

REPUBLIC OF NAURU
PORTS AND NAVIGATION BILL 2019
EXPLANATORY MEMORANDUM

The *Ports and Navigation Bill* is a Bill for the *Ports and Navigation Act 2019*.

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 *Ports and Navigation Act 2019*. The short title refers to “ports” (plural) rather than “port” (singular) as in the *Port Authority Act 2015* to allow for future growth.

Clause 2 sets out when the Bill’s provisions will commence.

Clause 3 sets out the objects of the Bill. A major object is to domesticate international obligations under the IMO mandatory conventions and other desirable conventions (to which Nauru has already acceded or plans to accede or plans to apply on a provisional basis) and Codes, including (as defined in Clause 5):

‘**AFS Convention**’ (International Convention on the Control of Harmful Anti-fouling Systems on Ships)

‘**BUNKER Convention**’ (International Convention on Civil Liability for Bunker Oil Pollution Damage)

‘**BWM Convention**’ (International Convention for the Control and Management of Ships’ Ballast Water and Sediments)

‘**CLC Convention**’ (International Convention on Civil Liability for Oil Pollution Damage, 1992 Protocol only)

‘**FUND Convention**’ (International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage)

‘**HNS Convention**’ (International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea)

‘**Intervention 1969**’ (International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties)

'ISM Code' (IMO International Management Code for the Safe Operation of Ships and for Pollution Prevention)

'LLMC Convention' (Convention on Limitation of Liability for Maritime Claims)

'MARPOL' (International Convention for the Prevention of Pollution from Ships)

'Nairobi Convention' (Nairobi International Convention on the removal of wrecks)

'PAL Convention' (Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea)

'Prevention of Collisions Convention' (International Regulations for Preventing Collisions at Sea)

'SOLAS' (International Convention for the Safety of Life at Sea)

'Salvage Convention' (International Convention on Salvage)

Clause 4 contains a dictionary of defined words and phrases used in the Bill. This is to be read together with localised interpretive provisions in different Parts.

The definition of Authority refers to the entity to be established under Clause 7 to replace the Port Authority established under the *Port Authority Act 2015* (which is to be repealed).

Clause 5 provides interpretive guidance on matters pertaining to measurement of vessels.

PART 2 – NAURU MARITIME AND PORT AUTHORITY

Division 1 – Establishment and administration

Clause 6 establishes the Authority as a body corporate and provides for the names under which it may operate.

Clause 7 establishes the Board as the governing body of the Authority as required by Section 37(1) of the *Public Enterprises Act 2019*.

Clause 8 provides for the appointment of Harbourmasters. It is based on Section 16 of the *Port Authority Act 2015* and updated. A Harbourmaster is subject to the general direction and supervision of the Chief Executive Officer as well as the terms of appointment and is responsible for:

- (a) controlling the movement of vessels in the port;
- (b) ensuring that the port and the approaches to the port are kept free of obstructions or possible obstructions to vessels using the port;

- (c) ensuring that the safety of people, property and the environment is not endangered by vessels or otherwise;
- (d) ensuring that the operations of the port in relation to vessels are conducted safely and efficiently;
- (e) co-ordinating search and rescue efforts in Nauru waters and the EEZ with other responsible agencies; and
- (f) such other matters as are specified in the Harbourmaster's terms of appointment.

The board is also allowed to appoint a deputy harbourmaster in relation to a Nauru port.

Clause 9 provides for the appointment of other officers required by international conventions to implement the regulatory functions of the Authority.

Division 2 – Objectives, functions and powers

Clause 10 sets out the objectives of the Authority. It is based on Section 10 of the *Port Authority Act 2015* and which are essential to promote, encourage and assist in the development of safe, secure, efficient and commercially viable Nauru ports.

Clause 11 sets out the functions of the Authority. It is based on Section 11 of the *Port Authority Act 2015* and updated and includes:

- (a) facilitating and encouraging trade within and through ports;
- (b) planning for future growth and development of ports;
- (c) regulating, controlling and co-ordinating business and other activities in ports or in connection with the operation of ports;
- (d) establishing contractual and other conditions for private sector participation in or outsourcing of, port and ancillary services;
- (e) regulating and controlling navigation within ports and the approaches to ports;
- (f) ensuring port safety and security;
- (g) protecting the environment from hazards arising from port operations and maritime activity;
- (h) performing such functions and exercising such powers as are conferred on the Authority by any other written law;
- (i) ensuring that the operation of ports and the regulation of the maritime sector is consistent with Nauru's international obligations; and
- (j) advising the Responsible Minister on matters relating to the maritime sector.

Clause 12 sets out the powers of the Authority. It is based on Section 12 of the *Port Authority Act 2015* and updated. These powers are subject to other written laws and so do not affect, for example, the operation of Customs or Immigration, etc. Subclause (6) has been added to

facilitate more commercial (including through public-private partnerships) role for the Authority in the future.

Clause 13 makes clear that the Authority's functions and powers are not duties and provides for a wide discretion as to the performance of functions and the exercise of powers.

Division 3 – Money and Property

Clause 14 provides for money of the Authority and makes specific provision for its handling and deposit.

Clause 15 provides for property of the Authority. It is based on Section 14 of the *Port Authority Act 2015* and updated.

Clause 16 provides that the property of the Authority not be taken in distress or execution in proceedings against any other person. This re-enacts Section 64 of the *Port Authority Act 2015*.

