

REPUBLIC OF NAURU

VESSEL REGISTRATION BILL 2024

EXPLANATORY MEMORANDUM

The *Vessel Registration Bill 2024* is a Bill for the *Vessel Registration Act 2024*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 - PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Vessel Registration Act 2024*.

Clause 2 sets out that the commencement of the Bill once passed will be on the date it is certified by the Speaker.

Clause 3 provides for the objectives of the Bill. The Bill aims to standardise vessel registration for both Nauruan-owned and foreign vessels. The Bill also establishes a Registrar, a Register of vessels, incorporates international maritime conventions, promotes vessel safety, protection of the marine environment and requires compliance with international laws, and enforces stakeholder obligations.

PART 2 – INTERPRETATION

Clause 4 provides for the interpretation of terms used in the Bill.

Clause 5 provides for Nauruan-owned vessels. A vessel is deemed a Nauruan-owned vessel where it is owned by persons listed in paragraphs (a) to (d). A vessel is considered Nauruan-owned vessel if it is owned by the Republic, only Nauruans, a majority of joint owners who are Nauruan or more than half the shares are held by Nauruans.

Clause 6 provides for demise charters. A vessel on demise charter refers to one chartered to the Republic, a Nauruan, a Nauruan resident or a combination, where those listed can control the charter's rights and powers.

Clause 7 provides for measurement references. Paragraph:

- (a) provides that a reference to the length of any vessel is a reference to length as defined in Article 2(8) of Load Lines. The definition of Load Lines is set out in Clause 4;

- (b) provides that a reference to the gross tonnage of any vessel is a reference to gross tonnage as defined in Article 2(4) of the Tonnage Convention. The definition of Tonnage Convention is set out in Clause 4; and
- (c) provides that a reference to the net tonnage of any vessel is a reference to net tonnage as defined in Article 2(5) of the Tonnage Convention. The definition of Tonnage Convention is set out in Clause 4.

PART 3 – ADMINISTRATION

Clause 8 provides for the Registrar of Vessels. The office of the Registrar is established. The Registrar is appointed by the Cabinet on the recommendation of the Authority. The terms and conditions of the Registrar's appointment is to be approved by the Cabinet. The Registrar shall be responsible to the Authority. If the Registrar is unable to perform his or her duties, for any reason including any official travel, recreation leave or medical leave, the Cabinet can appoint someone else to act as Registrar temporarily.

Clause 9 provides for the functions of the Registrar. The Registrar's functions are to:

- (a) register vessels;
- (b) set up registration fee procedures;
- (c) collect fees and taxes;
- (d) report quarterly to the Minister;
- (e) maintain records like registry certificates and vessel mortgages;
- (f) establish selection criteria for Recognised Organisations;
- (g) delegate survey duties;
- (h) establish oversight instructions and penalties for errors or omissions of Recognised Organisations;
- (i) recommend penalties for non-compliance with IMO Conventions;
- (j) recruit inspectors;
- (k) define marine inquiry requirements for casualties;
- (l) maintain the Register;
- (m) appoint necessary officers;

- (n) establish the requirements of the relevant IMO Conventions to the satisfaction of the Republic;
- (o) establish the requirements of the relevant IMO Conventions to the satisfaction of the Republic relating to the management of the Registry;
- (p) establish the procedure for and communicating information to the International Maritime Organisation relating to the management of the Registry;
- (q) implement and enforce the requirements of the IMO Conventions that the Republic is party to through the establishment of circulars or instructions;
- (r) be the supervisory authority for Nauruan vessels for the administration and implementation of the relevant Financial Action Task Force Standards;
- (s) perform additional prescribed or conferred functions.

Clause 10 provides for the Power of the Registrar. The Registrar will have the power to do all things necessary or convenient to be done for the performance of his or her functions under this Bill or any other written law.

Clause 11 provides for the Common Seal of the Registrar. The Registrar will have a common seal which is to be affixed for the purposes of executing any correspondence, document or instrument to bind the office of the Registrar. Courts and others must recognise the seal and accept it was duly affixed.

Clause 12 provides for the Register of Vessels. There will be established, a Register of Vessels under the Bill. It will contain details of vessels required or eligible for registration. The Registrar will maintain the Register, fix errors, and investigate if vessels are wrongly registered or inactive for 5 years. The Registrar can amend or close registrations if needed. People can inspect the Register, pay fees, and obtain copies of entries. If there are issues relating to matters contained in the Register, a person can apply to the Supreme Court for corrections to be made. Notice of an application made to the Supreme Court must be given to all parties involved, including mortgagees and interest holders. The Registrar must also comply with the *Fisheries Management Act 2024* when registering vessel that are also required to be registered under the *Fisheries Management Act 2024*.

Clause 13 provides for delegation of registration of vessels, keeping and maintaining of register of vessels required or entitled to be registered under this Bill. The Registrar can delegate his or her duties to another person, with the Minister approval. The delegation must be in writing, specify vessel classes, duration, terms, and any other details. The delegated person must follow the Bill's requirements. The Registrar can revoke the delegation if requirements are not met or if the services are no longer needed. The Registrar can still perform delegated functions and the Registrar's decisions override those of the delegate.

