

Chapter 242
Merchant Shipping Act 1975

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA



Chapter 242

Merchant Shipping Act 1975

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Merchant Shipping Act 1975,

Being an Act to provide for Merchant Shipping.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1)¹ In this Act, unless the contrary intention appears–

“**agreement**” in relation to–

- (a) a ship, means an agreement made under Section 110 between an employer and a crewman in respect of service by the crewman in the ship; and
- (b) a crewman, means an agreement made under Section 110 between the crewman and an employer; and
- (c) an employer, means an agreement made under Section 110 between the employer and a crewman;

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

“**appropriate coasting trade licence**” means a coasting trade licence which permits, or would permit, the ship in respect of which the licence is granted to be engaged in the coasting trade for the provision of the shipping service on which the ship is, or is about to be, engaged;

¹ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1.

²**“assistant to the Registrar”** means a person appointed by the Registrar under Section 9 to be his assistant;

³**“Authority”** means the National Maritime Safety Authority established by the *National Maritime Safety Authority Act 2003*;

“boarding ground” means a place at which the master of a ship is required to present the ship for the purposes of embarking or disembarking a pilot;

“casualty”, in relation to a ship, means—

- (a) the loss or the presumed loss, the stranding, the grounding or the abandonment of, or damage to, the ship or boat belonging to the ship; or
- (b) damage caused by a ship or by a boat belonging to the ship; or
- (c) a loss of life caused by—
 - (i) fire on board; or
 - (ii) accident to; or
 - (iii) accident occurring on board,
 the ship or a boat belonging to the ship;

“certificate of competency” means a certificate issued to a crewman under Section 104 which entitles the crewman to be employed in the capacity stated in that certificate;

“the Coasting Trade Committee” means the Coasting Trade Committee established under Section 234;

“coasting trade licence” means a licence granted under Section 222;

“coasting trade permit” means a permit issued under Section 232;

“the Collisions Convention” means the Convention on the International Regulations for Preventing Collisions at Sea 1972 as affected by any amendment other than an amendment objected to by the State, made under Article 6 of that Convention;

“the commencement date” means 16 September 1975, being the date on which the *Merchant Shipping Act 1975* came into force;

“compulsory pilotage area” means the whole or a part of a pilotage area in respect of which a determination has been made under Section 200;

² Section 1 Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1; Subsection (1) amended by No. 70 of 2006, s. 1.

³ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

“continental shelf” has the same meaning as in the Convention on the Continental Shelf made at Geneva on 26 April 1958 as amended from time to time;

“the Court” means the National Court or the District Court;

“crew” means those persons employed—

- (a) on board; and
- (b) in the business of,

a ship but does not include a pilot or a person temporarily employed on board the ship while the ship is at a port;

“crew accommodation”, in relation to a ship, means those parts of the ship which are set aside for the exclusive use of the crew;

“Crew List”, in relation to a ship, means a list of the crew of the ship made and maintained under Section 158;

“crewman”, in relation to a ship, means a person other than—

- (a) a pilot; or
- (b) a person temporarily employed on board a ship while the ship is at a port,

being a person who is engaged or employed in any capacity on board the ship and in the business of the ship;

“Crewman’s Identity Card” means a Crewman’s Identity Card issued under Section 154;

“dangerous goods” means any goods listed as dangerous goods in the International Maritime Dangerous Goods Code published by the Intergovernmental Maritime Consultative Organization, London, in 1965 as amended from time to time;

“distressed crewman” means a person who—

- (a) is, or has been, a crewman on a ship; and
- (b) is at a place away from his proper return port by reason of having been—
 - (i) left behind from a ship; or
 - (ii) shipwrecked in a ship; and
- (c) has not elected under Section 137 to be deemed not to be a distressed crewman;

“employer”, in relation to a crewman, means the person who has entered into an agreement with the crewman for the employment of the crewman on a ship;

“Employment Record Book” means an Employment Record Book issued under Section 156;

“equipment”, in relation to a ship, includes every thing or article belonging to or used in connection with, or necessary for the navigation and safety of, the ship;

“exempt pilot” means a person holding a current pilotage exemption certificate that entitles him to be in navigational command of a particular ship, or of a ship within a particular class of ship, in the pilotage area in respect of which it is issued;

“existing ship” means a ship that is not a new ship;

“general category licence” means a coasting trade licence referred to in Section 223(1)(a);

“Government ship” means a ship—

- (a) that belongs to the State or to an authority or instrumentality of the State; or
- (b) that is held by any person on behalf of, or for the benefit of, the State,

but does not include a ship belonging to—

- (c) the Defence Force; or
- (d) the corporation registered as the Papua New Guinea Shipping Corporation Proprietary Limited;

“internal waters” means any waters open to, or used for, navigation on the landward side of the base line from which the limits of the territorial sea of Papua New Guinea are measured;

“the Investment Promotion Authority” means the body by that name established by Section 5 of the *Investment Promotion Act 1992*;

⁴**“Labour Shipping Officer”** means a person appointed under Section 102(1)(b);

“left behind”, in relation to a crewman—

- (a) means the leaving behind of a crewman belonging to a ship at a port or place other than the proper return port of the crewman after the departure of the ship from that port or place; but
- (b) does not include the leaving behind of a crewman, who without the consent of the master of the ship, has left the ship to which he belongs with the intention of not returning to that ship;

“length”, in relation to a ship, means the distance measured from the fore part of the stem to the aft side of the head of the stern post in a direct

⁴ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

line over the fore and aft centre line or, in a ship not having a stern post, to the fore side of the rudder stock at the point where the rudder stock passes out of the hull;

“licensed pilot” means a person holding a current pilotage licence that entitles him to be in pilotage charge of a ship in the pilotage area in respect of which it is issued;

“load line” means a line marked on a ship indicating the depth to which a ship may safely be loaded;

“the Load Line Convention” means the International Convention on Load Lines 1966 as affected by any amendment, other than an amendment not accepted by the State;

“Load Line Convention ship” means a ship that is–

- (a) of a kind to which the Load Line Convention applies; and
- (b) registered in a country the government of which is a party to the Load Line Convention;

⁵**“Marine Inquiry”** means a Marine Inquiry caused to be held by the Authority under Section 165, and includes the person holding such Inquiry;

“marine navigational aid”–

- (a) means a lighthouse, lightship, beacon, marker, buoy or any structure, device or apparatus that is established or maintained to be used principally as an aid to marine navigation; and
- (b) includes any vessel, stores, equipment or other property the principal use of which is the servicing of an aid to marine navigation,

but, in the case of a ship other than a lightship, does not include any light, structure, device or apparatus which is part of the ship;

“master”, in relation to a ship, means the person having lawful command or charge of the ship but does not include a pilot;

“the Merchant Shipping Acts of the United Kingdom” means the Act of the United Kingdom Parliament entitled the Merchant Shipping Act 1894 and includes–

- (a) all other Acts of the United Kingdom Parliament that are to be construed as one with that Act; and
- (b) all Orders in Council and Proclamations under any such Act; and
- (c) all other rules, regulations or notices made or given by any United Kingdom Authority under any such Act;

⁵ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

“mortgage” means the instrument creating the security under Section 39;

“National Flag” means the National Flag of Papua New Guinea;

“the National Investment and Development Authority” . . . [Omitted]

“new ship” means a ship–

- (a) the keel of which was laid; or
- (b) that has been substantially–
 - (i) altered; or
 - (ii) reconstructed,

after 1 January 1977, being the date on which the *Merchant Shipping (Amendment) Act 1976* came into force;

“Official Log Book”, in relation to a ship, means the Official Log Book kept under Section 157;

“offshore ship” means a ship that is–

- (a) engaged in the exploration or exploitation of the continental shelf of the country; and
- (b) operating to, or from, or is based at, a port or place in the country;

“part of a ship” includes the hull, machinery and equipment of a ship;

“passenger” means a person carried on board a ship with the knowledge or consent of the owner or master of the ship but does not include–

- (a) a person engaged in any capacity on board the ship in the business of the ship; or
- (b) a child under the age of one year;

“passenger ship” means a ship that is–

- (a) engaged on an international voyage; and
- (b) carrying more than 12 passengers;

“pilot”, in relation to a ship, means any person not belonging to the ship who has the lawful conduct of the ship;

“pilotage area” means a port or place declared as a pilotage area under Section 196;

“pilotage authority”, in relation to a pilotage area, means the pilotage authority in respect of that area;

“pilotage exemption certificate” means a pilotage exemption certificate issued under Section 206;

“pilotage licence” means a pilotage licence issued under Section 206;

“pleasure craft” means a vessel that is–

- (a) exclusively used for pleasure; and
- (b) not used for—
 - (i) hire; or
 - (ii) reward; or
 - (iii) any commercial purpose;

⁶**“port of sub-registry”** means a port of sub-registry appointed by the Authority under Section 13(2);

⁷**“principal port of registry”** means the principal port of registry appointed by the Authority under Section 13(1);

“proper return port”, in relation to—

- (a) a crewman, means such port or place as is—
 - (i) agreed on by the employer and crewman; and
 - (ii) named in the agreement; and
- (b) a distressed crewman, means a port that is deemed under Section 135 to be the proper return port of the crewman;

“qualified crewman” means a member of the crew of a ship who holds a valid certificate of competency issued under Section 104;

“qualified person” means—

- (a) a person referred to in Section 14(2)(a); and
- (b) a corporation referred to in Section 14(2)(b);

“radio installation” means a radiotelegraphy or radiotelephony installation but does not include a radio-navigational aid;

“rate”, in relation to a ship, means the charge made in respect of the provision of a shipping service by the ship;

“the Register” means the Register of Ships referred to in Section 11(1);

“Register of Crewmen” means the Register of Crewmen kept under Section 155;

“the Registrar” means the Registrar of Ships;

“safety certificate” means a certificate granted under Section 70;

“the Safety Convention” means the International Convention for the Safety of Life at Sea 1974 as affected by any amendment other than an amendment not accepted by the State which has been made and has come into force under Article VIII of the Convention and includes the Protocol of 1978 relating to the Convention;

⁶ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

⁷ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

“Safety Convention ship” means a ship that is–

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

⁸**“the STCW Convention”** means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as affected by any amendment made under Article XII of the said Convention;

“serious injury” means an injury as a result of which permanent incapacity or death may occur;

“ship” includes–

- (a) in relation to the ownership of a ship, a share in the ship and any interest in the ship or share; and
- (b) an air cushioned vehicle; and
- (c) every description of vessel used, or capable of being used, in navigation by water, but does not include a vessel ordinarily propelled by oars or a vessel or air cushioned vehicle belonging to the Defence Force or to any of the defence forces of any other country;

“Shipping Officer Service Fees” means the fees referred to in Section 151;

“shipping service” in relation to a ship that is engaged in the coasting trade, includes–

- (a) the transport by water of goods or passengers; and
- (b) the conduct of marine operations including salvaging, towing, barging, dredging, drilling, surveying, constructing, lifting and exploring for, or exploiting, the resources of the seabed;

“special category licence” means a coasting trade licence referred to in Section 223(1)(b);

“sub-division load line” means a load line indicating the depth to which a passenger ship may be loaded having regard to–

- (a) the extent to which the ship is sub-divided; and
- (b) the space for the time being allotted to passengers;

“Survey Master Sheet” means the record of surveys and inspections of a ship required by the regulations to be kept on board the ship;

⁸ Section 1(1) (definition of “the STCW Convention”) inserted by *Merchant Shipping (Amendment) Act 1996* (No. 67 of 1996), s1.

⁹“**surveyor**” means a surveyor of ships appointed by the Authority under Section 57;

“**suspended person**” means a person whose name is included in the list of suspended persons kept under Section 148;

“**this Act**” includes any regulations made under this Act;

“**troopship**” means a ship that is—

- (a) in the course of being used for the transport of members of the Defence Force or the defence force of any other country; and
- (b) owned or operated by and is under the control of the State or the government of the other country;

“**unsafe ship**” means a ship that is deemed to be an unsafe ship under Section 94.

(2) A reference in a Part of this Act to “**this Part**” includes a reference to any regulation made in respect of the matters contained in that Part.

(3) Subject to Subsection (4), a ship shall, for the purposes of this Act, be deemed to have—

- (a) been taken or sent to sea; or
- (b) gone or proceeded to sea; or
- (c) proceeded on a voyage,

if the ship has been got under way for the purposes of—

- (d) going to sea; or
- (e) plying or running; or
- (f) proceeding on a voyage; or
- (g) in the case of an offshore ship—undertaking offshore operations.

(4) A ship shall not be deemed under Subsection (3) to have—

- (a) been taken or sent to sea; or
- (b) gone or proceeded to sea; or
- (c) proceeded on a voyage,

by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

(5) Unless the contrary intention appears, a reference in this Act (other than in Parts II, III and IX) to the owner of a ship shall, where the ship is operated by a person other than the owner, be read as including a reference to that person.

(6) The Minister may, by instrument, certify that an amendment to—

⁹ Section 1 Subsection (1) amended by No. 70 of 2006, s. 1.

- (a) the Collisions Convention; or
- (b) the Load Line Convention; or
- (c) the Safety Convention,

is an amendment that is objected to, or that is not accepted by, the State.

(7) In any proceedings under this Act a certificate given under Subsection (6) is *prima facie* evidence of the matters stated in the certificate.

(8) A ship is deemed to be engaged in the coasting trade where the ship—

- (a) takes on board passengers or cargo at a port or place in the country to be carried to or landed at another port or place in the country; or
- (b) leaves a port or place in the country—
 - (i) to undertake the provision of a shipping service within the territorial waters of the country; or
 - (ii) being a ship that is an offshore ship—to undertake offshore operations.

PART II. – NATIONAL CHARACTER AND FLAG.

2. PENALTY FOR UNDULY ASSUMING PAPUA NEW GUINEA CHARACTER.

(1) If a person uses the National Flag or assumes Papua New Guinea national character on board a ship owned in whole or in part by a person who is not a qualified person for the purpose of making the ship appear to be a ship registered under this Act, the ship is liable to forfeiture unless the use or assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for the enforcement of the forfeiture of a ship under Subsection (1), the burden of proving a right to use the National Flag or to assume Papua New Guinea national character lies on the person using or assuming that Flag or that character.

3. PENALTY FOR CONCEALMENT OF PAPUA NEW GUINEA CHARACTER OR ASSUMPTION OF FOREIGN CHARACTER.

(1) A master or owner of a ship registered under this Act who–

- (a) does or permits anything to be done; or
- (b) carries or permits to be carried on a ship, any papers or documents,

with intent to–

- (c) conceal the Papua New Guinea character of the ship from a person entitled by Papua New Guinea law to inquire into the character of the ship; or
- (d) deceive a person referred to in Paragraph (c); or
- (e) assume a foreign character,

is guilty of an offence.

Penalty: ¹⁰A fine not exceeding K20,000.00.

(2) Where the master or owner of a ship is convicted of an offence under Subsection (1), the ship is liable to forfeiture.

4. PENALTY FOR ACQUIRING OWNERSHIP IF UNQUALIFIED.

If a person, other than a qualified person, acquires as owner any interest, either legal or beneficial, otherwise than by such transmission as is provided for in this Act, in a ship registered under this Act, that interest is liable to forfeiture.

5. LIABILITIES OF UNREGISTERED SHIPS.

(1) Where a ship that is required to be registered under this Act is not so registered, the ship shall not be entitled–

¹⁰ Section 3 Subsection (1) amended by No. 70 of 2006, s. 2.

- (a) to any benefit, privilege, advantage or protection usually enjoyed by a ship registered under this Act; or
- (b) to use the National Flag; or
- (c) to assume Papua New Guinea national character.

(2) In the case of a ship to which Subsection (1) applies, the owner and the owner and master of the ship shall, in relation to—

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

be dealt with in the same manner in all respects as if the ship were registered under this Act.

6. NATIONAL COLOURS.

(1) The National Flag shall be the proper national colours for a ship registered under this Act.

(2) A master of a ship registered under this Act who, except where it would be unreasonable having regard to all the circumstances to do so, fails to cause the National Flag to be hoisted at all times on the ship, is guilty of an offence.

Penalty: ¹¹A fine not exceeding K4,000.00.

(3)^{12 13}Where, except with the consent of the Authority, any distinctive national colours other than the National Flag are hoisted on board a ship registered under this Act—

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

are each guilty of an offence.

Penalty: ¹⁴A fine not exceeding K2,000.00.

¹¹ Section 6 Subsection (2) amended by No. 70 of 2006, s. 3.

¹² Section 6 Subsection (3) amended by No. 70 of 2006, s. 3.

¹³ Section 6 Subsection (3) amended by No. 70 of 2006, s. 3.

¹⁴ Section 6 Subsection (3) amended by No. 70 of 2006, s. 3.

PART III. – REGISTRATION OF SHIPS.***Division 1.******The Registrar and the Register of Ships.*****7. REGISTRAR.**

(1) There shall be a Registrar of Ships.

(2)^{15 16}The Authority is the Registrar.

(3) The Registrar, an assistant to the Registrar or a delegate of the Registrar is not liable for any act or omission done or made by him *bona fide* and without negligence under, or for the purposes of, this Act.

8. DELEGATION BY REGISTRAR.

Subject to this Act, the Registrar may, by instrument delegate to a person all or any of his powers and functions under this Act (except this power of delegation).

9. ASSISTANTS TO THE REGISTRAR.

The Registrar may, in respect of the principal port of registry and each port of sub-registry, by instrument, appoint as many persons to assist him as, in his opinion, are required for the purposes of this Act.

10¹⁷. [REPEALED.]**11. REGISTER OF SHIPS.**

(1) The Registrar shall cause to be kept at the principal port of registry a register book to be known as the Register of Ships.

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

(3) Any person may inspect the Register at any time during the hours of official attendance by the Registrar.

12. PROVISIONS RELATING TO REGISTRATION.

The following provisions apply to, and in relation to, the registration of ships under this Act:–

(a) the property in a ship shall be divided into 64 shares; and

(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any one ship but this provision

¹⁵ Section 7 Subsection (2) substituted by No. 70 of 2006, s. 4.

¹⁶ Section 7 Subsection (2) substituted by No. 70 of 2006, s. 4.

¹⁷ Section 10 Repealed by No. 70 of 2006, s. 5.

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; and

- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares in the ship; and
- (d) 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 ship, in respect of which they are jointly registered; and
- (e) a corporation shall be registered as owner by its corporate name.

Division 2.

Registration of Ships.

13. PORTS OF REGISTRY.

(1)¹⁸ ¹⁹The Authority shall, by notice in the National Gazette appoint a port in the country to be the principal port of registry for the purposes of this Act.

(2)²⁰ ²¹The Authority may, by notice in the National Gazette appoint ports in the country to be ports of sub-registry for the purposes of this Act.

14. QUALIFICATION FOR OWNING REGISTERED SHIP.

(1) Subject to Sections 15 and 17, the Registrar shall not register a ship under this Act unless—

- (a) the ship is owned wholly by a qualified person, or by persons each of whom is a qualified person; and
- (b) the ship is not registered in any other country.

(2) For the purposes of this Act—

- (a) a person who is a citizen of Papua New Guinea; and
- (b) a corporation—
 - (i) that is established under, and is subject to, the laws of Papua New Guinea; and
 - (ii) that has its principal place of business in Papua New Guinea,

being a corporation that is—

¹⁸ Section 13 Subsection (1) amended by No. 70 of 2006, s. 6.

¹⁹ Section 13 Subsection (1) amended by No. 70 of 2006, s. 6.

²⁰ Section 13 Subsection (2) amended by No. 70 of 2006, s. 6.

²¹ Section 13 Subsection (2) amended by No. 70 of 2006, s. 6.

- (iii) registered by the Investment and Promotion Authority to carry on business as a shipowner in Papua New Guinea; or
- (iv) a national enterprise within the meaning of Section 3 of the *Investment Promotion Act 1992*.

is a qualified person and no other person is a qualified person.

(3)²² ²³Where the Registrar has reasonable cause to believe, and does believe, that any ship registered under this Act should not continue to be so registered, he may direct the Registrar to require the master and owner of the ship, or either of them, to produce evidence his satisfaction that the ship should continue to be so registered.

(4)²⁴ ²⁵If within such time as may be determined by the Authority, not being less than 30 days, the evidence referred to in Subsection (3) is not produced, the ship is liable to forfeiture.

15. REGISTRATION OF GOVERNMENT SHIPS.

(1) The regulations shall provide for the registration of Government ships.

(2) The regulations may exempt a Government ship or class of Government ships from the whole or any of the provisions of this Part.

(3) Subject to Subsection (2), this Act applies to Government ships that are registered under this Act.

16. OBLIGATION TO REGISTER SHIPS.

(1) In this section, a reference to an exempt ship shall be read as a reference to a ship that is—

- (a) an air cushioned vehicle; or
- (b) less than 10 m in length; or
- (c) in the opinion of the Registrar, of traditional build; or
- (d) employed solely in navigation on internal waters; or
- (e) a pleasure craft.

(2) The owner or owners of a ship that is—

- (a) owned wholly by a qualified person or by persons each of whom is a qualified person; and
- (b) not registered in any other country,

other than an exempt ship, shall apply for the registration of the ship under this Act.

(3) The owner or owners of an exempt ship that is—

²² Section 14 Subsection (3) amended by No. 70 of 2006, s. 7; Subsection (3) amended by No. 70 of 2006, s. 7.

²³ Section 14 Subsection (3) amended by No. 70 of 2006, s. 7; Subsection (3) amended by No. 70 of 2006, s. 7.

²⁴ Section 14 Subsection (4) amended by No. 70 of 2006, s. 7.

²⁵ Section 14 Subsection (4) amended by No. 70 of 2006, s. 7.

- (a) owned wholly by a qualified person or by persons each of whom is a qualified person; and
- (b) not registered in any other country,

may apply for the registration of the ship under this Act.

17. AUTOMATIC REGISTRATION OF CERTAIN SHIPS.

A ship—

- (a) that was, immediately before the commencement date, registered in accordance with the Merchant Shipping Acts of the United Kingdom at a port that becomes, after the commencement date, the principal port of registry or a port of sub-registry under this Act; and
- (b) that is wholly owned by a qualified person or by persons each of whom is a qualified person,

shall immediately on receipt by the Registrar of an application under this section by the owner or owners, accompanied by evidence to the satisfaction of the Registrar that registry under the Merchant Shipping Acts of the United Kingdom has been closed, be deemed to be registered under this Act, and the Registrar shall issue a certificate of registry accordingly.

18. SURVEY AND MEASUREMENT OF SHIP.

(1) Subject to Subsection (5), a ship shall, before registry, be surveyed by a surveyor and, subject to Subsection (4), its tonnage shall be ascertained by the surveyor in the prescribed manner and notified to the Safety Officer who shall issue a tonnage certificate in respect of the ship.

(2) A tonnage certificate shall—

- (a) be in the prescribed form; and
- (b) specify the tonnage and build of the ship and such other particulars in respect of the ship as are prescribed; and
- (c) before the ship is registered, be delivered to the Registrar or to an assistant to the Registrar.

(3) The fees to be paid by the owner or owners of the ship to a surveyor in respect of a survey under this section are as prescribed.

(4) Until regulations are made by which the tonnage of a ship may be ascertained, the tonnage of a ship may, if the Safety Officer so approves in the particular case, be taken to be the tonnage of the ship as ascertained in, and evidenced in writing in a form generally recognized in, another country, unless, in the opinion of the Safety Officer, the ship has been altered since the tonnage of the ship was so ascertained.

(5) Where an application is made to the Registrar for the registration of a ship that was, immediately before the commencement date, registered at a port in Papua

New Guinea under a law other than the Merchant Shipping Acts of the United Kingdom, the Safety Officer may determine the tonnage of the ship and may issue a tonnage certificate for the ship.

19. MARKING OF SHIP.

(1) A ship in respect of which an application for registration is made shall not be registered unless the ship has first been marked permanently and conspicuously in the prescribed manner.

(2) The marks required by this section to be placed on a ship shall be permanently continued and no alteration shall be made to those marks except as provided by this Act.

(3) An owner or master of a ship registered under this Act who fails to cause the ship to be marked as required by this section, or to keep the ship so marked, is guilty of an offence.

Penalty: ²⁶A fine not exceeding K20,000.00.

Default penalty: ²⁷A fine not exceeding K1,000.00.

(4) A person who conceals, removes, alters, defaces or obliterates any mark required by this Act to be placed and kept on a ship, except as provided by this Act or for the purposes of escaping from an enemy, is guilty of an offence.

Penalty: ²⁸A fine not exceeding K20,000.00.

(5)²⁹ ³⁰The Authority may, by notice in the National Gazette, exempt the owner or master of any ship or class of ships from complying, in whole or in part, with the requirements of this section.

20. APPLICATION FOR REGISTRATION.

(1) An application for the registration of a ship under this Act shall be made by the owner or owners to the Registrar, or to an assistant to the Registrar, in the prescribed form.

(2) An application under Subsection (1) shall be made—

(a) where the owner is a corporation—by the agent of the corporation; or

(b) where the owner is not a corporation—by the person or persons seeking the registration of the ship or by his or their agent.

(3) The authority of the agent referred to in Subsection (2) shall be in writing, and—

²⁶ Section 19 Subsection (3) amended by No. 70 of 2006, s. 8.

²⁷ Section 19 Subsection (3) amended by No. 70 of 2006, s. 8.

²⁸ Section 19 Subsection (4) amended by No. 70 of 2006, s. 8.

²⁹ Section 19 Subsection (5) amended by No. 70 of 2006, s. 8.

³⁰ Section 19 Subsection (5) amended by No. 70 of 2006, s. 8.

- (a) in the case of an agent appointed by a corporation—under the common seal of the corporation; and
 - (b) in the case of a person or persons other than a corporation—under the hand of that person or those persons.
- (4) The Registrar may require proof, to his satisfaction—
- (a) of the ownership; and
 - (b) of the seaworthiness,

of a ship before proceeding with the registration of the ship.

(5) An application for the registration of a ship under this Act shall be accompanied by such evidence in respect of the ship as may be prescribed.

21. DECLARATION OF OWNERSHIP ON REGISTRY.

A person shall not be entitled to be registered as owner of a ship until he, or in the case of a corporation, a person authorized under the common seal of the corporation to make declarations on behalf of the corporation, has made and signed a declaration of ownership referring to the ship as described in the tonnage certificate and containing the prescribed particulars.

22. REGISTRATION OF SHIPS.

(1) Where the requirements of this Act relating to a ship before registry have been complied with, the Registrar shall, on payment of the prescribed fee, register the ship by allotting to the ship a registry number and by entering in the Register the name of the ship, the registry number allotted to the ship and such other particulars in respect of the ship as are prescribed.

(2)^{31 32}The Registrar shall not register a ship by a name by which a ship is already registered under this Act or, by a name that is, in the opinion of the Registrar, undesirable.

(3) Where a ship has been registered under Subsection (1), the Registrar shall retain the documents submitted in connection with the application for registration as are prescribed.

23. CERTIFICATE OF REGISTRY.

(1) As soon as practicable after the registration of a ship the Registrar shall grant to the owner or owners a certificate of registry in the prescribed form.

(2) The certificate of registry shall be kept in a safe place on the ship.

(3) The certificate of registry of a ship shall be used only for the lawful navigation of the ship and shall not be subject to detention by reason of any title,

³¹ Section 22 Subsection (2) amended by No. 70 of 2006, s. 9.

³² Section 22 Subsection (2) amended by No. 70 of 2006, s. 9.

lien, charge, or interest had or claimed by any owner, mortgagee, or other person to, on or in the ship.

(4) A master or owner of a ship who uses, for the navigation of the ship, a certificate of registry not legally granted in respect of the ship is guilty of an offence.

Penalty: ³³A fine not exceeding K20,000.00.

(5) A person who—

- (a) has in his possession or under his control the certificate of registry of a ship; and
- (b) refuses or fails, without reasonable cause, to deliver the certificate on demand to—
 - (i) the person entitled to its custody for the purposes of the lawful navigation of the ship; or
 - (ii) the Registrar; or
 - (iii) any other person entitled by law to require its delivery,

is guilty of an offence.

Penalty: ³⁴A fine not exceeding K4,000.00.

(6)³⁵ ³⁶If the master of a ship in respect of which the owners are required by Section 16(2) to apply for registration fails on demand by the Authority to produce to the Authority the certificate of registry of the ship, the ship may be detained by the Authority until the certificate is produced.

(7) The Registrar may, on the delivery to him of a certificate of registry granted under Subsection (1), grant a new certificate in its place.

24. PROVISIONAL REGISTRATION.

(1)³⁷ ³⁸Where—

- (a) a ship at a place outside the country becomes wholly owned by a qualified person, or by persons each of whom is a qualified person; and
- (b) either—
 - (i)³⁹ that person, or one or more of those persons, declares to the Registrar or to an Assistant to the Registrar an intention to apply to have the ship registered under this Act; or

³³ Section 23 Subsection (4) amended by No. 70 of 2006, s. 10.

³⁴ Section 23 Subsection (5) amended by No. 70 of 2006, s. 10.

³⁵ Section 23 Subsection (6) amended by No. 70 of 2006, s. 10; Subsection (6) amended by No. 70 of 2006, s. 10.

³⁶ Section 23 Subsection (6) amended by No. 70 of 2006, s. 10; Subsection (6) amended by No. 70 of 2006, s. 10.

³⁷ Section 24 Subsection (1) amended by No. 70 of 2006, s. 11.

³⁸ Section 24 Subsection (1) amended by No. 70 of 2006, s. 11.

³⁹ Section 24 Subsection (1) amended by No. 70 of 2006, s. 11.

- (ii) the master of the ship makes such a declaration and declares in that declaration that he is authorized by the owner or by one or more of the owners to make the declaration,

the Registrar or an Assistant to the Registrar, as the case may be, may grant a provisional certificate of registry for the ship in the prescribed form.

(2)⁴⁰ [*Repealed.*]

(3) A provisional certificate of registry granted under Subsection (1) shall be deemed to be a certificate of registry granted under Section 23(1)–

- (a) until the expiry of three months after the date on which it was granted; or
- (b) until the expiry of 10 days after the arrival of the ship at the principal port of registry or at a port of sub-registry,

whichever is the earlier.

(4) The master of a ship in respect of which a provisional certificate of registry is granted under Subsection (1) who fails, within 10 days after the first arrival of the ship at the principal port of registry or at a port of sub-registry, to deliver the certificate to the Registrar or to an assistant to the Registrar is guilty of an offence.