Division 4 – Charges

Clause 17 sets out the interpretive rules for Division 4 – Charges.

Clause 18 sets out the Authority's ability to levy charges in a much more comprehensive and flexible way than under Sections 30 and 31 of the *Port Authority Act 2015*.

Clause 19 sets out who is liable to pay charges. Under subclause (1), in respect of a vessel, the owner, the master and each person who is a consignee, consignor or shipper of goods carried on the vessel or an agent of the vessel are jointly and severally liable to pay charges.

Subclause (2) provides that in respect of goods carried on a vessel, the owner of the goods, the owner of the vessel, each consignee, consignor or shipper of the goods; and each person entitled either as owner of the goods or on behalf of that owner to the possession of the goods, are jointly and severally liable to pay charges.

Clause 20 provides for the power of entry of a duly authorised officer or employee of a port operator, onto a vessel to determine the proper amount of charges. This re-enacts Section 32 of the *Port Authority Act 2015*.

Clause 21 in subclause (1) provides for collections of charges by other parties, contemplating the possibility of public-private partnerships. Subclause (2) provides for mandatory receipts.

Clause 22 provides for interest upon overdue charges. It is based on Section 40 of the *Port Authority Act 2015* and updated.

Clause 23 provides for the recovery of charges. It is based on elements of Sections 36 and 37 of the *Port Authority Act 2015*. The Authority may recover any charges or interest as a debt owing to the Authority.

Clause 24 provides for regulations specific to Division 4. These regulations may provide for charges including any of the following:

- (a) the manner of payment of charges;
- (b) the provision of information relevant to liability to pay charges;
- (c) determination of the gross tonnage of vessels, the quantity of cargo and any other matter necessary or incidental to the calculation of charges;
- (d) the detention and inspection of a vessel;
- (e) the exemption of any vessel from charges; or
- (f) the waiver or refund of charges.

Division 5 – Transitional

Clause 25 sets out the interpretive rules for Division 5 – Transitional.

Clause 26 provides that references to the Port Authority of Nauru shall be read as references to the Authority.

Clause 27 provides for continuity and transition of the board.

Clause 28 provides for continuity and transition of the Chief Executive Officer.

Clause 29 provides for continuity and transition of the Harbourmaster.

Clause 30 provides continuity and transition of employees of the Authority.

Clause 31 provides for continuity of service of employees and appointees so that entitlements and seniority are preserved.

Clause 32 provides for continuity and transition of property of the Authority.

Clause 33 provides for continuity and transition of prior contracts of the former Authority which are wholly or partially executory at the commencement of this Bill.

PART 3 – SAFETY

Division 1 – General

Clause 34 sets out the interpretive rules for Division 1 – General.

Division 2 – Navigation

Clause 35 imports the Prevention of Collisions Convention. The International Regulations for Preventing Collisions at Sea 1972 (COLREGS) are derived from the Convention and set out the navigational rules to be followed by vessels at sea to prevent collisions.

Clause 36 provides for the application of Division 2 consistent with articles 1 and 2 of the Convention. This Division applies to Nauruan vessels everywhere as well as foreign vessels in Nauru waters.

Clause 37 elaborates clause 36, setting out the navigation requirements in relation to different vessels in different places and providing for the responsibility of the owner and master.

Clause 38 precludes a presumption of fault since it is possible that a vessel infringing COLREGS did not cause a collision. Where liability arises from collision damage it is possible to apportion liability according to the degree of fault of each ship involved without regard to presumptions.

Clause 39 provides that the master needs to ensure that planned voyages are based on SOLAS Chapter V, regulation 34 including updating of such plans:

- (a) using the appropriate nautical charts and publications for the area concerned;
- (b) taking into account any applicable guidelines and recommendations of the IMO;
- (c) taking into account any relevant routing systems;
- (d) ensuring sufficient sea room for the safe passage of the vessel throughout the voyage;
- (e) anticipating all known navigational hazards and adverse weather conditions; and
- (f) taking into account any applicable environmental protection measures and avoiding as far as possible, actions which could cause damage to the environment.

Clause 40 provides that the master needs to ensure that warnings of navigational dangers is to be shared as provided by SOLAS Chapter V, regulation 4. This Clause is based on Section 77 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Clause 41 provides for regulations specific to Division 2. These regulations may provide for navigation requirements in specific areas; requirements for the prevention of collisions, and the use of lights and signals.

Division 3 - Pilotage

Clause 42 sets out the application of Division 3 – Pilotage. It is based on Section 46(2) of the *Port Authority Act 2015* and updated. This Division applies to every vessel over 35 metres in length or over 200 gross tonnage; carrying hydrocarbons or other hazardous liquid or gaseous substances in bulk as cargo; or having any defect in its hull, machinery or equipment that might materially affect its navigation.

Clause 43 provides for compulsory pilotage. It is based on Sections 44(1) and (2) of the *Port Authority Act 2015* and updated. Unless exempted under regulations, every vessel to which this Division applies needs to use pilotage services when entering or leaving a Nauru port; or when moving between places in a Nauru port.

Clause 44 provides for the Authority to approve pilots and pilotage services. It is based on Sections 47 and 48 of the *Port Authority Act 2015* and updated. The Authority may approve for a Nauru port, on such terms and for such duration as it deems fit, competent and suitably qualified persons as pilots and as pilotage providers.

