



Tonga

SHIPPING ACT

1988 Revised Edition



SHIPPING ACT

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SHIPPING ACT

Acts Nos. 11 of 1972, 4 of 1974, 7 of 1979, 15 of 1979, 13 of 1981, 12 of 1982, 18 of 1986

AN ACT RELATING TO SHIPPING AND NAVIGATION

[28th February, 1973]

PART I. —PRELIMINARY

1 Short title.

This Act may be cited as the Shipping Act.

2 Interpretation.

(1) In this Act, unless the context otherwise requires—

“**Absence without leave**”, in relation to any seaman or apprentice, means his failure without reasonable cause to join or to proceed to sea in the ship to which he belongs, or his absence without leave at any time within 24 hours of the ship's sailing from any port, either at the commencement or during the progress of a voyage, or his absence at any time without leave or sufficient cause from his ship or from his duty;

“**Administration**” means the Government of the State whose flag the ship is entitled to fly; (*Inserted by Act 18 of 1986.*)

“**Agreement**”, “**Agreement with the crew**” or “**Articles of agreement**”, in relation to any ship or to any seaman, means the agreement made between the master and the crew of the ship;

“**apprentice**” means a person duly indentured as an apprentice to the sea service;

“**Approved**” means approved by the Director; (*Inserted by Act 18 of 1986.*)

“**AUSL Code**” means the Uniform Shipping Law Code of the Marine and Ports Council of Australia, as published in the Australian Gazette dated 13 August 1984; (*Inserted by Act 18 of 1986.*)

“**Coasting Ship**” or “**Coastal Trade with relation to a ship**” means ships employed entirely within either the Tongatapu (including 'Eua), Ha'apai, Vava'u or Niuatoputapu group of islands and another place within the same group of islands; (*Substituted by Act 7 of 1979.*)

“**Collector**” means a Collector of Customs or other principal officer of customs doing duty at a port;

“**Collision Regulations**” means

- (a) the Rules and other Annexes attached to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as has been or may be amended; or
- (b) the Tongan Collision Regulations giving effect to those Rules and other Annexes; as the case may be; (*Inserted by Act 18 of 1986.*)

“**Control station**” means any position on board a ship where a person is required to exercise direct or remote control over the ship's radio or main navigating equipment, fire recording or fire control equipment, other emergency equipment, or machinery; (*Inserted by Act 18 of 1986.*)

“**Cargo ship**” means any ship that is not a passenger ship; (*Inserted by Act 18 of 1986.*)

“**Dangerous goods**” means all goods and other materials classified and dealt with as dangerous goods in the IMDG Code; (*Substituted by Act 18 of 1986.*)

“**Director**” means the person appointed as Director of Marine under section 6; (*Inserted by Act 18 of 1986.*)

“**Discharge**” means the certificate of discharge given to a seaman upon his discharge from a ship;

“**Distressed seaman**” means a seaman engaged under this Act who, by reason of having been discharged or left behind from, or shipwrecked in, any ship at a place outside Tonga, is in distress at that place;

“**Effects**”, in relation to a seaman, includes clothes and documents;

“**Equipment**”, in relation to a ship, includes boats, tackle, pumps, apparel, furniture, life saving appliances of every description, spars, masts, rigging and sails, fog signals, lights, shapes and signals of distress, medicines and medical and surgical stores and appliances, charters, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gear and appliances of all kinds and all other stores or articles belonging to or to be used in connection with or necessary for the navigation and safety of the ship;

“**Existing ship**” means a ship which is not a new ship; (*Inserted by Act 18 of 1986.*)

“**Fishing vessel**” means a vessel used for catching fish or other living resources of the sea, but does not include—

- (a) a vessel engaged in transporting or harvesting algae or aquatic plants; or
- (b) a vessel used solely to transport, store or process fish or other living resources of the sea, or to provide any combination of those uses; (*Inserted by Act 18 of 1986.*)

“**Foreign Going Ship**” means a ship employed in trading between any port or place in Tonga and any other port or place outside of Tonga or between any port or place outside Tonga; (*Inserted by Act 7 of 1979.*)

“**Freeboard**” means, in the case of any ship which is marked with a deck line, the height from the water to the upper edge of the deck line, and, in the case of any other ship, the height amidships from the water to the upper edge of the deck from which the depth of hold as stated in the register is measured;

“**Freight**” includes passage money and hire;

“**Go to Sea**” or “**Proceed to sea**” includes the getting under way for the purpose of going to sea;

“**Gross tons**” or “**gross tonnage**”, in relation to any ship means—

- (a) the gross tonnage of that ship determined in accordance with the Regulations; or
- (b) where under those regulations a ship has been assigned alternative gross tonnages, the higher of those gross tonnages:

Provided that where by any provision of this Act or of any rules or regulations under this Act it is provided that the gross tonnage of the ship shall be the lower of those gross tonnages, then, for the purposes of that provision, the gross tonnage of the ship shall be the lower of those tonnages;

“**Home-Trade Ship**” means a ship employed in trading between any port or place in Tonga; (*Substituted by Act 7 of 1979.*)

“**International voyage**” means a voyage between a port or place in one country and a port or place in another country; (*Inserted by Act 18 of 1986.*)

“**IMDG Code**” means the International Maritime Dangerous Goods Code adopted by the International Maritime Organization by resolution A.81(IV), as has been or may be amended by that Organization; (*Inserted by Act 18 of 1986.*)

“**Length**” means

- (a) the length shown in the Ship's Certificate of registry or tonnage certificate; or
- (b) in the case of a ship which does not possess either of the above certificates or where the length is not shown on either such certificates, the maximum overall length. (*Inserted by Act 18 of 1986.*)

“**Load Line certificate**” means a certificate issued under and in accordance with—

- (a) those provisions of this Act and the regulations that give effect to the Load Line Convention; or
- (b) the Load Line Convention;

as the case may be; (*Inserted by Act 18 of 1986.*)

“**Load Line Convention**” means—

- (a) the International Convention on Load Lines, 1966, as has been or may be amended by the International Maritime Organization; and
- (b) the Supplement Relating to the International Convention on Load Lines, 1966, published by the International Maritime Organization, London 1981—reprinted 1984 (S.N. 705 81.02.E);

(*Inserted by Act 18 of 1986.*)

“**Maritime Code**” means the South Pacific Maritime Code, published by the South Pacific Bureau for Economic Cooperation, as has been or may be amended by that organisation; (*Inserted by Act 18 of 1986.*)

“**Master**” means the person having command of a ship, but does not include a pilot; (*Substituted by Act 18 of 1986.*)

“**Member-country**” means a country the Government of which agrees to apply the Maritime Code to its ships, and enforce it according to its provisions; (*Inserted by Act 18 of 1986.*)

“**Minister**” means the Cabinet minister appointed as Minister of Marine in terms of section 6 hereof;

“**Near-coastal voyage**” means a voyage between a port or place in Tonga and another port or place in Tonga; (*Inserted by Act 18 of 1986.*)

“**New ship**” means a ship the keel of which is laid or which is at a similar stage of construction on or after the date of coming into force for Tonga of the Load Line Convention, the Safety Convention, the Tonnage Convention or the regulations implementing the Maritime Code, as the case may be; (*Inserted by Act 18 of 1986.*)

“**Officer**”, in relation to any ship, means the master, a mate, or an engineer of the ship, whether certificated or not;

“**Official log-book**” or “**Log-book**” in relation to a ship means the official log-book kept by the master of the ship in pursuance of this Act;

“**Owner**” means in respect of a ship the person whose name appears as owner, or as co-owner jointly and severally with others, of the ship or of a share in it in the register that records the ship's particulars in compliance with the law of the State whose flag the ship is flying, and includes

- (a) a charterer by demise;
- (b) the operator of the ship; and
- (c) any other person exercising control over the navigation of that ship, its equipment, or its crew; (*Substituted by Act 18 of 1986.*)

“**Pacific-region voyage**” means a voyage between a port or place inside the area bounded by

- (a) the parallels of latitude 15° North and 47° South; and
- (b) the meridians of longitude 130° East and 130° West; and

another port or place inside that area, not being a near-coastal voyage; (*Inserted by Act 18 of 1986.*)

“**Passenger**” means any person carried on a ship with the knowledge or consent of the owner, charterer, agent or master of the ship other than—

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

“**Passenger ship**” means a ship which carries more than 12 passengers;

“**Person**” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law; (*Inserted by Act 18 of 1986.*)

“**Pleasure craft**” means a ship used exclusively for pleasure and not for commercial purposes, and “**pleasure ship**” and “**pleasure vessel**” each have a corresponding meaning; (*Inserted by Act 18 of 1986.*)

“**Port of Registry**”, in relation to a ship or a sailing vessel, means the port at which she is registered or is to be registered;

“**Prescribed**” means prescribed by regulation; (*Amended by Act 18 of 1986.*)

“**Proper officer**” means the officer designated by the competent Government to be the proper officer at the port or place and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs;

“**Proper return port**”, in relation to a master, seaman or apprentice discharged or left behind, means the port at which the master, seaman or apprentice was engaged, or the port agreed to as such by the master, seaman or apprentice, as the case may be;

“**Radio Regulations**” means the Radio Regulations annexed to the most recent International Telecommunications Convention in force at any time; (*Inserted by Act 18 of 1986.*)

“**Register tons**” or “**register tonnage**”, in relation to any ship, means—

- (a) the register tonnage of that ship determined in accordance with the tonnage regulations of this Act; or
- (b) where under those regulations a ship has been assigned alternative register tonnages, the higher of those register tonnages:

Provided that where by any provision of this Act or of any rules or regulations under this Act it is provided that the register tonnage of the ship shall be the lower of those register tonnages, then, for the purposes of that provision, the register tonnage of the ship shall be the lower of those register tonnages;

“**Regulations**” means regulations made under a power conferred by this Act; (*Inserted by Act 18 of 1986.*)

“**Repatriation expenses**” means expenses incurred in returning a distressed seaman to a proper return port and in providing him with necessary clothing and maintenance until his arrival at such port, and includes in the case of a shipwrecked seaman the repayment of expenses incurred in conveying him to port after shipwreck and maintaining him while being so conveyed;

“**Safety certificate**” means a certificate issued under and in accordance with—

- (a) those provisions of this Act and the regulations that give effect to the Safety Convention; or
- (b) the Safety Convention,

as the case may be; (*Inserted by Act 18 of 1986.*)

“**Safety Convention**” means the International Convention for the Safety of Life at Sea, 1974, including its Annex and 1978 Protocol, as has been or may be amended by the International Maritime Organization; (*Inserted by Act 18 of 1986.*)

“**Salvage**” includes all expenses properly incurred by the salvor in the performance of salvage services;

“**Sea-going ship**” means a ship other than one that navigates—

- (a) exclusively in inland waters, or
- (b) exclusively in waters within or closely adjacent to sheltered waters or areas where harbour by-laws or regulations apply; (*Inserted by Act 18 of 1986.*)

“**Seaman**” means any person employed or engaged in any capacity on board any ship except a master, pilot, or apprentice, or a person temporarily employed on the ship while in port;

“**Ship**” means a vessel of any type whatsoever operating in the marine environment; (*Substituted by Act 18 of 1986.*)

“**Ship of traditional build**” means a ship built to a traditional polynesian design, and includes a raft, a canoe, an outrigger and any other craft of similar design; (*Inserted by Act 18 of 1986.*)

“**STCW Convention**” means the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978, as has been or may be amended by the International Maritime Organization; (*Inserted by Act 18 of 1986.*)

“**Surveyor**” means a person appointed under section 123 as a surveyor; (*Inserted by Act 18 of 1986.*)

“**Surveyor certificate**” means a certificate issued under and in accordance with—

- (a) those provisions of this Act and the regulations that give effect to the Maritime Code, or
- (b) the Maritime Code,

as the case may be, to a ship that is not required to fulfil all the requirements of the Load Line Convention or Safety Convention, and

which is not required to be issued with and does not possess the appropriate load line certificate or safety certificates; (*Inserted by Act 18 of 1986.*)

“**Tanker**” means a ship constructed or used for the carriage in bulk of petroleum or petroleum products, liquid chemicals or liquified gas, and includes a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature; (*Inserted by Act 18 of 1986.*)

“**Tongan Ship**” means a ship registered or licensed, or lawfully exempted from the requirement to be registered or licensed, under Part III of this Act or the regulations; (*Inserted by Act 18 of 1986.*)

“**Tonnage Convention**” means the International Convention on Tonnage Measurement of Ships, 1969, as has been or may be amended; (*Inserted by Act 18 of 1986.*)

“**Ton**” means, when used in conjunction with the words “**gross**” “**net**” or “**registered**”, 100 cubic feet; and the word “**tonne**”, when used in conjunction with those words, has the same meaning; (*Inserted by Act 18 of 1986.*)

“**Unlimited voyage**” means a voyage between a port or place outside the area bounded by—

- (a) the parallels of latitude 15° North and 47° South; and
- (b) the meridians of longitude 130° East and 130° West; and

another port or place inside that area, or outside it; (*Inserted by Act 18 of 1986.*)

“**Unseaworthy**” means, in relation to a ship, that—

- (a) the material of which the ship is made;
- (b) the condition of the hull of the ship;
- (c) the construction of the ship;
- (d) the condition of the ship's equipment, boilers or machinery;
- (e) the ship's safety equipment;
- (f) the qualification of the ship's master;
- (g) the number, description or qualifications of the crew of the ship, including its officers;
- (h) the weight, description or stowage of cargo or ballast on board the ship; or
- (i) the ship's draft, trim or heel;

is not of a reasonable standard, is not in accordance with the ordinary practice of seamen, is in contravention of this Act or the regulations or is prejudicial to safety of life at sea and, as a consequence, the ship is not in

every respect fit for the proposed voyage or service; (*Inserted by Act 18 of 1986.*)

“**Vessel**” includes every description of water craft used or capable of being used as a means of transportation on the water; (*Inserted by Act 18 of 1986.*)

“**Voyage**” means the whole distance between the ship's port or place of departure and her final port or place of arrival;

“**Wages**” includes emoluments.

- (2) Where a provision of this Act or regulations made hereunder is stated to be or purports to be based upon or give effect to any extrinsic material, reference to that extrinsic material and to any related documents may be made in aid in the interpretation of that provision. (*Inserted by Act 18 of 1986.*)
- (3) For the purpose of subsection (2), “**extrinsic material**” includes but is not limited to any code, treaty, convention, statute, regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, by-law, resolution, ordinance or other instrument, but does not include an order of court. (*Inserted by Act 18 of 1986.*)
- (4) Where a word or an expression is defined in this Act or in the regulations, other parts of speech and grammatical forms of the same word or expression have corresponding meanings, unless the context otherwise requires. (*Inserted by Act 18 of 1986.*)

3 Application of Act.

Unless expressly provided otherwise in this Act or the regulations, this Act and the regulations apply to every Tongan ship on any voyage and in any waters, and to every ship in a Tongan port or harbour, but do not apply to—

- (a) a ship belonging to the defence forces of Tonga or of any other country, including but not limited to warships, naval auxiliaries, and any other ships owned or operated only on governmental non-commercial service;
- (b) a ship employed solely in navigation on lagoons, lakes, rivers, and inland waters;
- (c) a ship of less than 15 metres in length;
- (d) a ship of traditional build;
- (e) a ship employed as a pleasure yacht or similar craft not engaged in trade;
- (f) a ship employed as a fishing vessel; or;

- (g) a ship lawfully exempted from any provision of this Act or the regulations, to the extent exempted.

(Inserted by Act 18 of 1986.)

4 Force majeure.

- (1) A ship that is not subject to this Act, the regulations or to any provision of the Act or regulations at the time of its departure on any voyage does not become subject to this Act, the regulations or to a provision of them on account of any deviation from its intended voyage due to stress of weather or any other cause of force majeure.
- (2) Persons who are on board a ship by reason of force majeure or in consequence of the obligation laid upon the master to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to a ship of any provisions of this Act, or of the regulations. *(Inserted by Act 18 of 1986.)*

5 Carriage of persons in an emergency.

For the purpose of evacuating persons in order to avoid a threat to the security of their lives, a ship may carry a larger number of persons than is otherwise permissible under this Act or the regulations. *(Inserted by Act 18 of 1986.)*

PART II.—GENERAL ADMINISTRATION

6 Minister of Marine.

- (1) His Majesty may from time to time appoint a member of the Cabinet as Minister of Marine.
- (2) The Minister of Marine shall be responsible for the administration of this Act on behalf of the Government and all acts done by him or under his command or authority shall be deemed to have been done by the Government.