Penalty: ⁴¹A fine not exceeding K4,000.00.

25. PROVISION FOR LOSS OF CERTIFICATE OF REGISTRY IN PAPUA NEW GUINEA.

(1) This section applies to a ship the certificate of registry of which, or the provisional certificate of registry of which, is lost, mislaid or destroyed while the ship to which the certificate applies is in the country or while the ship is proceeding on a journey with its next port of call in the country.

(2) Where a certificate of registry or a provisional certificate of registry has been lost, mislaid or destroyed, the Registrar shall, on application by the owner or owners of a ship to which this section applies, supported by a declaration made by a person having knowledge of the facts of the case setting out those facts, issue–

- (a) in the case of a certificate of registry—a certified copy of the certificate of registry; or
- (b) in the case of a provisional certificate of registry—a certified copy of the provisional certificate of registry,

in respect of the ship.

26. PROVISION FOR LOSS OF CERTIFICATE OUTSIDE PAPUA NEW GUINEA.

(1) This section applies to a ship other than a ship to which Section 25 applies.

⁴⁰ Section 24 Subsection (2) omitted by No. 70 of 2006, s. 11.

⁴¹ Section 24 Subsection (4) amended by No. 70 of 2006, s. 11.

(2)⁴² ⁴³Where a certificate of registry or a provisional certificate of registry of a ship to which this section applies is lost, mislaid or destroyed, the Registrar or an Assistant to the Registrar at the port at which the ship next arrives shall, on an application made by or on behalf of the owner or owners of the ship supported by a declaration by a person having knowledge of the facts of the case setting out those facts, issue—

- (a) in the case of a certificate of registry—a certified copy of the certificate of registry; or
- (b) in the case of a provisional certificate of registry—a certified copy of the provisional certificate of registry,

in respect of the ship.

(3)⁴⁴ [*Repealed.*]

27. CHANGE IN OWNERSHIP.

Where a change occurs in the ownership of a ship registered under this Act by reason of a transfer of the ship to a qualified person—

- (a) notification of the change shall be given to the Registrar; and
- (b) the certificate of registry shall be endorsed in the prescribed manner.

28. DELIVERY OF CERTIFICATE WHERE SHIP IS LOST OR AN OWNER CEASES TO BE A QUALIFIED PERSON.

(1) Where—

- (a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up; or
- (b) a person who is the owner of a ship registered under this Act, whether alone or jointly with other persons, ceases to be a qualified person; or
- (c) a person who is the owner of a ship registered under this Act transfers the ownership of the ship to a person who is not a qualified person,

the owner of the ship or, if the ship is owned by more than one person, each of those persons, unless he has given written notice of the fact to the Registrar or to an assistant to the Registrar within 72 hours after the time when he first had knowledge of the fact, is guilty of an offence.

Penalty: ⁴⁵A fine not exceeding K20,000.00.

(2) Where—

- (a) an event referred to in Subsection (1)(a) occurs or a circumstance referred to in Subsection (1)(b) arises; and

⁴² Section 26 Subsection (2) amended by No. 70 of 2006, s. 12.

⁴³ Section 26 Subsection (2) amended by No. 70 of 2006, s. 12.

⁴⁴ Section 26 Subsection (3) omitted by No. 70 of 2006, s. 12.

⁴⁵ Section 28 Subsection (1) amended by No. 70 of 2006, s. 13.

- (b) two or more persons own the ship concerned; and
- (c) any one of those persons, within 72 hours after the time when that person first had knowledge of the fact, gives notice to the Registrar or to an assistant to the Registrar,

the notice shall be deemed to have been given not only by that person but also by such of those persons (if any) as did not have knowledge of the fact at the time when the first-mentioned person first had knowledge of the fact.

(3)^{46 47} Where an event referred to in Subsection (1)(a) occurs or a circumstance referred to in Subsection (1)(b) or (c) arises, the Registrar may direct the person who has the certificate of registry or the provisional certificate of registry in his possession to deliver, within 30 days after the occurrence of the event, or after the circumstance has arisen, the certificate or the provisional certificate, as the case may be, to the Registrar or to an assistant to the Registrar.

(4) A person who refuses or fails to comply with a direction given under Subsection (3) is guilty of an offence.

Penalty: ⁴⁸ A fine not exceeding K4,000.00.

(5) The Registrar shall, on receipt of a notice specifying that an event referred to in Subsection (1)(a) has occurred in relation to a ship, make or cause to be made an entry in the Register of the event, and the registry of the ship in the Register shall be deemed to be closed except in so far as relates to any unsatisfied mortgage of the ship.

(6) The Registrar shall, on receipt of notice that a circumstance specified in Subsection (1)(b) or (c) has arisen, make or cause to be made an entry in the Register that notice has been received and, subject to this section, the registry of the ship shall be deemed to be closed.

(7) Where, at the time when the Registrar receives notice that a circumstance referred to in Subsection (1)(b) or (c) is applicable in relation to the owner or owners of a ship registered under this Act, the ship is subject to an undischarged mortgage entered in the Register, the Registrar shall give to the mortgagee written notice specifying the circumstances so applicable.

(8) If, within 30 days after notice is given to the mortgagee under Subsection (7), an application is not made to the National Court for an order under Subsection (9), the registry of the ship in the Register shall, subject to Subsection (11), be deemed to be closed on the expiration of that period.

(9) If, before the expiration of the period of 30 days referred to in Subsection (8) or within such further time as the National Court, on an application made before or after the expiration of that period, allows, an application is made to the National Court for an order under this subsection, the National Court may order the sale of

⁴⁶ Section 28 Subsection (3) amended by No. 70 of 2006, s. 13.

⁴⁷ Section 28 Subsection (3) amended by No. 70 of 2006, s. 13.

⁴⁸ Section 28 Subsection (4) amended by No. 70 of 2006, s. 13.

the ship and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid first to the mortgagee or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owner or owners of the ship.

(10) Where the National Court grants an application for an extension of time within which an application for an order under Subsection (9) may be made, it may grant the extension on such terms and conditions as to costs and otherwise as it thinks just.

(11) On an application for an order under Subsection (9), the National Court may give such directions with respect to the closure of the registry of the ship as it thinks fit, and the Registrar shall give effect to any directions given by the National Court.

29. REGISTRY OF ALTERATIONS.

(1) Where a ship registered under this Act is so altered as not to correspond with the particulars relating to the tonnage certificate or to the description of the ship contained in the Register, the owner of the ship must, within 21 days, make, or cause to be made, to the Registrar a written application to register the alteration.

(2) An owner of a ship who refuses or fails to comply with the provisions of Subsection (1) is guilty of an offence.

Penalty: ⁴⁹A fine not exceeding K4,000.00.

Default penalty: ⁵⁰A fine not exceeding K200.00.

(3) An application made under Subsection (1) shall be accompanied by a tonnage certificate issued under Section 18.

(4) The Registrar, on receipt of an application under Subsection (1) and on receipt of the prescribed fee (if any), shall cause the alteration to be registered.

(5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate of registry and shall grant a new certificate of registry and shall make the prescribed entries in the Register.

30. OWNER TO FURNISH PARTICULARS.

(1) The owner of a ship registered under this Act must—

(a) within 28 days after the expiration of a period of five years from the date of grant of a certificate of registry under Section 23(1); and

(b) within 28 days after the expiration of each further period of five years,

furnish the Registrar with such particulars in respect of the ship as may be prescribed.

⁴⁹ Section 29 Subsection (2) amended by No. 70 of 2006, s. 14.

⁵⁰ Section 29 Subsection (2) amended by No. 70 of 2006, s. 14.

(2) An owner of a ship who refuses or fails to comply with the provisions of Subsection (1) is guilty of an offence.

Penalty: ⁵¹A fine not exceeding K4,000.00.

Default penalty: ⁵²A fine not exceeding K200.00.

Division 3.

Transfers and Transmission.

31. TRANSFER TO BE BY BILL OF SALE.

(1) Where a ship registered under this Act is disposed of to a qualified person, or to persons each of whom is a qualified person, the ship shall be transferred by a bill of sale.

(2) A bill of sale shall—

- (a) be in the prescribed form; and
- (b) be executed by the transferor and the transferee in the presence of, and be attested by, a witness or witnesses.

32. DECLARATION OF TRANSFER.

Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he, or in the case of a corporation, a person authorized by this Act to make declarations on behalf of the corporation, has made and signed a declaration of transfer in the prescribed form referring to the ship and containing—

- (a) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and
- (b) a statement that, to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship.

33. REGISTRATION OF TRANSFER.

(1) Every bill of sale for the transfer of a ship registered under this Act, when duly executed, shall be produced to the Registrar with the declaration of transfer referred to in Section 32, and the Registrar shall—

- (a) enter into the Register the name of the transferee as owner of the ship; and
- (b) endorse on the bill of sale the fact of the entry having been made, with the day and hour of the entry.

⁵¹ Section 30 Subsection (2) amended by No. 70 of 2006, s. 15.

⁵² Section 30 Subsection (2) amended by No. 70 of 2006, s. 15.

(2) Bills of sale of a ship registered under this Act shall be entered in the Register in the order of their production to the Registrar.

34. TRANSMISSION OF PROPERTY IN SHIP ON DEATH, INSOLVENCY, ETC.

(1) Where the property in a ship registered under this Act is transmitted to a qualified person, or to persons each of whom is a qualified person, on the death or insolvency of any registered owner, or by any lawful means other than by a transfer made under this Act, that person shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the ship, and the declaration of transmission shall contain such statements and shall be accompanied by such documents as are prescribed.

(2) The Registrar, on receipt of the declaration of transmission under Subsection (1), accompanied by the statements and documents referred to in that subsection, shall enter in the Register—

- (a) the name of the person entitled under the transmission as owner of the ship the property in which has been transmitted; and
- (b) where there is more than one such person—the names of all such persons, but those persons, however numerous, shall, for the purposes of the provisions of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

35. ORDER FOR SALE ON TRANSMISSION TO UNQUALIFIED PERSON.

(1) Where the property in a ship registered under this Act is transmitted on death or insolvency or otherwise to a person who is not a qualified person, or to persons one or more of whom is not a qualified person, the National Court may, on application by or on behalf of that person or one or more of those persons—

- (a) order a sale of the property so transmitted; and
- (b) direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the National Court directs.

(2) The National Court may require any evidence it thinks fit in support of the application referred to in Subsection (1) and may make the order on any terms and conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) An application under Subsection (1) shall be made within 30 days after the occurrence of the event on which the transmission has taken place, or within such further time, not exceeding in the whole one year from the date of the occurrence, as the National Court allows.

(4) If the application is not made within the time specified in Subsection (3) or if the National Court refuses an order for sale, the ship transmitted is liable to forfeiture.

36. TRANSFER OF SHIP OR SALE BY ORDER OF NATIONAL COURT.

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

(2) The Registrar shall obey the requisition of the person named in a declaration under Subsection (1) in respect of any such transfer to the same extent as if that person were the registered owner.

37. NATIONAL COURT MAY PROHIBIT TRANSFER.

(1) The National Court may, if it thinks fit, and without prejudice to any other of its powers, on the application of a person claiming an interest in a ship registered under this Act, make an order prohibiting for the time specified in the order any dealing with that ship.

(2) The National Court may make an order under Subsection (1) on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires.

(3) The Registrar, after being served with a copy of an order made under this section, shall not register any dealing prohibited by the order.

38. CERTAIN TRANSFERS REQUIRE CONSENT OF THE MINISTER.

(1) A person who, without the written consent of the Minister, attempts to transfer a ship to a person other than a qualified person, or to persons one or more of whom is not a qualified person, where—

- (a) the ship has a gross tonnage exceeding 500 tons; and
- (b) less than 20 years have elapsed since the first registration of the ship whether under a law in force, before or after the commencement date, in Papua New Guinea or elsewhere,

is guilty of an offence.

Penalty: ⁵³A fine not exceeding K40,000.00 or imprisonment for a term not exceeding 12 months.

(2) A transaction by which a person purports to transfer a ship in contravention of Subsection (1) is void and of no effect.

⁵³ Section 38 Subsection (1) amended by No. 70 of 2006, s. 16.

Division 4.

Mortgages.

39. METHOD OF MORTGAGE OF SHIP.

(1) A ship registered under this Act may be made a security for a loan or other valuable consideration, and the mortgage shall be in the prescribed form.

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

(3) The Registrar shall—

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

40. ENTRY OF DISCHARGE OF MORTGAGE.

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

(2) On an entry being made under Subsection (1) the estate (if any) which passed to the mortgagee vests in the person in whom, having regard to intervening acts and circumstances (if any), it would have vested if the mortgage had not been made.

41. PRIORITY OF MORTGAGES.

(1) Where there are more mortgages than one registered in respect of the same ship registered under this Act, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority one over the other, according to the date and time at which each mortgage is produced to the Registrar and not according to the date of each mortgage itself.

(2) A registered mortgage—

- (a) shall not be affected by any act of insolvency committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor where he is adjudicated to be insolvent, at the commencement of his insolvency had the ship in his possession, order or disposition, or was the reputed owner of the ship; and
- (b) shall be preferred to any right, claim or interest in the ship of the other creditors of the insolvent or any trustee or assignee on their behalf.

42. POWERS OF MORTGAGEE.

(1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, a mortgagee shall not by reason of the mortgage, be deemed to be the owner of the ship nor shall a mortgagor be deemed to have ceased to be the owner of the ship.

(2) Subject to Subsection (3) and to Section 38, a registered mortgagee shall have power absolutely to dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.

(3) Where there are more persons than one registered as mortgagees of the same ship, a subsequent mortgagee shall not, except under an order of the National Court, sell the ship without the concurrence of every prior mortgagee.

43. TRANSFER OF MORTGAGE.

(1) A registered mortgage of a ship may be transferred to any person by registration of the instrument of transfer in the prescribed form.

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

- (a) register the transfer by making an entry of the transfer in the Register; and
- (b) endorse and sign on the mortgage and on the instrument of transfer a memorial stating the date and time of the production to him of the instrument of transfer and mortgage.

44. TRANSMISSION OF INTEREST IN MORTGAGE BY DEATH, INSOLVENCY, ETC.

(1) Where the interest of a mortgagee in a ship is transmitted to any person on the death or insolvency of the mortgagee, or by any lawful means, other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in Subsection (1) shall be in the prescribed form and shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted, and shall be accompanied by such evidence as is prescribed.

(3) The Registrar after receipt of the declaration referred to in Subsection (1) and accompanying evidence, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the ship.

Division 5.

General.

45. REGISTRAR MAY REQUIRE INFORMATION.

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

(2) A person who, after having been given a direction under Subsection (1), fails to comply with that direction is guilty of an offence.

Penalty: ⁵⁴A fine not exceeding K4,000.00.

46. NOTICE OF TRUSTS NOT RECEIVED.

(1) No notice of any trust, express, implied or constructive, shall be entered in the Register or shall be received by the Registrar.

(2) Subject to this Act, and to any rights and powers appearing on the face of the Register to be vested in any other person, the registered owner of a ship has absolute power to dispose of the ship and to give effectual receipts for any money paid or advanced by way of consideration.

47. EQUITIES NOT EXCLUDED BY ACT.

The expression “**beneficial interest**” where used in this Act includes interests arising under contract and other equitable interests and the intention of this Act is that, without prejudice to—

- (a) the provisions of this Act for preventing notice of trusts from being entered in the Register or received by the Registrar; and
- (b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and
- (c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of ships registered under this Act,

interests arising under contract and other equitable interests may be enforced by or against the owner or mortgagee of any ship in respect of his interest in the ship in the same manner as in respect of any other personal property.

48. LIABILITY OF OWNERS.

(1) Subject to Subsection (2), where a person has a beneficial interest in a ship registered under this Act and that ship is registered in the name of some other person as owner, the person having the interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of

⁵⁴ Section 45 Subsection (2) amended by No. 70 of 2006, s. 17.

ships, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.

(2) Subsection (1) does not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgagee in possession of a ship.

49. NAMES OF REGISTERED SHIPS.

An owner or master of a ship registered under this Act who permits the ship to be described by a name other than that by which the ship is for the time being registered is guilty of an offence.

Penalty: ⁵⁵A fine not exceeding K4,000.00.

50. PROPORTION OF CREW TO BE CITIZENS.

The master or owner of a ship registered under this Act who permits the ship to go to sea knowing the ship to have a crew consisting of less citizens than the prescribed proportion of the crew, is guilty of an offence.

Penalty: ⁵⁶A fine not exceeding K10,000.00.

51. REDUCTION OF FEES WHERE MAJORITY OF CREW ARE CITIZENS.

(1) In this section a reference to a ship shall be read as a reference to a ship registered under this Act, being a ship of more than 500 tons gross.

(2) Where in respect of a ship, a person has paid an annual registration fee under Section 52 and, during the whole of the period to which the fee relates, a prescribed proportion of the crew of the ship consists of citizens, the person who has paid the fee shall be entitled to a refund of such part of the fee as is prescribed.

52. ANNUAL REGISTRATION FEES.

(1) The owner of a ship registered under this Act is liable, on the expiration of a period of 12 months after the date of registration of the ship and on the expiration of similar periods afterwards to pay the prescribed annual registration fee.

(2) Where an annual registration fee is not paid within 30 days of the date on which the fee becomes due and payable, a Court may, on application by the Registrar, direct the amount remaining unpaid to be levied by distress or by the sale of the ship or the equipment of the ship.

⁵⁵ Section 49 Amended by No. 70 of 2006, s. 18.

⁵⁶ Section 50 Amended by No. 70 of 2006, s. 19.

PART IV. – SAFETY.***Division 1.******Preliminary.*****53. APPLICATION OF PART IV.**

(1) This Part, unless the contrary intention appears, applies to, and in relation to, a ship that—

- (a) is registered under this Act; or
- (b) is not registered under this Act, being a ship that is at a port or place in the country; or
- (c) is an offshore ship.

(2) This Part does not apply to, or in relation to—

- (a) a ship that—
 - (i) in the ordinary course of her voyage would not have been required to comply with this Part; and
 - (ii) is compelled by stress of weather, or by *force majeure*, to take refuge in a port or place in Papua New Guinea; or
- (b) a troopship; or
- (c) a ship that, in the opinion of the Registrar, is of traditional build; or
- (d) a pleasure craft; or
- (e) a ship that is less than 10m in length; or
- (f) an air cushioned vehicle.

54. EXEMPTION OF PARTICULAR SHIPS.

⁵⁷The Authority may, by notice in the National Gazette, subject to such conditions (if any) as it thinks fit, exempt a particular ship or a particular class of ship that is—

- (a) employed in navigation solely on internal waters; or
- (b) 10m or more and less than 15m in length,

from any requirement of this Part.

⁵⁷ Section 54 Amended by No. 70 of 2006, s. 20.

55 - 56⁵⁸. [REPEALED.]

57. SURVEYORS OF SHIPS.

(1)⁵⁹ ⁶⁰The Authority may, by notice in the National Gazette, appoint as many persons, including corporations and unincorporated bodies of persons, to be surveyors of ships as, in its opinion, are necessary for the purposes of this Act.

(2)⁶¹ ⁶²Where a corporation or an unincorporated body of persons is appointed under Subsection (1), it shall, if the Authority so directs, nominate persons to—

- (a) carry out surveys; or
- (b) issue certificates; or
- (c) do all other things necessary on its behalf.

(3) A nomination under Subsection (2) shall be notified to the Registrar and on receiving such notification, the Registrar shall cause to be published in the National Gazette notice of that nomination.

Division 2.

International Maritime Conventions.

58. CONVENTIONS TO HAVE EFFECT.

(1) Subject to this Act and to any other law, the Collisions Convention, the Load Line Convention and the Safety Convention shall have the force of law.

(2) Where, in respect of a ship that is—

- (a) registered under this Act; and
- (b) a Load Line Convention ship or a Safety Convention ship,

there is a failure to comply with a requirement of the Load Line Convention or the Safety Convention, the master or owner of the ship is guilty of an offence.

(3) Where, in respect of—

- (a) a ship that is registered under this Act; and
- (b) any ship that is within the territorial waters of Papua New Guinea,

the master or the owner or any other person fails to comply with a requirement of the Collisions Convention, the master or the owner of the ship or that other person is guilty of an offence.

Penalty: ⁶³A fine not exceeding K40,000.00.

Default penalty: ⁶⁴A fine not exceeding K4,000.00.

⁵⁸ Section 54 Amended by No. 70 of 2006, s. 20.

⁵⁹ Section 57 Subsection (1) amended by No. 70 of 2006, s. 22; Subsection (1) amended by No. 70 of 2006, s. 22.

⁶⁰ Section 57 Subsection (1) amended by No. 70 of 2006, s. 22; Subsection (1) amended by No. 70 of 2006, s. 22.

⁶¹ Section 57 Subsection (2) amended by No. 70 of 2006, s. 22.

⁶² Section 57 Subsection (2) amended by No. 70 of 2006, s. 22.

⁶³ Section 58 Subsection (3) amended by No. 70 of 2006, s. 23.

59. IMPLEMENTATION OF CONVENTIONS.

(1) The regulations may make provision for, or in relation to, the implementation of, or giving effect to, the Collisions Convention, the Load Line Convention and the Safety Convention.

(2)⁶⁵ ⁶⁶Where, under the Load Line Convention or under the Safety Convention, the several countries that are parties to the Load Line Convention or to the Safety Convention, as the case may be, have a discretion as to whether any, and if so what, action should be taken under them, that discretion may be exercised by the Minister, on the advice of the Authority.

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

(4) Where, under the Load Line Convention or under the Safety Convention, the several countries that are parties to the Load Line Convention or the Safety Convention, as the case may be, are under a duty to do any act or thing, that act or thing shall be done by the Minister.

60. APPLICATION OF THIS PART TO CERTAIN CONVENTION SHIPS.

Where a ship is a Load Line Convention ship or a Safety Convention ship, the provisions of this Part apply only in so far as they are applicable to and relevant to such a ship.

Division 3.

Requirement for Safety Certificates.

61. SHIP NOT TO GO TO SEA WITHOUT SAFETY CERTIFICATE.

(1) Subject to Section 62, a ship must not go to sea unless there are in force in respect of the ship such certificates as are required under this Part.

(2) Where a ship goes to sea in contravention of Subsection (1), the owner or master is guilty of an offence.

Penalty: ⁶⁷A fine not exceeding K40,000.00.

⁶⁴ Section 58 Subsection (3) amended by No. 70 of 2006, s. 23.

⁶⁵ Section 59 Subsection (2) amended by No. 70 of 2006, s. 24.

⁶⁶ Section 59 Subsection (2) amended by No. 70 of 2006, s. 24.

⁶⁷ Section 61 Subsection (2) amended by No. 70 of 2006, s. 25.

62. SHIP MAY GO TO SEA WITHOUT SAFETY CERTIFICATE IN CERTAIN CIRCUMSTANCES.

(1) This section applies where—

(a) a ship is not—

- (i) registered under this Act; or
- (ii) a Load Line Convention ship; or
- (iii) a Safety Convention ship; and

(b)⁶⁸ the Authority is satisfied that the ship may proceed to sea without danger to—

- (i) the ship; or
- (ii) the passengers or crew of the ship; or
- (iii) the crew of the ship.

(2)^{69 70} Where this section applies, the Authority may—

- (a) notwithstanding any other requirement of this Part; and
- (b)⁷¹ subject to such conditions as it thinks fit,

allow a ship to go to sea without a safety certificate.

(3)^{72 73} Where, under Subsection (2), the Authority allows a ship to go to sea without a safety certificate, it shall give to the master of the ship a written statement setting out—

- (a) the circumstances of the case; and
- (b) the conditions (if any) under which the ship is allowed to go to sea.

63. CERTIFICATES TO BE PRODUCED BEFORE SHIP GOES TO SEA.

(1)^{74 75} The Authority may, before a ship goes to sea, direct the master of the ship to produce to it—

- (a) such certificates as are required under this Part to be in force in respect of the ship; or
- (b) a written statement referred to in Section 62(3).

(2) A master of a ship who refuses, or fails without reasonable cause, to comply with a direction given under Subsection (1) is guilty of an offence.

⁶⁸ Section 62 Subsection (1) amended by No. 70 of 2006, s. 26.

⁶⁹ Section 62 Subsection (2) amended by No. 70 of 2006, s. 26.

⁷⁰ Section 62 Subsection (2) amended by No. 70 of 2006, s. 26.

⁷¹ Section 62 Subsection (2) amended by No. 70 of 2006, s. 26.

⁷² Section 62 Subsection (3) amended by No. 70 of 2006, s. 26; Subsection (3) amended by No. 70 of 2006, s. 26.

⁷³ Section 62 Subsection (3) amended by No. 70 of 2006, s. 26; Subsection (3) amended by No. 70 of 2006, s. 26.

⁷⁴ Section 63 Subsection (1) amended by No. 70 of 2006, s. 27; Subsection (1) amended by No. 70 of 2006, s. 27.

⁷⁵ Section 63 Subsection (1) amended by No. 70 of 2006, s. 27; Subsection (1) amended by No. 70 of 2006, s. 27.

Penalty: ⁷⁶A fine not exceeding K40,000.00.

Division 4.

Surveys and Inspections.

64. SHIPS SUBJECT TO SURVEY.

Subject to this Act, a ship is subject to such surveys and inspections as are prescribed.

65. POWERS OF SURVEYOR.

(1) A surveyor, may at any reasonable time—

- (a) go on board a ship and survey or inspect the ship; and
- (b) require any certificate, or other document relating to the ship, to be produced to him.

(2) A surveyor shall not, in exercising his powers under this section, unnecessarily—

- (a) detain a ship; or
- (b) delay a ship from going to sea.

(3) A person who—

- (a) obstructs or hinders a surveyor in the exercise of his powers under this section; or
- (b) refuses, or fails without reasonable cause, to comply with any requirement made by a surveyor under this section,

is guilty of an offence.

Penalty: ⁷⁷A fine not exceeding K10,000.00.

66. SPECIAL EXAMINATION OF SHIPS.

(1)^{78 79}For the purposes of a survey or of an inspection of a ship, the Authority may, if it thinks fit, direct an owner or the master of the ship to have the ship—

- (a) slipped; or
- (b) taken into dock; or
- (c) otherwise dealt with.

(2) A person who refuses, or fails without reasonable cause, to comply with a direction under Subsection (1) is guilty of an offence.

Penalty: ⁸⁰A fine not exceeding K10,000.00.

⁷⁶ Section 63 Subsection (2) amended by No. 70 of 2006, s. 27.

⁷⁷ Section 65 Subsection (3) amended by No. 70 of 2006, s. 28.

⁷⁸ Section 66 Subsection (1) amended by No. 70 of 2006, s. 29; Subsection (1) amended by No. 70 of 2006, s. 29.

⁷⁹ Section 66 Subsection (1) amended by No. 70 of 2006, s. 29; Subsection (1) amended by No. 70 of 2006, s. 29.

67. REQUIREMENT TO NOTIFY AUTHORITY OF CHANGE IN CONDITION OF SHIP.

(1) In this section “**ship**” means a ship that is–

- (a) registered under this Act being a ship that is not a ship referred to in Section 53(2); or
- (b) not registered under this Act being a ship in respect of which a safety certificate has been issued under this Act.

(2)^{81 82} Where the efficiency or safety of a ship is impaired because of–

- (a) replacement of, or damage or alteration to, a part of the ship; or
- (b) any other circumstances,

an owner or the master of the ship who fails, without reasonable cause, within seven days to notify the Authority of that fact or those circumstances is guilty of an offence.

Penalty: ⁸³ A fine not exceeding K10,000.00.

68. REGULATIONS FOR SURVEYS AND INSPECTIONS.

⁸⁴ The regulations may make provision, not inconsistent with this Division, for and in relation to–

- (a) the manner of survey or inspection of ships; and
- (b) the periods within which ships shall be inspected; and
- (c) the circumstances in which, at the request of the owner of a ship, a survey or inspection may be carried out; and
- (d)⁸⁵ the manner in which a surveyor shall report to the Authority on completion of a survey or of an inspection; and
- (e)⁸⁶ the exemptions from survey which may be granted by the Authority in respect of a particular ship or a particular class of ship; and
- (f) the manner in which a Survey Master Sheet of a ship shall be maintained and carried in the ship and made available for inspection; and
- (g) the persons or class of persons who may require a Survey Master Sheet to be made available for inspection; and
- (h)⁸⁷ the determination by the Authority of the periods within which parts of ships shall be inspected and the fees payable in respect of –.

⁸⁰ Section 66 Subsection (2) amended by No. 70 of 2006, s. 29.

⁸¹ Section 67 Subsection (2) amended by No. 70 of 2006, s. 30.

⁸² Section 67 Subsection (2) amended by No. 70 of 2006, s. 30.

⁸³ Section 67 Subsection (2) amended by No. 70 of 2006, s. 30.

⁸⁴ Section 68 Amended by No. 70 of 2006, s. 31.

⁸⁵ Section 68 Amended by No. 70 of 2006, s. 31.

⁸⁶ Section 68 Amended by No. 70 of 2006, s. 31.

- (i) annual inspections or surveys; or
- (ii) special inspections or surveys; and
- (i)⁸⁸ the determination by the Authority of the charges payable in respect of additional work (if any) carried out on –
 - (i) an inspection or survey; or
 - (ii) a proposed inspection or survey; and
- (j)⁸⁹ the particulars of the fines to be paid under Section 65, 66 and 67.

Division 5.

Issue of Safety Certificates.

69. APPLICATION FOR SURVEY.

- (1)^{90 91} Where an owner or the master of a ship other than –
- (a) a Load Line Convention ship; or
 - (b) a Safety Convention ship,

seeks the issue of a safety certificate he may apply in the prescribed manner to the Authority for the ship to be surveyed.

(2) Where an owner or the master of a Load Line Convention ship or a Safety Convention ship seeks the issue of a safety certificate, he may apply to a prescribed surveyor for the ship to be surveyed.

(3)^{92 93} On receipt of an application made under Subsection (1) the Authority shall nominate a surveyor who may cause the ship to be surveyed or inspected.

70. ISSUE OF SAFETY CERTIFICATE.

(1)^{94 95} A surveyor nominated under Section 69(3) shall, on completion of a survey or inspection under that subsection, deliver to the Authority a written report of the inspection or survey.