Clause 45 provides for the Authority to provide pilots, which may be by contract. It is based on Section 48 of the *Port Authority Act 2015* and updated.

Clause 46 provides for the relationship between pilot and master. An approved pilot is subject to the authority of the master of the vessel. The master of the vessel is not relieved of responsibility for the conduct and navigation of the vessel. It is based on Section 50 of the *Port Authority Act 2015*.

Clause 47 provides for the liability of owners and masters of piloted vessels. The owner or master of a vessel under compulsory pilotage is liable for any loss or damage caused by the vessel or by a fault in the conduct or navigation of the vessel in the same manner as the owner or master would be liable if pilotage were not compulsory. It is based on Section 51 of the *Port Authority Act 2015* and updated.

Clause 48 provides for immunities for the Republic and the Authority in relation to any loss or damage resulting from any act or omission in connection with the provision of pilotage services or any act or omission by an approved pilot in the conduct or the navigation of a vessel of which the person is the pilot. This combines and expands elements from sections 48 and 52 of the *Port Authority Act 2015*.

Clause 49 provides for regulations specific to Division 3. These regulations are to provide for:

- (a) training and certification of pilots and pilotage providers;
- (b) pilot transfer arrangements;
- (c) prescribing pilot boarding grounds;
- (d) operational procedures for pilots; and
- (e) charges for pilotage services.

Division 4 – Assistance at sea

Clause 50 sets out the application of Division 4 – Assistance at sea. This Division is inspired by international best practice and certain provisions of SOLAS Chapter V which are not (or are not explicitly) part of Nauru law. Some of these matters are dealt with in Part 5 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Clause 51 creates a duty on the master to render assistance to persons found at sea and in danger of being lost. It is based on Section 78 of the *Shipping (Registration of Foreign Vessels) Act 2018*. Such a duty is found in SOLAS Chapter V, regulation 33 and is also imposed by the Salvage Convention.

Clause 52 creates post-collision duties on masters of vessels. The master of a vessel involved in a collision with another is to:

- (a) render such assistance as may be necessary to save the other vessel from any danger caused by such collision;
- (b) stay by the other vessel until the master has determined that no further assistance is required; and
- (c) give to the master of the other vessel, the name of the vessel and the names of the ports from which it comes and to which it is bound.

It is based on Section 79 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Clause 53 creates duties on masters upon receiving signals of distress. On receiving a signal of distress, a master of a vessel is required to proceed with all speed to the vessel or aircraft in distress and inform the vessel or aircraft if possible of the vessel's location and that the vessel is proceeding toward the vessel or aircraft in distress. It is based on SOLAS Chapter V, regulation 33(1).

Clause 54 regulates the treatment of persons embarking ships in distress. Such persons are to be treated with humanity within the capabilities and limitations of the vessel. It is based on SOLAS Chapter V, regulation 33(6).

Clause 55 clarifies the relationship between Division 4 and salvage rights (which are unaffected). It is based on Section 80 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Division 5 – Aids to navigation

Clause 56 sets out the powers of the authority in relation to “aids to navigation”. Section 11 of the *Port Authority Act 2015* conferred functions on the (former) Authority in relation to “navigation aids” but left the (former) Authority without specific powers in that connection. Clause 12(3)(o) confers a general power and this clause is an elaboration of that Clause.

Clause 57 provides for the powers of the Harbourmaster to mitigate interference to aids to navigation from other lights. The Harbourmaster may require in writing the owner of any light or lamp or the occupier of any land on which there is any light or lamp to remove or relocate the light or lamp; vary its character, mode of display or operation; or refrain from lighting or displaying it until such light or lamp is removed or relocated or is varied.

Division 6 – Port safety

Clause 58 requires that every Nauru port have, maintain and implement a marine safety plan. A port operator may be required by the Authority to review from time to time a marine safety plan and to submit modifications for approval.

Clause 59 sets out the powers of Harbourmasters. Section 16 of the *Port Authority Act 2015* refers to the powers and duties of Harbourmasters and these are set out at Sections 20 and 21. This clause subsumes those sections which are significantly expanded to give the Harbourmaster a much wider role.

Clause 60 provides for regulations specific to Division 6. The regulations may provide for any of the following:

- (a) the driving, stopping and parking of vehicles;
- (b) the movement, handling or storage of any goods;
- (c) specifying areas within the port in which specified activity is permitted, prohibited or restricted;
- (d) the issue of permits for specified activities; or
- (e) any other matter that may pose a risk to safety or security.

Division 7 – Cargo

Clause 61 sets out interpretive guidance for Division 7 – Cargo.

Clause 62 provides for the application of Division 7. This Division applies to Nauruan vessels everywhere and to foreign vessels in Nauru waters other than in the course of innocent passage. This Division does not apply to vessels which are pleasure crafts; fishing vessels or military vessels or other vessels used only on government non-commercial service.

Clause 63 imports SOLAS Chapter VI.

Clause 64 imports various codes relating to certain types of cargo. This replaces sections 85-86 of the *Shipping (Registration of Foreign Vessels) Act 2018* (importing the Solid Bulk Cargoes Code) and unspecified requirements in relation to grain in SOLAS Chapter VI, with updates and also expands the range of applicable codes to include also:

- Code of Safe Practice for Cargo Stowage and Securing ('CSS Code')
- International Code for the Safe Carriage of Grain in Bulk ('International Grain Code')
- Code of Practice for the Safe Loading and Unloading of Bulk Grain Carriers ('BLU Code')
- Code of Safe Practice for Ships Carrying Timber Deck Cargoes ('TDC Code')

Clause 65 sets out the responsibilities of various persons in relation to the Codes to which Division 7 refers.