Director of Marine.

- (3) The Minister shall have power, according to the established procedure of the Government, to appoint a Director of Marine and other officers as may be deemed necessary for the purpose of exercising or discharging the powers, authority or duties conferred or imposed on the Government or the Minister or to carry out the purpose of the Act and to do all things

pertaining to domestic and foreign waterborne transportation and commerce of Tonga. (*Amended by Act 18 of 1986.*)

- (4) A mercantile marine office with the requisite buildings, property, officers, and other Government servants may be established and maintained at such places and ports as the Minister may consider necessary from time to time.

PART III.—REGISTRATION OF SHIPS

7 Obligation to register ship.

- (1) Every Tongan ship shall, unless exempted from registration, be registered under this Act.
- (2) If a ship required by this Act to be registered is not registered under this Act, she shall not be recognised as a Tongan ship:

Provided that any ship registered at the commencement of this Act at any port in Tonga under any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognized as a Tongan ship.

- (3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces a certificate of registry in respect of the ship.

8 Ships for which registration required.

Every Tongan ship of 15 metres or more in length engaged in the carriage of goods or passengers or both shall be registered in accordance with this Act. (*Amended by Act 18 of 1986.*)

9 Ports of registry.

- (1) The port at which registration of ships shall be made shall be the port of Nuku'alofa and such other ports in the Kingdom of Tonga as the Minister may, by notification in the Gazette, declare to be ports of registry under this Act.
- (2) The port at which a Tongan ship is registered for the time being shall be deemed to be her port of registry and the port to which she belongs.

10 Office of registrar.

- (1) Registration shall be effected at the office of the Director who shall be the registrar of Tongan ships. (*Amended by Act 18 of 1986.*)
- (2) A registrar or any person working under him or under his authority shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar unless the same has happened through his wilful act.

11 Register book.

Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with the following provisions:—

- (a) The property in a ship shall be divided into 20 shares;
- (b) Subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 20 individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial interest of any persons represented by or claiming under or through any registered owner or joint owner;
- (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 5 may be registered as joint owners of a ship or of any share or shares therein;
- (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 in severalty of any interest in a ship or in any share therein in respect of which they are registered;
- (e) A company may be registered as owner in its corporate name.

12 Application for registry.

An application for registry for a ship shall be made:—

- (a) in the case of an individual, by the person requiring to be registered as owner or by his agent;
- (b) in the case of more than one individual requiring to be so registered, by some one or more of the persons so requiring or by his or their agent; and
- (c) in the case of a company requiring to be so registered, by its agent;

and the authority of the agent shall be testified by writing, if appointed by an individual, under the hand of the person appointing him and, if appointed by a company, under its common seal.

13 Survey and measurement of ships before registry.

- (1) Whenever application for a ship to be registered is made under the last preceding section, the owner or other applicant shall, on or before making the application, cause the ship to be surveyed by a surveyor acceptable to the Minister and the tonnage of the ship ascertained in the prescribed manner.
- (2) The surveyor shall, upon making the survey, grant a certificate (hereinafter referred to as a surveyor's tonnage certificate) specifying the ship's tonnage and build and such other particulars descriptive of the identify of the ship as may be required from time to time by the Minister, and such certificate shall be delivered to the registrar before registry.

14 Marking of ships.

Every ship in respect of which an application for registration is made shall before registry be marked permanently and conspicuously to the satisfaction of the Minister or any prescribed authority as follows:

- (a) Her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stern, on a dark ground in white or yellow letters, or on a light ground in black letters, such letters to be of a length not less than 115 millimetres, and of proportionate breadth; (*Amended by Acts 13 of 1981 and 12 of 1982.*)
- (b) Her official number and the number denoting her registered tonnage shall be cut in on her main beam;
- (c) A scale of feet denoting her draught of water shall be marked on each side of her stern and of her stern post in Roman capital letters or in figures, not less than 150 millimetres in length, the lower line of such letters or figures to coincide with the draught line denoted thereby; and those letters or figures shall be marked by being cut in and painted white or yellow on a dark ground, or in such other way as may be required by the Minister; (*Amended by Acts 13 of 1981 and 12 of 1982.*)
- (d) Subject to any other provision contained in this Act and to the provisions of any rules made thereunder, the owner and the master of the ship shall take all reasonable steps to ensure that the ship remains marked as required by this Act, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in

this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right of which a proof shall be furnished;

- (e) If an owner or master of a Tongan ship neglects to cause his ship to be marked as required by this section, or to keep her so marked, or if any person conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, that owner, master, or person shall for each offence be liable to a fine not exceeding T\$100, and if the ship is marked insufficiently or inaccurately, she may be detained by the Director until the insufficiency or inaccuracy has been remedied. (*Amended by Act 18 of 1986.*)

15 Declaration of ownership on registry.

- (1) A person shall not be registered as owner of a ship or of a share therein until he or in the case of a company, the person authorised by the company to make declarations on its behalf has made and signed a declaration of ownership referring to the ship as described in the certificate of the surveyor and containing the following particulars:
- (a) a statement of the time and place of construction of the ship, or, if the time and place of building is unknown, a statement to that effect; and, in addition, thereto, in the case of a ship previously registered outside Tonga, a statement of her foreign name, or, in the case of a ship condemned, a statement of the time, place, and court at and by which she was condemned;
 - (b) a statement of the number of shares in the ship of which he or the company, as the case may be, claims to be registered as owner and the nationality of the owner;
 - (c) a statement of the name of the master;
 - (d) a declaration that the particulars stated are true to the best of his knowledge and belief.
- (2) In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them.

16 Evidence on first registry.

- (1) On the first registry of a ship, the following evidence shall be produced in addition to the declaration of ownership:—
- (a) a builder's certificate, that is to say, a certificate signed by the builder of a ship and containing a true account of the proper

denomination and of the tonnage of the ship, as estimated by him, and of the time when and the place where she was built, and, of the name of the person (if any) on whose account the ship was built, and, if there has been any sale, the instrument of sale under which the ship or a share therein has become vested in the applicant for registry;

- (b) if the declarant who makes the declaration of ownership declares that the time and place of her building are unknown to him, or that the builder's certificate cannot be procured, there shall be required only the bill of sale under which the ship, or a share therein, has become vested in the applicant for registry;
 - (c) in the case of a ship condemned by any competent court, an official copy of the condemnation.
- (2) If the person granting a builder's certificate under this section wilfully makes a false statement in that certificate he shall for each offence be liable to a fine not exceeding T\$200.

17 Entry of particulars in register book.

As soon as the requirements of this Act preliminary to registry have been complied with the registrar shall enter in the register book the following particulars respecting the ship:—

- (a) the name of the ship and the name of the port to which she belongs;
- (b) the details contained in the Surveyor's certificate;
- (c) the particulars respecting her origin stated in the declaration of ownership; and
- (d) the name and description of her registered owner or owners, and if there are more owners than one, the proportions in which they are interested in her.

18 Documents to be retained by registrar.

On the registry of a ship, the registrar shall retain in his custody the following documents, namely, the surveyor's certificate, the builder's certificate, any instrument of sale by which the ship was previously sold, the copy of the condemnation (if any), and all declarations of ownership.

19 Port of registry.

The port at which a Tongan ship is registered for the time being shall be deemed her port of registry and the port to which she belongs.

20 Grant of certificate of registry.

On completion of the registration of a ship, the registrar shall grant a certificate of registry comprising the particulars respecting her as entered in the register book with the name of her master.

21 Custody and use of certificate.

- (1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on, or in the ship.
- (2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.
- (3) Any person refusing or omitting to deliver the certificate as required by subsection (2), may, by order, be summoned by a court to appear before him and to be examined touching such refusal; and if the person is proved to have absconded so that the order of such court cannot be served on him, or if he persists in not delivering up the certificate, the magistrate shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost or destroyed, or as near thereto as circumstances permit.

22 Use of improper certificate.

If the master or owner of a Tongan ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall be guilty of an offence punishable with a fine not exceeding T\$500 and the ship shall be liable to forfeiture.

23 Power to grant new certificate in certain cases.

- (1) In the event of the certificate of registry of a Tongan ship being defaced or mutilated, the registrar of her port of registration may, on the delivery to him of that certificate, grant a new certificate in lieu of her original certificate.
- (2) In the event of the certificate of registry of a Tongan ship being mislaid, lost or destroyed or of the person entitled thereto being unable to obtain it

from the custody of any other person, the registrar of her port of registry shall grant a new certificate in lieu of her original certificate.

- (3) If, in the case of a ship registered in Tonga, the event referred to in the last preceding subsection occurs while the ship is at a port out of Tonga or if after the occurrence of that event the ship first arrives at a port out of Tonga, the master of the ship or some other person having knowledge of the facts of the case, shall furnish to the Tonga consular or other authorised proper officer at that port with a declaration stating the facts of the case and the names and descriptions of the registered owners of the ship, and the consular or other authorised proper officer may thereupon grant a provisional certificate of registry containing a statement of the circumstances under which it is granted.
- (4) Whenever a proper officer grants a provisional certificate in respect of any ship under the last preceding subsection, he shall transmit a copy of that certificate to the registrar at the ship's port of registry.
- (5) The provisional certificate shall within 10 days after the first subsequent arrival of the ship at the port in Tonga, be delivered by the master to the registrar of her port of registry and the registrar shall thereupon grant a new certificate of registry. If the master fails to comply with this subsection he commits an offence against this Act liable to a fine not exceeding T\$200.
- (6) If the certificate of registry stated to have been mislaid, lost or destroyed shall at any time afterwards be found, or if the person entitled to the certificate of registry obtains it at any time afterwards, the said certificate shall forthwith be delivered to the registrar of her port of registry to be cancelled.

24 Endorsement on certificate of change of master.

If the master of a ship, registered in Tonga is changed, such change shall be effected as follows:

- (a) if the change is made in consequence of the removal of the master by a Marine Board or by a court under this Act, the presiding officer of the Marine Board or of the court, as the case may be, shall endorse and sign on the certificate of registry a memorandum of the change and shall forthwith report the change to the registrar;
- (b) if the master is changed while the ship is at a port in Tonga and the change occurs from any cause other than that mentioned in the last preceding subsection, the registrar at that port shall endorse and sign a memorandum of the change on the ship's certificate of registry;

- (c) if the master is changed while the ship is at a port out of Tonga, the proper officer at that port shall endorse and sign a memorandum of the change on the ship's certificate of registry and shall forthwith notify the registrar at the ship's port of registry.
- (2) The Government may exempt in writing any home-trade ship from the requirements of this section and on such terms and conditions as it thinks fit. Such written exemption shall be delivered to the registrar at the ship's port of registry.

25 Endorsement on certificate of change of ownership.

- (1) Whenever a change occurs in the registered ownership of a ship registered in Tonga, the change of ownership shall be endorsed on the certificate of registry by the registrar at the ship's port of registry, or by the registrar at any port at which the ship arrives after he has been advised of the change by the registrar at the ship's port of registry.
- (2) The master shall, for the purpose of such endorsement by the registrar at the ship's port of registry, deliver the certificate of registry to the registrar, forthwith after the change if the change occurs when the ship is at her port of registry, and, if it occurs during her absence from that port and the endorsement under this section is not made before her return, then upon her first return to that port.
- (3) The Registrar at any port of registry, not being the ship's port of registry, who is by this section required to make an endorsement on the certificate of registry of a ship registered in Tonga, may require the master to deliver to him the ship's certificate of registry, provided that the ship is not thereby detained, and the master shall deliver the certificate accordingly.
- (4) Where any registrar, not being the registrar at the ship's port of registry, makes an endorsement under this section in respect of any ship, he shall forthwith notify the registrar at the ship's port of registry.
- (5) If the master of any ship fails to deliver the ship's certificate of registry to a registrar when required under this section to do so, he commits an offence against this Act.
- (6) Where the ownership of any ship registered in Tonga is changed, the registrar at the ship's port of registry may, on the application of the owner of the ship, register the ship anew, although registration anew is not required under this Act.

26 Delivery of certificate when ship is lost or ceases to be a Tongan ship.

- (1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be a Tongan ship, every owner of the ship or any share in the ship shall immediately on obtaining knowledge of the event, if no notice thereof has already been given to the registrar, give notice thereof to the registrar at her port of registry and that registrar shall make an entry thereof in the register book and its registry in that book shall be considered as closed except so far as relates to any unsatisfied mortgages entered therein.
- (2) In any such case, except where the ship's certificate of registry is mislaid, lost or destroyed, the master of the ship shall, immediately if the event occurs in any port in Tonga, or within 10 days after his arrival in port if it occurs elsewhere, deliver the certificate to the registrar of the port if the port of arrival is in Tonga, or if the arrival is in any port outside Tonga to the proper officer there, and the registrar if he is not himself the registrar of her port of registry or the officer so specified as the case may be, shall forthwith forward the certificate delivered to him to the registrar of her port of registry.
- (3) If any such owner or master fails, without reasonable cause, to comply with this section, he shall be liable to a fine not exceeding T\$200.

27 Re-registration of abandoned ships.

If a ship has ceased to be registered in Tonga by reason of having been wrecked or abandoned or for any other reason except capture by the enemy, the ship shall not be registered in Tonga until she has, at the expense of the applicant for re-registration, been inspected by a Surveyor of ships and certified by him to be seaworthy.

28 Provisional certificate for ship which in a foreign country becomes a Tongan ship.

- (1) If at any port outside Tonga, any authorised person on behalf of the owners of a ship declares to the Tongan consular or other proper officer authorised by the Minister at that port an intent to apply to have the ship registered in Tonga, the consular or proper officer, as the case may be, may grant to the master of that ship a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the certificate at the first convenient opportunity to the registrar of the port in Tonga.

- (2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of 6 months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect.
- (3) The master of every ship in respect of which a provisional certificate is granted under this section shall, within 10 days of the ship's arrival at the port in Tonga, deliver the certificate to the registrar at that port.

29 Temporary pass in lieu of certificate of registry.

Where it appears to the Minister that by reason of special circumstances it is desirable that permission should be granted to any Tongan ship to pass, without being previously registered, from one port to any other port in Tonga, the Minister may authorise the registrar of the first-mentioned port to grant a pass in such form as may be prescribed, and that pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

30 Transfer of ship or share.

- (1) Subject to other provisions of this Act, a Tongan ship or a share therein shall be transferred only by an instrument in writing.
- (2) The instrument shall contain such description of the ship as is contained in the surveyor's certificate or some other description sufficient to identify the ship to the satisfaction of the registrar and shall be in the prescribed form or as near thereto as circumstances permit and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

31 Registry of transfer.

- (1) Every instrument for the transfer of a Tongan ship or of a share therein when duly executed shall be produced to the registrar of her port of registry, and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share, as the case may be, and shall endorse on the instrument the fact of that entry having been made with the day and hour thereof.
- (2) Every such instrument shall be entered in the register book in the order of its production to the registrar.

32 Government or court may prohibit transfer.

Notwithstanding what is contained in the preceding sections:

- (a) The Government may, if it considers it necessary or expedient so to do for any reason, ask the registrar not to effect any transfer or acquisition of a ship or share therein;
- (b) The Supreme Court may, if the Court thinks fit, and without prejudice to the exercise of any other power of the Court, on the application of any interested person, make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order 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; and the registrar, without being made a party to the proceeding, shall on being served with the order or an official copy thereof obey the same.

33 Transmission of property in ship on death, bankruptcy etc.

- (1) Where the property in a Tongan ship or share therein is transmitted to a person on the death or insolvency of any registered owner, or by any lawful means other than by a transfer under this Act—
 - (a) that person shall authenticate the transmission by making and signing a declaration (in this Act referred to as a declaration of transmission) identifying the ship and also a statement of the manner in which and the person to whom the property has been transmitted;
 - (b) if the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by proper proof of such claim;
 - (c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by a succession certificate, probate or letters of administration or proof of survivorship in case of joint ownership or a duly certified copy thereof.
- (2) The registrar, on receipt of the declaration of transmission so accompanied, shall enter in the register book the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there are more persons than one, shall enter the names of all those persons, but those persons however numerous shall, for the purpose of the provisions of this Act with respect to the number of persons claiming to be registered as owners, be considered as one person.

34 Mortgage of ship or share.

- (1) A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in

this Act called a mortgage) shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument the registrar of the ship's port of registry shall record it in the register book.