(2) Where the surveyor nominated under Section 69(3) is satisfied that the ship complies with the requirements of this Act he shall –

- (a) complete a declaration to that effect in the prescribed form; and
- (b)⁹⁶ deliver the declaration to the Authority.

⁸⁷ Section 68 Amended by No. 70 of 2006, s. 31.

⁸⁸ Section 68 Amended by No. 70 of 2006, s. 31.

⁸⁹ Section 68 Amended by No. 70 of 2006, s. 31.

⁹⁰ Section 69 Subsection (1) amended by No. 70 of 2006, s. 32.

⁹¹ Section 69 Subsection (1) amended by No. 70 of 2006, s. 32.

⁹² Section 69 Subsection (3) amended by No. 70 of 2006, s. 32.

⁹³ Section 69 Subsection (3) amended by No. 70 of 2006, s. 32.

⁹⁴ Section 70 Subsection (1) amended by No. 70 of 2006, s. 33.

⁹⁵ Section 70 Subsection (1) amended by No. 70 of 2006, s. 33.

⁹⁶ Section 70 Subsection (2) amended by No. 70 of 2006, s. 33.

(3)^{97 98}Where the Authority—

(a) has received—

- (i) the report referred to in Subsection (1); and
- (ii) the declaration referred to in Subsection (2); and
- (iii) the Survey Master Sheet; and

(b) is satisfied that the ship complies with the requirements of this Act,

it shall, subject to such conditions (if any) as he thinks fit, grant a safety certificate in respect of the ship.

(4) Where the prescribed surveyor referred to in Section 69(2) is satisfied that he may do so, he shall grant a safety certificate in respect of a ship.

71. CANCELLATION OR SUSPENSION OF SAFETY CERTIFICATE.

(1)^{99 100}Where, in the opinion of the Authority—

- (a) a report or declaration referred to in Section 70 has been in any particular made fraudulently or erroneously; or
- (b) a safety certificate has been issued on false or erroneous information; or
- (c) since the making of the last declaration in respect of a survey, a ship has been altered, replaced or damaged to such an extent or in such a manner as to affect adversely the efficiency or seaworthiness of the ship,

the Authority shall cancel or suspend the safety certificate of the ship.

(2)^{101 102}Where a safety certificate is cancelled or suspended under Subsection (1), the Authority may require the owner of the ship to which the certificate relates to have the ship re-surveyed before the issue of a new certificate or the removal of the suspension.

72. DELIVERY UP OF SAFETY CERTIFICATE.

(1)^{103 104}Where a safety certificate has—

- (a) expired; or
- (b) been cancelled; or
- (c) been suspended,

⁹⁷ Section 70 Subsection (3) amended by No. 70 of 2006, s. 33; Subsection (3) amended by No. 70 of 2006, s. 33.

⁹⁸ Section 70 Subsection (3) amended by No. 70 of 2006, s. 33; Subsection (3) amended by No. 70 of 2006, s. 33.

⁹⁹ Section 71 Subsection (1) amended by No. 70 of 2006, s. 34.

¹⁰⁰ Section 71 Subsection (1) amended by No. 70 of 2006, s. 34.

¹⁰¹ Section 71 Subsection (2) amended by No. 70 of 2006, s. 34.

¹⁰² Section 71 Subsection (2) amended by No. 70 of 2006, s. 34.

¹⁰³ Section 72 Subsection (1) amended by No. 70 of 2006, s. 35.

¹⁰⁴ Section 72 Subsection (1) amended by No. 70 of 2006, s. 35.

the Authority may direct a person having the certificate in his custody or possession to deliver up the certificate.

(2)^{105 106} A person who refuses, or fails without reasonable cause, to obey a direction given by the Authority under this section is guilty of an offence.

Penalty: ¹⁰⁷ A fine not exceeding K2,000.00.

(3)^{108 109} Where a person contravenes Subsection (1), the ship to which the certificate relates may be detained until the certificate has been delivered up to the Authority.

73. PERIODICAL OR CONTINUOUS SURVEYS.

¹¹⁰ Where an owner or the master has failed to comply with a provision of this Act relating to periodical or continuous inspections or surveys, the ship in respect of which he has so failed to comply may be detained until the Authority is satisfied that she may go to sea.

74. ALTERATION OF SHIPS.

An owner or the master of a ship in respect of which a safety certificate has been issued who knowingly or negligently alters the ship or permits the ship to be altered so that the certificate becomes, or may become, inapplicable to the altered state of the ship, is guilty of an offence.

Penalty: ¹¹¹ A fine not exceeding K40,000.00.

75. SAFETY CERTIFICATE TO BE DISPLAYED.

A master of a ship in respect of which a safety certificate has been issued who fails to cause the certificate or a certified copy of the certificate to be continuously displayed in some prominent and accessible place on the ship is guilty of an offence.

Penalty: ¹¹² A fine not exceeding K4,000.00.

76. REGULATIONS FOR SAFETY CERTIFICATES.

¹¹³ The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the type and form of safety certificates; and
- (b) the duration of, or extensions to the duration of, the validity of safety certificates; and

¹⁰⁵ Section 72 Subsection (2) amended by No. 70 of 2006, s. 35.

¹⁰⁶ Section 72 Subsection (2) amended by No. 70 of 2006, s. 35.

¹⁰⁷ Section 72 Subsection (2) amended by No. 70 of 2006, s. 35.

¹⁰⁸ Section 72 Subsection (3) amended by No. 70 of 2006, s. 35.

¹⁰⁹ Section 72 Subsection (3) amended by No. 70 of 2006, s. 35.

¹¹⁰ Section 73 Amended by No. 70 of 2006, s. 36.

¹¹¹ Section 74 Amended by No. 70 of 2006, s. 37.

¹¹² Section 75 Amended by No. 70 of 2006, s. 38.

¹¹³ Section 76 Amended by No. 70 of 2006, s. 39.

- (c) the circumstances in which safety certificates may be cancelled or suspended; and
- (d) the manner in which safety certificates may be endorsed; and
- (e)¹¹⁴ the determination by the Authority of—
 - (i) the plans and documents which shall be required to accompany an application for the survey of a ship; and
 - (ii) the period by which the duration of a safety certificate may be extended.
- (f)¹¹⁵ the particulars of the fines to be paid under Sections 72, 74 and 75.

Division 6.

Safety.

77. SHIPS REQUIRED TO CARRY CERTAIN EQUIPMENT.

(1) Where a ship goes to sea without carrying the equipment which is required by—

- (a) this Act; or
- (b) the Collisions Convention; or
- (c) the Load Line Convention; or
- (d) the Safety Convention,

to be carried on or fitted in the ship, the owner and master of the ship are each guilty of an offence.

(2) Where any equipment or fitting—

- (a) is required by—
 - (i) this Act; or
 - (ii) the Collisions Convention; or
 - (iii) the Load Line Convention; or
 - (iv) the Safety Convention,

to be carried on or fitted in a ship; and

- (b) is—
 - (i) absent from the ship; or
 - (ii) not in good order and ready for use,

the owner and master of the ship are each guilty of an offence.

Penalty: ¹¹⁶A fine not exceeding K40,000.00.

¹¹⁴ Section 76 Amended by No. 70 of 2006, s. 39.

¹¹⁵ Section 76 Amended by No. 70 of 2006, s. 39.

78. SHIP TO CARRY QUALIFIED RADIO OPERATORS.

(1) In this section “**ship**” means a ship that is required by this Act to carry a radio installation.

(2) Where a ship goes to sea without carrying, as part of her crew, such person or persons qualified to operate the radio installation of the ship as is prescribed, the owner or master of the ship is guilty of an offence.

Penalty: ¹¹⁷A fine not exceeding K8,000.00.

79. REPORTS BY RADIO.

(1) In this section “**ship**” means—

- (a) a ship—
 - (i) that is registered under this Act; or
 - (ii) in respect of which an application is required to be made under Section 16; and
- (b) a ship that is—
 - (i) licensed under this, or under any other Act, to engage in the coasting trade; and
 - (ii)¹¹⁸ in the opinion of the Authority—engaged in the coasting trade.

(2) The master of a ship who refuses, or fails without reasonable cause, to make by radio a report in the prescribed manner of any serious danger to navigation that comes to his notice while the ship is at sea is guilty of an offence.

(3) The master of a ship who refuses, or fails without reasonable cause, when the ship is at sea within the prescribed area, to make by radio—

- (a) in the prescribed manner; and
- (b) to the prescribed officer; and
- (c) within the prescribed periods,

reports of the position of the ship and of the movements of the ship is guilty of an offence.

Penalty: ¹¹⁹A fine not exceeding K1,000.00.

80. COLLISION OFFENCES.

(1) In this section “**ship**” means any ship.

(2)¹²⁰ ¹²¹For the purposes of the Collisions Convention, “**appropriate authority**” means the Authority.

¹¹⁶ Section 77 Subsection (2) amended by No. 70 of 2006, s. 40.

¹¹⁷ Section 78 Subsection (2) amended by No. 70 of 2006, s. 41.

¹¹⁸ Section 79 Subsection (1) amended by No. 70 of 2006, s. 42.

¹¹⁹ Section 79 Subsection (3) amended by No. 70 of 2006, s. 42.

(3) Except in the case of a ship that is—

- (a) in distress; and
- (b) requires assistance,

a person who exhibits a signal that is prescribed in the Collisions Convention as being a signal used to designate a vessel that is in distress and that requires assistance is guilty of an offence.

Penalty: ¹²²A fine not exceeding K10,000.00.

81. DUTY OF VESSEL TO ASSIST IN CASE OF COLLISION.

(1) In every case of collision between two vessels it is the duty of the person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew and passengers (if any)—

- (a) to render to the other vessel, her master, crew and passengers (if any) such assistance as is practicable and necessary in order to save them from danger caused by the collision; and
- (b) to stay by the other vessel until he has ascertained that she has no need of further assistance; and
- (c) to give to the person in charge of the other vessel—
 - (i) the name of his own vessel and of the port to which she belongs; and
 - (ii) the names of the ports from which she comes and to which she is bound.

(2) Where a person in charge of any vessel fails without reasonable cause to comply with this section, he is guilty of an offence.

Penalty: ¹²³A fine not exceeding K40,000.00 or imprisonment for a term not exceeding six months.

82. HAZARDOUS GOODS.

(1)¹²⁴ ¹²⁵This section applies to cargo or goods other than dangerous goods where the cargo or goods, if carried in a particular ship, would in the opinion of the Authority—

- (a) endanger that ship; or
- (b) constitute a danger to life.

(2)¹²⁶ ¹²⁷The Authority may, by direction to the master of a ship—

¹²⁰ Section 80 Subsection (2) amended by No. 70 of 2006, s. 43.

¹²¹ Section 80 Subsection (2) amended by No. 70 of 2006, s. 43.

¹²² Section 80 Subsection (3) amended by No. 70 of 2006, s. 43.

¹²³ Section 81 Subsection (2) amended by No. 70 of 2006, s. 44.

¹²⁴ Section 82 Subsection (1) amended by No. 70 of 2006, s. 45.

¹²⁵ Section 82 Subsection (1) amended by No. 70 of 2006, s. 45.

- (a) prohibit the loading into the ship; or
- (b) prohibit the carriage in the ship; or
- (c) order the removal from the ship; or
- (d) direct the manner of the stowage or carriage in the ship,

of cargo or goods to which this section applies.

(3)^{128 129}Where a master of a ship refuses or fails to comply with a direction given by the Authority under Subsection (2), he is guilty of an offence.

Penalty: ¹³⁰A fine not exceeding K20,000.00.

(4)^{131 132}Where the master of a ship is convicted of an offence under Subsection (3), the ship shall be detained until such time as the master has complied with the direction given by the Authority under Subsection (2).

83. POWERS OF MASTER IN RELATION TO DANGEROUS GOODS.

The master or owner of a ship may—

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

and shall not be subject to any liability of any kind for doing so.

84. POWERS OF AUTHORITY IN RELATION TO DANGEROUS GOODS.

(1)^{133 134}The Authority may, where it is satisfied that dangerous goods are being loaded into, unloaded from or stowed, carried or used in a ship otherwise than in accordance with this Act or with the Safety Convention, direct the owner or master of the ship to take such action in relation to the ship or to the whole or to a part of the cargo of the ship as he thinks fit.

¹²⁶ Section 82 Subsection (2) amended by No. 70 of 2006, s. 45.

¹²⁷ Section 82 Subsection (2) amended by No. 70 of 2006, s. 45.

¹²⁸ Section 82 Subsection (3) amended by No. 70 of 2006, s. 45.

¹²⁹ Section 82 Subsection (3) amended by No. 70 of 2006, s. 45.

¹³⁰ Section 82 Subsection (3) amended by No. 70 of 2006, s. 45.

¹³¹ Section 82 Subsection (4) amended by No. 70 of 2006, s. 45.

¹³² Section 82 Subsection (4) amended by No. 70 of 2006, s. 45.

¹³³ Section 84 Subsection (1) amended by No. 70 of 2006, s. 46; Subsection (1) amended by No. 70 of 2006, s. 46.

¹³⁴ Section 84 Subsection (1) amended by No. 70 of 2006, s. 46; Subsection (1) amended by No. 70 of 2006, s. 46.

(2) A person who fails to comply with a direction given under Subsection (1) is guilty of an offence.

Penalty: ¹³⁵A fine not exceeding K20,000.00.

85. PROHIBITION OF DANGEROUS GOODS.

(1) A person who sends by or onto, brings onto or carries or uses on a ship dangerous goods otherwise than is required or permitted by this Act or by the Safety Convention is guilty of an offence.

Penalty: ¹³⁶A fine not exceeding K15,000.00.

(2) A person who, with intent to conceal the character of dangerous goods, sends by or onto, brings onto or carries or uses on a ship any dangerous goods under a false description is guilty of an offence.

Penalty: ¹³⁷A fine not exceeding K20,000.00.

86. FORFEITURE OF DANGEROUS GOODS.

(1) Any dangerous goods carried or shipped or used in contravention of this Act may be ordered by the National Court to be forfeited to the State.

(2) Where any order is made under Subsection (1), the dangerous goods shall be forfeited, notwithstanding that—

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

87. ORAL COMMUNICATION.

(1)^{138 139}Where, in the opinion of the Authority, the crew of a ship includes a person who, in the absence of adequate arrangements for transmitting orders or communications to him in a language of which he has sufficient knowledge, may fail to understand those orders or communications and for this reason the safety of the ship may be endangered, the Authority shall direct the master of the ship that the ship shall not go to sea.

(2) A master of a ship to whom a direction has been given under Subsection (1) who refuses, or fails without reasonable cause, to comply with that direction is guilty of an offence.

Penalty: ¹⁴⁰A fine not exceeding K4,000.00.

¹³⁵ Section 84 Subsection (2) amended by No. 70 of 2006, s. 46.

¹³⁶ Section 85 Subsection (1) amended by No. 70 of 2006, s. 47.

¹³⁷ Section 85 Subsection (2) amended by No. 70 of 2006, s. 47.

¹³⁸ Section 87 Subsection (1) amended by No. 70 of 2006, s. 48; Subsection (1) amended by No. 70 of 2006, s. 48.

¹³⁹ Section 87 Subsection (1) amended by No. 70 of 2006, s. 48; Subsection (1) amended by No. 70 of 2006, s. 48.

¹⁴⁰ Section 87 Subsection (2) amended by No. 70 of 2006, s. 48.

88. NUMBER OF PERSONS THAT MAY BE CARRIED IN A SHIP.

Where more persons are carried in a ship than the number stated in the safety certificate of the ship as being the maximum number of persons that may be carried in the ship, the owner and master of the ship are each guilty of an offence.

Penalty: ¹⁴¹A fine not exceeding K8,000.00 and in addition a fine not exceeding K200.00 for each person carried on board the ship in excess of the number stated in the safety certificate.

89. REGULATIONS FOR SAFETY.

¹⁴²The regulations may prescribe, not inconsistent with this Division—

- (a) the requirements with which the hull, machinery and equipment of ships shall comply; and
- (b) the appliances to be carried, and the measures to be observed, on ships for—
 - (i) the saving of life at sea; and
 - (ii) the prevention, detection and extinction of fires on ships; and
- (c) the requirements for the holding and recording of musters and drills for crew and passengers; and
- (d) the requirements with respect to—
 - (i) the equipping of ships with radio telephones and radio navigational aids; and
 - (ii) the operation, maintenance and use of radio telephones and radio-navigational aids in ships; and
 - (iii) the number and qualification of the radio telephone operators to be carried on ships; and
- (e) the measures and procedures to be followed and the equipment to be carried on ships to ensure safety of navigation; and
- (f) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in ships; and
- (g) the observance of safety standards and procedures on board ships; and
- (h) safety and safe working practices on board ships; and
- (i) the measures to be observed for the prevention of collisions; and
- (j) the requirements related to the provision and use on ships of lights and signals; and

¹⁴¹ Section 88 Amended by No. 70 of 2006, s. 49.

¹⁴² Section 89 Amended by No. 70 of 2006, s. 50.

- (k) the requirements which must be complied with in respect of lights and signals from the shore to ships; and
- (l)¹⁴³ for the determination by the Authority of the requirements for the carriage of dangerous goods on Safety Convention ships; and
- (m)¹⁴⁴ for the approval by the Authority of the safety standards required in respect of parts of ships; and
- (n)¹⁴⁵ for the approval by the Authority, on the advice of the officer for the time being in charge of telecommunications in Papua New Guinea, of the radiotelegraphy and radiotelephony equipment required to be carried in ships other than ships to which Chapter IV. of the Safety Convention applies; and
- (o)¹⁴⁶ for the determination by the Authority, on the advice of the officer for the time being in charge of telecommunications in Papua New Guinea, of the radio frequencies to be used in ships other than ships to which Chapter IV. of the Safety Convention applies; and
- (p)¹⁴⁷ for the determination by the Authority of—
 - (i) the requirements for the packing, stowage, marking and carriage of dangerous goods in ships other than Safety Convention ships; and
 - (ii) the requirements for the carriage of hazardous cargoes in ships other than Safety Convention ships; and
- (q)¹⁴⁸ the exemptions from any safety requirement which may be granted by the Authority in respect of a particular ship or a particular class of ship.
- (r)¹⁴⁹ the particulars of the fines to be paid under Section 77, 78, 79, 80, 81, 82, 84, 85(1), 85(2), 87 and 88.

Division 7.

Load Lines.

90. LOAD LINE MARKS.

(1) Load lines must be marked on a ship in the prescribed manner.

(2) A person who wilfully conceals, alters or defaces the load line marks on a ship is guilty of an offence.

Penalty: ¹⁵⁰A fine not exceeding K20,000.00.

¹⁴³ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁴ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁵ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁶ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁷ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁸ Section 89 Amended by No. 70 of 2006, s. 50.

¹⁴⁹ Section 89 Amended by No. 70 of 2006, s. 50.

(3) The owner or master of a ship who permits the load line marks on the ship to be concealed altered or defaced is guilty of an offence.

Penalty: ¹⁵¹A fine not exceeding K10,000.00.

91. LOADING OF SHIPS.

(1) A ship other than a passenger ship must not be loaded so that—

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

(2) A passenger ship must not be so loaded that—

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

(3) Where a ship is loaded in contravention of Subsection (1) or (2) an owner or the master is, notwithstanding that an offence may also have been committed under Section 95, guilty of an offence.

Penalty: ¹⁵²A fine not exceeding K40,000.00 and such additional fine not exceeding 20,000.00 for every complete centimetre and for every part of a centimetre over one or more complete centimetres by which the appropriate load line or subdivision load line was, or would have been, submerged, as the National Court thinks fit to impose having regard to the extent to which the earning capacity of the ship was increased by reason of the overloading.

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

(5) Where a ship is not registered under this Act, the master or owner shall not be prosecuted under Subsection (3) and the ship shall not be detained under Subsection (4) unless the ship has been inspected by a surveyor.

92. DEFENCE TO CHARGE OF OVERLOADING.

It is a defence to a prosecution for an offence under Section 91 to prove that the ship was overloaded as a result of an alteration in the route of the ship, or of

¹⁵⁰ Section 90 Subsection (2) amended by No. 70 of 2006, s. 51.

¹⁵¹ Section 90 Subsection (3) amended by No. 70 of 2006, s. 51.

¹⁵² Section 91 Subsection (3) amended by No. 70 of 2006, s. 52; Subsection (3) amended by No. 70 of 2006, s. 52.

delay to the ship caused by stress of weather, *force majeure* or other circumstances which the master or owner of the ship could not have prevented or forestalled.

93. REGULATIONS FOR LOAD LINES.

¹⁵³The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the manner of determining freeboards to be assigned to ships; and
- (b) the manner of determining, in relation to a ship the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the ship by a mark; and
- (c) the manner of determining, by reference to a mark, the freeboards assigned to a ship and the position in which each side of a ship is to be marked with a line indicating the maximum depths to which the ship may be loaded; and
- (d) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to ships; and
- (e) the manner of recording particulars of the requirements under Paragraph (d) and the methods of determining the extent of compliance with the conditions of assignment; and
- (f)¹⁵⁴ the information relating to the stability of a ship required to be provided by the owner of the ship to the Authority and to the master of the ship.
- (g)¹⁵⁵ the particulars of the fines to be paid under Section 90(2), 90(3) and 91.

Division 8.

Unsafe Ships.

94. SHIPS DEEMED TO BE UNSAFE.

(1)¹⁵⁶ ¹⁵⁷A ship shall be deemed to be unsafe where the Authority is of the opinion that, by reason of—

- (a) the defective condition of the hull, machinery or equipment; or
- (b) undermanning; or
- (c) improper loading; or
- (d) any other matter,

the ship is unfit to go to sea without danger to life having regard to the voyage which is proposed.

¹⁵³ Section 93 Amended by No. 70 of 2006, s. 53.

¹⁵⁴ Section 93 Amended by No. 70 of 2006, s. 53.

¹⁵⁵ Section 93 Amended by No. 70 of 2006, s. 53.

¹⁵⁶ Section 94 Subsection (1) amended by No. 70 of 2006, s. 54.

¹⁵⁷ Section 94 Subsection (1) amended by No. 70 of 2006, s. 54.

(2)^{158 159}In deeming a ship to be unsafe under Subsection (1) the Authority shall, where the ship is a Load Line Convention ship or a Safety Convention ship, have regard to the provisions of the Load Line Convention or of the Safety Convention, as the case may be.

95. OFFENCES RELATING TO UNSAFE SHIPS.

(1) Where an unsafe ship goes to sea—

- (a) any person who has knowingly sent; or
- (b) the master who has knowingly taken,

the unsafe ship to sea is guilty of an offence.

Penalty: ¹⁶⁰A fine not exceeding K40,000.00.

(2) It is a defence to a prosecution for an offence under Subsection (1) if the person charged with the offence proves that—

- (a) he used all reasonable means to ensure that he sent or took the ship to sea in a safe state; or
- (b) having regard to the circumstances, the sending or taking of the ship to sea was reasonable and justifiable.

96. DETENTION OF UNSAFE SHIPS.

(1)^{161 162}An unsafe ship may be detained until, in the opinion of the Authority, she ceases to be an unsafe ship.

(2)^{163 164}Where an unsafe ship is detained, the Authority shall give written notice to the owner or to the master setting out the reasons for the detention.

(3)^{165 166}Where a ship that is registered in a country other than Papua New Guinea is detained under Subsection (1), the Authority shall, as soon as practicable, cause the Consul or other diplomatic representative of the country in which the ship is registered to be informed of the detention and of the reasons for the detention.

¹⁵⁸ Section 94 Subsection (2) amended by No. 70 of 2006, s. 54.

¹⁵⁹ Section 94 Subsection (2) amended by No. 70 of 2006, s. 54.

¹⁶⁰ Section 95 Subsection (1) amended by No. 70 of 2006, s. 55.

¹⁶¹ Section 96 Subsection (1) amended by No. 70 of 2006, s. 56.

¹⁶² Section 96 Subsection (1) amended by No. 70 of 2006, s. 56.

¹⁶³ Section 96 Subsection (2) amended by No. 70 of 2006, s. 56.

¹⁶⁴ Section 96 Subsection (2) amended by No. 70 of 2006, s. 56.

¹⁶⁵ Section 96 Subsection (3) amended by No. 70 of 2006, s. 56.

¹⁶⁶ Section 96 Subsection (3) amended by No. 70 of 2006, s. 56.

Division 9.**Passengers.****97. DETENTION.**

(1)¹⁶⁷ ¹⁶⁸Where in the opinion of the Authority there would be a danger to the safety, comfort, health or well-being of any passenger on a ship by reason of the manner in which the ship is—

- (a) equipped; or
- (b) manned; or
- (c) carrying cargo, livestock or ballast; or
- (d) provided with—
 - (i) passenger or hospital accommodation; or
 - (ii) sanitary, health or medical services; or
 - (iii) provisions, water or stores,

the Authority may notify the master of the ship.

(2)¹⁶⁹ ¹⁷⁰Where notification is given under Subsection (1), the carriage of passengers in the ship in respect of which the notification is given is prohibited until such time as the Authority is satisfied that passengers may be carried without danger to their safety, comfort, health or well-being.

(3) The master of a ship carrying passengers who takes the ship to sea while the carriage of passengers is prohibited under Subsection (2) is guilty of an offence.

Penalty: ¹⁷¹A fine not exceeding K4,000.00 and in addition a fine not exceeding K400.00 for each passenger carried in the ship.

98. REGULATIONS FOR CARRIAGE OF PASSENGERS IN SHIPS.

¹⁷²The regulations may, make provision, not inconsistent with this Division, for and in relation to—

- (a) the accommodation of passengers; and
- (b)¹⁷³ the manner of notification to the Authority of the carriage of unberthed passengers; and
- (c) provisions, water, medical stores and medical inspection; and

¹⁶⁷ Section 97 Subsection (1) amended by No. 70 of 2006, s. 57.

¹⁶⁸ Section 97 Subsection (1) amended by No. 70 of 2006, s. 57.

¹⁶⁹ Section 97 Subsection (2) amended by No. 70 of 2006, s. 57.

¹⁷⁰ Section 97 Subsection (2) amended by No. 70 of 2006, s. 57.

¹⁷¹ Section 97 Subsection (3) amended by No. 70 of 2006, s. 57; Subsection (3) amended by No. 70 of 2006, s. 57.

¹⁷² Section 98 Amended by No. 70 of 2006, s. 58.

¹⁷³ Section 98 Amended by No. 70 of 2006, s. 58.

- (d) the carriage of medical staff and the provision of hospital accommodation; and
- (e) sanitary facilities; and
- (f) sale of alcohol; and
- (g) passenger lists; and
- (h) the cargo that may be carried and the method of stowing cargo; and
- (i) the maintenance of good order in respect of the passengers; and
- (j) the prevention of wilful damage and injury to the machinery or equipment of a ship by a passenger; and
- (k) the prevention of any obstruction to any crewman in the execution of his duty; and
- (l) the prevention of the molesting of or interference with any person on board the ship; and
- (m)¹⁷⁴ the approval by the Authority of the number of passengers to be carried on a particular ship; and
- (n)¹⁷⁵ the exemption by the Authority of a particular ship or a particular class of ship from any requirement relating to passengers.
- (o)¹⁷⁶ the particulars of the fines to be paid under Section 97.

Division 10.¹⁷⁷

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99¹⁷⁸. [*Repealed.*]

¹⁷⁴ Section 98 Amended by No. 70 of 2006, s. 58.

¹⁷⁵ Section 98 Amended by No. 70 of 2006, s. 58.

¹⁷⁶ Section 98 Amended by No. 70 of 2006, s. 58.

¹⁷⁷ Division 10 of Part IV Repealed by No. 70 of 2006, s. 59.

¹⁷⁸ Section 99 Repealed by No. 70 of 2006, s. 59.

PART V. – CREWMEN*Division 1**Preliminary***100. APPLICATION OF PART V.**

(1) This Part, unless the contrary intention appears, applies to and in relation to a ship—

- (a) that is 10m or more in length and is registered under this Act or in respect of which an application is required to be made under Section 16; and
- (b) that is more than 10m in length and employed solely in navigation on internal waters; and
- (c)¹⁷⁹ in respect of which a person holds a coasting trade licence and, in the opinion of the Authority, is engaged in the coasting trade; and
- (d) that is a Government ship of more than 10m in length.

(2) This Part does not apply to or in relation to, a ship that is—

- (a) an air cushioned vehicle; or
- (b) a pleasure craft; or
- (c) in the opinion of the Registrar—of traditional build; or
- (d) a troopship.

101. EXEMPTION OF PARTICULAR SHIPS.

(1)¹⁸⁰ ¹⁸¹Subject to Section 129, the Authority, on the advice of the Minister responsible for labour matters may, by notice in the National Gazette, subject to such conditions (if any) as it thinks fit, exempt a particular ship or a particular class or description of ship from any requirement of this Part.

(2) An exemption under Subsection (1) may be in respect of—

- (a) a particular period; or
- (b) one or more particular voyages.

102. APPOINTMENT OF LABOUR SHIPPING OFFICERS.

¹⁸²The Minister responsible for labour matters may, by notice in the National Gazette, appoint a person to be labour Shipping Officer.

¹⁷⁹ Section 100 Subsection (1) amended by No. 70 of 2006, s. 60.

¹⁸⁰ Section 101 Subsection (1) amended by No. 70 of 2006, s. 61; Subsection (1) amended by No. 70 of 2006, s. 61.

¹⁸¹ Section 101 Subsection (1) amended by No. 70 of 2006, s. 61; Subsection (1) amended by No. 70 of 2006, s. 61.

¹⁸² Section 102 Substituted by No. 70 of 2006, s. 62.

Division 2.

Manning and Certificates of Competency.

103. GOING TO SEA UNDERMANNED.

(1) Subject to Subsection (3), a ship must carry such number and grades of qualified crewmen as are prescribed.

(2) An owner or master of a ship that goes to sea without carrying the prescribed number of qualified crewmen is guilty of an offence.

Penalty: ¹⁸³A fine not exceeding K8,000.00.

(3)¹⁸⁴ ¹⁸⁵Where a ship is at a port and does not have the prescribed number of crewmen of a particular grade, the Authority where it is satisfied that—

- (a) a qualified crewman of the prescribed grade is not available for employment at the port; and
- (b) it would be unreasonable to require the employer to obtain a qualified crewman of the prescribed grade from another port; and
- (c) the safety of the ship would not be endangered,

may allow the ship, subject to such conditions (if any) as it thinks fit, to go to sea without carrying the prescribed number of qualified crewmen.

