conditions under section 26 or revoked under section 27.

(2) Where this section applies, the Secretary may have regard to, and give such weight as the Secretary 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 Cook Islands Court; or
 - (ii) the offence was committed before the commencement of this Act.
- (c) Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule made under this Act.

(3) The Secretary 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 Secretary may -

- (a) Seek and receive such information as the Secretary thinks fit; or
- (b) Consider information obtained from any source.

(5) If the Secretary proposes to take into account any information that is or may be prejudicial to a person, the Secretary shall, subject to subsection (6), unless there are reasonable grounds for not doing so, as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) shall require the Secretary to -

- (a) Disclose any information the disclosure of which would be likely to endanger the safety of any person; or
- (b) Disclose any information before -
 - (i) suspending a maritime document or suspending the recognition of a document as a maritime document; or
 - (ii) Imposing conditions in respect of a maritime document under section 26.

(7) If the Secretary determines not to disclose any relevant information, the Secretary must inform the person of the fact of non-disclosure and that the person may complain to the Ombudsman about that non-disclosure and;

- (i) where any complaint is received, the Ombudsman shall determine the complaint having regard to the purposes of the Act, any issues of confidentiality, the principles of natural justice and the national interests of the Cook Islands (including the maintenance of the law); and

- (ii) where the Ombudsman determines that the Secretary's refusal to release the information is unreasonable, the Ombudsman may order the release of the information on such conditions as the Ombudsman considers appropriate.

33. Criteria for fit and proper person - (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, or under the maritime rules, the Secretary shall, having regard to the degree and nature of the person's proposed involvement in maritime activities, have regard to, and give such weight as the Secretary 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 maritime regulatory requirements;
- (d) Any history of physical or mental health problems or serious behavioural problems;
- (e) Any conviction for any transport safety offence or for any offence relating to illegal or controlled drugs or relating to any prescription medicine, whether or not -
 - (i) the conviction was in a Cook Islands Court; or
 - (ii) the offence was committed before the commencement of this Act.
- (f) Any conviction for any offence involving violence, or causing danger to any person, or criminal damage, whether or not -
 - (i) the conviction was in a Cook Islands Court; or
 - (ii) the offence was committed before the commencement of this Act.
- (g) Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule.

(2) The Secretary shall not be confined to consideration of the matters specified in subsection (1) of this section and may take into account such other matters and evidence as may be relevant.

(3) The Secretary 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 Secretary thinks fit; and
- (b) Consider information obtained from any source.

(4) Subsection (1) applies to a body corporate with the following modifications -

- (a) Paragraphs (a), (b), (c), (e), (f), and (g) shall be read as if they refer to the body corporate and its officers;
- (b) Paragraph (d) shall be read as if it refers only to the officers of the body corporate.

(5) If the Secretary proposes to take into account any information that is or may be prejudicial to a person, the Secretary shall, subject to subsection (6), unless there are reasonable grounds for not doing so, as soon as is practicable, disclose that information to that person and, in accordance with section 34, give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) of this section shall require the Secretary to disclose any information the disclosure of which would be likely to endanger the safety of any person.

(7) If the Secretary determines not to disclose any relevant information, the Secretary must inform the person of the fact of non-disclosure and that the person may complain to the Ombudsman about that non-disclosure and -

- (a) Where any complaint is received, the Ombudsman shall determine the complaint having regard to the purposes of the Act, any issues of confidentiality, the principles of natural justice and the national interests of the Cook Islands (including the maintenance of the law) and
- (b) Where the Ombudsman determines that the Secretary refusal to release the information is unreasonable, the Ombudsman may order the release of the information on such conditions as the Ombudsman considers appropriate.

34. Notice to persons affected by proposed adverse decisions - (1) In this section, unless the context otherwise requires, -

“Adverse decision” means a decision of the Secretary to the effect that a person is not a fit and proper person for any purpose under this Act or under the maritime rules;

“Affected document holder” in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the maritime document;

“Person directly affected”, in relation to any adverse decision, means the person who would be entitled under section 146 to appeal against that adverse decision;

“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 33, means the person whom the Secretary assesses as not being a fit and proper person.

(2) Where the Secretary proposes to make an adverse decision under this Act in respect of any person, the Secretary, by notice in writing, shall -

- (a) Notify the person directly affected by the proposed decision of the proposed decision; and
- (b) Subject to subsection (4) of this section, inform that person of the grounds for the proposed decision; and
- (c) Specify a date by which submissions may be made to the Secretary in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and
- (d) Where appropriate, specify the date on which the proposed decision will, unless the Secretary otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and
- (e) Notify the person of the person's right of appeal under section 146, in the event of the Secretary 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 Secretary gives a notice under subsection (2) of this section, the Secretary -

- (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 Secretary 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 33(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 Secretary in relation to the proposed decision is received by the Secretary within the period specified in the notice under subsection (2)(c) of this section, or within such further period as the Secretary may allow;
- (b) The Secretary may consider any information supplied by that person after the expiry of the period referred to in paragraph (a) of this subsection, other than information requested by the Secretary and supplied by that person within such reasonable time as the Secretary may specify;
- (c) The Secretary shall consider any submissions made in accordance with paragraph (a) of this subsection, other than information requested by the Secretary and supplied pursuant to a request referred to in paragraph (b) of this subsection.

(6) After considering the matters referred to in subsection (5) of this section, the Secretary 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 this section, of -
 - (i) The Secretary's decision and the grounds for the decision; and
 - (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 section 24(6) or section 26(8) or section 27(4)).

Suspension of seafarers from employment

35. Suspension from employment - (1) The Secretary may suspend from employment on a Cook Islands vessel any person who is not required by this Act or regulations or rules made under this Act to be in possession of a maritime document, where -

- (a) The Secretary considers such action necessary in the interests of maritime safety; and

- (b) Either -
 - (i) The person is convicted for any offence relating to-
 - (A) Illegal or controlled drugs or any prescription medicine; or
 - (B) Violence, or causing danger to any person, or criminal damage, -

whether or not the conviction was in a Cook Islands Court or the offence was committed before the commencement of this Act; or

- (ii) The person has been dismissed from employment in circumstances that would give rise to a duty to report the dismissal under section 11;

(2) Where the Secretary proposes to suspend any person under this section, the Secretary shall give the person notice in accordance with, and shall adopt the procedure set out in, section 34, which shall apply as if the proposed suspension was a proposed adverse decision under this Act.

(3) The Secretary may suspend a person under this section for any period the Secretary thinks fit and may impose such conditions on the re-employment of that person as the Secretary thinks fit.

(4) The Secretary shall maintain a list of persons suspended under this section, and employers of seafarers or potential employers of seafarers may ask the Secretary to ascertain whether a particular person is a suspended person and the Secretary shall advise that employer or potential employer accordingly.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision under section 146.

36. Suspended persons not to be employed - (1) No person shall employ on board a Cook Islands vessel, or any vessel involved in coastal shipping, a person who has been suspended under section 35.

(2) No person who has been suspended under section 35 shall offer himself or herself for employment on board a Cook Islands vessel, or any vessel involved in coastal shipping.

(3) Every person commits an offence who, without reasonable excuse, contravenes this section.

(4) Every person who commits an offence against subsection (3) is liable, -

(a) In the case of an individual, to a fine not exceeding \$10,000;

(b) In the case of a body corporate, to a fine not exceeding \$50,000.

Inspection, detention, and rectification.

37 Inspections and audits - (1) The Secretary may in writing require any person who -

- (a) Holds a maritime document; or
- (b) Operates, maintains, or services, or does any other act in respect of any vessel or maritime product, -

to undergo or carry out such inspections and such audits as the Secretary considers necessary in the interests of maritime safety or the health or safety of seafarers or for the purposes of any provision of any of Parts 1 to 9.

(2) The Secretary may, in respect of any person described in subsection (1), carry out such inspections and audits as the Secretary considers necessary in the interests of maritime safety, protection of the marine environment, or the health or safety of seafarers.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Secretary may, in writing, -

- (a) Require from that person such information as the Secretary considers relevant to the inspection or audit;
- (b) Require that person to demonstrate to the Secretary the familiarity of the master or crew with essential shipboard procedures for the safe operation of the vessel;
- (c) Require that person to demonstrate to the Secretary that any operational, maintenance, servicing or environmental protection procedure in respect of a vessel or a maritime product is capable of being carried out in a competent manner.

38. Detention, etc, of vessels and maritime products - (1) The Secretary may from time to time do all or any of the following -

- (a) Detain any vessel or any vessel of a particular class;
- (b) Seize any maritime product or any maritime product of a particular class;
- (c) Prohibit or impose conditions on the use or operation of any vessel or any vessel of a particular class, or the use of any maritime product or any maritime product of a particular class -
- (d) Impose conditions on the release from detention or seizure of the vessel or maritime product.

(2) The powers under subsection (1) of this section may be exercised where the Secretary believes on clear grounds that -

- (a) The operation or use of any vessel or maritime product or class of vessel or maritime product, as the case may be, endangers or is likely to endanger any person, property, or the marine environment, or is hazardous to the health or safety of any person, or the marine environment; or

- (b) The appropriate prescribed maritime document is not for the time being in force in respect of the vessel, or the master or any member of the crew of that vessel, or the maritime product, as the case may be; or
- (c) Any maritime document required by maritime rules in respect of the vessel or maritime product, as the case may be, has expired; or
- (d) The conditions under which a maritime document in respect of a vessel or maritime product was issued or recognised, or the requirements of that document, are not being met; or
- (e) The watchkeeping requirements specified for a vessel by the State in which the vessel is registered are not being met; or
- (f) The conditions imposed under paragraph (c) or paragraph (d) of that subsection are not being met.

(3) The powers under subsection (1) may also be exercised where the Secretary is satisfied, on clear grounds, that the master is not, or crew are not, familiar with essential shipboard procedures for the safe operation of the vessel as that may relate to any person, property, or the marine environment.

(4) Nothing in this section shall permit the Secretary to detain a vessel where that detention would constitute a breach of any convention.

(5) Any detention or seizure under subsection (1) shall be maintained for only such time as is necessary in the interests of maritime operational or environmental safety or the health or safety of any person; but, if vessels, maritime products, or parts thereof are required for the purpose of evidence in any prosecution under this Act, those vessels, products, or parts thereof may be retained by the Secretary for such period as the Secretary considers necessary for that purpose.

(6) The Secretary shall, if requested by the owner or the person for the time being in charge of a vessel detained or a maritime product seized under subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 146.

(8) For the purpose of subsection (1), the Secretary shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Secretary considers appropriate in the circumstances.

(9) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition notified under this section.

(10) Every person who commits an offence against subsection (9) is liable -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or

- (ii) a fine not exceeding \$25,000; or
- (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$100,000.

39. Costs of detention, etc. - (1) Where the Secretary acts under section 38 to detain a vessel, the provisions of section 172 shall apply to the costs of and incidental to the detention.

(2) Where the Secretary acts under section 38 to seize a maritime product, the Ministry may recover from the owner of such maritime product all reasonable costs of and incidental to such seizure.

(3) The Ministry is liable to pay to the owner of a vessel or a maritime product compensation for any loss resulting from the Secretary unduly detaining the vessel or maintaining the seizure of a maritime product.

(4) The Ministry is liable to pay to the owner of a vessel or maritime product compensation for any loss resulting from the Secretary unduly delaying the vessel or the use of the maritime product.

(5) Where the Secretary has taken action under section 38 on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Ministry for all costs for which the Ministry is liable under this section.

Investigation of accidents, incidents, and mishaps

40. Investigation of accidents, incidents, and mishaps by Secretary - (1) Where an accident, incident, or mishap occurs that is required to be notified to the Ministry under section 14, the Secretary may investigate the accident, incident, or mishap.

(2) When an accident, incident, or mishap is under investigation by the Secretary, the Secretary shall be in charge of that investigation.

(3) The Secretary shall permit the participation or representation of foreign states in any investigation in which they have an interest.

(4) Except with the consent of the Secretary, which consent shall not be unreasonably withheld, no person (other than the Cook Islands Police) shall -

- (a) Participate in any investigation if the Secretary is in charge of the investigation; or
- (b) Undertake any independent investigation at the site of any accident, incident, or mishap that the Secretary is in charge of investigating; or
- (c) Examine or cause to be examined any material removed from the site of any accident, incident, or mishap that the Secretary is in charge of investigating.

(5) Where the Secretary refuses consent under subsection (4), he or she shall give the applicant a statement in writing of the reasons for his or her refusal.

41. Powers of investigation of Secretary - (1) For the purposes of investigating under section 40 an accident, incident, or mishap, the Secretary (or a person authorised for the purpose by the Secretary), may -

- (a) Make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the accident, incident, or mishap;
- (b) Issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation;
- (c) Take possession of and remove any such document or thing from the place where it is kept for such period of time as is reasonable in the circumstances;
- (d) Require a person to reproduce, or to allow the Secretary (or authorised person) to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

(2) Nothing in subsection (1) shall be construed so as to require any person to provide any answer tending to incriminate them.

(3) A summons under this section may be served in accordance with the provisions of section 49 of the Ship Registration Act 2007.

(4) For the purposes of this section, "document" means a document in any form; and includes -

- (a) Any writing on or in any material; and
- (b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) A record, book, graph, or drawing; and
- (d) A photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

(5) A person who fails without reasonable cause to comply with a requirement made under subsection (1) commits an offence and is liable to -

- (a) a fine not exceeding \$100,000; or
- (b) imprisonment for a term not exceeding 12 months; or
- (c) both.

42. Additional powers of investigation - Without limiting the powers conferred by section 41, for the purpose of exercising any of the functions, duties, or powers of the Secretary under this Act, the Secretary and any person authorised in writing for the purpose by the Secretary shall, in addition to any other powers conferred by this Act, have power to do the following -

- (a) Where the Secretary believes on reasonable grounds that it is necessary to preserve, locate, or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any vessel, place, maritime product, or any other thing involved in any manner in an accident, incident, or mishap, to prohibit or restrict access of persons or classes of persons to the site of any accident, incident, or mishap;
- (b) To seize, detain, remove, preserve, protect, or test any vessel, maritime product, or any thing that the Secretary believes on reasonable grounds will assist in establishing the cause of an accident, incident, or mishap;
- (c) Do all such acts and things and to give such directives as are necessary for the purpose of exercising any power afforded under this Act.

Powers and provisions relating to pilots

43. Master to ensure rules relating to pilotage are complied with - (1) The master of a vessel must ensure that a pilot is taken on board the vessel in accordance with and whenever required by maritime rules.

(2) Despite anything in maritime rules, the Secretary may direct that a pilot be taken on board a vessel in Cook Islands waters if the Secretary is satisfied that, in the circumstances (such as the weather conditions, damage to the vessel, or incapacity of the master), the interests of navigation safety or marine environmental protection require that a pilot be taken on board.