- (2) Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar shall, by memorandum under his hand, notify on each mortgage that it has been recorded by him stating the day and hour of that record.

35 Entry of discharge of mortgage.

Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made the estate, if any, which passed to the mortgagee shall vest in the person in whom (having regard to the intervening acts and circumstances, if any) it would have vested, if the mortgage had not been made.

36 Priority of mortgages.

- (1) If there are more mortgages than one registered in respect of the same ship or share, the mortgages shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other, according to the date at which each mortgage is recorded in the register book and not according to the date of each mortgage itself.
- (2) A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor, after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order, or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim, or interest therein of the other creditors of the bankrupt or any trustee or assignee in their behalf.

37 Rights of mortgagee.

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

- (2) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the Court, and when passing a decree or thereafter the Court may direct that the mortgaged ship or share be sold in execution of the decree.
- (3) Subject to the provisions of subsection (2), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share.

38 Transfer of mortgage.

- (1) A registered mortgage of a ship or share may be transferred to any person by an instrument in writing, and on the production of such instrument, the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share and shall, by memorandum under his hand, notify on the instrument of transfer that it has been recorded by him stating the day and hour of the record.
- (2) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

39 Transmission of interest in mortgage in certain circumstances.

- (1) Where the interest of a mortgagee in a ship or share is transmitted on death, 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 containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.
- (2) The registrar, on receipt of the declaration and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share.

40 Rules as to name of ship.

- (1) A Tongan ship shall not be described by any name other than that by which she is for the time being registered.
- (2) The registrar may refuse the registry of a Tongan ship by the name by which it is proposed to register the ship if that name is already borne by another ship or if the name be so similar as is calculated or likely to deceive.
- (3) A change shall not be made in the name of a Tongan ship without the written permission of the registrar.

- (4) If any person acts or suffers any person under his control to act in contravention of this section or omits to do or suffers any person under his control to omit to do anything required under this section, the ship may be detained until the provisions of this section are complied with:

Provided that nothing in this subsection shall apply to a foreign ship which has become, and is sought to be registered as a Tongan ship.

41 Registry of alterations.

When a ship registered in Tonga is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if the alteration is made in Tonga, the registrar at the ship's port of registry; or if the alteration is made outside Tonga, the registrar or another proper officer at the port at which the ship arrives after the alteration, shall, on application being made to him stating the particulars of the alteration either cause the alteration to be registered or direct that the ship be registered anew.

42 Procedure for registry of alterations.

- (1) Where a registrar or proper officer, on an application as to an alteration in a ship registered in Tonga, causes the alteration to be registered, the ship's certificate of registry shall be produced to him, and the registrar or proper officer shall, in his description, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or endorse and sign on the existing certificate a memorandum of the alteration.
- (2) Where a registrar (not being the registrar at the ship's port of registry) or any proper officer grants a new certificate or endorses an existing certificate under this section, he shall forthwith send a report of the particulars of the case to the registrar at the ship's port of registry, containing a statement similar to that contained in the certificate or endorsement, and accompanied, where a new certificate of registry has been granted, by the former certificate of registry.
- (3) The particulars of the alteration so made, and the fact of the new certificate having been granted or endorsement having been made, shall be entered in his register book by the registrar at the ship's port of registry.

43 Provisional certificate where ship registered anew.

- (1) Where a registrar (not being the registrar at the ship's port of registry) or any proper officer, on an application as to an alteration in a ship registered in Tonga, directs the ship to be registered anew, he shall either grant a

provisional certificate, describing the ship as altered, or provisionally endorse the particulars of the alteration on the existing certificate.

- (2) Where any registrar or proper officer grants a provisional certificate or provisionally endorses a certificate under this section, he shall add to the certificate or endorsement a statement that the same is made provisionally, and shall send a report of the particulars of the case to the registrar at the ship's port of registry, containing a statement similar to that contained in the certificate or endorsement.
- (3) Every such provisional certificate, or certificate provisionally endorsed, shall be delivered to the registrar of the port of the ship's registry and that registrar shall cause the ship to be registered anew.

44 Registry anew on change of ownership.

Subject to the other provisions contained in this Act, where the ownership of any Tongan ship is changed, the registrar of the port at which the ship is registered may, on the application of the owner of the ship, register the ship anew although registry anew is not required.

45 Procedure for registry anew.

- (1) Where a ship is to be registered anew, the registrar shall proceed as in the case of first registry, and on the delivery to him of the existing certificate of registry and on the other requisites to registry, or in the case of a change of ownership such of them as he thinks material, being duly complied with, shall make such registry anew, and grant a certificate thereof.
- (2) When a ship is registered anew, her former registry shall be considered as closed except so far as relates to any unsatisfied mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship as owners or mortgagees shall be entered in the new register and the registry anew shall not in any way affect the rights of any of those persons.

46 National colours for Tongan ships.

- (1) The Minister may, by notification declare what shall be the proper national colours for all ships registered under this Act and for all ships which are not so registered but which are owned by the government or by any local authority or by an individual; and different colours may be declared for different classes of ships.

- (2) The Director or any officer authorised by the Minister may board any ship on which any colours are hoisted contrary to this Act and take away the colours which shall be forfeited to the government. (*Amended by Act 18 of 1986.*)

47 Unlawful assumption of Tongan character.

No person on board a ship which is not a Tongan ship shall, for the purpose of making it appear to be a Tongan ship, use the Tongan national colours, unless the assumption of Tongan character has been made (the burden of proving which shall lie on him) for the purpose of escaping capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

48 Concealment of Tongan, or assumption of foreign character.

No owner or master of a Tongan ship shall knowingly do anything, or permit anything to be done, or carry or permit to be carried any papers or documents, with intent to conceal the Tongan character of the ship from any person entitled by any law for the time being in force to inquire into the same, or with intent to deceive any person so entitled as aforesaid.

49 Tongan ships to hoist proper national colours in certain cases.

A Tongan ship shall hoist the proper national colours—

- (a) on a signal being made to her by any vessel of His Majesty's ships;
- (b) on entering or leaving any foreign port;
- (c) if of 15 metres or more in length, on entering or leaving any Tongan port. (*Amended by Act 18 of 1986.*)

50 National character of ship to be declared before clearance.

- (1) A customs collector shall not grant a clearance for any ship until the master of such ship declares to that officer the name of the country to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance.
- (2) If a ship attempts to proceed to sea without such clearance, she may be detained by any customs collector until the declaration is made.

51 Liabilities of ships not recognised as Tongan ships.

Where it is declared by this Act that a Tongan ship shall not be recognized as a Tongan ship that ship shall not be entitled to any privileges, benefits, advantages

or protection usually enjoyed by Tongan ships or to use the Tongan national colours for Tongan ships or to assume the Tongan national character, but so far as regards the payment of dues, the liability to fine and forfeiture and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respect as if she were a recognized Tongan ship.

52 Proceedings on forfeiture of ship.

Where any ship has either wholly or as to any share therein become subject to forfeiture under this Act, the Director or any other officer authorised by the Government, may seize and detain the ship, and bring her for adjudication before the Supreme Court and the court may thereupon adjudge the ship, with her equipments and furniture, to be forfeited to the Government and make such order in the case as the court seems just and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship, or any share therein, as the court thinks fit. (*Amended by Act 18 of 1986.*)

53 Notice of trust not received but beneficial interest not excluded.

No notice of any trust, express, implied or constructive shall be entered in the register book or be receivable by the registrar, and subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or of a share therein shall have power to dispose of the ship or share in the manner provided in this Act and to give effectual receipts for any money paid or advanced by way of consideration. However, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

54 Liability of owners.

Where any person is beneficially interested otherwise than by way of mortgage in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all the pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings for the enforcement of any such penalties may be taken against both or either of the said parties with or without joining the other of them.

55 Evidence of register book, certificate of registry and other documents.

- (1) On application to the registrar and on payment of the prescribed fee, a person may, at any time during office hours, inspect any register book, and may obtain a certified copy of any entry in the register book.
- (2) The following documents shall be admissible in evidence in any court in manner provided by this Act, namely:—
 - (a) any register book on its production from the custody of the registrar or other person having the lawful custody thereof;
 - (b) a certificate of registry under this Act purporting to be signed by the registrar or any other officer authorised in this behalf by the Minister;
 - (c) an endorsement on a certificate of registry purporting to be signed by the registrar or any other officer authorised in this behalf by the Minister;
 - (d) every declaration made in pursuance of this Act in respect of a Tongan ship.
- (3) A certified copy of an entry in a register book shall be admissible in evidence in any court and have the same effect to all intents as the original entry in the register book of which it is a copy.

PART IV.—CERTIFICATION OF SEAFARERS**56 Interpretation.**

- (1) In this Part, unless the context otherwise requires—

“**certificate**” means a valid document, by whatever name it may be known, issued by or under the authority of the Director or recognised by him authorising the holder to serve as stated in the document or as authorised in the regulations;

“**certificated**” means properly holding a certificate;

“**radio officer**” means a person holding a 1st or 2nd class radio telegraph operator's certificate or a radiocommunication operator's general certificate for the maritime mobile service, issued under the Radio Operator's Certificates Regulations¹, who is employed in the

¹ See under the subsidiary legislation to the Radiocommunication Act. (Cap. 98.)

radiotelegraph station of a ship required to have that station by the Safety Convention;

“**radiotelephone operator**” means a person holding an appropriate certificate issued under the Radio Operator's Certificates Regulations.

- (2) Except as provided in section 66, this Part applies to seafarers serving on board Tongan ships.

(Inserted by Act 18 of 1986.)

57 Ships to be properly manned.

- (1) Every Tongan ship shall carry in accordance with the regulations a sufficient and efficient crew composed of seafarers properly qualified and fit for their duties.
- (2) Where a ship proceeds to sea in contravention of subsection (1), the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine not exceeding T\$10,000 or imprisonment not exceeding one year, or both;
 - (b) in the case of the master, to a fine not exceeding T\$2,000 or imprisonment not exceeding 6 months, or both.

(Inserted by Act 18 of 1986.)

58 The STCW Convention.

This Part and the regulations relating to this Part are intended to give effect to the STCW Convention. *(Inserted by Act 18 of 1986.)*

59 Director to issue certificates.

- (1) The Director shall issue certificates of competency and qualification for masters, officers and ratings to those candidates who, to his satisfaction, meet the appropriate requirements for service, age, medical fitness, training, qualification, and examination in accordance with the regulations.
- (2) Certificates of competency for masters and officers shall be endorsed to signify that the holder has been found duly qualified in accordance with the provisions of the STCW Convention. *(Inserted by Act 18 of 1986.)*

60 Seafarers to hold proper certificates.

- (1) Subject to section 65, every person serving on a Tongan ship shall hold the appropriate certificate or other qualification for his position in accordance with the regulations.
- (2) Where subsection (1) is contravened, the owner of the ship and its master, and the person contravening that subsection, are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine not exceeding T\$10,000 or imprisonment not exceeding one year, or both;
 - (b) in the case of the master, to a fine not exceeding T\$2,000 or imprisonment not exceeding 6 months, or both;
 - (c) in the case of the person contravening subsection (1), to a fine not exceeding T\$2,000 or imprisonment not exceeding 6 months, or both.
- (3) Certificates and endorsements shall be in the Tongan and English languages, and be in the forms required by the Director.
- (4) The Director may issue a certificate under subsection (1)—
 - (a) subject to the conditions he considers appropriate; and
 - (b) for any period of validity not exceeding 5 years as he considers necessary in the circumstances.

(Inserted by Act 18 of 1986.)

61 Cancellation and suspension.

- (1) Where it appears to the Director that the holder of a certificate is unfit to be the holder of such a certificate whether by reason of medical unfitness, incompetency or misconduct or for any other reason, the Director may give the holder written notice that he is considering the suspension or cancellation of the certificate.
- (2) The notice referred to in subsection (1) shall state:
 - (a) the reasons why it appears to the Director that the holder is unfit; and
 - (b) that within a period specified in the notice the holder may make written or oral representations to the Director.
- (3) After considering any representations made in accordance with subsection (2) the Director shall decide whether or not to suspend or cancel the certificate and shall give the holder written notice of his decision.
- (4) Where the decision is to suspend or cancel the certificate the notice shall:

- (a) state the date from which and the period for which the suspension is to take effect, or the date from which the cancellation is to take effect; and
 - (b) require the holder to deliver the certificate to the Director, not later than the date so specified.
- (5) A person who is served with a notice under this section and who fails to deliver the certificate specified in the notice to the Director within the specified period is guilty of an offence and liable on conviction to a fine not exceeding T\$250.
- (6) Where under this section a certificate is suspended or cancelled the holder may within 30 days of the date on which the notice was served on him appeal against the decision to the Chief Police Magistrate whose decision shall be final. *(Inserted by Act 18 of 1986.)*

62 Recognition of foreign certificates.

Where a certificate is issued by—

- (a) a member country in accordance with the provisions of the Maritime Code dealing with certification of seafarers;
- (b) a party to the STCW Convention in accordance with national legislation giving effect to that convention; or
- (c) a party to a bilateral or regional treaty, or other arrangement, in accordance with its national legislation,

the Director may recognize the certificate for the purpose of issuing a Tongan certificate of equivalent or lower grade and validity, and may issue an appropriate certificate under section 59(1) without the necessity of the applicant for the certificate having to meet the various requirements of that section other than medical fitness. *(Inserted by Act 18 of 1986.)*

63 Validity of certificate.

Subject to section 61, every certificate issued under section 59(1) remains valid from its date of issue or for the period stated on it, as the case may be. *(Inserted by Act 18 of 1986.)*

64 Continuing fitness and competence.

- (1) The holder of a certificate of competency issued to a master or officer under section 59(1) who is serving at sea, or who intends to return to sea after a period ashore, shall, in accordance with the regulations, satisfy the Director at regular intervals not exceeding 5 years as to his continuing

medical fitness and professional competence for the capacity in which the holder intends to serve.

- (2) Where more than 5 years has lapsed since the certificate holder referred to in subsection (1) has—
 - (a) satisfied the Director as to his continuing fitness and competence as required by subsection (1); or
 - (b) performed, in a substantial manner, sea-going service;in addition to subsection (1), the Director may require that person to perform sea-service, pass tests, oral or otherwise, or attend courses, before certifying that the holder is qualified for sea-going service.
- (3) Where the Director is satisfied under subsection (1) or (2), as appropriate, that the holder is fit and competent as required by those provisions for the position, he shall certify that the holder is qualified for sea-going service in the capacity in which the holder intends to serve, and the Director may only certify to that effect if satisfied that it will not adversely affect safety of life at sea or harm the public interest. (*Inserted by Act 18 of 1986.*)

65 Dispensation.

- (1) Subject to the conditions set out in subsection (2), the Director may issue a dispensation, to the extent and on the further conditions he considers appropriate, permitting a seafarer to serve in a capacity for which he is not properly certificated.
- (2) The conditions referred to in subsection (1) are as follows:
 - (a) a dispensation shall only be issued in circumstances of exceptional necessity;
 - (b) the Director must be of the opinion that granting the dispensation will not cause danger to persons, property or the environment;
 - (c) a dispensation shall only be issued to a named individual seafarer to serve on a named specific ship for a fixed period not exceeding 6 months;
 - (d) where a dispensation is to be granted to a radio officer or to a radiotelephone operator, the dispensation shall be granted in accordance with the relevant provisions of the Radio Operator's Certificates Regulations;
 - (e) the Director must be of the opinion that the person to whom the dispensation is to be granted is otherwise suitably qualified to fill the vacant post in a safe manner;

- (f) where the dispensation will allow a person to serve as master or chief engineer officer, it shall only be granted in circumstances of force majeure, and only for the shortest possible period;
 - (g) subject to paragraph (h), a dispensation shall only be granted to a person who is properly certificated to fill the post immediately below the vacant one; and
 - (h) where a certificate is not required for a lower post, the applicant for the dispensation shall satisfy the requirements of subsection (3) before he is granted the dispensation.
- (3) For the purposes of subsection (2)(h), the applicant for the dispensation shall possess the qualifications and experience that, in the opinion of the Director, are of a clean equivalence to the requirements of the post to be filled, and where the person holds no appropriate certificate, he shall pass a test, oral or otherwise, accepted by the Director as demonstrating that the dispensation may be safely issued.
- (4) The post referred to in subsection (3) shall be filled by a properly certificated person as soon as possible.
- (5) The Director may issue a dispensation in the form he requires, and, where he considers it appropriate, require an applicant for a dispensation to undergo an oral test in relevant subjects. (*Inserted by Act 18 of 1986.*)