104. CERTIFICATE OF COMPETENCY.

(1)¹⁸⁶ ¹⁸⁷Subject to this Act, the Authority may issue a certificate of competency in the prescribed manner to a person.

(2) A certificate of competency issued under this section is evidence that the person to whom the certificate is issued is a qualified crewman of the grade stated in the certificate.

105. INCAPACITY OF QUALIFIED CREWMAN.

(1)¹⁸⁸ ¹⁸⁹Where a qualified crewman appears to be medically unfit to perform the duties required of him, the Authority may require him to submit himself for such medical examination as the Authority determines to be necessary.

(2) Where—

- (a) a person who has conducted a medical examination referred to in Subsection (1) determines that a qualified crewman is medically unfit; and

¹⁸³ Section 103 Subsection (2) amended by No. 70 of 2006, s. 63.

¹⁸⁴ Section 103 Subsection (3) amended by No. 70 of 2006, s. 63; Subsection (3) amended by No. 70 of 2006, s. 63.

¹⁸⁵ Section 103 Subsection (3) amended by No. 70 of 2006, s. 63; Subsection (3) amended by No. 70 of 2006, s. 63.

¹⁸⁶ Section 104 Subsection (1) amended by No. 70 of 2006, s. 64.

¹⁸⁷ Section 104 Subsection (1) amended by No. 70 of 2006, s. 64.

¹⁸⁸ Section 105 Subsection (1) amended by No. 70 of 2006, s. 65.

¹⁸⁹ Section 105 Subsection (1) amended by No. 70 of 2006, s. 65.

- (b)¹⁹⁰ in the opinion of the Authority, the crewman should not, for the duration of the medical unfitness, be a qualified crewman of the grade stated in his certificate of competency,

the crewman is deemed not to be so qualified.

(3)^{191 192} Where a crewman is deemed under this section not to be a qualified crewman of the grade stated in his certificate of competency, the Authority shall endorse the certificate of competency of the crewman as prescribed.

(4)^{193 194} The Authority may direct a crewman to make available to it a certificate of competency for endorsement under Subsection (3).

(5) A crewman who refuses, or fails without reasonable cause, to comply with a direction under Subsection (4) is guilty of an offence.

Penalty: ¹⁹⁵ A fine not exceeding K800.00.

(6)^{196 197} Where a crewman who is deemed under this section not to be a qualified crewman of a particular grade proves to the satisfaction of the Authority that he is medically fit to perform the duties required of him—

(a) he ceases to be deemed not to be a qualified crewman of that grade; and

(b)¹⁹⁸ the Authority shall endorse his certificate of competency as prescribed.

(7)^{199 200} A crewman who is deemed under Subsection (2) not to be a qualified crewman of a particular grade may within 14 days of the date of being so deemed appeal to the National Court against the decision of the Authority and the National Court shall make such order as the justice of the case requires.

106. UNQUALIFIED PERSON GOING TO SEA AS QUALIFIED CREWMAN.

(1) A person who—

(a) goes to sea as a qualified crewman of a particular grade; and

(b) is not or is deemed not to be a qualified crewman of such a grade,

is guilty of an offence.

(2) A master of a ship who knowingly permits a person to go to sea as a qualified crewman of a particular grade when that person is a person referred to in Subsection (1)(b) is guilty of an offence.

¹⁹⁰ Section 105 Subsection (2) amended by No. 70 of 2006, s. 65.

¹⁹¹ Section 105 Subsection (3) amended by No. 70 of 2006, s. 65.

¹⁹² Section 105 Subsection (3) amended by No. 70 of 2006, s. 65.

¹⁹³ Section 105 Subsection (4) amended by No. 70 of 2006, s. 65; Subsection (4) amended by No. 70 of 2006, s. 65.

¹⁹⁴ Section 105 Subsection (4) amended by No. 70 of 2006, s. 65; Subsection (4) amended by No. 70 of 2006, s. 65.

¹⁹⁵ Section 105 Subsection (5) amended by No. 70 of 2006, s. 65.

¹⁹⁶ Section 105 Subsection (6) amended by No. 70 of 2006, s. 65.

¹⁹⁷ Section 105 Subsection (6) amended by No. 70 of 2006, s. 65.

¹⁹⁸ Section 105 Subsection (6) amended by No. 70 of 2006, s. 65.

¹⁹⁹ Section 105 Subsection (7) amended by No. 70 of 2006, s. 65.

²⁰⁰ Section 105 Subsection (7) amended by No. 70 of 2006, s. 65.

Penalty: ²⁰¹A fine not exceeding K4,000.00.

107. PRODUCTION OF CERTIFICATE OF COMPETENCY.

A crewman who—

- (a) holds any certificate of competency or other document that is evidence that he is a qualified crewman; and
- (b) refuses, or fails without reasonable cause, on demand, to produce the certificate or other document to—
 - (i) his employer; or
 - (ii) the master of the ship on which he is employed; or
 - (iii)²⁰² a Labour Shipping Officer,

is guilty of an offence.

Penalty: ²⁰³A fine not exceeding K800.00.

108. REGULATIONS FOR MANNING AND CERTIFICATES OF COMPETENCY.

²⁰⁴The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the standards of competence to be attained by a crewman and other conditions to be satisfied in order for a crewman to be a qualified crewman of a particular grade;
- (b) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced; and
- (c) the manner and conduct of any examinations and the conditions for admission to examinations; and
- (d) the appointment and remuneration of examiners; and
- (e) the issue, form and recording of certificates of competency and other documents; and
- (f) the endorsement of certificates of competency and other documents; and
- (g)²⁰⁵ a determination by the Authority in respect of any of the matters referred to in Paragraphs (a), (b) and (c).
- (h)²⁰⁶ the particulars of the fines to be paid under Sections 103, 105, 106 and 107.

²⁰¹ Section 106 Subsection (2) amended by No. 70 of 2006, s. 66.

²⁰² Section 107 Amended by No. 70 of 2006, s. 67.

²⁰³ Section 107 Amended by No. 70 of 2006, s. 67.

²⁰⁴ Section 108 Amended by No. 70 of 2006, s. 68.

²⁰⁵ Section 108 Amended by No. 70 of 2006, s. 68.

²⁰⁶ Section 108 Amended by No. 70 of 2006, s. 68.

Division 3.
Agreements.

109. EMPLOYER TO COMPLY WITH AGREEMENTS.

An employer who fails, without reasonable cause, to comply with any provision of this Division is guilty of an offence.

Penalty: ²⁰⁷ A fine not exceeding K4,000.00.

110. AGREEMENTS.

(1) Where a crewman is employed there shall be an agreement between—

- (a) the employer, or a person on his behalf; and
- (b) the crewman.

(2) An agreement shall be—

- (a) in writing; and
- (b) executed by the parties to the agreement.

(3) An agreement may be with respect to employment in one or more ships and may be for—

- (a) a particular period, not exceeding two years; or
- (b) one or more particular voyages.

(4) In every agreement, notwithstanding any express provision in the agreement to the contrary, there is an implied term that the employer and the owner of the ship shall use all reasonable means to ensure that the ship in which the crewman is, or is to be, employed is seaworthy for, and during, any voyage which may take place during the currency of the agreement and any consent, or purported consent, by the crewman to waive the benefit of that implied term is void and of no effect.

111. APPROVAL OF AGREEMENTS.

(1)^{208 209} An employer shall, before a ship in which crewmen are, or are to be, employed, goes to sea, lodge a copy of the proposed agreement with a Labour Shipping Officer.

(2)^{210 211} The Labour Shipping Officer shall, if satisfied that the agreement—

- (a) adequately protects the interests of the crewmen; and
- (b) complies with the requirements of this Part,

²⁰⁷ Section 109 Amended by No. 70 of 2006, s. 69.

²⁰⁸ Section 111 Subsection (1) amended by No. 70 of 2006, s. 70.

²⁰⁹ Section 111 Subsection (1) amended by No. 70 of 2006, s. 70.

²¹⁰ Section 111 Subsection (2) amended by No. 70 of 2006, s. 70.

²¹¹ Section 111 Subsection (2) amended by No. 70 of 2006, s. 70.

approve the proposed agreement.

(3) A master of a ship who takes the ship to sea without the approval referred to in Subsection (2) is guilty of an offence.

Penalty: ²¹²A fine not exceeding K2,000.00.

112. CREWMAN TO UNDERSTAND CONTENTS OF AGREEMENT.

An employer shall, before a crewman signs an agreement, ensure that—

- (a) the crewman reads the agreement; or
- (b) if the crewman is illiterate—the agreement is read to the crewman by some person employed by the employer,

and so far as is practicable, the crewman understands the nature and content of the agreement.

113. TERMINATION OF AGREEMENTS.

(1) Subject to Subsections (2) and (3), an agreement is terminated—

- (a) by the mutual consent of—
 - (i) the employer; and
 - (ii) the crewman; or
- (b) by the death of the crewman; or
- (c) where the agreement relates to employment for a particular period, at the expiry of that period, and if the period expires during a voyage, on the arrival of the ship at the next port of call after the expiry of the period; or
- (d) where the agreement relates to employment in a particular ship—
 - (i) by the wreck, loss or total inability of the ship to go to sea or to proceed on a voyage; or
 - (ii) where the ship is registered under this Act—by the ship ceasing to be registered under this Act; or
- (e) by the crewman becoming a suspended person; or
- (f) by the dismissal of the crewman.

(2)²¹³ ²¹⁴Where, but for this subsection, an agreement would have been terminated under Subsection (1)(d)(ii) the crewman may, with the written approval of a Labour Shipping Officer, consent to continue employment in the ship, and in that case, the agreement is deemed not to have been terminated.

²¹² Section 111 Subsection (3) amended by No. 70 of 2006, s. 70.

²¹³ Section 113 Subsection (2) amended by No. 70 of 2006, s. 71.

²¹⁴ Section 113 Subsection (2) amended by No. 70 of 2006, s. 71.

(3)^{215 216} An agreement is not capable of being terminated under Subsection (1)(a), (c) or (f) at a place away from the proper return port of the crewman without the consent of a Labour Shipping Officer or of the proper officer at that place.

114. UNLAWFUL AGREEMENTS.

(1) A person who knowingly employs in a ship or enters into an agreement for employment as a crewman on the ship with—

- (a) a person under the age of 15 years; or
- (b) except as may be prescribed—a person under the age of 18 years; or
- (c) a suspended person,

is guilty of an offence.

Penalty: ²¹⁷ A fine not exceeding K2,000.00.

(2) An agreement entered into in contravention of Subsection (1) is void and of no effect.

(3) A suspended person who offers himself for employment as a crewman in a ship or enters into an agreement for employment as a crewman on a ship is guilty of an offence.

Penalty: ²¹⁸ A fine not exceeding K2,000.00.

115. LABOUR SHIPPING OFFICER TO APPROVE EMPLOYMENT OF CITIZENS.

(1)^{219 220} A person who, at a place in the country without the written approval of a Labour Shipping Officer, employs a citizen as a crewman on a ship—

- (a) to which this Part does not apply; and
- (b) that is proceeding on a voyage to a place outside the country,

is guilty of an offence.

(2) Where—

- (a) there is a contravention of Subsection (1); and
- (b) a citizen is carried to sea,

an owner or the master of the ship in which the citizen is carried to sea is guilty of an offence.

Penalty: ²²¹ A fine not exceeding K4,000.00.

²¹⁵ Section 113 Subsection (3) amended by No. 70 of 2006, s. 71.

²¹⁶ Section 113 Subsection (3) amended by No. 70 of 2006, s. 71.

²¹⁷ Section 114 Subsection (1) amended by No. 70 of 2006, s. 72.

²¹⁸ Section 114 Subsection (3) amended by No. 70 of 2006, s. 72.

²¹⁹ Section 115 Subsection (1) amended by No. 70 of 2006, s. 73.

²²⁰ Section 115 Subsection (1) amended by No. 70 of 2006, s. 73.

²²¹ Section 115 Subsection (2) amended by No. 70 of 2006, s. 73.

116. PROHIBITION ON SEEKING REWARD FOR EMPLOYMENT.

A person who demands or receives, directly or indirectly, from another person seeking employment as a crewman any remuneration or reward, whether in cash or otherwise, for providing employment to that other person is guilty of an offence.

Penalty: ²²²A fine not exceeding K4,000.00.

117. REGULATIONS FOR AGREEMENTS.

²²³The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the conditions and particulars to be included in an agreement; and
- (b) the form of an agreement and the manner in which an agreement shall be made; and
- (c) the manner in which an agreement shall be—
 - (i) added to; or
 - (ii) amended; or
 - (iii)²²⁴ lodged with a Labour Shipping Officer; and
- (d) the circumstances in which an agreement, or a copy of an agreement, shall be carried in a ship; and
- (e)²²⁵ the requirements for an agreement, or a copy of an agreement to be delivered to a Labour Shipping Officer; and
- (f)²²⁶ the requirement for an agreement or a copy of an agreement, to be made available for perusal by a Labour Shipping Officer; and
- (g) the conditions under which a person not under 15 years of age but less than 18 years of age may enter into an agreement; and
- (h)²²⁷ the notice required to be given to a Labour Shipping Officer before an agreement is entered into or terminated; and
- (i) the procedures and practices to be followed on the termination of an agreement; and
- (j) the circumstances under which, other than by reason of termination of an agreement, a crewman may be left behind from a ship outside the country.
- (k)²²⁸ the particulars of the fines to be paid under Section 109, 111, 114(1), 114(3), 115 and 116.

²²² Section 116 Amended by No. 70 of 2006, s. 74.

²²³ Section 117 Amended by No. 70 of 2006, s. 75.

²²⁴ Section 117 Amended by No. 70 of 2006, s. 75.

²²⁵ Section 117 Amended by No. 70 of 2006, s. 75.

²²⁶ Section 117 Amended by No. 70 of 2006, s. 75.

²²⁷ Section 117 Amended by No. 70 of 2006, s. 75.

Division 4.

Wages.

118. AGREEMENT AS TO WAGES.

Subject to this Act, a crewman shall be paid wages in accordance with the terms of an agreement.

119. ACCOUNT OF WAGES.

An employer who refuses, or fails without reasonable cause, to deliver to a crewman an exact account of—

- (a) the wages due to the crewman under an agreement; and
- (b) the deductions (if any) made from those wages,

is guilty of an offence.

Penalty: ²²⁹A fine not exceeding K4,000.00.

120. PAYMENT OF WAGES.

(1) Subject to this Act, the wages due to a crewman under an agreement shall be paid in full on the termination of the agreement.

(2) Where an employer fails, without reasonable cause, to make payment in full to a crewman as provided in Subsection (1) he shall, in respect of each day for which payment is delayed, pay to the crewman a sum equal to double the daily rate fixed under the agreement.

(3)²³⁰ ²³¹Where the amount required to make payment in full as provided in Subsection (1) is less than the amount fixed by the Minister responsible for labour matters and published in the National Gazette, the number of days in respect of which payment is to be made under Subsection (2) shall not exceed seven.

(4) A sum payable under Subsections (2) and (3) is deemed to be wages due to the crewman.

121. ALLOTMENTS.

(1) A crewman may allot any part of his wages not exceeding 75% of the whole.

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

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

²²⁸ Section 117 Amended by No. 70 of 2006, s. 75.

²²⁹ Section 119 Amended by No. 70 of 2006, s. 76.

²³⁰ Section 120 Subsection (3) amended by No. 70 of 2006, s. 77.

²³¹ Section 120 Subsection (3) amended by No. 70 of 2006, s. 77.

122. DISPUTES.

(1)^{232 233} A dispute relating to the amount of wages payable to a crewman may, if the parties to the dispute so agree, be submitted to a Labour Shipping Officer for his decision.

(2)^{234 235} A Labour Shipping Officer to whom a dispute has been submitted under Subsection (1) may accept the submission but is not bound to accept it if he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(3)^{236 237} The decision of a Labour Shipping Officer on a dispute accepted by him under Subsection (2) is final.

(4)^{238 239} Where the amount in dispute does not exceed the sum of the daily rate payable under the agreement multiplied by 14, a Labour Shipping Officer shall, on the application of either of the parties to the dispute, adjudicate between the parties and his decision is final.

123. ENTITLEMENT TO WAGES AFTER WRECK OR LOSS OF SHIP.

(1) Where a ship is wrecked, lost or unable to proceed on a voyage, a crewman whose employment in the ship is thereby terminated before the date contemplated in the agreement is, subject to Subsection (2), entitled to wages at the rate payable under the agreement at the date of the wreck, loss or inability to proceed for every day on which he is unemployed in the two calendar months next after the date of the wreck, loss or inability to proceed.

(2) A crewman is not entitled to wages under Subsection (1) for a day on which he is unemployed, if it is proved that—

- (a) he did not make reasonable efforts to save the ship or persons or property carried in her; or
- (b) the unemployment was not due to the wreck, loss or inability of the ship to proceed; or
- (c) he was able to obtain suitable employment for that day but unreasonably refused or failed to accept that employment.

124. ENTITLEMENT TO WAGES FOR SICK OR INJURED CREWMAN LEFT BEHIND.

(1) Where a crewman belonging to a ship is left behind at a port other than his proper return port by reason of a circumstance referred to in Subsection (2), he is

²³² Section 122 Subsection (1) amended by No. 70 of 2006, s. 78.

²³³ Section 122 Subsection (1) amended by No. 70 of 2006, s. 78.

²³⁴ Section 122 Subsection (2) amended by No. 70 of 2006, s. 78.

²³⁵ Section 122 Subsection (2) amended by No. 70 of 2006, s. 78.

²³⁶ Section 122 Subsection (3) amended by No. 70 of 2006, s. 78.

²³⁷ Section 122 Subsection (3) amended by No. 70 of 2006, s. 78.

²³⁸ Section 122 Subsection (4) amended by No. 70 of 2006, s. 78.

²³⁹ Section 122 Subsection (4) amended by No. 70 of 2006, s. 78.

entitled to wages, at the daily rate fixed under the agreement, in respect of each day during the period—

- (a) commencing on the date on which he was so left behind; and
- (b) ending on the—
 - (i) date of his return to his proper return port; or
 - (ii) expiration of a period of two calendar months after the date referred to in Paragraph (a); or
 - (iii) death of the crewman,

whichever first occurs.

(2) A circumstance referred to in Subsection (1) is the illness, hurt or injury of a crewman where such illness, hurt or injury is—

- (a) not due to the—
 - (i) wilful act or default; or
 - (ii) misbehaviour,

of the crewman; and

- (b) such as to incapacitate him wholly from the performance of his duty.

125. RIGHT OF CREWMAN TO WAGES.

(1) The lien of—

- (a) a crewman for his wages; and
- (b) a master of a ship for his wages and for re-imburement of any expenditure or disbursements properly incurred or made by him on behalf of the ship,

have priority over all other liens irrespective of the date of that lien or those other liens.

(2) The right of a crewman to wages does not depend on the earning of freight.

126. CREWMAN CANNOT WAIVE PROTECTION OF ACT.

A provision in an agreement, whether express or implied, which purports to modify, vary or negative the rights of a crewman under this Division is void and of no effect.

127. REGULATIONS FOR WAGES.

²⁴⁰The regulations may make provision, not inconsistent with this Division, for and in relation to—

²⁴⁰ Section 127 Amended by No. 70 of 2006, s. 79.

- (a) the deductions which may be made from the wages due to a crewman; and
- (b) the manner in which deductions may be made; and
- (c) the manner in which wages are to be paid; and
- (d) the manner in which wages are to be accounted for where a crewman leaves a ship otherwise than on termination of an agreement; and
- (e) the form and manner in which accounts of wages are to be prepared by an employer and delivered to a crewman; and
- (f) the form of allotment notes; and
- (g) the circumstances in which allotments may be made.
- (h)²⁴¹ the particulars of the fines to be paid under Section 119.

Division 5.

Crew Accommodation.

128. CREW ACCOMMODATION.

(1) A ship must have accommodation exclusively reserved for the use of the crew.

(2) The accommodation referred to in Subsection (1) shall be known as the crew accommodation.

(3) The crew accommodation of a ship must be of the prescribed standard.

(4) An owner or master of a ship who permits the ship to go to sea without crew accommodation of the prescribed standard is guilty of an offence.

Penalty: ²⁴²A fine not exceeding K2,000.00.

129²⁴³. [REPEALED.]

130. REGULATIONS FOR CREW ACCOMMODATION.

²⁴⁴The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the crew accommodation requirements for new and existing ships; and
- (b) the minimum space per man which must be provided by way of sleeping accommodation for crewmen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used; and
- (c) the position in a ship in which the crew accommodation or any part of the crew accommodation is to be located; and

²⁴¹ Section 127 Amended by No. 70 of 2006, s. 79.

²⁴² Section 128 Subsection (4) amended by No. 70 of 2006, s. 80.

²⁴³ Section 129 Repealed by No. 70 of 2006, s. 81.

²⁴⁴ Section 130 Amended by No. 70 of 2006, s. 82.

- (d) the standards to be observed in the construction, equipment, ventilation, lighting, heating and furnishing of crew accommodation; and
- (e) the provision of washing, sanitary, toilet, messing and hospital facilities for crewmen; and
- (f) the standards of maintenance of crew accommodation; and
- (g) the prohibition or restriction, of the use of crew accommodation for purposes other than those for which it is designed; and
- (h)²⁴⁵ the determination by the Authority of the crew accommodation requirements for existing ships.
- (i)²⁴⁶ the particulars of the fines to be paid under Section 128.

Division 6.

Welfare.

131. PROVISIONS AND WATER.

(1) An employer or master of a ship shall ensure that the provisions and water supplied for the use of crewmen are as prescribed.

(2)^{247 248} Where three or more crewmen are of the opinion that the provisions or water supplied for the use of crewmen are not as prescribed, they may complain to a Labour Shipping Officer.

(3)^{249 250} A Labour Shipping Officer to whom a complaint is made under this section shall immediately cause the complaint to be investigated.

(4)^{251 252} For the purposes of an investigation under this section, a Labour Shipping Officer may cause the provisions or water to be examined.

(5)^{253 254} Where, after an investigation under this section, a Labour Shipping Officer is of the opinion that the provisions or water are not as prescribed he shall direct the employer or the master to replace them.

(6) An employer or a master shall comply with a direction given under this section.

²⁴⁵ Section 130 Amended by No. 70 of 2006, s. 82.

²⁴⁶ Section 130 Amended by No. 70 of 2006, s. 82.

²⁴⁷ Section 131 Subsection (2) amended by No. 70 of 2006, s. 83.

²⁴⁸ Section 131 Subsection (2) amended by No. 70 of 2006, s. 83.

²⁴⁹ Section 131 Subsection (3) amended by No. 70 of 2006, s. 83.

²⁵⁰ Section 131 Subsection (3) amended by No. 70 of 2006, s. 83.

²⁵¹ Section 131 Subsection (4) amended by No. 70 of 2006, s. 83.

²⁵² Section 131 Subsection (4) amended by No. 70 of 2006, s. 83.

²⁵³ Section 131 Subsection (5) amended by No. 70 of 2006, s. 83.

²⁵⁴ Section 131 Subsection (5) amended by No. 70 of 2006, s. 83.

132. SHIP TO CARRY MEDICAL STORES, ETC.

An owner or master of a ship who permits the ship to go to sea without carrying the prescribed number of qualified first aid attendants, medicines and medical and surgical stores is guilty of an offence.

Penalty: ²⁵⁵A fine not exceeding K4,000.00.

133. COMPLAINTS.

(1) Where, in the opinion of a crewman, the crewman has cause to complain about—

- (a) the master; or
- (b) any other crewman on a ship; or
- (c) the conditions on board a ship,

he may complain to the master.

(2) Where a crewman—

- (a) has made complaint under Subsection (1); and
- (b) is dissatisfied with—
 - (i) the action taken by the master on that complaint; or
 - (ii) the failure of the master to take any action,

the crewman may—

- (c) state his dissatisfaction to the master; and
- (d)²⁵⁶ request the master to make adequate arrangements for the crewman to complain to a Labour Shipping Officer or, where the complaint under Subsection (1) bears on a matter that prejudices the safety of the ship, to the Authority, as soon as the service of the ship permits.

(3) A master to whom a request has been made under Subsection (2) who refuses, or fails without reasonable cause, to make the adequate arrangements referred to in that subsection is guilty of an offence.

Penalty: ²⁵⁷A fine not exceeding K400.00.

134. RETURN OF DISTRESSED CREWMEN.

(1) Subject to Section 137, where a person is a distressed crewman, the person who last employed him as a crewman, must make such provision as is prescribed for his—

- (a) return to his proper return port; and
- (b) relief and maintenance until his return to his proper return port.

²⁵⁵ Section 132 Amended by No. 70 of 2006, s. 84.

²⁵⁶ Section 133 Subsection (2) amended by No. 70 of 2006, s. 85.

²⁵⁷ Section 133 Subsection (3) amended by No. 70 of 2006, s. 85.

(2) A person who fails to make the provision referred to in Subsection (1) is guilty of an offence.

Penalty: ²⁵⁸A fine not exceeding K20,000.00.

135. PLACE DEEMED TO BE PROPER RETURN PORT.

Where a distressed crewman refuses or fails without reasonable cause, to—

- (a) agree to be employed in a ship in which he is to be returned to his proper return port; or
- (b) comply with any reasonable arrangement for his return to his proper return port,

the place at which the refusal or failure occurs shall, from the time of the refusal or failure, be deemed to be the proper return port of the distressed crewman and his employer shall not be required to make provision for any expense incurred in relation to the distressed crewman after the occurrence of the refusal or failure.

136. RECOVERY OF EXPENSES.

Where expense is incurred in respect of a matter for which a person is required to make provision under Section 134, then, unless it can be proved that a distressed crewman would not have been left behind but for his own wrongful act or neglect—

- (a) if the expense is incurred by, or on behalf of, the State—the State; or
- (b) if the expense is incurred by the distressed crewman—the distressed crewman,

may recover the expense from the person who is required to make that provision.

137. DISTRESSED CREWMAN ELECTING TO REMAIN AWAY FROM PROPER RETURN PORT.

Where a distressed crewman elects, after the expiry of a period of three calendar months from the date of his becoming a distressed crewman to remain at a place away from his proper return port—

- (a) he shall be deemed, from the date on which he so elects, not to be a distressed crewman; and
- (b) the person who last employed him as a crewman shall not be liable to make provision for his return to his proper return port or for any matter arising after the date on which he so elects.

138. RECOVERY OF BURIAL EXPENSES.

Where—

- (a) a crewman dies; or
- (b) a person dies while being a distressed crewman,

²⁵⁸ Section 134 Subsection (2) amended by No. 70 of 2006, s. 86.

and his body—

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

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

139. DISPOSAL OF PROPERTY OF DECEASED CREWMAN.

(1) The master of a ship in which there is any property of a deceased crewman who refuses, or fails without reasonable cause, to cause that property to be delivered up in the prescribed manner to the Registrar is guilty of an offence.

Penalty: ²⁵⁹A fine not exceeding K2,000.00.

(2) Where any property of a deceased crewman has come into the possession of the Registrar, the Registrar shall deal with that property as prescribed.

(3) Where, after deduction of any costs or expense incurred in respect of a deceased crewman or the property of a deceased crewman, the value of the residue of the assets of the deceased crewman held by the Registrar—

- (a)²⁶⁰ exceeds the amount fixed by the Registrar and published in the National Gazette, that residue shall be dealt with according to the normal rules of probate; and
- (b)²⁶¹ is the amount fixed by the Registrar and published in the National Gazette or less, the Registrar may at any time within three months deliver it to any one or more of the persons referred to in Subsection (4) and the Registrar shall then be discharged from any liability in respect of that residue.

(4) The persons referred to in Subsection (3) are any persons appearing to the Registrar to be—

- (a) the next of kin of the crewman; or
- (b) the widow or a child of the crewman; or
- (c) persons beneficially entitled, under a will or an intestacy, to the assets of the crewman.

(5) Where, in a case to which Subsection (3)(b) applies, the Registrar has been unable to pay or deliver the whole of the value of the residue of the assets as provided by that subsection, the whole of the value of the residue of the assets, or, if part only remains, that part, shall be dealt with as prescribed.

²⁵⁹ Section 139 Subsection (1) amended by No. 70 of 2006, s. 87.

²⁶⁰ Section 139 Subsection (3) amended by No. 70 of 2006, s. 87.

²⁶¹ Section 139 Subsection (3) amended by No. 70 of 2006, s. 87.

140. REGULATIONS FOR WELFARE.

²⁶²The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the quality and quantity of the provisions and water to be supplied for the use of crewmen; and
- (b) the manner of checking and inspecting provisions and water supplied for the use of crewmen; and
- (c) the manner and conduct of medical examinations of crewmen and of persons seeking employment as crewmen; and
- (d) the medicines and medical and surgical stores (including books containing instructions and advice) to be carried in a ship and the manner in which such medicines and stores are to be carried, stored and used in a ship; and
- (e) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a ship; and
- (f) the manner in which medical expenses incurred in respect of a crewman while at a place outside the country may be recovered from an employer; and
- (g)²⁶³ the circumstances and the manner in which a Labour Shipping Officer or the Authority shall make provision for the relief, maintenance and return to a proper return port of a distressed crewman; and
- (h) the manner in which any wages due to a distressed crewman and any property left on board a ship by a distressed crewman are to be dealt with; and
- (i) the manner in which any expense incurred in bringing ashore a crewman who has been shipwrecked, or in maintaining him after he has been brought ashore, may be recovered from the person who last employed him as a crewman; and
- (j) the manner in which the property of a deceased crewman is to be—
 - (i) held in custody; or
 - (ii) sold, converted into cash or otherwise disposed of.
- (k)²⁶⁴ the particulars of the fines to be paid under Sections 132, 133, 134 and 139.

²⁶² Section 140 Amended by No. 70 of 2006, s. 88.

²⁶³ Section 140 Amended by No. 70 of 2006, s. 88.

²⁶⁴ Section 140 Amended by No. 70 of 2006, s. 88.

Division 7.

Discipline.

141. MISCONDUCT ENDANGERING SHIP OR PERSONS ON BOARD.

(1) This section applies where a crewman—

(a) does any act which causes, or is likely to cause—

(i) the loss or destruction of, or serious damage to; or

(ii) the death of, or serious injury to, a person on board,
a ship; or

(b) fails to do anything required to be done by him to preserve—

(i) a ship from loss, destruction, or serious damage; or

(ii) any person on board the ship from death or serious injury.