Clause 14 provides for the functions of the Director of Maritime Services. The Director for Maritime Services is responsible for overseeing all maritime activities, ensuring compliance with laws, and maintaining safety and environmental standards. The Director of Maritime Services must also:

- (a) enforce IMO Conventions through guidelines;
- (b) meet the Republic's requirements for these conventions;
- (c) communicate with the International Maritime Organisation on relevant matters;
- (d) recognise and establish procedures for foreign seaman documents
- (e) appoint officers to inspect vessels;
- (f) monitor vessels that call into port for compliance with the relevant Financial Action Task Force Standards and implement financial sanctions, including matters listed in this clause;
- (g) appoint necessary officers; and
- (h) perform other prescribed functions.

Clause 15 provides that the Director of Maritime will have the power to do all things necessary or convenient to be done for the performance of its functions under this Act or any other written law.

PART 4 – REGISTRATION

Clause 16 provides for the prohibition of operating a vessel without registration. An owner of a vessel who operates it without registration commits an offence. In the case of an individual the penalty is a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 2 years or both. In the case of a body corporate the penalty is a fine not exceeding \$100,000. The Authority can detain an unregistered vessel that's operating without the proper certificate. This can be done irrespective of whether an investigation or proceeding has commenced or not.

Clause 17 provides for the requirement to register. There are certain vessels that must be registered. The details of the vessels requiring to be registered are provided in subclause (1)(a) to (c). An owner must notify the Registrar within 21 days of any changes affecting the vessel's details. The Registrar must then treat these changes as a variation requiring new registration.

Clause 18 provides for the requirement of presence of a representative of an owner of a vessel, in Nauru. If a vessel owner does not live in Nauru, the owner must appoint a local representative.

This representative must be appointed before registration and kept as long as the vessel is registered. The representative must be a resident and meet other prescribed requirements.

The owner must notify the Registrar of the representative's details and any changes within 7 days. The representative can handle documents and information for the owner. Documents served to the representative are considered to have been served to the owner.

Clause 19 provides for the eligibility to of certain vessels. The vessels required to be registered are:

- (a) Nauruan-owned vessels;
- (b) foreign vessels on demise charter to Nauru operators;
- (c) vessels owned mostly or equally by Nauruans and permanent Nauru residents;
- (d) vessels owned mostly or equally by permanent Nauru residents;
- (e) foreign vessels owned wholly by a non-Nauruan; and
- (f) foreign vessels owned by multiple non-Nauruans.

Clause 20 provides for application for registration. Subclause (1) provides that in order to register a vessel, the application must:

- (a) be in the prescribed form;
- (b) include the prescribed fee;
- (c) provide required particulars, documents, and information; and
- (d) be signed by the persons listed in subclause (1)(d).

Subclause (2) empowers the Registrar to request more information.

Subclause (3) provides that the Registrar can reject a vessel name if it:

- (a) is the same or similar to another vessel;
- (b) is offensive or confusing;
- (c) suggests a false association with the Government of the Republic of Nauru; or
- (d) uses protected emblems or words.

Subclause (4) provides that the Registrar must certify a vessel if:

- (a) the application meets the requirements; and
- (b) the vessel complies with the requirements of the Bill.

Subclause (5) provides that the Registrar must not register a vessel if the application does not meet the requirements of the Bill.

Clause 21 provides for foreign registered vessels. This clause provides that the Registrar must not register or close the registration of a vessel if it is registered in another country. If a vessel was ever registered in another country, the application must include evidence that:

- (a) the vessel is no longer registered there; or
- (b) steps are being taken to close the registration in that country before registering under this the Bill.

Further, if a vessel's registration is suspended in another country, it is considered unregistered for the duration of the suspended registration.

Clause 22 provides for marking before registration. The purpose of this clause is to ensure adequate identification of a vessel, ensuring that it is distinct from others. This is crucial for tracking ownership, preventing fraud, aiding in search and rescue operations, and ensuring regulatory compliance. Subclause (1) requires that a vessel must be permanently marked before registration. The specification of how vessels are to be marked are listed in paragraphs (a) to (e).

Subclause (2) provides the markings required for pleasure crafts.

Subclause (3) provides that if the vessel's registration is closed, the owner must remove all required markings except the name of the vessel.

Subclause (4) provides that the Registrar can set additional marking requirements.

Subclause (5) authorises the Registrar where Registrar deems necessary to exempt vessels from these requirements if necessary.

Clause 23 provides for the Registrar to grant the Certificate of Registry. Subclause (1) provides that if an application for registration meets all the requirements, the Registrar will assign an official number to the vessel and grant a certificate of registry.

Subclause (2) provides that the Registrar can grant a provisional certificate if:

- (a) the application is received while the vessel is outside Nauru;
- (b) no certificate has been granted yet; and
- (c) one of the following applies:
 - (i) the owner has not received necessary deletion documents from the previous flag administration;

- (ii) the vessel is still under construction;
- (iii) the application is mostly complete but missing some information; or
- (iv) the Registrar considers it necessary that any conditions be met prior to registration.

Subclause (3) provides that a provisional certificate lasts no more than 90 days.

Subclause (4) provides that a vessel cannot get another provisional certificate within a year.

Subclause (5) provides that the Registrar must replace a provisional certificate when:

- (a) issues have been resolved; or
- (b) conditions have been met.