66 Control procedures.

- (1) Every Tongan ship is subject to control in accordance with subsection (3) while in a port of a country which is a Party to the STCW Convention by officers lawfully authorised by the Government of that country.
- (2) Every foreign ship flying the flag of a country which is a Party to the STCW Convention is subject to control in accordance with subsection (3) while in a Tongan port by officers lawfully authorized by the Tongan Government.
- (3) The control that may be exercised by an officer acting under subsection (1) or (2) is limited to the following matters—
 - (a) verification that each seafarer serving on board who is required to be certificated by national legislation of the flag state giving effect to the STCW Convention is properly certificated or holds an appropriate dispensation.
 - (b) assessment of the ability of the seafarers serving on the ship to maintain watch-keeping standards as required by national legislation of the flag state giving effect to the STCW Convention, if there are grounds for believing that the standards are not being

maintained because, while in the port or port approaches, the ship has—

- (i) been involved in a collision, grounding or stranding,
 - (ii) discharged substances in contravention of international conventions when underway, at anchor or at berth,
 - (iii) been manoeuvred in an erratic or unsafe manner, or
 - (iv) failed to follow navigation course markers or traffic separation schemes.
- (4) Where the control officer finds any one or more of the deficiencies set out in subsection (5), he shall give, in writing, information concerning the matter, including a statement of the deficiencies and dangers posed to persons, property and environment, to the following persons:
- (a) the master of the ship;
 - (b) the diplomatic representative, consul or other appropriate representative in the port who represents the State whose flag the ship is flying; and
 - (c) in the case of a Tongan ship, in addition to paragraphs (a) and (b), to the Director of Marine, Government of Tonga, Nuku'alofa, Tonga.
- (5) The deficiencies referred to in subsection (4) are as follows:
- (a) failure of a seafarer required to hold a certificate to have an appropriate valid certificate or dispensation;
 - (b) failure of navigational or engine-room watch arrangements to conform to the requirements specified for the ship by the flag state;
 - (c) absence in a watch of a person qualified to operate equipment essential to safe navigation or pollution prevention; and
 - (d) inability of the master to provide rested persons for the 1st watch at the commencement of the voyage or for subsequent relieving watches.
- (6) Where the ship fails to correct any of the deficiencies found by the control officer under subsection (5)(a), to the extent that they relate to certificates of persons other than ratings, and under subsection (5)(b), he may, subject to subsection (7), detain the ship until those deficiencies are corrected.
- (7) The control officer shall not detain the ship under subsection (6) until he has complied with subsection (4) and, in addition, sent the information required by that subsection together with a statement of the action to be taken to the Director or appropriate representative of the flag state referred to in subsection (4)(b), as the case may be.

(Inserted by Act 18 of 1986.)

PART V.—SEAMEN AND APPRENTICES

67 Seamen's employment offices.

- (1) The Minister may establish a seamen's employment office for the purpose of—
 - (a) regulating and controlling the supply of seamen;
 - (b) recruitment of persons for employment as seamen and the retirement of seamen;
 - (c) maintenance of registers of seamen and to perform such other duties relating to seamen and merchant ships as are, from time to time, entrusted to it by a notification.
- (2) After the establishment of an employment office, it shall not be lawful to employ any seaman unless such seaman has been supplied by such seamen's employment office.

68 Agreement with crew.

The master of every Tongan registered ship shall enter into an agreement called Shipping Articles (sometimes referred to as Articles) with every seaman whom he engages in, and carries to sea as one of his crew. In case of default the master and the owner shall be liable to a fine not exceeding T\$100. (*Amended by Act 7 of 1979.*)

69 Form and content of the Agreement.

- (1) The agreement shall be written or printed and shall be in a form approved by the government and shall contain, inter alia, as terms thereof in detail the following particulars—
 - (a) the name of the ship or ships on board which the seamen undertakes to serve;
 - (b) the nature of the intended voyage and the duration of voyage or engagement specifying either a particular voyage or an engagement for a definite period;
 - (c) the number and description of the crew of different categories;
 - (d) the capacity in which the seaman is to be employed and the amount of wages he is to receive;
 - (e) the time at which each seaman is to be on board or to begin work;
 - (f) a scale of provisions which are to be furnished to each seaman;

- (g) the conditions under which the service of the seaman may be terminated;
 - (h) any regulations as to conduct on board, and as to fines, or other lawful punishment for misconduct which have been approved by the Minister as regulations proper to be adopted, and which the parties agree to adopt.
- (2) The agreement with the crew shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, whether respecting the advance, allotment of wages or otherwise as are not contrary to law.
- (3) The agreement required by this section shall be prepared in duplicate. It shall be read over and explained to each seaman and each part shall be signed by the master and the seaman in the presence of the proper officer, who shall attest the signatures thereon and retain one part thereof.
- (4) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement required by this section to be posted up in some part of ship which is accessible to the crew.

70 Agreement to serve on two or more ships belonging to the same owner.

An agreement for service in two or more ships belonging to the same owner may be made by the owner instead of by the master, and the provisions of this Act with respect to the making of the agreement shall apply accordingly.

71 Alterations in agreements with crew.

- (1) Every erasure, interlineation or alteration in any agreement with the crew (except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship) shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in the erasure, interlineation or alteration by the written attestation of the Director or other proper officer. (*Amended by Act 18 of 1986.*)
- (2) If any person fraudulently alters, or makes any false entry in any agreement with the crew, and if any person aids in committing or procures to be committed any such act, each such person, in respect of each offence, shall be liable to a fine not exceeding T\$500.

72 Discharge of seamen.

- (1) Every seaman of a foreign going or home trade ship shall, on the termination of his service under the agreement, be discharged in the presence of the proper officer.
- (2) The master, at the time of discharge, shall pay to the seaman all wages due to him under the agreement and shall also sign and give a certificate of discharge in a form approved by the Minister, specifying his name, rank, period of service and the time and place of discharge.
- (3) If any person forges or fraudulently alters any certificate of service, he shall be fined, in respect of each offence, not exceeding T\$500 or 6 months imprisonment or both.

73 Discharge and leaving behind of seamen.

- (1) A seaman shall not be left behind in any port, except on his discharge on due termination of the agreement, without the previous sanction of the proper officer. In that case the officer aforesaid shall certify on the agreement with the crew that he has granted such sanction and will also state the reasons for the same.
- (2) The reasons for which sanction may be granted, shall be—
 - (a) mutual agreement between the seaman and master;
 - (b) unjustified failure to report on board at such times and dates as may be specified by the master;
 - (c) incompetence to perform duties for which the seaman has represented himself as qualified;
 - (d) theft, embezzlement or wilful destruction of any part of the vessel, its cargo or stores;
 - (e) serious insubordination or wilful disobedience to perform assigned duties;
 - (f) mutiny or desertion;
 - (g) habitual intoxication, quarrelling or fighting;
 - (h) possession of dangerous weapons or narcotics;
 - (i) assistance to stowaways;
 - (j) imprisonment for violation of the local criminal laws in case the ship is in a port.
- (3) The master shall be responsible, at the shipowner's expense, in all cases except desertion, to return the seaman to the port of discharge as mentioned in the agreement or to a mutually agreed port and for the care

and maintenance of the seaman pending and during such return unless the seaman waives this claim in writing before the proper officer.

74 Termination of the Agreement in certain circumstances.

When the agreement with the seamen is terminated and the seamen are discharged on account of:

- (a) transfer of registry;
- (b) transfer of ownership;
- (c) abandonment of vessel;
- (d) loss of vessel

each seaman shall be entitled to compensation equal to one month base wages and shall be returned to the port in accordance with section 73(3).

75 Compensation to seamen on premature discharge.

If a seaman having signed an agreement is discharged, otherwise than in accordance with the terms thereof, without fault on his part justifying the discharge and without his consent, he shall be entitled to receive from the master, owner or agent, in addition to any wages he may have earned, as due compensation for the damage caused to him by the discharge, such sum as the proper officer may fix having regard to the circumstances relating to the discharge:

Provided that the compensation so payable shall not exceed—

- (a) in case of a seaman who has been discharged before the commencement of a voyage, one month's wages; and
- (b) in the case of a seaman who has been discharged after the commencement of a voyage, 3 months' wages.

PAYMENT OF WAGES

76 Right to wages and provisions, when to begin.

A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

77 Right to wages and salvage not to be forfeited.

- (1) A seaman shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the

absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

- (2) Nothing in this section shall apply to a stipulation made by the seaman belonging to any ship which according to the terms of the agreement is to be employed on salvage service with respect to the remuneration to be paid to them for salvage service to be rendered by that ship to any other ship.

78 Wages not to depend on freight.

The right to wages shall not depend on the earning of freight, and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case be entitled to demand and recover the same notwithstanding that freight has not been earned, but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

79 Advance of wages.

- (1) Any agreement with the crew may contain a stipulation for payment to a seaman, conditional on his going to sea in pursuance of the agreement, of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement. Such advance shall be paid before the proper officer. No money paid in satisfaction or in respect of any such agreement, save as aforesaid, shall be deducted from the seaman's wages and no person shall have any right of action, suit or set off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.
- (2) No seaman, who has been lawfully engaged and has received under his agreement an advance payment, wilfully or through misconduct, shall fail to attend his ship or desert therefrom before the payment becomes due to him. In case of failure to comply with this provision, the proper officer may withhold any of the seaman's certificates of discharge and may refuse to furnish copies of such certificate till the satisfaction is made.

80 Allotment of wages.

- (1) It shall be lawful for the master and any seaman to agree that an allotment of a portion of the seaman's earnings may be payable to a spouse,

children, parents, grandparents, brothers or sisters, or to a bank account in the name of the seaman.

- (2) Except as provided in section 79, it shall be unlawful to pay any seaman wages in advance of the time when they are actually earned, or to pay such advance wages, or to make any order or note or other evidence of the indebtedness therefor, to any other person, or to pay any person for the shipment of any seaman when payment is deducted or to be deducted from a seaman's wages. Any violation of the provision of this section shall be punishable with a fine not more than T\$100.
- (3) The provisions of this section shall not apply to, or render unlawful:
 - (a) deductions from the wages of a seaman pursuant to the laws of the country at whose port the seaman signed on or of which he is a national;
 - (b) deductions on account of requirements of a labour organisation of which the seaman is a member if such deductions represent dues or other obligations to a labour organisation of which the seaman is a member and are remitted to such organisation;
 - (c) deductions with the written consent of the seaman, if such deductions are paid into a fund established for the exclusive benefit of seamen and their families and dependants or for the purpose of providing medical or hospital care, pensions on retirement or death of the seaman, life insurance, unemployment benefits or compensation for illness or injuries.

81 Master to give facilities to seaman for remitting wages.

Where a seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting any part of the balance of the wages due to him to a savings bank or to a near relative, the master shall give to the seaman all reasonable facilities for so doing, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port or otherwise than conditionally on the seaman going to sea in the ship.

82 Wages, maintenance and cure for sick and injured seaman.

- (1) In the event of sickness or injury, during which a seaman is incapable of performing his duties, while he is on board a vessel under a signed agreement or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the master, the seaman shall be entitled to:
 - (a) full wages, as long as he is sick or injured and remains on board the vessel;

- (b) medical and surgical treatment and supply of proper and sufficient medicines and therapeutical appliances, until medically declared to have reached a maximum cure or to be incurable, but in no event more than 30 weeks from the day of the injury or commencement of the sickness;
 - (c) an amount equal to board and lodging up to a maximum period of 30 weeks, and one-third of his basic wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of 30 weeks commencing from the date of injury or commencement of the sickness;
 - (d) repatriation including all charges for his transportation, accommodation and food during the journey and his maintenance up to the time fixed for his departure.
- (2) The shipowner or his representative shall take adequate measures for safeguarding property left on board by sick, injured or deceased seamen.
- (3) The seaman shall not be entitled to any of the foregoing benefits:
- (a) if such sickness or injury resulted from his wilful act, default or misconduct;
 - (b) if such sickness or injury developed from a condition which was intentionally concealed from the employer at or prior to his engagement under the Articles;
 - (c) if he refuses medical treatment for such sickness or injury or is denied such treatment because of misconduct or default;
 - (d) if at the time of his engagement he refused to be medically examined.
- (4) The seaman shall have a maritime lien against the vessel for any wages and entitlements due to him under this Section.

83 Wages not to accrue during absence without leave, refusal to work or imprisonment.

A seaman or apprentice shall not be entitled to wages—

- (a) for any period during which he is absent without leave from his ship or from his duty; or
- (b) for any period during which he unlawfully refuses or neglects to work when required; or
- (c) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned.

84 Wages exempt from attachment.

The wages of a seaman shall not be subject to attachment or arrestment by any court in cases not connected with his employment neither shall any assignment or sale of wages or of salvage made prior to the accruing thereof bind the seaman, nor shall a power of attorney or authority for the receipt thereof be irrevocable except allotments.

85 Vacation allowance and holidays.

- (1) Every master and seaman shall be entitled to receive an annual vacation holiday with pay after a continuous service on a vessel or for the same employer at the rate of:
 - (a) after 12 months of continuous service in the case of masters and officers and radio officers and operators not less than 18 days and in the case of other members of the crew not less than 12 days for each year of service;
 - (b) after 6 months of continuous service, in case of masters, officers or radio officer or operator one and a half working day's leave and in the case of other members of the crew one working day's leave in respect of each complete month of service.
- (2) A person who leaves or is discharged from the service of his employer before he has taken a vacation holiday due to him shall receive a cash allowance in respect of every day of vacation holiday due to him.

86 Master to deliver account of wages.

- (1) The master of every ship shall, before paying off or discharging a seaman under this Act, deliver at the time and in the manner provided by this Act a full and true account of the seaman's wages and of all deductions to be made therefrom on any account whatever.
- (2) The said account shall be delivered, either to the seaman himself, at or before the time of his leaving the ship, or to the proper officer not less than 24 hours before the discharge or payment off.

87 Disrating of seaman.

- (1) Where the master of a ship disrates a seaman, he shall forthwith enter or cause to be entered in the official log book a statement of the disrating, and furnish the seaman with a copy of the entry; and any reduction of wages consequent on the disrating shall not take effect until entry has been so made and the copy so furnished.

- (2) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages.

88 Deductions and settlement of wages.

- (1) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in pursuance of this Act except in respect of a matter happening after such delivery.
- (2) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.
- (3) Deductions from a seaman's wages may be made only in respect of:
 - (a) any deductions, allotments or advances as may have been authorised or requested by the seaman;
 - (b) fines imposed on the seaman in respect of any act of misconduct for which the agreement imposes a fine;
 - (c) expenses incurred by the master where the seaman has been left behind at any place due to his desertion, imprisonment or discharge for misconduct, including any expenses properly incurred in hiring a substitute;
 - (d) forfeitures ordered to be made by any court of law.
- (4) Notwithstanding anything contained in the preceding subsections a seaman may exempt from the release signed by him any specified claim or demand against the master or owner of the ship, and a note of any claim or demand so excepted shall be entered upon the release; and the release shall not operate as a discharge and settlement of any claim or demand so noted.

89 Summary proceedings for wages.

- (1) A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable and in respect of which a dispute arises, apply to any magistrate or court of summary procedure exercising jurisdiction in or near the place at which his service has been terminated or at which he has been discharged or at which he was engaged or at which any person upon whom the claim is made is or resides, and the magistrate or the court as the case may be shall try the case in a summary way and the order so made shall be final.

- (2) Masters and other officers shall, as far as the case permits, have the same rights, liens and remedies for the recovery of their wages as a seaman has under this Act or any other law or custom.

APPRENTICESHIP AND EMPLOYMENT OF YOUNG PERSONS

90 Apprenticeship to the sea service.

- (1) The apprenticeship of any boy to the sea service shall be by contract in writing between the apprentice or on his behalf by his guardian, if the boy is a minor, and the master or owner of the ship requiring the apprentice.
- (2) Every such contract shall be executed in duplicate setting out the terms and conditions of apprenticeship.
- (3) Every such contract shall be executed in the presence of, and shall be attested by, the Director or other proper officer who shall, before the execution of the contract, satisfy himself—
 - (a) that the intended apprentice—
 - (i) understands the contents and provisions of the contract;
 - (ii) freely consents to be bound;
 - (iii) has attained the age of 15 years; and
 - (iv) is in possession of a certificate to the effect that he is physically fit for sea service;
 - (b) if the intended apprentice is a minor, that his guardian's consent has been obtained to his being bound as an apprentice.

