

**REPUBLIC OF NAURU**  
**SHIPPING (REGISTRATION OF FOREIGN VESSELS) BILL 2018**

**EXPLANATORY MEMORANDUM**

The *Shipping (Registration of Foreign Vessels) Bill 2018* is a Bill for the *Shipping (Registration of Foreign Vessels) Act 2018*.

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 *Shipping (Registration of Foreign Vessels) Act 2018*.

**Clause 2** sets out when the Bill's provisions will commence which shall be in whole or in Parts on a date or dates notified by the Minister in the Gazette.

**Clause 3** is the general powers of the Minister in relation to the Bill.

**Clause 4** provides for the delegation of powers of the Minister under the Bill.

**Clause 5** provides for the definition of words used consistently throughout the Bill.

**PART 2- NAURU FOREIGN VESSEL ADMINISTRATION**

**Clause 6** provides for the establishment of the Nauru Foreign Vessel Administration. The Administration is responsible to the Minister for Nauru Port Authority.

**Clause 7** provides for the functions of the office of the Nauru Foreign Vessels Administration. The Foreign Vessels Administration shall:

- register foreign vessels and establish the fees procedure relating to registration;
- collect and receive registration fees, tonnage taxes and any other charges payable under this Act on behalf of the Republic;
- provide quarterly reports to the Minister on the operation of the registry;
- recognise foreign seaman documents and establish procedures relating to the same;
- communicate information to the International Maritime Organisation and establish procedures relating to the same;
- maintain records which include but is not limited to registry certificates, bills of sale, crew endorsements, vessel mortgages and establish procedures relating to the same;
- provide to the Republic copies of all records under paragraph (f);

- implement and enforce the requirements of the IMO Conventions that the Republic is party to through the establishment of circulars or instructions;
- establish the requirements in the relevant IMO Conventions that are left to the satisfaction of the Republic;
- establish safe manning requirements;
- establish the selection criteria for Recognised Organisations;
- delegate authority to a Recognised Organisation for the survey and measurement of vessels registered under this Act on behalf of the Republic;
- establish instructions and penalties for direct errors and omissions of Recognised Organisations in order to carry out effective oversight;
- establish penalties and actions for vessels that fail to meet the standards of the IMO Conventions that the Republic is party to;
- establish the selection criteria for the recruitment of inspectors;
- develop and define the requirements of a marine inquiry in the event of a casualty; and
- develop and implement systems and methods to evaluate and review performance for improvement.

**Clause 8** provides that the Minister in consultation with the Cabinet may appoint a reputable and suitable person to be the Foreign Vessels Administrator who shall head the Nauru Foreign Vessel Administration office and be appointed for a term of 5 years.

### **PART 3 – REGISTRATION OF VESSELS**

**Clause 9** provides provisions relating to registration of vessels:

- the property in a vessel shall be divided into 64 shares;
- 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 vessel but this provision shall not affect 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;
- 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 the vessel;
- joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose severally of any interest in a vessel, or in any share therein in respect of which they are jointly registered; and
- a corporation shall be registered as owner by its corporate name.

This clause is based on historical and common practice whereby for the purposes of vessel registration, ownership of a vessel is divided into 64 shares.

**Clause 10** provides that the Port of registry for every vessel registered under this Act is Nauru.

**Clause 11** outlines vessels other than an exempt vessel to be registered if 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.

An exempt vessel means:

- is ordinarily propelled by oars or paddles;
- belongs to a disciplined force or the defence force of any other country; or
- is in the opinion of the Administrator, of traditional build.

Qualified person means:

- if the person is an individual, is not a citizen of the Republic; or
- if the person is a body corporate, is not established, registered or incorporated under the laws of the Republic.

**Clause 12** provides for restrictions on registration of vessels. This clause allows the Minister to direct the Administrator to require the master and owner of the vessel or either of them to produce evidence to the satisfaction of the Minister that the vessel should continue to be so registered.

The vessel is liable to be de-registered if evidence required under this clause is not produced.

A foreign vessel not registered under this Act shall not be recognised:

- in the Republic or for the purposes of this Act as a Nauruan vessel; or
- as being entitled to the rights and privileges accorded to Nauruan vessels.

The Administrator shall not register a foreign vessel unless the owner or owners of the vessel has lodged a written declaration undertaking that the vessel will not be used for:

- storage and transportation of illegal drugs;
- people smuggling, trafficking in person or unlawful carriage or refugees;
- involvement in any war or armed conflict;
- supporting civil unrest in any State or territory;
- terrorism or activities in support of terrorism; and
- any other activity which would be contrary to the laws of the Republic or any international convention to which Nauru is a party.

This clause allows the Administrator to immediately cancel the registration of any foreign vessels where he or she has reasonable grounds to believe such vessels used are contrary to the provisions of this clause.

**Clause 13** requires every vessel before being registered to be surveyed by a surveyor and her tonnage ascertained in accordance with the tonnage regulations. A tonnage survey and measurement of a vessel is necessary to evidence the vessel's existence.

This clause will ensure that a vessel has been surveyed and meets the specified standards that apply to the vessel.

Fees for the survey will be as prescribed.

**Clause 14** requires the owner or master of a vessel registered under the Act to advise the Administrator of any alteration, change or reconstruction of the vessel which could affect the vessel's classification, measurement, tonnage or load line within 30 days of the completion of the alteration, change or reconstruction.

**Clause 15** outlines the documents that can be retained by the Administrator:

- surveyor's certificate;
- builder's certificate;
- any bill of sale of a vessel previously made;
- copy of condemnation if any; and
- all declarations of ownership.

**Clause 16** provides for the marking of vessels including name, port of registry, and vessel number as appropriate.

This clause allows the Minister to exempt the owner or master of any class of vessels from complying either in whole or in part of the requirements under this clause. Marks required under this clause should be permanently continued and no alteration to be made unless made in accordance with the Act.

**Clause 17** provides for the application for vessel registration, to allow for the registration of a vessel. This clause enables the Administrator to require proof to his or her satisfaction of the:

- ownership of the vessel; and
- seaworthiness of a vessel, -

before proceeding with the registration of a vessel.

Where owner is a corporation – application can be made by the agent of the corporation.