Clause 24 provides for Certificate of Registry. This clause requires a Certificate of Registry to be renewed annually upon payment of the requisite fee. It further provides that if the fee is not paid when it is due:

- (a) after 30 days of the due date, the licence will be suspended; and
- (b) after a further period of 30 days, the registration will be closed.

Clause 25 provides for custody of certificate of registry requirements. The intention of this provision is to ensure that a vessel always carries with it a Certificate of Registry. Subclause (1) requires that a Certificate of Registry must always be with the vessel, be used for lawful navigation and not to be removed during a voyage by any person.

Subclause (2) provides that a person who has possession or control of a Certificate, must provide it to a person entitled to custody of it for the purposes of the lawful navigation of the vessel to which it relates or the Registrar or any other person entitled by law to require its delivery. This is to ensure that a master of a vessel has access to the Certificate of Registry, particularly in situations where it is held by the owner or operator.

Clause 26 provides for the replacement of Certificate of Registry. This clause requires the owner to immediately apply for a replacement certificate if the initial Certificate of Registry is misplaced, lost or destroyed. The usual requirements for submitting an application also apply. This includes using the prescribed form, paying the requisite fee, provide an explanation as to how the Certificate was lost, destroyed or misplaced. The application must include all the requisite information and signed by the owner or authorised person.

Clause 27 provides for the surrender of certificate of registry. This clause requires the surrender of a Certificate of Registry where the vessel's registration is closed or the vessel ceases to be a Nauruan vessel. In relation to a provision certificate, it must be surrendered. It is important to surrender the certificate because it ensures accurate record-keeping and prevents any misuse or

fraudulent activities. It officially notifies the Registrar that the vessel is no longer registered, thereby avoiding any potential legal or administrative issues. Essentially, it helps keep the maritime system clean and transparent.

Clause 28 provides for the granting of temporary pass to unregistered vessels. Subclause (1) empowers the Registrar to grant a temporary pass to an unregistered vessel to travel to the destinations provided under paragraphs (a) and (b) of subclause (1), where the Registrar is satisfied by reason of special circumstances that such temporary pass should be granted to the unregistered vessel. The temporary pass is granted per voyage to an unregistered vessel.

Subclause (2) provides for that the temporary pass to be in the prescribed form and include the specifics provided under paragraphs (a) to (c). The specifics include the following, the voyage in which the vessel is allowed to make, the conditions for such voyage and the duration of the temporary pass.

Subclause (3) provides that during the currency of the temporary pass, the pass has the same effect as the certificate of registry and the vessel is considered to be registered during that period.

Subclause (4) provides that once the temporary pass has expired the owner of the vessel whose vessel was granted with a temporary pass must lodge the pass or caused it to be lodged with the Registrar.

Subclause (5) provides that it is an offence for an owner if he or she contravenes subclause (4). The owner is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years of both.

Clause 29 provides for certain vessels not to be registered. Subclause (1) provides that the Registrar must not register a foreign vessel unless the owner of the vessel declares the following on the application form:

- (a) that the vessel will not be used for storage and transportation of illegal drugs and stolen goods, smuggling and trafficking, involvement in wars or armed conflicts, to support civil unrest in any State or territory, terrorism and proliferation activities and any activities in contravention with the Republic's laws and international conventions in which the Republic is a party to;
- (b) applicant complies with requirements under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023, Counter Terrorism and Transnational Organised Crime Act 2004, orders under the Proceeds of Crimes Act 2004 and any other law;
- (c) the vessel does not fly the flag of high-risk country or is owned by person or entity designated by the United Nations Security Council resolution.

Subclause (2) empowers the Registrar to close the registration, where it is brought to the knowledge of the Registrar that the vessel falls under the categories of activities specified under subclause (1).

Clause 30 provides for particulars to be entered on the Register of vessels and retention of documents on the Register. This clause obligates the Registrar to enter the following particulars on the Register of Vessels:

- (a) full name of the vessel and official number;
- (b) port of registry;
- (c) any international call-sign assigned to the vessel;
- (d) vessel's gross and net tonnage, length and descriptive particulars;
- (e) name, address and nationality of every owner of every share in the vessel;
- (f) name, address and nationality of every mortgagee of every share in the vessel;
- (g) name, address and other particulars of any representative under clause 18;
- (h) particulars of beneficial owner required under the Beneficial Ownership Act 2017;
- (i) for vessels more than 18 metres long, the name and address of each person who is authorised to be its master;
- (j) date of registration
- (k) surveyor's certificate;
- (l) builder's certificate;
- (m) any bill of sale of a vessel previously made;
- (n) copy of condemnation where relevant;
- (o) all declarations of ownership; and
- (p) any prescribed matters.

Subclause (2) obligates the Registrar to retain for a period of 5 years all documents in relation to an application for registration of a vessel and all documents submitted to the Registrar in relation to the vessel.

Clause 31 provides for the process for the application for variation of particulars. This clause provides that an owner, representative, charterer or mortgagee must make an application to the Registrar, to register any variation in the particulars of the registered vessel. The application has to be in the prescribed form and made within 14 days of such variation being made.

Subclause (2) authorises the Registrar to amend the particulars in the Registrar once he or she receives notice and is satisfied that such particulars comply with the requirements under this Bill and any other law.