(Amended by Act 18 of 1986.)

91 Employment of young persons under 15 years.

No person under 15 years of age shall be engaged or carried to sea to work in any capacity in any ship, except—

- (a) in a school ship, or training ship, in accordance with the prescribed conditions if any; or
- (b) in a ship in which all persons employed are members of one family; or
- (c) in a home-trade ship of less than 200 tons gross; or
- (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

92 Engagement of young persons as trimmers or stokers.

- (1) Save as otherwise provided in subsections (2) and (3), no young person shall be engaged or carried to sea to work as a trimmer or stoker in any ship.
- (2) Subsection (1) shall not apply—
 - (a) to any work of trimming or stoking done by a young person in a school ship or training ship; or
 - (b) to any work of trimming or stoking done by 2 young persons in a ship which is mainly propelled otherwise than by steam; or
 - (c) to the engagement or carrying to sea of a person over 16 years of age to work as a trimmer or stoker on a coasting ship, provided he is employed in accordance with the prescribed conditions.
- (3) Where in any port a trimmer or stoker is required for any ship other than a coasting ship, and no person over 18 years of age is available, 2 young persons over 16 years of age may be engaged and carried to sea to do the work which would otherwise have been done by one person over 18 years of age.

93 Medical examination of young persons.

- (1) Save as otherwise provided in subsection (2), no young person shall be engaged or carried to sea to work in any capacity in any ship, unless there has been delivered to the master a certificate granted by a prescribed authority that the young person is physically fit to be employed in that capacity.
- (2) Subsection (1) shall not apply—
 - (a) to the employment of a young person in a ship in which all persons employed are members of one family; or
 - (b) where the Director on the ground of urgency, has authorised a young person to be engaged and carried to sea, without the certificate required by subsection (1) being delivered to the master, and the young person is not employed beyond the first port at which the ship in which he is so engaged calls. (*Amended by Act 18 of 1986.*)
- (3) A certificate of physical fitness required under this section shall remain in force for one year only from the date on which it is granted.

94 Maintenance of list or register of young persons in a ship.

There shall be included in every agreement with the crew, a list of young persons who are members of the crew, together with particulars of the dates of their birth, and, in the case of any such ship where there is no agreement, the master shall keep a register of young persons with particulars of the dates of their birth and of the dates on which they became or ceased to be members of the crew.

DECEASED SEAMAN AND APPRENTICES**95 Master to take charge of the effects of deceased seaman.**

- (1) If any seaman or apprentice engaged on a ship dies during such engagement the master shall report the death to the next-of-kin of the seaman or apprentice and to the proper officer at the port where the seaman was engaged and shall take charge of any money or effects belonging to him which are on board the ship.
- (2) In the event of such death, an entry shall be made into the vessel's log book by the master and attested by one of his officers. He shall also report the death to the authorities at the first port of arrival and shall submit a statement signed by him to the proper officer of maritime affairs. The log book entry and statement shall contain the full name, surname, sex, nationality, year and place of birth of the deceased person, his rank or rating, place and address of his residence or domicile and the number of his licence with date of issuance, the cause of death, place of death (latitude, longitude), date and time of death and the names of next-of-kin, if known, and name of the vessel. The statement submitted by the master shall be countersigned by any attending physician aboard, otherwise by one of the ship's officers. A list of personal effects and amounts of money left on board the vessel shall be attached.

96 Delivery of seaman's property to next-of-kin.

The master and the shipowner shall be responsible for delivering to the seaman's next-of-kin or legal personal representative his property and any unpaid wages, subject to any deductions that may be permitted under this Act which shall be approved and signed by the proper officer. In case no next-of-kin or legal representative is traceable and the property remains unclaimed for 6 months, it shall be deposited in the custody of the Government. No claim shall lie in respect of such property after a period of one year and the property shall rest in the Government as unclaimed property.

97 Burial expenses.

In case of death of seaman occurring on board the vessel or in case of his death occurring on shore, if at the time he was entitled to medical care and maintenance at the shipowner's expense, the shipowner shall be liable to defray reasonable local funeral expenses and make payment of the basic wages of the deceased seaman up to the end of the month in which the death occurs.

98 Issuance of death certificate.

Upon the request of anyone having a legal interest and where death has been reported in accordance with the requirements of this Act, the Director or other proper officer shall issue a death certificate. (*Amended by Act 18 of 1986.*)

99 Wrongful death and remedy.

Notwithstanding anything contained in this Act, whenever the death of a seaman, resulting from any injury, has been caused by wrongful act, omission, neglect or default of the shipowner, master, officers or other members of the crew, the next-of-kin or the legal representative of the deceased seaman may maintain a suit for damages, for the exclusive benefit of the deceased's wife, husband, parents, children or dependent relative against the vessel.

WAGES, HOURS OF WORK ON BOARD SHIP AND MANNING**100 Wages, Hours of work and manning.**

Home trade ships and foreign going ships shall comply with the standards concerning wages, hours of work on board ship and manning, as provided from time to time.

PROVISIONS, HEALTH AND ACCOMMODATION**101 Ships to have sufficient provisions and water.**

All ships upon which seamen have been engaged shall have on board sufficient provisions and water of good quality on the scale specified in the agreement with the crew. If for any reason such provisions or water are in short supply or bad in quality and the requisite quantity cannot be obtained, the master shall arrange to supply proper and equivalent substitutes.

102 Allowances for short or bad provisions.

If the allowance of any of the provisions, for which a seaman has by his agreement stipulated, is reduced or is bad in quality or unfit for use, the seaman

shall receive by way of compensation for that reduction or bad quality according to the time of its continuance, sums in accordance with such scale as may be prescribed, to be paid to him in addition to, and to be recoverable as wages.

103 Weights, measures and cook on board.

- (1) The master of a ship shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out and shall allow the same to be used at the time of serving out the provisions and articles in the presence of witnesses whenever any dispute arises about the quantities.
- (2) The master of every foreign going ship shall carry a duly qualified cook.

104 Beddings, towels, medicines, medical stores etc., to be provided and kept on board certain ships.

- (1) The owner and master of every home trade and foreign going ship shall supply or cause to be supplied to every seaman for his personal use, beddings, towels, mess utensils and other articles according to reasonable standards. The Minister may lay down the standards in this connection.
- (2) All home trade and foreign going ships shall have always on board a sufficient supply of medicines, medical stores appliances and first-aid equipment suitable for diseases and accidents likely to occur on voyages.

CREW ACCOMMODATION

105 Crew accommodation.

The owner and master of every ship shall ensure accommodation for crew on board a ship according to reasonable good standards. (*Amended by Act 18 of 1986.*)

COMPLAINT AND INVESTIGATION

106 Facilities for making complaint.

If a seaman or apprentice states to the master that he desires to make a complaint to a magistrate, the Director or other proper officer, against the master or any of the crew, the master shall, so soon as the service of the ship will permit—

- (a) if the ship is then at a place where there is a magistrate, the Director or other proper officer, as aforesaid, after such statement; and
- (b) if the ship is not then at such place, after her first arrival at such a place,

allow the complainant to go ashore or send him ashore under proper protection so that he may be enabled to make the complaint. (*Amended by Act 18 of 1986.*)

107 Government or proper officer to have power to investigate complaints and impose fines.

The government and the proper officer shall have power at all times to enter on any ship and to investigate any breach of the provisions of sections relating to seamen and apprentices either upon a complaint or at its own initiative and to impose any fines. The owner and master of every ship shall be under an obligation to give every facility and cooperation to carry out the investigation.

DISCIPLINE

108 Offences against the internal order of the vessel.

- (1) A seaman who commits any of the following offences may, in addition to any criminal penalties provided herein, be punished by the master as follows:
 - (a) for neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within 24 hours of the ship's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time, without leave and without sufficient reasons from his ship and from his duty, not amounting to desertion, by forfeiture from his wages of not more than 10 days wages or sufficient amount to defray any expenses which shall have been properly incurred in hiring a substitute;
 - (b) for quitting the vessel without leave before she is placed in security, by forfeiture from his wages of not more than one month's wages;
 - (c) for intoxication or wilful disobedience to any lawful command, by being placed in restraint until such intoxication or disobedience shall cease, and by forfeiture from his wages of not more than 4 days' wages;
 - (d) for continued intoxication or wilful disobedience to any lawful command or continued wilful neglect of duty, being placed in restraint until such intoxication, disobedience or neglect shall cease, and by forfeiture, for every 24 hours' continuance of such intoxication, disobedience or neglect, of a sum of not more than 12 days' wages;
 - (e) for wilfully damaging the vessel or embezzling or wilfully damaging any part of the stores or cargo, whether on board the

- vessel, in boats or ashore, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, but not exceeding 3 months' wages;
- (f) for any act of smuggling, whereby loss or damage is occasioned to the master or shipowner, by payment to such master or shipowner of such a sum as is sufficient to reimburse the master or shipowners for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability;
 - (g) for assaulting any master, pilot or officer, by forfeiture from his wages of not more than 3 months' pay;
 - (h) for mutiny or desertion, by forfeiture of all accrued wages up to 6 months' wages.
- (2) All earnings forfeited as a result of penalties imposed by the master pursuant to this section shall be applied to reimburse the master or shipowner for any loss or damage resulting from the act for which the forfeiture was imposed, and the balance with an accounting thereof shall be forwarded to the Director. (*Amended by Act 18 of 1986.*)

109 Prohibition of corporal punishment.

Flogging and all other forms of corporal punishment are hereby prohibited on board any ship, and any master who violates the provisions of this section shall be guilty of an offence.

110 Drunkenness, neglect of duty.

Whoever, being a master, seaman or other person on any vessel, by wilful breach of duty or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage, to such vessel or her cargo, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or by wilful breach of duty or by neglect of duty or by reason of drunkenness refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship and her cargo for immediate loss, destruction or serious damage or for preserving any person on such ship from immediate danger to life or limb, shall be subject to a fine of not more than T\$500 or imprisonment for not more than 6 months or both.

111 Desertion.

- (1) A seaman who deserts from his ship with the intention of not returning to duty and who remains unlawfully in a foreign country shall be guilty of desertion and shall be subject to a fine not exceeding T\$200 or to imprisonment not exceeding 6 months or both.

- (2) The master, any mate or agent of the owner of the ship may, without prejudice to any other action that may be taken against the seaman or apprentice under this Act, convey him on board his ship and may for that purpose cause to be used such force as may be reasonable in the circumstances of the case. They may, if and so far as the laws in force in the place will permit, arrest him without first procuring a warrant.

112 Incitement of seamen to revolt or mutiny.

Whosoever endeavours to make a revolt or mutiny on board a ship, or combines, conspires or associates with any other person on board the ship to make such revolt or mutiny, or solicits, incites or stirs up any member of the crew to disobey or resist the orders of the master, or other officers of such ship or to refuse or neglect his proper duty on board thereof, or to betray his proper trust, or makes a riot on board thereof or unlawfully confines the master or other commanding officer thereof, shall be liable to a fine of not more than T\$1000 or imprisonment for not more than 5 years or both.

113 Entry of offence in the log-book.

If any offence within the meaning of this Act is committed which attracts fine, imprisonment or for which the offender's agreement imposes a fine and it is intended to enforce the fine,—

- (a) an entry of the offence or act shall be made in the official log book and signed by the master, or the mate and one of the crew; and
- (b) the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, be furnished with a copy of the entry and have the same read over distinctly and audibly to him and may thereupon make such reply thereto as he thinks fit; and
- (c) a statement of a copy of the entry having been so furnished and the entry having been so read over and the reply if any, made by the offender shall likewise be entered and signed in manner aforesaid; and
- (d) in any subsequent legal proceedings the entries by this section required shall, if practicable, be produced or proved, and, in default of such production or proof, the court hearing the case may in its discretion, refuse to receive evidence of the offence or act of misconduct.

114 Offences to be triable by court of law.

The offences for which a fine or imprisonment or both are prescribed in this Act may be brought before a competent court of law having jurisdiction in these cases.

115 Log book.

- (1) A log book shall be kept in every Tongan ship in which the Master shall enter, or cause to be entered, particulars of the following matters:
 - (a) every offence committed by a member of the crew and the punishment, fine or forfeiture ordered in respect of such offence;
 - (b) every illness, injury or death happening to any person on board the ship, and the medical and other treatment or action taken as the case may be, in respect of such occurrence;
 - (c) every birth and marriage which takes place on board the ship;
 - (d) the name of any seaman who ceases to be a member of the crew of the ship with the place, time, manner and cause thereof;
 - (e) any seaman's wages and effects left behind on board, and their disposal;
 - (f) every disrating of a seaman;
 - (g) the dates of all musters held for boat drills and fire drills, and the dates of all inspections of life saving and fire extinguishing appliances, and, if any such musters are not held as may be required, a statement why they were not held;
 - (h) the position of the deck line and load lines assigned to the ship, and the maximum draught of water in the summer as specified in the ship's load line certificate;
 - (i) the actual draught of water of the ship as shown on the scale of feet on her stem and stern post when the ship is loaded and ready to leave any dock, wharf, harbour or to her place, together with the actual freeboard amidships on each side of the ship and the mean free board;
 - (j) the density of the water in which the ship is lying at the time when the particulars specified in paragraph (i) above are ascertained;
 - (k) every collision, and the circumstances under which it occurred;
 - (l) any other matter as the Minister may from time to time direct.
- (2) Every entry in the log book shall be signed by the master and by the mate or other member of the crew, and also:
 - (a) if it is an entry relating to injury, illness or death, by the medical practitioner on board (if any); and

- (b) if it is an entry relating to an offence or disrating, by the member or members of the crew concerned.
- (3) In the case of an offence or disrating the entry shall be read over to the member or members of the crew concerned, and his or their reply shall also be recorded with the entry, together with a statement that this has been done.
- (4) An entry required by this section shall be made in the log book as soon as possible after the occurrence to which it relates, and, if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and the entry respecting it.
- (5) The log book shall be made available for inspection by the proper officer at each port of call.
- (6) The master shall upon the discharge of the crew deliver the log book to the proper officer before whom the crew is discharged.
- (7) Any violation of the provisions of this section shall be regarded as a serious offence punishable with a fine not exceeding T\$10,000 or imprisonment for not more than 10 years or both.

116 National welfare board.

The Minister may, by notification in the Gazette, constitute an advisory board to be called the National Welfare Board for seafarers and may entrust to that body such functions and powers as may be determined from time to time for the welfare of the seamen.

PART VI.—CARRIAGE OF PASSENGERS

117 Interpretation.

In this Part “clear deck space” means a space that—

- (a) is not enclosed;
- (b) is not used in the navigation or working of the ship;
- (c) has no cargo, stores or equipment carried on it; and
- (d) provides a clear access, at least one metre wide, to the forward and after part of the ship. (*Inserted by Act 18 of 1986.*)

118 Responsibility of ship owner and master.

- (1) The owner and the master of a ship that carries one or more passengers shall each be responsible for maintaining on board the following minimum standards in accordance with the regulations:
 - (a) adequate clear deck space for each passenger;
 - (b) proper protection for passengers from the sea and weather;
 - (c) provision of adequate and sufficient medical stores for the maximum number of passengers to be carried;
 - (d) an adequate supply of potable water for drinking water for the maximum number of passengers to be carried;
 - (e) adequate and suitable sanitary facilities for the maximum number of passengers to be carried.
- (2) Where an owner of a ship and its master fail, in contravention of subsection (1), to maintain the standards required by that subsection, the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine not exceeding T\$10,000 or imprisonment not exceeding one year, or both;
 - (b) in the case of the master, to a fine not exceeding T\$2,000 or to imprisonment not exceeding 6 months, or both.
- (3) In any proceedings brought under subsection (2), the owner or the master, as the case may be, shall have the burden of proving that the standards set out in subsection (1) were properly maintained in accordance with the regulations. (*Inserted by Act 18 of 1986.*)

119 Record of passengers carried.

At the commencement of each voyage the master shall record the number of passengers carried on board in the deck log or other appropriate document, which shall be kept readily available for inspection by a surveyor at any time. (*Inserted by Act 18 of 1986.*)

120 Offences by passengers.

- (1) Every passenger on board a ship shall obey the lawful commands of the master or other officer of the ship and in cases of emergency, assist the crew as directed by him.
- (2) A passenger who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding T\$250.