Where owner is not a corporation – person seeking the registration or persons seeking the registration of the vessel or by his or her agent.

**Clause 18** provides for the making of declarations required under the Bill confirming ownership of the vessel. This is another requirement for registration. To be registered as an owner of a Nauruan vessel or share therein, or in the case of a corporation, a person authorised on behalf of the corporation, such person must make and sign a declaration of ownership stating the following particulars:

- full name and address; and
- a statement of the number of shares in the vessel of which he or she or the corporation, is entitled to be registered as owner.

This clause also outlines the evidence required to be produced in addition to the declaration of ownership.

**Clause 19** allows the Administrator to, where the requirements of the Act have been complied with and payment of the prescribed fee, register the vessel by:

- allotting to the vessel an official number;
- entering in the Register the name of the vessel, the official number allotted to the vessel; and
- such other particulars in respect of the vessel as are prescribed.

The official number allotted to a vessel will assist in identifying the vessel and her country of registration.

No vessel will be registered by the Administrator by a name which a vessel is already registered except in accordance with the direction of the Minister or, by a name that is in the opinion of the Administrator, undesirable.

**Clause 20** requires the Administrator to enter into the Register the following particulars of a vessel:

- the name of the vessel;
- the official number of the vessel;
- the details comprised in the surveyor's certificate;
- the particulars respecting her origin stated in the declaration of ownership;
- the name and description of her registered owner or owners, and if there are more owners than one the proportions in which they are interested in the vessel.

This clause also requires the copy of the entry to be forwarded to the Minister.

**Clause 21** provides for the issuing of a certificate of registry in respect of vessels by the Administrator to the owner or owners. The certificate of registry is the primary document that testifies to a vessel's nationality and ownership. The Administrator has the discretion to cancel the certificate of registry upon the failure to pay the annual fee due in respect of the registration.

**Clause 22** provides that the Administrator may, upon delivery to him or her of the certificate of registry of a vessel, grant a new certificate.

**Clause 23** allows the Minister to inquire into the ownership, etc. of a registered vessel by serving a written notice on the owner of the vessel and require the owner to provide any information relating to and evidence as to whether or not the owner is a qualified person.

The Minister may by written notice given to the Administrator direct that the registration of the vessel be cancelled.

**Clause 24** is the registration and annual fees provision. This clause also allows the Minister to prescribe registration and annual fees and make provision for different description of vessel or for vessels of the same description in different circumstances through regulations. This provision provides that any annual fee payable under this provision is a debt due to the Republic from the owner of the vessel and may be recovered in court.

**Clause 25** provides that the certificate of registry of a vessel shall:

- be kept in a safe place on the vessel;
- used only for lawful navigation of the vessel; and
- not be subject to detention by reason of any title, lien, charge or interest had or claimed by any owner, mortgagee or other person to, on or in the vessel.

**Clause 26** provides that a master or owner of a vessel shall not use for the navigation of a vessel, a certificate of registry not legally granted in respect of a vessel. A master or owner of a vessel who contravenes this clause is guilty of an offence. This is a strict liability offence.

**Clause 27** provides for certificates mislaid, lost or destroyed.

This provision is made for the granting of replacement certificates by the Administrator.

**Clause 28** allows the Administrator to terminate the registration of any vessel registered:

- on application by the owner;
- in the case of a bareboat charter, on the ship no longer eligible to be registered;
- if having regard to any requirement of this Act or any instrument made under the Act, relating to:
  - (i) the condition of the vessel or its equipment so far as it is relevant to its safety or to any risk of pollution;

- (ii) the safety, health and welfare of persons employed or engaged in any capacity on board the vessel, -

he or she considers that it would be inappropriate for the vessel to remain registered;

- on the vessel being destroyed;
- if the vessel is registered in another country except for a Nauruan vessel that is bareboat chartered and registered under the laws of another country for the duration of the charter where the Administrator has been notified by the proper officer of that other country and the Administrator has given permission for such foreign registration; and
- where any annual fee has remained unpaid for a period of more than 90 days.

The owner is required to immediately surrender the vessel's certificate of registry to the Administrator for cancellation.

**Clause 29** provides that a Nauruan vessel bareboat chartered to any citizen of a foreign country or to any corporation established under the laws of a foreign country may, on application to the proper officer of that foreign country, be registered under the laws of that country.

**Clause 30** provides that if there is a change in the registered ownership of a vessel, the Administrator shall:

- require the new owner to make a declaration in accordance with section 19; and
- issue a new certificate of registry if satisfied with the declaration and all other provisions of this Act.

The old certificate of registry shall be surrendered by the owner of the vessel to the Administrator as soon as practicable upon receipt of the vessel's new certificate of registry.

**Clause 31** requires the owner of a vessel to give notice to the Administrator if a vessel is lost or no longer a Nauruan vessel. This clause requires the Administrator to make an entry in the Register upon receipt of such notice from the owner of the vessel. This clause also allows the owner of a Nauruan vessel to transfer the vessel to a foreign registry if there are no claims in favour of the Administration and to submit to the original registrar:

- a written application specifying the name of the vessel;
- the reason for the proposed transfer;
- the name of the country to whose registry the transfer is desired;
- the written consent of every registered mortgagee.

**Clause 32** provides for provisional registration. Vessels that are provisionally registered may be issued with a provisional certificate of registry for 6 months in the

first instance and may be extended. The vessel may be transferred to the permanent register when all the outstanding documents or requirements are met for permanent registration are submitted. This clause allows provisionally registered vessels to be issued with permanent certificates of registry if:

- in the case of a vessel previously registered in another country, a deletion certificate or equivalent from the foreign registry indicating that there are no outstanding mortgages, liens or other encumbrances recorded against the vessel; and
- any other conditions as may be required by the Administrator to be met prior to the end of a vessel's provisional registration have been met.

**Clause 33** provides for the registration of bareboat charters. Any vessel which is registered under the laws of another country and chartered on bareboat terms of a bareboat charter who is a qualified person may be registered as a foreign vessel upon application by the charterer. Prior approval in writing of the underlying registry is required for registering a vessel as a foreign vessel.