(2) Where the act, or failure to act by the crewman referred to in Subsection (1)—

(a) is deliberate; or

(b) amounts to a breach or neglect of duty or disobedience to a lawful command; or

(c) occurs when the crewman is under the influence of alcohol, or a drug,

the crewman is guilty of an offence.

Penalty: ²⁶⁵A fine not exceeding K8,000.00 or imprisonment for a term not exceeding two years.

142. DEFENCE IF DRUG TAKEN FOR MEDICAL PURPOSES.

It is a defence to a charge of an offence against Section 141 if the person charged proves that—

(a) at the time of the alleged act or failure to act, he was under the influence of a drug taken by him for medical purposes; and

(b) either—

(i) he took that drug on medical advice and complied with any direction given as part of that advice; or

(ii) he had no reason to believe that the drug might have the influence it had.

143. CONTINUAL OR CONCERTED DISOBEDIENCE.

Where a crewman—

²⁶⁵ Section 141 Subsection (2) amended by No. 70 of 2006, s. 89.

- (a) persistently and wilfully–
 - (i) neglects his duty; or
 - (ii) disobeys lawful commands; or
- (b) combines with other crewmen to–
 - (i) disobey a lawful command; or
 - (ii) neglect his duty; or
 - (iii) impede the navigation of the ship,

he is guilty of an offence.

Penalty: ²⁶⁶A fine not exceeding K2,000.00.

144. ABSENCE WITHOUT LEAVE.

Where–

- (a) a crewman is absent without leave; and
- (b) his absence is–
 - (i) due to his recklessness; or
 - (ii) deliberate and without reasonable cause; and
- (c) a ship–
 - (i) is thereby delayed; or
 - (ii) goes to sea without him,

the crewman is guilty of an offence.

Penalty: ²⁶⁷A fine not exceeding K1,000.00.

145. PERSONS DEEMED TO BE CREWMEN.

Notwithstanding any other provision of this Act, where–

- (a) a person is carried to sea in a ship without the consent of the master or of any other person authorized to give consent to his being so carried; or
- (b) a distressed crewman is carried on a ship for the purpose of being returned to his proper return port,

he is, for the purposes of this Division, deemed to be a crewman on the ship.

146. DISCIPLINARY OFFENCES.

(1)²⁶⁸ ²⁶⁹The master of a ship who finds that a crewman has committed a disciplinary offence shall make a report of his findings in the prescribed form to a Labour Shipping Officer.

²⁶⁶ Section 143 Amended by No. 70 of 2006, s. 90.

²⁶⁷ Section 144 Amended by No. 70 of 2006, s. 91.

(2) Where—

- (a) two or more reports under Subsection (1) have been made within the prescribed time in respect of a crewman; or
- (b) a crewman has committed an offence under Section 141, 143 or 144,

the Registrar may declare the crewman to be a suspended person.

147. APPEAL AGAINST SUSPENSION.

(1) Where—

- (a) the Registrar has declared a crewman to be a suspended person; and
- (b) the period of suspension exceeds 12 months,

the crewman may, within 30 days of receiving the prescribed notification of his suspension, appeal to the National Court.

(2) Where an appeal is made under Subsection (1), the National Court shall make such orders as the justice of the case requires.

148. LIST OF SUSPENDED PERSONS.

(1) The Registrar shall keep a list known as the list of suspended persons.

(2) Where a crewman is suspended for a period—

- (a) of 12 months or less; or
- (b) exceeding 12 months and—
 - (i) no appeal to the National Court is made within the period of 30 days referred to in Section 147(1); or
 - (ii) an appeal is made under Section 147(1) and the National Court orders that the appeal be dismissed,

the Registrar shall include the name of the crewman in the list of suspended persons.

149. REGULATIONS FOR DISCIPLINARY OFFENCES.

²⁷⁰The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) misconduct on board a ship that is a disciplinary offence; and
- (b) the procedures under which a master may find that a crewman has committed a disciplinary offence; and
- (c) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to—
 - (i) a suspended person; and

²⁶⁸ Section 146 Subsection (1) amended by No. 70 of 2006, s. 92.

²⁶⁹ Section 146 Subsection (1) amended by No. 70 of 2006, s. 92.

²⁷⁰ Section 149 Amended by No. 70 of 2006, s. 93.

- (ii) the person who last employed him as a crewman; and
- (d) the manner in which the name of a suspended person shall be included in a list of suspended persons; and
- (e) the manner in which a list of suspended persons is—
 - (i) to be kept; and
 - (ii)²⁷¹ to be made available for inspection by any person appearing to the Registrar to be interested.
- (f)²⁷² the particulars of the fines to be paid under Sections 141, 143 and 144.

Division 8.

General.

150. STOWAWAYS.

A person who, without the consent of—

- (a) the master of a ship; or
- (b) a person authorized by the master of a ship to give that consent,

goes to sea in the ship is guilty of an offence.

Penalty: ²⁷³A fine not exceeding K2,000.00.

151. FEES PAYABLE IN RESPECT OF SERVICES OF LABOUR SHIPPING OFFICERS.

(1)^{274 275}Fees shall be payable as prescribed in respect of the services of Labour Shipping Officer.

(2)^{276 277}The fees referred to in Subsection (1) shall be known as Labour Shipping Officer Service Fees.

152. RETURNS OF BIRTHS AND DEATHS ON PAPUA NEW GUINEA SHIPS.

(1) In this section “**ship**” means a ship registered under this Act.

(2)^{278 279}The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Registrar of any—

- (a) birth occurring in; or

²⁷¹ Section 149 Amended by No. 70 of 2006, s. 93.

²⁷² Section 149 Amended by No. 70 of 2006, s. 93.

²⁷³ Section 150 Amended by No. 70 of 2006, s. 94.

²⁷⁴ Section 151 Subsection (1) amended by No. 70 of 2006, s. 95.

²⁷⁵ Section 151 Subsection (1) amended by No. 70 of 2006, s. 95.

²⁷⁶ Section 151 Subsection (2) amended by No. 70 of 2006, s. 95.

²⁷⁷ Section 151 Subsection (2) amended by No. 70 of 2006, s. 95.

²⁷⁸ Section 152 Subsection (2) amended by No. 70 of 2006, s. 96.

²⁷⁹ Section 152 Subsection (2) amended by No. 70 of 2006, s. 96.

(b) death occurring, or presumed to have occurred, in or from, the ship, is guilty of an offence.

Penalty: ²⁸⁰A fine not exceeding K400.00.

153. RETURNS OF BIRTHS AND DEATHS ON FOREIGN SHIPS.

(1) In this section “**ship**” means a ship registered in a country other than Papua New Guinea.

(2)²⁸¹ ²⁸²The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Registrar of any–

(a) birth occurring in; or

(b) death occurring, or presumed to have occurred, in or from, the ship, on a voyage to a port or place in the country, is guilty of an offence.

Penalty: ²⁸³A fine not exceeding K400.00.

154. CREWMAN’S IDENTITY CARD.

(1) The Registrar may issue to a person who is a citizen a card to be known as a Crewman’s Identity Card.

(2) A person to whom a Crewman’s Identity Card has been issued who refuses, or fails without reasonable cause–

(a) to keep the card securely; and

(b) to produce it when so required to such persons and in such circumstances as are prescribed,

is guilty of an offence.

Penalty: ²⁸⁴A fine not exceeding K400.00.

155. REGISTER OF CREWMEN.

(1) The Registrar shall cause to be kept at the principal port of registry a book to be known as the Register of Crewmen.

(2) The Registrar shall cause to be entered into the Register of Crewmen–

(a) particulars of an Employment Record Book issued under Section 156; and

(b) particulars of any period during which a person is a suspended person; and

(c) such other particulars as may be prescribed.

²⁸⁰ Section 152 Subsection (2) amended by No. 70 of 2006, s. 96.

²⁸¹ Section 153 Subsection (2) amended by No. 70 of 2006, s. 97.

²⁸² Section 153 Subsection (2) amended by No. 70 of 2006, s. 97.

²⁸³ Section 153 Subsection (2) amended by No. 70 of 2006, s. 97.

²⁸⁴ Section 154 Subsection (2) amended by No. 70 of 2006, s. 98.

(3) Any person may inspect the Register of Crewmen at any time during the hours of official attendance by the Registrar.

156. EMPLOYMENT RECORD BOOK.

(1) The Registrar may issue to a person a book to be known as an Employment Record Book.

(2) An Employment Record Book shall be in the prescribed form.

157. OFFICIAL LOG BOOK.

(1) The master of a ship shall keep a book to be known as the Official Log Book.

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

(a) to keep the Official Log Book in the prescribed manner; and

(b) to carry the Official Log Book in the ship,

is guilty of an offence.

Penalty: ²⁸⁵A fine not exceeding K4,000.00.

158. CREW LIST.

(1) An employer or the master of a ship must make and, in the prescribed manner, maintain a list of the crew of the ship.

Penalty: ²⁸⁶A fine not exceeding K4,000.00.

(2) A list referred to in Subsection (1) is to be known as a Crew List.

159. INQUIRIES INTO DEATH OR SERIOUS INJURY.

(1) Where—

(a) a person dies or suffers a serious injury in a ship; and

(b)²⁸⁷ the master of the ship fails, without reasonable cause, to notify the Authority of the death or serious injury,

the master of the ship is guilty of an offence.

Penalty: ²⁸⁸A fine not exceeding K1,000.00.

(2)^{289 290} Subject to Subsection (4), where—

(a) a person dies or suffers a serious injury in a ship; or

²⁸⁵ Section 157 Subsection (2) amended by No. 70 of 2006, s. 99.

²⁸⁶ Section 158 Subsection (1) amended by No. 70 of 2006, s. 100.

²⁸⁷ Section 159 Subsection (1) amended by No. 70 of 2006, s. 101.

²⁸⁸ Section 159 Subsection (1) amended by No. 70 of 2006, s. 101.

²⁸⁹ Section 159 Subsection (2) amended by No. 70 of 2006, s. 101; Subsection (2) amended by No. 70 of 2006, s. 101.

²⁹⁰ Section 159 Subsection (2) amended by No. 70 of 2006, s. 101; Subsection (2) amended by No. 70 of 2006, s. 101.

- (b) a crewman belonging to a ship dies or suffers a serious injury away from the ship,

an inquiry into the circumstances surrounding the death or serious injury shall, unless the Minister otherwise directs, be held by the Labour Shipping Officer or by a person so authorized by the Authority at the next port in Papua New Guinea at which the ship calls.

(3)^{291 292} For the purpose of holding an inquiry under Subsection (2), the Labour Shipping Officer, or the person authorized by the Authority, may—

- (a) go on board a ship at any time and inspect the ship or the machinery or equipment of the ship or any article on board the ship; or
- (b) summon any person before him and require that person to answer questions relating to the death or serious injury; or
- (c) require the production of any document that in his opinion is relevant to the inquiry.

(4) No inquiry shall be held under this section in a case where an inquest by a Coroner is being held, is to be held or is required to be held, under any law of Papua New Guinea.

(5)^{293 294} The Labour Shipping Officer or the person authorized by the Authority who has held an inquiry under Subsection (2) shall make a written report of his findings to the Authority and the Authority may make a copy of the report available in the case of a person who has—

- (a) died—
- (i) to the next of kin of the deceased person; or
- (ii)²⁹⁵ to any other person who requests such a copy and who appears to the Authority to be interested; and
- (b) suffered a serious injury—
- (i) to that person, or to a person acting on his behalf; or
- (ii)²⁹⁶ to any other person who requests such a copy and who appears to the Authority to be interested.

160. ABSENCE OF CREWMAN FROM DUTY.

(1) In this section “**crewman**” means a crewman who is absent from a ship at a time when, under an agreement, he is required to be on board.

²⁹¹ Section 159 Subsection (3) amended by No. 70 of 2006, s. 101; Subsection (3) amended by No. 70 of 2006, s. 101.

²⁹² Section 159 Subsection (3) amended by No. 70 of 2006, s. 101; Subsection (3) amended by No. 70 of 2006, s. 101.

²⁹³ Section 159 Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101.

²⁹⁴ Section 159 Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101; Subsection (5) amended by No. 70 of 2006, s. 101.

²⁹⁵ Section 159 Subsection (5) amended by No. 70 of 2006, s. 101.

²⁹⁶ Section 159 Subsection (5) amended by No. 70 of 2006, s. 101.

(2) Where a crewman proves—

(a) that his absence from a ship was due to—

(i) accident; or

(ii) mistake; or

(iii) some cause beyond his control; and

(b) that he took all reasonable precautions to avoid being absent,

his absence is not a breach of contract.

(3) Where, in an action for breach of contract arising from the absence of a crewman from a ship, a crewman fails to prove the matters referred to in Subsection (2), if special damages are—

(a) not claimed by his employer, his civil liability is limited to K10.00; and

(b) claimed by his employer, his civil liability is limited to K100.00.

161. FAILURE BY CREWMAN TO JOIN FOREIGN SHIP.

(1) This section applies to any ship which is registered in a country other than Papua New Guinea.

(2) Where a crewman of a ship, being a crewman who is not a citizen, fails to join the ship while the ship is at a place in Papua New Guinea a Magistrate or Judge may, on complaint being made—

(a) by the Consul or other diplomatic representative, of the country in which the ship is registered; or

(b) if there is no such representative in the country—by the owner of the ship or his agent,

issue a warrant for the apprehension of the crewman.

(3) Where a crewman has been apprehended under a warrant issued under Subsection (2), a Magistrate or Judge may place the crewman at the disposal of—

(a) the Consul or other diplomatic representative of the country in which the ship is registered; or,

(b) if there is no such representative in the country—the owner of the ship or his agent,

so that the crewman may be put back on board the ship either in the country or in some other country.

(4)^{297 298} Where any costs are incurred by the State—

(a) in the apprehension of a crewman under this section; or

(b) in the returning of the crewman to his ship,

²⁹⁷ Section 161 Subsection (4) amended by No. 70 of 2006, s. 102.

²⁹⁸ Section 161 Subsection (4) amended by No. 70 of 2006, s. 102.

those costs may be recovered from the owner of the ship or from his agent or from the Consul or diplomatic representative on the complaint of whom the crewman was apprehended.

162. DETENTION OF A SHIP.

(1) Where—

- (a) a ship is at a place in Papua New Guinea or within the territorial limits of Papua New Guinea; and
- (b)²⁹⁹ the Authority, or a Labour Shipping Officer, is of the opinion that the owner or the master of the ship or an employer, has failed to comply with a requirement of this Part,

the ship may be detained.

(2)³⁰⁰ ³⁰¹Where a ship is detained under Subsection (1), the ship may be detained until such time as the Authority, or a Labour Shipping Officer, issues a certificate showing that—

- (a) he is satisfied that the owner, the employer and the master have complied with this Part; and
- (b) the ship may go to sea without a contravention of this Part.

163. GENERAL REGULATIONS.

³⁰²The regulations may make provision, not inconsistent with this Division, for and in relation to—

- (a) the circumstances, manner and form in which the Registrar shall issue and record a Crewman's Identity Card; and
- (b) the circumstances and manner in which a Crewman's Identity Card is to be delivered up to a Shipping Officer; and
- (c) the issue and form of Employment Record Books; and
- (d) entries to be made in the Register of Crewmen; and
- (e) endorsements to be made in Employment Record Books; and
- (f) the particulars required to be entered in an Official Log Book; and
- (g) the persons by whom entries in an official log book are to be made, signed or witnessed; and
- (h) the procedure to be followed in the making of entries in an official log book; and

²⁹⁹ Section 162 Subsection (1) amended by No. 70 of 2006, s. 103; Subsection (1) amended by No. 70 of 2006, s. 103.

³⁰⁰ Section 162 Subsection (2) amended by No. 70 of 2006, s. 103; Subsection (2) amended by No. 70 of 2006, s. 103.

³⁰¹ Section 162 Subsection (2) amended by No. 70 of 2006, s. 103; Subsection (2) amended by No. 70 of 2006, s. 103.

³⁰² Section 163 Amended by No. 70 of 2006, s. 104.

- (i) the production, or delivery of an Official Log Book to such person, in such circumstances and within such times as may be specified; and
- (j) the particulars to be entered in the Crew List; and
- (k) the time during which a Crew List may remain in force; and
- (l) the manner of notification to specified persons of changes in a Crew List; and
- (m) the place and manner in which a Crew List, or a copy of a Crew List, is to be maintained; and
- (n) the manner in which the Crew List, or a copy of a Crew List, is to be made available on demand to specified persons.
- (o)³⁰³ the particulars of the fines to be paid under Sections 150, 152, 153, 154, 157, 158 and 159.

Division 9.³⁰⁴

International Maritime Conventions.

163A. CONVENTION TO HAVE EFFECT.

³⁰⁵(1) Subject to this Act and any other law, the STCW Convention shall have the force of law.

(2) Where, in respect of a ship that is registered under this Act, there is a failure to comply with a requirement of the STCW Convention, the master or owner of the ship is guilty of an offence.

Penalty: ³⁰⁶A fine not exceeding K20,000.00.

Default penalty: ³⁰⁷A fine not exceeding K1,000.00.

163B. IMPLEMENTATION OF CONVENTION.

³⁰⁸(1)³⁰⁹ ³¹⁰The regulations may make provision, not inconsistent with this Division, for, or in relation to, the implementation of, or giving effect to, the STCW Convention.

(2)³¹¹ ³¹²Where, under the STCW Convention, the several countries that are parties to the Convention have a discretion as to whether any or what action should

³⁰³ Section 163 Amended by No. 70 of 2006, s. 104.

³⁰⁴ Division 9 inserted by *Merchant Shipping (Amendment) Act 1996* (No. 67 of 1996), s2.

³⁰⁵ Section 163A inserted by *Merchant Shipping (Amendment) Act 1996* (No. 67 of 1996), s2.

³⁰⁶ Section 163A Subsection (2) amended by No. 70 of 2006, s. 105.

³⁰⁷ Section 163A Subsection (2) amended by No. 70 of 2006, s. 105.

³⁰⁸ Section 163B inserted by *Merchant Shipping (Amendment) Act 1996* (No. 67 of 1996), s2.

³⁰⁹ Section 163B Subsection (1) amended by No. 70 of 2006, s. 106.

³¹⁰ Section 163B Subsection (1) amended by No. 70 of 2006, s. 106.

³¹¹ Section 163B Subsection (2) amended by No. 70 of 2006, s. 106.

³¹² Section 163B Subsection (2) amended by No. 70 of 2006, s. 106.

be taken under theme, that discretion shall be taken by the Minister, on the advice of the Authority.

(3)^{313 314}Where, under the STCW Convention, the several countries that are parties to the Convention are under a duty to do an act or thing, that act or thing shall be done by the Authority.

³¹³ Section 163B Subsection (3) amended by No. 70 of 2006, s. 106.

³¹⁴ Section 163B Subsection (3) amended by No. 70 of 2006, s. 106.

PART VI. – SHIPPING CASUALTIES, INQUIRIES AND INVESTIGATIONS.**164. REPORTING OF CASUALTIES AND INCIDENTS.**

(1) In this section, “**ship**” means a ship that is–

- (a) registered under this Act; or
- (b) not registered under this Act and the next port of call of that ship is at a port or place in Papua New Guinea; or
- (c) an offshore ship.

(2) Where a ship–

- (a) causes or is involved in an accident; or
- (b) receives damage which renders, or is likely to render the ship unsafe; or
- (c) has been in a position of great peril from–
 - (i) the act of some other ship; or
 - (ii) danger of wreck or collision; or
- (d) fouls, or does damage to–
 - (i) a pipeline; or
 - (ii) a submarine cable; or
 - (iii) a marine navigational aid; or
- (e) is involved in any incident in which the sea is polluted by oil or by any other noxious substance either by the ship or by any other ship; or
- (f) having left a port in Papua New Guinea puts back to that port,

the master of the ship must, as soon as practicable–

- (g)³¹⁵ report the event to the Authority; and
- (h)³¹⁶ if so requested by the Authority – provide to it, a written report.

(3) The master of a ship who fails, without reasonable cause, to comply with the Subsection (2) is guilty of an offence.

Penalty: ³¹⁷a fine not exceeding K4,000.00.

165. INQUIRY INTO CERTAIN CASUALTIES.

(1) In this section, “**ship**” means a ship that was, at the time the casualty occurred–

- (a) registered under this Act; or
- (b) not registered under this Act, being–

³¹⁵ Section 164 Subsection (2) amended by No. 70 of 2006, s. 107.

³¹⁶ Section 164 Subsection (2) amended by No. 70 of 2006, s. 107.

³¹⁷ Section 164 Subsection (3) amended by No. 70 of 2006, s. 107.

- (i) a ship to which Part V applied; or
 - (ii) a ship that was within Papua New Guinea or the territorial sea.
- (2)^{318 319} Where a casualty has occurred, the Authority may–
- (a)³²⁰ cause a preliminary investigation into the casualty to be held by a person appointed for the purpose by the Authority; and
 - (b) whether or not a preliminary investigation into the casualty has been held—cause a Marine Inquiry to be held.

166. PRELIMINARY INVESTIGATIONS.

(1)^{321 322} Where the Authority causes a preliminary investigation to be held under Section 165 the person holding the investigation–

- (a) may–
 - (i) go on board any ship involved in the casualty; and
 - (ii) require any person to answer questions relating to the casualty; and
 - (iii) require production of any document or certificate relating to any ship involved in the casualty; and
- (b)³²³ shall, on conclusion of the investigation, send to the Authority a report containing a full statement of the case and of his opinion on it, accompanied by such report on or extracts from the evidence and such observations as he thinks fit.

(2)^{324 325} Where it appears to the Authority on receipt of the report referred to in Subsection (1) to be necessary and desirable to do so, he may order the suspension of any certificate issued under Section 104 to any qualified crewman pending the outcome of a Marine Inquiry held under Section 165.

167. MARINE INQUIRIES.

(1)^{326 327} The Authority may for the purpose of holding a Marine Inquiry under Section 165 nominate a person appearing to it to be suitably qualified by the holding of or by having held judicial office, or by experience as a lawyer, to hold a Marine Inquiry.

³¹⁸ Section 165 Subsection (2) amended by No. 70 of 2006, s. 108.

³¹⁹ Section 165 Subsection (2) amended by No. 70 of 2006, s. 108.

³²⁰ Section 165 Subsection (2) amended by No. 70 of 2006, s. 108.

³²¹ Section 166 Subsection (1) amended by No. 70 of 2006, s. 109.

³²² Section 166 Subsection (1) amended by No. 70 of 2006, s. 109.

³²³ Section 166 Subsection (1) amended by No. 70 of 2006, s. 109.

³²⁴ Section 166 Subsection (2) amended by No. 70 of 2006, s. 109.

³²⁵ Section 166 Subsection (2) amended by No. 70 of 2006, s. 109.

³²⁶ Section 167 Subsection (1) amended by No. 70 of 2006, s. 110; Subsection (1) amended by No. 70 of 2006, s. 110.

³²⁷ Section 167 Subsection (1) amended by No. 70 of 2006, s. 110; Subsection (1) amended by No. 70 of 2006, s. 110.

(2)^{328 329}The person nominated under Subsection (1) shall conduct the Marine Inquiry with the assistance of one or more assessors, with such qualifications as are prescribed, as nominated by the Authority.

(3)^{330 331}In any case where a question as to the cancellation or suspension of a crewman's certificate is likely to arise the Marine Inquiry shall be assisted by at least one assessor having experience in the merchant service.

(4) A Marine Inquiry shall be conducted—

- (a) in accordance with any regulations made under Section 173, and
- (b) in such a manner that if a charge is made against any person, that person shall have an opportunity of making a defence.

(5) For the purpose of an inquiry, the Marine Inquiry and/or the assessors assisting it, may—

- (a) go on board any ship; and
- (b) require any person to answer questions relating to the subject of the inquiry; and
- (c) require the production to it or them of any document or certificate that in its or their opinion is relevant to the inquiry.

(6)^{332 333}The Marine Inquiry after hearing the case shall make a full report to the Authority together with such report of or extracts from the evidence and such observations as it thinks fit and each assessor shall either sign the report or state in writing to the Authority his dissent from it and his reasons for that dissent.

(7)^{334 335}The Marine Inquiry may make such order as it thinks just regarding the costs of the inquiry or any part of it and any such costs that a person may be ordered to pay may be recovered from that person by the Authority.

(8)^{336 337}The Authority may, in any case that it thinks it is in the public interest to do so, pay any or all of the costs of a Marine Inquiry.

168. POWER OF A MARINE INQUIRY AS TO CERTIFICATES.

(1) Where, as a result of a Marine Inquiry, the Inquiry is satisfied that any qualified crewman—

- (a) is unfit to discharge his duties because of incompetence or misconduct or for any other reason; or

³²⁸ Section 167 Subsection (2) amended by No. 70 of 2006, s. 110.

³²⁹ Section 167 Subsection (2) amended by No. 70 of 2006, s. 110.

³³⁰ Section 167 Subsection (3) amended by No. 70 of 2006, s. 110.

³³¹ Section 167 Subsection (3) amended by No. 70 of 2006, s. 110.

³³² Section 167 Subsection (6) amended by No. 70 of 2006, s. 110.

³³³ Section 167 Subsection (6) amended by No. 70 of 2006, s. 110.

³³⁴ Section 167 Subsection (7) amended by No. 70 of 2006, s. 110.

³³⁵ Section 167 Subsection (7) amended by No. 70 of 2006, s. 110.

³³⁶ Section 167 Subsection (8) amended by No. 70 of 2006, s. 110; Subsection (8) amended by No. 70 of 2006, s. 110.

³³⁷ Section 167 Subsection (8) amended by No. 70 of 2006, s. 110; Subsection (8) amended by No. 70 of 2006, s. 110.

(b) has been seriously negligent in the discharge of his duties; or

(c) has failed to give any assistance or information required by Section 81,

and, in a case coming under Paragraph (a) or (b) is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Marine Inquiry may—

(d) order the cancellation or suspension of any certificate issued under Section 104 to the qualified crewman concerned; or

(e) censure the crewman concerned.

(2)^{338 339} Where a cancellation or suspension is ordered under Subsection (1)(d) the crewman concerned shall immediately deliver the certificate to the Authority for cancellation or suspension.

(3) A Marine Inquiry shall not order the cancellation or suspension of a certificate unless at least half of the number of assessors concur.

(4) A Marine Inquiry shall not order the cancellation or suspension of a certificate unless a copy of the report referred to in Section 166 or a statement of the case on which the formal inquiry has been ordered has been furnished to the crewman holding the certificate before the commencement of the inquiry.

(5) Where any case before a Marine Inquiry involves the question as to the cancelling or suspending of a certificate the Marine Inquiry shall, at the conclusion of the case or as soon afterwards as possible, state in open court the decision to which it has come with respect to the cancelling or suspending of the certificate.

(6)^{340 341} The Marine Inquiry shall in all cases send a full report of the inquiry to the Minister and the Authority.

169. DISQUALIFICATION OF A CREWMAN.

(1)^{342 343} Where it appears to the Authority that a person who is the holder of a certificate issued under Section 104 is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, he may give the holder written notice that he is considering the cancellation or suspension of the certificate.

(2) The notice referred to in Subsection (1) shall state—

(a)³⁴⁴ the reasons why it appears to the Authority that the holder is unfit to be the holder of such a certificate; and

³³⁸ Section 168 Subsection (2) amended by No. 70 of 2006, s. 111.

³³⁹ Section 168 Subsection (2) amended by No. 70 of 2006, s. 111.

³⁴⁰ Section 168 Subsection (6) amended by No. 70 of 2006, s. 111.

³⁴¹ Section 168 Subsection (6) amended by No. 70 of 2006, s. 111.

³⁴² Section 169 Subsection (1) amended by No. 70 of 2006, s. 112.

³⁴³ Section 169 Subsection (1) amended by No. 70 of 2006, s. 112.

³⁴⁴ Section 169 Subsection (2) amended by No. 70 of 2006, s. 112.

(b)³⁴⁵ that within a period specified in the notice, or such longer period as the Authority may allow, the holder may make written representations to the Authority or claim to make oral representations to the Authority.

(3)³⁴⁶ ³⁴⁷After considering any representations made in accordance with Subsection (2) the Authority shall decide whether or not to cancel or suspend the certificate and shall give the holder written notice of his decisions.

(4) Where the decision is to cancel or suspend the certificate the notice—

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

(b)³⁴⁸ shall require the holder to deliver the certificate to the Authority not later than the date so specified.

170. FAILURE TO DELIVER CANCELLED OR SUSPENDED CERTIFICATE.

Where a certificate is ordered to be cancelled or suspended or is cancelled or suspended and the holder fails to deliver up the certificate as required under this Part, he is guilty of an offence.

Penalty: ³⁴⁹A fine not exceeding K4,000.00.

171. REHEARINGS AND THE POWER OF THE MINISTER TO RESTORE CERTIFICATES.

(1) Where a Marine Inquiry has been held under this Part the Minister may order the whole or part of a case to be reheard, and shall do so if—

(a) new and important evidence which could not be produced at the inquiry has been discovered; or

(b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2)³⁵⁰ ³⁵¹Where a certificate has been cancelled or suspended under this Part by a Marine Inquiry under Section 167 or by the Authority under Section 169 the Minister may—

(a)³⁵² on the recommendation of the Marine Inquiry or the Authority; or

(b) if he is of the opinion that the circumstances of the case require it,

³⁴⁵ Section 169 Subsection (2) amended by No. 70 of 2006, s. 112.

³⁴⁶ Section 169 Subsection (3) amended by No. 70 of 2006, s. 112.

³⁴⁷ Section 169 Subsection (3) amended by No. 70 of 2006, s. 112.

³⁴⁸ Section 169 Subsection (4) amended by No. 70 of 2006, s. 112.

³⁴⁹ Section 170 Amended by No. 70 of 2006, s. 113.

³⁵⁰ Section 171 Subsection (2) amended by No. 70 of 2006, s. 114; Subsection (2) amended by No. 70 of 2006, s. 114.

³⁵¹ Section 171 Subsection (2) amended by No. 70 of 2006, s. 114; Subsection (2) amended by No. 70 of 2006, s. 114.

³⁵² Section 171 Subsection (2) amended by No. 70 of 2006, s. 114.

order the issue by the Authority of a new certificate of a lower grade in place of the cancelled or suspended certificate.

