



ANALYSIS

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1998, No. 17

An Act to consolidate and amend the law relating to Shipping and Seafarers and to control the registration, safety and manning of ships, and to give effect to various international maritime conventions, and for the purposes connected therewith.

(24th November 1998)

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

1. Short Title and Commencement - (1) This Act may be cited as the Shipping Act 1998.

(2) This Act shall come into force on a date to be appointed by the Queen's Representative by Order in Executive Council, and different dates may be so appointed for the coming into force of different parts and different sections of this Act.

PART I
PRELIMINARY

2. Interpretation - In this Act and in any Regulations made pursuant to this Act unless the contrary intention appears -

"Administration" means the Ministry responsible for Shipping;

"aid" means a marine navigation aid;

"Air-cushioned vehicle" means a vehicle designed to be supported when in motion wholly or partly by air expelled from the vehicle and forming a cushion of air, the boundaries of which include the water and other surface below the vehicle;

"Authority" means the Ports Authority as established by the Ports Authority Act 1994-95;

"Casualty" in relation to a vessel, means:

- (a) loss, or presumed loss, stranding, grounding foundering or abandonment of, or damage to, the vessel or a boat belonging to the vessel; or
- (b) damage caused by a vessel or by a boat belonging to the vessel; or

- (c) loss of life or serious injury caused by:
- (i) a fire on board; or
 - (ii) an accident to the vessel; or
 - (iii) an accident occurring on board the vessel or a boat belonging to the vessel;

"Certificate of Competency" means a certificate issued by the Director of Marine on behalf of the Administration to a seafarer under Part V of this Act which entitles the seafarer to serve in a vessel in the designation or Class stated in that certificate;

"Certificated pilot" means a person holding a current Pilotage certificate that entitles him to have the lawful conduct of a ship in the Pilotage area in respect of which it is issued;

"Code" means the Seafarers' Training, Certification and Watchkeeping Code (STCW Code);

"Collisions Convention" means the Convention on the International Regulations for Preventing Collisions at Sea 1972, together with the constituted Rules and other Annexes attached to that Convention, as corrected by Process-Verbal of Rectification dated 1 December 1973, as amended from time to time unless that amendment has been objected to by the Cook Islands;

"Cook Islands waters" means all waters appertaining to the Cook Islands and includes the territorial sea as defined in the Territorial Sea Act 1971 and the exclusive economic zone as defined by the Exclusive Economic Zone Act 1977;

"Corporation" means any body corporate registered under the laws of the Cook Islands and includes any Company, partnership, sole proprietorship, association, institution, statutory authority or other entity whether incorporated and registered or not;

"Court" means the High Court of the Cook Islands;

"Crew" means those persons employed or engaged in any capacity on board a vessel, but does not include a master, or pilot or other person temporarily employed on board the vessel while it is in port;

"Dangerous goods" means any goods classified and dealt with as dangerous goods in the International Maritime Dangerous Goods Code, 1981, (IMDG Code), published by the International Maritime Organisation, London, as amended from time to time;

"Discharge", in relation to harmful substances means any release from a ship howsoever caused, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying; but does not include:-

- (i) "dumping" as defined in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13th November 1972;
- (ii) the release of harmful substances directly resulting from the exploration, exploitation, and associated off-shore processing of sea-bed mineral resources; or
- (iii) the release of harmful substances for purposes of legitimate research into pollution abatement or control;

"Disciplinary Offence" includes any act or omission committed by a member of the crew, which causes or is likely to cause the loss, destruction or serious damage to a vessel, or death or injury to a person on board or negatively affect the safety and good order of the operation of the vessel;

"Equipment" in relation to a vessel, includes every thing or article belonging to or used in connection with, or necessary for the navigation, safety and working of the vessel;

"Exempt person" means a person holding a current Pilotage exemption certificate that entitles that person to pilot a particular vessel, or a vessel of a particular class, within the Pilotage area in respect of which the exemption certificate is issued;

"Existing vessel" means a vessel that is not a new vessel;

"Fishing vessel" means a vessel used, or intended to be used, wholly or principally for the catching or taking of marine organisms, including fish, whales, seals, aquatic plants or other living resources of the sea on a commercial basis and includes -

- (a) a vessel engaged in fisheries research; and
- (b) a vessel that is wholly or principally used or intended to be used as a carrier, or mother vessel, supply or bunker vessel or any other vessel used in support of fishing vessels;

"Government" means the Government of the Cook Islands;

"Government vessel" means a vessel that is -

- (a) wholly owned by the Government;
- (b) chartered to the Government and is wholly under its management and control;

"Gross tonnage" in relation to a ship having alternative gross tonnages, shall be taken to be the larger of those tonnages;

"Harmful substance" means any substance which, if introduced into the sea, may create hazards to human health, harm living resources or marine life, damage amenities, or interfere with other legitimate uses of the sea, and includes any substance subject to control by the MARPOL or London Conventions;

"IMDG Code" means the International Maritime Dangerous Goods Code published by IMO under the provisions of the Safety Convention;

"IMO" means the International Maritime Organisation;

"Incident" means an event involving the actual or probable discharge into the sea from a ship of a harmful substance, or effluent's containing such a substance;

"Insurer" shall include both Hull and Machinery insurers and Protection and Indemnity insurers;

"Law of the Sea Convention" means the United Nations Convention on the Law of the Sea, 1982;

"Left behind" in relation to a seafarer -

- (a) means the leaving behind of a seafarer belonging to a vessel at a port other than the port to which the Seafarer was to be returned as set forth in the Articles of Agreement or Employment Contract; but
- (b) does not include the leaving behind of a seafarer, who without the consent of the master, has left the vessel to which he belongs with the intention of not returning to that vessel;

"Length" in relation to a vessel means -

- (a) the length shown in the vessel's Certificate of Registry, or Tonnage Certificate; or

- (b) in the case of a vessel which does not possess either of those certificates or where the length is not shown on either certificate, the length of the vessel as determined by the Principal Surveyor;
- "Limitation of Liability for Maritime Claims Convention" means the International Convention for Limitation of Liability for Maritime Claims 1976, including any Protocols as amended from time to time unless objected to by the Cook Islands;
- "Light" includes any fire, lamp, street light or other illuminating device, or reflected light;
- "List of suspended persons" means a list of persons who have been declared by the Director of Marine to be suspended persons as a result of discipline imposed in the manner prescribed under this Act;
- "Load line" means a line marked on the hull of a vessel indicating the depth to which a vessel may safely be loaded;
- "Load Lines Convention" means the International Convention on Load Lines, 1966 and any amendment, unless that amendment has been objected to by the Cook Islands;
- "Load Lines Convention ship" means a vessel that is -
- (a) of a kind to which the Load Lines Convention applies; and
 - (b) registered in a State that is a party to the Load Line Convention;
- "Marine Lien" means a claim against the owner, demise charterer, manager or operator of the vessel, secured by a Maritime lien on the vessel as described in the International Convention on Maritime Liens and Mortgages, 1993;
- "Marine Navigation Aid" includes lights, lighthouses, beacons, radio beacons, electronic position/lining devices, buoys, fixed structures, illuminating and reflecting devices and any other apparatus the purpose of which is to assist in the navigation of vessels and small crafts;
- "MARPOL 73/78 Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended from time to time, unless that amendment has been objected to by the Cook Islands;
- "Master" means the person appointed by the Owner having lawful command or charge of the vessel but does not include a pilot;
- "Minister" means the Minister Responsible for Shipping;
- "Ministry" means the Ministry Responsible for Shipping;
- "National Flag" means the flag of the Cook Islands;
- "New vessel" means a vessel -
- (a) the keel of which was laid or which was at a similar stage of construction; or
 - (b) that has been substantially altered or reconstructed;
- on or after the date of coming into force of the applicable provision of this Act in respect of the vessel;
- "Officer" means an employee of, or a person acting for and on behalf of, the Ministry responsible for Shipping;
- "Official log book" means the logbook of a vessel required to be kept by the master under section 145 of this Act;
- "Offshore vessel" means a vessel which is not registered under this Act, but on which Cook Islands seafarers are employed;

"Outrigger vessel" means a vessel built of traditional materials or to a traditional design;
"Owner" means, in relation to a vessel, the owner of a vessel, a share in a vessel, or any legal, as opposed to equitable, interest in a vessel or any interest in a share of a vessel other than a mortgagee;

"Owner" in relation to a wrecked vessel, means any person to whom the wrecked vessel:-

- (a) belongs; or
- (b) belonged at the time at which it became wrecked; or
- (c) has belonged at any time after the time at which it became wrecked;

"Part" means a Part of this Act;

"Part of a vessel" includes the hull, machinery and equipment of a vessel;

"Passenger" means a fare-paying person carried on board a vessel with the knowledge or consent of the owner or master of the vessel but does not include:-

- (a) a person engaged in any capacity on board the vessel in the business of the vessel; or
- (b) a person on board the vessel in pursuance of an obligation laid upon the master to carry shipwrecked, distressed, or other persons who by reason of any circumstances that neither the master, nor owner, nor charterer, could have foreseen or prevented;
- (c) a child under the age of one year;

"Passenger vessel" means a vessel that is carrying more than 12 passengers on a voyage;

"Permanent resident" means a person who has been granted a certificate conferring on him the status of permanent resident of the Cook Islands under the Entry, Residence and Departure Act 1971-72;

"Person" means natural or legal person and includes a corporation;

"Pilot" means any person not belonging to the vessel who has the lawful conduct of the vessel;

"Pleasure craft" means a vessel that is exclusively used for pleasure, and not used for hire or reward or any commercial purpose; but does not include:-

- (a) a vessel which is provided for transport, sport or recreation by or on behalf of any institution, hotel, resort, or place of entertainment, or other establishment or business; or
- (b) a vessel that is used on any voyage for pleasure if it is normally used for fishing or for the carriage of passengers or cargo for hire or reward;

"Pollution" means the discharge or release into the sea of any harmful substance;

"Prescribed" means prescribed by regulations made under this Act;

"Proper return port" in relation to a seafarer, means the port named in the Articles of Agreement or Employment Contract as agreed upon by the employer and seafarer as the Port to which the seafarer is to be returned at the expiration of the Agreement or Contract;

"Qualified Seafarer" means a person on board a vessel who holds a certificate appropriate to the capacity in which he is serving in the vessel;

"Qualified Person" means -

- (a) a person who is a permanent resident of the Cook Islands; or

- (b) a corporation that is subject to the laws of the Cook Islands whose principal place of business is in the Cook Islands;

"Radio installation" means a radiotelegraphy or radiotelephony installation, including VHF radiotelephony, (as defined in the Annex to the 1974 SOLAS Convention and the 1978 Protocol relating thereto, incorporating the 1981 and 1983 amendments, Chapter IV), but does not include a radio navigation aid;

"Receiver" means the Receiver of Wreck;

"Register" means the Register of Vessels maintained by the Registrar;

"Register of Seafarers" means the Register of Seafarers maintained by the Director of Marine;

"Registrar" means the Registrar of Vessels;

"Related interests" means interests directly affected or threatened including (but without limiting the generality of the foregoing) - fishing, maritime, coastal, port or estuarine activities, tourist attractions, public health and welfare, and conservation of living marine resources and wildlife;

"Safety Convention" means the International Convention for the Safety of Life at Sea, 1974, and the Protocol of 1978, (SOLAS), as affected by any amendment, unless that amendment has been objected to by the Cook Islands, made under Article VIII of that Convention;

"Safety Convention ship" means a vessel that is -

- (a) of a kind to which the Safety Convention applies; and
- (b) registered in a State that is a party to the Safety Convention;

"Salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services;

"Salvage Convention" means the International Convention on Salvage 1989, including any Protocols, as amended from time to time, unless objected to by the Cook Islands;

"Seafarer" means a person who is employed or engaged on any vessel in any capacity for gain or reward, but does not include a pilot or a person temporarily employed on board while the vessel is in port;

"Secretary" means the Secretary for the Ministry responsible for Shipping;

"Ship" means a vessel that is self propelled but does not include a vessel ordinarily propelled by oars or sails;

"STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as affected by any amendment, unless that amendment has been objected to by the Cook Islands, made under Article XII of that Convention;

"Tonnage" means tonnage as defined by the International Convention on Tonnage Measurement of Ships, 1969, as amended;

"Tonnage Certificate" means:-

- (a) where a vessel is a vessel to which the Tonnage Measurement Convention would apply if the vessel were engaged on an international voyage, an International Tonnage Certificate (1969); or
- (b) such other tonnage measurement certificate as the regulations prescribe shall be issued in respect of the vessel;

"Tonnage Measurement Convention" means the International Convention on Tonnage

Measurement of Ships 1969 as affected by any amendment, other than an amendment not accepted by the Cook Islands, made under Article XVIII of that Convention;

"Tonnage Measurement Convention ship" means a vessel that is -

- (a) of a kind to which the Tonnage Measurement Convention applies; and
- (b) registered in a State which is a party to the Tonnage Measurement Convention;

"Unsafe vessel" means a vessel which in the opinion of the Principal Surveyor is unfit to go to sea in its present condition without danger to human life or damage to cargo, or otherwise deemed to be unseaworthy;

"Vessel" means every description of craft used, or capable of being used, in marine transportation and includes fishing vessels, hovercraft, non-displacement vessels and mobile offshore units, but does not include seaplanes and vessels under construction but not yet launched;

"Wreck" includes jetsam, flotsam, lagan, and derelict found in or on the shores or bottom of the sea or any tidal water;

"Wrecked vessel" means any vessel that is wrecked, stranded, sunk or abandoned or which is lying on the seabed within the limits of the jurisdiction of the Cook Islands.

3. Application - (1) This Act shall apply to all vessels registered or vessels required to be registered or licensed under this Act or Regulations on any voyage and in any waters, and to every vessel in Cook Islands waters or in a Cook Islands port or harbour, and to any vessel on which Cook Islands seafarers are employed, but does not apply to a vessel belonging to the defence force of any country, including but not limited to, warships, naval auxiliaries, patrol vessels and other similar vessels.

(2) Subject to this Act and to any other law, and subject to any such reservations as the Cook Islands may make, the following International Conventions shall have the force of law in the Cook Islands:-

- (a) International Convention on Load Lines, 1966 and any amendments thereto from time to time adopted (known as the Load Line Convention) including all amendments included in the Supplement of 1981, and the Protocol of 1988, in respect of the International Conference on the Harmonised System of Survey and Certification;
- (b) International Convention on Tonnage Measurement of Ships, 1969, known as the Tonnage Convention, with any amendments from time to time adopted including the Protocol of 1988 in respect of Harmonisation;
- (c) Convention on the International Regulations for Preventing Collisions at Sea, 1972, known as the "Collision Convention", including the Rules for Preventing Collision at Sea, and all amendments from time to time adopted under the tacit acceptance procedures unless specifically rejected by the Cook Islands;

- (d) International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, incorporating the 1981 and 1983 amendments known as MARPOL 73/78;
- (e) International Convention for the Safety of Life at Sea, 1974, known as Safety Convention and SOLAS 1974, and SOLAS Protocol 1978, including the IMDG Code, and all amendments from time to time adopted under the tacit acceptance procedures unless specifically rejected by the Cook Islands including the Protocol of 1988 in respect of Harmonisation;
- (f) International Convention of Standards on Training, Certification and Watchkeeping for Seafarers 1978, and all the relative Protocols and Amendments of 1995 and any further amendments thereto, known as the STCW Convention, as amended from time to time.
- (g) International Convention on Salvage 1989;
- (h) International Convention on Maritime Liens and Mortgages, 1993, known as the "MLM Convention".

(3) In the event of any inconsistency between the Convention and this Act or the regulations, the Convention prevails to the extent of the inconsistency.

(4) Where a vessel that is registered under this Act, or a Load Line Convention ship, fails to comply with a requirement of the Load Line Convention, the master or owner of the vessel commits an offence, and is liable upon conviction to a fine not exceeding \$25,000.

(5) Where a vessel that is registered under this Act, or a Safety Convention ship, fails to comply with a requirement of the Safety Convention, the master or owner of the vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$25,000.

(6) Where, in respect of a vessel, irrespective of type or size, that:-

- (a) is registered or licensed under this Act; or
- (b) is a foreign vessel within Cook Islands waters,

the master or the owner or any other person who fails to comply with a requirement of the Collisions Convention, the master or the owner of the vessel or that other person commits an offence and shall be liable upon conviction to a fine not exceeding \$25,000.

(7) Where, in respect of a vessel irrespective of type or size, that:-

- (a) is registered under this Act; or
- (b) is a foreign vessel within Cook Islands waters, the master or the owner or any other person fails to comply with a requirement of MARPOL 73/78, the master or the owner of the vessel or that other person commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000.

(8) Regulations made under this Act may make provision for, or in relation to the implementation of, or giving effect to, the Collisions Convention, the Load Line Convention, MARPOL 73/78, the Safety Convention, the STCW Convention and the Tonnage Measurement Convention.

(9) Where under any of the International Maritime Organisation Conventions listed under this section States-parties have discretion to take any action under them, that discretion may be exercised by the Minister.

(10) Notwithstanding any requirement under this Act for the purpose of giving effect to or implementing any requirement of the Load Lines Convention, Safety Convention or MARPOL 73/78, which requires a particular fitting, material, appliance or apparatus to be fitted or carried in a vessel or any particular provision to be made in a vessel, the Principal Surveyor may allow any other fitting, material, appliance or apparatus or type of fitting, material, appliance or apparatus to be fitted or carried, or any other provision to be made, if he is satisfied that other fitting, material, appliance or apparatus or provision is at least as effective as that required by the Load Lines Convention, the Safety Convention, or MARPOL 73/78, as the case may be.

(11) Where, under the Load Line Convention, the Safety Convention, the Tonnage Measurement Convention or MARPOL 73/78, the countries which are parties to these Conventions, are under a duty to do any act or thing, that act or thing shall be done by the Secretary.

(12) Where a vessel comes under the provisions of any International Maritime Organisation Convention, the provisions of this Part apply only in so far as they are applicable to and relevant to such a vessel.

(13) Where a vessel goes to sea without carrying the equipment required by the Collisions Convention, the Load Lines Convention, the Safety Convention or MARPOL 73/78, to be carried on or fitted in the vessel, or where the equipment required to be carried or fitted is absent from the vessel, or is not in good order and ready for use, the owner and master of the vessel each commit an offence and each shall be liable upon conviction to a fine not exceeding \$20,000.

(14) Except in the case of a vessel that is in distress or requires assistance, a person who exhibits a signal that is prescribed in the Collisions Convention as a signal indicating that a vessel is in distress and needs assistance commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

PART II

National Character and Flag

4. Nationality and National colours - (1) Every vessel registered under this Act shall be deemed to be a Cook Islands vessel and shall have Cook Islands nationality.

(2) The National Flag of the Cook Islands shall be the proper national colours for a vessel registered under this Act.

(3) The master of a vessel registered under this Act shall, (in Cook Islands waters, on the high seas, on the approach of another vessel and in the territorial sea or port of any other state), cause the National Flag to be flown on the vessel at all times during the hours of daylight. A master who fails to do so, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 .

(4) Where, except with the consent of the Registrar, or as a courtesy ensign, any distinctive national colours other than the National Flag are flown on board a vessel registered under this Act:-

- (a) the master of the vessel;
- (b) the owner if he is on board the vessel; and
- (c) any person hoisting those colours,

commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000 .

(5) Every vessel registered under this Act shall carry on board an Official Log Book.

5. Improper assumption or concealment of Cook Islands nationality or character -

(1) A person who is not a Qualified Person shall not, in respect of a vessel which is owned in whole or in part by that person, use the National Flag or assume the nationality or character of the Cook Islands on board that vessel. Any person so doing commits an offence and shall be liable, upon conviction, to a fine not exceeding \$25,000 and the vessel is liable to be forfeited to the Crown.

(2) In any proceeding for the forfeiture of a vessel, the burden of proving a right to use the National Flag or to assume the national character of the Cook Islands lies on the person using or assuming that flag or that character.

(3) The master or owner of a vessel registered under this Act shall not do anything or permit anything to be done in respect of the vessel or carry or permit to be carried on a vessel any papers or documents, with intent to:-

- (a) conceal the national character of the Cook Islands with respect to the vessel from a person entitled by the law of the Cook Islands to inquire into the nationality, registration or character of the vessel; or
- (b) deceive a person referred to above; or
- (c) give the vessel the appearance of a ship of foreign nationality, registration or character, or not being a registered ship;

and anyone so doing commits an offence and upon conviction shall be liable to a fine not exceeding \$15,000.

(4) Where the master or owner of a vessel is convicted of an offence under this section, the vessel is liable to forfeiture to the Crown.

6. Ownership interest subject to forfeiture if unqualified - If a person other than a Qualified Person acquires as owner any interest in a vessel registered under this Act, and fails to divest himself of that interest or become a Qualified Person within 30 days after acquiring that interest is liable to forfeit that interest.

7. Liabilities of unregistered vessels - (1) Where a vessel that is required to be registered under this Act is not so registered, the vessel shall not be entitled:-

- (a) to any benefit, privilege, advantage or protection usually enjoyed by a vessel registered under this Act; or
- (b) to use the National Flag or to assume the national character, or in any other way indicate that it is a registered vessel.