**Clause 34** provides that vessel registered under this provision is deemed to be a Nauruan vessel and shall fly the Nauruan national flag. Such vessels shall be under the jurisdiction and control of Nauru and comply with the laws of Nauru.

**Clause 35** provides that a registered vessel or share in a vessel shall be transferred by Bill of Sale. The Bill of Sale shall the following:

- in the prescribed form;
- executed by the transferor and the transferee in the presence of and be attested by 2 witnesses; and
- authenticated by a notary public or commissioner for oaths where the Bill of Sale is executed, -

before the Bill of Sale can be registered with the Administrator.

The Bill of Sale shall contain such description of the vessel as contained in the surveyor's certificate or some other description sufficient to identify the vessel to the satisfaction of the Administrator.

**Clause 36** requires the Administrator to provisionally enter in the Register the name of the transferee as owner of the vessel or share. This clause further requires the Administrator to permanently enter in the Register the name of the transferee as owner of the vessel or share and endorse on the Bill of Sale that the original has been sighted.

**Clause 37** provides that the transmission on death or bankruptcy of a vessels is only possible if the following is met:



- that person shall authenticate the transmission by making and signing a declaration of transmission identifying the vessel and a statement of the manner in which, and the person whom, the property has been transmitted;
- if the transmission is a consequent of bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being receivable in a court as proof of the title of persons claiming under a bankruptcy;
- if the transmission is a consequent of death, the declaration of transmission shall be accompanied by the instrument of representation or an official extract.

The Administrator upon receipt of the declaration of transmission shall enter in the Register:

- the name of the person entitled under the transmission of the owner of the vessel or shares in the property which is transmitted; and
- if more than one person enters the names of all those persons but those persons, however numerous shall for the purpose of this Act and in respect of the number of persons entitled to be registered, be considered as one.

The Administrator is required to enter in the Register the name of the person entitled under the transmission of the owner of the vessel or shares therein the property which is transmitted.

**Clause 38** provides for transfer of the vessel or share by order of the court. If the court orders for the sale of a vessel or share, such order will contain a declaration vesting to any person's name the right to transfer that vessel or share and that person shall be entitled to transfer the vessel or share in the manner or to the same extent as if he or she was the registered owner.

The Administrator shall comply with the demand of the person named in such transfer as if the person is a registered owner.

**Clause 39** provides that the Supreme Court has the power to prohibit the transfer. The Supreme Court may make an order on such terms and conditions as it thinks fit, refuse to make an order or discharge the order with or without costs.

The Administrator, without being made a party to the proceeding shall, on being served with an order or an official copy thereof, comply with the order.

**Clause 40** provides that no notice of trust expressed, implied or constructive shall be received by the Administrator or entered in the Register.

**Clause 41** provides that, without prejudice to certain other provisions, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of vessels in respect of their interest in the same manner as in respect of any other personal property.

**Clause 42** allows a person who has beneficial ownership of a vessel to be subject to all penalties imposed under the Act as the owner of the vessel in respect of any offence committed. A person is not liable to any penalty if he or she is able to show that the offence in question was committed without his or her knowledge and consent.

**Clause 43** provides that a registered vessel or share in a vessel is capable of being made a security for the discharge of an obligation by way of a mortgage. The instrument making a registered vessel or share in a vessel a security for the discharge of an obligation by way of a mortgage shall be in a prescribed form. Recording of mortgages shall be in the order in time they are produced to the Administrator.

Where a vessel has been registered previously in a foreign country and mortgages were registered against that vessel, the Administrator on the production of the written consent of every mortgagee and prescribed instruments, shall record those mortgages in the order or precedence as indicated in the previous register. No mortgage instrument shall be recorded in respect of any bareboat chartered vessel registered under the laws of a foreign country and which has existing registration as a Nauruan vessel.

**Clause 44** provides that the Administrator after production of the discharge of mortgage shall make an entry in the Register that the mortgage has been discharged.

**Clause 45** provides that if there is more than 1 registered mortgage in respect of a registered vessel, the mortgagees are entitled to the priority one over the other, according to the date and time at which the mortgage was produced to the Administrator and not according to the date of the mortgage itself.

**Clause 46** provides that in relation to a mortgage that has been registered under the Act, a mortgagee is not by reason of the mortgage deemed to be the owner nor the mortgagor deemed to have ceased to be the owner.

**Clause 47** provides that a person who is registered as a mortgagee in respect of a registered vessel has absolute power to dispose of that vessel and give effectual receipts for the purchase money. However if there are more than 1 mortgagee, the mortgagee does not have the power to sell the vessel unless through a Court order or with the consent of the other mortgagees.

**Clause 48** provides for mortgagees not affected by bankruptcy. A registered mortgagee of a vessel or share in a vessel is not affected by the act of the bankruptcy committed by

the mortgagor despite the mortgagor had the vessel in his or her possession at the commencement of the bankruptcy.

**Clause 49** provides that a registered mortgage of a vessel or share in a vessel is capable of being transferred by registration of an instrument of a transfer. On the production to the Administrator of an instrument of transfer of a registered mortgage, the Administrator shall:

- register the transfer by making an entry of the transfer in the Register; and
- endorse and sign on the mortgage instrument and instrument of transfer of the fact that the entry has been made, stating the date and time of the making of the entry.

**Clause 50** provides if an interest of a mortgagee in a vessel or share is transmitted on marriage, death or bankruptcy or other lawful means apart from a voluntary transfer, the transmission shall be authenticated with a declaration of person whom the interest is transmitted and accompanied by like evidence as required in the case of transmission of an interest in a vessel or share in a vessel as stated under Clause 37.

The Administrator shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the vessel or share.

**Clause 51** provides for the registration of mortgage on provisional registration.

**Clause 52** provides for the rules as to the name of vessels. The vessel shall not be described by any other name than which she was registered. A change of name can only be made with the written consent of the Minister. An application has to be made to the Minister for permission to change the name and this has to be published in the Gazette. Permission for such change of name has to be registered in the Register in the vessels certificate of registry, and marked on her bow and stern.

If the Minister is satisfied that there has been a change of name without his or her permission, then the Minister shall direct that the name be altered back to its original name before the change.