(3) A direction under subsection (2) must, whenever practicable, be in writing and must be given to the owner or master of the vessel to which it applies.

(4) Once a direction is given under subsection (2), the vessel may not proceed from or enter a port in the Cook Islands without a pilot on board if to do so is contrary to that direction or to a provision of the maritime rules.

44. Limitation of liability where pilot engaged - (1) Any person, including the Crown, who provides a pilot is not liable for any neglect or want of skill of the pilot.

(2) The owner or master of a vessel navigating under circumstances in which pilotage is required is answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner and to the same extent as that person would be if pilotage were not required.

(3) A pilot is not liable for neglect or want of skill while on board a vessel and acting as a pilot.

PART 5
OFFENCES IN RELATION TO MARITIME ACTIVITY

Safety Offences

45. Unnecessary danger caused by holder of maritime document - (1) Every holder of a maritime 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 or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(2) Every person who commits an offence against subsection (1) is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 2 years; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$250,000;
- (c) In any case, to an additional penalty under section 132.

46. Dangerous activity involving vessels or maritime products - (1) Every person commits an offence who -

- (a) Operates, maintains, or services; or
- (b) Does any other act in respect of -

any vessel or maritime product in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(2) Every person commits an offence who -

- (a) Causes or permits any vessel or maritime product to be operated, maintained, or serviced; or
- (b) Causes or permits any other act to be done in respect of any vessel or maritime product, -

in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 2 years; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$250,000;
- (c) In any case, to an additional penalty under section 132.

47. Proceeding without pilot contrary to maritime rules or direction given under section 43 - (1) If a vessel proceeds without a pilot in contravention of section 43, the owner and master of the vessel each commits an offence and is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$250,000;
- (c) In any case, to an additional penalty under section 132.

(2) Notwithstanding section 161(5), a contravention of a maritime rule in circumstances to which section 43(1) applies is an offence against this section.

48. Effect of breach of maritime rule - (1) Where any person is charged with any offence against section 45 or section 46 and the Court is satisfied that any act or omission of that person, or caused or permitted by that person, constitutes a breach of a relevant maritime rule, then, in the absence of proof to the contrary, it shall be presumed that the act or omission caused unnecessary danger or risk to another person or to property, irrespective of whether or not in fact any injury or damage occurred.

(2) Nothing in this section shall be construed so as to require the proof of a breach of a maritime rule as an element of any offence described in section 45 or section 46.

49. 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 a vessel, maritime product, or any other facility or product used in or connected with maritime activities, 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) is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$250,000.

(3) Where the commission of an offence against subsection (1) of this section causes financial loss to any person and 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.

Offences in relation to maritime document

50. Acting without necessary maritime document - (1) Every person commits an offence who -

(a) Operates, maintains, or services; or
(b) Does any other act in respect of -
any vessel or maritime product, without holding the appropriate current maritime document.

(2) Every person commits an offence who -
(a) Operates, maintains, or services; or
(b) Does any other act in respect of -
any vessel or maritime product knowing that a current maritime document is required to be held in respect of that vessel or product before that act may lawfully be done and knowing that the appropriate document is not held.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable, -

- (a) In the case of an individual, to;
(i) imprisonment for a term not exceeding 12 months;
or
(ii) a fine not exceeding \$100,000; or
(iii) both.
(b) In the case of a body corporate, to a fine not exceeding \$250,000;
(c) In any case, to an additional penalty under section 132.
(4) For the purposes of this section, -
(a) A maritime document is not a current maritime document if it is for the time being suspended under this Act;
(b) A maritime document is not a current maritime document in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Act.

51. Applying for maritime document while disqualified - (1) Every person commits an offence who applies for or obtains a maritime document while disqualified by an order of the High 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) is liable, -

- (a) In the case of an individual, to:
(i) imprisonment for a term not exceeding 6 months; or
(ii) a fine not exceeding \$10,000; or
(iii) both.
(b) In the case of a body corporate, to a fine not exceeding \$25,000 -

and the Court may order the person to be further disqualified from holding or obtaining a maritime document for such period not exceeding 12 months as the Court thinks fit.

Other offences

52. Failure to comply with inspection or audit request - (1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Secretary under subsection (1) or subsection (3) of section 37.

(2) Every person who commits an offence against subsection (1) of this section is liable, -

- (a) In the case of an individual, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence is continued;
- (b) In the case of a body corporate, to a fine not exceeding \$250,000 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;
- (c) In any case, to an additional penalty under section 132;

53. Failure to comply with Part 2 - (1) Every person commits an offence who, without reasonable excuse, contravenes or fails to comply with any provision of any of sections 11, 12, 13, and 14.

(2) Every person who commits an offence against subsection (1) of this section is liable, -

- (a) In the case of an individual, to a fine not exceeding \$10,000;
- (b) In the case of a body corporate, to a fine not exceeding \$50,000.

Disqualification

54. Court may disqualify holder of maritime document or impose conditions on holding of document - (1) In addition to any penalty a Court may impose under section 45 or section 46 or section 52, the Court, on convicting any person of an offence against any of those sections, may by order do all or any of the following, namely, -

- (a) Disqualify the person convicted from holding or obtaining a maritime document, or a particular maritime document, issued by the Secretary;
- (b) Impose on any maritime 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 36 months as the Court thinks fit.

(2) Nothing in subsection (1) of this section shall affect or prevent the exercise by the Secretary of his or her powers under Part 4.

55. Effect of disqualification - (1) Where the holder of a maritime document is disqualified by an order of the High Court from holding or obtaining a maritime 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) Where the holder of a maritime document is disqualified by an order of the High Court from holding or obtaining such 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 Secretary may from time to time specify.

56. Commencement of period of disqualification - Where an order is made by a Court disqualifying any person for a period from holding or obtaining a maritime 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.

57. Retention and custody of documents - (1) Where, by an order of the High Court, the holder of a maritime 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 -

- (a) The Court; or
- (b) The Ministry.

(2) Where a maritime document is so surrendered, it shall forthwith be forwarded to the Secretary who 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 55(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.

58. Removal of disqualification - (1) Subject to this section, any person who by order of the High Court is disqualified for a period exceeding 6 months from holding or obtaining a maritime document, or is disqualified from being recognised as the holder of a maritime document, may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the High Court by which that order was made to remove the disqualification.

(2) On an application under this section, the High 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) Notice of every application under this section shall be served on the Secretary who shall have a right to appear and be heard in respect of the matter.

59. Particulars of disqualification orders, etc., to be sent to Secretary

Where the High Court makes an order under section 54 or section 58, the Registrar of the High Court shall send to the Secretary particulars of the order.

60. Appeals - (1) Any order of the High Court by which any person is disqualified from holding or obtaining a maritime 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 High Court may, if it thinks fit, stay the order pending the appeal, but otherwise the order shall have immediate effect.

(2) Any person whose application under section 58 to the High Court is refused may, appeal to the Court of Appeal against the refusal.

(3) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the High Court that is or includes an order of disqualification, the Court of Appeal 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.

(4) Where an appeal to the Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Secretary who shall have a right to appear and be heard in respect of the matter.

(5) In determining the expiration of the period for which a person is disqualified from holding or obtaining a maritime document, any time during which the operation of the relevant order is deferred under this section shall be disregarded.

PART 6

LIABILITY OF VESSEL OWNERS AND OTHERS

61. Application of this Part - This Part applies to every vessel (whether registered or not and whether a Cook Islands vessel or not) in any circumstances in which the High Court has jurisdiction under the Admiralty Act 2004.

62. Interpretation - In this Part, unless the context otherwise requires, -

“Limitation of liability” means limitation of the aggregate amount of liability of any one or more persons in accordance with this Part;

“Owner”, in relation to a vessel, -

- (a) Means every person who owns the vessel or has any interest in the ownership of the vessel;
- (b) In any case where the vessel has been chartered, means the charterer;
- (c) In any case where the owner or charterer is not responsible for the navigation and management of the vessel, includes every person who is responsible for the navigation and management of the vessel;

“Salvage” includes all expenses properly incurred by the salvor in the

performance of the salvage services;

“Salvage operations” or “salvage services” includes -

- (a) Operations in respect of the raising, removal, destruction, or rendering harmless of a vessel which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a vessel;
- (b) Operations in respect of the removal, destruction, or rendering harmless of the cargo of a vessel;
- (c) Measures taken in order to avert or minimise any loss or injury or damage in respect of which liability may be limited in accordance with this Part;

“Salvor”, in relation to a vessel, means every person rendering services directly connected with salvage operations carried out in relation to that vessel;

“Vessel” means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a vessel or part of a vessel; and also includes any vessel used by or set aside for the Cook Islands Government.

63. Persons entitled to limitation of liability under this Part - (1) Subject to subsection (2), the following persons are entitled to limit their liability in accordance with this Part -

- (a) Owners of vessels, and any master, seafarer, or other person for whose act, omission, neglect, or default the owner of the vessel is responsible;
- (b) Salvors, and any employee of a salvor or other person for whose act, omission, neglect, or default the salvor is responsible;
- (c) Insurers of liability for claims subject to limitation of liability, to the extent that the person assured is entitled to such limitation.

(2) No person shall be entitled to limitation of liability in respect of claims for loss or injury or damage resulting from that person's personal act or omission where the act or omission was committed, or omitted, with intent to cause such loss or injury or damage, or recklessly and with knowledge that such loss or injury or damage would probably result.

64. Claims subject to limitation of liability - (1) No person who is entitled to limitation of liability shall be liable for an amount greater than the relevant limit calculated in accordance with section 65 in respect of claims for loss or injury or damage arising on any distinct occasion, being, in relation to any vessel, -

- (a) Claims in respect of -
 - (i) loss of life or personal injury; or

- (ii) loss of or damage to property (including damage to harbour works, basins and waterways, and aids to navigation), -

where the loss or injury or damage occurs on board the vessel or is directly connected with the operation of the vessel or with salvage operations, or is consequential upon any such loss or injury or damage; or

- (b) Claims in respect of loss or damage resulting from delay in the carriage by sea of cargo, passengers, or luggage; or
 - (c) Claims in respect of loss or damage resulting from infringement of rights other than contractual rights, where the loss or damage is directly connected with the operation of the vessel or salvage operations; or
 - (d) Claims in respect of the raising, removal, destruction, or rendering harmless of a vessel which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a vessel; or
 - (e) Claims in respect of the removal, destruction, or rendering harmless of the cargo of a vessel; or
 - (f) Claims of a person (other than the person liable) in respect of measures taken in order to avert or minimise any loss or injury or damage for which the person liable is entitled to limitation of liability, including claims for further loss or injury or damage caused by the taking of such measures.
- (2) Notwithstanding anything in subsection (1), -
- (a) The following claims shall not be subject to limitation of liability under this Act -
 - (i) claims for salvage or contribution in general average;
 - (ii) claims for pollution damage;
 - (iii) claims in respect of nuclear damage; and
 - (b) Claims in respect of the matters specified in paragraphs (d), (e), and (f) of that subsection shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.
- (3) The limitation of liability under this Part -
- (a) Applies to the aggregate of relevant claims arising on any distinct occasion -
 - (i) against the owner of the vessel, and any seafarer or other person for whose act, omission, neglect, or default the owner is responsible; or
 - (ii) against the owner of a vessel rendering salvage services, and the salvor operating from that vessel, and any employee of the salvor or other person for whose act, omission, neglect, or default that owner or salvor is responsible; or

- (iii) against a salvor who is not operating from a vessel, or is operating solely on the vessel to or in respect of which the salvage services are rendered, and any employee of the salvor or other person for whose act, omission, neglect, or default the salvor is responsible; and
 - (b) Relates to all relevant claims for loss or injury or damage arising on any distinct occasion, whether or not the loss or injury or damage is sustained by more than one person; and
 - (c) Applies in respect of each distinct occasion, without regard to any liability arising on any other distinct occasion; and
 - (d) Applies, subject to subsection (4), whether the liability arises at common law or under any other enactment, and notwithstanding anything in any other enactment.
- (4) This section shall not limit or affect section 81, Part VI of the Ports Authority Act 1994-95, or Part V of the Prevention of Marine Pollution Act 1998.

65. Calculation of limits of liability - (1) Subject to subsection (4), the limit of liability for the purposes of this Part in respect of claims for loss of life or personal injury (other than claims specified in subsection (2) of this section) shall be as follows -

- (a) In the case of a vessel of not more than 300 gross tons, 166,677 units of account;
 - (b) In the case of a vessel of more than 300 gross tons, but not more than 500 gross tons, 333,000 units of account;
 - (c) In the case of a vessel of more than 500 gross tons, 333,000 units of account plus a further number of units of account calculated as follows -
 - (i) for each gross ton of the vessel from 501 to 3,000 tons, 500 units of account; and
 - (ii) for each gross ton of the vessel from 3,001 to 30,000 tons, 333 units of account; and
 - (iii) for each gross ton of the vessel from 30,001 to 70,000 tons, 250 units of account; and
 - (iv) for each gross ton of the vessel in excess of 70,000 tons, 167 units of account.
- (2) The limit of liability of the owner of a vessel (including any person for whom that owner is responsible) in respect of claims for the loss of life of, or injury to, passengers of that vessel, shall be 46,666 units of account multiplied by the number of passengers which the vessel is authorised to carry, up to a maximum limit of 25,000,000 units of account.
- (3) The limit of liability in respect of any claim other than a claim for which a limit is set under subsection (1) or subsection (2) shall be -
- (a) In the case of a vessel of not more than 300 gross tons, 83,333 units of account;

- (b) In the case of a vessel of more than 300 gross tons, but not more than 500 gross tons, 167,000 units of account;
 - (c) In the case of a vessel of more than 500 gross tons, 167,000 units of account plus a further number of units of account calculated as follows -
 - (i) for each gross ton of the vessel from 501 to 30,000 tons, 167 units of account; and
 - (ii) for each gross ton of the vessel from 30,001 to 70,000 tons, 125 units of account; and
 - (iii) for each gross ton of the vessel in excess of 70,000 tons, 83 units of account.
- (4) Where the amount available under the limit of liability calculated in accordance with subsection (1) is insufficient to pay all relevant claims under that subsection in full, -
- (a) The amount available under the limit calculated in accordance with subsection (3) shall also be available for payment of the unpaid balance of any such claims; and
 - (b) That unpaid balance shall rank rateably with claims under subsection (3).
- (5) For the purposes of this section, -
- (a) The limits of liability for any salvor not operating from any vessel, or for any salvor operating solely on the vessel to or in respect of which the salvor is rendering salvage services, shall be calculated as if the salvor were operating from a vessel of 1,500 gross tons;
 - (b) The tonnage of a vessel shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Vessels 1969, and regulations and maritime rules made under this Act;
 - (c) Where the gross tonnage of a vessel is unable to be ascertained, -
 - (i) the Secretary, on receiving from or by the direction of the High Court hearing the case in which the tonnage of the vessel is in question such evidence of the dimensions of the vessel as is available, shall estimate what the gross tonnage of the vessel would have been if the vessel had been duly measured in accordance with the relevant tonnage measurement rules, and give a certificate of the tonnage as estimated by the Secretary; and
 - (ii) the tonnage so estimated shall be taken to be the gross tonnage of the vessel.