(2) For the purpose of any law of the Cook Islands providing for:-

- (a) the payment of dues, fees or other charges;
- (b) the liability to fines and forfeiture;
- (c) the punishment of offences committed on board a vessel; and
- (d) offences committed by persons belonging to the vessel;

a vessel to which subsection (1) of this section applies shall be dealt with in the same manner in all respects as if the vessel were registered.

8. Declaration of vessel's nationality before clearance - (1) No officer shall grant port clearance in respect of a registered vessel about to leave a port in the Cook Islands for a port outside the Cook Islands until the master of the vessel has declared the nationality of the vessel and produced a Certificate of Registry.

(2) If no Certificate of Registry is produced, the officer may refuse to grant clearance and the vessel may be detained until the declaration is made and a Certificate of Registry is produced.

PART III **REGISTRATION OF VESSELS**

9. Qualifications of owner to register a vessel - (1) No vessel shall be registered under this Act unless the vessel is owned wholly by a Qualified Person, or by persons each of whom is a Qualified Person, and is not registered in any other country.

(2) Where the Registrar has reasonable cause to believe that any vessel registered under this Act is not in compliance with this section, he may require that the master or owner of the vessel produce evidence to his satisfaction that the vessel should continue to be registered.

(3) If within such time as may be determined by the Registrar, not being less than 30 days, the evidence referred to in subsection (2) of this section is not produced, the vessel is liable to be forfeited to the Crown.

10. Obligation to register vessels - (1) Every vessel which is owned by a Cook Islander or a permanent resident of the Cook Islands or a Company incorporated in the Cook Islands and having a length of 15 metres or more shall be registered in accordance with this Act.

(2) Every vessel engaged in the carriage of passengers or cargo on a commercial basis from any port or place in the Cook Islands to any other port or place in the Cook Islands shall be registered under this Act;

(3) Notwithstanding the provisions of subsection (1) and (2) hereof, the owner of a vessel not registered pursuant to this Act, may apply to the Secretary for a temporary exemption from provisions of this section.

(4) A vessel required by this Act to be registered may be detained at a port or place in the Cook Islands until the master or owner of the vessel, if so required, produces the Certificate of Registry of the vessel.

(5) Every Cook Islands passenger or cargo or fishing vessel or pleasure craft of less than 15 metres in length shall be licensed under this Act, in a manner to be prescribed by Regulations.

11. Exempt vessels - (1) Subject to section 10 of this Act, and for the purposes of this Part, an exempt vessel is a vessel that is exempt from registration, and includes a vessel that is -

- (a) less than 15 metres in length; or
- (b) a pleasure craft; or
- (c) ships not propelled by mechanical means; or
- (d) an outrigger vessel; or
- (e) a warship or patrol vessel.

(2) The owner or owners of an exempt vessel that is owned wholly by a Qualified Person or by persons each of whom is a Qualified Person and is not registered in any other country, may apply for the registration of the vessel under this Act.

(3) Any exempt vessel as in (1) above may be exempted from the requirement to be currently in class with one of the Classification Societies.

12. Continuation of registration of certain vessels - A vessel that -

(a) was, immediately before the commencement of this Act, registered in accordance with the Shipping Registry Act 1985; and

(b) is wholly owned by a Qualified Person or by persons each of whom is a Qualified Person,

shall be deemed to be registered, and the existing Certificate of Registry shall continue to be valid under this Act.

13. Registration of Government vessels - Government vessels, except warships, naval auxiliaries, patrol vessels or vessels engaged in non commercial services, shall be registered in accordance with this Act in a manner prescribed by Regulations.

14. The Registrar - (1) There shall be a Registrar of Vessels appointed by the Secretary, whose duty shall be to maintain the Register, and who shall for that purpose:-

(a) receive and record all information and documents required or permitted to be recorded by this Act;

(b) enter in the Register those particulars of vessels, the owners, names and addresses and any mortgages, liens and other instruments required to be recorded or registered in accordance with this Act or Regulations;

(c) grant, issue, vary or revoke such certificates and other documents issued under this Act as required by this Act or by the Court;

(d) issue copies of, or extracts from, any certificate or document and entries in the Register.

(2) There shall be a seal of the Cook Islands Shipping Registry of Vessels in a form determined by the Secretary, which shall be under the control of the Registrar.

(3) All Courts, judges and persons acting judicially shall take judicial notice of the seal of the Registry affixed to a document and shall presume that it was duly affixed.

(4) Where a signature on a document purports to be the signature of the Registrar it shall be presumed, until the contrary is proved, that the signature is that of a person who, at the relevant time, was holding the office or performing the duties of the Registrar.

(5) The Registrar, or any other person to whom any or all of the functions of the Registrar are delegated, shall not be liable for any act or omission done or made by him bona fide and without negligence for the purpose of this Act.

15. Delegation by Registrar - (1) Subject to this Act, the Registrar may, by instrument in writing, delegate to a person all or any of his powers and functions, other than this power of delegation, which may be exercised and performed by that person in relation to the matters specified in the instrument of delegation.

(2) Every delegation is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Registrar.

(3) A copy of every instrument of delegation shall be given to the Secretary.

16. Ports of registry - The Secretary may appoint ports in the Cook Islands to be ports of registry for the purposes of this Act.

17. Register of Vessels - (1) The Registrar shall cause to be kept at a place appointed by the Secretary a register book to be known as the Register of Vessels.

(2) The Registrar shall cause to be entered in the Register particulars of all vessels registered under this Act and such other entries as may be required by this Act and Regulations to be entered in the Register.

(3) Any person may inspect the Register at any time during the normal business hours upon payment of the prescribed fee.

(4) The Registrar shall make available for public inspection any instrument required or permitted to be deposited with the Registrar and shall make available copies of such instrument upon payment of the prescribed fee.

18. Special provisions relating to registration - The following provisions shall apply to the registration of vessels under this Act:-

- (a) the property in a vessel shall be divided into 64 shares;
- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any one vessel, provided that the beneficial title of any number of persons or of a company represented by or claiming under or through any registered owner or joint owner shall not be affected;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a vessel but any number of persons not exceeding five may be registered as joint owners of a vessel or of any share or shares in a vessel;
- (d) joint owners shall -
 - (i) be considered as constituting one person only as regards the persons entitled to be registered; and
 - (ii) not be entitled to dispose severally of any interest in a vessel in respect of which they are jointly registered,
- (e) a company shall be registered as owner by its corporate name.

19. Application for registration - (1) An Application for Registration of a vessel under this Act shall be made to the Registrar in the prescribed form.

(2) Such application shall be made where the owner is -

- (a) a corporation, by the agent of the company; or
- (b) not a corporation, by the person or persons seeking registration of the vessel.

(3) The authority of the agent referred to in subsection (2) of this section shall be in writing, and shall be under the common seal of the company .

(4) The Registrar shall require proof of ownership and seaworthiness of a vessel before entering the particulars of the vessel and the bill of sale or other instruments of transfer or transmission in the Register.

(5) Proof that the vessel was built to, has been maintained, and is currently in class with an approved Classification Society at the time of application for registration shall be considered prima facie evidence for seaworthiness, but such presumption may be rebutted by a survey of hull and equipment caused to be carried out by the Principal Surveyor.

(6) Regulations may prescribe which Classification Societies are approved under this Act for the purpose of registration of vessels and the maintenance in class as indicia of seaworthiness, and may by Order in Council add or remove Classification Societies from the list of approved Classification Societies annexed as a schedule to the Regulations.

(7) An Application for Registration of a vessel shall be accompanied by such evidence as may be prescribed in Regulations.

20. Tonnage measurement of a vessel - Before a vessel may be registered, it shall be inspected by a Surveyor at the owner's or owners' cost who shall ascertain the tonnage and issue a Tonnage Certificate, the particulars of which shall be entered in the vessel's Official Log Book.

21. Marking of a vessel - (1) The Registrar shall not register a vessel unless the vessel has first been marked permanently and conspicuously in the manner prescribed by Regulations.

(2) The marks shall be permanently maintained and no alteration shall be made except as provided by this Act.

(3) Every owner or master who fails to cause a vessel to be marked as required by this section, or to keep that vessel so marked, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(4) Every person who conceals, removes, alters, defaces or obliterates any mark required by this Act commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

22. Declaration of Qualified Person - A person shall not be entitled to be registered as the owner of a registered vessel until he, or in the case of a corporation a person authorised by the corporation to make declarations on its behalf, has made and signed a declaration that the person or corporation is a Qualified Person defined by this Act, in the form prescribed by Regulations.

23. Entries in the register - (1) Where the requirements for registration have been complied with, the Registrar shall upon payment of the prescribed fee, register the vessel and enter the prescribed particulars in the Register.

(2) The Registrar shall not register a vessel by a name which is already registered under this Act or by a name that is in the opinion of the Registrar undesirable.

(3) Where the vessel owned by a Qualified Person and is required to be registered in the Cook Islands is registered in the registry of another state, the Registrar shall not register the vessel unless -

- (a) a Certificate of Deletion has been issued by the Registrar of the other State; or
- (b) a certificate has been issued by the Registrar of the other State to the effect that the vessel will be de-registered with the immediate effect, at such time as the new registration in the Cook Islands is effected and the date of de-registration shall be the date of the new registration of the vessel.

(4) A Bill of Sale in the form prescribed in Regulations shall be the document which evidences transfer of title in the sale and purchase of a vessel and shall be signed by the vendor and purchaser(s) and shall show the names and address of the purchasers and the interest of their ownership in the vessel.

(5) Notwithstanding any regulations prescribing the information to be contained in the documents and instruments to be filed with the Registrar in respect of a mortgage or other charge against the vessel, the Registrar shall require that the documents or instruments to be deposited with him contain the following information:-

- (a) the name and address of the person in whose favour the mortgage or charge has been effected;
- (b) the maximum amount secured;
- (c) the date and the time of registration of the mortgage or other charge in the register.

(6) In respect of a mortgage or other charge against the vessel, the Registrar shall enter in the register the information contained in the documents or instruments deposited with him in accordance with subsection (3) of this section.

24. Improper description of vessel - An owner or master of a vessel required to be registered under this Act, who permits the vessel to be described by a name other than that by which the vessel is currently being registered, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

25. Certificate of Registry - (1) As soon as practicable after the vessel has been registered, the Registrar shall issue to the owner a Certificate of Registry in the prescribed form.

(2) The Certificate of Registry shall be kept by the master in a safe place on board the vessel and the particulars therein entered in the Official LogBook.

(3) The Certificate of Registry of a vessel shall be used only for the lawful operation of the vessel and shall not be subject to detention [and may only be removed from the vessel in accordance with subsection (5) of this section].

(4) A master or owner of a vessel who uses a Certificate of Registry not legally issued in respect of the vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(5) A person who has in his possession or under his control the Certificate of Registry of a vessel and who refuses or fails without reasonable cause to deliver the certificate on demand -

- (a) to the person entitled to its custody for the purposes of the lawful operation of the vessel; or
- (b) to the Registrar; or
- (c) to any other person entitled by law to require its delivery; or

commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

(6) The Registrar may, upon the delivery to him of a Certificate of Registry issued under this section, issue a new certificate in its place.

26. Provisional registration - (1) Where a vessel becomes wholly owned by a Qualified Person at a place outside the Cook Islands, and that person declares an intention to apply to have the vessel registered under this Act, the Registrar may issue a Provisional Certificate of Registry for the vessel.

(2) A Provisional Certificate of Registry issued under this section shall be deemed to be a Certificate of Registry until the expiry of -

- (a) three months after the date on which it was issued; or
- (b) ten days after the arrival of the vessel in the Cook Islands, whichever is the earlier.

(3) The master of a vessel who fails within ten days after the arrival of the vessel in the Cook Islands to deliver the Provisional Certificate to the Registrar, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

27. Loss of Certificate of Registry - Where a Certificate of Registry has been lost, mislaid or destroyed, the Registrar shall, on application by the owner of the vessel, supported by a declaration made by a person having knowledge of the facts of the case, and on payment of any prescribed fee, issue a certified copy of the Certificate of Registry.

28. Endorsement of Certificate of Registry on change of ownership - Where a change occurs in the ownership of a vessel, or a share in a vessel, registered under this Act by reason of a transfer of the vessel, or a share in a vessel, to a Qualified Person -

- (a) notification of the change shall be given to the Registrar; and
- (b) the Registrar shall endorse the Certificate of Registry to that effect.

29. Registration of alterations to a vessel - (1) Where a vessel registered under this Act is altered so as not to correspond with the particulars relating to the Tonnage Certificate or the description of the vessel contained in the register, the owner of the vessel shall within 21 days of that alteration being made, make a written application to the Registrar to register the alteration.

(2) Every owner of a vessel who refuses or fails to comply with this provision commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

(3) An application made under this section shall be accompanied by a Tonnage Certificate and the Registrar upon receipt of the application and any prescribed fee, shall cause the alteration to be registered.

30. Check of entries in the register - (1) The Registrar may, when he has reason to believe that the Register does not contain accurate particulars in respect of a vessel registered under this Act, direct the owner of the vessel, or any other person in possession of information relating to the vessel, to furnish him with information in respect of the vessel.

(2) A person who, after having been given a direction under this section, fails within 30 days to comply with that direction, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

31. Transfer of ownership by Bill of Sale - Where a vessel registered under this Act is disposed of to a Qualified Person the vessel shall be transferred by bill of sale in the prescribed form and executed by the transferor and transferee, and in the case of a corporation, by the affixing of the corporate seal.

32. Declaration of Qualified Person on transfer of vessel - Where a vessel registered under this Act is transferred, the transferee shall not be entitled to be registered as owner of the vessel until he, or in the case of a corporation, a person authorised by the corporation to make the declaration on its behalf, has made and signed a Declaration in the prescribed form that the person or corporation to whom the vessel is to be transferred is a Qualified Person as defined by this Act.

33. Registration of transfer - (1) Every bill of sale for the transfer of a vessel registered under this Act, when duly executed, shall be delivered to the Registrar together with the Declaration of Qualified Person, and the Registrar shall enter into the Register the name of the transferee as owner of the vessel, and shall endorse on the bill of sale the fact of that entry having been made, with the day and hour of the entry.

(2) Bills of sale shall be entered in the Register in the order of their delivery to the Registrar.

34. Transmission of property in vessel by operation of law - (1) Where property in a vessel registered under this Act is transmitted to a Qualified Person by any lawful means other than by transfer made under this Act, that person shall authenticate the transmission by making and signing a Declaration on Transmission in the prescribed form identifying the vessel, and the Declaration on Transmission shall contain such statements and shall be accompanied by such documents as are prescribed by Regulations.

(2) The Registrar, on receipt of the Declaration on Transmission referred to in subsection (1) of this section, accompanied by the statements and document referred to in that subsection, shall enter in the Register the name of the person entitled under the transmission as owner of the vessel, the property or interest which has been transmitted.

(3) Where there is more than one such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

35. Registration of Maritime Liens and Mortgages - (1) A registered vessel is capable of being made security for a loan or other financial obligation, by way of a mortgage in the prescribed form.

(2) The Registrar, upon the production to him of a mortgage, shall register the mortgage by making an entry of the mortgage in the Register.

(3) The Registrar shall -

- (a) register mortgages in the order in which they are produced to him for that purpose; and
- (b) endorse and sign a memorial on each mortgage, stating the date and time that it was produced to him and entered in the Register.

(4) Notwithstanding anything contained in this Act or the International Convention on Maritime Liens and Mortgages, 1993, a maritime lien is not enforceable against a ship owned by a bona fide purchaser for value without notice unless such lien has been registered in the Register at the port in which the ship is registered, but it is enforceable against the owner and vendor who has incurred the debt from which the maritime lien arises, irrespective of registration.

(5) The Registrar shall, at the request of the holder of a maritime lien register the maritime lien by making the entry in the register -

- (a) describing the claim against the owner, demise charterer, manager or operator of the vessel secured by the maritime lien on the vessel; and
- (b) the date of the event which gave rise to the maritime lien against the vessel; and
- (c) the name and address of the lien holder for the service of notice or documents.

(6) Subject to Article 9 of the International Convention on Maritime Liens Mortgages 1993, a maritime lien shall be extinguished after a period of one year.

36. Priority of Maritime Liens and Mortgages - (1) Where there is more than one mortgage registered in respect of the same vessel under this Act, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority one over the other according to the date and time at which each mortgage is delivered to the Registrar and recorded in the Register and not according to the date of each mortgage itself.

(2) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the bankrupt or insolvent had at the commencement of his bank agency insolvency the vessel in his possession, order or disposition.

(3) Any such mortgage shall be preferred to any right, claim, or interest in the vessel of the other creditors of the bankrupt or any trustee or assignee on their behalf.

(4) A maritime lien recorded in the Register shall rank in priority as against other maritime liens and registered mortgages in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993.

37. Discharge of mortgage - (1) The Registrar, after production to him of a discharge of mortgage in the prescribed form, shall make an entry in the Register that the mortgage has been discharged.

(2) On that entry being made, the property (if any) which passed to the mortgagee vests in the person in whom, having regard to any intervening acts and circumstances, it would have vested if the mortgage had not been made.

38. Powers of mortgagee - (1) A mortgagee shall not by reason of the mortgage be deemed to be the owner of the vessel, nor shall a mortgagor be deemed to have ceased to be the owner of the vessel.

(2) In the event of default of mortgage, the registered mortgagee is entitled to recover the amount due under the mortgage. Upon application, notice of which is to be served on the mortgagor and any subsequent mortgagees, the Court may grant an Order directing that the mortgaged vessel, or any share therein, be sold by tender or at a public auction, and that the proceeds of the sale be used to satisfy:-

- (i) the expenses of conducting the sale;
- (ii) any existing maritime liens against the vessel;
- (iii) the amount outstanding to the mortgagee under the mortgage;
- (iv) the amount outstanding to subsequent mortgagees;
- (v) the balance being distributed to the mortgagor.

(3) Upon receiving the application, the Court may set the date of the hearing, notice of which shall be published for three insertions in a daily newspaper having wide circulation in the Cook Islands, and the Court shall appoint a person as an Officer of the Court, to conduct the sale and distribute the proceeds in accordance with the Order. The Officer so appointed shall not be liable for any act of commission or omission in conducting the sale or distributing the proceeds.

(4) The Order of the Court shall vest ownership in the vessel to the purchaser, which Order may be registered in the Register of Vessels.

(5) Where more than one person is registered as mortgagee of the same vessel, a subsequent mortgagee shall not, except under an Order of the Court, make an application to sell the vessel without the concurrence of every prior mortgagee.

39. Transfer of mortgage - (1) A registered mortgage of a vessel may be transferred to any person by registration of an instrument of transfer of that mortgage in the prescribed form.

(2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument of transfer relates, the Registrar shall -

- (a) register the transfer by making an entry of the transfer in the Register; and
- (b) endorse and sign on the mortgage and on the instrument of transfer the fact of the entry having been made and stating the date and time of the making of the entry.

40. Transmission of mortgage by operation of law - (1) Where the interest of a mortgagee in a vessel is transmitted to any person by any lawful means other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in subsection (1) of this section shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted and shall be accompanied by such documents as the Registrar may require.

(3) The Registrar after receipt of the declaration and accompanying documents referred to above, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the vessel.

41. Notification where vessel is lost or an owner ceases to be a Qualified Person -

(1) In the event of a vessel registered under this Act -

- (a) being either actually or constructively lost, taken by an enemy, burnt or broken up; or
- (b) ceasing to be entitled to be registered,

every owner of the vessel who fails, immediately after obtaining knowledge of the event, unless notice has already been given to the Registrar, to give notice in writing of the event to the Registrar, commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

(2) The Registrar shall upon receipt of a notice under subsection (1) of this section, make or cause to be made an entry in the Register of the event to which the notice relates.

(3) Where an entry made in the Register under subsection (2) of this section is in respect of a vessel which has -

- (a) been either actually or constructively lost, taken by an enemy, burnt or broken up, the registration of the vessel shall be deemed to be closed in so far as it relates to any unsatisfied mortgage of the vessel; or
- (b) ceased to be entitled to be registered, the registration shall, subject to this section, be deemed to be closed and the vessel shall be struck off the Register.

(4) Where a vessel, in relation to which the Registrar has received a notice under subsection (1) of this section stating that the vessel has ceased to be entitled to be registered, is subject to an unsatisfied mortgage or mortgages -

- (a) the registration of the vessel, so far as it relates to the mortgage or mortgages, shall, subject to subsections (5) and (6) of this section, not be deemed to be closed; and
- (b) the Registrar shall give notice in writing to the mortgagee or each mortgagee as the case may be, that he has received a notice under subsection (1) of this section stating that the vessel has ceased to be entitled to be registered.

(5) Subject to this section, where the Registrar gives a notice under subsection (4) of this section to the mortgagee or mortgagees of a vessel, the registration of the vessel, so far as it relates to the mortgage or mortgages shall be deemed to be closed at the expiration of a period of ninety days after the date of the notice.

(6) Where a mortgagee who has received a notice under subsection (4) of this section makes application to the Court within the period of ninety days after the date of the notice or such extended time as the Court orders, on application made either before or after the expiration of that period, the Court may do all or any of the following -

- (a) order that the vessel or the vessel's equipment be sold;
- (b) make such Orders for and in relation to the distribution of the proceeds of the sale as it thinks fit; and

(c) make such Orders and give such directions with respect to the closure of the registration of the vessel as it thinks fit.