If any person acts or permits or omits to do or permits any other to commit an act in contravention of this section, he or she commits an offence, and the Administrator shall suspend the certificate of registry of the vessel until the section is complied with.

**Clause 53** provides that when a registered vessel is altered and does not correspond with the particulars relating to her tonnage or description contained in the Register, a notice of 30 days shall be given after completion of the alteration to the Register is accompanied by a certificate from the surveyor stating the particulars of the alteration.

Upon receipt and payment of the prescribed fee, the Administrator shall register the alterations.

**Clause 54** provides where ownership of a Nauruan vessel is changed, the vessel shall be registered on the application of the owner to the Administrator to register the vessel anew. A vessel's former registration shall be considered closed except where it relates to any unsatisfied mortgage. The names of all person in the former register as owners or mortgages shall be entered on the new register and such registration shall affect the rights of any of those persons.

**Clause 55** provides that if a Nauruan vessel is wrecked and the register is closed and the certificate of registry delivered to the Administrator is cancelled, the Minister may after an application can direct the vessel to be re-registered as a Nauruan vessel, if there is proof that the vessel has been surveyed and certified by the surveyor to be seaworthy.

**Clause 56** provides that if a person interested in a vessel or shares in a vessel is incapable of making a declaration in connection with the registry of a vessel or share due to such infancy or incapacity, the guardian or person appointed upon application made on behalf of the infant or incapacitated person, may:

- (a) make such declaration or declarations as the situation permits;
- (b) act in the name or on behalf of the incapable person; and
- (c) all the acts done will be considered the act done by the incapable person.

Guardians are necessary in such situations since an infant or an incapacitated person would not be able to successfully represent his or herself.

**Clause 57** provides that the name and address of the managing owner for the time being of every registered vessel shall be registered with the Administrator.

If there is no managing owner, the name of another person to whom the management of the vessel is entrusted by or on behalf of the owner, and any person whose name is registered to be under the same obligations and subject to the same liabilities as if he or she was the managing owner.

**Clause 58** provides that the Administrator shall dispense with the production of declarations and evidence subject to the Minister's approval, if the person or person acting on behalf of the corporation can prove that he or she is unable to make the declaration or produce the evidence.

**Clause 59** provides that upon payment of a prescribed fee and application to the Administrator, a person may inspect the Register.

The following documents are admissible as evidence:

- any register book on its production from the custody of the Administrator or other person with lawful custody;
- certificate of registry to be signed by the Administrator;
- an endorsement on a certificate of registry to be signed by the Administrator;

- every declaration made under this Act in respect of a registered vessel.

The copy or transcript of the Register of vessels kept by the Administrator under the direction of the Minister is admissible as evidence in the manner provided for under the Act.

**Clause 60** provides that Cabinet may prescribe the tariff of fees for the change of name, transfer, transmission, mortgage, survey and inspection of registers of the vessels.

**Clause 61** provides that the several instruments and documents specified under this Part shall be in the prescribed form.

The Administrator shall not be required to enter in the Register any documents specified in Schedule 1, unless it contains the particulars specified in the prescribed form.

The Minister may direct the Administrator as to:

- the manner of making entries in the register book;
- the execution and attestation of powers of attorney;
- any evidence required for identifying any person;
- referring to him or her any questions involving doubt or difficulty; and
- generally any act or thing to be done by him or her under the Act.

**Clause 62** provides that any person who forges or fraudulently alters any Register, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, any entry or endorsement made in any of those documents, commits an offence.

**Clause 63** provides any person who:

- (a) makes, or assist in making or procures to be made any statement concerning the title to or ownership of or the interest existing in any vessel, or any share in a vessel; or
- (b) utters, produces or makes use of any declaration or document containing any such false statement, knowing the same to be false.

This clause is the offence provision which relates to any declaration made in the presence of or produced to the Administrator or any document or evidence produced to the Administrator.

**Clause 64** provides that a customs officer shall not grant clearance of any vessel until the master of such vessel has declared the nationality of the vessel.

Any vessel that attempts to proceed to sea without proper clearance may be detained until the declaration is made.

**Clause 65** provides that where a person uses a Nauruan flag and assumes the Nauruan national character on board a vessel not registered in Nauru in order to make the vessel appear to be a Nauruan vessel, the vessel shall be subject to forfeiture.

In any proceedings for enforcing such forfeiture, the burden of proof is on the person using the Nauruan flag and assuming the Nauruan national character.

**Clause 66** provides that the master and the owner of a vessel registered under this Act commits an offence if he or she does anything to conceal the Nauruan character of the vessel from a person entitled by law to inquire as to the character of the vessel, deceive a person or assume a foreign character.

**Clause 67** provides that where the master or owner of a vessel is convicted for an offence, the vessel shall be liable to forfeiture.

**Clause 68** provides that the National Flag is the proper national colours for a registered vessel.

The National Flag to be hoisted at all times. The master, the owner (if he is on board the vessel) or any person who fails to hoist those colours commits an offence.

Penalty – upon conviction is liable to a fine not exceeding \$10,000.

The registered vessel may as a courtesy while in a port of a foreign country, display the national flag of that country but not to confuse that flag with the National Flag.

**Clause 69** provides that a Nauruan vessel shall use the Nauruan flag on entering and leaving any port. Failure to do so, the master of the vessel will be liable. This is a strict liability offence.

#### **PART 4 – INTERNATIONAL MARITIME CONVENTIONS**

**Clause 70** provides that the International Maritime Conventions in Schedule 2 may have the force of law in Nauru subject to reservations by the Republic and enter into force from the date after the deposit of the instrument of accession in the relevant depositary.

The Cabinet may make regulations for the purposes of the implementation of any or all of the Conventions in Schedule 2.

**Clause 71** provides for the transitional provision for any International Convention that has been brought into effect by Regulation made under this Act. A Convention is deemed to have the force of law from the date the regulations were notified.

**Clause 72** provides for the duty of the owner and the Master to ensure that there is compliance with the requirements of the International Maritime Organisation Conventions, the International Labour Organisation Conventions and other relevant international instruments as may be prescribed.

Where an owner or Master fails to comply with any Conventions or Agreements, the Administrator may cancel the vessel's Certificate of Registry and impose a monetary penalty and such other conditions as may be necessary to bring about compliance.