(*Inserted by Act 18 of 1986.*)

121 Detaining a person.

The master or other officer of a ship, or any person called by him to his assistance, or any police officer, may, without a warrant, detain any person and convey him as soon as possible before a court if he reasonably believes that person while on board to be under the influence of alcohol or other drugs, or where that person is molesting other persons on board, causing a disturbance or damaging property. (*Inserted by Act 18 of 1986.*)

122 Proceeding to sea improperly.

- (1) No ship shall proceed to sea
 - (a) carrying passengers in excess of the number stated on its safety or survey certificate as being the maximum number of passengers that the ship may carry;
 - (b) carrying passengers when its safety or survey certificate states that the ship may not carry any passengers; or
 - (c) carrying deficient lifesaving equipment or appliances in contravention of the regulations.
- (2) Where a ship proceeds to sea in contravention of subsection (1) the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine of not less than T\$1,000 and not exceeding T\$30,000, or to a term of imprisonment of not less than one month, and not exceeding 3 years, or both;
 - (b) in the case of the master, to a fine of not less than T\$500, and not exceeding T\$10,000 or to a term of imprisonment of not less than 15 days, and not exceeding one year, or both;

and in either case the ship is subject to forfeiture to the Crown.

(*Inserted by Act 18 of 1986.*)

PART VII.—SAFETY

123 Appointment of surveyors.

- (1) The Minister may appoint, by name, an appropriate number of suitably qualified persons as surveyors for the purpose of carrying out the intent of this Part and the regulations.
- (2) The Minister may appoint as surveyors under this subsection, by office, persons who are employed by an approved ship classification society.

- (3) A surveyor is not personally liable for any damage or injury caused in the lawful discharge of his duties under this Act or the regulations, or in the lawful exercise of his powers specified in his certificate of appointment.
- (4) The Government is not liable for any damage or injury caused by a surveyor acting in his official capacity as stated in subsection (3) or otherwise.

(Inserted by Act 18 of 1986.)

124 Certificate of appointment.

A person appointed under section 123(1) shall be provided with a certificate of appointment indicating his name, his employer, the authority under which he is appointed, and which of the powers specified in section 126 he is authorised to exercise. *(Inserted by Act 18 of 1986.)*

125 Obligations of surveyors.

- (1) A surveyor shall ensure that this Part and the regulations are complied with by the owners and masters of ships, and by all other persons associated with ships, as the case may be, within the scope of his authority set out in his certificate.
- (2) Every surveyor appointed under section 123(1), shall carry his certificate of appointment with him at all times when acting in his official capacity, and, when requested, he shall produce the certificate for inspection by the owner or master of a ship, or other interested person.

(Inserted by Act 18 of 1986.)

126 Powers of a surveyor.

- (1) A surveyor may exercise one or more of the following powers as the Minister may direct, and the powers that are so permitted to be exercised shall be clearly specified in his certificate of appointment:—
 - (a) to conduct surveys and inspections with respect to one or more of the following:
 - (i) construction and stability,
 - (ii) machinery,
 - (iii) electrical systems,
 - (iv) load lines,
 - (v) life-saving appliances,
 - (vi) fire detection, fire extinction and fire fighting equipment,

- (vii) navigational equipment,
 - (viii) miscellaneous equipment,
 - (ix) radio,
 - (x) carriage of dangerous goods,
 - (xi) carriage of bulk cargoes, including grain cargoes,
 - (xii) carriage of deck cargoes,
 - (xiii) safety of navigation, including navigation lights and shapes, and sound signals,
 - (xiv) musters and drills,
 - (xv) protection of crew and safe working practices; and
- (b) to conduct surveys for tonnage measurement.
- (2) In order to effectively carry out his official duties, a surveyor may, as the case requires, exercise one or more of the following powers without unduly delaying a ship:
- (a) demand production of the ship's books, records, documents, plans, drawings, papers and related items, or of the ship's equipment, piece of machinery, or other thing connected with the ship;
 - (b) board a ship at any time if he reasonably suspects a breach of this Act or the regulations, or that the ship is unseaworthy, and make the survey or inspection that he considers necessary in the circumstances;
 - (c) enter any shore establishment, building or other premises at any time if it is reasonable to do so in connection with any matter under this Act or the regulations;
 - (d) require any person to give him, if possible, the necessary information in connection with any matter under this Act.

(Inserted by Act 18 of 1986.)

127 Director's powers.

The Director has all the powers set out in section 126 and may, in his discretion, exercise those powers in the same manner as a person appointed as a surveyor, and in addition he may exercise the following powers:

- (a) to instruct a local officer of customs, or other appropriate officer, to take the steps necessary to detain a specific ship named by him;
- (b) to initiate criminal proceedings with respect to a contravention of any provisions of this Act or the regulations.

(Inserted by Act 18 of 1986.)

128 Obstructing the Director or a surveyor.

- (1) No person shall obstruct or otherwise interfere with in any way the Director, a surveyor or any other person lawfully designated by the Director to carry out one or more functions under this Act or the regulations, in the discharge of his official duties or in the lawful exercise of his power under this Act or the regulations.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding T\$10,000; or imprisonment not exceeding one year, or both.

(Inserted by Act 18 of 1986.)

129 Ship not to proceed without certificates or marks.

- (1) No ship shall proceed to sea unless it has in accordance with the regulations—
 - (a) the appropriate valid safety, load line or survey certificates, as the case may be; and
 - (b) the deck line, load line and other marks marked on each side indicating the several maximum depths to which the ship can be safely loaded in the various prescribed circumstances.
- (2) The master of a ship shall produce on demand to a surveyor or other appropriate officer all the necessary certificates required to be in force for that ship under this Act or the regulations, and the Director may detain the ship until the appropriate certificates are produced.
- (3) Subject to subsection (4), where a ship proceeds to sea in contravention of subsections (1) or (2), the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine of not less than T\$1,000 and not exceeding T\$30,000 or imprisonment not less than one month, and not exceeding 3 years, or both;
 - (b) in the case of the master, to a fine of not less than T\$500, and not exceeding T\$10,000 or imprisonment of not less than 15 days, and not exceeding one year, or both;

and in either case the ship is subject to forfeiture to the Crown.

- (4) No person shall be convicted under subsection (3) if he can show that the offence occurred without his actual fault or privity, or that it was reasonable in the circumstances to permit the ship to proceed to sea.
(Inserted by Act 18 of 1986.)

130 Meaning of “ship” clarified.

For the purposes of section 123, and for greater certainty, “**ship**” includes a ship not registered in Tonga. (*Inserted by Act 18 of 1986.*)

131 Dispensation for foreign non-convention ships.

- (1) Where a ship, the Administration of which is not a Party to the Safety Convention or to the Load Line Convention, is or may be detained under section 123, the Director may permit the ship to sail if he reasonably believes that it would not adversely affect safety of life at sea or harm the public interest.
- (2) When the Director permits a ship to proceed under subsection (1), he shall issue to the master a written dispensation releasing the ship from detention, subject to the conditions endorsed on the dispensation which he considers appropriate in the circumstances with a copy of the dispensation sent to the Administration of the ship.
- (3) Subject to subsection (4), where a condition endorsed on a dispensation issued under subsection (2) is breached, the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine not exceeding T\$10,000 or imprisonment not exceeding one year;
 - (b) in the case of the master, to a fine not exceeding T\$2,000 or imprisonment not exceeding 6 months,or in either case, to both fine and imprisonment.
- (4) No person shall be convicted under subsection (3) if he can show that the breach of condition occurred without his actual fault or privity, or that the breach was otherwise reasonable in the circumstances.

(*Inserted by Act 18 of 1986.*)

132 Issue of certificates.

- (1) Where a ship has been surveyed and inspected and found to comply with the relevant provisions of this Part and the regulations, subject to any lawful written exemption, the Director shall issue for the ship the appropriate safety or survey certificate, or load line certificate, as required.
- (2) Every certificate issued under this section shall be in the form required by the Director, or prescribed by him.

(*Inserted by Act 18 of 1986.*)

133 Recognition of foreign certificates.

- (1) Where, with respect to a Tongan ship,
 - (a) the Director requests the Administration of a foreign country to issue to the ship a safety certificate or a load line certificate; and
 - (b) the foreign country is a Party to the Safety Convention or to the Load Line Convention, or to both, as the case may be; and
 - (c) the Administration of the foreign country surveys and inspects the ship and finds that it complies with the Safety Convention and Load Line Convention; and
 - (d) the Administration of the foreign country issues the ship with a safety certificate or a load line certificate, or both, as the case may be;

the certificate or certificates issued shall have the same effect as an equivalent certificate issued under section 132.

- (2) Where requested by the Administration of a foreign country which is a Party to the Safety Convention or to the Load Line Convention, or to both as the case may be, to issue a safety certificate or a load line certificate, or both, as the case may be, to one of its ships, the Director may, after the ship has been surveyed, inspected and found to comply with relevant provisions of this Part and the regulations, issue to the ship a safety certificate or a load line certificate, or both, as appropriate, under section 132.

(Inserted by Act 18 of 1986.)

134 Recognition of certificates of foreign ships.

A valid safety certificate, survey certificate or load line certificate issued to a foreign ship by its Administration has the same force and effect in Tonga as a valid safety certificate, survey certificate or load line certificate issued to a Tongan ship under section 132. *(Inserted by Act 18 of 1986.)*

135 Validity of certificates.

- (1) Subject to subsection (2), a certificate issued under section 132 remains valid for the prescribed period or, where the period is stated on the certificate, for that period.
- (2) Where it is reasonable to do so, the Director may extend the period of validity of a certificate that has not expired, in accordance with the regulations.

(Inserted by Act 18 of 1986.)

136 Stability information.

- (1) Every ship shall carry information concerning its stability in accordance with the regulations.
- (2) Where a ship proceeds to sea in contravention of subsection (1), the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine not exceeding T\$2,000 or imprisonment not exceeding 6 months, or both;
 - (b) in the case of the master, to a fine not exceeding T\$500 or imprisonment not exceeding one month, or both.

(Inserted by Act 18 of 1986.)

137 Meaning of alteration.

For the purposes of sections 138 to 141, “**alteration**” means an alteration that affects adversely the safety of the ship and persons on board. *(Inserted by Act 18 of 1986.)*

138 Notice of alteration.

- (1) Where an alteration is made in a ship's hull, equipment or machinery, the owner of the ship shall give written notice of the alteration, together with full particulars, without delay to the Director.
- (2) On receiving a notice of alterations, the Director may order a new survey and inspection to be made with respect to any certificate issued to the ship under section 132, and he may cancel or suspend that certificate.
- (3) Where a notice of alterations is not given in contravention of subsection (1), the owner of the ship is guilty of an offence and is liable on conviction to a fine of not less than T\$1,000 and not exceeding T\$30,000 or imprisonment of not less than one month and not exceeding 3 years, or both, and the ship is subject to forfeiture to the Crown.

(Inserted by Act 18 of 1986.)

139 Cancellation or suspension of certificate.

- (1) Where the Director is of the opinion that—
 - (a) an alteration has been made to a ship in respect of which no notice of alterations has been given, in contravention of section 138(1);
 - (b) the hull, equipment or machinery of the ship has sustained damage or is otherwise deficient; or

- (c) a safety or survey certificate, or a load line certificate, issued to the ship under section 132 or otherwise was obtained fraudulently or on wrong information;
- (d) material alterations have taken place in the hull or superstructure of the ship so as to affect the position of the load line; or
- (e) the fittings and appliances for the protection of openings, the guard rails, the freeing ports, or the means of access to the crew's quarters have not been properly maintained;

he may forthwith cancel or suspend any certificate issued to the ship under this Part or the regulations, and he may require the ship to be surveyed and inspected in such respects as he considers appropriate before considering whether to issue a new certificate or to remove the suspension.

- (2) Where a certificate has been cancelled or suspended, the owner of the ship shall forthwith deliver the certificate to the Director or to a person designated by him.
- (3) Where the owner of the ship fails to deliver the certificate to the Director in contravention of subsection (2), he is guilty of an offence and is liable on conviction to a fine of not exceeding T\$2,000; or imprisonment not exceeding 6 months, or both. (*Inserted by Act 18 of 1986.*)

140 Foreign Load Line Convention ships.

- (1) A surveyor may board any foreign ship the Administration of which is a Party to the Load Line Convention and inspect its load line certificate.
- (2) Where a valid load line certificate is produced, the surveyor may check the following matters:
 - (a) that the ship is not overloaded in contravention of section 142;
 - (b) that the positions of the load lines correspond with the positions specified in the load line certificate;
 - (c) that no material alterations described in section 133(1)(d) have taken place; and
 - (d) that the fittings and appliances and other items described in section 139(1)(e) have been properly maintained.
- (3) A surveyor may board any Tongan ship, inspect its load line certificate, and if a valid certificate is produced, he may check the matters set out in subsection (2)(a) to (d). (*Inserted by Act 18 of 1986.*)

141 Detention and prosecution where section 140 contravened.

- (1) Where a surveyor boards a ship under section 140 and a valid load line certificate is not produced, or where the surveyor makes the checks with respect to those matters set out in paragraphs (a) to (d) of section 140(2) and determines that—
 - (a) the ship is overloaded in contravention of section 142;
 - (b) the position of the ship's load lines do not correspond with the positions specified in its load line certificate;
 - (c) that material alterations described in section 139(1)(d) have taken place; or
 - (d) that the fittings and appliances and other items described in section 139(1)(e) have not been properly maintained, the Director may detain the ship until the matters have been rectified, as appropriate.
- (2) Where a ship is detained under subsection (1) because of the matters specified therein, namely: a valid load line certificate is not produced, the ship is overloaded, the ship's load lines do not correspond with the positions specified on its load line certificate, material alterations have taken place or the fittings, appliances and other items have not been properly maintained the owner of the ship and its master are each guilty of an offence and liable on conviction—
 - (a) in the case of the owner, to a fine of not less than T\$1,000, and not exceeding T\$30,000, or imprisonment of not less than one month, and not exceeding 3 years, or both;
 - (b) in the case of the master, to a fine of not less than T\$500, and not exceeding T\$10,000, or imprisonment of not less than 15 days, and not exceeding one year, or both;

and, in either case, the ship is subject to forfeiture to the Crown.

(Inserted by Act 18 of 1986.)

142 Submersion of Load Lines.

- (1) In this section “**salt water**” means water having specific gravity of 1.025. When testing the specific gravity of water in which the ship is floating, the water sample shall be taken from a depth equal to half of the mean draft of the ship in the immediate vicinity of the ship, but well clear of any on board discharge.
- (2) No ship shall be so laden—
 - (a) in salt water when upright that the load lines to which it may load in the prescribed circumstances are submerged; and

- (b) if brought into salt water, or if brought upright, or both, that the load lines to which it may load in the prescribed circumstances would be submerged. (*Inserted by Act 18 of 1986.*)

143 Publication of certificates.

The owner of a ship in respect of which a valid safety or survey certificate, or load line certificate, has been issued shall cause the certificate to be posted in a conspicuous place on board, and to be kept so posted and legible for as long as the certificate remains in force. (*Inserted by Act 18 of 1986.*)

144 Sending unseaworthy ship to sea.

- (1) No person shall take or send or attempt to take or send an unseaworthy ship to sea.
- (2) Subject to subsection (3), a person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of not less than T\$1,000 and not exceeding T\$30,000 or imprisonment of not less than one month and not exceeding 3 years, or both, and the ship is subject to forfeiture to the Crown.
- (3) No person shall be convicted under subsection (2) if he can show that the contravention of subsection (1) occurred without his actual fault or privity, or that it was reasonable in the circumstances to take or send the ship to sea while unseaworthy.

(Inserted by Act 18 of 1986.)

145 Detention of unseaworthy ships.

- (1) Where a ship appears to be unseaworthy, the Minister or the Director may issue a certificate of provisional detention and detain the ship until it can be properly surveyed and inspected.
- (2) The certificate of provisional detention shall—
 - (a) contain a brief statement setting out the grounds for belief that the ship is unseaworthy; and
 - (b) be given to the owner, the master or other person in charge of the ship.
- (3) A survey and inspection shall be conducted as soon as practicable after the certificate of provisional detention is served in accordance with subsection (2)(b).
- (4) Following the survey and inspection under subsection (3), a copy of the surveyor's report shall be given to the owner or the master of the ship,

who may, within 7 days of receiving it, appeal to the person who issued the certificate of provisional detention.