(7) Notice of every application under subsection (6) of this section, including every application for an extension of time, shall be served on the Registrar.

(8) An Order under subsection (6) of this section may be on such terms and conditions as to costs or otherwise as the Court thinks fit.

(9) The Registrar shall give effect to every Order or direction given by the Court under this section so far as it relates to the Register.

(10) Where the registration of a vessel is closed or deemed to be closed under this section, the Registrar shall direct the person who has the Certificate of Registry or the Provisional Certificate of Registry of the vessel in his possession to deliver the Certificate or the Provisional Certificate, as the case may be, to the Registrar.

(11) A person who refuses or fails to comply with a direction given under subsection (10) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(12) Nothing in this section shall be taken to prejudice any rights of a mortgagee existing apart from this section.

42. Power to inquire into ownership of a registered vessel - (1) Where the Registrar has reason to suspect that a vessel registered under this Act is not entitled to be registered he may, by written notice served on the registered owner of the vessel, require that person to give him, within the period specified in the notice, being not less than 30 days after the date of service of the notice, information relating to and evidence as to whether or not the owner is a Qualified Person.

(2) Every owner of a vessel to whom a notice is directed under subsection (1) of this section who fails to furnish to the Registrar within the period specified in the notice, the information sought by that notice, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

(3) Where an owner is unable to produce evidence to the satisfaction of the Registrar that a vessel is entitled to remain registered, the Registrar may decide that the registration in relation to the vessel be suspended.

(4) The Registrar shall advise any registered mortgagee and then, within 30 days, strike the vessel from the Register.

43. Transfer of vessel or sale of vessel by Order of the Court - (1) Where the Court orders the sale of a vessel registered under this Act, the Order shall contain a declaration vesting in a person or persons specified in the Order the right to transfer the vessel, and that person is entitled to transfer the vessel in the manner and to the same extent as if he were the registered owner of the vessel.

(2) The Registrar shall obey the requisition of the person named in a declaration and treat the Order as if it were a Bill of Sale in respect of any such transfer to the same extent as if that person were the registered owner or be required to register the same and insert the purchaser as registered owner.

44. Trusts not recognised - Notice of any trust in respect of a registered vessel, whether the trust is express, implied or constructive, shall not be -

- (a) received by the Registrar; or
- (b) entered in the Register.

45. Powers of disposal by owner - (1) Subject to this Act, and subject to any rights and powers appearing in the register to be vested in any other person, the registered owner of a vessel has absolute power to dispose of the vessel and to give effectual receipts in respect of the disposal.

(2) If the vessel is subject to an existing registered mortgage or mortgages, the prior consent of the registered mortgagees must be obtained before the vessel may be disposed of to another person qualified to register the vessel in the Cook Islands.

(3) Subject to section 41 of this Act, if a vessel subject to any existing mortgage is to be sold to any person who is not qualified to register the vessel in the Cook Islands, all existing registered mortgages outstanding against the vessel shall be discharged and deleted from the Register prior to de-registration of the vessel.

46. Equities not excluded by this Act - (1) The expression "beneficial interest" where used in this Act includes interests arising under contract and other equitable interests.

(2) The intention of this Act is that, subject to this Act, beneficial interests may be enforced by or against the owner or mortgagee of any vessel in respect of his interest in the vessel in the same manner as in respect of any other personal property.

47. Liability of owners - (1) Where a person has a beneficial interest in a vessel registered under this Act and that vessel is registered in the name of some other person as owner, the person having that beneficial interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of vessels, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.

(2) This section shall not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgagee in possession of a vessel.

(3) The registered agent of a vessel registered under this Act or a foreign vessel in the Cook Islands waters shall be subject to all pecuniary penalties imposed by this Act as if he were the owner of the vessel, and proceedings can be taken for the enforcement of any such penalties against that person.

48. Proceedings on forfeiture of a vessel - (1) Where a vessel is liable to forfeiture under this Act, an Officer may seize and detain the vessel, and the Secretary may apply to the Court for an Order under subsection (2) of this section.

(2) Upon application being made under subsection (1) of this section in relation to a vessel, the Court may order the vessel and its equipment to be forfeited to the Crown.

(3) Anything forfeited under this section becomes the property of the Crown and may be sold or otherwise dealt with as the Secretary thinks fit.

(4) Upon an Order of the Court being granted, the property in or title to the ship or any share therein shall pass to the Crown.

(5) The Registrar shall record the Ministry as the registered owner of the ship or share therein.

- (6) In this section "Officer" includes -
- (a) an Officer authorised in writing by the Secretary for the purposes of this section; or
 - (b) a police officer.

49. Mode of making declarations under this Part - A declaration required under this Part may be made before the Registrar, or any other person before whom declarations may be made under the law of the Cook Islands.

50. Crew to be Cook Islanders - (1) Every owner of a vessel registered under this Act shall be required, subject to subsection (2) of this section, to employ Cook Islanders aboard that vessel.

(2) The Registrar may, on application and presentation of satisfactory proof by the owner, waive the requirement of subsection (1) of this section for a period of up to (6) months, if no Cook Islanders with the requisite certificates and experience are available for employment at the time the vessel is due to sail.

(3) If the vessel is outside Cook Islands waters when the period expires, the owner of the vessel may continue to employ non-Cook Islanders until the vessel returns to Cook Islands waters.

(4) If, when the vessel is outside Cook Islands waters, a Cook Islander employed on board the vessel is discharged for any reason that person shall be replaced by another Cook Islander at the owner's expense, unless the owner can prove to the satisfaction of the Registrar that no suitably qualified or experienced Cook Islands seafarers are available at that time.

51. Registration fees - (1) The owner of a vessel registered under this Act is liable on the initial registration of the vessel to pay the prescribed registration fee.

(2) Fees may be prescribed by Regulations for the registration of mortgages, discharge of mortgages, change of name of vessel and any other service provided by the Registrar including searching for and copying of documents in the Register.

52. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part, and for the due administration thereof.

(2) Without limiting the generality of subsection (1) of this section Regulations may provide for or in relation to -

- (a) the registration of vessels;
- (b) the ascertainment of the tonnage of vessels and the issue and use of Tonnage Certificates;
- (c) the marking of a vessel for the purposes of registering a vessel under this Act;
- (d) the manner of making an Application for Registration of a vessel at a port of registry;
- (e) the manner in which the Registrar shall register a vessel or a vessel mortgage;

- (f) the endorsements which shall be made on a Certificate of Registry;
- (g) the manner in which an alteration to a vessel shall be recorded;
- (h) the documents which shall accompany a Declaration of Transmission, or transmission of mortgage;
- (i) the approval by the Registrar of the name by which the vessel is to be registered and the change of the name of a registered vessel;
- (j) the fees payable on the initial registration of a vessel, the registration of mortgages and other documents required to be registered under this Act and fees payable for a copy of any document filed in the Registry; and
- (k) the forms to be used in connection with the registration of vessels;
- (l) the manner in which the Registrar shall register a lien in respect of a vessel; and
- (m) the manner in which the Registrar shall license passenger, cargo, fishing vessels or pleasure craft of less than 15 metres.

PART IV **SAFETY**

53. Application of this Part - (1) The following Conventions shall govern this Part and any Regulation relating thereto -

- (a) Collisions Convention;
- (b) Load Lines Convention;
- (c) Safety Convention;
- (d) Tonnage Measurement Convention;
- (e) MARPOL 73/78.

(2) Subject to any specific provision and unless the contrary intention appears, the provisions of this Part apply only insofar as they are applicable and relevant to a vessel coming under the provisions of any of the Conventions.

(3) Regulations may be made under this Act to ensure that appropriate measures are adopted to preserve the safety of vessels, crew, passengers and cargo not subject to the Conventions listed in subsection (1) of this section.

54. Appointment of Principal Surveyor and Surveyors of vessels - (1) The Secretary may in writing appoint a person, being the holder of a Certificate of Competency of either a Master or Chief Engineer, or other person duly qualified, as Principal Surveyor.

(2) The Principal Surveyor shall be responsible for carrying out obligations in respect of Port State Control contained in the Conventions to which the Cook Islands is a party including but not limited to the following -

- (a) Law of Sea Convention;
- (b) Safety Convention;
- (c) STCW Convention;
- (d) MARPOL 73/78 Convention;
- (e) Tonnage Measurement Convention;

(f) Load Lines Convention.

(3) The Principal Surveyor may delegate to any person any responsibility for carrying out the duties and obligations referred to in subsection (2) of this section.

(4) The Secretary may appoint an association or a company to be a classification society for the purposes of this Part.

(5) The Secretary may appoint any person or classification society to be a Surveyor of vessels for the purposes of this Act.

(6) Where a classification society is appointed, it shall nominate one or more persons to carry out surveys, issue reports, make declarations of compliance or do all other things prescribed in Regulations, subject to the approval of the Secretary.

55. Vessel not to go to sea without certificates - (1) No vessel shall go to sea unless there are in force all such valid certificates as are required under this Part in respect of that vessel.

(2) Subsection (1) of this Section shall not apply to any vessel which is required by the laws of some other country or State to comply with regulations or rules of any equivalent nature, except that the Secretary may determine that this part shall not apply to that particular vessel.

(3) Where a vessel goes to sea in contravention of subsection (1) of this section, the owner and master commit an offence, and each shall be liable upon conviction to a fine not exceeding \$5,000.

56. Certificates to be produced - (1) The Principal Surveyor may direct the master of the vessel to produce to him such certificates as are required under this Part before the vessel goes to sea.

(2) The master of a vessel who refuses or fails without reasonable cause to produce the certificates under subsection (1) of this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

57. All vessels subject to survey - A vessel shall be subject to such surveys and inspections as are required by this Act or prescribed by Regulations.

58. Powers of Principal Surveyor or Surveyor - (1) The Principal Surveyor or a Surveyor may at any time in the course of a survey, or in a situation which in his opinion is or may become dangerous -

- (a) go on board a vessel, including a vessel under construction, and survey any part of the vessel and its equipment, any cargo or articles on board, and examine any document carried on the vessel pursuant to this Act;
- (b) upon giving reasonable notice to the owner or agent of the vessel concerned, enter any premises and make such examination and investigation and require the production of such books, papers and documents relating to that vessel, as he considers necessary for the performance of this duty;

- (c) instruct the owner or master to provide sufficient information with respect to the stability of the vessel, and prove to the satisfaction of the Surveyor that the vessel has sufficient residual stability:
 - (i) on arrival;
 - (ii) at every stage of discharge and loading; and
 - (iii) on departure from the port; and
- (d) instruct the master or owner of the vessel to give a satisfactory explanation to him of any matter concerning the vessel or the documents produced or required to be produced.

(2) The Principal Surveyor or a Surveyor shall not exercise a power under subsection (1) of this section so that a vessel is unreasonably detained or delayed.

(3) A person who hinders the Principal Surveyor or a Surveyor in the exercise of his powers under this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(4) A person who refuses or fails to comply with a requirement or request given or made to him by the Principal Surveyor or a Surveyor in accordance with this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(5) Failure to provide adequate information to the Principal Surveyor or Surveyor in respect of the stability of the vessel shall result in the vessel being liable to detention until sufficient information is provided, which, in the opinion of the Principal Surveyor or Surveyor, indicates the vessel has adequate residual stability.

59. Special examinations of vessels - (1) For the purposes of a survey of a vessel, the Principal Surveyor may, if he thinks fit, direct the owner or the master of a vessel to have the vessel slipped or taken into dock so he may inspect the hull and appendages below the waterline.

(2) A person who refuses or fails without reasonable cause to comply with a direction under subsection (1) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

60. Requirement to notify the Principal Surveyor - (1) The owner or master of a vessel shall notify the Principal Surveyor of any condition that may impair the safety of a vessel or its operation, or affect the validity of any certificate issued under this Act.

(2) Upon notification, the Principal Surveyor shall forthwith take any action deemed appropriate in the circumstances.

(3) Any measures taken to restore the safety of the vessel or its operation shall be communicated to the Principal Surveyor.

(4) Where any alteration or modification is proposed that will change the vessel's characteristics from those described in any certificate, the owner or master shall notify the Principal Surveyor not less than fourteen days prior to the intended commencement of such work.

(5) The Principal Surveyor shall signify his approval or convey his recommended changes to the owner or master within fourteen days after receipt of the proposal.

(6) When the Principal Surveyor has approved the proposal, work on the alterations or modifications may commence.

61. Application for survey - (1) Where an owner or the master of a vessel other than a Safety Convention ship seeks the issue of a Safety Certificate, he shall apply to the Principal Surveyor for the vessel to be surveyed.

(2) On receipt of an application made under subsection (1), the Principal Surveyor shall nominate a Surveyor and shall cause the vessel to be surveyed.

(3) Where the owner or master of a Load Lines Convention ship or a Safety Convention ship seeks the issue of a Load Line Certificate or a Safety Certificate, he may apply to the Principal Surveyor to have a classification society appointed.

62. Issue of Safety Certificate - (1) A Surveyor nominated under section 61(2) of this Act shall on completion of a survey, deliver a written report of the survey to the Principal Surveyor.

(2) Where the Surveyor is satisfied that the vessel complies with the requirements of this Part, he shall complete a declaration to that effect, and shall deliver it to the Principal Surveyor.

(3) Where the Principal Surveyor has received the declaration referred to in subsection (2) of this section and is satisfied that the vessel complies with the requirements of this Part, he shall, subject to such conditions (if any) as he thinks fit, issue a Safety Certificate in the prescribed form and for the prescribed duration in respect of the vessel.

63. Cancellation or suspension of Safety Certificate - (1) Where in the opinion of the Principal Surveyor -

- (a) a declaration made pursuant to section 62(2) of this Act has been made fraudulently or erroneously; or
- (b) a Safety Certificate has been issued upon false or erroneous information; or
- (c) since the issue of a Safety Certificate the vessel has been altered, repaired or damaged to such an extent or in such a manner as to affect adversely the seaworthiness of the vessel; or
- (d) the vessel or the equipment has been insufficiently maintained to render the vessel unseaworthy, he may cancel or suspend the Safety Certificate of the vessel.

(2) Where the Principal Surveyor suspends or cancels a Safety Certificate under subsection (1) of this section, he shall as soon as practicable after the suspension or cancellation, serve a notice on the owner or master of the vessel which shall:-

- (a) if the certificate has been suspended, set out the period for which it has been suspended; or
- (b) if the certificate has been cancelled, require the surrender of the Safety Certificate to the Principal Surveyor.

(4) A person served with such a notice who fails to surrender the Safety Certificate to the Principal Surveyor commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(5) Where a Safety Certificate is cancelled or suspended, the Principal Surveyor may require the owner to have the vessel re-surveyed before the issue of a new certificate or the removal of the suspension.

(6) Where a Safety Certificate is cancelled or suspended, the Secretary may order the detention of the vessel in port until the situation is rectified.

64. Alteration of a vessel - Where a vessel in respect of which a Safety Certificate has been issued is altered so that the certificate becomes or may become inapplicable to the altered state of the vessel, the owner or master of the vessel who fails to notify the Principal Surveyor of such alteration each commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

65. Certificate to be displayed - (1) A master of a vessel, other than an unmanned barge, in respect of which a Safety Certificate has been issued, shall cause the certificate or a certified copy of the certificate to be continuously displayed in some prominent and accessible place on the vessel.

(2) Every master who fails to do so commits an offence, and shall be liable upon conviction to a fine not exceeding \$5000.

66. Requirement to carry certain safety equipment - (1) The owner and the master of a vessel which is required by this Act and Regulations or Safety Convention to carry or be fitted with particular kind of equipment shall ensure that all such equipment -

- (a) is carried or fitted in the vessel; and
- (b) is in standard working order and ready for use; and
- (c) where applicable, has a valid inspection or manufacturer's or testing certificate before the vessel goes to sea.

(2) The owner and the master of the vessel who fails to comply with the requirements of subsection (1) each commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

67. Vessel to carry qualified radio communications personnel - The owner and the master of a vessel which is required by this Part or the Regulations or Safety Convention to carry a radio installation and which goes to sea without a person qualified to operate the radio installation each commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

68. Radio reports of dangers to navigation - The master of a vessel who refuses or fails without reasonable cause to forthwith make a report by radio to the nearest coast station, and a written report to the Principal Surveyor, of any serious danger to navigation, including non-functioning or absence of navigation aids, which comes to his notice while the vessel is at sea commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

69. Assistance to persons in danger or distress at sea - (1) The master of any vessel shall, as far as he can do so without serious danger to his vessel, crew and passengers, render assistance to any person or vessel found at sea in danger or distress.

(2) The master of any vessel in Cook Islands waters shall, as far as he can do so without serious danger to his vessel, crew and passengers, render assistance to any person or vessel found at sea in danger or distress.

(3) The master of a vessel who fails to comply with the provisions of this section commits an offence, and shall be liable upon conviction, to a fine not exceeding \$5,000, or to a term of imprisonment not exceeding two years, or both.

(4) Compliance with the provisions of this section by the master of a vessel shall not affect his right or the right of any other persons to salvage.

70. Duty of vessel to assist in case of collision - (1) In every case of collision between two vessels, the person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew and passengers, shall:

- (a) render to the other vessel, her master, crew and any passengers such assistance as is practicable and necessary in order to save them from any danger caused by the collision; and
- (b) stand by the other vessel until it has ascertained that the other vessel has no need of further assistance; and
- (c) to give to the person in charge of the other vessel:-
 - (i) the name of his own vessel and port of registry; and
 - (ii) the names of the previous and next port of call.

(2) Every person in charge of a vessel who fails without reasonable cause to comply with this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000, or to a term of imprisonment not exceeding two years, or both.

71. Hazardous cargo - (1) This section applies to cargo, goods or substances (other than dangerous goods) which, if shipped or carried in a vessel in an improper or unsuitable manner could, in the opinion of the Principal Surveyor, endanger that vessel or constitute a danger to human life.

(2) Every master shall inform the Principal Surveyor of his intention to load, carry, discharge or handle cargo comprising of harmful substance.

(3) The Principal Surveyor may by direction to the master of a vessel -

- (a) prohibit the loading into the vessel; or
- (b) prohibit the carriage in the vessel; or
- (c) order the removal from the vessel; or
- (c) direct the manner of the stowage or carriage in the vessel, of cargo, goods or substances to which this section applies.

(4) The master of a vessel who refuses or fails to comply with a direction given under this section by the Principal Surveyor commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(5) Where a master of a vessel is charged with an offence under subsection (4) of this section, the vessel may be detained until such time as the master has complied with the direction given by the Principal Surveyor.

72. Powers of the master in relation to dangerous goods - (1) The provisions of the International Maritime Dangerous Goods (IMDG) Code shall have the force of law in the Cook Islands and shall apply to this Part.

(2) The master or owner of a vessel may -

- (a) refuse to take on board any package which he suspects may contain dangerous goods;
- (b) open and inspect any package which he suspects may contain dangerous goods; and
- (c) discharge, destroy, render innocuous or otherwise deal with goods which:-
 - (i) in his opinion are dangerous goods; and
 - (ii) have been shipped on board the vessel without his consent,

and shall not be subject to any civil or criminal liability of any kind for so doing in good faith.

73. Powers of the Principal Surveyor in relation to dangerous goods - (1) The Principal Surveyor may, where he is satisfied that dangerous goods are being loaded into, unloaded from, or stowed, carried or used in a vessel otherwise than in accordance with the International Maritime Dangerous Goods (IMDG) Code or with the Safety Convention, direct the owner or master of the vessel to take such action in relation to the vessel or to the whole or to a part of the cargo of the vessel as he thinks fit.

(2) Every person who fails to comply with a direction given under subsection (1) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(3) Where a person is charged under subsection (2) of this section, the vessel may be detained until such time as the person has complied with the direction given by the Principal Surveyor.

74. Requirements in relation to dangerous goods - (1) Every master shall inform the Principal Surveyor of his intention to load, carry, discharge or handle dangerous goods.

(2) Every person who ships, carries or uses in a vessel dangerous goods otherwise than as required or permitted by the International Maritime Dangerous Goods (IMDG) Code or by the Safety Convention commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(3) Every person who conceals the character of any dangerous goods or uses a false description of dangerous goods in order to ship, carry or use any dangerous goods aboard a vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

75. Forfeiture of dangerous goods - (1) Any dangerous goods shipped or carried or used in a vessel in contravention of this Part may be ordered by the Court to be forfeited to the Crown.

(2) Where any Order is made under this section, the dangerous goods may be forfeited, sold or destroyed notwithstanding;

- (a) that no offence has been committed by the owner of the goods, or;
- (b) that the owner of the goods has had no notice of the proceedings, or;
- (c) that there is no evidence as to the ownership of the goods.

76. Number of persons that may be carried in a vessel – (1) The owner or master of a vessel shall not permit more persons to be carried than the number stated in the Safety Certificate issued in respect of the vessel as being the maximum number of persons that may be carried in the vessel.

(2) Where a vessel is found to be in contravention of this section, the owner and the master each commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000, and to a further fine of not more than \$100 for each person carried on board the vessel in excess of the number stated on the Safety Certificate.

77. Compliance with load line requirements. (1) This section shall apply to every vessel required to be registered in accordance with this Act.