## **PART 5 – SAFETY**

**Clause 73** provides that any unsafe vessel that is registered under the Act and a vessel not registered under the Act which is at a port or place in Nauru can be detained. The Harbour Master has the power to detain any unsafe vessel until he or she has cause to believe that the vessel can go to sea without causing serious danger to the crew or any passenger on the vessel.

The vessel is deemed unsafe if there is the hull is in a defective condition, under manning, overloading or improper loading or any other matter.

In considering whether a vessel is unsafe, due regard shall be made to the requirements set out under any International Maritime Organisation Conventions or any regulations that apply.

**Clause 74** provides that if a vessel is detained, the Harbour Master or the inspector shall give a written notice to the master setting out the reasons for such detention.

If a vessel is detained in a foreign country, the Harbour Master or the inspector shall inform the Minister who shall relay the detention and reasons for such detention to the foreign country diplomatic relations or the Government of the foreign country.

If a vessel is detained under Clause 73, the master may make written representation to the Minister in relation to the release of the vessel. The Minister may order the release of the vessel if he or she considers that in all the circumstances he or she is justified in doing so.

**Clause 75** provides that any person or master of the vessel who knowingly sent or attempt to send or take an unsafe vessel out to sea from Nauru commits an offence. It is a defence to prosecution for an offence if the person proves that he or she used reasonable means to ensure the safety of the vessel or sending or taking the vessel to sea was a reasonable and justifiable. This clause applies to a vessel:

- registered under the Act; and
- not so registered which is at a port or place in the Republic.

**Clause 76** provides that any such failure to carry equipment as required to be fitted on a vessel for a voyage by any International Maritime Organisation convention implemented in Nauru or any Regulations or carries an equipment not in good order commits an offence.

This is to ensure the safety at sea of crew members.

**Clause 77** provides that a master of a vessel, at sea within Nauru waters shall make a report of any serious danger to navigation on or near the course of the vessel. The report shall be given by radio and to any vessel in the vicinity of the danger; to any Nauru radio and any nearest island radio station and give details of the position and nature of the danger.

**Clause 78** provides an obligation on the master of a vessel to assist a person in danger of being lost. Failure of the master of the vessel to assist any person found at sea results in the commission of an offence by the master. It is a defence if the master proves that he complied but it would have caused serious danger to his or her vessel or any person on his or her vessel.

**Clause 79** provides that in every collision between 2 vessels, it is the duty of the person in charge to render assistance to the other vessel, stay by the other vessel and give the person in charge the name of his own vessel and of the port to which the vessel belongs.

Any person who fails to comply with this clause, commits an offence.

**Clause 80** provides that the compliance of the master of a vessel to the requirements of Regulation 10 Chapter V of the Safety Convention if applicable in the Republic shall not affect the right of the master or the right of any other person to salvage.

**Clause 81** provides for definitions of dangerous goods and IMDG Code.

**Clause 82** provides that the master or the owner of a vessel at a port or place in Nauru is not liable for refusing to take on board, opening and inspecting any package, discharging or destroying any goods suspected of being dangerous.

**Clause 83** provides a person who sends or attempts to send by any vessel to carry or attempts to carry any dangerous goods without marking the outside of the package and giving a written notice to the Harbour Master not less than 24 hours and to the master or owner of the vessel before the time of sending the goods to be shipped commits an offence.

**Clause 84** provides that the packaging, storage and carriage of dangerous goods in vessels are prescribed by the IMDG Code. In the case of a vessel engaged in a voyage apart from an international voyage, the Harbour Master or the inspector may permit modifications to such requirement as he or she considers reasonable.

**Clause 85** provides the definition of bulk cargo, Bulk Cargoes Code and grain.

**Clause 86** provides that the requirements for storage and carriage of bulk cargo and grain cargoes are prescribed in the Bulk Cargoes Code and Chapter VI of the Safety Convention respectively. In the case of a vessel engaged in a voyage apart from an international voyage, the Harbour Master or the inspector may permit modifications to such requirement as he or she considers reasonable.



**Clause 87** provides for the definition of casualty and vessel for the purposes of this Part.

**Clause 88** provides that if any casualty occurs, the Minister may cause a preliminary investigation or Marine Inquiry or a preliminary investigation and a Marine Inquiry.

**Clause 89** provides that where the Minister causes a preliminary investigation, the person carrying out the preliminary may on board a vessel which has been involved in the casualty, require persons to answer questions and require the production of any certificate of the vessel. Upon conclusion of such preliminary investigation, the person carrying out the investigation shall send a report to the Minister containing the full statement of the case accompanied with the reports and evidence produced.

**Clause 90** allows the Minister on causing a Marine inquiry to appoint a person to conduct such inquiry and nominate 2 assessors to assist such person. This clause also allows the Cabinet to make Regulations in relation to proceedings in any Marine Inquiry.

**Clause 91** provides that the Marine inquiry can be conducted if a master, qualified officer or seaman is unfit to discharge his or her duties, has been seriously negligent in the discharge of his or her duties or has failed to give assistance and information required.

As a result of the Marine inquiry that the master, qualified officer or seaman is in breach of this provision, the inquiry may order the cancellation or suspension of certificates or censure the master, qualified officer or other seamen.

**Clause 92** provides that a holder of a certificate commits an offence if such certificate ordered to be cancelled, suspended or is cancelled or suspended is not delivered.

**Clause 93** provides that after a Marine inquiry has been held, the Minister may order the whole or part of the case to be reheard in the following circumstances:

- new and important evidence which could not be produced at the inquiry has been discovered; or
- there appear to the Minister to be other ground for suspecting that a miscarriage of justice may have occurred.

For cancelled or suspended certificates - the Minister may issue a new certificate of a lower grade in place of the cancelled or suspended certificate subject to:

- the recommendation of the Marine Inquiry; or
- if he or she is of the opinion that the circumstances of the case require it.

**Clause 94** provides that a person whose certificate has been cancelled, he or she has been censured or costs of the inquiry has been awarded, the master, qualified officer or seaman may appeal to the Supreme Court.