Subclause (3) provides that where the Registrar requires further information in respect of the application for registration of variation of particulars, the Registrar may request in writing such information to the owner, representative, charterer or mortgagee. The owner, representative, charterer or mortgagee must then provide the information within 7 days or any other period specified by the Registrar. Once the time specified by the Registrar for the owner, representative, charterer or mortgagee to provide the information has expired, the Registrar may then make a determination on the registration of the variation of the particulars.

Subclause (4) provides that the Registrar may issue an amended certificate of registry if the variation is in relation to the certificate of registry, ownership, address or matter relating to the vessel.

Subclause (5) obligates the Registrar to provide reasons in writing where he or she has declined an application for variation.

Subclause (6) provides that it is an offence if an owner, representative, charterer or mortgagee does not comply with subclause (1). They are liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

Clause 32 provides for the requirements in relation to registering property in a vessel. Subclause (1) provides the following requirements for registering property in a vessel:

- (a) that a property in the vessel must be divided into 64 shares;
- (b) that the number of persons registered as the owners of a vessel must not exceed 64, this is subject to subclause (2);
- (c) that persons may register as joint owners of a vessel or joint owners of shares in a vessel, however, this joint ownership must not exceed 5 persons;
- (d) the vessels and shares owned by joint owners cannot be disposed of by only one owner;
- (e) that a person cannot be registered as an owner of a fractional part of a share in a vessel, ownership to a share has to be a whole share;
- (f) where a body corporate is registered as the owner of a vessel and shares, it must be registered using its full corporate name together with any identifying number or other designation of its domicile.

Subclause (2) provides in relation to subclause (1)(b) noted above, that for a share that is jointly owned by two or more persons or 2 or more shares are jointly owned by the same persons this constitutes as 1 person.

Subclause (3) provides that nothing in subclause (2) affects the beneficial interests of any person or body corporate who is represented by or claiming under or through a registered owner or joint owners.

Clause 33 authorises the use of registered vessel or any share in a registered vessel to be used as security for a mortgage.

Subclause (2) provides for the order in which priority is afforded in relation to circumstances where 2 or more mortgages are registered in respect of the same vessel or share in a vessel. Priority is given in respect of which mortgage was first lodged.

Subclause (3) provides that mortgagees registered under the Act may vary the priority between them by way of a memorandum between the mortgagees. Variation comes into effect upon lodgement of such variation.

Subclause (4) provides that where a mortgagor has declared bankruptcy, such actions will not affect a registered mortgage of a vessel or share in a vessel under this Bill. The registered mortgage under this Bill will be given priority over other creditors, trustee or assignee's right, claim or interest in the vessel or share.

Subclause (5) provides in the event that the mortgagee becomes the owner of the vessel and the mortgagor ceases to be the owner of the vessel due to him or her unable to pay off the mortgage where the vessel was used as a security, the mortgage on the vessel will not be affected due to this change of ownership, however, the exception is where it is necessary to use the vessel or share available as security under the mortgage.

Subclause (6) provides that a mortgagee (lender) of a vessel or of a share in a vessel has the authority to dispose of the vessel or share and to provide effectual receipts as confirmation of payments in respect of the disposal. This provision is subject to subclause (7).

Subclause (7) provides that in circumstances where there are 2 or more mortgagees of the same vessel and share, the mortgagees that came later cannot dispose of the vessel or share without the consent of the mortgagees that came first. The exception to this rule is where the Supreme Court orders otherwise and allows for the subsequent mortgagees or mortgagees that came later to dispose of vessel and shares without the consent of the prior or earlier mortgagees.

Subclause (8) provides that where a vessel's registration has closed under the Bill, a mortgagee in respect of a matter relating to a unsatisfied mortgage or the vessel or share in the vessel, may apply to the Supreme Court within 30 days of closure of registration or such time extended by the Supreme Court to order that the vessel and its equipment be sold or such orders as provided under this provision to pay off the mortgage.

Clause 34 provides for parties to a mortgage to vary conditions and amount of the mortgage. This is done by way of memorandum in the prescribed form and requires the consent of the subsequent mortgagee. Variation may be done to increase or decrease amount of the mortgage and the rate of interest, and in relation to the duration of the mortgage or to vary any other term of the mortgage.

This clause also authorises the following:

- (a) transfer of a registered mortgage and the transmission of the registered mortgage by marriage, death, bankruptcy, court order or any other lawful means; and
- (b) that a registered mortgage may be discharged.

Clause 35 provides for the registration of mortgages and other documents under this Bill. This clause provides for the form, manner and process for registering a mortgage and the effective date of such instruments being registered under this provision. Furthermore, it provides for other documents which is required in this process, that is a memorandum as referenced under clauses 33 and 34.

Clause 36 provides for requirements relating to trusts and equities. Subclause (1) provides that the Registrar does not have to enter on the register or receive any notice of any trust.

Subclause (2) provides that despite subclause (1) this does not prevent the registration of a vessel that is subject to a mortgage.

Subclause (3) provides that nothing in the Bill affects any power to enforce any beneficial ownership in any vessel or share in a vessel similar to that in relation to any personal property.

Clause 37 provides the process in relation to the transmission of the registered vessel or share in a vessel upon the death or bankruptcy of any registered owner or by way of any other lawful transmission other than voluntary transfer. There are certain documents required as evidence and requirements as provided under paragraph (a) of subclause (1) in which a person to whom the vessel or share in a vessel has to prepare and satisfy before such a transmission is authorised.