- (5) An appeal under subsection (4) shall be limited to findings of fact contained in the surveyor's report.
- (6) If the owner or master appeals under subsection (4), the person who issued the certificate of provisional detention shall give him a hearing and consider any new facts presented before issuing a certificate of final detention, or releasing the ship subject to the conditions he considers appropriate in the circumstances.
- (7) After duly considering the surveyor's report and, in the case of an appeal, any alleged new facts, the person who issued the certificate of provisional detention shall, without undue delay, cancel the certificate of provisional detention and either release the ship subject to the conditions he considers appropriate in the circumstances, or issue a certificate of final detention for the ship.
- (8) A certificate of final detention shall remain in force until the Director is satisfied that the ship is no longer unseaworthy; and it shall:
 - (a) contain a full statement setting out the grounds for belief that the ship is unseaworthy; and
 - (b) be given to the owner, the master or other person in charge of the ship.

(Inserted by Act 18 of 1986.)

146 Sending detained ship to sea.

- (1) No person shall take or send or attempt to take or send a ship to sea in respect of which a provisional or final certificate of detention is in force.
- (2) Subject to subsection (3), a person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of not less than T\$1,000 and not exceeding T\$30,000, or imprisonment of not less than one month and not exceeding 3 years, or both, and the ship is subject to forfeiture to the Crown.
- (3) No person shall be convicted under subsection (2) if he can show that the contravention of subsection (1) occurred without his actual fault or privity, or that it was reasonable in the circumstances to take or send or to attempt to take or send the ship to sea while unseaworthy.

(Inserted by Act 18 of 1986.)

147 Powers of master regarding dangerous goods.

- (1) The owner of a ship or its master may—
- (a) refuse to take on board any package that he suspects may contain dangerous goods;
 - (b) open and inspect any package that he suspects may contain dangerous goods;
 - (c) discharge, destroy, render innocuous or otherwise deal with dangerous goods that:
 - (i) in his opinion are dangerous goods, and
 - (ii) have been shipped on board without his knowledge or consent, and
 - (d) discharge, destroy, render innocuous or otherwise deal with goods, including dumping them overboard, if he reasonably believes the goods to have been shipped on board wrongly marked or labelled, and to be dangerous goods.
- (2) No person shall be convicted of an offence or made subject to liability of any kind for taking any action under subsection (1) if he has acted reasonably in the circumstances.

(Inserted by Act 18 of 1986.)

PART VIII.—NAVIGATION**148 Method of giving helm orders.**

No person on any Tongan ship shall, when the ship is going ahead, give a helm or steering order containing the word “starboard” or “right” or any equivalent of “starboard” or “right” unless he intends that the head of the ship shall move to the “right” or give a “helm” or “Steering” order containing the word “port” or “left” or any equivalent of “port” or “left” unless he intends that the head of the ship shall move to the left. *(Amended by Act 18 of 1986.)*

149 General duty to assist in danger at sea.

The master in charge of a ship shall, on receiving at sea a signal of distress or information that a vessel or aircraft is in distress shall proceed with all speed to the assistance of the persons in distress unless he is unable or in the special circumstances of the case considers it unreasonable or unnecessary to do so.

PART IX.—COLLISIONS, ACCIDENTS AT SEA AND LIMITATION OF LIABILITY

150 Division of loss in case of collision.

- (1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo or one or more of them or to any property on board one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault:

Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of faults, the liability shall be apportioned equally;
 - (b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed;
 - (c) nothing in this section shall affect the liability of any person under any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
- (2) For the purposes of this Part, references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable in law by way of damages.

151 Damages for personal injury.

- (1) Whenever a loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships concerned shall be joint and several.
- (2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

152 Right of contribution.

- (1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered from the owner of one of the ships which exceeds the proportion in which she was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault:

Provided that no amount shall be so recovered 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 therefor.

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

153 Duty of master of ship to assist in case of collision.

- (1) In every case of collision between two ships it shall be the duty of the master or person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers, if any—
 - (a) to render to the other ship, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision and to stay by the other ship until he has ascertained that she has no need of further assistance; and
 - (b) to give to the masters or persons in charge of the other ships the name of his own ship and of the port to which she belongs and also the names of the ports from which she comes and to which she is bound.

154 Collision to be entered in official log.

In every case of collision in which it is practicable so to do, the master of every ship concerned shall, immediately after the occurrence, cause a statement thereof and of the circumstances under which the same occurred to be entered in the official log book, if any, and the entry shall be signed by the master and also by the mate or one of the crew.

155 Report to Government of accidents to ships.

When a ship has sustained or caused any accident occasioning loss of life or any serious injury to any person or has received any material damage affecting her seaworthiness or her efficiency either in her hull or is so altered in any part of her machinery as not to correspond with the particulars contained in any of the certificates issued under this Act in respect of the ship, the owner or master shall within 48 hours after the happening of the accident or damage or as soon thereafter as possible, after the arrival at the first port, transmit to the Government or the nearest principal officer a report of the accident or damage and of the probable cause thereof stating the name of the ship, her official number, if any, her port of registry and the place where she is.

156 Notice of Tongan ship to be given to Government.

If the owner or agent of any Tongan ship has reason, owing to the non-appearance of the ship or to any other circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as convenient, send to the Government notice in writing of the loss and of the probable cause thereof stating the name of the ship, her official number, if any, and her port of registry.

157 Limitation of actions.

No action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of any damage or loss to another ship, her cargo or freight, or any property on board, or damages for loss of life or personal injuries suffered by any person on board, caused by the fault of the former ship, whether such ship is wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered; and 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 therein are commenced within one year from the date of payment:

Provided that the Court may, in accordance with the rules of Court, extend any such period to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during the period been a reasonable opportunity of arresting the defendant ship at any port in Tonga or within the territorial waters thereof, or locally within the jurisdiction 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 a reasonable opportunity.

158 Court may consolidate claims.

Where any liability is alleged to have been incurred by the owner of any ship, whether or not she is a Tongan ship, in respect of loss of life, personal injury, or loss of or damage to any ship or cargo or other property, and several claims are made or apprehended in respect of that liability, the owner may apply to the Court, and that Court may determine the amount of the owner's liability, and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other Court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

159 Insurance of certain risks valid.

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 of this Act shall not be invalid by reason of the nature of the risk.

PART X.—WRECK AND SALVAGE

160 Interpretation.

In this Part of this Act, unless the contrary intention appears—

“**salvage**” includes all expenses properly incurred by the salvor in the performance of salvage services;

“**the receiver**” means the receiver of wreck who shall be the Director and any person duly authorised by him to act as a receiver of wreck for the time being in any assigned district; (*Amended by Act 18 of 1986.*)

“**wreck**” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water, and any articles or goods of whatever kind which belonged to or came from a vessel wrecked, stranded or in distress, or any portion of the hull, machinery or equipment of any such vessel.

161 Power of Customs reserved.

The operation of this Part of this Act shall in no way derogate from or interfere with the powers of the Customs conferred by any Act.

WRECK

162 Receiver where ship in distress.

- (1) Where any vessel is wrecked, stranded or in distress at any place on or near any one or more of any of the islands, rocks, reefs and structures (whether artificial or natural) or anywhere in waters lying within the limits of Tonga, the receiver shall proceed there and upon arrival shall take command of all persons present, and give such instructions to each person as he thinks fit for the preservation of the vessel and of the lives of the person belonging to the vessel (in this Part of this Act referred to as “shipwrecked persons”) and of the wreck:

Provided that the receiver shall not interfere between the master and the crew of the vessel in the management of the vessel unless requested to do so by the master.

- (2) Any person who wilfully disobeys the directions of the receiver shall be liable to a penalty of T\$100.

163 Powers of receiver to require assistance.

- (1) The receiver may, with a view to the preservation of shipwrecked persons or of the wreck—
 - (a) require such persons as he thinks necessary to assist him;
 - (b) require the master of any vessel near at hand to give such aid with his men or vessel as is in his power; and
 - (c) require the use of any vehicle or draught animal that is near at hand.
- (2) No person shall refuse without reasonable cause to comply with any such requisition.
- (3) Any person who violates the provisions of this section shall be liable to a penalty of T\$200.

164 Power to pass over private land to assist at wreck.

- (1) Whenever a vessel is wrecked, stranded or in distress all persons may, for the purpose of rendering assistance to the vessel or of saving the lives of the shipwrecked persons or of saving the wreck, unless there is some public road equally convenient, freely pass and repass, either with or without vehicles or draught animals, over any lands, but doing as little damage as possible, and may also, on the like condition, deposit any wreck on any lands.

- (2) Any damage occasioned by the exercise of the rights given by this section shall be a charge on the wreck in respect of or by which the damage is occasioned, and the amount of compensation payable for that damage shall be determined and recoverable in the same manner as if it were salvage.
- (3) No person shall—
 - (a) impede any person in the exercise of the rights given by this section;
 - (b) impede the deposit of any wreck on the land; or
 - (c) prevent any wreck from remaining so deposited until it can be removed to a safe place.
- (4) Any person who violates the provisions of this section shall be liable to a penalty of T\$100.

165 Power of receiver to suppress plunder and disorder by force.

- (1) Whenever a vessel is wrecked, stranded or in distress and any person—
 - (a) obstructs the preservation of the vessel or of the shipwrecked persons or of the wreck; or
 - (b) plunders or creates disorder, the receiver may cause that person to be apprehended.
- (2) The receiver may use such reasonable force as may be necessary for the suppression of any such plundering, disorder or obstruction and may command all persons present to assist him in so doing.
- (3) If any person is killed, maimed or hurt by reason of his resisting the receiver or any person acting under his orders in the execution of his duty, neither the receiver nor the person so acting under the receiver's orders shall be liable to any punishment or to pay any damages by reason of the person being so killed, maimed or hurt.

166 Exercise of power when receiver absent.

- (1) Where the receiver is not present, the following persons in succession (each in the absence of the other, in the order in which they are named) namely—
 - (a) the chief officer of Customs at any port;
 - (b) a police officer;
 - (c) a commissioned officer in the naval or military service of His Majesty;
 - (d) a district officer; or

- (e) a town officer,
may do anything authorised to be done by the receiver.
- (2) Any person so acting for a receiver shall with respect to any wreck be considered as the agent of the receiver, and shall place the wreck in his custody but shall not be deprived, by reason of his so doing, of any right to salvage to which he would otherwise be entitled.

167 Examination on oath as to wrecks.

- (1) Where any vessel is or has been wrecked, stranded or in distress within the limits of Tonga, the receiver shall examine on oath any person who is able to give any account thereof as to the following matters—
 - (a) the name and description of the vessel;
 - (b) the name of the master and of the owners;
 - (c) the name of the owners of the cargo;
 - (d) the ports from and to which the vessel was bound;
 - (e) the occasion of the wrecking, stranding or distress of the vessel;
 - (f) the services rendered; and
 - (g) such other matters or circumstances relating to the vessel or to the cargo on board as the person holding the examination thinks necessary.
- (2) The person holding the examination shall cause the evidence to be taken down in writing and shall send one copy of it to the Minister and another to the Controller of Customs, who shall place it in some conspicuous place for inspection.

168 Finding or taking possession of wrecks.

Where any person—

- (a) finds or takes possession of any wreck within the limits of Tonga;
or
- (b) having found or taken into possession any wreck outside Tonga subsequently brings it within the limits of Tonga,

that person shall give notice to the receiver stating that he has found or taken possession of the wreck, and describing the marks by which the wreck may be recognised. Any person who violates the provisions of this section shall be guilty of an offence and liable to a penalty of T\$200.

169 Penalty for retaining possession of wreck.

- (1) No person other than the owner of a wreck shall keep possession of the wreck or fail on demand to deliver the wreck to the receiver or to any person authorised by him to demand it.
- (2) The receiver or any person authorised by him may take the wreck by force from any person refusing to deliver it.
- (3) Any person who violates the provisions of this section shall be guilty of an offence and liable to a penalty of T\$200.

170 Notice to be posted in Customs house.

Where a receiver takes possession of any wreck, he shall within 48 hours cause to be posted in the nearest Customs house a description and any distinguishing marks of the wreck.

171 Claim of owner to wreck.

The owner of any wreck, upon establishing his claim to the wreck to the satisfaction of the receiver within 12 months from the time at which the vessel was wrecked, stranded or in distress, shall upon paying the salvage, fees and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

172 Sale of wreck by receiver

- (1) A receiver may at any time sell any wreck in his custody, if in his opinion it is—
 - (a) under the value of T\$20;
 - (b) of such condition or nature that it should not be kept; or
 - (c) not of sufficient value to pay for keeping.
- (2) The proceeds of the sale shall, after defraying the expenses in connection with the sale, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

173 Expenses connected with wreck.

In regard to expenses connected with any wreck, the following provisions shall apply—

- (a) all expenses properly incurred by the receiver shall be recoverable in a court of competent jurisdiction from the owner of the vessel or wreck in respect of which any services were performed;
- (b) the receiver shall, in addition to all other rights and remedies for the recovery of those expenses, have the same rights and remedies in respect thereof as a salvor has in respect of salvage;
- (c) if any dispute arises in regard to any such expenses, it shall be determined by the Minister whose decision shall be final;
- (d) all money received by any receiver in respect of his services shall be paid into the general revenue of the State.

174 Right of the Crown to unclaimed wreck.

It is hereby declared that the Crown has always been and is entitled to all unclaimed wreck found within the limits of the Kingdom of Tonga.

175 Sale of unclaimed wreck.

Where a wreck is found or is brought into Tonga and no owner establishes a claim to that wreck within 12 months from the date on which the wreck was found or brought into the State, the receiver may sell the wreck and, in the case of sale, shall pay the proceeds of the sale (after deducting therefrom the expenses of sale and any other expenses incurred by him, and paying thereout to the salvors such amount of salvage as the Minister directs or as is prescribed) to the general revenues of the State.

176 Discharge of receiver from liability.

Upon compliance with the provisions of this Part of this Act the receiver shall be discharged from all liability.

177 Dispute as to title to wreck.

- (1) Where a dispute arises as to the title to any wreck, it may be determined in the same manner as if it were a dispute as to salvage.
- (2) If any party to the dispute is unwilling to have it so determined, he may proceed in any court of competent jurisdiction to establish his claim.

178 Taking wreck out of the Kingdom.

Any person who takes into and sells at any place out of Tonga any vessel stranded, derelict or otherwise in distress, or any wreck found within the limits

of Tonga commits an offence and is liable to a penalty of the value of the gross proceeds of the sale or a term of imprisonment not exceeding a period of 5 years or both.

179 Boarding ship in distress without authority.

- (1) No person shall, without the leave of the master or the authority of this or any other Act, board any vessel which is wrecked, stranded or in distress. Any person who violates the provisions of this section shall be guilty of an offence and liable to a penalty of T\$100.
- (2) The master of the vessel may repel by force any person acting in contravention of this section.

180 Offences as to wreck.

No person shall—

- (a) impede the saving of any ship stranded or in distress or of any wreck;
- (b) secrete any wreck or deface or obliterate any marks on the wreck.

Any person who violates the provisions of this Section shall be liable to a penalty of T\$300, in addition to any other punishment to which the offender is liable by law.

181 Removal of wreck.

- (1) If any vessel is wrecked, stranded, sunk or abandoned within the limits of Tonga, the receiver shall have in regard thereto, the following powers—
 - (a) to require the owner thereof, by notice in writing, to remove the wreck within a time specified in the notice, or give security for its removal to his satisfaction;
 - (b) in the event of the owner not complying with such notice, to remove or destroy the wreck in any manner he sees fit;
 - (c) to sell any wreck recovered under his orders, and out of the proceeds of the sale to retain a sum to cover the expenses incurred in the recovery and sale of the wreck, paying the surplus, if any, to the owner;
 - (d) to recover from the owner any expenses incurred by him in connection with the removal or destruction.
- (2) For the purposes of this section, “owner” means the owner immediately prior to the time of the loss or abandonment of the ship.

SALVAGE

182 Liability of owner for salvage.

- (1) Where services are rendered within the limits of Tonga in saving life from any vessel, there shall be payable to the salvor by the owner of the vessel, cargo or equipment saved a reasonable amount of salvage, to be determined in case of dispute in the manner hereinafter mentioned.
- (2) Salvage in case of preservation of life, when payable by the owner of the vessel, shall be payable in priority to all other claims for salvage.