Clause 66 provides for regulations specific to Division 7. The regulations may be made in relation to the handling of cargo or different types of cargo; or the documentation required in relation to different categories of cargo.

Division 8 – Dangerous goods

Clause 67 sets out interpretive guidance for Division 8 – Dangerous Goods.

Clause 68 provides for the application of Division 8. This Division applies to Nauruan vessels everywhere and to foreign vessels in Nauru waters.

Clause 69 imports SOLAS Chapter VII.

Clause 70 requires compliance with the IMO Codes (as defined). This Division unifies Sections 81-84 of the *Shipping (Registration of Foreign Vessels) Act 2018* and Section 53 of the *Port Authority Act 2015* in one place, with updates, and also expands the range of applicable codes beyond the International Maritime Dangerous Goods (IMDG) Code to include also:

- Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ('BCH Code')
- Code for Existing Ships Carrying Liquefied Gases in Bulk ('EGC Code')
- Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk ('GC Code')
- International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ('IBC Code')
- International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk ('IGC Code');
- International Maritime Solid Bulk Cargoes Code ('IMSBC Code'); and

- International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium, and High-Level Radioactive Wastes on Board Ships ('INF Code').

Clause 71 sets out the responsibilities of various persons in relation to the codes to which Division 8 refers. The master of a vessel loading or unloading dangerous goods needs to ensure there is a safe system of work for members of the crew as well as other persons on board the vessel.

Clause 72 provides specifically for dangerous goods in packaged form. Such goods need to be accurately identified and classified, packaged, placarded, marked and labelled in accordance with the IMDG Code.

Clause 73 sets out the documentation requirements for dangerous goods. Such documents need to be accurately and fully completed and signed by the shipper of dangerous goods for carriage on a vessel. The owner and master of a vessel shall not accept any such goods for carriage on the vessel unless the dangerous goods document, any relevant container or vehicle packing certificate and any additional information and required documentation are provided. Every document required under this Section is to be kept for a minimum period of 3 months by the signatory, every subsequent shipper or carrier and, the owner and master.

Clause 74 provides for training and competencies in relation to the handling of dangerous goods. No person should perform a function relating to dangerous goods unless such person is competent to perform that function. Records of all trainings under this Section are to be kept for a minimum period of 1 year and made available for inspection or copying by the Authority or an Inspector.

Clause 75 provides for specific powers of owners and masters of vessels in relation to dangerous goods. An owner or master of a vessel at a Nauru port may refuse to carry any dangerous goods; open and inspect any package suspected of containing dangerous goods; and discharge, destroy, render innocuous or otherwise deal with any good on board that are considered dangerous goods; and have been taken on board without the master's knowledge and consent. This re-enacts Section 82 of the *Shipping (Registration of Foreign Vessels) Act 2015*.

Clause 76 provides for the forfeiture of dangerous goods when falsely described or improperly marked.

Clause 77 provides for regulations specific to Division 8. The regulations may provide for:

- (a) the classes of Nauruan vessels in which dangerous goods may be carried;
- (b) the quantities of dangerous goods that may be loaded to or unloaded from, a vessel at a Nauru port; and
- (c) the precautions to be observed in handling dangerous goods at a Nauru port.

Division 9 – Port State Control

Clause 78 sets out interpretive guidance for Division 9 – Port State Control.

Clause 79 provides for the application of Division 9. This Division applies to all vessels other than naval vessels.

Clause 80 sets out the powers of the Director in relation to port state control. The Director may direct the owner or master of a vessel in writing, to not enter a Nauru port; not to enter Nauru waters; not to enter the EEZ and to comply with specific requirements within a Nauru port or while entering or leaving a Nauru port, Nauru waters or the EEZ.

Clause 81 provides for the appointment of inspectors. This expands and replaces Section 162(a) of the *Shipping (Registration of Foreign Vessels) Act 2018* and brings the appointment of inspectors largely (subject to human resource capacity limitations in Nauru) into conformity with the IMO Procedures for Port State Control 2017 and the IMO Instrument Implementation Code (III Code).

Clause 82 provides for inspections by Inspectors or Harbourmasters. This expands and replaces Section 73(2) of the *Shipping (Registration of Foreign Vessels) Act 2018*. Inspections may be carried out in order to verify compliance with this Bill; compliance with any convention to which the Republic is a party; or the accuracy of information provided in respect of the vessel or its cargo. Inspections may not be carried out in the living quarters of a crew member or passenger without consent or a warrant. The Inspector or Harbourmaster needs to ensure that all efforts are made to avoid a vessel being unduly delayed as a result of an inspection. Where a vessel is unduly delayed by an inspection, the owner of the vessel is entitled to reasonable compensation. Inspections are to be carried out as far as possible, in accordance with IMO policy, Chapter 2.