## **PART 6 – MASTERS AND SEAMEN**

**Clause 95** provides that subject to this Part and any exemption granted under the Act, this Part applies in relation to: a vessel registered under the Act not being a vessel less than 10 metres in length or a pleasure craft; the provisions of Clause 103 to apply in relation to vessels as may be prescribed; any class or description of a vessel identified in an order made by the Minister and engaged in near coastal trade.

**Clause 96** provides that the Minister may by order exempt a particular vessel or class or description of vessels from the requirements of this Part. An exemption may be granted in respect of a particular period, one or more than one voyage; or generally.

**Clause 97** provides that a vessel shall be manned by such number and grades of person as may be prescribed. An owner or master of a vessel commits an offence if a vessel is allowed to go to sea without being manned in the prescribed manner or not complying with the prescribed proportion of the crew.

**Clause 98** provides that the prescribed authority may issue a certificate of competency in a prescribed manner to a person attaining such standard as may be prescribed.

**Clause 99** provides that no person shall go to sea as a master, qualified officer or a seaman of a particular grade if he or she is not a master, qualified officer or seaman of that grade. Penalty – if convicted, a fine not exceeding \$10,000.

**Clause 100** provides that any person serving or engaged in a service in a vessel and holding a certificate of competency that he is a master, qualified officer or qualified seaman shall, upon demand by his employer, master of the vessel to which he or she is employed, produce the certificate. Any person who fails to produce the certificate of competency required under this clause commits an offence.

**Clause 101** provides that the Minister shall cause an inquiry to be held if a master, qualified officer or seaman is unfit to discharge his or her duties, negligent in the discharge of his or her duties and fails to give assistance and information after a collision.

The Minister may suspend the certificate of competency of the master, officer or seaman pending the outcome of the inquiry.

**Clause 102** provides that the person appointed for the purpose of an inquiry can go board the vessel, require persons to answer questions and require production of the documents or certificate.

The person appointed after conducting an inquiry must produce a report to the Minister. After such inquiry the person appointed may recommend to the Minister for the cancellation or suspension of a certificate of competency. The master, qualified officer or other seaman may within 30 days appeal to the Supreme Court.

**Clause 103** provides that regulations may be made to make provisions for certificates of competency.

**Clause 104** provides that there is to be a crew agreement between the employer and the seaman. The crew agreement is to be in writing. The crew agreement in respect to employment in one or more vessels may be for a particular period not more than 2 years or one or more particular voyages.

In all crew agreements, the employer or owner of the vessel is to ensure that the vessel in which the person is employed is seaworthy for and during the voyage.

**Clause 105** provides that a person who demands and receives directly or indirectly from another person seeking employment any wages or reward in cash or kind for providing employment to that other person commits an offence.

**Clause 106** provides that the Cabinet may make Regulations for crew agreements in relation to conditions and particulars to be included in a crew agreement; the form of the agreement; and the requirements for an agreement.

**Clause 107** provides that a seaman shall be paid wages in accordance with the terms of a crew agreement.

**Clause 108** provides that an employer who refuses, fails without reasonable cause to deliver to a seaman the exact account of the wages due to the seaman under a crew agreement commits an offence.

**Clause 109** provides that a lien of a seaman wages and a master of a vessel for his or her wages and reimbursement of any expenditure or disbursements properly incurred by him or her on behalf of a vessel takes priority over all other liens irrespective of the date of those liens.

**Clause 110** provides that a provision in a crew agreement which contend to modify or vary the rights of a seaman under this Part is void and of no effect.

**Clause 111** provides that the Cabinet may make Regulations in relation to wages.

**Clause 112** provides that a vessel shall have a crew accommodation reserved for the use of the crew. The crew accommodation shall be of a prescribed standard. Any owner or master of a vessel who permits the vessel to go to sea without crew accommodation of the prescribed standards commits an offence.

**Clause 113** provides that the Cabinet may make Regulations for crew accommodation.

**Clause 114** provides that an employer or master of a vessel shall ensure that provisions and water supplied for the crewmen are as prescribed. If 3 or more seaman are of the opinion that the provisions of water supplied for the use of seamen are not as prescribed, they may complain to the master and if dissatisfied with the action of the master or the master's failure to act they may complain to the Registrar of Seamen.

Upon receipt of such complaint the Registrar of Seaman shall cause a complaint to be investigated. If after the investigation the Registrar of Seaman is of the opinion that the provisions or water supplied is not as prescribed, he or she shall direct the employer or master to replace them. The employer or master shall comply with the directions given under this clause.

**Clause 115** provides that an owner or master of a vessel that suffers or permits the vessel to go to sea without carrying the prescribed number of qualified first aid attendants, medicines, medical and surgical stores, commits an offence.

**Clause 116** provides that a seaman may complain to the master if he or she has to complain about the master, other seaman on a vessel or conditions on board a vessel. If the seaman is dissatisfied with the action taken by the master on his or her complaint or the failure of the master to take any action, the seaman may state his or her dissatisfaction to the master and request the master to make adequate arrangements for the seaman's complaint to the Registrar of Seamen, as soon as the service of the vessel permits.

If the master to whom the seaman made the request refuses or fails without reasonable cause to make the adequate arrangements commits an offence.

**Clause 117** provides that the Cabinet may make Regulations in relation to the welfare of the seamen.

**Clause 118** provides that this section applies to a seaman that does an act that causes or likely to cause the loss or destruction or serious damage or death or serious injury to a person on board a vessel or fails to do anything required to be done by him or her to preserve the vessel from loss or destruction or any person on the board from death or serious injury.

If the act or failure to act by the seaman is deliberate that amounts to the breach or neglect of duty or disobedience to a lawful command or the seaman is under the influence of alcohol or drug, the seaman commits an offence.

**Clause 119** provides that a seaman on a vessel commits an offence if he or she persistently and willfully neglects his or her duty or disobeys a lawful command or together with other seamen neglect their duty and disobey lawful commands or obstruct the navigation of the vessel or the progress of the voyage.

**Clause 120** provides that a seaman commits an offence if a seaman is absent without leave from a vessel at a time when he or she is required to be on board, his or her absence is due to his or her recklessness or deliberate without reasonable cause and as a result the vessel is delayed or goes to sea without him or her.