- (d) The reference in subsection (2) to claims for the loss of life of, or personal injury to, passengers of a vessel refers to claims brought by, through, or on behalf of any person carried in that vessel -
 - (i) under a contract of passenger carriage; or
 - (ii) who, with the consent of the carrier, was accompanying a vehicle or live animals carried under a contract for the carriage of goods.

66. Units of account - (1) For the purposes of determining the monetary value of the number of units of account calculated in any case to be the relevant limit of liability under this Act, -

- (a) The units of account shall be converted to their monetary value according to the value of New Zealand currency at the date on which the limitation fund is constituted, or payment is made on the claims, or satisfactory security for any such payment is given; and
- (b) The value of New Zealand currency in terms of the special drawing right shall be treated as equal to such a sum in New Zealand currency as is fixed by the International Monetary Fund as being the equivalent of one special drawing right for -
 - (i) the relevant date; or
 - (ii) if no sum has been fixed for that date, the last preceding date for which a sum has been so fixed.

(2) For the purposes of subsection (1)(b), a certificate given by or on behalf of the Financial Secretary stating -

- (a) That a particular sum in New Zealand currency has been fixed as the equivalent of one special drawing right for a particular date; or
- (b) That no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date, -

shall, in any proceedings, be received in evidence and, in the absence of proof to the contrary, be sufficient evidence of the value of New Zealand currency for the purposes of subsection (1)(b).

67. Court may consolidate claims - (1) Where 2 or more claims are made or expected against any person who is alleged to have incurred liability in respect of any claim of a kind referred to in section 71(2), that person may apply to the High Court to have the claims consolidated.

- (2) On any such application, the Court may -
 - (a) Determine the amount of the applicant's liability, and distribute that amount rateably among the several claimants; and

- (b) Stay any other proceedings pending in the same or any other Court in relation to the same matter; and
- (c) Proceed in such manner and give such directions relating to the joining or excluding of interested persons as parties, the giving of security, the payments of costs, or otherwise, as the Court thinks just.

68. Part owners to account in respect of damages - All sums paid for or on account of any loss or damage in respect of which the liability of owners is limited under this Part, and all costs incurred in relation to that loss or damage, may be brought into account among those part owners of the same vessel who are jointly and severally liable in the same manner as money disbursed for the use of that vessel.

69. Release of vessel where security given - (1) Where any vessel or other property is arrested or seized in respect of a claim that appears to be one for which liability is limited by this Part, or security has been given to prevent or obtain release from any such arrest or seizure, the High Court may, on the application of the owner of the vessel or other property or any other person having an interest in the ownership of the vessel or other property, order the release of the vessel, property, or security if the conditions specified in subsection (2) are met.

(2) The conditions for the making of an order under subsection (1) are as follows -

- (a) That security of a kind that, in the opinion of the Court, is satisfactory (in this section referred to as the guarantee) has previously been given, whether in the Cook Islands or elsewhere, in respect of the claim; and
- (b) That the Court is satisfied -
 - (i) that if the claim is established the amount of the guarantee will in fact be available to the claimant; and
 - (ii) that the amount, either by itself or together with any further security that the Court may require to be given, is at least equal to the maximum amount that may be allowed to the claimant in accordance with the provisions of sections 64 and 65.

PART 7

LIABILITY WHERE TWO OR MORE VESSELS INVOLVED

70. Application of this Part - This Part applies to every vessel (whether registered or not and whether a Cook Islands vessel or not) in any circumstances in which the High Court has jurisdiction under the Admiralty Act 2004.

71. Interpretation - (1) In this Part, unless the context otherwise requires, -

“Owner”, in relation to a vessel at fault, means every person who owns the vessel or any interest in the vessel; and includes every other person who is responsible for the fault of the vessel; and in any case where, by virtue of any charter or demise or for any other reason, the owner is not responsible for the navigation and management of the vessel, also includes every person who is responsible for the navigation and management of the vessel;

“Salvage services” has the same meaning as in section 62;

“Vessel” means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a vessel or part of a vessel; and also includes any vessel used by or set aside for the Cook Islands Government.

(2) In this Part, reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

72. Division of loss - (1) Subject to the succeeding provisions of this section, where, by the fault of 2 or more vessels, damage or loss is caused to one or more of them, or to their cargoes or freight, or to any other property on board, the liability to make good the damage or loss shall be in proportion to the degree to which each vessel was at fault.

(2) If, in any case to which subsection (1) applies, it is not possible to establish different degrees of fault, having regard to all the circumstances of the case, the liability shall be apportioned equally.

(3) Nothing in this section shall -

- (a) Render any vessel liable for any loss or damage to which the fault of that vessel has not contributed; or
- (b) Affect the liability of any person under a contract of carriage, or any other contract; or
- (c) Impose any liability upon any person from which that person is exempted by any contract or by any provision of law; or
- (d) Affect the right of any person to limit that person's liability in the manner provided by law.

73. Damages for personal injury (1) Subject to subsection (2), where, by the fault of 2 or more vessels, any person on board one of the vessels is killed or injured, the liability of the owners of the vessels shall be joint and several.

- (2) Nothing in subsection (1) shall -
 - (a) Deprive any person of any right of defence on which, had this section not been enacted, that person might have relied in an action brought against that person by the injured person or by any person entitled to sue in respect of the death of any person on board; or
 - (b) Affect the right of any person to limit that person's liability in the manner provided by law.

74. Right of contribution - (1) Subject to subsection (2), where, by the fault of 2 or more vessels, any person on board one of the vessels is killed or injured, and a proportion of the damages is recovered against the owners of one of the vessels that exceeds the proportion in which that vessel was at fault, those owners may recover the amount of the excess by way of contribution from the owners of the other vessel or vessels to the extent to which those vessels were respectively at fault.

(2) No amount shall be recovered under subsection (1) that could not, by reason of any statutory or contractual limitation of or exemption from liability, or for any other reasons, have been recovered in the first instance as damages by the persons entitled to sue for damages.

(3) In addition to any other remedy provided by law, the persons entitled to any contribution under this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

75. Limitation of actions - (1) Subject to subsections (3) and (4), no action may be brought to enforce any claim or lien against a vessel (the defendant vessel) or the owners of the vessel, if the action concerns -

- (a) Any damage or loss to another vessel, or to cargo or freight of another vessel, or to any other property on board another vessel, that was caused wholly or partly by the fault of the defendant vessel; or
- (b) Damages for loss of life or personal injuries suffered by any person on board another vessel, that were caused wholly or partly by the fault of the defendant vessel, -

unless proceedings are commenced within 2 years after the date when the damage or loss or injury was caused.

(2) Subject to subsections (3) and (4), no action shall be maintainable under section 74 to recover any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within 1 year after the date of payment.

(3) If, in any case to which subsection (1) or subsection (2) applies, the High Court is satisfied that there has not been a reasonable opportunity to arrest the defendant vessel -

- (a) At any port in the Cook Islands; or
- (b) Within Cook Islands waters; or

- (c) Locally within the jurisdiction of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his or her principal place of business, -

within the period specified by subsection (1) or (as the case may require) subsection (2), the Court shall, on the application of the plaintiff, extend that period to an extent sufficient to give such a reasonable opportunity.

(4) Without limiting subsection (3), in any case to which subsection (1) or subsection (2) applies, the High Court may, in accordance with rules of Court, extend the period referred to in the appropriate one of those subsections to such extent and on such conditions as it thinks fit.

(5) This section shall not apply to proceedings in respect of any alleged fault of a vessel used by or set aside for the Cook Islands Police.

(6) Subsection (3) shall not apply to any vessels of the Crown.

(7) This section shall not limit or affect section 81 or anything in Part VI of the Ports Authority Act 1994-95, or Part V of the Prevention of Marine Pollution Act 1998.

PART 8

WRECK OF VESSELS AND AIRCRAFT

76. Interpretation - In this Part, unless the context otherwise requires, -

“Cook Islands waters” means -

- (a) Any part of the sea within the outer limits of the Exclusive Economic Zone of the Cook Islands;
 - (b) Any internal waters of the Cook Islands
- but does not include any port.

“Wreck” includes -

- (a) Any vessel or aircraft which is abandoned, stranded, or in distress, or any equipment or cargo or other articles belonging to or separated from any such vessel or aircraft or belonging to or separated from any vessel or aircraft which is lost; and
- (b) Shipping containers and property lost overboard or similarly separated from a vessel, other than cargo lost in the course of its unloading or discharge from the vessel while the vessel is in a port.

Vessels and aircraft in distress

77. Powers and duties of Secretary where vessel or aircraft in distress - (1) If any vessel or aircraft is wrecked, stranded, or in distress at any place on, over, or near any Cook Islands waters, the Secretary may give such directions as he or she thinks fit for the

preservation of all or any of the following -

- (a) The vessel or aircraft;
 - (b) The lives of the passengers and crew (who are in this Part referred to as the shipwrecked persons);
 - (c) The equipment and cargo of the vessel or aircraft.
- (2) The Secretary may, with a view to the preservation of the lives of the shipwrecked persons or of the vessel or aircraft or of its cargo or equipment, -
- (a) Require such persons, as the Secretary thinks necessary, to assist him or her;
 - (b) Require the master or other person having the charge of any vessel near at hand to give such aid with his or her crew or vessel as may be within the master's power;
 - (c) Demand the use of any vehicle that may be near at hand.
- (3) Every person commits an offence who -
- (a) Wilfully disobeys the lawful direction of the Secretary; or
 - (b) Refuses without reasonable cause to comply with any lawful requisition or demand made by the Secretary under this section.
- (4) No power conferred by this section shall be exercised so as to conflict with the exercise of a lawful power, or directions given by any other person.
- (5) The Secretary may recover as a debt due from the owner of the vessel or aircraft, or of the cargo or equipment, the costs of his or her intervention under this section in respect of that vessel, aircraft, cargo, or equipment, other than costs in respect of the preservation of life.

78. Responsibility of owner of vessel or aircraft in distress - (1) If any vessel or aircraft is wrecked, stranded, or in distress at any place on or over or near Cook Islands waters, and the Secretary notifies the owner of the vessel or aircraft that he or she considers that the vessel or aircraft, or its equipment or cargo, is a hazard to navigation, the owner must make arrangements to secure and remove the hazard.

(2) This section is subject to section 77 and nothing in this section affects or limits any right, privilege, or power exercisable in relation to a vessel or aircraft, or its equipment or cargo, by the Secretary or any other person under any other enactment or any rule of law.

(3) A person commits an offence if the person contravenes subsection (1).

79. Right of passage over adjoining lands - (1) Where a vessel or aircraft is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel or aircraft, or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the vessel or aircraft, unless there is some public road equally convenient, pass and re-pass, either with or without vehicles or equipment, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the vessel or aircraft.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the vessel or aircraft or cargo or articles in respect of or by which the damage is occasioned.

(3) Every owner or occupier of land commits an offence who -

- (a) Impedes or hinders any person in the exercise of the rights given by this section, by locking his or her gates, or refusing upon request to open the same, or otherwise; or
- (b) Impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel or aircraft as aforesaid; or
- (c) Prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit.

Dealing with wreck

80. Rules to be observed by person finding wreck - (1) If a person finds or takes possession of any wreck within the limits of Cook Islands waters, or takes possession of and brings within the limits of Cook Islands waters any wreck found outside those limits, the following provisions apply -

- (a) The person must notify the Secretary that the person has found or taken possession of the wreck;
- (b) If the person is not the owner of the wreck, the person must either deliver it to the Police or allow the Police to take possession of it.

(2) The Secretary may transmit to such persons and agencies as the Secretary thinks appropriate any information received by him or her under subsection (1).

(3) Every person commits an offence who, without reasonable excuse, fails to comply with this section, and shall in addition, if he or she is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value thereof, to be recovered in the same way as a fine of a like amount under this Act.

Removal of wrecked vessels and aircraft

81. Removal of hazards to navigation - (1) The Secretary may cause to be removed any vessel or aircraft referred to in section 78, or any derelict vessel, or any floating or submerged or stranded object, (the "hazard"), if -

- (a) The owner of the hazard has not made arrangements under that section to secure and remove the hazard; and
- (b) No regional council has jurisdiction over the waters or place where the hazard is located; and
- (c) The Secretary considers the hazard is a hazard to navigation; and

- (d) The action taken to remove the hazard is not inconsistent with the requirements of any other act.
- (2) The Secretary may, by notice in writing given to the owner or master or person in command of the hazard, or to any agent of the owner, require that person to remove the whole or any part of that hazard in a manner satisfactory to, and within a time to be specified by, the Secretary.
- (3) If a person fails to comply with the notice, or if a person to whom the notice can be given cannot be found, the Secretary or a person authorised by the Secretary may -
- (a) Take possession of and remove or destroy the whole or any part of the hazard; and
 - (b) Sell, in such manner as he or she thinks fit, the hazard or any part of it that is so removed, and also any property recovered from it, in the exercise of his or her powers under this section; and, out of the proceeds of any such sale, without any reference to the articles from the sale of which those proceeds arise, recover the whole of the expenses of removal; and
 - (c) If the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner or master or person in command of the hazard, or from the owner of any vessel or aircraft or from any other person if the sinking, stranding, or abandonment occurred through the fault or negligence of that vessel, aircraft, or person.
- (4) The Secretary or a person authorised by the Secretary must hold the surplus (if any) of the proceeds of any sale under this section and dispose of the surplus to the owner of the hazard or any other persons entitled to receive the surplus.
- (5) This section applies to every article belonging to or forming part of a vessel or aircraft, as it applies to a vessel or aircraft; and the proceeds of the sale under this section of any vessel or aircraft or any part of it or other property recovered from it must be regarded as a common fund.
- (6) In this section, "owner", in relation to any hazard, includes not only the owner or owners at the time of the sinking, stranding, abandonment, or other event, but also any subsequent purchaser of the hazard or of any article belonging to it or forming part of it, as long as the hazard remains a hazard to navigation.

Offences in respect of wreck
Duties on wreck

82. Foreign wreck subject to duties as an importation - (1) All wrecks, being goods brought or coming into the Cook Islands from a place outside the Cook Islands, shall be subject to the same duties as if the same was imported into the Cook Islands, and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as the Revenue Management (Tax and Customs) may on investigation determine.