(2) Subject to any exemption conferred or granted under this Part, a vessel shall not proceed or attempt to proceed to sea, unless the vessel -

- (a) has been surveyed and marked with a deck line and load line in accordance with the Load Line Convention or regulations promulgated under this Act;
- (b) complies with the conditions of assignment; and
- (c) has on board the prescribed information for the guidance of the master.

(3) Every owner who permits or allows a vessel to go to sea and a master who takes a vessel to sea in contravention of this section each commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

78. Submerged load line - (1) This section shall apply to every vessel which is registered or is required to be registered in accordance with this Act and to every vessel in Cook Islands waters.

(2) A vessel other than a passenger vessel shall not be so loaded that:-

- (a) if the vessel is in still salt water of specific gravity of 1.025 and has no list, the appropriate load line on each side of the vessel is submerged; or
- (b) the appropriate load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.

(3) A passenger vessel shall not be so loaded that:-

- (a) if the vessel is in still salt water of specific gravity of 1.025 and it has no list the appropriate subdivision load line on each side of the vessel is submerged; or
- (b) the appropriate subdivision load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.

(4) Where a vessel is loaded in contravention of subsection (2) or subsection (3) of this section, every owner and the master each commits an offence, and shall be liable upon conviction to a fine not exceeding \$2,000, and to a further fine of not more than \$2,000 for every complete centimetre or part thereof by which the appropriate load line or subdivision load line was, or would have been, submerged.

(5) Where a vessel is loaded in contravention of this section, the vessel may be detained until it ceases to be so loaded.

(7) Where a vessel is not registered under this Act –

- (a) the master or owner shall not be prosecuted under subsection (4) of this section, but the Government of the country in which the vessel is registered shall be advised by the Secretary through the appropriate channels; and
- (b) the vessel shall not be detained under subsection (5) of this section, unless a Surveyor has inspected the vessel, and if detained the Government of the country in which the vessel is registered shall be advised by the Secretary through the appropriate channels.

(7) It is a defence to a prosecution for an offence under this section to prove that the vessel was overloaded as a result of an alteration in the route of the vessel, or of a delay to the vessel caused by stress of weather, force majeure or other circumstances which the master or owner of the vessel could not have foreseen or prevented.

(8) The master of every registered vessel shall record the draft, forward and aft in the Official Log Book before the vessel departs from any port.

79. Unsafe vessels - (1) A vessel is an unsafe vessel if -

- (a) the hull, machinery or equipment of the vessel is in a defective condition; or
- (b) the vessel is undermanned; or
- (c) the vessel is improperly loaded; or ,
- (d) the vessel has inadequate stability; or
- (e) for any other reason which, in the opinion of the Principal Surveyor having regard to the proposed voyage, makes the vessel unfit to go to sea without danger to life, property or the environment.

(2) Every person who sends, and the master who takes, a vessel to sea which is known to be unsafe each commits an offence, and shall be liable upon conviction to a fine not exceeding \$25,000.

80. Detention of unsafe vessels - (1) Every unsafe vessel may be detained until, in the opinion of the Principal Surveyor, it ceases to be an unsafe vessel.

(2) Where an unsafe vessel is detained, the Principal Surveyor shall give notice in writing to the owner or to the master setting out the reasons for the detention.

(3) Where a vessel that is registered in a country other than the Cook Islands is detained, the Secretary shall as soon as practicable cause the nearest Consul or other diplomatic representative of the country in which the vessel is registered to be informed of the detention, and of the reasons for the detention.

81. Reporting of casualties and incidents - (1) In this section, vessel means a vessel that is -

- (a) registered under this Act;

- (b) not registered under this Act, but is within the jurisdiction of the Cook Islands:-
 - (i) in Cook Island waters; or
 - (ii) on a voyage where the next port of call of that vessel is at a port in the Cook Islands; or
 - (c) an offshore vessel.
- (2) Where a vessel -
- (a) causes or is involved in a casualty; or
 - (b) receives damage which renders or is likely to render the vessel unsafe; or
 - (c) has been in a position of great peril from:
 - (i) the act of some other vessel; or
 - (ii) danger of wreck or collision; or
 - (d) fouls or does damage to:
 - (i) a pipeline; or
 - (ii) a submarine cable; or
 - (iii) a marine navigation aid; or
 - (e) having left a port in the Cook Islands is forced to return to that port in difficulties; or
 - (f) has sustained an incident,

the master of the vessel shall as soon as practicable report the event to the Principal Surveyor by radio through an appropriate coast station, or if no radio is available, by the fastest practicable means, and shall, if so requested by the Principal Surveyor, provide a report in writing.

(3) The master of a vessel who, without reasonable cause, fails to comply with the provisions of subsection (2) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$20,000.

82. Inquiry into certain casualties and incidents - Where a vessel has suffered or caused a casualty or incident, the Secretary may cause -

- (a) a preliminary investigation into the casualty or incident to be carried out by a person appointed by him; or
- (b) a Marine Inquiry to be held under this Part; or
- (c) a preliminary investigation to be carried out and a Marine Inquiry to be held.

83. Preliminary investigations - (1) Where the Secretary causes a preliminary investigation to be held under this Act, the person holding the investigation -

- (a) may -
 - (i) go on board any vessel involved in the casualty or incident;
 - (ii) require any persons to answer questions relating to the casualty or incident; and
 - (iii) require production of any document or certificate relating to any vessel involved in the casualty or incident; and
- (b) shall report the result of the preliminary investigation to the Secretary.

- (2) A person shall not in relation to any Officer carrying out an investigation
- (a) hinder or obstruct any such Officer carrying out a preliminary investigation under this section; or
 - (b) fail to answer any question put to him by any such Officer; or
 - (c) fail to produce a document or certificate he has in his possession or under his control when requested to do so by any such Officer,

and any person so doing commits an offence, and shall be liable upon conviction to a fine not exceeding \$15,000.

(3) A person committing an offence under sub-section (2) may, in addition to any fine payable, have his name added to the List of Suspended Seafarers.

(4) Where it appears to the Secretary to be necessary or desirable to do so, he may order the suspension of any certificate issued to any qualified seafarer under this Act, pending the outcome of the preliminary investigation.

84. Marine Inquiries - (1) The Secretary may, for the purpose of holding a Marine Inquiry, appoint a Board of Marine Inquiry which shall consist of a chairman and two other members.

(2) The chairman may, if he thinks it advisable, co-opt expert advisers to assist the Board in any inquiry.

(3) Subject to subsections (4) and (5) of this section, and any Regulations made under this Act, the Board may regulate its procedure in such manner as it thinks fit.

(4) Where it is likely during the course of a Marine Inquiry that the conduct of a person will be called into question or it is likely that a person will be adversely affected by a decision of the inquiry, the Chairman shall -

- (a) give that person at least 72 hours notice of the place, date and time of the inquiry; and
- (b) provide that person -
 - (i) a copy of the report of any preliminary investigation in relation thereto; or
 - (ii) in any other case, a statement of the case on which the inquiry was so ordered.

(5) Every person whose conduct is likely to be questioned during the course of a marine inquiry or who is likely to be adversely affected by the decision of the inquiry, is entitled to -

- (a) attend the inquiry personally and to be represented by counsel;
 - (b) be sworn and give evidence before the inquiry;
 - (c) subpoena and call witnesses;
 - (d) examine, cross-examine and re-examine all witnesses in accordance with rules of procedure and evidence applicable to the Commissions of Inquiry Act 1966;
 - (e) take all proper exceptions to the admissibility of evidence; and
 - (f) address the Inquiry, either at the conclusion or at any other proper time.
- (6) The Board of Marine Inquiry may -
- (a) go on board any vessel;

- (b) require any person to answer questions relating to the subject of the Inquiry; and
- (c) require the production of any document or certificate which in their opinion is relevant to the Inquiry.

(7) Without limiting any of the powers conferred on it by this Act, a Board of Marine Inquiry shall have the same powers and immunities as if it were a Commission of Inquiry appointed under the Commission of Inquiry Act 1966.

(8) On conclusion of the Inquiry, the Board of Marine Inquiry shall make a report in writing to the Secretary setting out the results of the Inquiry.

(9) A member of the Board may dissent in writing from any report of the Board and an Order shall be made on the majority decision of the members.

(10) The Board of Marine Inquiry may make such Order as it thinks just in regard to the costs of the Inquiry and any such costs which a person may be ordered to pay may be recovered from that person by the Secretary.

(11) Where it appears to the Secretary to be necessary or desirable to do so, he may order the suspension of any certificate issued to any qualified seafarer under this Act, pending the outcome of a Marine Inquiry.

85. Powers of the Board of Marine Inquiry in relation to certificates - (1) Where as a result of an inquiry the Board of Marine Inquiry is satisfied that a certificated or qualified seafarer -

- (a) is unfit to discharge his duties because of incompetence or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duty and is further satisfied that the unfitness or negligence caused or contributed to the casualty,

the Board of Marine Inquiry shall make recommendations to the Secretary.

(2) The Board of Marine Inquiry may recommend to the Secretary that he cancels or suspends any Certificate held by the qualified seafarer, or

- (a) reprimands the seafarer in writing to be filed on his record; or
- (b) adds the seafarer's name to the List of Suspended Seafarers, or
- (c) issues a lower grade of Certificate for the period of cancellation or suspension.

(3) Where the Secretary cancels or suspends a certificate, the seafarer concerned shall forthwith deliver such certificate to the Secretary for cancellation or suspension.

(4) Where as a result of the Inquiry the Board of Marine Inquiry is satisfied that the suspended seafarer was fit or was not negligent in the discharge of his duties at the time the casualty or the incident occurred, it may recommend to the Secretary that -

- (a) the cancellation or suspension of the certificate of the suspended seafarer be revoked as soon as practicable;
- (b) the name of the suspended seafarer be removed from the List of Suspended Seafarers; and
- (c) the certificate be returned to the suspended seafarer forthwith.

86. Statement to be furnished to seafarer - The Board of Marine Inquiry shall not recommend the cancellation or suspension of the certificate of any master or qualified seafarer, unless a statement of the case on which the Inquiry had been ordered has been furnished to the master or seafarer holding the certificate, and, where practicable, the master or qualified seafarer has had an opportunity to be heard.

87. Failure to deliver cancelled or suspended certificate - Where a certificate is recommended to be cancelled or suspended, the holder who fails to deliver up the certificate commits an offence and shall be liable upon conviction to a fine not exceeding \$1000.

88. Appeals (1) Where under this Part -
(a) the certificate of a master or qualified seafarer is cancelled or suspended; or
(b) a master or qualified seafarer is reprimanded,
the master or the qualified seafarer may within 21 days of the reprimand or after the reprimand, or cancellation or suspension of the certificate appeal to the High Court against the reprimand, cancellation or suspension, and the High Court may make such Order confirming, varying or revoking the reprimand, cancellation or suspension as it deems fit. .

89. Safety and well-being of passengers - (1) This section shall apply to a vessel which is carrying passengers.

(2) Where in the opinion of the Principal Surveyor there may be a danger to the safety, comfort, health or well-being of passengers on a vessel by reason of -

- (a) the manner in which the vessel is equipped or manned or fuelled;
or
- (b) the fact that the vessel is carrying cargo, livestock or ballast such that the safety and well-being of passengers is or may be affected; or
- (c) the absence of sanitary passenger accommodation or health provisions; or
- (d) unwholesome provisions or water or stores; or
- (e) any other compelling reason in the opinion of the Principal Surveyor,

the Principal Surveyor may notify the master of the vessel accordingly.

(3) Where a notification is given under subsection (2) of this section, the carriage of passengers in the vessel in respect of which the notification is given shall be prohibited until such time as the Principal Surveyor is satisfied that passengers may be carried without danger to their safety, comfort, health or well-being, and the prohibition is revoked.

(4) The master of a vessel carrying passengers who takes the vessel to sea while the carriage of passengers is prohibited under subsection (3) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000 and to a further fine not exceeding \$500 for each passenger carried in the vessel.

90. Annual Report – The Principal Surveyor shall prepare an annual report of his activities to be submitted to the Secretary not later than the thirty-first day of July each year, and the Secretary shall as soon as practicable thereafter arrange for such report to be tabled before Parliament.

91. Safety Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part and for the due administration thereof.

(2) Without limiting the generality of subsection (1) of this section, Regulations may provide in respect of all vessels including fishing vessels, for or in relation to -

- (a) the Certificates that are required by this Part to be in force in respect of a vessel;
- (b) the manner of survey or inspection of vessels;
- (c) periods within which vessels shall be surveyed or inspected;
- (d) the circumstances in which a survey or inspection may be carried out;
- (e) the manner in which a Surveyor shall make a record of survey and a declaration of compliance to the Principal Surveyor on completion of a survey or of an inspection;
- (f) the exemptions from survey that may be granted in respect of a particular vessel or a particular class of vessel;
- (g) the type and form of Certificates;
- (h) the duration of, or extension to the duration of, the validity of Certificates;
- (i) the circumstances in which safety certificates may be cancelled or suspended;
- (j) the manner in which Certificates may be endorsed;
- (k) the requirements with which the hull, machinery and equipment of vessels shall comply;
- (l) the appliances to be carried, and the measures to be observed, on vessels for -
 - (i) the saving of life at sea; and
 - (ii) the prevention, detection and extinguishing of fires;
- (m) the requirements for the holding and recording of musters and drills for crews and passengers;
- (n)
 - (i) the requirements with respect to the equipping of vessels with radio-telephones and radio navigation aids including the number of units;
 - (ii) the operation, maintenance and use of radio-telephones and radio navigation aids in vessels; ; and
 - (iii) qualifications of the radio-telephone operators to be carried on vessels;
- (o) the measures and procedures to be followed and the equipment to be carried on vessels to ensure safety of navigation;
- (p) the observance of safety standards and procedures on board vessels;

- (q) safety and safe working practices on board vessels including the loading and unloading of cargo, stores and provisions and including also minimum standards for machinery and appliances carried and used on vessels in loading or unloading of cargo, stores and provisions;
- (r) minimum freeboard for fishing vessels;
- (s) the stability and sea worthiness of vessels and the information required to be provided by an owner to the Principal Surveyor and to the master of the vessel;
- (t) the manner in which preliminary investigations and Marine Inquiries are to be conducted;
- (u) empowering the Principal Surveyor to make orders applicable to a specified vessel or class of vessel, in relation to:-
 - (i) the number, type and location of lifesaving appliances and fire fighting equipment to be carried;
 - (ii) the type and location of radio navigation and miscellaneous equipment to be carried;
- (v) the fees payable in respect of surveys and inspections;
- (w) the number of berthed and unberthed passengers to be carried in a vessel;
- (x) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and other hazardous cargo in vessels;
- (y) the manner of determining freeboards to be assigned to vessels;
- (aa) the manner of determining, in relation to a vessel, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the vessel by marks;
- (bb) the manner of determining, by reference to a mark, the freeboards assigned and the position in which each side of a vessel is to be marked with a line indicating the maximum depth to which the vessel may be loaded;
- (cc) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to vessels;
- (dd) the manner of recording particulars of the requirements for the assignment of freeboard and the method of determining the extent of compliance with the conditions of assignment and the requirements for the recording of the vessels draft forward and of the vessel and the freeboard in the Official Log Book prior to departure from any port;
- (ee) in relation to a vessel carrying passengers:-
 - (i) the accommodation of passengers;
 - (ii) provisions, water, medical stores and medical inspection;
 - (iii) the carriage of medical staff and the provision of hospital accommodation;
 - (iv) sanitary facilities;

- (v) the sale and consumption of alcohol;
- (vi) passenger lists;
- (vii) the cargo which may be carried in the vessel and the method of stowing cargo;
- (viii) the maintenance of good order in respect of the passengers;
- (ix) the prevention of wilful damage to the machinery or equipment of a vessel by a passenger;
- (x) the prevention of any obstruction to any seafarer in the execution of his duty;
- (xi) the prevention of the molesting of or interference with any person on board the vessel;
- (ff) empowering the Principal Surveyor to make orders applicable to a specified vessel or class of vessel, providing for or in relation to:-
 - (i) the number of passengers which may be carried having regard to the trade in which the vessel is engaged; and
 - (ii) the special requirement to be observed for the carriage of dangerous goods and other hazardous cargo including deck cargo and livestock.

PART V **SEAFARER'S AND PILOTAGE CERTIFICATES**

92. Application of this Part - (1) Subject to any specific provisions, unless the contrary intention appears the provisions of this Part apply only insofar as they are applicable and relevant to a vessel coming under the provisions of the STCW Convention or the Code.

(2) The provisions of this Part, unless the contrary intention appears, do not apply to, or in relation to, a vessel that is -

- (a) less than 15 metres in length; or
- (b) a pleasure craft; or
- (c) an outrigger vessel.

(3) This Part applies to the issuance and control of Pilotage certificates and Pilotage exemption certificates.

93. Vessel to be properly crewed - (1) Subject to subsection (2) every vessel to which this Act applies shall carry such number of qualified seafarers on board in the capacities as are prescribed.

(2) Every vessel when proceeding from any port or island in the Cook Islands to any port or island within the Cook Islands shall be provided with a Master and an Engineer who are the holders of valid Certificates of Competency issued by the Director of Marine. Every owner or master who fails to comply with this subsection commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(3) Where the owner sends or the master takes the vessel to sea or permits the vessel to remain at sea with fewer qualified seafarers on board than the complement prescribed in respect of that vessel, each of them commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

94. The STCW Convention and the Code - (1) Subject to this Act and to any other law, the STCW Convention, including the 1995 Amendments to the Convention, and the STCW Code shall have the force of law in the Cook Islands, and shall govern this Part and any regulations relating thereto.

(2) Where, in respect of the crewing of a vessel that is registered under this Act, there is a failure to -

- (i) comply with a requirement of the STCW Convention, including the 1995 Amendments or where applicable;
- (ii) observe the Code,

the owner or master of the vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(3) Regulations made under this Act may make provision for the implementation of the STCW Convention and the 1995 Amendments or giving effect to the Code.

(4) Where, under the STCW Convention or the Code, State parties have discretion to take any action, that discretion may be exercised by the Secretary.

(5) Notwithstanding any requirement under this Act for the purpose of giving effect to or implementing any requirement of the STCW Convention or the Code in respect of education and training arrangements, the Director of Marine may allow equivalent arrangements for such education and training, subject to the condition set down in Article IX of that Convention, or the Code.

(6) Where the Government is required to carry out any obligation or duty pursuant to the STCW Convention or the Code, that obligation or duty shall be implemented, as may be practicable, by the Ministry responsible for Shipping or by any other agency or person(s) designated by that Ministry to be the implementing agency.

95. Appointment of Director of Marine - (1) The Secretary may appoint a suitable person to be the Director of Marine.

(2) The Director of Marine shall be responsible for carrying out obligations in respect of Flag State and Port State Control contained in the STCW Convention and the Code.

(3) All vessels to which the STCW Convention or the Code apply shall, while in the Cook Islands ports, be subject to the control of the Director of Marine or his designees to verify that all seafarers serving on board vessels who are required to be certificated under the STCW Convention and the Code, are so certificated or hold an appropriate dispensation.

(4) The Director of Marine may delegate any responsibility for carrying out the duties and obligations referred to in subsection (2).

96. Certificates - (1) Any person may apply to the Director of Marine for a Certificate of Competency.

(2) An application shall be accompanied by relevant supporting documents and the prescribed fee.

(3) The Director of Marine shall issue a Certificate of Competency if it is satisfied that the applicant is properly qualified in accordance with the Regulations incorporating the STCW Convention and the Code.

(4) A Certificate shall be in the prescribed form and in accordance with the STCW Convention and shall set out the class in respect of which it is issued.

(5) The holder of a valid Certificate may serve on a vessel as a qualified seafarer of the capacity specified in the Certificate.

97. Suspension or cancellation of Certificate - (1) Where the Director of Marine has reason to believe that the holder of a Certificate is unfit to be the holder of such Certificate whether by reason of medical unfitness, incompetence or misconduct or for any other reason, he may give the holder written notification that it is considering the suspension or cancellation of the Certificate.

(2) The notification referred to in subsection (1) shall state:-

(a) why the Director of Marine has reason to believe that the holder is unfit; and

(b) that within a period specified in the notice, being not less than 72 hours, the holder may make written and oral representations to the Director of Marine.

(3) After considering any representations, the Director of Marine shall decide whether or not to suspend or cancel the Certificate, and shall give the holder written notice of, and the reasons for, his decision.

(4) Where the decision is to suspend or cancel the Certificate, the notice shall -

(a) state the date from which and the period for which the suspension is to take effect, or the date from which the cancellation is to take effect; and

(b) require the holder to deliver the Certificate to the Director of Marine not later than the date so specified in the notice.

(5) Every person who is served with the notice and who fails to deliver the Certificate of Competency specified in the notice to the Director of Marine commits an offence, and shall be liable upon conviction to a fine not exceeding \$1,000.

98. Pilotage certificate and Pilotage exemption certificate - (1) The Director of Marine may, after consultation with the Pilotage Authority for the Pilotage area, determine the qualifications and experience required for Pilotage certificates and Pilotage exemption certificates in respect of that Pilotage area which shall be prescribed in Regulations.

(2) The Director of Marine may issue or renew a Pilotage certificate or a Pilotage exemption certificate authorising the holder to take the lawful conduct of a vessel within a compulsory Pilotage area.