Clause 83 provides for powers incidental to inspections. An Inspector or Harbourmaster may while carrying out an inspection:

- (a) require the master to stop or manoeuvre the vessel;
- (b) require the master to adopt or maintain a specified course or speed;
- (c) require a person to demonstrate the operation of any machinery or equipment on a vessel;
- (d) examine or observe any activity conducted on a vessel;
- (e) inspect, measure or conduct tests on any thing on a vessel;
- (f) inspect or copy any document on a vessel;
- (g) make a still or moving image or other recording or measurement of any thing on a vessel;
- (h) operate electronic equipment and extract, copy or transfer data therefrom;
- (i) require a person to operate electronic equipment and extract, copy or transfer data therefrom; and
- (j) take onto the vessel such equipment and materials, or be accompanied by such other persons, as the inspector requires.

Clause 84 provides for the issue of warrants and for related matters. A warrant is required if an Inspector, Harbourmaster or police officer needs to conduct an inspection in the living quarters of a crew member or passenger; enter and search premises in the Republic; or to seize, retain and subject to tests any thing that may afford evidence of the commission of an offence under this Bill.

Clause 85 provides for control measures (defined in clause 79) to be imposed on vessels in accordance with IMO Procedures for Port State Control.

Clause 86 provides for the release of vessels from detention (i.e. a control measure). Subclause (1) provides that a vessel may be released from detention where the Inspector or Harbourmaster is satisfied that the further detention of the vessel is no longer necessary.

Subclause (3) provides that reasonable compensation is payable in respect of the detention of a vessel. Compensation is payable: by the owner of the vessel if the detention was reasonable in all circumstances or, where the detention was not reasonable in all circumstances, payable to the owner.

Clause 87 requires masters and others to comply with various directions or requirements given on an inspection.

Clause 88 provides an appeal mechanism based on the Tokyo Memorandum of Understanding (a regional multilateral agreement on port state control). A complaint may be made in writing by a person aggrieved by the detention of a vessel to the flag state or the recognized organisation responsible for the certificate of the vessel in connection with the relevant deficiency.

PART 4 – LIABILITY AND LIMITATION OF LIABILITY

Division 1 - General

Clause 89 provides interpretive guidance to Part 4.

Clause 90 provides for the application of Part 4. Part 4 applies to Nauruan vessels everywhere and to foreign vessels in Nauru waters and the exclusive economic zone. Unless the context or regulations provide otherwise, this Part does not apply to military vessels or other vessels owned or operated by a State on government non-commercial service.

Clause 91 provides for liability of owners of vessels and for liability to be limited in accordance with the Conventions given force under that Part.

Division 2 – Passengers and luggage

Clause 92 imports the Athens *Convention* relating to the Carriage of Passengers ('PAL') Convention. The Convention was designed to consolidate and harmonize two earlier conventions

dealing with passengers and luggage and adopted in 1961 and 1967 respectively. The Convention establishes a regime of liability for damage suffered by passengers. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. However, unless the carrier acted with intent to cause such damage, or recklessly and with knowledge that such damage would probably result, it can limit liability.

Clause 93 deems contracts of carriage to be made in Nauru limit arguments arising from a known weakness in the Athens *Convention* relating to the Carriage of Passengers and their Luggage by Sea ('PAL') Convention. A contract of carriage is deemed to be made in the Republic if the passenger is ordinarily resident in the Republic or in the Republic at the time the contract concluded. Subclause (2) invalidates 'choice of law' clauses in contracts of carriage which may seek to negate the effect of the PAL Convention.

Division 3 – General maritime claims

Clause 94 imports the LLMC Convention. The *Convention on Limitation of Liability for Maritime Claims* (LLMC Convention) allows shipowners to limit their liability to pay compensation for general ship-sourced damage. The LLMC Convention applies to claims for loss of life and personal injury, as well as loss of or damage to property. It also applies to pollution damage where no other Convention applies.

Clause 95 creates exceptions to the limitation of liability under the LLMC Convention to avoid hardship.

Clause 96 establishes priority of claims in respect of damage to port facilities (as defined) and other things, to protect State infrastructure.

Clause 97 creates exceptions to the LLMC Convention.

Division 4 – Bunker oil

Clause 98 imports the Bunker Convention. The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Bunkers Convention provides a free-standing instrument covering pollution damage only.

Clause 99 provides for the application of Division 4 – Bunker Oil. This Division applies to pollution damage occurring in the Republic, Nauru waters or the exclusive economic zone; and preventive measures, wherever taken, to minimise pollution damage in Nauru waters or the exclusive economic zone. This Division does not apply to pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage ('CLC Convention').

Clause 100 provides for the immunity of responders to “pollution damage” (as defined in the Bunker Convention). This is not to dissuade responders.

Division 5 – Oil from tankers

Clause 101 imports the 1992 CLC Protocol. The Protocol governs the liability of vessel owners for oil pollution damage. The owner has strict liability for pollution damage caused by the escape or discharge of persistent oil. This means that the owner is liable even in the absence of fault. The owner is exempt from liability only if it is proved that:

- the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or
- the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

Clause 102 imports the International Oil Pollution Compensation *Fund* (‘1992 FUND Convention’). The Convention, which is supplementary to the CLC Convention, establishes a regime for compensating victims when compensation under the CLC is not available or is inadequate. The International Oil Pollution Compensation Fund, 1992 (1992 Fund) was set up under the 1992 Fund Convention. The 1992 Fund pays compensation when:

- the damage exceeds the limit of the shipowner’s liability under the CLC,
- or the shipowner is exempt from liability under the CLC, or
- the shipowner is financially incapable of meeting his obligations in full under the CLC and the insurance is insufficient to pay valid compensation claims.