Once the Registrar receives the documents required under subclause (1) the Registrar must then enter the name or names of the persons now entitled under the transmission as the owner of the vessel or shares in a vessel in the Register.

Clause 38 provides for the transfer of vessel or shares by order of the court. This Clause provides that in circumstances where the court orders the sale of any vessel or share in it, the order will contain a declaration giving the authority to a person named by the court to allow the person the right to transfer the vessel or the share in the vessel. This person will be entitled to transfer the vessel or shares to the same extent as if he or she was the registered owner. The Registrar is obligated to adhere to the demands of the person named by the court in relation to a transfer as if this person is the registered owner of the vessel and share in the vessel.

Clause 39 provides for the power of the Supreme Court to make orders to prohibit for a time any dealings in relation to a vessel or share in a vessel, where the Supreme Court has received an application from a person claiming an interest in such a registered vessel. The Registrar is to comply with such orders upon being served with an official copy of the order.

Clause 40 empowers the Registrar to suspend the registration of a vessel for a period of not exceeding 30 days of the following grounds and where the Registrar believes on reasonable grounds:

- (a) that a vessel poses an unreasonable risk to international or domestic law and order, safety of navigation, safety of crew members, maritime security and the environment; or
- (b) in situations where the vessel does not match with any particulars, documents or information with regards to the vessel provided to the Registrar.

This provision allows the Registrar to require the owner of the vessel to prove otherwise and that his or her vessel should still be registered. Such proof may include reasonable particulars to support the cause for the vessel to still be registered and this must be done within the required time allowed.

Clause 41 provides for the closure of certificate of registry. This Clause provides for the circumstances whereby the Registrar may close the registration of the vessel and cancel its certificate as provided under subclauses (1) and (2).

Subclause (3) provides that the Registrar is required to enter in the Register the event relating to the status of the vessel.

Subclause (4) provides that where an entry is made under subclause (3), the registration is still taken to be closed except for the purposes of the discharge of any mortgage over the vessel.

Subclause (5) provides that where the Registrar is satisfied that circumstances provided under subclause (1) applies to a vessel but the owner has not notified the Registrar, the Registrar may close the registration and notify the owner.

Subclause (6) provides that a closure under this Clause has to be endorsed on the Register and notified to every mortgagee or the vessel or a share in the vessel.

Subclause (7) provides that the certificate is taken to be concurrently cancelled on the closure of the registration of the vessel.

Subclause (8) authorises the Registrar to restore the registration of the vessel where such a registration has been closed on an application by the owner.

Subclause (9) provides for the process to restore registration to be prescribed by Regulations.

Subclause (10) makes it an offence if an owner contravenes subclause (1) and he or she is liable to a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years or both.

Clause 42 provides for the closure of registration on implementation of sanctions. This Clause empowers the Registrar to close the registration of a vessel and to cancel the certificate on the grounds and reasons provided under subclause (1). These grounds include, failure to comply with requirements of the implementation of any targeted financial sanctions under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023, Counter Terrorism and Transnational Organised Crime Act 2004 and order under the Proceeds of Crimes Act 2004 and any other written law. Furthermore, this provision obligates the Registrar to inform the owner of the vessel and other law enforcement agencies and authorities where he Registrar has closed the registration or cancelled the certificate under this provision.

PART 5 – RIGHTS AND OBLIGATIONS OF NAURUAN FLAGGED VESSELS

Clause 43 provides that owners of all Nauruan vessel must ensure that the vessel and the operation of the vessel complies with requirements of international conventions, Financial Action Taskforce Standards for vessels and any other prescribed instruments. The owner of the Nauruan vessels must ensure that crew members of that vessel are given publications and guidelines in relation to applicable international conventions, as required under this Bill, guidelines provided by

manufacturer or supplier of equipment on the vessel and guidelines necessary to operate the vessel safely.

Clause 44 provides that Nauruan vessels that registered under the Bill must fly the Nauru Flag. Where a Nauruan vessel is ported or is in a foreign port, the Nauruan vessel may display the national flag of that country as a matter of courtesy but this is not to confuse that the Nauruan vessel is flying under the Nauru Flag as it is registered under this Bill.

This clause makes it an offence if an owner does not comply with this provision, he or she is liable to a fine of \$20,000 or a term of imprisonment not exceeding 2 years or both.

Clause 45 authorises the Cabinet to make Regulations to establish a flag that may be flown by a particular Nauruan vessel or class of vessels for particular circumstance and occasions.

Clause 46 provides that vessels deemed to have Nauruan nationality are registered vessels and vessels entitled to be registered under this Act.

Clause 47 provides for the authority of the Registrar to require a Nauruan vessel to be inspected either in Nauru or outside of Nauru. This provision authorises the Registrar to appoint persons to carry out the inspection and provides for the powers given to these authorised persons, that is, to board, inspect the vessel, require production of any document and to require persons on the vessel to answer questions in relation to the inspection.

Clause 48 provides for declaration of vessels nationality before customs clearance. This clause provides that a certificate of clearance will not be granted to allow the vessel to leave the port for a place outside of the Republic unless the owner has shown the nationality of the vessel. A vessel that attempts to leave or voyage without the certificate will be detained.