(3) The issue and renewal of a Pilotage Certificate or Pilotage Exemption Certificate shall be subject to such conditions as the Director of Marine thinks fit, which conditions shall be endorsed on the Pilotage Certificate or Exemption Certificate.

(5) A Pilotage Certificate or Pilotage Exemption Certificate issued or renewed under this section is valid only within a Pilotage area in respect of which it is issued.

(5) The Director of Marine may at any time cancel a Pilotage Exemption Certificate.

(6) The Director of Marine may, after consultation with the Pilotage Authority, at any time exempt any person from the provisions of this Part.

99. Suspension of a Pilotage Certificate - (1) Where in the opinion of the Director of Marine a certificated pilot -

- (a) is unfit to discharge his duties because of incompetence or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duties, he shall, after consultation with the Pilotage Authority for that Pilotage area, inform the Secretary who may cause an inquiry to be held.

(2) Where the Secretary causes an inquiry to be held he may, if he thinks fit, direct the Director of Marine to suspend the Pilotage Certificate of the certificated pilot in relation to whom the inquiry is to be held, pending the outcome of the inquiry.

100. Inquiry into incompetence of a pilot - (1) The Secretary may cause an inquiry to be held under this Part of the Act, and nominate a person or persons who in his judgement would be suitably qualified to hold the inquiry.

(2) Where the Secretary has caused an inquiry to be held under this Part, the person or persons holding the inquiry shall follow the same procedure as that laid down for the conduct of a Marine Inquiry in section 84 of this Act and may, for the purpose of the inquiry:-

- (a) go on board the ship;
- (b) enter upon any wharf or installation adjacent to a Pilotage area;
- (c) require any person to answer questions relating to the subject of the inquiry;
- (d) require the production to him or them, of any document or certificate which is in his opinion, is relevant to the inquiry.

(3) The person or persons holding an inquiry shall make a report on the inquiry to the Secretary.

(4) Where, after receiving a report under this section, the Secretary is satisfied as to any of the matters referred to in subsection (3) of this section the Director of Marine may, after consultation with the Pilotage Authority, suspend or cancel the Pilotage Certificate of the certificated pilot in respect of whom the inquiry was held for such period as he thinks fit.

(5) Where, under this section a Pilotage Certificate is cancelled or suspended, the holder of the certificate may within twenty-one (21) days after the date of suspension or cancellation apply to the High Court against the suspension or cancellation, and the High Court may confirm, vary or revoke such order as it thinks fit in the circumstances.

(6) The provisions of this section apply *mutatis mutandis* to a person holding a Pilotage exemption certificate.

101. Production of Pilotage Certificate - (1) Where a certificated pilot goes on board a ship for the purpose of acting as pilot of the ship, the master of the ship may require him to produce his Pilotage Certificate for inspection.

(2) A certificated pilot who refuses or fails without reasonable cause to comply with this requirement commits an offence and shall be liable upon conviction to a fine not exceeding \$100.

102. Unqualified persons not to act as Certificated Pilot or Exempt Pilot - Every person who is not a Certificated Pilot or does not hold a Pilotage Exemption Certificate who -

- (a) holds himself out to be a certificated pilot or an exempt pilot; or
- (b) pilots a ship in respect of which a certificated pilot is required to be on board,

commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

103. Misconduct by a Certificated Pilot- Notwithstanding anything contained in this Act, where a certificated pilot -

- (a) does any act which causes, or is likely to cause the loss or destruction of or damage to a ship or the death of or injury to a person on board a ship; or
- (b) fails to do anything required to be done by him to preserve a ship from loss, destruction or damage or any person on board a ship from death or injury,

then where such act or failure to act is deliberate or amounts to a wilful breach or neglect of duty, or occurs when the certificated pilot is under the influence of alcohol or drugs, the certificated pilot commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

104. Transitional - Where a person possesses a valid certificate as a pilot for a particular Pilotage area on the date of the coming into force of this Part, that person is deemed, until the expiry of a period of 12 months after the date of coming into force of this Part, or until expiry of his existing certificate whichever is the earlier, to be a certificated pilot for that Pilotage area.

105. Appeals - Where a Certificate of Competency, Pilotage Certificate or Pilotage Exemption Certificate is suspended or cancelled, the holder may within 30 days of the date on which the notice was served on him, appeal to the Court which may confirm, vary or revoke the suspension or cancellation as it deems fit.

106. Production of certificate - Every person who holds a Certificate of Competency or a Pilotage Certificate or a Pilotage Exemption Certificate and who fails upon request to produce that certificate to a person authorised by this act commits an offence, and shall be liable upon conviction to a fine not exceeding \$1,000.

107. Offences - (1) No person shall go to sea purporting to be a holder of a Certificate, issued under the STCW Convention or the Code of a particular class who does not hold Certificate of that class, and any person who does so commits an offence, and shall be liable upon conviction to a fine not exceeding \$3,000.

(2) Neither the owner nor the master of a vessel shall knowingly permit a person who does not hold a Certificate issued under the STCW Convention or the Code of a particular class to go to sea on the vessel as a seafarer of in that capacity, and any owner or master who does so commits an offence, and each shall be liable upon conviction to a fine not exceeding \$10,000.

(3) Any person who fails to comply with any of the provisions of this Section for which no other penalty is provided commits an offence, and shall be liable upon conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding \$20,000, or to both.

108. Seafarers Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Section, and for the due administration thereof.

(2) Without limiting the generality of subsection (1) of this section, Regulations may provide in respect of all vessels, including fishing vessels, for -

- (a) the class of Certificates of Competency;
- (b) the manner in which the attainment of any standard is determined;
- (c) the appointment of examiners of applicants for Certificates of Competency;
- (d) the manner and conduct of any examination;
- (e) the issue, endorsement and validation of Certificates of Competency;
- (f) empowering the Director of Marine to make orders in relation to a specified vessel or class of vessel providing for the complement of qualified seafarers to be carried in that vessel;
- (g) the form and the manner of recording Certificates of Competency;
- (h) the dispensations that may be permitted from the complement of qualified seafarers to be carried in a vessel; and
- (i) the fees payable in respect of examinations for Certificates of Competency; and
- (j) the training, qualifications and experience of teaching staff at nautical training institutions.

109. Pilotage regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make such Regulations as may be necessary or expedient for giving full effect to this Section.

(2) Without limiting the generality of subsection (1) of this section, Regulations may provide for -

- (a) the manner of application for the issuance of a Pilotage Certificate or a Pilotage Exemption Certificate;
- (b) the determination, after consultation with the Pilotage Authority, of the qualifications and experience required for applicants for the issue or renewal of a Pilotage Certificate or a Pilotage Exemption Certificate in respect of a Pilotage area;

- (c) the issue or renewal of Pilotage Certificates and Pilotage Exemption Certificates;
- (d) the maintenance of the efficiency of licensed pilots and exempt pilots, and the continuous evaluation of their Competency, health, proficiency and skills;
- (e) the suspension and cancellation of Pilotage Certificates and Pilotage Exemption Certificates; and
- (f) the fees payable on the issuance or renewal of Pilotage Certificates and Pilotage Exemption Certificates.

PART VI **SEAFARER'S EMPLOYMENT**

110. Application of this Part - (1) The provisions of this Part, unless a contrary intention appears, shall apply to or in relation to -

- (a) a vessel that is registered or is required to be registered under this Act; or
- (b) a seafarer who is a Cook Islander or permanent resident of the Cook Islands and employed on any vessel whether that seafarer joins a vessel in the Cook Islands or elsewhere.

(2) The provisions of this Part, unless a contrary intention appears, shall not apply to or in relation to a vessel that is -

- (a) less than 15 metres in length; or
- (b) a pleasure craft; or
- (c) an outrigger vessel.

111. Supply and engagement of seafarers - (1) No person shall engage or supply a seafarer for employment on board a vessel, unless that person is-

- (a) the owner of the vessel or that owner's licensed shipping agent; or
- (b) the Director of Marine or a person authorised by him.

(2) No person shall receive or accept a seafarer for employment on board a vessel unless that person is satisfied that such seafarer is not being supplied or engaged in contravention of this Act.

112. Restriction on making arrangements for employment of seafarers - (1) Except as provided in this Act, a person who for reward makes arrangements for -

- (a) finding seafarers for persons seeking to employ seafarers; or
- (b) finding employment for persons as seafarers,

commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000, or \$100 per seafarer engaged contrary to that section, whichever is greater.

(2) A person who in contravention of subsection (1) of this section demands or directly or indirectly receives from any other person any remuneration for providing that other person with employment as a seafarer commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

113. Agreements - (1) No person shall be employed on a vessel as a seafarer unless there is in force an employment agreement approved by the Director of Marine in writing between the owner or licensed agent or master and the seafarer which agreement may be -

- (a) with respect to employment in one or more vessels; or
- (b) for a particular period not exceeding one year; or
- (c) for one or more particular voyages.

(2) No master shall take a vessel to sea unless in respect of each seafarer employed there is an employment agreement approved by the Director of Marine.

(3) Every person who acts in contravention of subsection (1) or subsection (2) commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

114. The seaworthiness of vessel shall be a condition of employment - (1) It shall be a condition of every employment agreement that the owner of a vessel in which a person is employed as a seafarer shall use all reasonable means to ensure that the vessel is seaworthy before and during the voyage on which the seafarer is employed.

(2) A purported waiver in an employment agreement of the condition referred to in subsection (1) is void.

115. Seafarer to understand Agreement- (1) No owner or master of a vessel shall enter into an agreement relating to employment in a vessel, unless he is satisfied that the seafarer -

- (a) has read the Agreement, or if the seafarer is illiterate, in respect of the language in which the agreement is written, has had the Agreement read to him; and
- (b) as far as practicable understands the nature and content of the Agreement.

(2) Every owner or master who contravenes subsection (1) of this section shall be liable upon conviction to a fine not exceeding \$2,000 in respect of each seafarer engaged in contravention of that subsection.

116. Agreements to be approved - (1) The owner of a vessel shall, before a vessel in which a seafarer is employed goes to sea, lodge a copy of the employment Agreement or the proposed employment agreement with the Director of Marine.

(2) The Director of Marine shall, if satisfied that the Agreement adequately protects the interests of the seafarer and complies with the requirements of this Part, approve the agreement by indicating his approval and appending his signature.

117. Suspended person not to be employed as a seafarer - (1) No person who is a suspended person shall be employed as a seafarer in a vessel.

(2) An agreement relating to employment of a suspended person is void and of no effect.

(3) A person who employs a suspended person or enters into an employment agreement with a suspended person commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

(4) A suspended person who offers himself for employment as a seafarer in a vessel or enters into an agreement for employment as a seafarer in a vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$1000.

118. Termination of Agreement - (1) Subject to this section, the Employment Agreement may be terminated -

- (a) by mutual consent of the parties;
- (b) by the incapacitation or death of the seafarer;
- (c) by the expiry of a particular period referred to in the Employment Agreement, and, if that period expires during a voyage, on the arrival of the vessel at the next port of call after the expiry of that period;
- (d) where the Employment Agreement relates to employment in a particular vessel:
 - (i) by the wreck, loss or total inability of the vessel to go to sea or to proceed on a voyage; or
 - (ii) by the vessel ceasing to be registered under this Act; or
- (e) by the lawful dismissal of the seafarer; or
- (f) by the seafarer becoming a suspended person.

(2) The Agreement is not capable of being terminated under paragraphs (a) or (c) of subsection (1) at a place away from the proper return port of the seafarer without the consent of the seafarer and the Director of Marine.

119. Seafarer cannot waive protection of this Act - A provision in an Employment Agreement, whether express or implied, which purports to modify, vary or negate the right of a seafarer under this Part is void and of no effect.

120. Seafarer not to be left behind - A person who wrongfully -

- (a) forces a seafarer on shore from a vessel; or
- (b) without reasonable justification, leaves behind or causes a seafarer to be left behind, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.
- (c) this section does not apply when a seafarer leaves the vessel with the intention of not returning to the vessel.

121. Wages - (1) Subject to this Act, a seafarer shall be paid wages in accordance with the terms of the Employment Agreement.

(2) Subject to this Act, the wages due to a seafarer under the Agreement shall be paid in full on the termination of the agreement.

(3) Where an owner fails without reasonable cause to make payment in full to a seafarer as provided in subsection (2), he shall in respect of each day for which payment is delayed pay to the seafarer a sum equal to double the daily rate fixed under the Agreement.

(4) Where the amount required to be paid in full as provided in subsection (2) is less than \$500, the number of days in respect of which payment is to be made under subsection (3) shall not exceed seven days.

(5) A sum payable under subsections (3) and (4) is deemed to be wages due to the seafarer, and constitutes a maritime lien against the vessel.

(6) Where a seafarer has entered into an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, he shall be entitled to receive in addition to his earned wages a sum equal to one month's wages as compensation.

122. Allotments - (1) A seafarer may allot any part of his wages not exceeding 75 per cent of the whole.

(2) Allotment shall be made by means of an allotment note in the prescribed form.

(3) A person to whom any part of the wages of a seafarer is allotted has the right to receive such part in his or her own name and, for that purpose, has the same remedies as the seafarer for recovery of wages.

(4) In any proceedings brought by a person named in an allotment note, it shall be presumed, unless the contrary is known, that the seafarer is entitled to the wages specified in the allotment note and that the allotment note has not been varied or cancelled.

123. Account of wages - (1) An owner or master shall deliver to a seafarer an exact account of the wages due under an Agreement, and deductions (if any) made from those wages.

(2) Every owner or master who fails to do so commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

124. Entitlement to wages after wreck or loss of vessel - (1) Where a vessel is wrecked, lost or unable to proceed on a voyage, a seafarer whose employment in the vessel is thereby terminated before the date contemplated in the Agreement, is entitled in addition to wages earned during the voyage to -

(a) conveyance by, or at the cost to, the owner of the vessel to his proper return port; and

(b) subject to subsection (2), wages at the rate payable on the day of the termination of the service in respect of the period commencing on the date of termination of the service and ending 30 days after he reaches his proper return port.

(2) A seafarer is not entitled to wages in respect of a day on which his conveyance under subsection (1) is delayed by his own act, default or neglect.

125. Wages for sick or injured seafarer - (1) This section applies to a seafarer belonging to a vessel who is ill, hurt or injured where the illness, hurt or injury is -

(a) not due to the wilful act, default, or misbehaviour of the seafarer; and

(b) such as to incapacitate him wholly from the performance of his duty, and who, by reason of the illness, hurt or injury is left behind at a port other than his proper return port.

(2) In addition to wages earned during the voyage, a seafarer is entitled to wages at the rate payable under the agreement on the day on which he was left behind in respect of the period commencing on that day and ending -

- (a) on the day of his return to his proper return port; or
- (b) at the expiration of two months; or
- (c) on the date of his death, whichever first occurs.

126. Seafarer's rights in regard to wages - (1) A seafarer's lien for his wages and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any Agreement.

(2) Subsection (1) shall not affect those terms of the Agreement made with the seafarer of a vessel employed on salvage services, which provide for the remuneration to be paid to the seafarer for salvage services rendered by that vessel.

(3) The master of a vessel shall have the same lien for all disbursements or liabilities properly made or incurred by him on account of the vessel as a seafarer has for his wages, pro-rated from any funds available.

(4) The right of a seafarer to wages shall not depend on the earning of freight.

(5) Nothing in this section shall be construed as preventing any profit sharing plan or sharing of the catch of a fishing vessel by which a seafarer is to be compensated with a proportion of profits or catch in addition to his wages.

(6) The wages and clothing of a seafarer shall not be subject to attachment or arrest by any court; and assignment of wages (except allotments) or of salvage made prior to the accruing thereof shall not bind the seafarer.

(7) Every person who contravenes any of subsections (1) to (6) (inclusive) commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000 for each offence.

127. Return of a distressed seafarer - (1) In this section a "distressed seafarer" means a person who -

- (a) is or has been a seafarer on a vessel; and
- (b) is at a place away from his proper return port by reason of having been left behind from a vessel, or shipwrecked in a vessel;

but does not include a seafarer left behind who would not have been left behind, but for his own wilful act or neglect.

(2) Where a person is a distressed seafarer, the person who last employed him as a seafarer shall make provision for his return to his proper return port and his relief and maintenance prior to his return to that port.

(3) Every person who fails to make the provision referred to in subsection (2) commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000, in addition to making restitution to the seafarer or any expenses incurred.

(4) Where in the opinion of the Director of Marine a person has failed to make proper provision for the relief, maintenance and return to his proper return port of a distressed seafarer, he may make such provision and recover the cost of so doing from the person who has failed to make the provision.

(5) Where any expense is incurred in respect of a matter for which a person is required to make provision under this section, then, unless it can be proved that the distressed seafarer would not have been left behind but for his own wilful act or neglect -

- (a) if the expense is incurred by or on behalf of the Government, the Government; or
- (b) if the expense is incurred by the distressed seafarer, the distressed seafarer,

may recover the expense from the person who is required to make that provision in a civil action.

(6) Where a seafarer or a distressed seafarer dies, and his body -

- (a) is conveyed to his proper return port; or
- (b) is buried or cremated at a place away from his proper return port,

the expenses of conveying, burying or cremating his body may be recovered from the person who last employed him as a seafarer.

128. Property of deceased seafarer - (1) When a seafarer dies while or after being employed in the vessel, the master shall cause his property left on board to be delivered up to the Director of Marine.

(2) Any master or other person who refuses or fails unreasonably to comply with subsection (1) commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(3) Unless otherwise prescribed, where any property of a deceased seafarer has come into the possession of the Director of Marine, he shall take all steps reasonably necessary and practicable in the circumstances to ensure that the property of the deceased seafarer is immediately returned to the person lawfully entitled to it.

129. Disciplinary Offences- (1) Where a seafarer commits any of the following disciplinary offences -

- (a) does any act which causes or is likely to cause;
 - (i) the loss or destruction of, or damage to a vessel;
 - (ii) the death of, or serious injury to, a person on board; or
- (b) fails to do anything required by him to preserve;
 - (i) a vessel from loss, destruction or damage, or
 - (ii) any person on board the vessel from death or serious injury; or
- (c) engages in fighting or commits any form of assault against the master or officers or any passenger or any other crew member; or
- (d) whilst on duty, is found to be under the influence of alcohol, or any prohibited or narcotic drug;
- (e) fails to obey any lawful command;
- (f) is in possession of any prohibited substance or illegal weapons or other objects; or
- (g) smuggles or attempts to smuggle into any country any goods on which duty is payable, or any goods the import of which is prohibited,

that seafarer commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding two years, or both.

130. Continual or concerted disobedience - Where a seafarer other than the master -

- (a) willfully and persistently -
 - (i) neglects his duty; or
 - (ii) disobeys any lawful command; or
- (b) combines with other seafarers to
 - (i) disobey a lawful command; or
 - (ii) neglect his duty; or
 - (iii) impede the navigation of the vessel; or
- (c) wilfully and persistently commits any of the disciplinary offences in section 129 of this Act,

that seafarer commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding two years, or both.

131. Absence without leave - Where a seafarer is absent without leave and his absence is due to his recklessness, or is deliberate and without reasonable cause, and a vessel is thereby delayed or goes to sea without him, the seafarer commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

132. Persons deemed to be seafarers - Notwithstanding any other provision of this Act, where -

- (a) a person is carried to sea without the consent of the master or of any other person authorised to give consent to his being so carried; or
- (a) a person, having been a seafarer, is carried on a vessel for the purpose of being returned to his proper return port with discipline and bad order,

that person is, for the purposes of the sections of this Act dealing with discipline and good order, deemed to be a seafarer on the vessel, and shall obey all the lawful commands of the master.

133. Suspension of Seafarers - (1) The Director of Marine shall maintain a List of Suspended Seafarers.

(2) The master of a vessel on which a seafarer has committed a disciplinary offence shall make an entry in the Official LogBook to that effect, and shall make a report of his findings to the Director of Marine.

(3) Where -

- (a) two or more reports under subsection (2) have been made during a voyage or period under an employment contract in respect of a seafarer; or
- (b) a seafarer has committed a disciplinary offence under this Act,

the Director of Marine may declare the seafarer to be a suspended person, and place his name on the List of Suspended Seafarers.

134. Appeal against suspension - (1) Where the Director of Marine has declared the seafarer to be a suspended seafarer and the period of suspension exceeds six months, the seafarer may, within 21 days of receiving the notification of his suspension, appeal to the High Court against his suspension.

(2) Where an appeal is made, the High Court shall make such order confirming, waiving or revoking the suspension as it deems fit.

(3) Where no appeal to the High Court is made within the period of 21 days, or an appeal is made and the High Court orders that the appeal be dismissed, the Director of Marine shall include the name of the seafarer in the List of Suspended Seafarers.

135. Stowaways - (1) A person who, without the consent of the master of the vessel or a person authorised by the master to give that consent, goes to sea or stows away in a vessel from any port or place in the Cook Islands commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 1 year, or both.

(2) In addition to any fine, the Court may order that the stowaway shall pay to the owner of the vessel any expenses incurred by the owner as a result of the actions of the stowaway, and, alternatively, the Court may include in the fine an amount for reimbursement of any costs incurred by any person or agency and provide for a term of imprisonment in default of payment by the person convicted of stowing away.

(3) A person who contravenes subsection (1) of this section shall be repatriated to the Cook Islands at the expense of the owner or master of the ship on which that person stowed away.