Clause 103 provides for the application of Division 5 – Oil from tankers. This Division applies to pollution damage occurring in the Republic, Nauru waters or the exclusive economic zone; and preventive measures, wherever taken, to minimise pollution damage in Nauru waters or the exclusive economic zone.

Clause 104 provides for the “1992 Fund” (as defined) to have legal personality for the purposes of making, defending or intervening in claims.

Clause 105 provides for contributions to be made to the 1992 Fund in accordance with the Convention.

Clause 106 provides for the immunity of responders to “pollution damage” (as defined in the CLC and FUND Conventions). This is not to dissuade responders.

Division 6 – Hazardous and noxious substances

Clause 107 provides for the separate commencement of Division 6 – Hazardous and noxious substances, providing flexibility as to the HNS Protocol.

Clause 108 sets out interpretive guidance for Division 6.

Clause 109 imports the 2010 HNS Protocol. In May 1996, the IMO organized an international conference in London, where states adopted the HNS Convention. The convention is based on the model of the 1992 International Convention on Civil Liability for Oil Pollution Damage, which covers pollution damage caused by spills of crude oil from tankers. In 2009, the Convention had still not entered into force due to an insufficient number of ratifications. In 2010, a second international conference adopted a protocol to the convention, which came to be known as 2010 HNS Protocol. The protocol was designed to overcome some implementation problems that had discouraged states from ratifying the original convention.

Clause 110 provides for the application of the 2010 HNS Protocol, consistent with articles 3 and 4(1), (2) and (3).

Clause 111 provides for the HNS Fund (as defined) to have legal personality for the purposes of making, defending or intervening in claims.

Division 7 – Damage to ports

Clause 112 provides for responsibility for damage to ports.

Division 8 – Multiple fault

Clause 113 provides for the application of Division 8 – Multiple fault

Clause 114 provides rules for the division of liability. Where damage or loss is caused by the fault of 2 or more vessels to 1 or more of those vessels; their cargoes or freight; any property on board; property outside the vessel or the environment, the liability to make good the damage shall be proportionate to the degree each vessel was at fault. Where it is not possible to establish different degrees of fault having regard to all circumstances of the case, liability shall be equally apportioned. This expands and replaces Section 142(1) of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Clause 115 provides rules for joint and several liabilities for personal injury and death. This expands and replaces Section 143 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Clause 116 provides contribution for personal injury and death. This expands and replaces Sections 144 and 145 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Division 9 – Limitation of actions

Clause 117 provides for the application of Division 9 – Limitation of actions. This Division applies to any proceeding to enforce any claim or lien in respect of damage or loss caused by the fault of any vessel; or loss of life or personal injury caused by the fault of any vessel.

Clause 118 establishes time limits for proceedings to be brought.

PART 5 – ENVIRONMENTAL PROTECTION

Division 1 – General

Clause 119 sets out interpretive guidance for Part 5.

Clause 120 provides for the application of Part 5 in accordance with the BWM Convention, MARPOL and the AFS Convention. This Part applies to Nauruan vessels everywhere and to foreign vessels in Nauru waters and the exclusive economic zone. Unless the context or regulations provide otherwise, this Part does not apply to military vessels or other vessels owned or operated by a State on government non-commercial service.

Clause 121 saves rights and obligations under customary international law (as reflected in the United Nations Convention on the Law of the Sea).

Division 2 – Ballast water

Clause 122 sets out interpretive guidance in relation to Division 2 – Ballast Water.

Clause 123 imports the BWM Convention. The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) was adopted in 2004 to introduce global regulations to control the transfer of potentially invasive species. This requires vessels to manage their ballast water.

Clause 124 provides for the application of Division 2.

Clause 125 prohibits entry to a Nauru port to vessels without an applicable certificate or which do not correspond to the certificate.

Clause 126 requires vessels to which the Division applies to have a ballast water management plan in accordance with the Convention.

Clause 127 requires vessels to which the Division applies to have a ballast water record book in accordance with the Convention.

Clause 128 prohibits the discharge of ballast water other than in accordance with the Convention.

Clause 129 provides for equivalent compliance to the Convention as may be prescribed by regulations.

Division 3 – Marine pollution

Clause 130 sets out interpretive guidance for Division 3 – Marine Pollution.

Clause 131 imports MARPOL. This is the main international convention aimed at the prevention of pollution from ships caused by operational or accidental causes.

Clause 132 prohibits entry to Nauru waters without a “necessary document” (as defined) or where the vessel does not correspond with that document.

Clause 133 gives effect to MARPOL Annex I (Oil).

Clause 134 gives effect to MARPOL Annex II (Noxious liquid substances).

Clause 135 gives effect to MARPOL Annex III (Harmful substances in packaged form).

Clause 136 gives effect to MARPOL Annex IV (Sewage).

Clause 137 gives effect to MARPOL Annex V (Garbage).

Clause 138 gives effect to MARPOL Annex IV (Air pollution).

Division 4 – Anti-fouling systems

Clause 139 sets out interpretive guidance for Division 4 - Anti-fouling systems.

Clause 140 provides for the application of Division 4 in accordance with the AFS Convention.

Clause 141 imports the AFS Convention. The Convention prohibits the use of harmful substances in anti-fouling paints used on ships and establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems. Anti-fouling paints are used to coat the bottoms of ships to prevent sea life such as algae and molluscs attaching themselves to the hull – thereby slowing down the ship and increasing fuel consumption.