172. APPEALS.

(1) Subject to Subsection (2), where under this Part—

- (a) the certificate of a crewman is cancelled or suspended; or
- (b) a crewman is censured; or
- (c) the costs or part of the costs of an inquiry are awarded by a Marine Inquiry against any person; or
- (d) the Marine Inquiry has found that the casualty has been caused or contributed to by the wrongful act of any person,

the crewman in the case of Paragraph (a) or (b) and in the case of Paragraph (c) or (d) any person who has appeared at the hearing and is affected by the decision of the Marine Inquiry, may appeal to the National Court and the National Court may make such order as the justice of the case requires.

(2) Where a rehearing has been ordered under Section 171(1), no appeal may be made until the decision of the rehearing has been given.

173. REGULATIONS UNDER PART VI.

³⁵³The regulations may make provision, not inconsistent with this Part, for and in relation to —

- (a) the selection of assessors for nomination by the Authority; and
- (b) the qualifications of assessors; and
- (c) the circumstances in which assessors shall assist a Marine Inquiry; and
- (d) the manner in which any facts may be proved; and
- (e) the persons who may be allowed to appear; and
- (f) the notices to be given to persons affected; and
- (g) the particulars of the fines to be paid under Section 164.

³⁵³ Section 173 Substituted by No. 70 of 2006, s. 115.

PART VII. – NAVIGATIONAL AIDS.***Division 1.******Preliminary.*****174. INTERPRETATION OF PART VII.**

In this Part, unless the contrary intention appears–

³⁵⁴³⁵⁵“**aid**” means marine navigational aid except a marine navigational aid whose provision and maintenance is the responsibility of the Harbours Board under the Harbours Act (Chapter 240);

“**light**” includes any fire, lamp, street light or other illuminating device;

“**owner**”, in relation to–

- (a) an aid–includes any person in possession or control of the aid; and
- (b) a light–includes any person in possession or control of the light.

175. DECLARATION OF PUBLIC PURPOSE.

It is declared that, for the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, marine navigational safety is, in relation to the acquisition of aids, a public purpose.

Division 2.***Acquisition of Aids.*****176. APPLICATION OF DIVISION 2.**

(1) This Division applies–

- (a) notwithstanding any other law in force in Papua New Guinea; and
- (b) to aids other than aids affixed to land.

(2) In relation to the acquisition of aids affixed to land, the *Land Act 1996* applies.

177. MODE OF ACQUISITION.

(1)³⁵⁶ ³⁵⁷The Authority may, on behalf of the State by agreement, acquire from any person any aid held by that person.

(2) Where an aid is acquired under Subsection (1), any instrument purporting to transfer the property in the aid is valid and effectual to vest the property in the aid in the State.

³⁵⁴ Section 174 Amended by No. 70 of 2006, s. 116.

³⁵⁵ Section 174 Amended by No. 70 of 2006, s. 116.

³⁵⁶ Section 177 Subsection (1) amended by No. 70 of 2006, s. 117.

³⁵⁷ Section 177 Subsection (1) amended by No. 70 of 2006, s. 117.

178. COMPULSORY ACQUISITION.

(1)^{358 359}Where—

- (a)³⁶⁰ the Authority has failed to enter into an agreement under Section 177; and
- (b)³⁶¹ in its opinion, it is necessary for it to do so for the purposes of this Part,

the Authority may, by notice in the National Gazette, declare that the aid specified in the notice is acquired by compulsory process under this Act.

(2) On publication of a notice under Subsection (1)—

- (a) the property in the aid is vested in the State; and
- (b) the aid is freed and discharged from all interests, trusts, restrictions, declarations, reservations, obligations, contracts, licences, liens, charges and rates.

179. EFFECTS OF COMPULSORY ACQUISITION.

Where an aid is compulsorily acquired under Section 178—

- (a) the interest in the aid of the person from whom the aid has been acquired is converted into a right to compensation; and
- (b) in respect of any interest in the aid—the right of any person against the person from whom the aid has been acquired is preserved.

180. COMPENSATION.

(1) Any person who, immediately before the date of compulsory acquisition of an aid under Section 178, had an interest in the aid may apply within the prescribed time and in the prescribed manner to the Minister for payment of compensation in respect of that interest.

(2) The Minister shall, within the prescribed time, after receiving an application under Subsection (1), determine—

- (a) whether the applicant had, at the relevant time, a compensable interest in the aid; and
- (b) the amount of compensation (if any) payable by the State in relation to that compensable interest.

181. COURT MAY ADJUST RIGHTS.

³⁶²Where an aid is compulsorily acquired under this Division, the Court may, on the application of the Authority or any interested person, make such order as it

³⁵⁸ Section 178 Subsection (1) amended by No. 70 of 2006, s. 118.

³⁵⁹ Section 178 Subsection (1) amended by No. 70 of 2006, s. 118.

³⁶⁰ Section 178 Subsection (1) amended by No. 70 of 2006, s. 118.

³⁶¹ Section 178 Subsection (1) amended by No. 70 of 2006, s. 118.

thinks proper for declaring or adjusting rights and liabilities in connection with the aid, including any claim for compensation, or with transactions in relation to the aid, or otherwise affected by the acquisition.

Division 3.

Control of Aids.

182. ESTABLISHMENT OF AIDS.

(1)^{363 364}The Authority may establish an aid.

(2)^{365 366}A person may, with the written approval of the Authority, establish an aid.

(3) A person who, without the approval referred to in Subsection (2), establishes an aid is guilty of an offence.

Penalty: ³⁶⁷A fine not exceeding K20,000.00.

183. MAINTENANCE AND ALTERATION OF AIDS.

³⁶⁸The Authority, or a person authorized by the Authority for the purpose, may—

(a) maintain; and

(b) add to, alter or remove; and

(c) vary the character of, or the mode of operating or exhibiting,

an aid.

184. CONTROL OF PRIVATE AIDS.

(1)^{369 370}A person who, without the written approval of the Authority—

(a) maintains; or

(b) adds to, alters or removes; or

(c) varies the character of, or the mode of operating,

an aid that is his property, or under his control, is guilty of an offence.

Penalty: ³⁷¹A fine not exceeding K20,000.00.

³⁶² Section 181 Amended by No. 70 of 2006, s. 119.

³⁶³ Section 182 Subsection (1) amended by No. 70 of 2006, s. 120.

³⁶⁴ Section 182 Subsection (1) amended by No. 70 of 2006, s. 120.

³⁶⁵ Section 182 Subsection (2) amended by No. 70 of 2006, s. 120.

³⁶⁶ Section 182 Subsection (2) amended by No. 70 of 2006, s. 120.

³⁶⁷ Section 182 Subsection (3) amended by No. 70 of 2006, s. 120.

³⁶⁸ Section 183 Amended by No. 70 of 2006, s. 121.

³⁶⁹ Section 184 Subsection (1) amended by No. 70 of 2006, s. 122.

³⁷⁰ Section 184 Subsection (1) amended by No. 70 of 2006, s. 122.

³⁷¹ Section 184 Subsection (1) amended by No. 70 of 2006, s. 122.

(2)^{372 373} The Authority may, by written notice, require the owner of an aid, or the owner of, or person having under his control, any light, device, or thing being a light, device or thing that is not an aid—

- (a) to remove it; or
- (b) to alter its character or mode of operation; or
- (c) to desist from using or from interfering with it; or
- (d)³⁷⁴ to use it only at such times and in such manner as the Authority directs.

(3)^{375 376} In making a requirement under Subsection (2), the Authority shall have regard to the safety and convenience of marine navigation.

(4)^{377 378} Where a person fails, without reasonable cause, to comply with a requirement made under Subsection (2), or for any reason a notice under Subsection (2) cannot be served on the owner, the Authority may—

- (a) take possession or control of the aid or of the light, device or thing; and
- (b)³⁷⁹ do, at the expense of the person, anything which the person was required to do under Subsection (2) or which, in the opinion of the Authority, must be done for the safety of marine navigation.

(5) A person who fails, without reasonable cause, to comply with a requirement made under Subsection (2) is guilty of an offence.

Penalty: ³⁸⁰ A fine not exceeding K20,000.00.

185. INSPECTION OF AIDS BY AUTHORITY.

(1)^{381 382} The Authority may at any reasonable time inspect—

- (a) any aid; and
- (b) any light, device, or thing that—
 - (i) is not an aid; and
 - (ii)³⁸³ may, in its opinion, affect the safety or convenience of marine navigation.

(2)^{384 385} For the purpose of an inspection under Subsection (1), the Authority may enter on any property.

³⁷² Section 184 Subsection (2) amended by No. 70 of 2006, s. 122.

³⁷³ Section 184 Subsection (2) amended by No. 70 of 2006, s. 122.

³⁷⁴ Section 184 Subsection (2) amended by No. 70 of 2006, s. 122.

³⁷⁵ Section 184 Subsection (3) amended by No. 70 of 2006, s. 122.

³⁷⁶ Section 184 Subsection (3) amended by No. 70 of 2006, s. 122.

³⁷⁷ Section 184 Subsection (4) amended by No. 70 of 2006, s. 122.

³⁷⁸ Section 184 Subsection (4) amended by No. 70 of 2006, s. 122.

³⁷⁹ Section 184 Subsection (4) amended by No. 70 of 2006, s. 122.

³⁸⁰ Section 184 Subsection (5) amended by No. 70 of 2006, s. 122.

³⁸¹ Section 185 Subsection (1) amended by No. 70 of 2006, s. 123.

³⁸² Section 185 Subsection (1) amended by No. 70 of 2006, s. 123.

³⁸³ Section 185 Subsection (1) amended by No. 70 of 2006, s. 123.

186. MAINTENANCE OF AIDS BY AUTHORITY.

³⁸⁶Where, in the opinion of the Authority, it is necessary for the maintenance of an aid to do so, the Authority may—

- (a) enter on any property; and
- (b) transport goods, or cause goods to be transported through the property.

187. OBSTRUCTION OF AUTHORITY.

³⁸⁷A person who obstructs the Authority in the exercise of its powers or the performance of its duties under this Division is guilty of an offence.

Penalty: ³⁸⁸A fine not exceeding K10,000.00.

Division 4.***Navigational Aid Contributions.*****188. REQUIREMENT TO PAY NAVIGATIONAL AID CONTRIBUTIONS.**

³⁸⁹The—

- (a) owner; or
- (b) master; or
- (c) agent of the owner; or
- (d) agent of the charterer,

of a ship that—

- (e) enters or leaves a place or port in Papua New Guinea; or
- (f) is engaged in offshore operations,

shall pay to the prescribed person such navigational aid contributions in respect of the ship as are prescribed.

189. PENALTY FOR FAILURE TO PAY NAVIGATIONAL AID CONTRIBUTIONS.

Where, without reasonable cause, the owner or the master of a ship fails to pay such navigational aid contributions as are prescribed, the owner and the master of the ship are each guilty of an offence.

Penalty: ³⁹⁰A fine not exceeding K10,000.00.

³⁸⁴ Section 185 Subsection (2) amended by No. 70 of 2006, s. 123.

³⁸⁵ Section 185 Subsection (2) amended by No. 70 of 2006, s. 123.

³⁸⁶ Section 186 Amended by No. 70 of 2006, s. 124.

³⁸⁷ Section 187 Amended by No. 70 of 2006, s. 125.

³⁸⁸ Section 187 Amended by No. 70 of 2006, s. 125.

³⁸⁹ Section 188 replaced by No. 38 of 1984.

³⁹⁰ Section 189 Amended by No. 70 of 2006, s. 126.

190. DETENTION OF SHIP WHERE NAVIGATIONAL AID CONTRIBUTIONS ARE NOT PAID.

Where, in respect of a ship, navigational aid contributions are—

- (a) payable under Section 188; and
- (b) are unpaid,

the ship may be detained until they are paid.

Division 5.

Damage to Navigational Aids.

191. OFFENCES RELATING TO NAVIGATIONAL AIDS.

(1) A person who—

- (a) wilfully or negligently damages, destroys or allows a ship to foul an aid;
or
- (b) wilfully or negligently does anything which causes the view of an aid to be obstructed in such a manner as to lessen its efficiency; or
- (c) wilfully or negligently does anything which interferes with an aid so as to hinder the effective use of the aid; or
- (d) without lawful authority, removes, alters or interferes with an aid so as to hinder the effective use of the aid; or
- (e) trespasses on, or without lawful excuse, is found in or on—
 - (i) an aid; or
 - (ii) any land on which an aid is situated,

is guilty of an offence.

Penalty: ³⁹¹A fine not exceeding K8,000.00 and in addition the cost of repairing or replacing the aid or of rendering the aid effective again.

(2) A person who—

- (a) damages, destroys or allows a ship to foul an aid; and
- (b)³⁹² fails to notify the Authority as soon as practicable after the aid is damaged, destroyed or fouled,

is guilty of an offence.

Penalty: ³⁹³A fine not exceeding K4,000.00.

³⁹¹ Section 191 Subsection (1) amended by No. 70 of 2006, s. 127.

³⁹² Section 191 Subsection (2) amended by No. 70 of 2006, s. 127.

³⁹³ Section 191 Subsection (2) amended by No. 70 of 2006, s. 127.

192. DETENTION OF SHIP IN CERTAIN CIRCUMSTANCES.

Where a ship damages, destroys or fouls an aid, the ship may be detained until the cost of repairing or replacing the aid or rendering the aid effective again is paid.

*Division 6.**General.***193. IMMUNITY FROM CERTAIN PROCEEDINGS.**

(1)^{394 395} In this section, “**the State**” includes the Minister, an employee of the State, any statutory authority or instrumentality of the State, including the Authority, and an employee of any such statutory authority or instrumentality.

(2) No legal proceedings shall be instituted against the State in respect of any act or omission that is done or made under this Part unless that act or omission arises from wilful misconduct.

194³⁹⁶. [REPEALED.]**195. REGULATIONS FOR NAVIGATIONAL AIDS.**

³⁹⁷The regulations may make provision, not inconsistent with this Part, for and in relation to—

- (a) the rates and scales, whether on a voyage or on a periodical basis, of the navigational aid contributions payable in respect of ships; and
- (b) the manner in which navigational aid contributions shall be paid; and
- (c) the times at which navigational aid contributions shall be paid; and
- (d) the refund of navigational aid contributions; and
- (e) the exemption of particular ships or of particular classes of ships from the requirements relating to payment of navigational aid contributions; and
- (f)³⁹⁸ a determination by the Authority that a particular fishing vessel or particular classes of fishing vessel are exempt from the requirements relating to payment of navigational aid contributions; and
- (g)³⁹⁹ the returns to be made and the information to be supplied to the Authority by the owner of an aid.
- (h)⁴⁰⁰ the particulars of the fines to be paid under Sections 182, 184(1), 184(5), 187, 189, 191(1) and 191(2).

³⁹⁴ Section 193 Subsection (1) amended by No. 70 of 2006, s. 128.

³⁹⁵ Section 193 Subsection (1) amended by No. 70 of 2006, s. 128.

³⁹⁶ Section 194 Repealed by No. 70 of 2006, s. 129.

³⁹⁷ Section 195 Amended by No. 70 of 2006, s. 130.

³⁹⁸ Section 195 Amended by No. 70 of 2006, s. 130.

³⁹⁹ Section 195 Amended by No. 70 of 2006, s. 130.

⁴⁰⁰ Section 195 Amended by No. 70 of 2006, s. 130.

PART VIII. – PILOTAGE.

Division 1.

Pilotage Areas and Pilotage Authorities.

196. PILOTAGE AREAS.

⁴⁰¹The Authority may, by notice in the National Gazette, declare a port or place to be a pilotage area.

197. APPOINTMENT OF PILOTAGE AUTHORITIES.

⁴⁰²The Authority may, by notice in the National Gazette, appoint a person to be a pilotage authority in respect of a particular pilotage area.

198. PILOTAGE AUTHORITIES.

- (1) There shall be a pilotage authority in respect of each pilotage area.
- (2) The pilotage authority in respect of a particular pilotage area is–
 - (a) where a person is appointed under Section 197—that person; and
 - (b)⁴⁰³ where no person is appointed under Section 197—the Authority.

Division 2.

Compulsory Pilotage.

199. INTERPRETATION OF DIVISION 2.

In this Division, unless the contrary intention appears—

“**exempt ship**”, in relation to a particular pilotage area, means a ship that, in respect of that area, is prescribed as an exempt ship by a regulation made under this Part;

“**ship**”, in relation to a particular pilotage area, means a ship other than an exempt ship.

200. COMPULSORY PILOTAGE AREAS.

A pilotage authority may, by notice in the National Gazette, declare that, in respect of the whole or a part of a particular pilotage area, pilotage is compulsory.

201. SHIPS REQUIRED TO TAKE LICENSED PILOTS ON BOARD.

(1) Subject to Section 203, before a ship enters a compulsory pilotage area, the master of the ship must—

- (a) present the ship at the appropriate boarding ground; and

⁴⁰¹ Section 196 Amended by No. 70 of 2006, s. 131.

⁴⁰² Section 197 Amended by No. 70 of 2006, s. 132.

⁴⁰³ Section 198 Subsection (2) amended by No. 70 of 2006, s. 133.

- (b) receive on board a licensed pilot and such other persons and equipment as the pilotage authority may direct; and
- (c) receive such assistance as the licensed pilot may direct; and
- (d) give the ship in pilotage charge of the licensed pilot.

(2) Where there is a contravention of this section, the owner and the master of the ship in respect of which the contravention occurs are each guilty of an offence.

Penalty: ⁴⁰⁴A fine not exceeding K10,000.00.

202. SHIPS REQUIRED TO HAVE LICENSED PILOTS ON BOARD.

Subject to Section 203, where a ship plies in, moves in (other than by warping) or leaves a compulsory pilotage area without having a licensed pilot on board, the owner and the master of the ship are each guilty of an offence.

Penalty: ⁴⁰⁵A fine not exceeding K20,000.00.

203. LICENSED PILOTS NOT REQUIRED IN CERTAIN CIRCUMSTANCES.

Subject to Section 204, where it is necessary, having regard to the safety of the ship or of a person on board the ship, that the ship be immediately brought into, moved within or taken out of a compulsory pilotage area, a licensed pilot is not required to be on board the ship.

204. SPECIAL CIRCUMSTANCES WHERE PILOTS ARE REQUIRED.

(1) Where a pilotage authority is of the opinion that there would otherwise be some special risk or danger within a particular pilotage area, the pilotage authority may require the master of any ship, including an exempt ship, to take on board the ship a pilot acceptable to the pilotage authority.

(2) In forming an opinion under Subsection (1) a pilotage authority shall have regard to—

- (a) the condition of the ship and its equipment; and
- (b) the nature and condition of any cargo carried on the ship; and
- (c) the existence of any nuclear power source on the ship; and
- (d) the circumstances of, and the conditions within, a particular pilotage area.

(3) Where the master of a ship refuses, or fails without reasonable cause, to comply with a requirement made under Subsection (1), the owner and the master of the ship are each guilty of an offence.

Penalty: ⁴⁰⁶A fine not exceeding K40,000.00.

⁴⁰⁴ Section 201 Subsection (2) amended by No. 70 of 2006, s. 134.

⁴⁰⁵ Section 202 Amended by No. 70 of 2006, s. 135.

Division 3.

Pilotage Licences and Pilotage Exemption Certificates.

205. NUMBER OF PILOTAGE LICENCES.

The Minister may, by notice in the National Gazette, determine the maximum number of pilotage licences that may be issued in respect of a particular pilotage area.

206. PILOTAGE LICENCES AND PILOTAGE EXEMPTION CERTIFICATES.

(1) Subject to Section 205, a pilotage authority may in the prescribed manner—

- (a) issue a pilotage licence or a pilotage exemption certificate to a person; and
- (b) renew a pilotage licence or a pilotage exemption certificate; and
- (c) suspend or cancel a pilotage exemption certificate.

(2) The issue and renewal of a pilotage licence or a pilotage exemption certificate under this section shall be subject to such conditions (if any) as the pilotage authority thinks fit and endorses on the licence or certificate.

(3) A pilotage licence or a pilotage exemption certificate issued or renewed under this section is valid only within the pilotage area in respect of which it is issued.

207. SUSPENSION OF PILOTAGE LICENCE.

(1) Where, in the opinion of a pilotage authority, a licensed pilot—

- (a) is unfit to discharge his duties because of—
 - (i) incompetence; or
 - (ii) misconduct; or
 - (iii) any other reason; or
- (b) has been seriously negligent in the discharge of his duties,

the pilotage authority may cause an inquiry to be held.

(2) Where a pilotage authority causes an inquiry to be held under Subsection (1), it may, if it thinks fit, suspend the pilotage licence of the licensed pilot in relation to whom the inquiry is to be held pending the outcome of the inquiry.

(3) Where a pilotage licence is suspended under this section, the pilotage authority may direct the licensed pilot to deliver up his pilotage licence to it.

(4) A person who refuses, or fails without reasonable cause, to comply with a direction under Subsection (3) is guilty of an offence.

⁴⁰⁶ Section 204 Subsection (3) amended by No. 70 of 2006, s. 136.

Penalty: ⁴⁰⁷A fine not exceeding K800.00.

208. INQUIRY INTO INCOMPETENCE, ETC.

(1)^{408 409}The Authority may, for the purposes of an inquiry under Section 207, nominate a person to hold the inquiry.

(2) Where a pilotage authority has caused an inquiry to be held under Section 207, the person holding the inquiry may, for the purpose of the inquiry—

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

(3) A person holding an inquiry shall make a report on the inquiry to the pilotage authority.

(4) Where, after receiving a report under Subsection (3), a pilotage authority is satisfied as to any of the matters referred to in Section 207(1)(a) or (b), the pilotage authority may—

- (a) for such period as it thinks fit, suspend; or
- (b) cancel,

the pilotage licence of the licensed pilot in respect of whom the inquiry was held.

(5) Where, under this section, a pilotage licence is—

- (a) suspended for a period exceeding six months; or
- (b) cancelled,

the holder of the licence may, within 30 days after the date of the suspension or cancellation, appeal to the National Court and the National Court shall make such order as the justice of the case requires.

(6) A person holding an inquiry may be assisted by one or more assessors nominated by the person holding the inquiry.

⁴⁰⁷ Section 207 Subsection (4) amended by No. 70 of 2006, s. 137.

⁴⁰⁸ Section 208 Subsection (1) amended by No. 70 of 2006, s. 138.

⁴⁰⁹ Section 208 Subsection (1) amended by No. 70 of 2006, s. 138.

Division 4.

Licensed Pilots and Exempt Pilots.

209. PRODUCTION OF PILOTAGE LICENCE.

(1) Where a licensed pilot goes on board a ship for the purpose of acting as pilot of the ship, the master of the ship may require the licensed pilot to produce his pilotage licence for inspection.

(2) A licensed pilot who refuses, or fails without reasonable cause, to comply with a requirement made under Subsection (1) is guilty of an offence.

Penalty: ⁴¹⁰A fine not exceeding K800.00.

210. UNQUALIFIED PERSONS NOT TO ACT AS LICENSED PILOTS OR EXEMPT PILOTS.

A person who is not a licensed pilot or an exempt pilot and who—

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

is guilty of an offence.

Penalty: ⁴¹¹A fine not exceeding K6,000.00.

211. MISCONDUCT BY LICENSED PILOTS.

(1) This section applies where a licensed pilot—

- (a) does any act which causes, or is likely to cause—
 - (i) the loss or destruction of or serious damage to; or
 - (ii) the death of, or serious injury to, a person on board,

a ship; or

- (b) fails to do anything required to be done by him to preserve—
 - (i) a ship from loss, destruction or serious damage; or
 - (ii) any person on board a ship from death or serious injury.

(2) Where the act, or the failure to act, referred to in Subsection (1)—

- (a) is deliberate; or
- (b) amounts to a wilful breach or neglect of duty; or
- (c) occurs when the licensed pilot is under the influence of alcohol or a drug,

⁴¹⁰ Section 209 Subsection (2) amended by No. 70 of 2006, s. 139.

⁴¹¹ Section 210 Amended by No. 70 of 2006, s. 140.

the licensed pilot is guilty of an offence.

Penalty: ⁴¹²A fine not exceeding K20,000.00.

212. DEFENCE IF DRUG TAKEN FOR MEDICAL PURPOSES.

It is a defence to a charge of an offence under Section 211 if the licensed pilot charged proves that—

- (a) at the time of the alleged act, or failure to act, he was under the influence of a drug taken by him for medical purposes; and
- (b) either—
 - (i) he took the drug on medical advice and complied with any direction given as part of that advice; or
 - (ii) he had no reason to believe that the drug might have the influence it did.

213. LICENSED PILOT NOT CIVILLY LIABLE.

A licensed pilot is not personally liable in any civil proceedings for any damage done by him, or for any loss suffered as a result of any act done by him, or of any failure to do anything required to be done by him, while acting as a licensed pilot.

Division 5.

Miscellaneous.

214. PRESENCE OF LICENSED PILOT DOES NOT DIMINISH RESPONSIBILITY OF MASTER.

(1) Subject to the authority of the master of a ship, the duty of a licensed pilot is to pilot the ship.

(2) The master of a ship is not relieved, by reason of the ship being in pilotage charge of a licensed pilot, of his responsibility for the conduct and navigation of the ship.

215. OWNER AND MASTER LIABLE FOR DAMAGE.

The owner and the master of a ship are jointly and severally liable for any loss or damage caused by the ship, or as a result of any fault in the navigation of the ship, notwithstanding that a licensed pilot was required to be on board the ship at the time that the loss or damage was caused.

216. PILOTAGE AUTHORITY NOT LIABLE FOR LOSS OR DAMAGE.

A pilotage authority is not liable in any civil proceedings for—

- (a) any damage done by; or
- (b) any loss suffered as a result of—

⁴¹² Section 211 Subsection (2) amended by No. 70 of 2006, s. 141.

- (i) any act done by; or
- (ii) any failure to do anything required to be done by,

a licensed pilot licensed by it while the licensed pilot is acting as a pilot of a ship.

217. PILOTAGE SERVICES.

A pilotage authority—

- (a) shall, where pilotage is compulsory; and
- (b) may, where pilotage is not compulsory,

provide pilotage services.

218. PILOTAGE DUES AND CHARGES FOR PILOTAGE SERVICES.

(1) Pilotage dues, and charges for pilotage services, in respect of a ship shall be payable by the owner or master of the ship to the pilotage authority.

(2) A pilotage authority may, by notice in the National Gazette, fix the scale of dues and charges for pilotage services payable under Subsection (1).

(3) In fixing a scale of dues and charges for pilotage services under Subsection (2), a pilotage authority shall have particular regard to—

- (a) the circumstances of; and
- (b) the cost of providing pilotage services within,

the pilotage area in respect of which the scale is to be fixed.

219. FEES FOR PILOTAGE LICENCES AND PILOTAGE EXEMPTION CERTIFICATES.

Fees payable in respect of the issue and renewal of pilotage licences and pilotage exemption certificates are as prescribed.

220. REGULATIONS FOR PILOTAGE.

⁴¹³The regulations may make provision, not inconsistent with this Part, for and in relation to—

- (a) the ships or classes of ship that are exempt for the purposes of Division 2; and
- (b) the measures necessary to facilitate the boarding of ships by pilots; and
- (c)⁴¹⁴ the determination by the Authority of boarding grounds; and
- (d) the manner of application for the issue or renewal of pilotage licenses or pilotage exemption certificates; and

⁴¹³ Section 220 Amended by No. 70 of 2006, s. 142.

⁴¹⁴ Section 220 Amended by No. 70 of 2006, s. 142.

- (e) the manner of suspension or cancellation of a pilotage exemption certificate; and
- (f) the determination by a pilotage authority of the qualifications required to be held by, and the standards required to be attained by, applicants for the issue or renewal of pilotage licences or pilotage exemption certificates; and
- (g) the issue or renewal of pilotage licences or pilotage exemption certificates; and
- (h) the form of pilotage licences or pilotage exemption certificates; and
- (i) the maintenance of efficiency of licensed pilots and of holders of pilotage exemption certificates; and
- (j) the manner of payment of pilotage dues and charges for pilotage services; and
- (k)⁴¹⁵ the determination by the Authority, after consultation with a pilotage authority, of the fees payable to the pilotage authority in respect of the issue or renewal of pilotage licences or pilotage exemption certificates.
- (l)⁴¹⁶ the particulars of the fines to be paid under Sections 201, 202, 204, 207, 209, 210 and 211.

⁴¹⁵ Section 220 Amended by No. 70 of 2006, s. 142.

⁴¹⁶ Section 220 Amended by No. 70 of 2006, s. 142.

PART IX. – COASTING TRADE.

Division 1.

Preliminary.

221. APPLICATION OF PART IX.

This Part, unless the contrary intention appears, does not apply to or in relation to a ship that is—

- (a) in the opinion of the Registrar, of traditional build; or
- (b) less than 10 m in length; or
- (c) a pleasure craft.

Division 2.

Coasting Trade Licences.

222. COASTING TRADE LICENCES.

The Minister may, subject to such conditions (if any) as he thinks fit, grant to a person a licence to engage a ship in the coasting trade.

223. CATEGORIES OF COASTING TRADE LICENCES.

(1) A licence granted under Section 222 shall be—

- (a) a general category licence; or
- (b) a special category licence.

(2) A general category licence entitles the holder of the licence to engage the ship in respect of which the licence is granted in the coasting trade.

(3) A special category licence entitles the holder of the licence to engage the ship in respect of which the licence is granted in the coasting trade in the shipping service specified in the licence.

224. REQUIREMENT TO HOLD COASTING TRADE LICENCES.

(1) In this section, “**owner**”, in relation to a ship, includes, where the ship is operated by a person other than the owner, that person.

(2) Subject to Section 225, where—

- (a) a ship engages in the coasting trade; and
- (b) an appropriate coasting trade licence is not held in respect of the ship,

the master and the owner of the ship are each guilty of an offence.

Penalty: ⁴¹⁷A fine not exceeding K200,000.00.

Default penalty: ⁴¹⁸A fine not exceeding K10,000.00.

⁴¹⁷ Section 224 Subsection (2) amended by No. 70 of 2006, s. 143.