PART 6 – ENFORCEMENT

Clause 49 provides for the interpretation of terms used in this Part.

Clause 50 provides that a person is criminally liable for any act or omission which is an offence under this Bill in relation to a Nauruan vessel, regardless of whether it was committed in the Republic or outside of the Republic.

Clause 51 provides that a beneficial owner of any interest in a vessel is not criminally liable for any act or omission committed, if he or she was not aware of such act or omission or did not consent to such act or omission.

Clause 52 provides that prosecution of any offence under the Bill is commenced by the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions.

Clause 53 provides the limitation period in which a prosecution may commence for an offence under the Bill. Prosecution has to commenced within 5 years from the date on which the offence is alleged to have occurred or committed.

Clause 54 provides for matters in relation to averment relating to prosecution matters. Subclause (1) provides that for any prosecution for an offence under this Bill, the averment or allegation by the prosecutor contained in the complaint is taken as prima facie evidence of the matter.

Subclause (2) provides that this clause applies to all matters averred or alleged, although evidence in support or rebutting a matter averred is given by a witness or matter averred is a mixed question of law and fact, the averment is prima facies evidence of the fact only.

Subclause (3) provides that any evidence given by a witness in support or rebuttal of a matter averred or alleged is considered based on merits and the weight afforded to such evidence is not affected by this Clause.

The onus of proof on the defendant is not lessen or affected because of this Clause.

Clause 55 authorises the Court to issue a court order to a person convicted of an offence under the Bill to pay all costs and expenses as a result of the prosecution proceedings. This Court order is in addition to any sentence whether it be a fine or imprisonment term already imposed by the Court for committing the offence.

Clause 56 authorises the Court to issue a court order to a person convicted of an offence under this Bill to pay to the Republic or any person compensation for any loss or damage suffered by reason of the offence. This Court Order is in addition to any sentence whether it be a fine or imprisonment term already imposed by the Court for committing the offence.

Clause 57 authorises the Court to issue a court order to a person convicted of an offence under this Bill, to pay to the Republic the amount equal to any profit he or she received as a result of committing the offence. This Court Order is in addition to any sentence whether it be a fine or imprisonment term already imposed by the Court for committing the offence.

Clause 58 provides for orders of the court made under this Part. The following are the orders that can be made by the Court under this Part:

- (a) order to be made where the court has entered a conviction is satisfied on the balance of probabilities that clauses 55, 56 or 57 applies and as to the general amount of the costs and expenses, compensation or profits as the case may be;
- (b) to specify the amount of costs and expenses, compensation of profits, as the case may be; and
- (c) may be recovered as a debt.

Clause 59 provides for distress and forfeiture. This clause authorises the Court to make such orders as necessary where the owner or master has been convicted under the Bill and penalty has already been imposed but the owner and master has not paid the penalty for more than 30 days. This provision authorises the Court to make orders for the sale of the vessel or equipment to pay off the penalty amount imposed.

This provision also authorises the Harbour master to seize and detain the vessel and for the Minister to apply for a Court Order for the vessel and equipment to be forfeited to the Republic where an owner or master has been convicted of an offence under Clause 63. All forfeited vessel or property becomes the property of the Republic and may be sold or disposed of as the Minister thinks fit.

Subclause (4) provides that a person will not be liable criminally or in civil proceedings in respect of the levy of any distress or the seizure or detention under this Clause.

Clause 60 provides for failure to give notice. A person required under the Bill to give notice and fails to do so commits an offence. The penalty is a fine not exceeding \$5,000 or a term of imprisonment not exceeding 6 months or both. Subclause (2) provides that it is an offence where such failure to give notice results in a loss of life or personal injury or damage to the environment. This carries a penalty of a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years or both.

Clause 61 provides for the offence of misleading information. It is an offence where a person knowingly or recklessly, gives information that is misleading. This carries a penalty of a fine not exceeding \$25,000 or a term of imprisonment not exceeding 2 years or both. This clause also makes it an offence where a person knowingly or recklessly, gives information that is misleading and such misleading information causes the loss of life or personal injury or damage to the environment. This offence carries a penalty of a fine not exceeding \$50,000 or a term of imprisonment not exceeding 3 years or both.

Clause 62 provides for hindering. This clause prohibits a person from hindering the operation or implementation of this Bill. This clause provides that a person is hindering or obstructing the operation of this Bill if he or she does any of the actions provided under paragraphs (a) to (e) of subclause (2). The penalty for contravention of this provision is a fine not exceeding \$15,000.

Clause 63 provides that it is an offence where an owner or master of the vessel does anything or causes or permits to do anything to fly national colours which does not comply with Clause 44 or which obscures or conceals the nationality of the Nauruan vessel. This offence carries a penalty of a fine not exceeding \$30,000 or a term of imprisonment not exceeding 3 years or both. However, where a person has committed the offence under this Clause, the person may raise the defence that he or she was escaping being captured or attached by an enemy.

Clause 64 provides for general offences under this Bill. Such offences include where a person who intentionally misleads or deceives any person who has official business in relation to a Nauruan vessel who does the following:

- (a) gives incorrect information of the name of the vessel;
- (b) removes, alters, conceals, defaces or obliterates any marking on a vessel;
- (c) removes, alters, conceals, defaces or obliterates any part of a certificate;
- (d) uses or lends to another person certificate not lawfully granted under this Bill;
- (e) uses a certificate in relation to a vessel other than the vessel for which it was issued; or
- (f) causes or permits any person to do any of the things listed in paragraphs (a) to (e).