(2) The Revenue Management (Tax and Customs) may permit all goods saved from any vessel or aircraft stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods saved from any vessel or aircraft stranded or wrecked on its outward voyage to be returned to the port at which they were laden; but the Revenue Management (Tax and Customs) shall take security for the due protection of the revenue in respect of those goods.

(3) In this section, the term "goods" includes, any part of any vessel or aircraft and the cargo, machinery, and equipment thereof, and any other property belonging thereto.

83. Penalties - (1) Every person who commits an offence against section 77(4) or section 78(3) or section 79(3) is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 3 months; or
 - (ii) to a fine not exceeding \$25,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$100,000.

(2) Every person who commits an offence against section 80(3) is liable to a fine not exceeding \$25,000 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.

PART 9

GENERAL PROVISIONS RELATING TO SHIPPING

Duty of assistance

84. Duty of assistance - (1) Every person on whom any duty is imposed by this Act -

- (a) Shall at all reasonable times furnish; and
- (b) Shall ensure that at all reasonable times the person's agents and employees furnish -

the means required by the Ministry, its employees, the Secretary, or their respective agents for an entry, inspection, examination, audit, inquiry, or the exercise of any other power, under this Act in relation to the duty.

(2) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with subsection (1).

(3) Every person who commits an offence against subsection (2) is liable to a fine not exceeding \$100,000.

Maritime Depository

85. Maritime Depository - (1) The Ministry shall operate a Maritime Depository, in which copies or appropriate evidence of the following shall be recorded and maintained -

- (a) Every maritime document and every marine protection document issued by the Secretary;
- (b) Every regulation made under this Act, and every rule notified in the *Gazette* and for the time being in force;
- (c) Every item incorporated by reference into rules under section 162;
- (d) Every accident, incident, and mishap notification given under section 24;
- (e) Every delegation, authorisation, notification of recognition of a document as a maritime document or marine protection document, and exemption granted in writing under this Act;
- (f) The address for service of -
 - (i) every current applicant for a maritime document or marine protection document; and
 - (ii) every current holder of a maritime document or marine protection document; and
 - (iii) every person who holds a document recognised under this Act as a maritime document or marine protection document.
- (g) A list of the conventions and the parties to each of those conventions -

unless the Secretary is otherwise satisfied that any such category is already maintained by any Administrator appointed under section 8 of the Ship Registration Act 2007.

(2) Documents kept in accordance with subsection (1) shall be made available by the Ministry or the Administrator, as the case may be, for inspection by the public free of charge.

(3) Subsection (2) is subject to such reasonable expectations of personal privacy as the Secretary considers appropriate in the circumstances, having regard to the function of the record, document or information recorded or maintained.

Information services

86. Information services - (1) The Ministry shall ensure that an information service is provided to collect and disseminate information as to maritime safety requirements, marine protection requirements, and the placement and operation of navigational aids in respect of Cook Islands waters.

(2) The Secretary may require the payment of a reasonable fixed charge for any costs incurred in providing any information in accordance with subsection (1).

Fees and charges

87. Marine safety charges - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations providing for the payment to the Ministry of marine safety charges in respect of vessels entering any port in the Cook Islands or operating in Cook Islands waters and prescribing the amounts of those charges.

(2) The purpose of marine safety charges is to provide funding to enable the provision of -

- (a) Navigational aids; and
- (b) Distress and safety radio services; and
- (c) Marine safety information; and
- (d) Other services related to the safety of shipping;

not otherwise provided for under the Ports Authority Act 1994-95.

(3) Any such regulations may -

- (a) Specify the persons by whom the marine safety charges are payable including (without limitation) all or any of the master, owner, charterer, person responsible for the management of the vessel, or any agent of any of those persons who by law or by contract is liable to pay any other charge on account of the vessel;
- (b) Prescribe different marine safety charges for different classes of vessel based on length, tonnage, equipment available for use on board the vessel, or such other criteria as may be specified in the regulations;
- (c) Provide for the refund or waiver of any marine safety charge in whole or in part, in any specified case or class of cases;
- (d) Provide that the marine safety charges are payable on an annual or other equal basis in advance or otherwise, or on a per voyage basis at the option of either the Secretary or the person liable to pay the marine safety charges; and provide for the changing of those options, and for the making of adjustments where an option is changed -

whether or not persons levied use, or the vessel in respect of which the levy arises uses, any such services.

(4) Nothing in this section limits the provisions of section 96 or section 97.

88. Exemptions from marine safety charges - (1) All pleasure craft are totally exempt from liability in respect of marine safety charges.

(2) Regulations made under this Act may -

- (a) Exempt any vessel or class or description of vessel or any vessel used for a purpose specified in the regulations from liability in respect of marine safety charges, either totally or partially, and subject to such conditions, as may be imposed in the regulations;

- (b) Specify circumstances in which any vessel or class or description of vessel is exempt from liability in respect of marine safety charges, either totally or partially.

89. Power to appoint agents to collect marine safety charges - (1) The Secretary may appoint the holder for the time being of any office (whether or not within the Public Service) or any other person to be the agent of the Ministry for the purpose of collecting marine safety charges or any class of marine safety charges.

(2) Any appointment under subsection (1) may -

- (a) Provide for the payment of a fee by the Secretary for the collection of marine safety charges; or
- (b) Permit the agent to retain a specified proportion of the marine safety charges as a collection fee; or
- (c) Both.

90. Power of agent of vessel, etc, to retain marine safety charges out of other money - Any agent who by any regulations made under this Act is liable for the payment of marine safety charges in respect of any vessel may, out of the money received by the agent on account of that vessel or belonging to the owner thereof, retain the amount of all such charges paid by the agent, together with any reasonable expenses incurred by reason of the payment of the charges or the agent's liability to pay the charges.

91. Recovery in certain cases where marine safety charges not paid - (1) This section shall apply only where a marine safety charge is payable to the Ministry and not where the charge is payable to any other person or any agent of the Ministry.

(2) If the person liable to pay any marine safety charge in respect of any vessel fails to do so on demand, and the charge is not paid by any other person, the Secretary may, in addition to any other remedy, go on board the vessel and distrain the cargo and any other property belonging to or on board the vessel, and may maintain that distraint until that charge is paid.

(3) For the purposes of subsection (1) of this section, the term "agent" does not include an employee of the Crown, acting in that capacity.

92. Issue of receipt for marine safety charge - Every person who receives any marine safety charge shall, on demand, issue to the person paying the charge a receipt showing clearly the vessel in respect of which the charge is paid and the period to which the charge relates.

93. Detention of vessel where marine safety charges not paid or receipt not produced - (1) Where, on demand being made by any person for the payment of any marine safety charge, -

- (a) The charge is not paid; or
 - (b) Evidence for the earlier payment of the charge is not produced, -
- the Secretary may detain the vessel concerned until the charge is paid or the receipt is produced.

(2) If payment of the charge is not made, or evidence of the earlier payment not produced, within the period of 28 days next following the detention, the Secretary may at any time during the continuance of the non-payment, or non-production, sell the vessel, and apply the proceeds in payment of that charge, together with all reasonable expenses incurred by the Secretary under this subsection, paying the surplus (if any), on demand, to the owner or other person for the time being responsible for the management of the vessel, or the master of the vessel.

(3) Where a vessel is detained or sold under this section, the Crown, the Secretary, or any person acting under their direction shall not be liable for any loss or damage arising directly or indirectly from the detention or sale of the vessel unless it is proved to the satisfaction of the High Court that the person acted in bad faith.

Safety services

94. Navigational aids - (1) Except as provided for under the Ports Authority Act 1994-95, the Ministry is responsible for the management of all navigational aids on or near the coasts of islands of the Cook Islands and the adjacent seas except those to which subsection (2) applies.

(2) A person who operates a port, cargo terminal, marina, jetty, marine farm, or other maritime facility ("an operator") must provide navigational aids for that facility and is responsible for them.

(3) The Ministry may -

- (a) Erect or place any navigational aid;
- (b) Add to, alter, remove, or maintain any navigational aid;
- (c) Inspect any navigational aid or property related to any navigational aid.

(4) Any person who is authorised by the Secretary for that purpose either generally or specially may inspect and examine any navigational aid that is under the management of an operator, and may for that purpose enter, with such assistants as he or she may deem necessary, any such navigational aid and any premises and property that is appurtenant to the navigational aid.

(5) An operator who operates a port must, as and when required by the Secretary, do such of the following in or for that port as the Secretary may require -

- (a) Erect lights, lay down buoys and beacons, and replace, remove, or discontinue any harbour light, signal, buoy, beacon, or other sea mark;
- (b) Make any variation in the character of any harbour light, signal, buoy, beacon, or other sea mark or in the mode of exhibiting it.

(6) If an operator fails or neglects to comply with a requisition made under subsection (5) within a reasonable period to be stated in the requisition,—

- (a) The Secretary may take all such steps and do all such acts as may be necessary to give effect to the requisition; and
- (b) The cost and charges of so doing are a debt due from the operator to the Crown, and may be recovered accordingly.

(7) No person may erect or place a navigational aid, alter the character of a navigational aid, or alter or remove the position of a navigational aid, without the approval of the Secretary.

(8) Navigational aids must be provided and maintained in accordance with, and otherwise conform with, the maritime rules.

Dangerous goods

95. Opening and testing of packages containing dangerous goods - (1) This section applies to -

- (a) Cook Islands vessels; and
- (b) Other vessels in a port in the Cook Islands or in Cook Islands waters that load or unload cargo or fuel or embark or disembark passengers.

(2) A person referred to in subsection (3) may require a package or container to be opened and subjected to such tests as may be necessary to identify the contents, if -

- (a) The package or container is, or is intended to be, loaded or carried on a vessel to which this section applies; and
- (b) The person reasonably believes the package or container contains dangerous goods (as defined in rules made under this Act) that are not marked or packed in accordance with the rules.

(3) The persons referred to in subsection (2) are -

- (a) The owner, master, or charterer of a vessel to which this section applies;
- (b) The agent of the owner or charterer;
- (c) The consolidator of any freight container or other form of secondary containment intended for shipment on the vessel;
- (d) A person authorised by the Secretary.

(4) The shipper of the package or container is liable for the costs of inspections and tests carried out under subsection (2), and of any delay caused by the inspections and tests.

Miscellaneous provisions

96. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes -

- (a) Prescribing those breaches of maritime rules that constitute offences against this Act;
- (b) Prescribing those breaches of maritime rules that constitute infringement offences against this Act;

- (c) Prescribing the penalty for each offence prescribed under paragraph (a) of this subsection which, -
 - (i) in the case of an individual, shall be
 - (A) imprisonment to a term not exceeding 6 months; or
 - (B) A fine not exceeding \$100,000; or
 - (C) Both.
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$500,000;
- (d) Prescribing the form of infringement notice and the infringement fee for each offence prescribed under paragraph (b) of this subsection, which, -
 - (i) in the case of an individual, shall be a fine not exceeding \$2,000;
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$12,000;
- (e) the procedure for administration of infringement offences, including -
 - (i) the rights of any person served with an infringement to request a hearing;
 - (ii) the period for payment of an infringement notice;
 - (iii) the consequence of non-payment;
 - (iv) commencement and determination of infringement offences.
- (f) The welfare and employment of seafarers including, but not limited to -
 - (i) employers duties and the rights of seafarers in relation to employment on Cook Islands vessels;
 - (ii) the carrying out of inspections and audits for the purpose of ascertaining compliance with any such duties or rights;
 - (iii) the handling and return of the body and effects of deceased seafarers;
 - (iv) the crewing of Cook Islands vessels and employment of young persons under the age of 18 years;
 - (v) limitations on the contracting out of seafarers' rights.
- (g) Regulating or prohibiting maritime transport, coastal shipping, maritime products or any related use or activity, including, but not limited to, any matter that may be made the subject of a maritime rule under this Act.
- (h) Such other matters as may be expedient or necessary for giving full effect to the provisions of this Act and for their 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, vessels, or maritime products, or with respect to the same class of person, vessel, or maritime product in different circumstances.

97. Regulations, etc, deemed made under this Act - (1) All regulations, rules, orders, and notices made or saved under the Shipping Act 1998, being in force immediately before the commencement of this Act and not revoked by this Act, shall be deemed to have been made under this Act and shall continue in force until revoked, with all such necessary modifications.

(2) The Queen's Representative may from time to time, by Order in Executive Council, make regulations or orders, as the case may require, for either or both of the following purposes -

- (a) Amending any regulations, rules, or orders continued in force by subsection (1) by providing for any purpose for which a maritime rule or regulation may be made under this Act;
- (b) Revoking any regulation, rule, or order continued in force by subsection (1), in whole or in part.

(3) The Minister may from time to time amend or revoke, in whole or in part, any notice continued in force by subsection (1).

(4) All instruments of delegation in respect of any regulation, rule, order, or notice continued in force by subsection (1) shall, until revoked, continue to have effect, with all such necessary modifications, according to their tenor, and any delegation that could have been made in respect of any such regulation, rule, order, or notice immediately before the commencement of this Act may hereafter be made as if this Act had not been passed.

98. Dispensing powers of Secretary - The Secretary may, if he or she thinks fit, and subject to such conditions as he or she thinks fit to impose, exempt any vessel or class of vessel from any specified requirement contained in this Act or in any regulation, order, or notice continued in force by section 97, or dispense with the observance of any such requirement in the case of any vessel or class of vessel, if he or she is satisfied that

- (a) The requirement has been substantially complied with in the case of that vessel or vessels of that class; or
- (b) Compliance with the requirement is unnecessary in the circumstances of the case; or
- (c) The action taken or provision made in relation to the subject-matter of the requirement in the case of the vessel or vessels of that class, is as effective as or more effective than actual compliance with the requirement.

PART 10
CARRIAGE OF GOODS BY SEA

99. Interpretation (1) In this Part, "the Rules" means the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on the 25th day of August 1924, as amended by the Protocol signed at Brussels on the 23rd day of February 1968 and by the Protocol signed at Brussels on the 21st day of December 1979.

(2) A reference in this Act to a non-negotiable document includes a reference to a sea waybill.

100. Hague Rules to have force of law - (1) The Rules, as set out in Schedule 5, shall have the force of law in the Cook Islands.

(2) Subsection (1) shall apply to carriage of goods by sea evidenced by a non-negotiable document (other than a bill of lading or similar document of title) that contains express provision to the effect that the Rules are to govern the carriage as if the document were a bill of lading.