225. EXEMPTION FROM REQUIREMENT TO HOLD COASTING TRADE LICENCE.

The Minister may, by notice in the National Gazette, declare that Section 224 does not apply—

- (a) in relation to the provision of a particular shipping service; or
- (b) for the period specified in the notice in relation to—
 - (i) a particular ship or a particular class of ship; or
 - (ii) trading or going between a particular port or place and another particular port or place.

226. LIMITATION ON GRANT OF LICENCES.

(1) In this section, “**charterer**”, in relation to a ship, means any person who by virtue of a charter or other agreement has responsibility for the management, operation and navigation of the ship as if he were the owner of the ship.

(2) Subject to Subsection (4), a coasting trade licence in respect of a ship that is registered under this Act may only be granted to—

- (a) the owner of the ship; or
- (b) a qualified person who is either by himself or with other persons each of whom is a qualified person, the charterer of the ship.

(3) Subject to Subsection (4), a coasting trade licence in respect of a ship that is not registered under this Act may only be granted to a qualified person who, either by himself or with other persons each of whom is a qualified person, is the owner or charterer of the ship.

(4) Where, in respect of a particular shipping service, the Minister is satisfied that no person referred to in Subsection (2) or (3) is able to offer an efficient and adequate service, he may grant a coasting trade licence to any person who, in his opinion, is able to do so.

227. DURATION OF LICENCES.

(1) Subject to this section, the Minister may determine the period for which a coasting trade licence is granted to a person in respect of a ship.

(2) In making a determination under Subsection (1) the Minister shall have regard to—

- (a) the age, size and condition of the ship; and
- (b) whether or not the person seeking the grant of the licence is the owner of the ship; and
- (c) the suitability of the ship for the trade or service.

⁴¹⁸ Section 224 Subsection (2) amended by No. 70 of 2006, s. 143.

(3) Where a general category licence is granted to a person referred to in—

- (a) Section 226(2), the licence shall be granted for a period not exceeding eight years; and
- (b) Section 226(3), the licence shall be granted for a period not exceeding five years; and
- (c) Section 226(4), the licence shall be granted for a period not exceeding two years.

(4) A special category licence shall be granted for a period not exceeding 12 months.

228. DELIVERY UP OF LICENCES IN CERTAIN CIRCUMSTANCES.

(1) Where—

- (a) a coasting trade licence is granted to a qualified person; and
- (b) that person ceases to be a qualified person,

he must, within seven days of ceasing to be a qualified person, deliver up his licence to the Minister.

(2) A person who refuses, or without reasonable cause fails, to deliver up a licence under Subsection (1) is guilty of an offence.

Penalty: ⁴¹⁹A fine not exceeding K10,000.00.

229. CANCELLATION OR VARIATION OF LICENCES.

(1) Where, in the opinion of the Minister, it is necessary or desirable in the public interest to do so, the Minister shall—

- (a) cancel a coasting trade licence; or
- (b) subject to Section 227, vary any condition under which a coasting trade licence is issued.

(2) Where—

- (a) a coasting trade licence is granted to a person in respect of a ship registered under this Act; and
- (b) the ship ceases to be registered under this Act,

the Minister shall give effect to Section 227 by altering the period for which the coasting trade licence is granted.

230. HOLDER TO OBSERVE CONDITIONS OF LICENCE.

(1) Where a coasting trade licence has been granted, or a coasting trade permit has been issued, subject to any condition, and that condition is not observed, the holder of the licence or permit is guilty of an offence.

⁴¹⁹ Section 228 Subsection (2) amended by No. 70 of 2006, s. 144.

Penalty: ⁴²⁰A fine not exceeding K10,000.00.

(2) Where—

- (a) an offence is committed under Subsection (1); or
- (b) in the case of a ship in respect of which a coasting trade licence has been granted to a person—an offence is committed under Section 224,

the Minister may cancel the coasting trade licence.

231. REQUIREMENT TO FURNISH INFORMATION.

(1) The Minister may require—

- (a) the holder of a coasting trade licence or permit; or
- (b) an applicant for—
 - (i) the grant of a coasting trade licence; or
 - (ii) the issue of a coasting trade permit,

to furnish him with information about the shipping service in respect of which the licence or permit is, or is about to be, granted or issued.

(2) The information referred to in Subsection (1) shall include details of—

- (a) voyages made or to be made; and
- (b) cargo carried or to be carried; and
- (c) passengers carried or to be carried; and
- (d) shipping services performed or to be performed,

by the ship in respect of which the licence or permit is, or is about to be, granted or issued and shall include—

- (e) descriptions of the operations involved in; and
- (f) financial matters connected with,

the provision of the shipping services in respect of which the licence or permit is, or is about to be, granted or issued.

(3) Where the Minister has reasonable cause to believe that a person has, in respect of a ship, failed to comply with a requirement of this Part, he may, for the purpose of acquiring or verifying any information required to be furnished under this section—

- (a) go on board; and
- (b) make a check on cargo or passengers carried on board; and
- (c) examine any accounts, shipping documents, manifests or other documents relating to,

⁴²⁰ Section 230 Subsection (1) amended by No. 70 of 2006, s. 145.

the ship.

(4) A person who refuses, or fails without reasonable cause—

(a) to comply with a requirement made under Subsection (1); or

(b) to permit the Minister to do any of the acts referred to in Subsection (3)(a), (b) or (c),

is guilty of an offence.

Penalty: ⁴²¹A fine not exceeding K10,000.00.

(5)⁴²² ⁴²³An officer of the Department responsible for transport matters who, other than in the performance of his official duties—

(a) makes any record available; or

(b) divulges; or

(c) communicates,

to any person any information acquired by him or furnished to the Minister under this section is guilty of an offence.

Penalty: ⁴²⁴A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 12 months.

Division 3.

Coasting Trade Permit.

232. COASTING TRADE PERMITS.

(1) Where, in the opinion of the Minister—

(a) no ship in respect of which an appropriate coasting trade licence has been granted is available to provide a particular shipping service; or

(b) a particular shipping service offered by a ship in respect of which an appropriate coasting trade licence has been granted is inadequate, inefficient or unreasonably costly and it is desirable in the public interest to do so,

the Minister may, subject to such conditions (if any) as he thinks fit, issue a coasting trade permit to the master of a ship.

(2) A permit issued under Subsection (1) shall be in respect of—

(a) a particular ship; and

(b) the provision of specified shipping services by that ship.

⁴²¹ Section 231 Subsection (4) amended by No. 70 of 2006, s. 146.

⁴²² Section 231 Subsection (5) amended by No. 70 of 2006, s. 146.

⁴²³ Section 231 Subsection (5) amended by No. 70 of 2006, s. 146.

⁴²⁴ Section 231 Subsection (5) amended by No. 70 of 2006, s. 146.

233. EFFECT OF ISSUE OF COASTING TRADE PERMIT.

A ship in respect of which a permit is issued under Section 232 shall not be deemed to be engaged in the coasting trade solely by reason of the fact that the ship is engaged in the provision of those shipping services specified in the permit.

*Division 4.**Coasting Trade Committee.***234. COASTING TRADE COMMITTEE.**

The Coasting Trade Committee is hereby established.

235. MEMBERSHIP OF COASTING TRADE COMMITTEE.

(1) The Coasting Trade Committee shall consist of—

- (a)⁴²⁵ an officer of the Department responsible for transport matters who shall be the Chairman of the Committee; and
- (b) two members to represent the interests of shippers or producers of goods customarily carried in ships engaged in the coasting trade; and
- (c) one member to represent consumers of goods customarily carried in ships engaged in the coasting trade; and
- (d) three members to represent the holders of coasting trade licences.

(2) The members of the Coasting Trade Committee shall be appointed by the Minister by notice in the National Gazette.

236. COASTING TRADE COMMITTEE TO BE COMMITTEE OF ADVICE FOR CERTAIN PURPOSES.

The Coasting Trade Committee is deemed to be a Committee of Advice for the purposes of—

- (a) the conduct of its meetings; and
- (b) the payment of fees, expenses and allowances to its members.

237. FUNCTIONS OF COASTING TRADE COMMITTEE.

The Coasting Trade Committee may—

- (a) advise the Minister on any matter relating to the coasting trade; and
- (b) report to the Minister on any proposed regulation relating to the coasting trade,

and shall within 60 days of being requested by the Minister to do so, recommend a rate that it considers to be the maximum rate that should be charged for a particular shipping service.

⁴²⁵ Section 235 Subsection (1) amended by No. 70 of 2006, s. 147.

238. PUBLICATION OF RECOMMENDED RATES.

(1) Subject to Subsection (2), where the Coasting Trade Committee makes a recommendation under Section 237, the Minister shall cause the recommendation to be published in the prescribed manner.

(2) At any time prior to publication under Subsection (1), the Coasting Trade Committee may by written notice to the Minister withdraw a recommendation made under Section 237.

Division 5.

Maximum Rates for Shipping Services.

239. INVESTIGATION OF RATES FOR SHIPPING SERVICES.

(1) In this section “**recommended**” means recommended to the Minister under Section 237.

(2) Where the Minister is of the opinion that—

- (a) the recommended rates for shipping services are not at as low a level as is commercially viable; or
- (b) the rates being charged for shipping services provided by a particular ship, or by ships within a particular class of ship—
 - (i) are too high; or
 - (ii) consistently exceed the recommended rates; or
- (c) it is in the public interest to do so,

he shall cause the recommended rates, or the rates being charged, as the case may be, to be investigated.

240. MINISTER MAY FIX MAXIMUM RATES FOR SHIPPING SERVICES.

(1) The Minister may, after he has caused an investigation to be carried out under Section 239(2), by notice in the National Gazette, fix a maximum rate for a particular shipping service.

(2) In fixing a maximum rate under Subsection (1), the Minister shall have regard to any advice given to him by the Coasting Trade Committee under Section 237.

241. RATES NOT TO EXCEED MAXIMUM RATES FOR SHIPPING SERVICES.

A person who, in respect of the provision of a particular shipping service, charges a rate exceeding the maximum rate fixed under Section 240(1) is guilty of an offence.

Penalty: ⁴²⁶A fine not exceeding K200,000.00.

Default penalty: ⁴²⁷A fine not exceeding K10,000.00.

Division 6.

General.

242. LICENCE AND PERMIT FEES.

The holder of—

- (a) a coasting trade licence shall, on the grant of the licence and on the expiry of each subsequent period of 12 months; and
- (b) a coasting trade permit shall, on the issue of the permit,

pay such fees as are prescribed.

243⁴²⁸. [REPEALED.]

244. REGULATIONS FOR COASTING TRADE.

⁴²⁹The regulations may provide, not inconsistent with this Part,

- (a) applications for the grant of coasting trade licences; and
- (b) the form of coasting trade licences; and
- (c) the publication of any recommended rates for the provision of shipping services; and
- (d) applications for the issue of coasting trade permits; and
- (e) the form of coasting trade permits; and
- (f) the submission and verification of information related to the operation of ships in respect of which coasting trade licences or coasting trade permits have been granted or issued; and
- (g) the determination by the Minister of areas classed as places; and
- (h) the fees payable in respect of the grant of a coasting trade licence or the issue of a coasting trade permit.
- (i) the particulars of the fines to be paid under Sections 224, 228, 230, 231(4), 231(5) and 241.

⁴²⁶ Section 241 Amended by No. 70 of 2006, s. 148.

⁴²⁷ Section 241 Amended by No. 70 of 2006, s. 148.

⁴²⁸ Section 243 Repealed by No. 70 of 2006, s. 149.

⁴²⁹ Section 244 Substituted by No. 70 of 2006, s. 150.

PART X. – LIABILITY OF SHIOWNERS AND OTHERS.

Division 1.

Preliminary.

245. INTERPRETATION OF PART X.

(1) In this Part–

“**the Court**” means the National Court;

“**gold franc**” means a unit consisting of 65.5 mg of gold of millesimal fineness 900;

“**ship**” includes–

- (a) every description of lighter, barge or like vessel, however propelled; and
- (b) any structure launched and intended for use in navigation as a ship or a part of a ship; and
- (c) a vessel belonging to the Defence Force.

(2) The Minister responsible for financial matters may, from time to time, by notice in the National Gazette, specify the amounts which, for the purposes of this Part, are to be taken as equivalent to any specified number of gold francs.

(3) Where money has been paid into Court in respect of any liability to which a limit is set by this Part, the ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified under Subsection (2) unless the amount so paid was less than that limit as ascertained in accordance with the order in force under that subsection.

(4) For the purposes of this Part–

(a) the tonnage–

- (i) of a ship propelled by any mechanical power–shall be her net registered tonnage with the addition of any engine-room space deducted for the purposes of ascertaining that tonnage; and
- (ii) of a sailing ship–shall be her net registered tonnage; and

(b) where a foreign ship–

- (i) has been or can be measured according to this Act, her tonnage shall be that ascertained by that measurement; and
- (ii)⁴³⁰ has not been, and cannot be, measured according to this Act, the Registrar shall, on receiving from or by the direction of the court hearing the case in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practicable to furnish, give a certificate under his hand stating

⁴³⁰ Section 245 Subsection (4) amended by No. 70 of 2006, s. 151.

what would, in his opinion, have been the tonnage of the ship if she had been so measured, and the tonnage so stated shall be deemed for the purposes of this Part to be the tonnage of the ship; and

- (c) the tonnage of a ship that is less than 300 tons shall be deemed to be 300 tons.

Division 2.

Exclusion and Limitation of Liability.

246. LOSS OR DAMAGE FROM FIRE OR THEFT.

The owner of a ship registered in Papua New Guinea, or of any share in the ship, shall not be liable to make good to any extent any loss or damage happening without his actual fault or privity in the following cases:—

- (a) where any goods, merchandise, or other things taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of robbery, embezzlement, making away with, or secreting them.

247. LIMITATION OF LIABILITY IN CERTAIN CASES.

(1) The owners of any ship shall not, where all or any of the following occurrences take place without their actual fault or privity, that is to say:—

- (a) where any loss of life or personal injury is caused to any person being carried in the ship;
- (b) where any damage or loss is caused to any goods, merchandise, or other things on board the ship;
- (c) where any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person, whether on board the ship or not—
- (i) in the navigation or management of the ship; or
- (ii) in the loading, carriage or discharge of its cargo; or
- (iii) in the embarkation, carriage or disembarkation of its passengers,
or through any other act or omission of any person on board the ship;
- (d) where any loss or damage is caused to any property, other than any property mentioned in Paragraph (b), or any rights are infringed

through the act or omission of any person, whether on board the ship or not—

- (i) in the navigation or management of the ship; or
- (ii) in the loading, carriage or discharge of its cargo; or
- (iii) in the embarkation, carriage or disembarkation of its passengers,
or through any other act or omission of any person on board the ship,

be liable to damages beyond the following amounts:—

- (e) in respect of loss of life or personal injury, alone or together with such loss, damage or infringement referred to in Paragraphs (b) and (d)—an aggregate amount not exceeding an amount equivalent to 3,100 gold francs for each ton of their ship's tonnage;
- (f) in respect of such loss, damage or infringement referred to in Paragraphs (b) and (d), whether or not there be in addition loss of life or personal injury—an aggregate amount not exceeding an amount equivalent to 1,000 gold francs for each ton of their ship's tonnage.

(2) (2)The limits set by this section to the liabilities mentioned in it shall apply—

- (a) to the aggregate of such liabilities which are incurred on any distinct occasion; and
- (b) in respect of each distinct occasion without regard to any liability incurred on another occasion.

(3) The application of this section to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

(4) This section does not apply to any liability in respect of—

- (a) loss of life or personal injury caused to; or
- (b) loss of or damage to any property or infringement of any right of,

a person who is on board or employed in connection with the ship under a contract of service with all or any of the persons whose liabilities are limited by this section, if that contract is governed by the law of any foreign country and that law—

- (c) does not set any limit to that liability; or
- (d) sets a limit exceeding that set by this section.

248. POWER OF COURT TO CONSOLIDATE CLAIMS.

Where any liability is alleged to have been incurred by the owner of a ship in respect of any occurrence in respect of which his liability is limited under Section

247, and several claims are made or apprehended in respect of that liability, the Court may, on the application of the owner—

- (a) determine the amount of his liability; and
- (b) distribute that amount rateably among the several claimants; and
- (c) stay any proceedings pending in any other court in relation to the same matter; and
- (d) proceed in such manner and subject to such regulations as the Court thinks just as to—
 - (i) making persons interested parties to the proceedings; and
 - (ii) excluding any claimants who do not come in within a certain time; and
 - (iii) requiring security from the owner; and
 - (iv) payment of any costs.

249. EXTENSION TO OTHER PERSONS OF PROVISIONS APPLYING TO SHIPOWNERS.

(1) The persons whose liability in connection with a ship is excluded or limited by this Division shall include any charterer and any person interested in or in possession of the ship, and, in particular, any manager or operator of the ship.

(2) In relation to a claim arising from the act or omission of any person in his capacity as a crewman of a ship or, otherwise than in that capacity, in the course of his employment as a servant of the owners or of any such person referred to in Subsection (1)—

- (a) the persons whose liability is excluded or limited under Subsection (1) shall also include the crewman or servant and, in a case where the crewman is the servant of a person whose liability would not be excluded or limited apart from this paragraph, the person whose servant he is; and
- (b) the liability of the crewman or servant himself shall be so excluded or limited notwithstanding his actual fault or privity in that capacity, except in the cases referred to in Section 246(b).

250. RELEASE OF SHIP ON GIVING SECURITY.

(1) In this section—

“**Convention country**” means any country in respect of which the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships done at Brussels on 10 October 1957 is in force (including any country to which the Convention extends by virtue of Article 14 of the Convention);

“**guarantee**” means security that, in the opinion of the Court, is satisfactory;

“relevant port”–

- (a) in relation to any claim, means that port where the event giving rise to the claim occurred or, if that event did not occur in a port the first port of call after the event occurred; and
- (b) in relation to a claim for loss of life or personal injury or for damage to cargo, includes the port of disembarkation or discharge.

(2) Where–

- (a) a ship or other property is arrested in connection with a claim that appears to the Court to be founded on a liability to which a limit is set by Section 247; or
- (b) security is given to prevent or obtain release from such an arrest,

the Court may, and in the circumstances mentioned in Subsection (4) shall, order the release of the ship, property or security, if the conditions specified in Subsection (3) are satisfied, but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim.

(3) The conditions referred to in Subsection (2) are–

- (a) that a guarantee has previously been given, whether in Papua New Guinea or elsewhere, in respect of the liability or any other liability incurred on the same occasion, and the Court is satisfied that, if the claim is established, the amount for which the guarantee was given or such part of it as corresponds to the claim will be actually available to the claimant; and
- (b) that either the guarantee is for an amount not less than the limit or further security is given that, together with the guarantee, is for an amount not less than that limit.

(4) The circumstances referred to in Subsection (2) are that the guarantee was given in a port that, in relation to the claim, is the relevant port (or, as the case may be, a relevant port) and that that port is in a Convention country.

(5) For the purposes of this section–

- (a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given; and
- (b) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by Section 247 shall be decided as at the time at which the security is given; and
- (c) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his

claim if any other part may be available to a claimant in respect of a liability to which no limit is set in Subsection (2).

(6) Where the Minister, by notice in the National Gazette, declares that any country specified in the notice is a Convention country within the meaning of this section, the notice shall, while in force, be conclusive evidence that the country is a Convention country.

251. RESTRICTIONS ON ENFORCEMENT AFTER GIVING OF SECURITY.

(1) No judgement or decree for a claim founded on a liability to which a limit is set by Section 247 shall be enforced, except so far as it is for costs, where—

- (a) security for an amount not less than that limit has been given, whether in Papua New Guinea or elsewhere, in respect of the liability or any other liability incurred on the same occasion; and
- (b) the Court is of the opinion that the security is satisfactory and is satisfied that the amount for which it was given or such part of it as corresponds to the claim will actually be available to the person in whose favour the judgement or decree was given or made.

(2) For the purposes of this section—

- (a) any question whether the amount of any security is not less than any limit set by Section 247 shall be decided as at the time when the security is given; and
- (b) where part only of the amount for which security has been given will be available to the person in whose favour the judgement or decree was given or made, that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set in Subsection (1).

252. DISTRIBUTION OF LIMITATION FUND.

(1) In making any distribution in accordance with Section 248, the Court may, if it thinks fit, postpone distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside Papua New Guinea.

(2) No lien or other right in respect of any ship or property shall affect the proportions in which, under Section 248, any amount is distributed amongst several claimants.

253. PART OWNERS TO ACCOUNT IN RESPECT OF DAMAGES.

All sums paid for or on account of any loss or damage, in respect of which the liability of owners is limited under this Part and all costs incurred in relation to them, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use of the ship.

254. INSURANCE OF CERTAIN RISKS NOT INVALID.

An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part shall not be invalid by reason of the nature of the risk.

255. SAVING FOR OCCURRENCES TAKING PLACE BEFORE COMMENCEMENT.

This Part does not apply in relation to any liability arising from an occurrence which took place before 24 January 1980.

256. LIMITATION OF LIABILITY OF A HARBOUR AUTHORITY.

(1) In this section, “**a harbour or port authority**” includes any person or authority having under the laws of Papua New Guinea control and management of any harbour or port and of ships using the same, as the case may be.

(2) Where, without the actual fault or privity of a harbour or port authority, any loss or damage is caused to any ship or to any goods, merchandise or other things on board any ship or ships, such authority shall not be liable to damages beyond an aggregate amount not exceeding an amount equivalent to 1,000 gold francs for each ton of the tonnage of the largest ship that at the time of such loss or damage occurring, is, or within the preceding five years has been, within the area over which such harbour or port authority performs any duty or exercises any power.

(3) For the purposes of this section, a ship shall not be taken to have been within the area over which a harbour or port authority performs any duty or exercises any power by reason only that it has—

- (a) been built or fitted out within such area; or
- (b) taken shelter within or passed through such area on a voyage between two places both situated outside that area; or
- (c) loaded or unloaded mails or passengers within that area.

(4) This section does not impose any liability in respect of any loss or damage on any such owners or authority in any case where no such liability exists apart from this Act.

(5) The limitation of liability under this section—

- (a) shall relate to the whole of any losses and damages which may arise on any one distinct occasion, although such loss or damages may be sustained by more than one person; and
- (b) shall apply whether the liability arises at common law or under any Act, and notwithstanding anything contained in any Act.

Division 3.**Division of Liability.****257. APPLICATION OF DIVISION 3.**

Division 3 applies to any persons, other than the owners, who are responsible for the fault of the vessel, as though “owners” includes such persons and all persons responsible for the navigation and management of the vessel pursuant to a charter or demise.

258. RULE AS TO DIVISION OF LIABILITY.

(1) In this section, “freight” includes passage money and hire, and reference to damage or loss caused by the fault of a vessel includes a reference to any salvage or other expenses, consequent on that fault, recoverable at law by way of damages.

(2) Subject to Subsection (3) where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes 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 in fault.

(3) Subsection (2) shall not apply if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, and in such a case the liability shall be apportioned equally.

(4) This section shall not—

- (a) operate so as to render any vessel liable for loss or damage to which her fault has not contributed; or
- (b) affect the liability of any person under a contract of carriage or any contract; or
- (c) be construed as imposing any liability on any person from which he is exempted by any contract or by any law; or
- (d) be construed as affecting the right of any person to limit his liability in the manner provided by law.

259. DISTRIBUTION OF LOSS AND DAMAGES FOR PERSONAL INJURIES.

(1) Where 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 the owners of the vessels shall be joint and several.

(2) Subsection (1) shall not be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in any action brought against him by the person injured or any person entitled to sue in respect of such loss of life, nor shall it affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

260. RIGHT OF CONTRIBUTION.

(1) Subject to Subsection (2), 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, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, those owners may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault.

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

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

PART XI.⁴³¹ –

261 - 263⁴³². [*Repealed.*]

⁴³¹ Part XI Repealed by No. 70 of 2006, s. 152.

⁴³² Part XI Repealed by No. 70 of 2006, s. 152; Section 261 Repealed by No. 70 of 2006, s. 152; Section 262 Repealed by No. 70 of 2006, s. 152; Section 263 Repealed by No. 70 of 2006, s. 152.

PART XIA.⁴³³ – WRECK AND SALVAGE.

*Division 1.*⁴³⁴

Preliminary.

263A. INTERPRETATION OF PART XIA.

⁴³⁵In this Part, unless the contrary intention appears–

“**salvage**” includes all expenses properly incurred by a salvor in the performance of the salvage services;

“**tidal water**” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, but does not include a declared port within the meaning of the *Harbours Board Act 1963*;

“**vessel**” includes a ship or boat and any other description of vessel used in navigation by water;

“**wreck**” includes–

- (a) jetsam, flotsam, lagan and derelict found on or near the coast or in any tidal waters; and
- (b) any articles or goods of any kind, cast ashore within the ebb and flow of the tide, that belonged to or came from any vessel wrecked, stranded or in distress or any portion of the hull, machinery or equipment of any such vessel.

263B. RESERVATION OF POWERS OF CUSTOMS.

⁴³⁶This part does not derogate or interfere with the powers of the Comptroller of Customs conferred by or under any other Act.

263C⁴³⁷. [REPEALED.]

263D. DELEGATION BY AUTHORITY.

⁴³⁸Subject to this Act, the Authority may, by instrument, delegate to a person all or any of its powers and functions under this Part (except this power of delegation).

263E. INDEMNITY OF AUTHORITY.

⁴³⁹The Authority or his delegate is not liable for any damage or loss suffered as a result of –

⁴³³ Part XIA added by No. 12 of 1981.

⁴³⁴ Division XIA.1 added by No. 12 of 1981.

⁴³⁵ Section 263A added by No. 12 of 1981; Amended by No. 70 of 2006, s. 153.

⁴³⁶ Section 263B added by No. 12 of 1981.

⁴³⁷ Section 263C added by No. 12 of 1981; Repealed by No. 70 of 2006, s. 154.

⁴³⁸ Section 263D added by No. 12 of 1981; Substituted by No. 70 of 2006, s. 155.

⁴³⁹ Section 263E added by No. 12 of 1981; Substituted by No. 70 of 2006, s. 155.

- (a) any act done; or
- (b) a failure to do anything required to be done,

by it or him in carrying out its or his duties for the purpose of this Act.

Division 2.⁴⁴⁰

Vessels in Distress.

263F. DUTY OF AUTHORITY TO ASSIST VESSELS IN DISTRESS, ETC.

⁴⁴¹(1)⁴⁴² ⁴⁴³Where a vessel is wrecked, stranded or in distress on or near the coast or in any tidal water, the Authority shall, subject to Subsection (2), take such action as it thinks necessary to assist in the preservation of—

- (a) the vessel; and
- (b) the life of a person belonging to the vessel; and
- (c) any wreck coming from the vessel.

(2)⁴⁴⁴ ⁴⁴⁵The Authority shall not interfere between the master and the crew in reference to the management of the vessel unless requested to do so by the master.

263G. POWERS OF AUTHORITY.

⁴⁴⁶(1)⁴⁴⁷ ⁴⁴⁸For the purposes of Section 263F(1), the Authority may—

- (a) requisition—
 - (i) the services of any person; and
 - (ii) the use of any vehicle, machinery or equipment that is available; and
 - (iii) the services of any vessel; and
 - (b) enter and pass, with or without other persons and vehicles, machinery and equipment over any land; and
 - (c) deposit wreck on any land.
- (2) A person who—
- (a) fails to comply with a requisition under Subsection (1); or
 - (b)⁴⁴⁹ obstructs the Authority in the exercise of any rights or powers under that subsection; or

⁴⁴⁰ Division XIA.2 added by No. 12 of 1981.

⁴⁴¹ Section 263F added by No. 12 of 1981.

⁴⁴² Section 263F Subsection (1) amended by No. 70 of 2006, s. 156; Subsection (1) amended by No. 70 of 2006, s. 156.

⁴⁴³ Section 263F Subsection (1) amended by No. 70 of 2006, s. 156; Subsection (1) amended by No. 70 of 2006, s. 156.

⁴⁴⁴ Section 263F Subsection (2) amended by No. 70 of 2006, s. 156.

⁴⁴⁵ Section 263F Subsection (2) amended by No. 70 of 2006, s. 156.

⁴⁴⁶ Section 263G added by No. 12 of 1981.

⁴⁴⁷ Section 263G Subsection (1) amended by No. 70 of 2006, s. 157.

⁴⁴⁸ Section 263G Subsection (1) amended by No. 70 of 2006, s. 157.

- (c) prevents wreck from remaining on land until it can be removed to a safe place,

is guilty of an offence.

Penalty: ⁴⁵⁰A fine not exceeding K20,000.00.

263H. COST OF ASSISTING VESSELS IN DISTRESS RECOVERABLE.

⁴⁵¹Where the Authority has, in relation to a vessel that is wrecked, stranded or in distress—

- (a) made a requisition under Section 263G; or
 (b)⁴⁵² caused damage to land as a result of the exercise of its powers under that section,

the cost of the requisition or damage shall be a charge on—

- (c) the vessel including its cargo and any property on board; and
 (d) any wreck from the vessel,

as if it were salvage.

263I. BOARDING WITHOUT AUTHORITY.

⁴⁵³(1)⁴⁵⁴ ⁴⁵⁵A person, other than the Authority or a person acting under its instructions, who, without the leave of the master, boards or attempts to board a vessel that is wrecked, stranded or in distress is guilty of an offence.

Penalty: ⁴⁵⁶A fine not exceeding K8,000.00.

(2) A person attempting to board a vessel in contravention of Subsection (1) may be repelled by the master, using such force as is reasonable under the circumstances.

263J. INTERFERING, ETC., WITH WRECK.

⁴⁵⁷A person who, in relation to a vessel that is wrecked or stranded or in danger of becoming wrecked or stranded, or is otherwise in distress—

- (a) impedes or hinders or endeavours in any way to impede or hinder the saving of the vessel or the life of a person belonging to the vessel or any property from it; or
 (b) plunders any vessel; or

⁴⁴⁹ Section 263G Subsection (2) amended by No. 70 of 2006, s. 157.

⁴⁵⁰ Section 263G Subsection (2) amended by No. 70 of 2006, s. 157.

⁴⁵¹ Section 263H Amended by No. 70 of 2006, s. 158; added by No. 12 of 1981.

⁴⁵² Section 263H Amended by No. 70 of 2006, s. 158.

⁴⁵³ Section 263I added by No. 12 of 1981.

⁴⁵⁴ Section 263I Subsection (1) amended by No. 70 of 2006, s. 159; Subsection (1) amended by No. 70 of 2006, s. 159.