(4) The owner of the vessel may bring an action against the stowaway to recover the expenses of repatriation.

136. Incitement of seafarers to revolt or mutiny - Where a seafarer, other than the master of a vessel -

- (a) attempts to mutiny or usurp the authority of the master; or
- (b) combines, or conspires with any other person on board to mutiny; or
- (c) solicits or incites any other member of the crew to -
 - (i) disobey or resist the lawful orders of the master or other officers of the vessel; or
 - (ii) refuse or neglect his proper duty on board the vessel; or
- (d) assembles with others in a tumultuous and mutinous manner; or
- (e) makes a riot on board the vessel,

that seafarer commits an offence, and shall be liable upon conviction to a term of imprisonment not exceeding five years, or to a fine not exceeding \$10,000, or to both.

137. Revolt or mutiny of seafarers - Where a seafarer, other than the master of a vessel -

- (a) unlawfully and with force, or by fraud or intimidation, usurps the command of the vessel from the master; or
- (b) deprives the master of command and authority; or

- (c) resists or prevents the master in the free and lawful exercise of command and authority; or
- (d) transfers the command and authority of the master to a person not lawfully entitled thereto;
- (e) unlawfully confines the master,

that seafarer is guilty of revolt and mutiny, and shall be liable upon conviction to a term of imprisonment not exceeding five years, or to a fine not exceeding \$10,000, or to both.

138. Prohibition of corporal punishment - Flogging and all other forms of corporal punishment are hereby prohibited on board any vessel, and any master or officer who violates this section commits an offence, and shall be liable upon conviction to a term of imprisonment not exceeding one year, or to a fine not exceeding \$5,000, or to both.

139. Wrongful death or disability - Subject to the provisions of this Act in respect of time limits and limitation of actions, where -

- (a) the death of a seafarer is caused by a wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seafarer may maintain an action for damages for the exclusive benefit of the deceased's wife, husband, parent, child, or dependent relative, against the vessel, person, owner or charterer which would have been liable to the deceased if death had not ensued; or
- (b) an injury or permanent disability is sustained by a seafarer by wrongful act, omission, neglect or default occurring on board a vessel, the seafarer may maintain an action for damages against the vessel, person or owner or charterer.

140. Death or injury on board - (1) In the event of a death on board a vessel, the master shall -

- (a) where practicable, retain the body on board;
- (b) make an entry in the Official Log book of the vessel which shall contain particulars of the cause, or suspected cause, of death;
- (c) at the first port of arrival after death has occurred, report the death and deliver the body to the appropriate authority;
- (d) at the earliest opportunity after the death has occurred, forward a copy of the Log book entry, signed by him, to the Director of Marine.

(2) In the event of an injury on board a vessel, the master shall -

- (a) make an entry in the Official Log Book of the vessel, which shall contain particulars of how the injury occurred, the treatment given, and any other pertinent particulars;
- (b) at the first port of arrival after the injury has occurred, report the injury to the appropriate authority;
- (c) at the earliest opportunity after the injury has occurred, forward a copy of the Log book entry, signed by him, to the Director of Marine.

141. Issuance of death certificate - Where the Director of Marine has received a copy of the Official Log book entry, he shall forward the information contained in the entry to the Secretary of Health for the issuance of a death certificate.

142. Seafarer's identity card - (1) The Director of Marine may issue to any person who is a permanent resident of the Cook Islands who is serving or intending to serve aboard any vessel a card to be known as a Seafarer's Identity Card.

(2) A person to whom a Seafarer's Identity Card has been issued who refuses or fails without reasonable cause to keep the card securely and to produce it when so required to such persons and in such circumstances as are prescribed, commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

143. Seafarer's record book - (1) The Director of Marine shall issue to a seafarer a book to be known as a Seafarer's Record Book.

(2) A Seafarer's Record Book shall be in such form as the Director of Marine shall determine, and shall be applied for, issued and dealt with in the manner determined by the Director of Marine.

(3) A seafarer who fails to produce his Seafarer's Record book when requested by the Director of Marine commits an offence, and shall be liable upon conviction to a fine not exceeding \$1000.

(4) A seafarer whose Seafarer's Record Book has become lost or destroyed as a result of his negligence will be required to pay the cost of replacement.

144. Register of seafarers - (1) The Director of Marine shall cause to be kept at the Ministry responsible for Shipping a book to be known as the Register of Seafarers into which shall be entered such particulars as he may require.

(2) Any person may inspect the Register of Seafarers at any time during normal business hours upon payment of the prescribed fee.

145. Official Log book - (1) The master of a vessel shall keep a book on board the vessel to be known as the Official Log book in the form prescribed in Regulations, which shall contain such particulars as shall be prescribed, or if not prescribed, such particulars as are required by the Director of Marine.

(2) Subject to this Act, the master of a vessel who fails without reasonable cause -

- (a) to keep the Official Log book in the prescribed or required manner; or
- (b) to carry the Official Log book in the vessel;

commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

146. Crew list - (1) An owner or the master of a vessel shall make a list of the crew of the vessel, which list shall be known as the Crew List, and which shall be deposited with the Director of Marine or a person or class of persons designated by the Director of Marine before the vessel departs from port.

(2) The Crew List shall list all the crew and their positions on board the vessel, and only those crew on board the vessel at the time of sailing, and if the names and address of their next of kin are not recorded in the Articles of Agreement, then the crew list shall name each seafarer's next of kin and their current address.

(3) A person who without reasonable cause fails to maintain the Crew List of a vessel or fails to deposit a copy with the Director of Marine commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

147. Exemption of particular vessels - (1) The Director of Marine may, subject to such conditions (if any) as he thinks fit, exempt a particular vessel or a particular class or description of vessel from any requirement of this Part.

(2) An exemption under subsection (1) of this section may be in respect of a particular period, or one or more particular voyages.

148. Time limits - (1) Subject to the provisions of this Act in respect of limitation of actions, Court proceedings arising out of agreements between employers and seafarers shall be commenced within one year.

(2) Court proceedings in respect of the following classes of claim shall be commenced within two years:-

- (a) claims arising out of the death of a seafarer caused by wrongful act, neglect or default on the high seas or in Cook Islands waters;
- (b) claims of the shipowner against the master for acts committed during the performance of his duties;
- (c) all other tort claims.

(3) The proceedings in respect of all other claims shall be commenced within three years.

(4) The periods of time referred to in subsections (1), (2) and (3), run from the time of the termination of the voyage during which the cause of action arose.

(5) A cause of action of a kind referred to in this section shall be deemed to have been abandoned if proceedings in respect thereof have not been commenced within the time or times specified in this section.

149. Regulations for employment of seafarers - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part, and for the due administration thereof.

(2) Without limiting the generality of subsection (1), Regulations may provide for -

- (a) the terms and conditions of employment of seafarers;
- (b) the conditions and particulars to be included in an agreement;
- (c) the form of an agreement and the manner in which an agreement shall be made;
- (d) the manner in which an agreement shall be added to or amended or lodged with the Director of Marine;
- (e) the circumstances in which an agreement or copy of an agreement shall be carried in a vessel;

- (f) the requirements for an agreement, or a copy of an agreement to be delivered to or made available to the Director of Marine;
- (g) the notice required to be given to the Director of Marine before an agreement is entered into or terminated;
- (h) procedures and practices to be followed on the termination of an agreement;
- (i) the circumstances under which, other than by reason of termination of an agreement, a seafarer may be left behind from a vessel outside the Cook Islands;
- (j) the deductions which may be made from the wages due to a seafarer;
- (k) the manner in which wages are to be paid;
- (l) the manner in which wages are to be accounted for where a seafarer leaves a vessel otherwise than on termination of an agreement;
- (m) the form and manner in which accounts of wages are to be prepared by the owner and delivered to a seafarer;
- (n) the form of allotment notes;
- (o) the circumstances and the manner in which allotment notes are to be made;
- (p) the conduct of medical examinations of seafarers and persons seeking employment as seafarers;
- (q) the manner in which the property of a deceased seafarer is to be dealt with;
- (r) the misconduct of seafarers on board a vessel which is to be a disciplinary offence;
- (s) procedures under which a master may find that a seafarer has committed a disciplinary offence;
- (t) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to;
 - (i) a suspended seafarer; and
 - (ii) the person who last employed him as a seafarer;
- (u) the manner in which the name of a suspended seafarer shall be included in the List of Suspended Seafarers ;
- (v) the manner in which the List of Suspended Seafarers is to be kept and made available for inspection by any person;
- (w) the circumstances, manner and form in which Seafarer's' Identity Cards and Seafarer's Employment Records Books are to be issued, recorded and dealt with;
- (x) the particulars to be entered, and the manner in which and the persons by whom, entries in an Official Log book are to be made, signed and witnessed;
- (y) the production, or delivery of an Official Log Book to such person in such circumstances and within such times as may be specified;

- (z) the particulars to be entered into and the place and manner in which a Crew List or a copy thereof is to be maintained;
- (aa) the manner in which a Crew List or a copy thereof is to be made available on demand to specified persons; and
- (bb) the fees payable in respect of any matter under this Part.

PART VII

SEAFARER'S WELFARE

150. Application of this Part - (1) The provisions of this Part shall apply to a vessel that is -

- (a) registered or is required to be registered under this Act; or
 - (b) employing Cook Islands seafarers; or
 - (c) an offshore vessel.
- (2) The provisions of this Part do not apply to a vessel that is -
- (a) less than 15 metres in length; or
 - (b) a pleasure craft; or
 - (c) an outrigger vessel.

151. Protection of young persons - (1) No person under the age of 16 years shall be employed as a seafarer in a vessel except that, with the approval of the Director of Marine, a person under the age of 16 years may be employed in -

- (a) a vessel in which only members of the same family are employed; or
- (b) a school vessel or a training vessel.

(2) A person under the age of 18 years but who is 16 years and over shall not be employed as a seafarer in a vessel unless-

- (a) the seafarer is subjected to such periodical medical examinations as are prescribed by Regulations; and
- (b) a register is kept of persons of such age aboard the vessel in the Official Log Book.

(3) An agreement relating to employment of a seafarer which is not in compliance with subsections (1) and (2) is void and of no effect as against that seafarer.

(4) A person who knowingly employs a person in contravention of subsections (1) and (2) or who fails to comply with the requirements of subsection (2) commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

152. Approval of service - (1) A person who, at a place in the Cook Islands, without the written approval of the Director of Marine, employs a permanent resident of the Cook Islands who is under 18 years of age as a seafarer in a vessel that is proceeding on a voyage to a place in another country commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

(2) Where there is a contravention of this section and a permanent resident of the Cook Islands is carried to sea, the owner, master or agent of the vessel to which subsection (1) applies commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

153. Crew accommodation - (1) Every vessel shall have accommodation exclusively reserved for the use of the crew.

(2) An owner or master of a vessel who permits the vessel to go to sea without crew accommodation of the prescribed standard, or if no standard is prescribed, then as the Director of Marine may require, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

154. Provisions and water - (1) An owner or master of a vessel shall ensure that the provisions and water supplies for the use of seafarers are as prescribed in Regulations.

(2) Where the Director of Marine is of the opinion that the provisions or water on any vessel are in his opinion unwholesome or insufficient for the voyage, he may direct the owner or the master to rectify or replenish them before the vessel goes to sea.

(3) An owner or master of a vessel who fails to comply with this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

155. Vessel to carry medical stores. - An owner or master of a vessel who suffers or permits the vessel to go to sea without carrying the prescribed number of qualified first-aid attendants, medicines, and medical and surgical stores each commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

156. Exemption of particular vessels - (1) The Director of Marine may, in writing, exempt a particular vessel or a particular class or description of vessel from any requirement of this Part.

(2) An exemption under subsection (1) of this section may be in respect of a particular period or one or more particular voyages.

(3) The Director of Marine in granting an exemption on any vessel under subsection(1) of this section may impose any such conditions as he thinks fit.

157. Regulations for welfare of seafarers - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part, and for the due administration thereof.

(2) Without limiting the generality of subsection (1), Regulations may provide for -

- (a) the protection of young persons and the manner in which a register of persons between the ages of 16 and 18 years employed on a vessel shall be recorded;
- (b) the crew accommodation requirements for new and existing vessels;
- (c) the standards to be observed in the construction, equipment, ventilation, lighting, heating, furnishing and maintenance of crew accommodation;
- (d) the quality and quantity of the provisions and water to be supplied for the use of seafarers;
- (e) the carriage of a medical practitioner in a vessel;

- (f) the appointment and certification of First-Aid Attendants and the circumstances in which first-aid attendants are to be carried in a vessel;
- (g) empowering the Director of Marine to make orders applicable to a specified vessel or class of vessel providing for or in relation to the medicines and medical and surgical stores to be carried in a vessel, and the manner in which such medicines and stores are to be carried, stored and used in a vessel.

PART VIII **MARINE NAVIGATION AIDS**

158. Application - This Part applies to all marine navigation aids situated in Cook Islands waters used for guiding seafarers in the navigation of vessels near reefs, shores and other dangers to navigation.

159. Aid to Navigation Officer - (1) The Director of Marine may appoint an Aid to Navigation Officer who may at any reasonable time inspect any marine navigation aid or any light which, in his opinion, may affect the safety or convenience of marine navigation.

(2) Where, for the purpose of inspection or maintenance of a marine navigation aid or light, it is necessary for the Officer to do so, the Officer may enter upon any property and transport goods through or over that property.

(3) A person who obstructs or hinders an Officer in the exercise of his powers or in the performances of his duties under this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

160. Establishment and alteration of marine navigation aids - (1) The Director of Marine may establish, maintain, operate, alter or remove any marine navigation aid at any location throughout the Cook Islands.

(2) Where it is possible to conform with the standards developed by the International Association of Lighthouse Authorities, the Director of Marine shall ensure that any lights or marine navigation aids established or altered within the Cook Islands comply with the appropriate standards.

(3) Subject to subsection (1) of this section, the Director of Marine may delegate the authority to establish, maintain, operate, alter or remove any marine navigation aid within port limits or near the approaches to any designated port, and which is declared by the Secretary not to be a coastal light, to the Ports Authority established under the Ports Authority Act, 1994.

(4) The Chairman of the Board of Directors shall communicate to the Director of Marine the details concerning the establishment or alteration or malfunction of any marine navigation aid so that the Director of Marine may cause to be issued a Notice to Mariners in respect of any marine navigation aid coming under the authority of the Ports Authority.

(5) The Director of Marine shall ensure that any lights or marine navigation aids established or altered by the Ports Authority or by the Ministry responsible for Shipping are not so established or altered without prior consultation with the Advisory Committee on Marine Navigation Aids established under section 167 of this Act.

161. Changes to marine navigation aids - Where any marine navigation aid is established, altered or removed, the Director of Marine shall cause a "Notice to Mariners" to be issued accordingly.

162. Private Marine Aids to Navigation - (1) It shall be unlawful for any person to establish, operate, alter or remove a private aid to navigation without authority under this act or the written approval of the Director of Marine.

(2) If safety or convenience requires it, the Director of Marine may by written notice require the owner of a private aid to navigation to move, remove, modify or alter it.

(3) Where the owner of a private aid to navigation fails to comply with the conditions contained in the notice served on the owner in compliance with subsection (2), the

(4) Director of Marine may take possession or control of the aid and do anything which must be done for the safety of navigation, and the owner shall pay any and all costs incurred by the Director of Marine under this subsection.

163. Offences in relation to Marine Navigation Aids - (1) A person who -

- (a) makes fast to, damages, destroys or allows a vessel to foul a marine navigation aid;
- (b) does anything which causes the view of a marine navigation aid to be obstructed in such a manner as to lessen its efficiency;
- (c) without lawful authority removes or does anything which interferes with a marine navigation aid so as to hinder the effective use of the aid; or
- (d) trespasses on or without lawful excuse is found in or on a marine navigation aid or any land upon which such an aid is situated

commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000, and in addition shall reimburse the Director of Marine for the cost of repairing or replacing the marine navigation aid or of rendering the aid effective.

(2) A person who, or the master of a vessel which damages, destroys, fouls or interferes with a marine navigation aid and fails to notify the Director of Marine as soon as practicable after the aid is damaged, destroyed, fouled or interfered with commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

164. Detention of a vessel which damages a Marine Navigation Aid - Where a vessel damages, destroys, fouls or interferes with a marine navigation aid, the vessel may be detained until the cost of repairing or replacing the marine navigation aid or rendering the marine navigation aid effective again is paid to the Government.

165. Immunity from certain proceedings - (1) In this section, "the Government" includes the Minister, Secretary, Director of Marine, Ports Authority, an officer or employee of the Government, or any statutory authority.

(2) Notwithstanding the provisions of the Crown Proceedings Act 1950 or any other enactment, no legal proceedings shall be instituted against the Government in respect of any act or omission that is done or made under this Part unless that act or omission arises from wilful misconduct.

166. Advisory committee on Marine Navigation Aids - (1) The Director of Marine may nominate persons to advise it on any matter related to this Part which it refers to them.

(2) The persons nominated under subsection (1) shall include two or more persons who shall represent the owners of vessels in respect of which marine navigation aid dues are payable.

(3) The persons nominated under subsection (1) of this section shall form a committee the chairman of which shall be a person appointed by the Director of Marine.

167. Marine Navigation Aids dues - (1) The owner or master of a vessel that enters or leaves a port in the Cook Islands shall pay such marine navigation aid dues in respect of the vessel as are prescribed.

(2) Where, without reasonable cause, the owner or master of a vessel fails to pay such dues as are prescribed, the owner or master of the vessel commits an offence, and each shall be liable upon conviction to a fine not exceeding \$5,000.

(3) Where marine navigation aid dues payable under this Part are unpaid for a period in excess of 30 days after the invoice is delivered, the vessel may be detained until they are paid.

168. Marine Navigation Aids Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part, and for the due administration thereof.

(2) Without limiting the generality of subsection (1) of this section, Regulations may provide for -

- (a) the rates of marine navigation aid dues payable in respect of vessels and the manner in which dues shall be paid;
- (b) the exemption of particular vessels from the requirements relating to the payment of marine navigation aid dues;
- (c) the specific responsibilities of the Maritime Division of the Ministry responsible for Shipping to provide and maintain marine navigation aids;
- (d) Penalties for failure to comply with any provisions of this Part or Regulations made hereunder.

PART IX SMALL CRAFT

169. Regulations for small craft - (1) The Queen's Representative may from time to time by Order in Executive Council make all such Regulations as may be necessary or expedient for giving full effect to this Part, and for the due administration thereof.

(2) Without limiting the generality of subsection (1), Regulations may provide for -

- (a) the recording of information with respect to the vessel, its ownership and operations;
- (b) the identification and marking of vessels;
- (c) periodical and unscheduled inspections;
- (d) construction and equipment;

- (e) operational requirements and licensing of operators;
- (f) fees payable in respect of the recording of information, inspection of a vessel, the licensing of an operator and other safety services provided for in the Regulations;
- (f) the exemptions from the specific requirements of the Regulations which may be granted in respect of a specified vessel or class of vessel.

(3) Notwithstanding anything in this Act, "small craft" means a vessel that is less than 15 metres in length and is not -

- (a) a pleasure craft; or
- (b) an outrigger vessel.

(4) Regulations made under this section may make different provisions for different classes of vessels.

PART X

WRECK AND SALVAGE

170. Receiver of Wreck - (1) There may be appointed by the Secretary from time to time a Receiver, who shall be the Receiver of Wreck for the time being in the Cook Islands.

(2) The Secretary shall appoint a Receiver when any vessel is wrecked, stranded or in distress at any place on or near the shore of the sea or of any tidal water within the limits of the Cook Islands, and such Receiver shall be appointed on the recommendation of, and at the cost in all things to, the owner of the wrecked vessel

(3) In the event that the owner of any wrecked vessel refuses to recommend a person for appointment as Receiver by the Secretary, or the owner of any wreck cannot be found, the Secretary shall appoint as Receiver a competent person of his choice provided that all the costs of such Receiver shall be borne by the owner of the wreck or shall be a charge against any proceeds (if any) from the sale of the wreck.

(4) The appointment of a Receiver may be for a specified period of time or duration, or it may be in relation to a particular wreck or incident.

(5) The Receiver shall have general superintendence in all matters relating to the Wreck, and may appoint any competent person to act for the Receiver of Wreck for the time being on any island in the Cook Islands, and to perform such duties for the Receiver of Wreck as are referred in this Part.

(6) The Receiver and any person appointed by him shall at all times and as far as practicable exercise all reasonable care, consideration and diligence in the exercise of any of his functions under this Act.

171. Preservation of Wreck - (1) When any vessel is wrecked, stranded or in distress at any place on or near the shore of the sea or of any tidal water within the limits of the Cook Islands, the Receiver or any person appointed by the Receiver may proceed to such place, and upon his arrival there shall take all necessary steps and do things necessary as he thinks fit with the view to the preservation of the vessel, the cargo and the lives of persons belonging to the vessel.

(2) The Receiver or any person appointed by the Receiver shall not interfere between the master of vessel and his crew in matters relating to the management of the vessel, unless he is requested to do so by the master.

(3) The Receiver may with a view to preservation to the vessel, persons, cargo and apparel –

- (a) requisition such assistance as he thinks necessary; and
- (b) require the master of any vessel to give such aid as he is able to safely do.