101. Jurisdiction of Cook Islands Courts - (1) An agreement, whether made in the Cook Islands or elsewhere, has no effect to the extent that it purports to -

(a) Preclude or limit the jurisdiction of the High Court of the Cook Islands in respect of -

(i) a bill of lading or a similar document of title, relating to the carriage of goods from any place in the Cook Islands to any place outside the Cook Islands; or

(ii) a non-negotiable document of a kind mentioned in section 100(2) relating to such a carriage of goods; or

(b) Preclude or limit the jurisdiction of the High Court of the Cook Islands in respect of -

(i) a bill of lading, or a similar document of title, relating to the carriage of goods from any place outside the Cook Islands to any place in the Cook Islands; or

(ii) a non-negotiable document of a kind mentioned in section 100(2) relating to such a carriage of goods.

(2) Nothing in this section shall be construed as limiting or affecting any stipulation or agreement to submit any dispute to arbitration in the Cook Islands or any other country.

102. Contracting parties to the Rules - If the Secretary of Foreign Affairs certifies that, for the purposes of the Rules or any convention relating to liability of sea carriers for loss of, or damage to, cargo, -

- (a) A State specified in the certificate is a Contracting State, or is a Contracting State in respect of any place or territory so specified; or
- (b) Any place or territory specified in the certificate forms part of a State so specified (whether a Contracting State or not);

then, in any proceedings, the certificate shall, in the absence of proof to the contrary, be sufficient evidence of the matters so certified.

103. Savings - Notwithstanding section 178(1), the Sea Carriage of Goods Act 1940, as in force immediately before the commencement of that section, shall be deemed to continue to apply to a contract of carriage of goods by sea after that commencement if-

- (a) The contract was made before that commencement, and
- (b) That Act would have applied but for the operation of section 178(1).

PART 11 **SALVAGE**

104. Interpretation - In this Part, unless the context otherwise requires, -

“Coastal” or “inland waters” means Cook Islands waters;

“Convention” means the International Convention on Salvage, 1989, as set out in Schedule 6 to this Act;

“Freight at risk” includes payments due to an owner or charterer for the carriage of cargo.

105. Application of Convention - The provisions of the Convention shall have the force of law in the Cook Islands.

106. Salvage claims against the Crown - Subject to the provisions of the Crown Proceedings Act 1950, the provisions of this Part shall apply to salvage operations which assist any Government vessel or other property, in the same manner as if the vessel or property belonged to a private person.

107. Salvage claims by the Crown - Where salvage operations are rendered by any government vessel, the Crown shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

108. Apportionment between salvors - A payment in respect of a salvage operation that is due to more than one person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the High Court thinks fit, having regard to the terms of the Convention.

109. Salvage for saving life - (1) Where services are rendered -

- (a) Wholly or in part within Cook Islands waters in saving life from any vessel or aircraft, whether or not a Cook Islands vessel or an aircraft registered in or belonging to the Cook Islands; or
- (b) Elsewhere in saving life from any Cook Islands vessel or any aircraft which is registered in or belongs to the Cook Islands, -

there is payable to the salvor by the owner of the vessel or aircraft or cargo or equipment saved a reasonable amount of salvage, to be determined in case of dispute in the manner set out in subsections (2) and (3).

(2) Salvage in respect of the preservation of life, when payable by the owners of the vessel or aircraft, is payable in priority to all other claims for salvage.

(3) Where the vessel or aircraft and its cargo and equipment are destroyed, or the value of it is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may in his or her discretion award to the salvor, out of any money appropriated by Parliament for the purpose, such sum as he or she thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

110. Actions for indemnity - Any person who -

- (a) Is liable to pay a payment in respect of a salvage operation; and
- (b) Is indemnified against that liability -

shall take action to enforce that indemnity within 2 years of the liability arising and, in the event of failure to do so, that right of enforcement shall no longer be available to that person.

PART 12

MAKING OF MARINE PROTECTION RULES AND REGULATIONS AND TAKING OF OTHER MEASURES TO PROTECT MARINE ENVIRONMENT

Marine protection rules

111. Marine protection rules to implement international standards - (1) The Minister may from time to time make marine protection rules in respect of vessels, or any installation, facility or marine operation used for any purpose associated with maritime transport, for all or any of the following purposes -

- (a) To implement Cook Islands' obligations under any marine protection convention;
- (b) To make such rules as may be necessary to enable the Cook

Islands to become a party to any international convention, protocol, or agreement relating to the protection of the marine environment;

- (c) To implement such international practices or standards relating to the protection of the marine environment as may from time to time be recommended by the International Maritime Organisation.
- (d) To give effect to the provisions of the Prevention of Marine Pollution Act 1998.

(2) Nothing in subsection (1) limits any other provision of this Act that empowers the making of marine protection rules.

112. Marine protection rules relating to marine permits etc. - (1) The Minister may from time to time for the purpose of any marine protection rule require that a permit, licence authorization or document, relating to any particular requirement, operation or function, be held by or in respect of all or any of the following -

- (a) Cook Islands vessels;
- (b) Maritime products;
- (c) Marine protection products;
- (d) Persons or organisations that provide -
 - (i) maritime training; or
 - (ii) the testing, inspection, audit, or certification of vessels or marine protection products; or
 - (iii) the design, manufacture, or maintenance of vessels or marine protection products;
- (e) Within Cook Islands waters -
 - (i) offshore installations;
 - (ii) pipelines;
 - (iii) marine incineration facilities;
 - (iv) oil transfer sites;
 - (v) cargo loading and unloading terminals;
 - (vi) reception facilities.
- (f) Any other vessel, equipment, person, or organisation engaged or used in maritime activities or activities that, in the opinion of the Minister, relate to maritime activities.

(2) Marine protection rules may provide for the recognition, issue, revocation or suspension by the Secretary of any permit, licence authorisation, document, or certificate.

(3) The requirements, standards, and application procedure for each permit, licence authorization or document and the maximum period for which each may be issued or recognised, as the case may be, shall be prescribed by the marine protection rules.

(4) The marine protection rules may specify the requirements and criteria that must be satisfied in respect of the relevant insurance policy, bond, or other form of financial security for the Secretary to issue, recognise or accept a certificate of insurance under section 116 or any regulations made under section 117.

(5) Subject to any marine protection rules, a permit, licence, authorisation, or document may be issued, recognized, or accepted, as the case may be, by the Secretary for such specified period and subject to such conditions as the Secretary considers appropriate in each particular case.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision under section 146.

113. Power of Secretary to make emergency marine protection rules - (1) The Secretary may from time to time make rules (to be called emergency marine protection rules) for any of the purposes for which the Minister may make rules under this Part, if the Secretary considers that -

- (a) Such rules are necessary to alleviate or minimise any damage to the marine environment or threat of imminent damage to the marine environment; and
- (b) It is not practicable in the circumstances of the particular case for the Minister to make rules to effectively eliminate or alleviate the damage or threat of damage to the marine environment.

(2) The Minister may revoke any emergency marine protection rule and the revocation shall be notified as if it were an emergency rule.

114. Matters to be taken into account in making marine protection rules - In making any marine protection rules, the Minister or the Secretary, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following -

- (a) The need to -
 - (i) protect the marine environment;
 - (ii) maintain and improve maritime safety;
- (b) Whether the proposed rule -
 - (i) assists economic development;
 - (ii) improves access and mobility;
 - (iii) promotes and protects public health;
 - (iv) ensures environmental sustainability;
- (c) The recommended international practices of the International Maritime Organisation relating to protection of the marine environment;
- (d) The costs of implementing measures for which the rule is being proposed;
- (e) The risk to the marine environment if the proposed rule is not made;
- (f) Such other matters as the Minister or the Secretary, as the case may be, considers appropriate in the circumstances.

115. Further provisions relating to marine protection rules - The provisions of sections 158 to 162 apply in relation to marine protection rules.

116. Certain ships to have certificates of insurance - (1) No regulated oil tanker or regulated vessel shall enter or leave any port in the Cook Islands or Cook Islands marine waters unless a certificate of insurance issued, recognized, or accepted by the Director in accordance with this Act is for the time being in force in respect of, and carried on board, that tanker or ship.

(2) The Secretary may, in accordance with the provisions of any marine protection rules and this Act, as the case may require, issue, recognize, or accept certificates of insurance in respect of a regulated oil tanker or a regulated vessel.

Regulations

117. Regulations - (1) Without limiting any other provision of this Act, the Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes -

- (a) Requiring insurance and other financial guarantees, and certification relating to the same, in respect of any class of product, person, organization or thing referred to in section 112 relating to maritime transport;
- (b) Requiring insurance and other financial guarantees, and certification relating to the same in respect of any vessel other than regulated oil tankers;
- (c) Prescribing those breaches of marine protection rules that constitute offences against this Act;
- (d) Prescribing those breaches of marine protection rules that constitute infringement offences against this Act;
- (e) Prescribing the penalty for each offence prescribed under paragraph (a) of this subsection which, -
 - (i) in the case of an individual, shall be
 - (A) imprisonment for a term not exceeding 6 months; or
 - (B) a fine not exceeding \$100,000; or
 - (C) Both.
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$500,000.
- (f) Prescribing the infringement fee for each offence prescribed under paragraph (d) of this subsection which, -
 - (i) in the case of an individual, shall be a fine not exceeding \$2,000; or
 - (ii) in the case of any other person, shall be a fine not exceeding \$12,000;

- (g) Regulating or prohibiting maritime transport, maritime products, marine protection products or any related use or activity, including, but not limited to, any matter that may be made the subject of a marine protection rule under this Act;
- (h) Such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.

(2) Regulations made under subsection (1) may, in addition to any other penalty imposed under this section, where the offence is a continuing one, impose further fines not exceeding \$10,000 for each day or part of a day on which the offence is continued.

118. Exemptions - (1) The Secretary may, if, and upon such conditions as, he or she considers appropriate, grant an exemption from any specified requirement in any marine protection rule.

(2) The Secretary shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that -

- (a) The granting of the exemption will not breach Cook Islands' obligations under any marine protection convention; and
- (b) Either -
 - (i) the requirement has been substantially complied with and that further compliance is unnecessary; or
 - (ii) 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; or
 - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (iv) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
- (c) The risk of harm to the marine environment will not be significantly increased by the granting of the exemption.

(3) Nothing in this section shall apply in any case where any marine protection rule specifically provides that no exemptions are to be granted.

119. Inspections and audits - (1) The Secretary may from time to time, in writing, require any person who operates, maintains, services, or does any other act in respect of vessels, or any installation facility or marine operation used for any purpose associated with maritime transport, to undergo, or carry out, such inspections or audits, or both, as the Secretary considers necessary in the interests of protecting the marine environment from harm.

(2) The Secretary may in respect of any person described in subsection

(1) carry out such inspections or audits, or both, as the Secretary considers necessary in the interests of protecting the marine environment from harm.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Secretary may, in writing, -

- (a) Require that person to provide to the Secretary such information as the Secretary considers relevant to the inspection or audit;
- (b) Require that person to demonstrate to the Secretary the familiarity of the master or crew with essential shipboard procedures for the prevention of marine pollution;
- (c) Require that person to demonstrate to the Secretary that any operational, maintenance, or servicing procedure in respect of a vessel or marine protection product is capable of being carried out in a competent manner.

120. Detention, etc., of vessels and seizure of marine protection products - (1)
The Secretary may from time to time do all or any of the following -

- (a) Detain any vessel;
- (b) Prohibit, or impose conditions on, the use or operation of any vessel or any installation, facility or marine operation used for any purpose associated with maritime transport;
- (c) Impose conditions on the release from detention of the vessel;
- (d) Prohibit a vessel from entering a port or calling at an offshore terminal.

(2) The powers under subsection (1) may be exercised where the Secretary believes on clear grounds that -

- (a) There is an existing discharge from the vessel of a pollutant, garbage, or waste in breach of this Act; or
- (b) There is likely to be a discharge from the vessel of a pollutant, garbage, or waste in breach of this Act; or
- (c) Vessels of a particular class are likely to give rise to a discharge of a pollutant, garbage, or waste in breach of this Act; or
- (d) Any permit, licence authorization or document as required by this Act or any regulations or marine protection rules made under this Act; has not been issued; or
- (e) Any permit, licence authorization or document as required by this Act or any regulations or marine protection rules made under this Act has expired; or
- (f) Any provision or condition of any permit, licence authorization or document as required by this Act or any regulations or marine protection rules made under this Act, is not being met; or

- (g) The vessel, installation, facility or marine operation presents an unreasonable threat of environmental harm to the marine environment; or
 - (h) Any conditions imposed under paragraph (b) or paragraph (c) of subsection (1) have not been complied with.
- (3) The powers under subsection (1) may also be exercised where the Secretary believes on clear grounds that the master or crew are not familiar with essential shipboard procedures for the prevention of marine pollution.
- (4) Without limiting the generality of subsection (2), the Secretary may detain any vessel if the owner of that vessel has not provided a contract of insurance or other financial security in accordance with the provisions of this Act.
- (5) Nothing in this section shall permit the Secretary to detain a foreign vessel where that detention would constitute a breach of any marine protection convention.
- (6) Subject to subsections (7) and (8), any detention or seizure under subsection (1) shall be maintained for only such time as the grounds under subsection (2) which gave rise to the detention or seizure continue.
- (7) If any vessel, or thing, or parts thereof are required for the purpose of evidence in any prosecution under a provision in this Act, they may be retained by the Secretary for such period as the Secretary considers necessary for that purpose.
- (8) Any detention under subsection (4) shall be maintained until the Secretary is satisfied that either -
- (a) The owner of the vessel has complied with any obligation under this Act to provide a contract of insurance or financial security; or
 - (b) Such obligation to provide a contract of insurance or financial security is no longer appropriate as it has been determined that there is no liability to pay the amounts in respect of which the security was sought or all such amounts have been paid.
- (9) The Secretary shall, if requested by any owner affected under subsection (1), provide in writing to the owner the reasons for the detention, prohibition or condition.
- (10) For the purpose of subsection (1), the Secretary shall notify any detention prohibition or condition to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Secretary considers appropriate in the circumstances.
- (11) Any person in respect of whom any decision is taken under this section may appeal against that decision under section 146.

121. Costs of detention under section 120 - (1) Where the Secretary acts under section 120 to detain a vessel, the provisions of section 172 shall apply to the costs of and incidental to the detention.

(2) Where the Secretary acts under section 120 to seize a marine protection product, the Authority may recover from the owner of such marine protection product all reasonable costs of and incidental to such seizure.

Offences

122. Failure to comply with Secretary's inspection or audit requirements - Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Secretary under subsection (1) or subsection (3) of section 119.

123. Contravention of prohibition or conditions - Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition under section 120.

124. Contravention of emergency marine protection rule - Every person commits an offence who, without reasonable excuse, acts in contravention of any emergency marine protection rule made by the Secretary under section 113.

Penalties

125. Penalties in respect of section 122 - Every person who commits an offence against section 122 is liable, -

- (a) In the case of an individual, to a fine not exceeding \$50,000 and, if the offence is a continuing one, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence is continued;
- (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.