**Clause 121** provides that despite the other provision of the Act, a person is deemed to be a seaman on a vessel where, a person is carried to sea in a vessel without the consent of the master or any other person authorised to give consent to his or her being on

board or, a distressed seaman is carried on a vessel for the purpose of being returned to his or her proper port.

**Clause 122** provides that the master of a vessel who finds that a seaman has committed a disciplinary offence shall make a report of his or her findings in the prescribed form to the Registrar of Seamen.

The Registrar of Seamen may declare the seaman to be a suspended person, if 2 or more reports have been made within the prescribed time or a seaman has committed an offence under this Act.

**Clause 123** provides that the seaman may appeal within 30 days of receiving the prescribed notification of his or her suspension, if the Registrar of Seamen has declared a seaman to be a suspended person and the period of suspension exceeds 12 months.

**Clause 124** provides that the Registrar of Seamen shall keep a list of suspended persons. The Registrar of Seamen shall include the name of a seaman in the list if the seaman is suspended for a period of 12 months or less or more than 12 months and no appeal is made within 30 days or appeal made and the Court orders such appeal be dismissed.

**Clause 125** provides that the Cabinet may make Regulations providing for disciplinary offences.

**Clause 126** provides that a person who, without the consent of the master of a vessel or a person authorised by the master to give consent, goes to sea or attempts to go to sea in a vessel, commits an offence.

**Clause 127** provides that a person not being an authorised person or an inspector, commits an offence who, without the consent of the master of a vessel or a person authorised by the master to give that consent goes on board a vessel in a port in Nauru or remains on board after being requested by the master, police or customs officer to leave.

**Clause 128** provides that the master of a vessel may cause any person on board a vessel to be put under restraint as long as it appears necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the vessel.

**Clause 129** provides that a master who refuses or fails without reasonable cause to make a return in the prescribed form to the Harbour Master any birth or death occurring in a vessel, commits an offence. This clause also defines 'vessel' as a vessel registered under the Act.

**Clause 130** provides that a master who refuses or fails without reasonable cause to make a return in the prescribed form to the Harbour Master any birth or death of a Nauruan citizen occurring in a vessel, commits an offence. This clause also defines 'vessel' as a vessel registered in a country other than Nauru.

**Clause 131** provides that for the purposes of the Act, the Administrator shall be the Registrar of Seamen.

**Clause 132** provides that the Registrar of Seamen shall keep a book to be known as the Register of Seamen.

The Register of Seamen shall contain particulars of any Seaman's Discharge Book. Any person may inspect the Register of Seamen at any time during the hours approved by the Registrar of Seamen.

**Clause 133** provides that the Registrar of Seamen may issue to a person a book to be known as the Seaman's Discharge Book which shall be in the prescribed form.

**Clause 134** provides that the master of a vessel shall keep a record book relating to a vessel known as the Official Log Book. The master of a vessel who fails without reasonable cause to keep the Official Log Book in the prescribed manner and carry the Official Log Book in the vessel commits an offence.

Any person who willfully destroys or mutilates or renders illegible any entry in an Official Log Book commits an offence.

**Clause 135** provides that an employer or the master of a vessel shall make and in the prescribed manner to maintain a separate list of the crew of the vessel (Crew List) and passengers on the vessel (Passengers List).

An up to date copy of the Crew and Passengers List is to be maintained ashore or on behalf of the managing owner of a vessel.

**Clause 136** provides that the master of a vessel commits an offence if a person dies or suffers a serious injury in a vessel and the master fails without reasonable excuse to notify the Harbour Master of the death or serious injury.

If a person dies or suffers a serious injury in a vessel or seaman dies or suffers a serious injury away from a vessel, an inquiry into the circumstances surrounding the death or serious injury shall be made as directed by the Minister by a person appointed by the Minister at the next port in Nauru in which the vessel calls.

No inquiry shall be made in a case where the inquiry is required to be held under the Inquest Act.

**Clause 137** provides for the purpose of holding an inquiry the person authorised may:

- go on board a vessel at any time and inspect the vessel or any article on board the vessel;
- summon any person to appear before him or her; and
- require the production of any document which in his or her opinion is relevant to the inquiry.

After completion of an inquiry the person holding the inquiry shall make a report in writing to the Minister and the person may make a copy of the report available,

- in the case of a person who died the next of kin or another person who requests a copy that appears to the Minister to be interested; and
- in the case of the person who suffered a serious injury to that person or person acting on his or her behalf or to any other person who requests a copy that appears to the Minister to be interested.

**Clause 138** provides that a seaman's absence from a vessel is not a breach of a contract, if the seaman proves that his or her absence from the vessel was due to an accident, mistake or some cause beyond his or her control and that he or she took all reasonable precaution to avoid being absent.

If there is an action of breach of contract arising from the absence of the seaman from a vessel, and the seaman fails to prove the matters raised above, if special damages are not claimed by his or her employer, the civil liability is limited to US\$5,000 or claimed by his or her employer, the civil liability is limited to US\$5,000.

**Clause 139** provides that if it appears to the Minister that due facilities will be given by the Government of a country for apprehending and receiving a seaman who deserts in that country from a vessel registered under the Act, the Minister may by order declare that this section shall apply in relation to that country subject to the conditions of the order.

The clause also provides that in Nauru, if a seaman deserts from a vessel registered in a country, the master of the vessel may apply to the Court for aid in apprehending the deserter and the Court and its officers shall give aid within their power and on information given under oath issue a warrant for the deserter to be conveyed on board the vessel or delivered to the master or owner of the vessel or his or her agent.

**Clause 140** provides that a vessel may be detained where a vessel is at a place in Nauru or within the Nauruan waters and the Harbour Master is of the opinion that the owner or the master of the vessel or employer has failed to comply with the requirements of the Act.

A vessel may be detained until such time the Harbour Master issues a certificate showing that:

- the Harbour Master is satisfied that the owner, employer and master have complied with the provisions of this Part; and
- the vessel may go to sea without a contravention of any provision of this Part.

**Clause 141** provides that the Cabinet may make Regulations for the issue or a form of Seaman's discharge book, entries made in a Register of Seaman, the particulars to be entered in an Official Log Book and procedures and related matters.