Clause 142 prohibits entry to Nauru waters without a certificate (as defined) or where the vessel does not correspond with the certificate.

Clause 143 prohibits the use of anti-fouling systems in Nauru and in Nauru waters and certain vessels.

PART 6 – WRECK AND SALVAGE

Division 1 – Preliminary

Clause 144 sets out interpretive guidance for Part 6.

Clause 145 provides for the application of (the different divisions of) Part 6.

Division 2 – Wreck

Clause 146 imports the Nairobi Convention. The purpose of the convention is to establish uniform rules for the prompt and effective removal of ship wrecks located in the exclusive economic zone of a state that may be hazardous to navigation or to the environment. The convention gives states authority to remove wrecks from the portion of its EEZ that is within international waters without any implication that the state is claiming sovereignty over that area. This will lead to the repeal of the *Salvage of Derelict Wreck Act 1969* and the *Wreck and Salvage Act 1902*.

Clause 147 provides for the reporting requirements in relation to wrecks, consistent with article 5 of the Convention and supplemented by notice requirements in subclause (3).

Clause 148 provides for locating and marking wrecks, consistent with articles 7 and 8 of the Convention.

Clause 149 provides powers for the removal of wrecks and confers specific powers upon the Director in that connection, consistent with articles 2 and 9 of the Convention

Clause 150 provides for the liability of owners in relation to wrecks, consistent with articles 10(a) and 11(1) of the Convention.

Clause 151 provides for the recovery of costs, loss and damage resulting from wrecks, consistent with articles 11 and 13 of the Convention and supplemented by provision for joint and several liability where liability cannot be separated in subclause (4).

Clause 152 provides for compulsory wreck removal insurance, consistent with article 12 of the Convention.

Clause 153 provides for certificates of wreck removal insurance to be given, consistent with article 12 of the Convention.

Clause 154 sets out the rights of third parties against wreck insurers, consistent with article 12 of the Convention.

Clause 155 sets out various savings in relation to the Division.

Division 3 – Historic Wrecks

Clause 156 provides for the declaration of historic wrecks to preserve the cultural history of Nauru.

Clause 157 provides that persons in possession of historic wrecks are required to notify the Director.

Clause 158 sets out the consequences of declaring a wreck to be a historic wreck.

Division 4 – Salvage

Clause 159 imports the Salvage Convention of 1989. This replaced the 1910 Brussels Convention which had established the principle (known as "no cure, no pay") that a salvor is rewarded only if the salvage operation successfully rescues the ship or its cargo. The Salvage Convention expanded on this principle by introducing the concept of an "enhanced salvage award", which may be awarded by an arbitrator or a tribunal if the salvor took effective action to prevent or minimize environmental damage but nevertheless failed to salvage the ship or its cargo.

Clause 160 provides for salvage claims against the Republic.

Clause 161 provides for salvage claims by the Republic.

Clause 162 provides for apportionment between salvors.

Clause 163 provides for salvage or persons and is incidental to article 16 of the Convention.

Clause 164 provides for detention of property to secure salvage claims and is intended to support article 21 of the Convention.

Clause 165 sets out limitation periods in respect of salvage claims, this being left open under the Convention.

Clause 166 sets out savings in respect of the Division.

PART 7 – ACCIDENTS AND INCIDENTS

Division 1 – Preliminary

Clause 167 sets out interpretive guidance for Part 7. In particular, the definition of 'accident' is much wider than the definition of "casualty" in Section 87 of the *Shipping (Registration of Foreign Vessels) Act 2018* that it will replace. Indeed, it is slightly wider than the concept of a

“marine casualty” in paragraph 2.9 of the “Casualty Investigation Code” (as defined). The definition of incident is based on paragraph 2.10 of the Code.

Clause 168 provides for reporting obligations in relation to accidents and incidents and for the content of reports.

Division 2 – Investigation

Clause 169 provides for a preliminary investigation. This is based on Section 89 of the *Shipping (Registration of Foreign Vessels) Act 2018* but considerably expanded.

Clause 170 provides for Marine Inquiries. This is based on Section 90 of the *Shipping (Registration of Foreign Vessels) Act 2018* but considerably expanded. Account has been taken of equivalent provisions in Sections 82-83 of the *Civil Aviation Act 2011* and various international instruments have informed its content:

- SOLAS regulation I/21
- MARPOL articles 8, 12
- UNCLOS article 94(7)
- Code clauses 2.11, 4.1, 11

Clause 171 provides for the procedure of a Marine Inquiry. A Marine Inquiry shall be conducted and may inform itself in such manner as the chairperson deems appropriate having regard to the subject matter.

Clause 172 provides for information gathering powers of a Marine Inquiry. This is based on Sections 89 and 90(4) of the *Shipping (Registration of Foreign Vessels) Act 2018* but considerably expanded. The Code specifically requires that states ensure that their national law provide investigators with certain powers and the powers in this clause are wider than currently provided.

Clause 173 (partly) overcomes the privilege against self-incrimination in accordance with chapter 24 of the Code and consistently with Section 17 of the *Commissions of Inquiry Ordinance 1948*.

Clause 174 provides for final reports of the Marine Inquiry and the types of orders that can be made. This is based on Section 94 of the *Shipping (Registration of Foreign Vessels) Act 2018* but expanded.