126. Penalties in respect of sections 123 and 124 - (1) Every person who commits an offence against section 123 is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or
 - (ii) to a fine not exceeding \$100,000; or
 - (iii) both.
 - (b) In the case of a body corporate, to a fine not exceeding \$500,000;
 - (c) In any case, to an additional penalty under section 132.
- (2) Every person who commits an offence against section 124 is liable -
- (a) In the case of an individual, to -
 - (i) to a term of imprisonment not exceeding 6 months; or
 - (ii) a fine not exceeding \$50,000; or
 - (iii) both.
 - (b) In the case of a body corporate, to a fine not exceeding \$100,000;

- (c) Where the offence is a continuing one, to further fines not exceeding \$10,000 for each day or part of a day on which the offence continued;
- (d) In any case, to an additional penalty under section 132.

PART 13

GENERAL OFFENCES AND PROVISIONS IN RELATION TO OFFENCES AND APPEALS UNDER THIS ACT

General offences

127. Obstruction of persons duly authorised by Secretary - (1) Every person commits an offence who obstructs, impedes, delays, hinders, or deceives or causes to be obstructed, impeded, delayed, hindered, or deceived, the Ministry, its employees, the Secretary, or any other person who is duly authorised the Minister or the Secretary, while the Ministry, employee, Secretary, or other person so authorised is acting in the performance or exercise of any functions, duties, or powers conferred on it or him or her by or under this Act or any rules made under this Act.

(2) Subsection (1) shall apply only where the person obstructed or impeded, if challenged as their appointment or authorisation, produces evidence of that authorisation or appointment.

128. Failure to maintain accurate records - Every person commits an offence who contravenes any provision of this Act or of any regulation or rule made under this Act that requires that person -

- (a) To make accurate entries in a record; or
- (b) To maintain an accurate record; or
- (c) To produce to the Minister, the Ministry, or the Secretary an accurate record.

129. Communicating false or insufficient information - Every person commits an offence who, -

- (a) By any means, provides information relevant to the exercise of powers under this Act, or under regulations or rules made under this Act by any person, knowing the information to be false; or
- (b) Being an applicant for a permit, license, authorisation, document, or certificate to be issued on recognised under this Act, fails, without reasonable excuse, to provide information known to that person which is relevant to the exercise of powers under this Act, or under regulations or rules made under this Act; or

- (c) Being the holder of a permit, license, authorisation, or document issued or recognised under this Act, fails, without reasonable excuse, to provide to the Minister, the Ministry or the Secretary (as the case may be) information known to that person which is relevant to any continuing obligation to provide such information specified in the same.

130. Penalties - (1) Every person who commits an offence against section 127(1) is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 6 months; or
 - (ii) a fine not exceeding \$20,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$100,000.

(2) Every person who commits an offence against section 128 is liable, -

- (a) In the case of an individual, to a fine not exceeding \$50,000;
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

(3) Every person who commits an offence against section 129 is liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

(4) In addition to any penalty imposed on any person convicted of any offence against this Act, the High Court may order that person to pay -

- (a) Any loss or damage caused by the offence; and
- (b) Any cost incurred in detecting, apprehending, investigating and prosecuting the offence; and
- (c) Any costs incurred in detaining or seizing any vessel, property, article or thing in respect of that offence -

and the amount if so ordered may be received in the same manner as any fine.

(5) Any order made under subsection (4), insofar as it relates to an owner of a Cook Islands vessel, may specify that the amount to be paid shall constitute a registrable interest (and its priority) for the purposes of section 35 of the Ship Registration Act 2007.

General provisions in respect of offences

131. Offences to be punishable on conviction - Subject to section 144(2), every offence against this Act shall be punishable on conviction.

132. Additional penalty for offence involving commercial gain - (1) In Addition to any other penalty the High Court may impose under this Act, the High Court may, on convicting any person of an offence against section 45 or section 46 or section 50 or section 52 or section 123 or section 124 or any offences prescribed pursuant to Regulations made under section 96(1)(a) or section 117(1)(c), 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 High 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 High Court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

133. Liability of principal for acts of agents - (1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.

(2) Notwithstanding anything in subsection (1), where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves, -

- (a) In the case of a natural person (including a partner in a firm), that -
 - (i) he or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; and
 - (ii) he or she took all reasonable steps to prevent the commission of the offence;
- (b) In the case of a body corporate, that -
 - (i) neither the Directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; and
 - (ii) The body corporate took all reasonable steps to prevent the commission of the offence;
- (c) In all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Where any body corporate is convicted of an offence against this Act, every Secretary and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved -

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

134. Limitation of proceedings - (1) Subject to subsection (2), no person shall be charged with an offence against this Act unless an information charging that person with that offence is laid within 2 years after the matter arose.

(2) Notwithstanding any other act or rule of law, the period of 2 years shall not run while the person charged is beyond the limits and territorial sea of the Cook Islands.

135. Proof of exemption, etc. - Any exception, exemption, proviso, excuse, or qualification in relation to any offence against this Act or any rules or regulations under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negated in any information and, if so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant.

136. Place where offences deemed to be committed - For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

137. Presumption as to master of vessel - (1) Where, in any proceedings for an offence against this Act or any regulations made under this Act, the informant alleges in any information that any person was, or was not, the master of any vessel at any specified time, the allegation shall be presumed to be true in the absence of proof to the contrary.

(2) The presumption in subsection (1) shall apply whether or not separate or further evidence is adduced by or on behalf of the informant in support of the relevant allegation or presumption.

138. Offences committed in foreign ports or on high seas by seafarers of Cook Islands vessels - (1) Whenever any complaint is made to any proper officer in a foreign country -

- (a) That any person who is employed as a seafarer on any Cook Islands vessel has committed an offence against property or persons at any place outside the Cook Islands, whether on shore or afloat; or

- (b) That any seafarer belonging to a Cook Islands vessel has committed an offence on the high seas, -

that proper officer may inquire into the case upon oath or affirmation, and may, if the case so requires, take any measures in his or her power for the purpose of placing the person alleged to have committed the offence under the necessary restraint and of sending that person as soon as practicable in safe custody to the Cook Islands or, if any court in a country other than the Cook Islands is capable of taking cognisance of that offence, to that country.

(2) Any master of a Cook Islands vessel or pilot in command of a Cook Islands aircraft in whose charge any person alleged to have committed an offence has been so placed shall, on the arrival of the vessel or aircraft in the Cook Islands or, as the case may be, in the other country to which the vessel or aircraft is bound, give the alleged offender into the custody of some member of the Police.

(3) The expense of placing any person referred to in subsection (1) of this section under restraint, and of conveying him or her and any witnesses to the Cook Islands or any other country in any manner other than on board the vessels to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid by the Ministry out of money appropriated by Parliament.

139. Compliance with rules - Compliance with any rule or regulation made under this Act shall not excuse the commission of an offence against this Act.

140. Evidence and proof - (1) In any proceedings for an offence against this Act, the following provisions shall apply -

- (a) A copy of any maritime document or marine protection document or permit which is certified correct by the Secretary or any other employee of the Ministry authorised in that behalf by the Secretary shall be sufficient, in the absence of proof to the contrary, to prove that document;
- (b) The production of a certificate signed by the Secretary or any other employee of the Ministry authorised in that behalf by the Secretary to the effect that on a specified date a person or organisation was or was not the holder of any maritime document or marine protection document or any permit or any specified type of maritime document or marine protection document shall be sufficient evidence of the matter certified until the contrary is proved;
- (c) 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 Secretary or any other employee of the Ministry authorised in that behalf by the Secretary to certify documents or give certificates under this section.

(2) Without limiting any other method of proof, the production in any proceedings of a copy of -

- (a) Any rule purporting to have been made by the Minister under this Act; or
- (b) Any rule purporting to have been made by the Secretary under section 20 or section 113 -

shall, in the absence of proof to the contrary, be sufficient evidence of the rule and the fact that it has been made in accordance with the relevant provisions of this Act.

141. Mode of service of summons on master, operator, or owner - (1) Where the master, operator, or owner of a vessel is a defendant in any prosecution for an offence against any provision of this Act, then, notwithstanding any other enactment, service on the defendant of any summons or other document shall be deemed to be effected by being served or furnished in any manner provided for under section 49 of the Ship Registration Act 2007.

(2) The provisions of section 49 of the Shipping Registration Act 2007 shall apply, with all such necessary modification, to any summons or document served on any defendant in accordance with subsection (1) of this section.

(3) Nothing in this section limits anything in section 168.

142. Proceedings for offences - (1) Proceedings for an offence against this Act or any regulations made under this Act may be brought by the Secretary.

(2) Where any fine imposed by the Court in proceedings under this Act or regulations made under this Act is not paid on time, the Court may direct the amount unpaid to be levied by distress and sale of any real or personal property involved in the committing of the offence.

143. Offence under more than one enactment - (1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

(2) Where an act or omission constitutes an offence under 2 or more provisions of this Act, the offender may be prosecuted and punished under any of those provisions.

Infringement offences

144. Infringement offences - (1) In this Act, infringement offence means an offence specified as such in this Act or regulations made under this Act.

(2) Where any person is alleged to have committed an infringement offence, that person may either -

- (a) Be proceeded against for the alleged offence; or
- (b) Be served with an infringement notice as provided in section 145.

145. Infringement notices - (1) Where the Secretary, or any person duly authorised by the Secretary, observes a person committing an infringement offence or has

reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Secretary or the authorised person.

(2) An infringement notice for an infringement offence against this Act may be issued by the Secretary, or any person duly authorised by the Secretary.

(3) An infringement notice may be served -

- (a) By delivering it personally to the person who appears to have committed the infringement offence; or
- (b) By sending it by post addressed to him or her at his or her last known place of residence or business; or
- (c) Where the person is a holder of a maritime document or marine protection document, by serving it by post on that person at his or her last address for service provided under section 18.

(4) An infringement notice sent to a person by post under paragraph (b) or paragraph (c) of subsection (3) shall be deemed to have been served on the person when it would have been delivered in the ordinary course of post.

(5) Every infringement notice shall be in the prescribed form and shall contain the following particulars -

- (a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence;
- (b) The amount of the infringement fee for that offence;
- (c) The address at which the infringement fee may be paid;
- (d) The time within which the infringement fee shall be paid;
- (e) A statement of the right of the person served with the notice to request a hearing;
- (f) A statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing;
- (g) Such other particulars as are prescribed in regulations made under this Act.

(6) Different forms of infringement notices may be prescribed in regulations made under this Act in respect of different kinds of infringement offences.

(7) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced as prescribed in regulations made under this Act.

Rights of appeal

146. Rights of appeal - (1) Where any other section of this Act provides that any person has a right of appeal under this section against a decision in respect of that person, that person may appeal to the High Court against that decision in accordance with this Part.

(2) It is hereby declared that the exercise of any power conferred on the Secretary by any section that confers a right of appeal of the kind referred to in

subsection (1) is, except where that section specifies that the right of appeal applies to a particular decision or decisions, a decision in respect of a person within the meaning of that section and may be appealed against under this section.

(3) The owner of a vessel, offshore installation, pipeline, maritime product, marine protection product, or other real or personal property shall, for the purposes of exercising a right of appeal under this section, be the person who is the owner of the vessel, offshore installation, pipeline, maritime product, marine protection product, or other real or personal property for the purposes of that Part of this Act which contains the section giving rise to the right of appeal.

147. Procedure - (1) Every appeal under section 146 shall be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the High Court may allow.

- (2) In determining an appeal under section 146 the High Court may -
 - (a) Hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that Court; and
 - (b) Either -
 - (i) confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Minister, the Ministry or the Secretary, as the case may require, as may be necessary to give effect to the Court's decision; or
 - (ii) refer the matter back to the Minister, the Ministry or the Secretary, as the case may require, with directions to reconsider the whole or any specified part of the matter.
- (3) Any appeal under this section shall be by way of rehearing.
- (4) Subject to this section, every such appeal shall be made and determined in accordance with the rules of Court.

148. Decision of Minister or Secretary to continue in force pending appeal -

(1) Every decision of the Minister or Secretary that is appealed against under section 146 shall continue in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of the Act or the decision on the ground that any appeal is pending.

(2) Notwithstanding that any appeal under section 146 may have been determined in favour of the appellant, the Secretary may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with in accordance with the provisions of this Act any maritime document or marine protection document or any permit, any person to which or to whom the appeal related, or any maritime document or marine protection document or any permit or approval granted or restored in compliance with the decision of the High Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

149. Appeal to the Court of Appeal on question of law - (1) Every party to an appeal under section 146 may appeal to the Court of Appeal on a question of law.

(2) Every appeal under this section shall be heard and determined in accordance with the rules of Court.

150. Further appeal to Privy Council - (1) Every party to an appeal under section 149 may, with the leave of the Court of Appeal or (if that leave is declined) with special leave of the Privy Council, appeal to the Privy Council on a question of law.

(2) On any appeal under subsection (1), the Privy Council may make such order or determination as it thinks fit.

(3) The procedure in respect of any appeal under this section shall be in accordance with the rules of Court.

PART 14 **MISCELLANEOUS**

Miscellaneous Provisions relating to Ministry

151. Powers of entry in respect of existing works - (1) Subject to subsection (3), the Ministry may -

- (a) Enter upon any land for the purpose of gaining access to cables, wires, navigational aids, or other equipment owned by the Ministry, being equipment installed before the date of commencement of this section; and
- (b) Perform any act or operation necessary for the purpose of inspecting, maintaining, operating, repairing, or replacing such equipment.

(2) A certificate given under the hand of the Secretary containing a statement that any equipment of the type referred to in subsection (1) was installed before the date of commencement of this section shall be admissible in any proceedings and shall, in the absence of proof to the contrary, constitute proof of that statement.

(3) The power to enter land conferred by subsection (1) shall be subject to the following conditions -

- (a) Entry to the land shall be made only by an officer, employee, or agent of the Ministry authorised by it in writing, or by persons under the immediate control of such an officer, employee, or agent;
- (b) Entry shall be made at reasonable times;
- (c) The officer, employee, or agent shall have with him or her, and shall produce on initial entry and subsequently if required to do so, evidence of his or her identity and Ministry.

(4) Subsection (3) shall not apply where the entry is necessary in circumstances of probable danger to life or property.

(5) Any equipment owned by the Ministry that is fixed to or installed over or under land not owned by the Ministry shall be deemed to be lawfully fixed or

installed and shall continue to be fixed or installed until the Ministry otherwise decides, and no person other than the Ministry shall have any interest in any such equipment by reason only of having an interest in the land.

152. Secretary to consider delegating or contracting out of functions and powers - Subject to this Act, the Secretary shall, in the course of performing his or her functions and powers, consider whether they could most efficiently and effectively be performed by means of Ministry operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate process.

General provisions

153. Delegation of Minister's functions or powers to Secretary - (1) The Minister may from time to time, either generally or particularly, delegate to the Secretary all or any of the Minister's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to sub-delegate.