## **PART 7 – DIVISION OF LIABILITY**

**Clause 142** provides for division of liability if 2 or more vessels damage or loss is caused to one or more of those vessels, any of their cargo or freight or 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 at fault. Liability shall be apportioned equally if it is not possible to establish degrees of fault.

**Clause 143** provides that if a loss of life or personal injury is suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of owners of the vessels shall be joint and several.

**Clause 144** provides that where loss of life or personal injury is suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, the proportion of the damage recovered against the owners of one of the vessels exceeds the proportion in which the vessel was at fault, they may recover by way of contribution to the amount of the excess from the owners of the other vessel or vessels but to the extent in which those vessels were at fault.

**Clause 145** provides that in addition to any other remedy provided by law, the person entitled to any contribution under Clause 144 shall have for the purpose of recovering the contribution under this Act, the same rights and powers as the person entitled to sue for damages in the first instance.

## **PART 8 – MARINE POLLUTION**

**Clause 146** provides that the following International Maritime Conventions relating to marine pollution may have the force of law in the Republic:

- International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 as modified by the Protocol of 1978 relating thereto for Annex I to V;
- Protocol of 1997 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as Modified by the Protocol of 1978 Relating Thereto for Annex VI;
- Protocol of 1992 relating to the International Convention on Civil Liability for Oil Pollution Damage (CLC);



Protocol of 1992 relating to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992).

The Conventions only have force of law if the Republic ratifies the conventions and incorporates such conventions into domestic law.

## **PART 9 – LEGAL PROCEEDINGS**

**Clause 147** provides that the penalties for offences under the Act will be provided in the table in Schedule 3. The description of an offence given in column 2 of Schedule 3 is illustrative only and not definitive or exhaustive.

**Clause 148** provides the limitation of actions enforceable under the Act.

**Clause 149** provides the interpretation of ‘freight’ and references to damage or loss for the purpose of clause 148.

**Clause 150** provides for the jurisdiction for any offence committed under the Act. The offence is deemed to be committed in either place in which the offence was committed or place in which the offender may be.

**Clause 151** provides that a court which has jurisdiction in the Republic shall have jurisdiction over any vessel on or lying or passing off that part and overall persons on board the vessel as if the vessel or the person were within the limits of the original jurisdiction of the court.

**Clause 152** provides that a person who commits an offence or omission on board a vessel registered under this Act, is liable to be prosecuted for any offence or omission as if the offence or omission was committed in the Republic.

It is not a defence to prove that the offence or omission was committed beyond the territorial limits of the Republic.

## **PART 10 – GENERAL**

**Clause 153** provides that a declaration required under this Act may be made before the Administrator, a magistrate, notary public, Commissioner for Oaths or a diplomatic representative of Nauru.

A declaration may be made on behalf of a corporation under the common seal of the corporation.

**Clause 154** provides for the power of the Administrator to dispense with a declaration or evidence. If the person who is required to make a declaration or provide evidence to the Administrator can prove to the satisfaction of the Administrator that he or she is unable to make a declaration or provide evidence, then the Administrator can dispense with the declaration or evidence.

**Clause 155** provides that a person who in a declaration or in any document or other evidence produces to the Administrator or Registrar of Seamen a false declaration, commits an offence.

If the person willfully makes a false statement in relation to either to his or her being a qualified person, the vessel in respect of which that false statement was made is liable to forfeiture to the extent of the interest of the vessel of the declarant or unless it is proved that the person made the declaration without lawful authority.

**Clause 156** provides all certificates or other documents to which this section applies are admissible as evidence.

**Clause 157** outlines the admissibility of documents in evidence.

**Clause 158** provides that if a vessel is liable to forfeiture under the Act, the Minister may cause the vessel to be seized and detained and bring the vessel for a decision before the Court.

The Supreme Court may make a decision on such terms and condition as it thinks just order that the vessel be forfeited to the Republic.

**Clause 159** provides that a court can decide on recovery of fines by distress.

**Clause 160** provides that for the purpose of any International Maritime Organisation Convention implemented in Nauru under regulations or has an effect in Nauru, the Harbour Master, an inspector or an authorised officer may exercise all the powers of inspection:

- at all reasonable time to go on board a vessel and inspect the vessel or any part of the vessel, any part of the machinery, boats, equipment of the vessel or any articles on board a vessel;
- require the production of and inspection of any documents or certificates carried out on the vessel in accordance to the Act or any Convention; or
- require any person to answer questions relevant to exercise of power referred to above.

**Clause 161** provides that the Minister may by notice appoint a surveyor of vessels for the purpose of the Act from societies which are members of the International Association of Classification of Societies.

**Clause 162** provides that the Minister may by notice designate a person as an inspector or an authorised officer for the purpose of the Act.

**Clause 163** provides for the Cabinet to make Regulations relating to matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

**Clause 164** provides for the repeal of the following provisions of the Shipping Registration Act 1968.

(a) from section 2 the following definitions:

***'bareboat charter'*** means the contract for the lease or sub lease of a vessel for a stipulated period of time by virtue of which the charterer acquires full control and complete possession of the vessel, including the right to appoint the master and crew for the duration of the charter, but excluding the right to sell or mortgage the vessel; ***'foreign vessel'*** means a vessel that is owned by a person who:

- (a) if the person is an individual, is not a citizen of Nauru; or
- (b) if the person is a body corporate, is not established, registered or incorporated under the laws of Nauru;

***'Register'*** means:

- (a) the Register of Vessels kept by the Registrar under section 5; or
- (b) the Register of Foreign Vessels kept by the Registrar of Foreign Vessels under section 5;

***'Registrar of Foreign Vessels'*** means the Registrar of Foreign Vessels appointed under section 4A;

(b) sections 4A, 6A, 8A, 39A, 46A, 65A, 65B, 65C, 66(1)(e) to (p), 67 and 68.

**SCHEDULE 1** provides the list International Maritime Convention applicable to the Act as being ratified by the Republic.

**SCHEDULE 2** provides the list of required documents for the purposes of registration of vessels.

**SCHEDULE 3** provides for the penalties of offence committed under the Act.