(4) All cargo and other articles belonging to a vessel that may be washed on shore or otherwise be lost or taken from the vessel, shall be delivered to the Receiver or any person appointed by the Receiver, and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article or refuses to deliver the same to the Receiver or to any person authorised by him to demand the same, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(5) It shall be lawful for the Receiver or any person appointed by the Receiver to take any cargo or article by the use of reasonable force from any person refusing to deliver it in accordance with subsection (4) of this section.

(6) For the purpose of rendering assistance to a vessel or saving the lives of shipwrecked persons or the cargo or apparel thereof, any person may, unless there is some public road equally convenient, pass and re-pass doing as little damage as possible either with or without vehicles over any adjoining lands without being subject to interruption by the owner or occupier.

(7) Any person may deposit on adjoining lands any cargo or other article recovered from a vessel to which this section applies.

(8) All damage or costs that may be sustained by any person or owner or occupier in consequence of being requisitioned to render assistance or of any such passing or re-passing or deposit, as the case may be, shall be a charge on the vessel, cargo or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recovered in the same manner as salvage is made recoverable under this Part, and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is in case of dispute to be determined.

172. Finding and taking possession of wreck - (1) Every person finding or taking possession of wreck within the Cook Islands -

- (a) if the person so finding or taking possession of wreck is the owner, shall as soon as possible give notice to the Receiver or any person appointed by the Receiver that he has so found or taken possession of wreck, and he shall describe in such notice the marks by which such wreck is recognised;
- (b) if any person not being the owner finds or takes possession of any wreck, shall as soon as possible deliver the wreck to the Receiver or any person appointed by the Receiver.

(2) Every person who fails without reasonable cause to comply with the requirements of subsection (1) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.

173. Search allowed for secreted wreck - If the Receiver or any person appointed by the Receiver suspects or receives information that any wreck -

- (a) has been secreted; or
- (b) is in the possession of some person who is not the owner and who has failed to comply with the provisions of this Part;

he may apply for a search warrant so that he may enter and search for the wreck in any vessel or place, and if any such wreck is found it may be seized and detained and dealt with as wreck by the Receiver or any person appointed by the Receiver in accordance with this Part.

174. Notice by Receiver of having taken possession of wreck - The Receiver shall, as soon as possible after taking possession of any wreck, inform the owner or publicly advertise a description of the wreck and of any marks by which it is distinguished, and the fact that he has taken possession of it pursuant to this Part.

175. Removing wreck from custody of Receiver - If any vessel, cargo, apparel or wreck is detained under this Part for any sums due, and any person without the authority of the Receiver removes or attempts to remove the vessel, cargo, apparel or wreck from the place where the Receiver has ordered it to be detained, that person commits an offence and shall, in addition to any liability incurred under any other law, be liable upon conviction to a fine not exceeding \$5,000.

176. Claimed and unclaimed wreck - (1) Subject to the payment of any expenses, fees and salvage due, the owner of any wreck who establishes his claim thereto to the satisfaction of the Receiver shall be entitled to have the wreck delivered to him.

(2) If no owner establishes his claim to the wreck before the expiration of three months from the date on which the wreck has come into possession of the Receiver, the Receiver shall sell the wreck and, after payment of all expenses, deduction of his fees, and payment to the salvors of such amount of salvage as has been determined, shall pay the residue into the Public Account of the Cook Islands.

(3) Notwithstanding subsection (1), the Receiver may at any time sell any wreck in his possession, if in his opinion;

- (a) it is so damaged that it cannot with advantage be kept; or
- (b) it is of so perishable a nature that it cannot be preserved; or
- (c) it is not of sufficient value to pay for storage or warehousing;

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the Receiver in an interest-bearing trust account pending any claim thereto.

177. Removal of wrecked vessels - (1) Where any vessel is wrecked on or near the coasts of any island of the Cook Islands or in any tidal water within the limits of the Cook Islands, and in the opinion of the Receiver the wrecked vessel should be removed, the Receiver may require the owner of the wrecked vessel to raise, remove or destroy the vessel or to place a lighted buoy or other such work to indicate the position of any such vessel until it is raised, removed or destroyed.

(2) Where the owner fails to comply with such requirement, the Receiver or any person or entity contracted by him may raise, remove, destroy or deal with the wrecked vessel in such manner as he deems fit, and any costs incurred shall be recoverable from the owner or his insurers.

(3) Where in the opinion of the Receiver any vessel is, or is likely to become an obstruction or hazard to navigation, he may by notice in writing to the owner or person in command of the vessel, require the vessel to be removed in such manner and within such time as he specifies.

(4) Where the owner fails to comply with that notice, the Receiver shall cause the vessel to be removed and may -

- (a) take possession of or raise or destroy the whole or any part of the vessel, or deal with the wrecked vessel in such manner as he deems fit; and
- (b) sell the vessel or any part thereof and any other property recovered, and out of the proceeds reimburse the appropriate Government agency for the expenses of buoying or lighting the wreck or its removal, and any expenses associated with the sale; and
- (c) if the proceeds of the sale are insufficient to cover all the cost of the removal, recover the balance from the owner of the vessel or his insurers.

(5) In the event of the forced sale of a stranded or sunken vessel removed by the Receiver or other public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall constitute a Maritime Lien pursuant to Article 12(3) of the International Convention of Maritime Liens Mortgages 1993, and shall be paid out of the proceeds of the sale before all other claims secured by a maritime lien on the vessel.

(6) The powers given to the Receiver under this section for the removal of wrecked vessel shall be in addition to and not in derogation of any other powers given under this or any other Act.

(7) Where the owner fails to comply with the direction of the Receiver in respect of the removal of a wrecked vessel, the owner commits an offence, and shall be liable upon conviction to a fine not exceeding \$100,000 or, in default, a term of imprisonment not exceeding two years.

178. Prohibited areas - (1) Where the Secretary is satisfied that because of anything contained in a wrecked vessel it is in such a condition which makes it a potential danger to life, property or the environment, and that the wrecked vessel ought to be protected from unauthorised interference, he shall declare an area around the wrecked vessel to be a prohibited area.

(2) The declaration shall contain a description of the wrecked vessel, the place where it is and the extent of the area declared to be a prohibited area.

(3) Subject to subsection (4), a person who, without the written authority of the Secretary, enters the prohibited area commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(4) A person does not commit an offence under subsection (3) if he enters the prohibited area in pursuance of some duty or function imposed on him by law or out of necessity due to stress of weather or navigational hazard.

179. Sale by Receiver of detained property - (1) Where a dispute as to salvage has been referred to the Court, the Receiver shall deal with any property detained as the Court orders.

(2) Where the amount of salvage due to a salvor is not disputed, and the amount due is not paid within twenty-one (21) days of the date agreed for payment, the Receiver may sell the detained property.

(3) After payment of any fees and any expenses incurred by the Receiver in respect of the property, its sale and payment of salvage, the proceeds of the sale shall be paid to the person legally entitled to it or, if in dispute, to the Court.

180. Offences relating to wreck - (1) A person who -

- (a) wrongfully removes any part of any vessel stranded or in distress or any part of the cargo or wreck; or
- (b) endeavours in any way to impede the saving of any vessel, cargo, apparel or wreck; or
- (c) secretes any wreck or obliterates or defaces any marks thereon;

commits an offence, and shall be liable upon conviction to a fine not exceeding \$15,000.

(2) A person not being the Receiver or not acting under the orders of the Receiver who, without the leave of the master, boards or endeavours to board any vessel commits an offence, and shall be liable upon conviction to a fine not exceeding \$15,000, and it shall be lawful for the master of such vessel to repel by reasonable force necessary under the circumstances in order to deter any such person so boarding or attempting to board the vessel.

(3) A person who, without the leave of the master or authority of the Receiver, takes from the Cook Islands into any foreign port any vessel found stranded, derelict or in distress within the Cook Islands or any part of the cargo or any wreck with the intention of selling the vessel, wreck, apparel, equipment or cargo commits an offence, and shall be liable upon conviction to a fine not exceeding \$25,000.

181. Powers of Customs - (1) All wreck being foreign goods brought into the Cook Islands shall be subject to the same duties as if imported into the Cook Islands. If any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Comptroller of Customs determines.

(2) The Comptroller of Customs may permit all cargo saved from any inward-bound vessel stranded or wrecked to be forwarded to the port of its original destination.

182. The International Convention on Salvage, 1989 - (1) The provisions of the International Convention on Salvage, 1989, shall have the force of law in the Cook Islands.

(2) "Salvage operation" means any act or activity undertaken to assist a vessel or any other property in danger in Cook Islands waters or on the High Seas.

183. Payments to salvors for services rendered - (1) When -

- (a) any vessel is stranded or wrecked or otherwise in distress within Cook Islands waters, and services are rendered by any person assisting the vessel or saving the lives of the persons belonging to the vessel or saving cargo or apparel of the vessel; or
- (b) any wreck is salvaged by any person other than a Receiver within Cook Islands waters,

there shall be payable by the owners of the vessel, cargo, apparel or wreck to the person by whom such services are rendered or by whom such wreck is salvaged a reasonable amount of salvage as determined by the Salvage Convention.

(2) The amount of salvage and expenses payable pursuant to subsection (1) of this section shall be determined in the manner set out in this Part.

184. Duties of Salvor and Owner or 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 operation with due care;
- (b) in performing the duty specified in paragraph (a) of subsection (1) of this section, to exercise due care to prevent or minimise 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 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 minimise damage to the environment; and
- (c) when the vessel or other property has been brought into a place of safety, to accept re-delivery when reasonably requested to do so.

185. 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 distress or in danger of being lost at sea.

(2) The duty of the master of a vessel to render assistance to those in distress at sea does not derogate from his right to salvage for property saved at sea.

(3) The owner of the vessel shall incur no liability for a breach of the duty of the master under subsection (1) of this section.

(4) Life salvage shall not be payable to a salvor when there is no property saved.

186. Criteria for fixing of reward - (1) The reward shall be fixed by arbitration with a view to encouraging salvage operations, taking into account the criteria listed in Article 13 of the Salvage Convention, 1989.

(2) If the parties cannot agree on the amount of the reward, it shall be referred to a Panel of Arbitrators, one appointed by the salvors, one appointed by the owners of the ship and the cargo, and a third to be selected by the first two appointed who shall act as chairman.

(3) The rules of procedure to be followed by the Arbitration Panel shall be free from rigid, formal procedures which will best allow for a rapid resolution of the amount of the reward. The Panel shall, as far as is practical, conduct the arbitration in accordance with the procedures laid down in Lloyd's Open Form 1990, and any award, subject to Appeal, shall be final and binding on all parties concerned whether they were represented at the Arbitration or not.

(4) Any party to the Arbitration may, if not satisfied with the decision of the Arbitration panel, appeal to the High Court of the Cook Islands, who shall review all documentary evidence as it thinks fit, but evidence which was not adduced at the Arbitration shall not be considered on Appeal, and the decision of the Court shall be final in respect of all parties whether or not they were represented at the Arbitration or the Appeal.

(5) Special compensation may be paid to a salvor in respect of a vessel or its cargo which has threatened the environment when the salvor by his salvage operations has prevented or minimised such damage to the environment, in accordance with the criteria laid down in the Salvage Convention, 1989.

187. Maritime Lien for Salvage - (1) Subject to Section 208 of this Act, a salvor shall have a maritime lien against the ship and its cargo for salvage services rendered.

(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.

188. Life salvage to have priority - (1) Salvage in respect of the preservation of the life of any person belonging to any vessel shall be payable prior to all other claims for salvage. In cases where the vessel, cargo or apparel are destroyed or where the value thereof is insufficient after payment of the actual expenses incurred to pay the amount of salvage due in respect of any life or lives, the Receiver may, with the approval of the Secretary and without further appropriation than this section, award to the salvors of such life out of the Public Account of the Cook Islands such sum as he deems fit in whole or part satisfaction of any salvage left unpaid in respect of such life.

(2) Nothing in this section derogates the duty of all masters and other seafarers to render assistance to those in distress at sea.

189. Settlement of disputes as to salvage - (1) Where there is a dispute as to the amount of salvage and the parties to the dispute cannot agree to a settlement or to refer the matter to arbitration, the dispute shall be determined by the High Court.

(2) Where a dispute arises between two or more parties as to the title of a wreck, the dispute shall be determined in the same manner as if it were salvage, determined under subsection (1) of this section.

(3) Where there is any dispute between parties as to the wreck or salvage, or the Receiver wishes to seek directions in any related matter, the Receiver may apply to the High Court for directions.

190. Manner of enforcing payment of salvage - (1) Where payment of salvage is due to a person under this Part, the Receiver shall detain the vessel, cargo, property or wreck as he thinks appropriate in the circumstances.

(2) Where a vessel, cargo, property or wreck is detained under this section, the Receiver shall notify the owner, and in any case where the owner cannot be found, retain possession until salvage has been paid or otherwise ordered by the Court.

(3) The Receiver may release any detained vessel, cargo, property or wreck on receipt of adequate security.

191. Limitation of time in proceedings - No person shall be convicted of any offence under this Part unless proceedings in respect of that offence are commenced within one year after the commission of the offence.

PART XI **MARITIME RIGHTS AND LIABILITIES**

192. Shipowners' liability in collisions: Rule for division of loss - (1) Where, by the fault of two or more vessels, damage or loss is caused -

- (a) to one or more of them; or
- (b) to their cargoes or freight; or
- (c) to any property on board,

the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault.

(2) Where, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) Nothing in this section shall operate so as to render any vessel liable for any loss or damage for which that vessel was not at fault.

(4) Nothing in this section shall affect the liability of a person under a contract of carriage or any other contract.

(5) Nothing in this section shall be construed as -

- (a) imposing any liability upon any person from which he is exempted by any contract or by any provision of law; or
- (b) affecting the legal rights of any person to limit his liability.

(6) In this Part, references 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.

193. Shipowner's liability in collisions for death and personal injuries - (1) Where a person on board a vessel -

- (a) is killed; or
- (b) suffers personal injury;

due to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

(2) Nothing in this section shall -

- (a) deprive any person of any right of defence on which, independent of this section, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of that loss of life;
- (b) affect the right of any person to limit his liability in cases to which this subsection relates.

194. Right of contribution - (1) Where death or personal injury is suffered by any person on board a vessel as a result of the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion to which that one was at fault, the owners of that one vessel may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively at fault.

(2) No amount is recoverable which could not by reason of any statutory or contractual limitation of, or exemption from liability, or which could not for any other reason have been recovered in the first instance as damages by persons otherwise entitled to sue.

(3) In addition to any other remedy provided by law, the persons entitled to any contribution provided by subsection (1) of this section shall for the purpose of recovering the same, have the same rights and powers as the persons entitled to sue for damages in the first instance.

195. No presumption of fault - In the case of a collision, a vessel shall not be deemed to be at fault solely by reason of the fact that the master or person in charge of the vessel has infringed any of the provisions of the Collisions Convention.

196. Application to Government vessels - (1) The provisions of sections 194 to 197 of this Act (inclusive of those sections) shall apply to Government vessels.

(2) Nothing in this Act shall -

- (a) authorise proceedings *in rem* in respect of any claim against the Government for the arrest, detention or sale of any Government vessel; or
- (b) give to any person any lien on any Government vessel engaged in non-commercial services or on any cargo or other property belonging to Government.

197. The Right of Limitation of Shipowner's liability - (1) The provisions of the International Convention on Limitation of Liability for Maritime Claims, 1976, (also known as the Limitation of Liability Convention), shall have the force of law in the Cook Islands.

(2) Where a claim is made against a person in respect of any liability in relation to maritime claims set forth in the Convention and in this Part, that person may limit his liability in accordance with the provisions of the International Convention on Limitation of Liability for Maritime Claims by applying to the Court to determine the limit of that liability under the procedures set forth in Regulations.

(3) The Court may determine the limit of that liability and may make such order as it thinks fit including the creation, administration and distribution of a Limitation of Liability Fund for the payment of claims.

(4) The act of invoking limitation of liability under this Part shall not constitute an admission of liability.

(5) The insurer of liability or claims subject to limitation under this Part shall be entitled to the benefits of this Part with respect to limitation of liability to the same extent as the assured.

(6) Liability of a person shall include liability in an action *in rem* brought against the vessel.

198. Limitation of actions - (1) No action shall be maintainable to enforce any claim or lien against the vessel or its owners in respect of any damage or loss to another vessel, its cargo or freight, or any property on board the vessel, or damages for loss of life or personal injuries suffered by any person on board the vessel, caused wholly or partly by the fault of the first mentioned vessel, or in respect of any salvage services, unless proceedings are commenced within two years from the date when the damage or loss or injury was caused, or the salvage services were rendered.

(2) No action shall be maintainable to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.

(3) The Court may extend any such period, to such extent and on such conditions as it thinks fit, if satisfied that there has not been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs.

PART XII

ARREST, FORFEITURE AND FORCED SALE OF VESSELS

199. Application of International Convention on Maritime Liens and Mortgages - (1) Subject to this Act and to any other law, and subject to any such reservations as the Cook Islands may make, the International Convention on Maritime Liens and Mortgages, 1993, is incorporated into and has the force of law in the Cook Islands, from and after the day that the Cook Islands deposits instruments of accession with the Secretary General of the International Maritime Organisation.

(2) This Convention shall apply to all sea-going vessels registered in the Cook Islands and registered in States which are parties to the Convention.

(3) Each of the claims listed in Article 4 of the International Convention on Maritime Liens and Mortgages, 1993, shall be secured by a maritime lien on the vessel.

(4) The priority of maritime liens shall be in accordance with Article 5 of the International Convention on Maritime Liens and Mortgages 1993.

(5) Where it is alleged in an action brought in a Court with Admiralty jurisdiction that the owner of a vessel has incurred any liability to pay any sum in respect of the following items, a maritime lien will be created which will take priority in accordance with Article 6 of the International Convention on Maritime Liens and Mortgages 1993 -

- (a) work carried out at any port, harbour, roadstead or anchorage in the Cook Islands in connection with the loading or discharging of cargo or fuel or the embarkation or disembarkation of passengers on or from that vessel; or
- (b) victualling, fuelling, repair and maintenance of that vessel or any part thereof or of the equipment thereof or any other services rendered in connection therewith.

(6) If at any time a vessel is found within the limits of the Cook Islands, the High Court, upon being shown that there are grounds on which the owners may be found liable, and that the owners are not residents of the Cook Islands and intends to depart therefrom, may, at its discretion, order the detention of the vessel.

(7) Notwithstanding subsection (6) of this section, where under this Act a vessel is subject to detention, the Secretary may without warrant and with such assistance as he considers necessary take, or cause to be taken, such action as he thinks necessary to detain the vessel.

(8) For the purpose of detaining a vessel, the Secretary or his delegate may require any person to do or refrain from doing any specified act.

(9) A person who fails to comply with a requirement under subsection (8) of this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

(10) A seafarer who does, or refrains from doing, and acts in pursuance of this section is not thereby in breach of his employment agreement.

200. Arrest of Ships - (1) This section covers the arrest of ships for the enforcement of rights between private parties and does not cover the arrest of ships for breach of any statutory provision or requirement.

(2) A ship may be arrested or released from arrest only by Order of the High Court.

(3) A ship may only be arrested in respect of maritime claim.

(4) A ship may be arrested for the purpose of obtaining security, notwithstanding any clause in any relevant contract in respect of where the claim is to be adjudicated.

(5) The procedures relating to the arrest of any ship in the Cook Islands or its release shall be governed by this Act and any other applicable law of the Cook Islands.

(6) A ship may be arrested in respect of any maritime claim secured by a maritime lien referred to in Article 4 of the International Convention on Maritime Liens and Mortgages, 1993, or a claim based upon a vessel mortgage registered in the Cook Islands, or if the claim is in respect of ownership or possession of the ship.

(7) A ship which has been arrested shall only be released when sufficient security has been furnished in the amount and form satisfactory to the claimant, or if the sufficiency and form is disputed, by the High Court, provided that the security shall not exceed the value of the ship.

(8) Any request for the ship to be released upon security being provided shall not be construed as an acknowledgment of liability nor as a waiver of any defence or any right to limit liability.

(9) Upon application of the owner the Court may, in its discretion, as a condition of the arrest of the ship, impose upon the claimant the obligation to provide security of a kind and for an amount and on such term as the Court deems appropriate for any loss which may be incurred by any owner or defendant as a result of the arrest.

(10) The High Court has jurisdiction to determine the case on its merits, unless all parties agree to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

(11) Notwithstanding subsection (10) of this section, the High Court may refuse to exercise jurisdiction on the merits of the case where the Court of another State accepts jurisdiction.

(12) The High Court may require that proceeding on the merits of the case be commenced within a reasonable period of time, and if proceedings have not commenced within that time, the Court may order the ship released.

(13) Except with leave of the High Court, a warrant for the arrest of a foreign ship shall not be issued in an action *in rem* until notice of the action has been sent to the Consul or the Government of the State in which the vessel is registered.

(14) Such notice shall be sent through the normal diplomatic channels, and may be transmitted by facsimile or telex, and shall be deemed to have been received when proof of notice is not required prior to the arrest of the vessel.

201. Forced sale of vessels - (1) In the event of the forced sale of a vessel the provisions of the International Convention on Maritime Liens and Mortgages, 1993, Article 11 in respect of notice of forced sale and Article 12 in respect of effects of forced sale shall have full effect in the Cook Islands.