The penalty for committing any of the offences listed in this provision is fine not exceeding \$5,000 or a term of imprisonment not exceeding 2 years or both.

It is a defence if a person has committed any of the offences listed if he or she was escaping being captured or attacked by an enemy.

For any other provision in the Bill in which a person contravenes or causes or permits another person to contravene which does not have any offence or penalty provided, a person is considered to have committed an offence for contravention of such provisions and is liable to a fine not exceeding \$30,000 or a term of imprisonment not exceeding 3 years or both.

PART 7 – RECORD KEEPING AND SHARING, DISCLOSURE AND EXCHANGE OF INFORMATION

Clause 65 provides for the obligation on the Registrar to keep and maintain records of all matters required to be kept pursuant to the Bill. This clause provides for the form and manner in which such records and information are to be kept. The records are to be kept and maintained for the duration of the registration and at least for 5 years from the date of closure of registration.

Clause 66 provides for the obligation on the Nauruan vessel owner to keep and maintain records of all matters required to be kept pursuant to the Bill. This clause provides for the form and manner in which such records and information are to be kept and maintained. The records are to be kept and maintained for the duration of the registration and at least for 5 years from the date of closure of registration and at the registered address of the owner in the Republic.

In the event that the Nauruan vessel owner no longer exists or if the person is no longer a citizen or resident of Nauru, the owner must ensure that a copy of the records of the vessel that were kept and maintained is to be given to the Registrar for safe keeping until the expiration of the period provided under this provision in which records are to be kept and maintained.

Failure of an owner to comply with this Clause is an offence which carries a penalty of a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years or both.

Despite subclause (5) which provides for the offence where an owner does not comply with this Clause, the Registrar has the authority to close the registration of a vessel for not complying with requirements under this provision in relation to a foreign owner or representative or both.

Clause 67 provides for the obligation on the foreign vessel owner to keep and maintain records of all matters required to be kept pursuant to the Bill. This clause provides for the form and manner in which such records and information are to be kept and maintained. The records are to be kept and maintained for the duration of the registration and at least for 5 years from the date of closure of registration and at the registered address of the representative in the Republic. The copy of the records is to be kept by the foreign owner in accordance with the requirements of this Clause.

In the event that the foreign vessel owner no longer exists or in the case of the representative is no longer a citizen or resident of Nauru, the foreign vessel owner and the representative must ensure that a copy of the records of the vessel that were kept and maintained is to be given to the Registrar for safe keeping until the expiration of the period provided under this provision in which records are to be kept and maintained.

This provision provides for the penalty for contravention of this provision, for a foreign owner, the penalty is a fine not exceeding \$50,000. For a representative he or she will be liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years or both.

Despite where a foreign vessel owner or representative is convicted and penalised under subclauses (5) and (6) which provides for the offence where a foreign vessel owner or representative does not comply with this Clause, the Registrar has the authority to close the registration of a vessel for not complying with requirements under this provision in relation to a foreign owner or representative or both.

Clause 68 provides for the confidentiality of information. This clause provides that for the obligation on the Registrar to keep and maintain the confidentiality of information under this Bill. The Registrar may only disclose such information for any of the reasons provided under paragraphs (a) to (d) under subclause (2) which relates to investigation and prosecution and any enforcement actin under this Bill and any other law and for any prescribed purpose.

Clause 69 provides for sharing, disclosure and exchange of information. For the purposes of Clause 68(2) the Registrar may do the following in relation to information required to be kept and maintained under Clause 65:

- (a) share, disclose and exchange information on his or her own initiative or upon request to the offices and law enforcement agencies allowed under this provision;
- (b) coordinate the exchange of information with national, international and regional law enforcement agencies and authorities; or
- (c) share, disclose or exchange information with a flag administration where necessary.

Clause 70 authorises the Registrar to require an owner to provide information to a third party. Third parties include law enforcement agencies and authorities and foreign flag administration authorities and law enforcement agencies and authorities. However, an owner or person does not have to provide any information if it affects his or her rights of self-incrimination. The Registrar may request the third party to specify the purpose and reason as to why they are requesting information from the owner. Failure of an owner to comply with this provision carries a penalty of a fine not exceeding \$10,000 or a term of imprisonment not exceeding 12 months or both.

Clause 71 provides for restriction on sharing, disclosure and exchange of information. This Clause provides that despite Clause 69, the Registrar must not disclose, share or exchange information if the Registrar is not satisfied that recipient has in place sufficient measures to ensure information is kept confidential. However, where information is shared, disclosed and exchanged under Clause 69 the Registrar may impose conditions on the use of such information.

PART 8 – MISCELLANEOUS

Clause 72 provides that this Bill does not apply to any vessel being set aside or used by the armed forces of the Republic or any other country.

Clause 73 provides for the indemnity and protection of any persons from any liability whether criminal or civil while carrying out their functions, if the performance of such functions and powers was done in good faith.

Clause 74 provides that a vessel which was detained by the Authority or any law enforcement agency for not complying with the requirements under the Bill, can be released back to the owner where such vessel has complied with requirements of the Bill or upon an order from the court.