Clause 175 provides for reporting to the IMO to update its databases in accordance with the guidance in MSC-MPEEC.3/Circ.4.

Division 3 – Re-hearing and appeal

Clause 176 provides for re-hearing of the Marine Inquiry in limited situations. This takes up an idea raised in Section 94(2) of the *Shipping (Registration of Foreign Vessels) Act 2018* but here clarified.

Clause 177 provides for appeal (on a point of law) to the Supreme Court.

PART 8 – OFFENCES

Division 1 – Preliminary

Clause 178 sets out interpretive guidance in relation to Part 8.

Clause 179 provides for extraterritorial jurisdiction, noting that offences are very likely to raise extraterritorial questions as that under Section 7(2) of the *Crimes Act 2016*.

Division 2 – Prosecutions

Clause 180 provides that the Director of Public Prosecutions (or person authorised by the Director of Public Prosecutions) may prosecute offences under this Bill.

Clause 181 sets out time limits for commencing prosecutions.

Clause 182 permits the prosecution to make averments (subject to Section 28 of the *Crimes Act 2016*).

Division 3 – Consequential orders

Clause 183 provides that costs and expenses may be recoverable on conviction for an offence.

Clause 184 provides that compensation for victims of offences may be ordered upon conviction.

Clause 185 provides for situations in which persons committing offences have profited from them. Such persons may be ordered to disgorge such profits.

Clause 186 provides that a consequential order under Division 3 be made on the balance of probabilities and may be recovered as a debt.

Clause 187 provides that penalties upon conviction may be recovered by distress. This is a re-enactment of Section 159 of the *Shipping (Registration of Foreign Vessels) Act 2018*.

Division 4 – Infringement notices

Clause 188 provides for a scheme of infringement notices to enforce lower level offences and for which a lower level of penalty is applicable. This is intended to be less burdensome than full prosecution and to more realistically and expeditiously deter lower level offending.

Clause 189 provide for the withdrawal and substitution and of infringement notices.

Clause 190 sets out the effect of payment of a modified penalty under an infringement notice

Division 5 – General offences

Clause 191 creates an offence for failing to keep, maintain or produce records.

Clause 192 creates an offence of failing to give notice.

Clause 193 creates an offence of giving information that is misleading.

Clause 194 creates an offence of hindering.

Clause 195 creates an offence of failing to comply with directions.

Clause 196 creates an offence of breach of duty.

Division 6 – Offences relating to Part 3

Clause 197 creates an offence of operating a vessel in contravention of COLREGS.

Clause 198 creates an offence of navigating without a pilot.

Clause 199 creates offences in relation to aids to navigation.

Clause 200 creates offences of trespassing on vessels.

Division 7 – Offences relating to Part 5

Clause 201 provides interpretive guidance in relation to this Division 7.

Clause 202 creates offences relating to the failure to have necessary certificates and other documents while in various places.

Clause 203 creates offences relating to the discharge of pollutants.

Division 8 – Offences relating to Part 6

Clause 204 creates offences relating to the removal of wrecks.

Clause 205 creates offences relating to wreck removal insurance.

Clause 206 creates offences of defacing or obliterating wreck marking.

Division 9 – Offences relating to Part 7

Clause 207 creates an offence of contempt of a Marine Inquiry.

Division 10 – Offences relating to Part 10

Clause 208 creates an offence of contravening a regulation for which no other offence is provided.

Clause 209 creates an offence of contravening an emergency rule.

PART 9 - MISCELLANEOUS

Division 1 – Liability of officials

Clause 210 provides for immunities of officials consistent with Section 147 of the *Civil Aviation Act 2011* and other regulatory legislation.

Division 2 – Nuisances

Clause 211 provides for regulations to be made for the abatement of nuisances.

Clause 212 limits the availability of actions for nuisance corresponding to section 148 of the *Civil Aviation Act 2011*.

Division 3 – Privileges

Clause 213 preserves privileges and immunities, consistently with Section 156 of the *Civil Aviation Act 2011* (and also reproduced in the *Maritime Security Act 2019*).

Clause 214 provides for directions to be made about the application of the Act to persons accorded privileges or immunities, consistently with Section 224 of the *Civil Aviation Act 2011*.

Division 4 – Documents

Clause 215 provides interpretive guidance in relation to this Division 4 – Documents.

Clause 216 provides guidance in relation documentary requirements.

PART 10 – SUBORDINATE INSTRUMENTS

Division 1 - Regulations

Clause 217 provides for a regulations power and for the kinds of regulation which may be made.

Clause 218 provides for the further domestication of international agreements by regulation, consistently with Section 172 of the *Civil Aviation Act 2011*.

Division 2 – Rules

Clause 219 provides for a rule-making power, Sections 173-174 of the *Civil Aviation Act 2011*.

Clause 220 sets out how rules are to be made.

PART 11 – REPEALS AND TRANSITIONAL MATTERS

Division 1 - Repeal

Clause 221 provides for repeal of redundant legislation.

Division 2 – Consequential amendments

Clause 222 provides for incidental amendments as described in the Schedule.

Division 3 - Transitional

Clause 223 provides interpretive guidance in relation to Division 3 – Transitional.

Clause 224 saves regulations made under Acts to be repealed.

Clause 225 saves documents issued under Acts to be repealed.

Clause 226 saves delegations made under Acts to be repealed.

Clause 227 is a general transitional provision.

Clause 228 provides for the making of transition-specific regulations.