(4) The power of the Minister to delegate under this section -

(a) Is subject to section 161(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; but

(b) 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 Secretary may exercise any functions or powers so delegated to the Secretary in the same manner and with the same effect as if they had been conferred on the Secretary directly by this Act and not by delegation.

(6) Where the Secretary purports to act pursuant to any delegation under this section, the Secretary, 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 performance of any function or the exercise of any 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.

(8) The Secretary must not delegate any powers or functions delegated by the Minister without the written consent of the Minister.

154. Director of Marine - There shall be appointed by the Secretary for the purposes of this Act a Director of Marine who shall have such functions and powers as the Secretary may delegate under section 155

155. Delegation of Secretary's functions or powers to employees of Ministry - (1) The Secretary may from time to time, either generally or particularly, delegate to the

Director of Marine or to any employee of the Ministry any of the Secretary's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, including functions or powers delegated to the Secretary under this Act or any other Act.

(2) No delegation under this section shall include the power to sub-delegate.

(3) Any delegation under this section may be made to a specified employee of the Ministry 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 offices of the Ministry.

(4) Every delegation under this section, until it is revoked, continues in force according to its tenor, despite the fact that the Secretary by whom it was made may cease to hold office, and continues in effect as if made by the person for the time being holding that office.

(5) A delegation under this section does not prevent the Secretary from performing the function or exercising the power delegated.

156. Delegation of Secretary's functions or powers to persons outside Ministry

- (1) Subject to this section, the Secretary may from time to time, either generally or particularly, delegate to any person who is not an employee of the Ministry any of the Secretary's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, other than -

- (a) Any power to suspend seafarers; or
- (b) Any power to detain vessels or maritime products or marine protection products; or
- (c) Any power to issue infringement notices.
- (d) Any power to commence proceedings for an offence under this Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation shall be made under this section without the written consent of the Minister.

(4) In any case where the Secretary 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.

(5) 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.

(6) Every delegation under this section may be given for a specified period and may be subject to such conditions as the Secretary considers fit, including any conditions relating to sub-delegation..

(7) Every person purporting to act under any delegation under this section shall when, reasonably requested to do so, produce evidence of his or her authority to so act.

(8) 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, provided the charging of such a fee is authorised under such delegation.

(9) Any fee charged under subsection (8) of this section by any Administrator appointed under the Ship Registration Act 2007, shall be deemed to be a fee for the purposes of section (9) of that Act.

PART 15

MISCELLANEOUS PROVISIONS APPLYING TO THIS ACT GENERALLY

Regulations

157. Regulations for fees, charges and costs - (1) Without limiting the power to make regulations conferred by any other section of this Act, but subject to the provisions of this Act, the Queen's Representative may from time to time make regulations prescribing, or providing for the fixing and recovery of, fees, charges, or costs in relation to the following purposes -

- (a) To provide funds for the establishment, maintenance, and operation of facilities, works, goods, and services under this Act;
- (b) To meet, or assist in meeting, the costs and expenses incurred by the Ministry, the Secretary, the Crown, or any delegate in the exercise of functions or powers, or in the performance of duties, or the provision of services under this Act;
- (c) To meet, or assist in meeting, the costs and expenses incurred by the Ministry, the Secretary, or the Crown in providing goods, services, facilities, or works for maritime purposes or for the purposes of protecting the marine environment.

(2) Different rates of fees or charges, or both, may be so prescribed or fixed in respect of different classes of persons, vessels, offshore installations, pipelines, maritime products, marine protection products, or any other property or item, or on the basis of different times of use, or on any other differential basis.

(3) Any regulation made under subsection (1) may -

- (a) Specify the persons by whom, and to whom, any fees, charges, or costs, are payable;
- (b) Prescribe, or provide for the fixing of, additional fees, charges, or costs, for services or work carried out outside normal working hours, at weekends, or on statutory holidays;
- (c) Prescribe, or provide for the fixing of, charges for reimbursement of traveling time, accommodation and other expenses;
- (d) Providing for the refund, waiver, or rebate or enabling the refund, waiver, or rebate, of any fee or charge, or both;
- (e) Fixing, or enabling the fixing, of a date by which any fee, charge, or cost is to be paid;

- (f) Providing, or enabling the fixing of, a discount for early payment of any fee or charge as a penalty for late payment, or both;
 - (g) Prescribing any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.
- (4) Notwithstanding section 35(e) of the Ship Registration Act 2007, where any fees, charges, or costs are payable under regulations made under this section by the registered owner or charterer of a Cook Islands vessel, they shall be deemed to be a registerable interest for the purpose of that Act and, upon entry in the register, shall rank as a first charge against that vessel.

Provisions in respect of rules under this Act

158. Provisions in respect of rules generally - (1) Every rule made under this Act shall -

- (a) Be signed by the Minister if made by the Minister, or be signed by the Secretary if made by the Secretary; and
- (b) Contain a statement specifying the objective 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 162.

(2) Subject to section 159, notice of the making of a rule under this Act shall be given in the *Gazette* and the rule shall 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) Every rule made under this Act by the Minister shall come into force on the day after notice of its making has been given in the *Gazette* or on such later date as may be specified in the rule.

(4) Subject to section 159, every rule made under section 20 or section 113 by the Secretary shall come into force on the day after its notification in the *Gazette*.

159. Notification of emergency rules in certain circumstances - (1) Where for reasons of safety, or because of the imminence of the threat to the marine environment, as the case may be, it is in the opinion of the Secretary impracticable to give notice in the *Gazette* under section 158(2) of a rule made under section 20 or section 113 by the Secretary, the Secretary may notify such persons as he or she considers appropriate of the making of the rule and such rule shall immediately upon such notification come into force in respect of any person or persons notified and in respect of that person or those persons only.

(2) Notification may be given by the Secretary under subsection (1) by telephone, facsimile, or such other manner as the Secretary considers appropriate.

160. Other provisions in respect of emergency rules - (1) A rule made under section 20 or section 113 by the Secretary shall be in force for such period as is specified

in the rule which shall not exceed 90 days, and may be renewed once only for a further period not exceeding 30 days.

(2) If any rule made under section 20 or section 113 by the Secretary is inconsistent with or repugnant to any rule made by the Minister under this Act, the rule made by the Secretary shall prevail.

161. Further general provisions in respect of rules - (1) Any rules made under this Act may be made so that different rules shall apply with respect to different classes of persons, organisations, vessels, offshore installations, pipelines, maritime products, maritime related services, marine protection products, or of any other real or personal property, or with respect to the same class of person, organisation, vessel, offshore installation, pipeline, maritime product, maritime related service, marine protection product, or of any other property or item in different circumstances.

(2) Any rule made under this Act may apply generally throughout the Cook Islands, or Cook Islands waters, or within any specified part or parts of the Cook Islands or Cook Islands waters, or to any Cook Islands vessel.

(3) The commencement of any rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.

(4) No rule made under this Act shall be invalid because it confers any discretion upon, or allows any matter to be determined or approved by the Ministry, the Secretary, or any other person, or allows the Ministry, the Secretary, or any other person to impose requirements (including requirements by notice) as to the performance of any activities.

(5) No breach of any rule made under this Act shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act or is expressly specified by this Act to be an offence against this Act.

(6) Every rule made under this Act is hereby deemed to be a regulation.

(7) So far as any bylaws are inconsistent with or repugnant to any rule in force in the same locality, the bylaws shall be construed subject to the rule.

(8) The Minister shall not delegate his or her power to make rules under this Act.

162. Incorporation in rules of material by reference - (1) The following may be incorporated by reference into a rule made under this Act -

- (a) Standards, requirements, or recommended practices of international or national organizations;
- (b) Standards, requirements, or rules in force in any other jurisdiction;
- (c) Standards, requirements, or rules, of any classification society or similar organization;
- (d) Standards, requirements, or rules, of any maritime sporting or maritime recreational organization;
- (e) Any other written material or document that, in the opinion of the Minister 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 subsection (4), be deemed to be part of the rule.

(3) The Secretary shall make available for inspection free of charge or purchase at a reasonable price, at such place or places as he or she shall from time to time appoint, copies of all material incorporated in a rule by reference under subsection (1) and copies of all amendments deemed to be part of any rule.

(4) No amendment to any material incorporated in a rule by reference under subsection (1) of this section shall have effect until it is made available for inspection or purchase in accordance with subsection (3) of this section.

Powers of entry

163. General power of entry - (1) Subject to subsections (3) and (4), every person duly authorised by the Secretary may, at any reasonable time or times, go on board any vessel or enter any building or place for the purpose of carrying out his or her functions, duties, or powers under this Act.

(2) Subject to subsections (3) and (4), but without limiting the power conferred by subsection (1), every person duly authorised by the Secretary who has reasonable grounds to believe that -

- (a) Any breach of this Act is being or about to be committed; or
- (b) A condition imposed under any maritime document or marine protection document is not being complied with; or
- (c) A situation exists within the maritime system or is about to exist that constitutes a danger to persons or property or a threat to the marine environment -

may at any reasonable time go on board any vessel, or enter any building or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) of this subsection exists.

(3) No such duly authorised person shall enter a dwelling house under subsection (1), except with -

- (a) The consent of an occupier; or
- (b) A warrant issued under section 164.

(4) Where a warrant under section 164 has been issued to a duly authorised person subject to conditions, the duly authorised person -

- (a) Shall not enter the dwellinghouse specified in the warrant otherwise than in accordance with the conditions; and
- (b) Shall in all other respects comply with the conditions.

(5) Subject to subsection (4), a duly authorised person exercising the powers of inspection conferred by subsection (1) or subsection (2) may use such force in going on, into, or under, the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

164. Warrant to inspect dwellinghouse - A High Court Judge or a Justice of the Peace duly authorised by the Chief Justice, who, on a written application made on oath by a person duly authorised by the Secretary, is satisfied that entry to a dwellinghouse is reasonably required to enable an inspection to be carried out in the performance of any functions, duties, or powers under this Act, may issue to the duly authorised person, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising that person to enter the place on one occasion within 14 days of the issue of the warrant.

165. Entry in respect of offences - (1) Subject to subsection (2), a High Court Judge or a Justice of the Peace duly authorised by the Chief Justice, who, on a written application made on oath by a person duly authorised by the Secretary, is satisfied that there are reasonable grounds for believing that there is on or in any place specified in the application any thing -

- (a) In respect of which an offence against this Act has been or may have been committed; or
- (b) That is or may be evidence of the commission of an offence against this Act; or
- (c) That is intended to be used for the commission of an offence against this Act -

may issue, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising the entry and search of the place, at any reasonable time on one occasion within 14 days of the issue of the warrant.

(2) Every warrant under subsection (1) shall be directed to and exercisable only by -

- (a) A member of the Police specified in the warrant; or
- (b) A duly authorised person specified in the warrant, if accompanied by a member of the Police; or
- (c) Any member of the Police; or
- (d) Any duly authorised person, if accompanied by a member of the Police.

(3) Where a warrant under subsection (1) has been issued subject to conditions, the person exercising it -

- (a) Shall not enter or search the place specified in it otherwise than in accordance with the conditions; and
- (b) Shall in all other respects comply with the conditions.

(4) Subject to subsection (3), a person exercising a warrant under subsection (1) may use such force in entering the place specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

166. Duties on exercising power of entry - (1) Any person duly authorised by the Secretary, or member of the Police, exercising a power of entry conferred by section 164 or section 165 -

- (a) Shall have with him or her -
 - (i) evidence of his or her identity, and appointment as a duly authorised person or member of the Police; and
 - (ii) except in the case of entry under section 164 to a place that is not a dwellinghouse, the warrant under section 164 or section 165 authorising the entry; and
- (b) Shall produce them to any person appearing to be in charge of the place entered -
 - (i) on entering the place (if such a person is then present); and
 - (ii) at any reasonable time thereafter, if asked to do so by the person; and
- (c) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection or search concerned has been completed, shall, as soon as is practicable after completing the inspection or search, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters -
 - (i) The time and date of entry;
 - (ii) The circumstances and purpose of entry;
 - (iii) The name, office or position, and employer of every person entering;
 - (iv) If entry was under warrant, the principal contents of the warrant;
 - (v) Everything that has been seized, or that nothing has been seized, as the case may be.

167. Additional powers - (1) A person lawfully exercising the powers conferred by section 163 or section 165 may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disk from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the person duly authorised by the Secretary to reproduce, in usable form, information recorded or stored in a computer or other device.

(2) A duly authorised person who has lawfully entered premises under section 163 or section 165 may do on or in respect of any such premises all such acts and things as appear to the duly authorised person to be reasonably necessary or expedient.

Service of documents

168. Service of documents - Where for the purposes of this Act any document is to be served on, or any notice, notification, or instructions is or are to be given to, any person, that document may be served and any notice, notification, or instructions may be given, -

- (a) In any case, by delivering a copy personally to the person concerned or by leaving a copy at his or her last known place of abode; or
- (b) If the person concerned is a master of a vessel, where there is a master, or a person belonging to a vessel, by leaving a copy for him or her on board the vessel with the person appearing to be in command or charge of the vessel and explaining to that person the nature of the document, notice, notification, or instructions; or
- (c) If the person concerned is a master of a vessel, where there is no master and the vessel is within the limits or territorial sea of the Cook Islands, on the owner of the vessel resident in the Cook Islands, on the agent of the vessel in the Cook Islands, or, where no such agent is known or can be found, by fixing a copy to the mast of the vessel or (if there is no mast) to some other conspicuous part of the vessel; or
- (d) In any other manner provided for service of that document, notice, notification, or instruction by this Act or by rules or regulations made under this Act.

Detention of vessel and distress on vessel

169. Recovery of fines, etc., by distress - (1) Where under this Act any Court -

- (a) Adjudges any person convicted of an offence to pay any fine or other money; or
- (b) Adjudges any person to pay wages owing to any seafarer or master; or
- (c) Makes any order for payment of costs or expenses of or incidental to any such proceeding, -

and the person adjudged or ordered to pay the same is the owner or master of a vessel, and the same are not paid within the time and in the manner limited by the conviction or specified in the order of the Court, or, if in the case of a proceeding or the recovery of wages no time for payment is specified, within 7 days after judgment is given or the order made, the Court may exercise the powers specified in subsection (2).

(2) In any such case the Court may, -

- (a) In addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the vessel and the vessel's equipment; and
- (b) If, at any time thereafter while that fine or those wages or other money remain unpaid, that vessel is found within the internal waters or the territorial sea of the Cook Islands, issue an order for the detention of the vessel.

(3) An order for the detention of a vessel under this section shall be directed to the Secretary, or other officer named in the order, requiring him or her to detain the vessel until the judgment or order of the Court has been satisfied.