Clause 75 provides for the jurisdiction of the District Court to hear and determine any civil or criminal proceedings instituted in relation to a contravention or matter arising under the Bill, apart from matters where the Supreme Court has the jurisdiction to hear and determine.

Clause 76 empowers Cabinet to make regulations to give effect to the Act. This Clause authorises the making of Regulations for the following matters:

- (a) contraventions regulations that constitute offences under the Bill;
- (b) contraventions of regulations which give rise to liability to a civil penalty;
- (c) civil or criminal penalties up to \$5000 for an individual and \$20,000 for a body corporate;
- (d) matters relating to vessels;
- (e) standards, rules, regulations, codes, instructions or similar instrument made, determined or issued by or under international conventions that the Republic is a party to;
- (f) standards, rules, codes or specifications of the international bodies listed under this paragraph;
- (g) matters in relation to foreign vessels;

- (h) fees and monies payable under the Bill;
- (i) matters relating to fixed penalties;
- (j) amendments to Schedule in relation to the list of applicable conventions, in the event there is a need to add a new convention or protocols or the current conventions are amended.

Clause 77 empowers Cabinet to make regulations to give effect to maritime and international employment conventions relating to vessel crews and staff. This clause provides the process in which international convention are to take effect and domesticated into the laws of the Republic.

Clause 78 provides for the Minister's power to inquire into ownership of a registered vessel. This clause authorises the Minister to require by written notice an owner of a registered vessel in which the Minister suspects is not entitled to be registered, for such owner to provide information to prove that the owner is a qualified person.

Subclause (2) provides that the owner must respond to the Minister's notice within the period provided under the notice.

Subclause (3) provides that where the owner of the vessel served with a notice to provide information to satisfy the Minister that the vessel is entitled to be registered does not provide sufficient evidence to satisfy the Minister, the Minister may inform the Registrar in writing to direct the suspension of the registration for such vessel until evidence is provided to allow for the continuation of the registration or until such time where the registration will be cancelled.

PART 9 – REPEALS AND TRANSITIONAL MATTERS

Clause 79 provides for the repeal of the *Shipping Registration Act 1968* and the *Shipping (Registration of Foreign Vessels) Act 2018* which is now replaced by this Bill.

Clause 80 provides that any reference to the term 'Administrator' or 'Registrar' under a repealed Act or instrument in force before the commencement of this Bill is taken to be a reference to the term 'Registrar'.

Clause 81 provides for the savings provisions for this Bill to save all subsidiary legislation and instruments made under the repealed Acts. Such subsidiary legislation and instruments are valid until repealed or revoked.

Subclause (2) provides for the saving of any licence, rating, certificate, permit, authorisation, approval or other document issued under the repealed Act and remains valid until it expires or 12 months after the commencement date of the Bill.

Subclause (3) provides for the saving of any delegation of functions and powers made under the repealed Act enforced before the commencement of the Bill as if were made under the corresponding or similar provision of this Bill.

Subclause (4) provide that any international maritime convention domesticated under a repealed Act continues to be in force under this Bill.

Clause 82 provides that all vessels registered under the repealed Act before the commencement of this Bill is taken to be registered in the Register. This clause further provides that the Registrar must issue the certificate of registry for such vessels which are taken to be registered and may require the production of the certificate of registry that was issued before the commencement of this Bill.

Clause 83 provides that all applications for registration of a vessel made under the repealed Act that has yet to be finalised may be continued and completed under the provisions of this Bill.

Clause 84 provides for the general transition of anything required or permitted to be done under a provision of this Bill that may have been done under a corresponding provision of the repealed Act, it is taken that such actions continues to have effect as it was done under this Bill. This clause also provides that where a provision of the repealed Act has a corresponding provision under this Bill, the corresponding provision of this Bill applies with the necessary changes in relation to such matter. This clause further provides that an agreement, arrangement or understanding entered into under a repealed Act in relation to any provision of the Bill, will continue in force for a period of 12 months after the enactment of the Bill. However, if the agreement, arrangement or understanding is not revived, it will be deemed to have lapsed after 12 months.

Clause 85 authorises the making of regulations to provide for savings and transitional nature from the operation of the repealed Act to this Bill in which is not provided under this Bill. This clause allows for such regulations to apply retrospectively, unless it relates to matters depriving a person of their rights and which imposes liability on a person. This Clause expires 12 months from the coming into force of this Bill.

Clause 86 provides for consequential amendments to the following Acts to ensure the relevant provisions under these Acts are consistent with the provisions of the Bill:

- (a) *Communications and Broadcasting Act 2018*;
- (b) *Geneva Conventions Act 2012*;
- (c) *Maritime Security Act 2019*;
- (d) *Ports and Navigation Act 2019*;
- (e) any other written law where there is reference to ‘*Shipping Registration Act 1968*’ or ‘*Shipping (Registration of Foreign Vessels) Act 2018*’ must be deleted and substituted with ‘*Vessel Registration Act 2024*’.

This includes ensuring the terms used in the Act is consistent with terms now used in the Bill and other related matters.

The Schedule provides for the list of International Conventions that apply to the Republic. These applicable conventions are relevant for the purposes of Clauses 4 (definition of '*applicable conventions*'), 43, 47 and 76.