(2) The costs and expenses arising out of the arrest or seizure and subsequent sale of a vessel shall be paid first out of the proceeds of sale. Such costs and expenses include the cost of upkeep of the vessel and the crew as well as wages, repatriation, social insurance contributions payable on behalf of the master and crew incurred from the time of arrest or seizure, and the balance of the proceeds distributed in accordance with the International Convention on Maritime Liens and Mortgages, 1993, with the residue of the proceeds, if any, to be paid to the owner.

(3) If at the time of the forced sale the vessel is held under a possessory lien by a shipbuilder or ship repairer, such shipbuilder or ship repairer must surrender possession of the vessel to the purchaser and is entitled to be paid his claim out of the proceeds of the sale after the claims of holders of maritime liens have been satisfied.

(4) Where a vessel which has been the subject of a forced sale is sold free of all mortgages or other charges and maritime liens, the High Court shall issue a certificate to that effect, and, upon production, the Registrar shall register the vessel in the name of the purchaser or issue a certificate of deletion and delete any existing mortgages or maritime liens.

202. Unpaid rates, tolls and fees - (1) No vessel about to leave any port at which any rates, tolls, fees, or other charges are payable pursuant to this or any other act or Regulation shall receive a certificate of clearance, unless the master produces a receipt to the effect that the rates, tolls, fees or other charges on the vessel have been paid, or a certificate to the effect that none are payable thereon.

(2) If any vessel leaves any port without paying any rates, tolls, fees or other charges on the vessel, such unpaid amounts shall constitute a maritime lien enforceable against the vessel.

(3) A vessel in respect of which any rates, tolls, fees or other charges remain unpaid may be detained until the amount owing is paid in full.

203. Liability of Agents for Vessels' Debts - Licensed vessel agents shall be liable for any costs incurred by a vessel for which they are an agent while it is in any port in the Cook Islands, and shall be liable for all outstanding financial obligations of the owner or master of the vessel after the vessel has left the Cook Islands waters.

204. Detention and Forfeiture - (1) When the Secretary finds or is advised that reasonable grounds exist under this Act for the detention of a vessel, the Secretary may issue a Detention Order and may detain the vessel without Warrant, provided however, that -

- (a) written notice shall be served on the master or person in charge of the vessel, together with a copy of the Detention Order; and
- (b) such written notice shall state the grounds for detention and the section of the Act or paragraph of the Regulations under which the Detention Order has been issued.

(2) The owner or master of a vessel which has been detained may petition the Secretary for a hearing to show cause as to why the vessel has been detained.

(3) The procedures for such a hearing shall be, to the extent possible, the same as to be followed for a Marine Inquiry.

(4) Where a foreign vessel is detained, the Secretary through diplomatic channels, shall notify the diplomatic representative of the vessel's Flag State, including the reason for its detention.

(5) Where a vessel is subject to forfeiture under this Act, a Police Officer may seize and detain the vessel upon the issuance of a Warrant by the High Court,.

(6) Such Warrant, or a copy thereof, shall be affixed or posted in a prominent place aboard the vessel.

(7) Upon seizure and detention under this section, a proceeding for forfeiture of the vessel shall be initiated forthwith by the Crown Law Office, and written notice of the proceedings shall be served upon the owner, provided, however, in the case of a foreign vessel, notice shall be given to the owner by the Secretary through diplomatic channels of the forfeiture proceedings and the grounds thereof.

(8) If, after the hearing before the High Court and on the preponderance of evidence, it has been proved beyond reasonable doubt that an offence has been committed by the vessel, its owner or master, for which the penalty is forfeiture, the Court may issue an Order stating that the owner has forfeited all rights of ownership in the vessel, equipment, stores and cargo and that property rights in all the aforementioned have vested in the Crown.

(9) Upon forfeiture of a vessel under this section, Government may register the vessel under this Act by filing the Order or Certificate with the Registrar, and the Registrar shall enter the vessel in the Register listing the Government as the registered owner.

(10) An Order or Certificate issued by the Court shall be deemed evidence of good title to the vessel, free of all liens, mortgages and other encumbrances, and Government shall have the right to sell the vessel with clear title.

PART XIII
LEGAL PROCEEDINGS

205. Access to and inspection of Regulations - (1) Where a Convention or Rule or Regulation, or a provision thereof, has been adopted and incorporated by reference in Regulations made under the authority of a power under this Act, the adopted Convention, Rule or Regulation, or provision, as the case may be, shall be available for inspection and copying at the office of the Secretary by any person likely to be affected by it.

(2) Subject to subsection (1) of this section, no person shall be prosecuted or convicted for contravening an adopted Regulation, if that Regulation is not available for inspection or copying as required by subsection (1) of this section, and it is a defence to such a prosecution to show that the contravened Regulation was not so available as required.

(4) The defence available under subsection (2) of this section is not available to a person who has sufficient knowledge of the requirements of the contravened provision for which he is being prosecuted, or who possessed or who had reasonable access in any event to the requirements of the contravened provision independently of the procedure required under subsection (1) of this section.

(4) When a person requests copies of an adopted regulation under subsection (1) of this section, the Secretary may charge a reasonable fee for any copying services that is provided by that Office commensurate to that charged generally in the public service,

(5) For the purposes of this section, and for greater certainty, "adopted regulation" means any code, treaty, convention, statute, rule, by-law, resolution, form, ordinance, Order and regulation adopted and incorporated by reference under this Act

206. Jurisdiction of High Court in Admiralty - (1) The High Court of the Cook Islands shall have inherent jurisdiction in all Maritime and Admiralty matters and in all matters pertaining to this Act and Regulations made hereunder, and the procedures set out in the Criminal Procedures Act 1980-81 shall apply.

(2) Admiralty jurisdiction *in rem* shall be conferred with respect to -

- (a) disputes relating to the ownership, possession or title to a vessel or a share in a vessel;
- (b) mortgages, including foreign mortgages or hypothecations and other charges in the nature of a mortgage;
- (c) claims for towage;
- (d) claims relating to salvage;
- (e) claims for Pilotage;
- (f) general average claims;
- (g) claims for wages of masters and crew;
- (h) claims for disbursements made by masters, shippers, charterers or agents on behalf of a vessel;
- (i) claims for damage done by a ship;
- (j) personal injury claims arising from the operation of a vessel for which the ships owner, operator or charterer is liable;
- (k) claims for loss or damage to goods carried by a vessel;
- (l) claims arising from contracts for the carriage of goods by a vessel;

- (m) claims arising from agreements for the use or hire of a vessel;
 - (n) claims for the construction, repair, alteration or equipping a vessel;
 - (o) claims for goods, materials or services supplied to a vessel;
 - (p) claims for unpaid insurance premiums or protection and indemnity club calls;
 - (q) port, harbour, light dues and similar charges;
 - (r) claims for marine pollution damage under the Prevention of Marine Pollution Act (1996) and any international marine pollution conventions incorporated into the laws of the Cook Islands;
 - (s) claims for damages arising from the operation of a vessel for which the owner, operator or charterer is liable;
 - (t) claims for the enforcement of arbitral awards in respect of maritime claims; and
 - (u) claims for the enforcement of local and foreign admiralty judgments *in rem*.
- (3) Admiralty jurisdiction *in personam* shall be conferred with respect to:
- (a) claims for damage done to a ship;
 - (b) claims to limit liability under any international maritime convention to which the Cook Islands is a Party allowing for limitation of liability in relation to vessels;
 - (c) ancillary matters of admiralty and maritime jurisdiction associated with matters in respect of which the Court's inherent jurisdiction is invoked.

(4) Where any person has a right of appeal under this Act against a decision in respect of any action commenced in the High Court, that person may, with the leave of the High Court, or if that leave is declined, then with special leave of the Court of Appeal, appeal to the Court of Appeal on a question of law.

(5) The Court of Appeal may make such order or determination as it thinks fit, and such decision shall be final.

(6) Subject to this section, the procedure in respect of any appeal shall be in accordance with the rules of Court.

(7) The Court may appoint independent nautical assessors to advise it on all matters of navigation and seamanship.

(8) Assessors shall not be called by the parties to give evidence, shall not be sworn and shall not be cross-examined.

(9) The advice of independent nautical assessors is private and shall not be disclosed to the parties.

(10) Independent nautical assessors shall be appointed on the basis of their expert knowledge and experience, and may be engaged prior to trial for as long as their expertise is required.

(11) Independent nautical assessors may be paid compensation for their services.

(12) The advice of independent nautical assessors shall be treated as highly persuasive, but it is for the Court to assess its worth and decide on all matters of fact and law.

(13) Trials in respect of civil admiralty actions shall be by judge alone or by a judge sitting with independent nautical assessors, and for the trial of actions *in rem*, limitation actions and any associated *in personam*, juries shall not be used.

207. Application - The jurisdiction of the High Court in Admiralty applies in relation to:

- (a) all vessels, irrespective of the place of residence of their owners; and
- (b) all maritime claims, wherever arising.

208. Procedure for Prosecution of Offences - (1)

- (a) All proceedings brought against a person for an offence under this Act shall be commenced by the laying of an information;
- (b) Any information for any offence under this Act or regulations shall be laid by the Secretary.
- (2) (a) Subject to subsection (1)(b) of this section, every information for an offence shall be laid within 12 months from the date on which the offence is alleged to have been committed;
- (b) Where any vessel or any person has committed an offence under this Act and departed from the jurisdiction before an information could be laid, the time period referred to in subsection (2)(a) of this section shall commence running on the date on which the vessel or person returns to the jurisdiction.
- (3) (a) Every information shall be sworn on oath before a Registrar or Deputy Registrar of the High Court, and shall be in the form set out in Form 3 in the First Schedule of the Criminal Procedure Act 1980-81;
- (b) Every information shall contain such particulars as will fairly inform the Defendant of the substance of the offence with which he is charged.
- (4) As soon as practicable after an information has been laid, it shall be filed in the High Court.
- (5) Where an information has been laid the Registrar or Deputy Registrar of the High Court may issue a summons to the Defendant in the form set out in Form 4 of the First Schedule of the Criminal Procedure Act 1980-81.
- (6) Every summons to a defendant, and every other document which is required to be served on a defendant, shall be served pursuant to the provisions of sections 25 to 31 of the Criminal Procedure Act 1980-81.
- (7) When an information has been laid and a summons has been issued and served, a Police Officer who has reasonable grounds to believe that the defendant will not appear before the Court on the date set out in the summons may apply to a Judge of the High Court for a warrant to arrest the defendant if:
 - (i) a warrant is necessary to compel the attendance of the defendant; or

- (ii) a warrant is desirable having regard to the gravity of the alleged offence and the circumstances of the case.

(8) A Police Officer, for the purposes of enforcing this Act, may without warrant -

- (a) stop, board and search any vessel he reasonably suspects to have committed any offence or that the owner or master or any crew member thereof has committed any offence under this Act;
 - (b) require the master or any crew member to inform him about any incident occurring aboard or involving the ship;
 - (c) make any inspection, examination of anything aboard the vessel;
 - (d) require to be produced, examine and take copies of any certificate, document logbook or other record required to be kept by this Act or Regulations, or concerning the operation of the vessel or employment of the crew;
 - (e) seize any logs, charges, documents, equipment, material and take or require to be taken any samples which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of any offence against this Act;
 - (f) seize anything which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act;
 - (g) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act.
- (9) (a) Pending the date of the hearing set forth in the summons, a Judge may upon application, by Order, detain the vessel until the final adjudicating of the matter contained in the information;
- (b) Notwithstanding subsection (9)(a) of this section, the Court may order the release of the vessel from such detention upon the payment to a Court of a bond in an amount not exceeding the value of the vessel or the maximum fine prescribed in relation to the offence or the total of all the offences if more than one information has been laid.
- (10) (a) Where the defendant does not speak or understand the Maori language of the Cook Islands or the English language a crew member may be used as an interpreter;
- (b) Where that interpreter was used when the information was laid and the summons served, and the evidence collected from the vessel or persons on board the vessel, that same interpreter shall be summoned to appear in Court at the trial of the named defendant;
- (c) Where certificates required to be carried on board the vessel are not in the English language, the defendant shall obtain copies of those certificates translated into the English language by a competent authority or organisation.
- (11) (a) Any number of informations for any offences against a defendant may be tried together;

- (b) If the Court believes that it is desirable or expedient in the interests of justice to do so, it may order that the defendant be tried on one or more of such informations separately;
 - (c) The informations which are not then tried shall be proceeded upon in all respect as if they had been presented separately.
- (12) Any number of defendants may be tried together, provided that the Court may, at any time, order separate trials if satisfied that the interests of justice so require.
- (13)
 - (a) In the event of any conflict between the procedures contained in this Part and the procedures contained in any other Act, the procedures of this Part shall be paramount;
 - (b) In the event of any omission in the procedures contained in this Part, the procedures contained in the Criminal Procedures Act 1980-81 shall pertain;
 - (c) The rules of evidence shall be those contained in the Evidence Act 1968 as amended.
- (14)
 - (a) Any person charged with an offence which is not punishable by imprisonment may elect to plead guilty before a Justice of the Peace;
 - (b) Where any defendant pleads guilty before the Justice of the Peace, the Justice of the Peace may impose a fine not exceeding that prescribed in the Act;
 - (c) Where the defendant has paid the fine imposed by the Justice of the Peace, the Secretary shall issue a receipt on behalf of the Ministry responsible for Shipping and notify the Registry by means of a Certificate of Satisfaction that the information has been withdrawn which certificate the Registrar shall enter in the file;
 - (d) Where the defendant elects to plead guilty before a Justice of the Peace and the defendant objects to the amount of the fine, the matter shall proceed to trial and the Court shall be advised as to the guilty plea and impose any fine as it thinks fit.

209. False declaration as to ownership - (1) Every person who, in a declaration made for the purpose of this Act, or in any document or other evidence produced to the Registrar -

- (a) wilfully makes or assists in making or produces to be made, a false statement concerning the title to, ownership of, or the interest existing in, a vessel registered under this Act; or
 - (b) utters, produces or make use of any declaration or document containing any false statement knowing the same to be false,
- commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000. or a term of imprisonment not exceeding two years,

(2) Every person who, in a declaration made under or for the purposes of this Act, wilfully makes a false statement in relation either to his being a Qualified Person or to another Person being a Qualified Person, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000.

210. False declarations and statements - (1) Every person who, in a declaration made for the purposes of this Act, or in any document or other evidence produced to the Registrar -

- (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, ownership of, or the interest existing in, a vessel registered under this Act; or
- (b) utters, produces or makes use of any declaration or document containing any false statement knowing the same to be false,

commits an offence, and shall be liable upon conviction to a term of imprisonment not exceeding two years, or to a fine not exceeding \$10,000, or both.

(2) Every person who, in a declaration made under or for the purposes of this Act, wilfully makes a false statement in relation either to his being a Qualified Person or to another person being a Qualified Person, commits an offence, and shall be liable upon conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$10,000 or to both.

(3) Every person who knowingly -

- (a) makes a false declaration, statement or representation; or
- (b) gives false evidence on oath; or
- (c) alters, produces or makes use of any false declaration, statement or representation, in connection with any application, report, record or proceeding under this Act,

commits an offence, and shall be liable upon conviction to a term of imprisonment not exceeding 2 years, or a fine not exceeding \$10,000.

211. Mode of making declaration - (1) Except as otherwise provided in this Act, a declaration required by this Act shall be made before a person authorised in that regard pursuant to the Cook Islands Act 1915 section 653.

(2) A declaration required by this Act may be made on behalf of a corporation by any person so authorised by resolution of the Board of Directors under the common seal of the corporation.

212. Obstruction of persons - Every person who, without lawful excuse, (proof of which is on him), hinders or obstructs a person in the performance, execution or carrying out of any duty conferred or imposed on that person by this Act commits an offence, and where no other penalty is provided for in this Act, shall be liable upon conviction to a term of imprisonment not exceeding one year or to a fine not exceeding \$5,000.00.

213. Service of notices and documents - A notice or other document authorised or required by a provision of this Act to be served upon, given or delivered to any person may be served, given or delivered -

- (a) in any case by delivering a copy personally to the person to be served, given or delivered; or by sending the same by registered post, addressed to his place of abode or business ;
- (b) if a document is to be served on the master of a vessel, by serving it on the person in command or charge of the vessel;

- (c) if a person upon whom service required cannot be found, the Court may, upon application, order alternative methods of service by public media.

214. Proof of documents - (1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by this Part.

(2) Documents admissible in evidence include -

- (a) a certificate or other document issued, given or made under this Act or purporting to be issued, given or made under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to issue, give or make any such certificate or document; and
- (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to make any such endorsement; and
- (c) a certificate given or made by the Registrar asserting the negative of any circumstances, fact or thing;
- (d) a certificate signed by the Secretary as to the authenticity of a document purporting to set out the text of a treaty.

215. Admissibility of documents in evidence - (1) Where a certificate or other document is by this Act declared to be admissible in evidence, it shall, on its production from proper custody, be admissible in evidence in any Court, and shall be deemed to be conclusive evidence of the matters stated in it, and the maker of the said document shall not be required to prove that he made the document.

(2) A copy of any certificate or other document referred to in subsection (1) of this section or an extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as true copy or extract by the officer or person to whom custody of the certificate or other document is entrusted.

(3) Any person who is by this Act required or authorised to issue, grant, give or make any certificate or other document shall furnish a certified copy of the certificate or document, to any person applying at a reasonable time for such certified copy or certified extract upon payment of the prescribed fee.

(4) In proceedings for an offence against this Act an averment by the prosecutor contained in the information or complaint that at a specified time -

- (a) a specified person was a delegate of the Minister or the Registrar or the Secretary;
- (b) a specified person was a Director of Marine, Shipping Officer, a Surveyor, a Shipping Inspector, or a pilot;
- (c) a specified person was or was not the holder of a specified licence or certificate;
- (d) a specified safety, load line, or survey certificate was or was not in force in respect of a specified vessel,

is *prima facie* evidence of the matter averred.

216. Recovery of fines by distress - Where the High Court orders a person convicted of any offence against this Act to pay any fine or other monies and that person is the owner or master of a vessel registered under this Act, and the fine or other monies are not paid within the time and in the manner set forth in the conviction or specified in the Order of the High Court, the High Court may, in addition to any other power it may have to compel payment, and notwithstanding any other Act, direct the amount remaining unpaid to be levied by distress or by sale of the vessel or the equipment of the vessel, as the case requires.

217. Offences - (1) Every person who does any act, or makes any omission, in contravention of any provision of this Act or Regulations commits an offence.

(2) When any provision of this Act is contravened and no specific offence is prescribed and no penalty provided for, any person contravening any provision commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

217. Regulations - (1) In addition to the powers to make regulations conferred elsewhere in this Act, the Queen's Representative by Order in Executive Council may from time to time make regulations for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as he thinks necessary or expedient for the purpose of giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of the foregoing, the Queen's Representative by Order in Executive Council may make regulations providing for Admiralty Rules of Procedure for actions *in rem*.

(3) Wherever in this Act authority is given to make regulations for any purpose, that authority shall be deemed to include an authority to prescribe offences in respect of the contravention of, or non-compliance with, any such regulations or any requirement or direction made or given pursuant to any such regulations, and authority to prescribe penalties not exceeding \$10,000 for such offences.

219. Delegations - Subject to this Act, the Minister, Secretary, Registrar, Principal Surveyor and Director of Marine may, by instrument, delegate to a person all or any of their powers under this Act except this power, and those powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters and in the area or locations specified in the instrument.

220. Repeal and transitional - (1) The Shipping Ordinance 1963 and the Shipping Registry Act 1985 and the Rules contained in the First Schedule are hereby repealed.

(2) Any certificate, licence, instrument or document having a like or a similar effect to a -

- (a) Certificate of Registry;
- (b) Certificate of Competency;
- (c) Pilotage Certificate;
- (d) Pilotage Exemption Certificate;
- (e) Safety Certificate;
- (f) Load Line Certificate;
- (g) Licence as Operator of a small vessel,

in force immediately prior to the commencement of this Act shall remain in force for a period of 12 months from the date of commencement of the related Part of this Act or until the date of the expiration of the certificate, licence, instrument or document whichever is the earlier.

221. Saving of Regulations - The Rules and Regulations referred to in the Second Schedule to this Act shall continue in force as if made under this Act.

This Act shall be administered by the Ministry Responsible for Shipping.

SCHEDULES**FIRST SCHEDULE****Section 222(1)****Acts Repealed****Enactments repealed or revoked**

Shipping Ordinance 1963

Shipping Registry Act 1985

Regulations revoked

Shipping (Crescent Gypsy) Rule 1979

Shipping (Dolly Varden) Rules 1979

Shipping (Manuvai) Rules 1979

Shipping (Mataora) Rules 1979

Shipping (Torea) Rules 1979

Shipping (Tuahine II) Rules 1979

Shipping (Ravakai) Rules 1982

General Shipping Rules 1982

Shipping Registry Regulations 1986

Shipping (Avatapu) Rules 1994

Shipping (Marthalina) Rules 1994

Shipping (Acadea B) Rules 1996

SECOND SCHEDULE
Section 223
Enactments continued in force

Acts Continued

Shipping Collision Regulations 1979

Regulations continued

All the Rules of the Marine Board not specifically revoked in the list set forth in First Schedule