170. Enforcing detention of vessels - (1) Where under this Act a vessel is to be or may be detained, the Secretary or any person to whom an order for detention made by any Court under powers conferred by this Act is directed, may detain the vessel; and if, after detention or after service on the master of any notice of or order for detention, the vessel proceeds to sea before it is released by competent Ministry, the master and the owner, and also any person who sends the vessel to sea if he or she is a party or privy to the offence, each commits an offence and shall be liable, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 12 months; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$200,000.

(2) If a vessel proceeds to sea while there is on board any person who is detaining the vessel under this Act, the owner and the master of the vessel each commits an offence against this Act and shall, in addition to the liability he or she incurs under subsection (1), be liable in respect of each offence, -

- (a) In the case of an individual, to -
 - (i) imprisonment for a term not exceeding 2 years; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both.
- (b) In the case of a body corporate, to a fine not exceeding \$200,000.

(3) Where under this Act a vessel is to be detained, a Customs officer shall, and, where under this Act a vessel may be detained, a Customs officer may, refuse to grant a clearance to that vessel.

171. Consular officer to be notified of detention of foreign vessel - (1) Where pursuant to any provision of this Act any foreign vessel is detained at a port in the Cook Islands, or any proceeding is taken against the owner of a foreign vessel or any other person for the time being responsible for the navigation and management of the vessel or against the master of the vessel, the following provisions shall apply -

- (a) In any case where the person ordering or giving notice of that detention, or, as the case may be, instituting that proceeding, is not the Secretary, that person shall forthwith inform the Secretary thereof and of the reason for the detention;
- (b) In every case the Secretary shall forthwith cause notice thereof to be served on a consular officer of the country in which the vessel is registered or to which the vessel belongs; and the notice shall specify the grounds on which the vessel has been detained or, as the case may be, the grounds on which the proceeding has been taken.

(2) Nothing in this section shall affect the provisions of section 38 or section 120.

172. Cost of detention and inspection to be paid by owner - (1) Where any vessel is detained at a port in the Cook Islands under or pursuant to this Act, the owner of the vessel, or other person for the time being responsible for the navigation and management of the vessel, shall be liable to pay to the costs of and incidental to the detention and to any inspection and audit under this Act; and those costs shall, without prejudice to any other remedy, be recoverable as a debt due to the Crown,

(2) Nothing in this section shall affect the provisions of section 39 or section 121.

173. Detention in lieu of security for civil claims - (1) For the purposes of this section, where the owner of a vessel is a corporation, it shall be deemed to reside in the Cook Islands if it has an office or place of business in the Cook Islands at which service can be effected.

(2) Subject to subsection (3), where a person has been convicted of an offence under this Act in respect of the discharge of a pollutant from a vessel or convicted of an offence of contravening or permitting a contravention of any provision of the Prevention of Marine Pollution Act 1998 in respect of the discharge of any pollutant and, -

(a) Property has been or is likely to be damaged by that discharge; and

(b) None of the owners of that vessel reside in the Cook Islands, -

a High Court Judge may, on being satisfied as to the matters in paragraphs (a) and (b) of this subsection, order any Customs officer or other officer named by the High Court Judge to detain that vessel until such time as security for costs, damages, or other money that may be payable as a result of any civil proceedings has been given.

(3) A certificate complying with the terms of Article VII of the Civil Liability Convention shall be sufficient security for the purposes of this section.

(4) On any order being made under subsection (2), the officer to whom the order is directed shall detain the vessel.

(5) Procedure on an application for an order under subsection (2) shall be as the High Court Judge considers appropriate.

(6) Any person affected by an order made under subsection (2) may appeal against that order to the High Court.

174. Agents' contracts of indemnity - (1) Where any person enters into an agreement to act as the agent in the Cook Islands of the owner, charterer, manager, or operator of a vessel, he or she shall be entitled to enter into a contract of indemnity whereby the owner, charterer, manager, or operator agrees to indemnify the agent for any sum for which the agent may become liable as a result of any proceedings (whether civil or criminal) against the agent, in the capacity of such agency, in any Court under any provision of this Act or the Prevention of Marine Pollution Act 1998, or both.

(2) Where any proceedings are brought in a Cook Islands Court by an

agent seeking to enforce a contract of indemnity entered into with the owner, charterer, manager, or operator of a vessel, the Court may enforce the contract of indemnity except where the proceedings have resulted from the willful act or neglect or default of the agent.

175. Designation of parties to conventions - (1) The Minister shall keep a list of and may give a certificate stating the Contracting Parties to any convention declared by Order in Executive Council under section 2(3).

(2) Any list or certificate under subsection (1) shall specify the date on which any such Government or State became or ceased to be a Contracting Government, a State Party, a Contracting Party, or a Contracting State, as the case may be.

(3) In the absence of proof to the contrary, a certificate issued under subsection (1) shall be conclusive evidence of the matters stated in the certificate.

176. Other enactments not affected - Except where this Act or any other enactment otherwise provides, the provisions of this Act are in addition to and not in substitution for the provisions of the Prevention of Marine Pollution Act 1998, and, except as expressly provided by this Act, nothing in this Act shall derogate from the provisions of that enactment.

PART 16

SAVINGS, REPEALS AND CONSEQUENTIAL AMENDMENTS

177. Savings relating to the Shipping Act 1998 - (1) Any proceeding, action, or investigation under -

(a) The Shipping Act 1998; or

(b) Any regulations, rules, or order revoked by this Act,-

that has commenced, is pending or in progress immediately before the commencement of this section, may be continued, completed, or enforced, as the case may require, as if that Act had not been repealed, or those regulations or rules or that order had not been revoked, by this Act.

(2) Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by or under the Cook Islands Shipping Act 1998, or any regulations or rules or order made under that Act, shall, -

(a) If issued, recognised, or accepted by the Minister, the Ministry, the Secretary, or any employee of the Ministry, or by any person or organisation acting pursuant to and in accordance with delegated authority under any enactment; and

(b) If in force immediately before the repeal of that Act by this Act, -

be deemed to be issued, recognised, or accepted, as the case may be, as a maritime document under this Act.

(3) Any determination, order, finding or ruling made under the Cook Islands Shipping Act 1998 that was in force or in effect immediately before the repeal of that Act by this Act, shall continue to have force and effect as if made under this Act

unless, upon, application, the High Court, having regard to the objectives and functions set out in sections 6 and 7, considers it appropriate to order otherwise.

178. Repeals and amendments - (1) The enactments specified in Schedule 3 are repealed.

(2) The enactments set out in the first column of Schedule 4 are amended in the manner set out in the second column of that Schedule.

This Bill is administered by the Ministry of Transport

RAROTONGA, COOK ISLANDS: Printed under the authority of the Government of the Cook Islands - 2008

SCHEDULE 1(s2(2))***Serious Harm***

1. Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.
2. Amputation of body part.
3. Burns requiring referral to a specialist ... medical practitioner or specialist outpatient clinic.
4. Loss of consciousness from lack of oxygen.
5. Loss of consciousness, or acute illness requiring treatment by a ... medical practitioner, from absorption, inhalation, or ingestion, of any substance.
6. Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within 7 days of the harm's occurrence.

SCHEDULE 2 (S7(2))***Consultants, agents, etc***

1. The Minister may from time to time appoint consultants, agents, specialists, and advisory committees to advise him or her in relation to the exercise of his or her functions and powers, and to exercise such functions and powers as may be delegated under this Act to such persons or committees.
 2. The Minister may pay to any such so appointed such remuneration by way of fees, salary or allowances, and such traveling allowances and expenses, as the Minister thinks fit; and
 3. In making any payment under clause (2), the Minister must have regard to any fees framework determined by the Government from time to time.
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SCHEDULE 3 (S178(1))***Enactments repealed***

The Shipping Act 1998

The Sea Carriage of Goods Act 1940

SCHEDULE 4 (S178(2))***Enactments amended***

Enactment	Amendment
Prevention of Marine Pollution Act 1998	
Section 2(1)	By repealing the definition of “Cook Islands vessel” and substituting the definition for that term set out in section 2(1) of this Act;
	By repealing the definition of “Principal Surveyor” and substituting the following definition, “Surveyor” means a surveyor appointed pursuant to section 20(1) of the Ship Registration Act 2007;
Section 5	By repealing that section.
Ports Authority Act 1994-1995	
Section 54(1)	By deleting from that section the words “harbour or tidal waters, or on the seashore” and substituting therefore the word “Port”.
Part IV	By repealing that Part
Ship Registration Act 2007	
Section 2	By omitting from the definition of “Qualified person” the words “commercial yacht” and substituting the word “ship”

SCHEDULE 5 (S100)***Schedule Contents***

The Amended Hague Rules

Article 1

Article 2

Article 3

Article 4

Article 4bis

Article 5

Article 6

Article 7

Article 8

Article 9

Article 10

The Amended Hague Rules***Article 1***

In this convention the following words are employed with the meanings set out below:

- (a) **Carrier** includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) **Contract of carriage** applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) **Goods** includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) **Vessel** means any vessel used for the carriage of goods by sea.
- (e) **Carriage of goods** covers the period from the time when the goods are loaded on to the time they are discharged from the vessel.

Article 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled

to the rights and immunities hereinafter set forth.

Article 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to -
 - (a) Make the vessel seaworthy.
 - (b) Properly man, equip and supply the vessel.
 - (c) Make the holds, refrigerating and cool chambers, and all other parts of the vessel in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things -
 - (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
 - (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
 - (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.
5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery

thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the vessel shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the vessel or vessels upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.
8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the vessel from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article 4

1. Neither the carrier nor the vessel shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the vessel seaworthy, and to secure that the vessel is

properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the vessel in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the vessel shall be responsible for loss or damage arising or resulting from -
 - (a) Act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the vessel.
 - (b) Fire, unless caused by the actual fault or privity of the carrier.
 - (c) Perils, dangers and accidents of the sea or other navigable waters.
 - (d) Act of God.
 - (e) Act of war.
 - (f) Act of public enemies.
 - (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
 - (h) Quarantine restrictions.
 - (i) Act or omission of the shipper or owner of the goods, his agent or representative.
 - (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general.
 - (k) Riots and civil commotions.
 - (l) Saving or attempting to save life or property at sea.
 - (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
 - (n) Insufficiency of packing.
 - (o) Insufficiency or inadequacy of marks.
 - (p) Latent defects not discoverable by due diligence.
 - (q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
3. The shipper shall not be responsible for loss or damage sustained by the carrier or the vessel arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the vessel shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the vessel in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows -

- (i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 10,000 monetary units;

- (ii) in respect of the amount of 2 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in subparagraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

- (e) Neither the carrier nor the vessel shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
 - (f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the Bill of Lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
 - (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.
 - (h) Neither the carrier nor the vessel shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the Bill of Lading.
6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the vessel or

cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article 4b

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the Bill of Lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a vessel under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a Bill of Lading of any lawful provision regarding general average.

Article 6

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article 7

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the vessel for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the vessel on which the goods are carried by sea.

Article 8

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article 9

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article 10

The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:

- (a) the Bill of Lading is issued in a Contracting State, or
- (b) the carriage is from a port in a Contracting State, or
- (c) the contract contained in or evidenced by the Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract -

whatever may be the nationality of the vessel, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to Bills of Lading not included in the preceding paragraphs.

SCHEDULE 6 (S104)

Schedule Contents

International Convention on Salvage, 1989

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<i>International Convention on Salvage, 1989</i>	

THE STATES PARTIES TO THE PRESENT CONVENTION, RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

Chapter I

General Provisions

Article 1 Definitions

For the purpose of this Convention:

- (a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) *Vessel* means any vessel or craft, or any structure capable of navigation.
- (c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) *Damage to the environment* means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) *Payment* means any reward, remuneration or compensation due under this Convention.
- (f) *Organization* means the International Maritime Organization.
- (g) *Secretary-General* means the Secretary-General of the Organization.

Article 2 Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3 Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral sources.

Article 4 State-owned vessels

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.
2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 5 Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
3. The extent to which a public Ministry under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such Ministry is situated.

Article 6 Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
2. The master shall have the Ministry to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the Ministry to conclude such contracts on behalf of the owner of the property on board the vessel.
3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

Article 7 Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II

Performance Of Salvage Operations

Article 8 Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:
 - (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

- (a) to co-operate fully with him during the course of the salvage operations;
- (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept re-delivery when reasonably requested by the salvor to do so.

Article 9 Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10 Duty to render assistance

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 11 Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Chapter III

Rights of Salvors

Article 12 Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13 Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are

presented below:

- (a) the salvaged value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
 - (c) the measure of success obtained by the salvor;
 - (d) the nature and degree of the danger;
 - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
 - (f) the time used and expenses and losses incurred by the salvors;
 - (g) the risk of liability and other risks run by the salvors or their equipment;
 - (h) the promptness of the services rendered;
 - (i) the availability and use of vessels or other equipment intended for salvage operations;
 - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
 3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

Article 14 Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.
3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 15 Apportionment between salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16 Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

Article 17 Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18 The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19 Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

Chapter IV

Claims and Actions

Article 20 Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21 Duty to provide security

1. Upon the request of the salvor a person liable for payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Article 22 Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23 Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24 Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25 State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis

for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

Article 26 Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Article 27 Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

Chapter V

Final Clauses

Article 28 Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.
2. States express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 29 Entry into force

1. This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

Article 30 Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:
 - (a) when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
 - (b) when the salvage operations take place in inland waters and no vessel is involved;
 - (c) when all interested parties are nationals of that State;
 - (d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 31 Denunciation

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

Article 32 Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 33 Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Convention;
 - (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) any amendment adopted in conformity with article 32;
 - (v) the receipt of any reservation, declaration or notification made under this Convention;
 - (b) transmit certified true copies of this Convention to all States which have

signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34 Languages

This convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned^{1*} being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE at LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

Attachment1

Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.

Attachment2

Resolution requesting the amendment of the York-Antwerp Rules, 1974

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,
HAVING ADOPTED the International Convention on Salvage, 1989,
CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,
REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

Attachment3

Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

The International Conference on Salvage, 1989,
IN ADOPTING the International Convention on Salvage, 1989 (hereinafter referred to as **The Convention**),
Considering it Desirable that as many States as possible should become Parties to the Convention,

¹Signatures omitted.

RECOGNIZING that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

CONSIDERING that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

I RECOMMENDS:

- (a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;
- (b) that training institutions created under the auspices of the Organization include the study of the Convention in the corresponding courses of study.

II REQUESTS:

- (a) Member States to transmit to the Organization the text of the laws, orders, decrees, regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;
 - (b) Member States, in consultation with the Organization, to promote the giving of help to those States requesting technical assistance for the drafting of laws, orders, decrees, regulations and other instruments necessary for the implementation of the Convention; and
 - (c) The Organization to notify Member States of any communication it may receive under paragraph II(a).
-