⁴⁵⁵ Section 263I Subsection (1) amended by No. 70 of 2006, s. 159; Subsection (1) amended by No. 70 of 2006, s. 159.

⁴⁵⁶ Section 263I Subsection (1) amended by No. 70 of 2006, s. 159.

⁴⁵⁷ Section 263J added by No. 12 of 1981.

- (c) secretes any wreck or defaces or obliterates any mark on it; or
- (d) wrongfully removes or carries away any wreck,

is guilty of an offence.

Penalty: ⁴⁵⁸A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years.

Division 3.⁴⁵⁹

Dealing with Wreck.

263K. NOTICE OF WRECK TO BE GIVEN TO AUTHORITY.

⁴⁶⁰(1)⁴⁶¹ ⁴⁶²A person, including the owner of wreck, who—

- (a) finds or takes possession of any wreck within the jurisdiction of the country; or
- (b) having found or taken possession of any wreck outside the jurisdiction brings the wreck into the jurisdiction,

must notify the Authority in the prescribed manner of the finding or bringing it within the jurisdiction.

(2) A person who fails or refuses without reasonable cause (proof of which is on him) to give the notice required under Subsection (1) is guilty of an offence.

Penalty: ⁴⁶³A fine not exceeding K4,000.00.

263L. AUTHORITY MAY TAKE POSSESSION OF WRECK.

⁴⁶⁴(1)⁴⁶⁵ ⁴⁶⁶The Authority may—

- (a) take possession of any wreck within the jurisdiction of the country; or
- (b) by written notice require a person to deliver up to him any wreck.

(2) A person who fails or refuses without reasonable cause (proof of which is on him) to comply with a notice under Subsection (1) is guilty of an offence.

Penalty: ⁴⁶⁷A fine not exceeding K4,000.00.

⁴⁵⁸ Section 263J Amended by No. 70 of 2006, s. 160.

⁴⁵⁹ Division XIA.3 added by No. 12 of 1981.

⁴⁶⁰ Section 263K added by No. 12 of 1981.

⁴⁶¹ Section 263K Subsection (1) amended by No. 70 of 2006, s. 161.

⁴⁶² Section 263K Subsection (1) amended by No. 70 of 2006, s. 161.

⁴⁶³ Section 263K Subsection (2) amended by No. 70 of 2006, s. 161.

⁴⁶⁴ Section 263L added by No. 12 of 1981.

⁴⁶⁵ Section 263L Subsection (1) amended by No. 70 of 2006, s. 162.

⁴⁶⁶ Section 263L Subsection (1) amended by No. 70 of 2006, s. 162.

⁴⁶⁷ Section 263L Subsection (2) amended by No. 70 of 2006, s. 162.

263M. AUTHORITY TO GIVE NOTICE OF WRECK.

⁴⁶⁸Where the Authority takes possession of any wreck it shall give notice within the time and in the manner prescribed.

263N. DEALING WITH WRECK.

⁴⁶⁹(1) ⁴⁷⁰ ⁴⁷¹Subject to this Part, where any wreck is in the possession of the Authority, and a person satisfies the Authority that he is the owner of the wreck, the Authority shall deal with the wreck in the prescribed manner.

(2) ⁴⁷² ⁴⁷³Where wreck has been in the possession of the Authority for a period of 12 months and no claim to ownership of the wreck has been proved to the satisfaction of the Authority, it may sell or dispose of the wreck in the prescribed manner and keep the proceeds (if any).

(3) ⁴⁷⁴ ⁴⁷⁵For the purposes of Subsection (1) or (2), in the absence of the owner or an agent appointed by it, where—

- (a) any wreck that, immediately before becoming wreck was not cargo, is from a foreign vessel—the diplomatic representative of the country to which the vessel belongs; and
- (b) any wreck from a foreign vessel that immediately before becoming wreck was cargo owned by a person who was, at the time, a citizen of another country—the diplomatic representative of the country of which the person was a citizen,

is deemed to be the agent of the owner.

263O. DISCHARGE FROM LIABILITY OF AUTHORITY.

⁴⁷⁶(1) ⁴⁷⁷ ⁴⁷⁸Where, in respect of wreck that comes into his possession, the Authority has complied with this Division, it is discharged from liability in respect of that wreck.

(2) ⁴⁷⁹ ⁴⁸⁰The discharge of liability of the Authority under Subsection (1) shall not prejudice or affect any question that may be raised by third parties concerning the right or title to any wreck.

⁴⁶⁸ Section 263M Amended by No. 70 of 2006, s. 163; added by No. 12 of 1981.

⁴⁶⁹ Section 263N added by No. 12 of 1981.

⁴⁷⁰ Section 263N Subsection (1) amended by No. 70 of 2006, s. 164.

⁴⁷¹ Section 263N Subsection (1) amended by No. 70 of 2006, s. 164.

⁴⁷² Section 263N Subsection (2) amended by No. 70 of 2006, s. 164; Subsection (2) amended by No. 70 of 2006, s. 164; Subsection (2) amended by No. 70 of 2006, s. 164.

⁴⁷³ Section 263N Subsection (2) amended by No. 70 of 2006, s. 164; Subsection (2) amended by No. 70 of 2006, s. 164; Subsection (2) amended by No. 70 of 2006, s. 164.

⁴⁷⁴ Section 263N Subsection (3) amended by No. 70 of 2006, s. 164.

⁴⁷⁵ Section 263N Subsection (3) amended by No. 70 of 2006, s. 164.

⁴⁷⁶ Section 263O added by No. 12 of 1981.

⁴⁷⁷ Section 263O Subsection (1) amended by No. 70 of 2006, s. 165; Subsection (1) amended by No. 70 of 2006, s. 165.

⁴⁷⁸ Section 263O Subsection (1) amended by No. 70 of 2006, s. 165; Subsection (1) amended by No. 70 of 2006, s. 165.

⁴⁷⁹ Section 263O Subsection (2) amended by No. 70 of 2006, s. 165.

263P. DISPUTE AS TO TITLE TO WRECK.

⁴⁸¹Where a dispute arises as to the title to any wreck, it may be determined as if it were a dispute as to salvage under Division 5.

263Q. REMOVAL OF WRECKED VESSEL, ETC.

⁴⁸²A person who, without the prior written approval of the Authority, removes from the jurisdiction of the country—

- (a) a vessel that has been wrecked, stranded or abandoned; or
- (b) any wreck that is found or has been brought,

within the jurisdiction of the country, is guilty of an offence.

Penalty: ⁴⁸³A fine not exceeding K20,000.00, or imprisonment for a term not exceeding two years.

Division 4.⁴⁸⁴

Salvage.

263R. SALVAGE IN RESPECT OF SAVING LIFE.

⁴⁸⁵(1) Where—

- (a) within the jurisdiction of the country any services are rendered in saving life from a vessel; or
- (b) outside the jurisdiction of the country any services are rendered in saving life from a vessel that—
 - (i) is registered under this Act; or
 - (ii) belongs to the Defence Force; and
- (c) the vessel, or any cargo, machinery or equipment from the vessel, is saved,

the salvor is entitled to the payment of salvage by the owners of the vessel, cargo, machinery or equipment.

(2) Salvage in respect of the saving of life is payable in priority to all other claims for salvage.

(3) Where—

- (a) salvage is payable in respect of the saving of life; and
- (b) the value of the vessel, cargo, machinery or equipment saved (if any) is insufficient to pay the amount of salvage payable; and

⁴⁸⁰ Section 263O Subsection (2) amended by No. 70 of 2006, s. 165.

⁴⁸¹ Section 263P added by No. 12 of 1981.

⁴⁸² Section 263Q Amended by No. 70 of 2006, s. 166; added by No. 12 of 1981.

⁴⁸³ Section 263Q Amended by No. 70 of 2006, s. 166.

⁴⁸⁴ Division XIA.4 added by No. 12 of 1981.

⁴⁸⁵ Section 263R added by No. 12 of 1981.

(c) the Minister considers that in the circumstances it is proper to do so, the Minister may, in his discretion, pay to the salvor from funds appropriated for the purpose such sum as he thinks fit in whole or part satisfaction of the amount of salvage.

263S. SALVAGE IN RESPECT OF PROPERTY.

⁴⁸⁶Where a vessel is wrecked, stranded or in distress within the jurisdiction of the country and services are rendered by a person—

- (a) assisting the vessel; or
- (b) saving cargo or property from the vessel; or
- (c) saving any wreck,

salvage is payable to the salvor by the owner of the vessel, cargo, property or wreck.

263T. ASSISTANCE TO BE RENDERED.

⁴⁸⁷(1) Subject to Subsection (3), the master of a vessel that is registered under this Act or in respect of which a license or permit has been granted under Part IX must render assistance to any person who is found at sea in danger of being lost, whether or not that person is a subject of another country that is at war with the State.

(2) A master who, without reasonable cause (proof of which is on him) fails to comply with Subsection (1) is guilty of an offence.

Penalty: ⁴⁸⁸A fine not exceeding K12,000.00 or imprisonment for a term not exceeding 12 months.

(3) It is a defence to an action under Subsection (2) if the master proves that compliance with Subsection (1) would have caused serious danger to his vessel or to any person in it.

(4) Compliance by the master of a vessel with Subsection (1) shall not affect his right, or the right of any other person, to salvage.

Division 5.⁴⁸⁹

Procedure in Salvage.

263U. INTERPRETATION OF DIVISION 5.

⁴⁹⁰In this Division, unless the contrary intention appears, “**detained property**” and “**property detained**” include a vessel, its cargo, machinery, equipment, bunkers, freight at risk (if any) and any wreck.

⁴⁸⁶ Section 263S added by No. 12 of 1981.

⁴⁸⁷ Section 263T added by No. 12 of 1981.

⁴⁸⁸ Section 263T Subsection (2) amended by No. 70 of 2006, s. 167.

⁴⁸⁹ Division XIA.5 added by No. 12 of 1981.

⁴⁹⁰ Section 263U added by No. 12 of 1981.

263V. DISPUTES AS TO SALVAGE.

⁴⁹¹Where there is a dispute as to salvage, whether in respect of the saving of life or of property and the dispute is not settled by agreement, arbitration or otherwise, the dispute shall be determined by the National Court.

263W. DETENTION OF VESSEL, ETC.

⁴⁹²(1) ⁴⁹³ ⁴⁹⁴Where salvage is due to a person under this Part, the Authority shall—

(a) in the case of salvage due in respect of services rendered in—

- (i) assisting a vessel; or
- (ii) saving life from the vessel; or
- (iii) saving cargo or property from the vessel,

detain the vessel, the cargo or property; and

(b) in the case of salvage due in respect of the saving of any wreck, and the wreck is not sold as unclaimed—detain the wreck.

(2) ⁴⁹⁵ ⁴⁹⁶Where a vessel, cargo or property is detained under Subsection (1), the Authority shall—

- (a) ⁴⁹⁷ notify the owner of any detained property, if the owner is known to it, of its detention; and
- (b) retain possession of the detained property until payment is made for the salvage or until otherwise ordered by the Court.

(3) ⁴⁹⁸ ⁴⁹⁹The Authority may release any detained property on receipt of adequate security.

263X. SALE BY AUTHORITY OF DETAINED PROPERTY.

⁵⁰⁰(1) ⁵⁰¹ ⁵⁰²Where a dispute as to salvage has been referred to the National Court, the Authority shall deal with any property detained under Section 263W as the Court orders.

(2) ⁵⁰³ ⁵⁰⁴Where, subject to Subsection (1), in the case of property detained under Section 263W the amount of salvage due to a salvor is not disputed, and the amount

⁴⁹¹ Section 263V added by No. 12 of 1981.

⁴⁹² Section 263W added by No. 12 of 1981.

⁴⁹³ Section 263W Subsection (1) amended by No. 70 of 2006, s. 168.

⁴⁹⁴ Section 263W Subsection (1) amended by No. 70 of 2006, s. 168.

⁴⁹⁵ Section 263W Subsection (2) amended by No. 70 of 2006, s. 168.

⁴⁹⁶ Section 263W Subsection (2) amended by No. 70 of 2006, s. 168.

⁴⁹⁷ Section 263W Subsection (2) amended by No. 70 of 2006, s. 168.

⁴⁹⁸ Section 263W Subsection (3) amended by No. 70 of 2006, s. 168.

⁴⁹⁹ Section 263W Subsection (3) amended by No. 70 of 2006, s. 168.

⁵⁰⁰ Section 263X added by No. 12 of 1981.

⁵⁰¹ Section 263X Subsection (1) amended by No. 70 of 2006, s. 169.

⁵⁰² Section 263X Subsection (1) amended by No. 70 of 2006, s. 169.

⁵⁰³ Section 263X Subsection (2) amended by No. 70 of 2006, s. 169.

due is not paid within 20 days of the date agreed for payment, the Authority may sell the detained property.

(3) After payment of—

- (a)⁵⁰⁵ any fees payable to, and any expenses incurred by, the Authority in respect of the property and of its sale; and
- (b) salvage,

the proceeds of the sale of detained property shall be paid to the person legally entitled to the proceeds.

263Y. APPORTIONMENT OF SALVAGE BY NATIONAL COURT.

⁵⁰⁶(1) Where two or more persons claim payment of the salvage, the National Court may, on the application of a claimant, cause the amount of salvage to be apportioned amongst the persons entitled to it in such manner as it thinks fit.

(2) Where a dispute arises under Subsection (1) between the owner of, or the master or any other person in the service of, a foreign vessel, the National Court shall, in apportioning salvage, have regard to the laws of the country to which the vessel belonged at the time the salvage services were rendered.

263Z. VOLUNTARY AGREEMENT TO PAY SALVAGE.

⁵⁰⁷(1) Where—

- (a) services are rendered for which salvage is claimed and the salvor voluntarily agrees to abandon his lien on the vessel, cargo or property alleged to be salvaged; and
- (b) the master or owner, whether principal or agent—
 - (i) enters into a written agreement to abide by the decision of the National Court or of a court of competent jurisdiction in another country; and
 - (ii) gives security to an amount agreed on by the parties to the agreement,

the agreement shall bind the vessel and the cargo and property and the respective owners of the vessel and cargo and property and the owners for the time being, for the salvage that may be adjudged to be payable to the extent of the security given.

(2) Where security has been given for the performance of an agreement under this section, the person with whom the security is lodged shall deal with it as the court adjudicating on the agreement directs.

(3) Where an agreement—

⁵⁰⁴ Section 263X Subsection (2) amended by No. 70 of 2006, s. 169.

⁵⁰⁵ Section 263X Subsection (3) amended by No. 70 of 2006, s. 169.

⁵⁰⁶ Section 263Y added by No. 12 of 1981.

⁵⁰⁷ Section 263Z added by No. 12 of 1981.

- (a) that corresponds to an agreement under this section is made under the corresponding provisions of the law in force in another country; and
- (b) provides that the parties to it will abide by the decision of a court of competent jurisdiction in Papua New Guinea,

the National Court shall have power to adjudicate on and enforce that agreement.

(4) The National Court shall have power to enforce, and shall assist a court of competent jurisdiction in another country in enforcing, an agreement made under this section or under the corresponding provisions of the law of any other country.

263ZA. POSTAL ARTICLES NOT SUBJECT TO SALVAGE.

⁵⁰⁸(1) In this section, “**postal article**” has the same meaning as in the *Postal Services Act 1996*.

(2) A claim for salvage shall not lie against the State in respect of a postal article or the contents of a postal article.

*Division 6.*⁵⁰⁹

Miscellaneous.

263ZB. FEES PAYABLE TO AUTHORITY.

⁵¹⁰Where the Authority has—

- (a) attended at the site of a stranded vessel or wreck; or
- (b) taken possession of any wreck under this Part; or
- (c) acted in pursuance of his powers under this Part in relation to a vessel that is wrecked, stranded or in distress,

fees as prescribed shall be payable to the Authority.

263ZC. RECOVERY OF FEES AND COSTS.

⁵¹¹(1)⁵¹² ⁵¹³Where—

- (a)⁵¹⁴ the Authority is entitled to fees payable under Section 263ZB; or
- (b)⁵¹⁵ the Authority has incurred costs and expenses in acting in pursuance of his powers under this Part, and those costs and expenses are not otherwise recovered,

⁵⁰⁸ Section 263ZA added by No. 12 of 1981.

⁵⁰⁹ Division XIA.6 added by No. 12 of 1981.

⁵¹⁰ Section 263ZB Amended by No. 70 of 2006, s. 170; added by No. 12 of 1981.

⁵¹¹ Section 26ZC added by No. 12 of 1981.

⁵¹² Section 263ZC Subsection (1) amended by No. 70 of 2006, s. 171.

⁵¹³ Section 263ZC Subsection (1) amended by No. 70 of 2006, s. 171.

⁵¹⁴ Section 263ZC Subsection (1) amended by No. 70 of 2006, s. 171.

⁵¹⁵ Section 263ZC Subsection (1) amended by No. 70 of 2006, s. 171.

the Authority may institute proceedings for the payment of fees or recovery of costs and expenses, as the case may be.

(2)⁵¹⁶ ⁵¹⁷In addition to its rights and remedies under Subsection (1), the Authority has, in respect of costs and expenses incurred under this Part, the same rights and remedies as a salvor has in respect of salvage.

(3)⁵¹⁸ [*Repealed.*]

263ZD. REGULATIONS.

⁵¹⁹The Regulations may make provision, not inconsistent with this Part, for and in relation to—

- (a)⁵²⁰ the manner in which notice of wreck found or taken possession of shall be given to the Authority; and
- (b)⁵²¹ the manner in which the Authority shall give notice that he has taken possession of wreck; and
- (c)⁵²² the manner in which the Authority may sell, deal with or otherwise dispose of any wreck in his possession; and
- (d)⁵²³ the fees and expenses, and their payment for services rendered by the Authority.
- (e)⁵²⁴ the particulars of the fines to be paid under Sections 263G, 263I, 263J, 263K, 263L, 263Q and 263T.

⁵¹⁶ Section 263ZC Subsection (2) amended by No. 70 of 2006, s. 171; Subsection (2) amended by No. 70 of 2006, s. 171.

⁵¹⁷ Section 263ZC Subsection (2) amended by No. 70 of 2006, s. 171; Subsection (2) amended by No. 70 of 2006, s. 171.

⁵¹⁸ Section 263ZC Subsection (3) omitted by No. 70 of 2006, s. 171.

⁵¹⁹ Section 263ZD Amended by No. 70 of 2006, s. 172; added by No. 12 of 1981.

⁵²⁰ Section 263ZD Amended by No. 70 of 2006, s. 172.

⁵²¹ Section 263ZD Amended by No. 70 of 2006, s. 172.

⁵²² Section 263ZD Amended by No. 70 of 2006, s. 172.

⁵²³ Section 263ZD Amended by No. 70 of 2006, s. 172.

⁵²⁴ Section 263ZD Amended by No. 70 of 2006, s. 172.

PART XII. – MISCELLANEOUS.*Division 1.**Wrecks.***264. VESSELS WRECKED.**

(1) In this Division unless the contrary intention appears–

“**owner**”, in relation to a vessel wrecked, means any person or persons to whom the vessel wrecked–

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

“**vessel**” includes part of a vessel and any item of tackle, equipment, cargo, stores or ballast of, or belonging to, a vessel;

“**vessel wrecked**” means any vessel that is wrecked, stranded, sunk or abandoned or which is lying on the sea-bed within the territorial limits of the country and includes wreck.

(2)^{525 526} Where, in the opinion of the Authority–

- (a) a vessel wrecked is, or is likely to be, an obstruction or danger to navigation; or
- (b) it is in the public interest to do so,

the Authority may–

- (c) require the owner of the vessel wrecked to–
 - (i) raise, remove or destroy, the whole or any part of the vessel; or
 - (ii) light or buoy any such vessel or part until it is raised, removed or destroyed; or
- (d)⁵²⁷ where the owner of a vessel wrecked fails to comply with the requirements made under Paragraph (c)–remove, destroy or deal with the vessel wrecked or any part of the vessel wrecked in such manner as it thinks fit; or
- (e)⁵²⁸ sell, in such manner as it thinks fit–
 - (i) any vessel wrecked or any part of it so raised or removed; and
 - (ii) any other property recovered in the raising or removal;

⁵²⁵ Section 264 Subsection (2) amended by No. 70 of 2006, s. 173; Subsection (2) amended by No. 70 of 2006, s. 173.

⁵²⁶ Section 264 Subsection (2) amended by No. 70 of 2006, s. 173; Subsection (2) amended by No. 70 of 2006, s. 173.

⁵²⁷ Section 264 Subsection (2) amended by No. 70 of 2006, s. 173.

⁵²⁸ Section 264 Subsection (2) amended by No. 70 of 2006, s. 173.

and, out of the proceeds of sale, pay after deduction of any expenses incurred by it the net proceeds of such sale to the persons entitled to them; or

- (f)⁵²⁹ recover from the owner any and all expenses incurred by it in the lighting, buoying, raising, removal or destruction of the vessel wrecked or any part of the vessel wrecked and not recovered from the proceeds of any sale under Paragraph (e).

(3)^{530 531} The powers given to the Authority under this section for the removal of vessels wrecked shall be in addition to and not in derogation of any other powers given to a harbour or port authority for a like object under any other law.

265. PROHIBITION OF APPROACHING DANGEROUS WRECKS.

(1)^{532 533} Where the Authority is satisfied that—

- (a) because of any thing contained within a vessel wrecked, the vessel wrecked is in a condition which makes it a potential danger to life or to property; and
- (b) the vessel wrecked ought to be protected from unauthorized interference,

it may, by notice in the National Gazette, declare an area around the vessel to be a prohibited area.

(2) A notice under Subsection (1) shall contain a description of the vessel wrecked, the place where that vessel is and the extent of the area declared to be a prohibited area.

(3)^{534 535} Subject to Subsection (4) a person who, without the written authority of the Authority, enters a prohibited area is guilty of an offence.

Penalty: ⁵³⁶ A fine not exceeding K20,000.00.

(4) A person is not guilty of an offence under Subsection (3) if he enters a prohibited area—

- (a) in pursuance of some duty or function imposed on him by law; or
- (b) out of necessity due to stress of weather or navigational hazard.

⁵²⁹ Section 264 Subsection (2) amended by No. 70 of 2006, s. 173.

⁵³⁰ Section 264 Subsection (3) amended by No. 70 of 2006, s. 173.

⁵³¹ Section 264 Subsection (3) amended by No. 70 of 2006, s. 173.

⁵³² Section 265 Subsection (1) amended by No. 70 of 2006, s. 174; Subsection (1) amended by No. 70 of 2006, s. 174.

⁵³³ Section 265 Subsection (1) amended by No. 70 of 2006, s. 174; Subsection (1) amended by No. 70 of 2006, s. 174.

⁵³⁴ Section 265 Subsection (3) amended by No. 70 of 2006, s. 174.

⁵³⁵ Section 265 Subsection (3) amended by No. 70 of 2006, s. 174.

⁵³⁶ Section 265 Subsection (3) amended by No. 70 of 2006, s. 174.

*Division 2.**Offences.***266. FALSE DECLARATION AS TO OWNERSHIP.**

(1) A person who, in a declaration made under or for the purposes of this Act, or in any document or other evidence produced to the Registrar, an assistant to the Registrar or a proper officer—

- (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, ownership of, or the interest existing in, a ship registered under this Act; or
- (b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,

is guilty of an offence.

Penalty: ⁵³⁷A fine not exceeding K20,000.00 or imprisonment for a term not exceeding 12 months.

(2) Where, in a declaration made under or for the purposes of this Act, a person wilfully makes a false statement in relation either to his being a qualified person or to another person being a qualified person, the ship in respect of which that false statement has been made is liable to forfeiture to the extent of the interest in the ship of the declarant or, unless it is proved that the declaration was made without authority, of a person on behalf of whom the declaration was made.

267. FALSE DECLARATIONS AND STATEMENTS.

A person who knowingly—

- (a) makes a false declaration, statement or representation; or
- (b) gives false evidence on oath; or
- (c) alters, produces or makes use of any false declaration, statement or representation,

in connection with any application, report, record or proceeding under this Act is guilty of an offence.

Penalty: ⁵³⁸A fine not exceeding K20,000.00 or imprisonment for a term not exceeding 12 months.

268. OBSTRUCTION OF PERSONS.

A person who, without lawful excuse (proof of which is on him), hinders or obstructs a person in the performance, execution or carrying out of any duty conferred or imposed on that person by this Act is guilty of an offence.

⁵³⁷ Section 266 Subsection (1) amended by No. 70 of 2006, s. 175.

⁵³⁸ Section 267 Amended by No. 70 of 2006, s. 176.

Penalty: ⁵³⁹A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months.

Division 3.

Procedure.

269. LIMITATION OF ACTIONS.

(1) For the purposes of this section, the expression “**freight**” includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent on that fault, recoverable at law by way of damages.

(2) An action shall not be maintainable to enforce any claim or lien against a vessel or her owners in respect of—

(a) any—

(i) damage or loss to another vessel, her cargo or freight or any property on board her; or

(ii) damages for loss of life or personal injuries suffered by any person on board her,

caused by the fault of the former vessel, whether such vessel be wholly or partly in fault; or

(b) any salvage services,

unless proceedings are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered.

(3) An action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within one year from the date of payment.

(4) Any court having jurisdiction to deal with an action to which this section applies—

(a) may, in accordance with the rules of court, extend any such period to such extent and on such conditions as it thinks fit; and

(b) shall, if satisfied that there has not, during such period, been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

⁵³⁹ Section 268 Amended by No. 70 of 2006, s. 177.

270. PROCEEDINGS ON FORFEITURE OF SHIP.

(1)^{540 541} Where a ship has become liable to forfeiture under this Act, the Minister or the Authority, as the case may be, may cause the ship to be seized and may detain the ship and may bring the ship for adjudication before the National Court.

(2) The National Court may, where a ship has been brought before it for adjudication under Subsection (1), on such terms and conditions as it thinks just, order that the ship be forfeited to the State.

271. MODE OF MAKING DECLARATION.

(1)^{542 543} A declaration required by this Act may be made before the Registrar, an assistant to the Registrar, a Commissioner for Oaths, a Papua New Guinea consular officer or an officer of the Authority duly authorized by the Authority to take oaths..

(2) A declaration required by this Act may be made on behalf of a corporation by any person so authorized under the common seal of the corporation.

272. PROOF OF DOCUMENTS.

(1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by Section 273.

(2) This section applies to—

- (a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by any person required or authorized by this Act to issue, grant, give or make any such certificate or document; and
- (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorized by this Act to make any such endorsement; and
- (c) a certificate given or made by the Registrar asserting the negative of any circumstance, fact or thing.

273. ADMISSIBILITY OF DOCUMENTS IN EVIDENCE.

(1) Where a certificate or other document is by this Act declared to be admissible in evidence it shall, on its production from proper custody, be admissible in evidence in any court, and, subject to all just exceptions, shall be conclusive evidence of the matters stated in it.

⁵⁴⁰ Section 270 Subsection (1) amended by No. 70 of 2006, s. 178.

⁵⁴¹ Section 270 Subsection (1) amended by No. 70 of 2006, s. 178.

⁵⁴² Section 271 Subsection (1) amended by No. 70 of 2006, s. 179.

⁵⁴³ Section 271 Subsection (1) amended by No. 70 of 2006, s. 179.

(2) A copy of any certificate or other document referred to in Subsection (1) or an extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other document is entrusted.

(3) Any person who is by this Act required or authorized to issue, grant, give or make any certificate or other document, shall furnish a certified copy of the certificate or document to any person applying at a reasonable time for such certified copy or certified extract.

274. AVERMENT.

(1)⁵⁴⁴ ⁵⁴⁵In this section, “**officer**” includes a, a Labour Shipping Officer, a surveyor, an assistant to the Registrar, the Registrar and an officer of the Authority.

(2) Subject to Subsection (4), in any prosecution under this Act the averment of any officer shall be prima facie evidence of the matters averred.

(3) Any evidence given in support or rebuttal of a matter averred under Subsection (2) shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) Averment shall not be made—

(a) as to the intent of a person; or

(b) in a case where an offence is punishable by imprisonment.

275. RECOVERY OF FINES BY DISTRESS.

Where a Court adjudges a person convicted of any offence against this Act to pay any fine or other moneys and that person is the master of a ship registered under this Act or the owner of the ship, and the fine or other moneys are not paid within the time and in the manner limited by the conviction or specified in the order of the Court, the Court may, in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the ship or the equipment of the ship, as the case requires.

275A. PAYMENT OF FINES.

⁵⁴⁶All monies received by way of fines for offences under this Act shall be paid to the funds of the Authority.

276. DELEGATION BY MINISTER.

Subject to this Act, the Minister may, by instrument, delegate to a person all or any of his powers and functions under this Act (except this power of delegation).

⁵⁴⁴ Section 274 Subsection (1) amended by No. 70 of 2006, s. 180.

⁵⁴⁵ Section 274 Subsection (1) amended by No. 70 of 2006, s. 180.

⁵⁴⁶ Section 275A Inserted by No. 70 of 2006, s. 181.

277. APPLICATION OF OTHER LAWS.

Subject to this Act, all laws in force in Papua New Guinea at the commencement date relating to merchant shipping shall continue in force after the commencement date and shall have full force and effect except where they are inconsistent with any of the provisions of this Act and to the extent of any inconsistency the provisions of this Act prevail.

278. STATE OWNED SHIPS NOT SUBJECT TO CERTAIN PROCEEDINGS.

This Act does not—

- (a) authorize—
 - (i) proceedings *in rem* in respect of any claim against the State; or
 - (ii) the arrest, detention or sale of any Government ship or of any vessel belonging to the State; or
- (b) give to any person any lien on any Government ship or on any vessel belonging to the Defence Force or on any cargo or other property belonging to the State.

279. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the carrying out or giving effect to this Act, and in particular for prescribing—

- (a) the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act; and
- (b) forms to be used for or in connection with this Act; and
- (c) the means by which, and the conditions subject to which, a ship or a class of ship may be exempted from compliance with the regulations or any provision of the regulations; and
- (d)⁵⁴⁷ penalties of fines and default penalties of fines for offences against the regulations.

280. REPEAL.

The *Wreck and Salvage Act* is repealed.

Office of Legislative Counsel, PNG

⁵⁴⁷ Section 279 Amended by No. 70 of 2006, s. 182.