183 Salvage for saving life beyond the limits of the jurisdiction of the Kingdom.

When it is made to appear to the Minister that the Government of any foreign country is willing that salvage should be awarded by any courts in Tonga for services rendered in saving life from vessels belonging to that country when the vessel is beyond the limits of the jurisdiction of the Kingdom, the Minister may by order direct that the provisions of this Part of this Act with reference to salvage of life shall, subject to any conditions and qualifications, apply, and these provisions shall accordingly apply to those services as if they were rendered in saving life from vessels within the jurisdiction of the Kingdom.

184 Persons assisting entitled to salvage.

Where any vessel is wrecked, stranded or in distress within the limits of Tonga and services are rendered by any person in assisting that ship or saving any wreck, there shall be payable to the salvor, by the owner of the ship or wreck, a reasonable amount of salvage, to be determined, in case of dispute, in the manner hereinafter mentioned.

185 Assistance to persons in danger at sea.

- (1) The master of a vessel shall, so far as he can do so without danger to his ship, his crew and passengers (if any), render assistance to any person who is found at sea in danger of being lost.
- (2) The master of the vessel who fails to comply with the provisions of this section commits an offence.
- (3) Compliance by the master of a vessel with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

PROCEDURE IN SALVAGE

186 Settlement of disputes between owners and salvors.

- (1) Whenever any dispute arises as to the amount of salvage, whether of life or property, between the salvors and the owners of any vessel or wreck, and the dispute is not settled by agreement between the parties then —
 - (a) if the sum claimed does not exceed T\$100—
 - (i) the dispute shall, in case of wreck, be referred to the arbitration of the magistrate resident nearest the place where the wreck is found; or
 - (ii) the dispute shall, in case of service rendered to any vessel or to the persons, cargo or equipment belonging to the vessel, be referred to the magistrate resident nearest to the place where the ship is lying or to a magistrate at the first port in Tonga into which the vessel is brought after the occurrence by reason of which the claim to salvage arises; or
 - (b) If the sum claimed exceeds T\$100, the dispute shall be decided by the Supreme Court; but if the claimants in the dispute do not recover in the Supreme Court a greater sum than T\$100, they shall not, unless the Supreme Court certifies that the case is a fit one to be tried in that Court, recover any costs, charges or expenses incurred by them in the prosecution of their claim.
- (2) Every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged or of their respective agents.

187 Magistrate to determine dispute referred to his arbitration.

- (1) Whenever, in pursuance of this Act, a dispute as to salvage is referred to the arbitration of a magistrate he may determine the same and may appoint as assessor any person conversant with maritime affairs to assist him.
- (2) There shall be paid to every assessor who may be so appointed in respect of his services any sum not exceeding T\$10 per day as the magistrate may allow; and all the costs of the hearing including payments to the assessor shall be fixed by the magistrate and be paid by parties to the dispute in such manner and in such shares and proportions as the magistrate shall direct by his award.
- (3) The magistrate may call for production of any documents in the possession or power of either party which he may think necessary for

determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

188 Appeal against award made by magistrate.

A party aggrieved by an award made by a magistrate in a dispute as to salvage referred to him for his arbitration may appeal to the Supreme Court but no appeal shall be heard by that Court unless—

- (a) the sum in dispute exceeds T\$50;
- (b) within 10 days after the date of the award the appellant gives notice to the magistrate to whom the dispute was referred of his intention to appeal; and
- (c) the party appealing takes such other proceeding as according to the practice of the Supreme Court is necessary for the institution of an appeal to that Court.

189 Magistrate to transmit copy of proceedings and certificates of value.

When an appeal is made under the last preceding section the magistrate shall transmit to the Supreme Court a copy certified under his hand to be a true copy of the proceedings had before him and of the award made by him accompanied with his certificate in writing of the gross value of the article respecting which salvage is claimed and such copy and certificate shall be admitted as evidence in the appeal.

190 Detention of ship or wreck till salvage paid.

- (1) Where salvage is due to any person under this Act, the receiver shall—
 - (a) if the salvage is due in respect of services rendered in assisting any vessel, saving life from the vessel or in saving the cargo and equipment of the ship—detain the vessel and cargo or equipment; and
 - (b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed—detain the wreck,until the payment is made for salvage.
- (2) A receiver may release any property detained by him under the provisions of the last preceding subsection if security is given to his satisfaction.
- (3) Any security given for salvage in pursuance of this section may be enforced by any court of competent jurisdiction in the same manner as if it had been given in that court.

191 Sale of detained property by the receiver.

The receiver may sell any property detained pursuant to the last preceding section if the person liable to pay the salvage in respect of which the property is detained is aware of the detention, in the following cases—

- (a) where the amount is not in dispute and payment of the amount due is not made within 20 days after the amount is due;
- (b) where no appeal lies from the award made by the magistrate to whom the dispute was referred for his arbitration and payment is not made within 20 days after the date of the giving of the award;
- (c) where an appeal lies from the award made the magistrate to whom the dispute was referred for his arbitration but neither payment of the sum due is made nor proceedings are commenced for the purpose of the institution of appeal.

192 Apportionment of salvage by magistrate.

- (1) Where the aggregate amount of salvage payable in any case has been finally determined under this Act, and does not exceed \$T100, but a dispute arises as to its apportionment among several claimants, the person liable to pay the amount may apply to a magistrate for liberty to pay the amount of salvage to him.
- (2) The magistrate may, if he thinks fit, receive the amount and grant to the person paying it a certificate of the amount paid and of the services in respect of which it is paid, and that certificate shall be a full discharge and indemnity to the person by whom the money is paid, and to his vessel, cargo, equipment and effects, against the claims of all persons in respect of the services mentioned in the certificate.
- (3) The magistrate shall distribute any amount received by him under this section among the persons entitled to it on such evidence and in such proportions as he thinks fit, and may retain the share of any person who is absent.
- (4) Any such distribution shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

193 Apportionment of salvage by the Supreme Court.

- (1) Where the aggregate amount of salvage payable in any case has been finally ascertained and exceeds T\$100, then if any delay or dispute arises as to its apportionment, the Supreme Court shall distribute the amount amongst the person entitled to it in such manner and in such proportion as it thinks fit.

- (2) Any such distribution shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

PART XI. - INVESTIGATIONS AND INQUIRIES

194 Shipping casualties.

- (1) For the purpose of investigations and enquiries under this Part of this Act a shipping casualty shall be deemed to occur—
 - (a) when any Tongan ship is lost, abandoned, or damaged, or causes loss or damage to any other ship; or
 - (b) when loss of life ensues by reason of any casualty on board any Tongan ship; or
 - (c) when any ship has been lost or supposed to have been lost, stranded, or damaged, or blown away, provided such event occurs on or near the coasts of Tonga or when occurring elsewhere a witness is found in Tonga; or
 - (d) when on or near the coasts of Tonga any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of Tonga.
- (2) In the cases mentioned above, the master of the ship, pilot, harbour master, the owner or other person in charge of the ship, as the case may be, or where 2 or more ships are concerned, the master in charge of each ship at the time of the shipping casualty or any of the above persons shall, on arriving in Tonga, give immediate notice of the shipping casualty to the Minister.

195 Report of shipping casualties.

- (1) Whenever a shipping casualty comes to the knowledge of any concerned person mentioned in subsection (2) of the preceding section he shall make a preliminary inquiry into the casualty and report the information along with his report to the Minister as soon as possible.
- (2) The Minister, unless he decides that it is not necessary to do so, shall request the court to make a formal investigation into any shipping casualty, and the court shall thereupon make such investigation.

196 Magistrates' Court to hold formal inquiry.

- (1) The Magistrates' Court shall be the Court of Marine Inquiry. The Court shall sit with assessors for the purpose of inquiring into any shipping casualty.
- (2) When holding an inquiry into a shipping casualty the Court, in addition to the jurisdiction it may exercise under any other law or by custom shall have jurisdiction—
 - (a) to inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty;
 - (b) to go on board the vessel and inspect it or anything on board;
 - (c) to enter and inspect any premises;
 - (d) to order the cancellation of any certificate of competency of any master;
 - (e) to order costs to be paid by whomsoever it thinks proper.

197 Power of Court as to evidence etc.

For the purpose of any investigation or inquiry under this Part, the court making the investigation or inquiry shall, in respect of compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, have the same powers as are exercisable by that court in the exercise of its criminal jurisdiction.

198 Opportunity to be given to person to make defence.

In every case in which a charge of incompetency, or misconduct, or wrongful act or default arises against any master, mate or engineer, the court shall cause to be furnished to him a statement of the case upon which the inquiry has been directed and shall give him an opportunity of making a defence either in person or otherwise.

199 Assessors.

- (1) The assessors, for the purpose of constituting a court of inquiry, shall be not less than 2 and more than 4 and may be either the Collector of Customs, the Harbour Master, nautical engineer, qualified lawyer or any other person conversant with marine affairs.
- (2) An assessor, including the Chairman, shall be entitled to receive such fee for his attendance as may be fixed by the Government from time to time.

(Amended by Act 7 of 1979.)

200 Report by Court to Government,

The Court shall transmit to the Minister a full report of all cases of investigation or inquiry.

201 Right of appeal.

Any owner, master or other person may appeal against the decision of the Court of Marine Inquiry to the Supreme Court. The fees on an appeal shall be those chargeable for appeals in civil cases.

202 Minister may order inquiry.

- (1) Without limiting the powers contained in the preceding sections, the Minister shall have power to order an inquiry, in appropriate cases in the interest of orderly marine transport and commerce, and to take suitable action.
- (2) Without limiting the general power contained in subsection (1), the Minister may after being satisfied—
 - (a) remove the master and appoint another qualified person to act in his place, if he is of the opinion that the safety of a Tongan ship or her cargo or crew or the interest of the owner of the ship or the cargo requires it;
 - (b) suspend the certificate of the master or any other officer of a ship if he is of opinion that any master or officer of a Tongan ship is incompetent or has been guilty of any act of misconduct or in case of collision has failed to render such assistance or give such information as required under this Act or that loss, abandonment or stranding of or serious damage to any ship or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship's officer;
 - (c) discharge a seaman from a Tongan ship and order the wages of any seaman so discharged or any part of those wages to be forfeited;
 - (d) decide any questions as to wages, fines or forfeiture arising between any of the parties to the proceedings;
 - (e) direct that any or all of the costs incurred by the master or owner of a Tongan ship or on the maintenance of a seaman or apprentice while in prison outside Tonga shall be paid out of, and deducted from, the wages of that seaman or apprentice, whether earned or subsequently earned;

- (f) order a survey to be made of a Tongan ship which is the subject of investigation if he considers such a step expedient;
- (g) order any person making a frivolous or unjustified complaint to pay compensation for any loss or damage.

PART XII. - CONTROL OF SHIPS ENGAGED IN COASTING TRADE AND COMMERCE

203 Ships engaged in coasting trade and commerce.

- (1) No ship or boat shall be engaged in coastal trade or in any commercial activity in the territorial waters of Tonga except under a licence granted by the Minister upon the payment of a fee prescribed by the Minister from time to time.
- (2) A licence granted under this section may be—
 - (a) a general licence;
 - (b) a licence for the whole or any part of the coasting trade or commerce; or
 - (c) a licence for a specified period or voyage.
- (3) The Minister may at any time revoke or modify a licence if the circumstances of the case so require.
- (4) Any person who contravenes the provisions of this section shall for each offence be liable to a fine not exceeding T\$50.

PART XIII. - MISCELLANEOUS

204 Jurisdiction of Courts on offences.

The Courts having jurisdiction under this Act shall be the Magistrates' Courts and the Supreme Court which in all cases except under section 196 shall sit without assessors.

205 Offence for which no penalty is provided elsewhere.

Every person who commits an offence against this Act for which no penalty is provided elsewhere shall be liable in respect of each offence to a fine not exceeding T\$100.

206 Regulations.

- (1) The Minister may with the consent of the Cabinet make regulations, and without limiting the generality of the foregoing, he may make regulations respecting the following matters as they apply to ships, including fishing vessels and to seafarers, ship owners and other similar responsible persons—
 - (a) tonnage measurement, surveys and certificates, marking of ships, and recognition of foreign tonnage certificates;
 - (b) the form, content and number of shares in a ship, and the transfer, mortgage and ownership of them;
 - (c) registration of commercial and government ships, licensing of small ships, procedures for registration and licensing, powers and duties of registrars, the books for keeping details of registered and licensed ships, and related matters;
 - (d) crew accommodation; crew employment and welfare;
 - (e) qualification and certification of seafarers, establishing different grades and classes for the certificates for different classes of ship, different types of voyage, different types or degree of engine propulsion power, or for any other appropriate criteria suitable for a certification system;
 - (f) manning and qualification scales for different classes of ships, and for different types of voyage;
 - (g) recognition of foreign certificates or other documents issued for any matter for the purpose of giving effect to international conventions, treaties or arrangements;
 - (h) safety surveys, inspections, certificates and endorsements, survey certificates and endorsements, intervals between surveys of specific ships, classes of ships, and ships in general;
 - (i) the form, content and period of validity of certificates required generally or specifically under this Act or the regulations;
 - (j) construction, stability, machinery and electrical systems;
 - (k) load lines, life-saving appliances, and fire detection, fire extinction and fire fighting equipment;
 - (l) navigation equipment, radio and radio equipment and miscellaneous equipment;
 - (m) the carriage of cargoes, including but not limited to bulk cargoes, grain cargoes, deck cargoes and dangerous goods;
 - (n) safety of navigation including reporting dangers to navigation and ships' positions, musters and drills, protection of crew and safe working practices;

- (o) manning and hours of rest, conducive to navigational safety and safety of life at sea;
 - (p) cancelling or suspending any certificate or other document, including but not limited to a certificate of qualification or competency of a seafarer, a safety or survey certificate, a tonnage or load line certificate, an exemption or dispensation, issued or granted under this Act or the regulations;
 - (q) prescribing the circumstances in which a ship may be held to be unseaworthy and when sections 144 and 145 shall apply;
 - (r) dispensations and exemptions for individual persons on specific ships from having to comply with specific provisions concerning the qualification and certification of those persons;
 - (s) exemptions from the application of regulations made under this section for a specific ship or class of ships, having due regard to safety of life at sea and the public interest;
 - (t) the fines and other punishment for offences against the regulations made under this section, including provisions that have been adopted and incorporated by reference under paragraph (u);
 - (u) adopting and incorporating by reference any one or more of the provisions, or all of them, of any code, treaty, convention, statute, rule, by-law, resolution, form, ordinance, order other than a court order, or regulation, incorporating those provisions as they are, or as those provisions may be amended from time to time;
 - (v) fees and other charges respecting anything done under this Act or the regulations;
 - (w) matter set out in paragraphs (a) to (u) as it applies or may be made to apply to any ship or class of ships under 15 metres in length.
- (2) Without affecting the generality of subsection (1) or of any specific regulation making power under that subsection, the Minister may, for the purpose of carrying out the intent of this Act—
- (a) make regulations that he considers necessary and advisable, and which are ancillary to this Act and not inconsistent with it;
 - (b) provide for administrative and procedural matters for which no express, or only partial, provision has been made;
 - (c) limit the application of a regulation in time or place or both;
 - (d) prescribe the amount of the fee authorized by this Act or the regulations.
- (3) The Minister may with the consent of the Cabinet make regulations respecting the following matters—

- (a) the form and content of any certificate or other document required under this Act or the regulations;
- (b) the following matters in relation to certification and qualification of seafarers:
 - (i) examination entry requirements,
 - (ii) form and content of certificates,
 - (iii) conduct during examinations,
 - (iv) disqualification of candidates for breach of regulations made under sub-paragraph (iii),
 - (v) application for examination,
 - (vi) medical examinations, including eyesight tests,
 - (vii) examination syllabus for each grade and class of certificate, and
 - (viii) the form and content of, and the grading of, written, oral and practical examinations;
- (c) dispensations for seafarers from the requirements respecting seafarers' qualifications; and
- (d) establishing the criteria for the recognition of foreign certificates for safety, survey, load line, tonnage measurement and seafarers' qualifications.

207 Access to and inspection of regulations .adopted and incorporated by reference.

- (1) Where a regulation, or a provision of it, has been adopted and incorporated by reference in regulations made under the authority of a power under this Act, the adopted regulation, or provision, as the case may be, shall be available for inspection and copying at the Director's office, and at the offices in Ha'apai and Vava'u designated by him, by any person likely to be affected by it.
- (2) Subject to subsection (1), no person shall be prosecuted or convicted for contravening an adopted regulation if that regulation is not available for inspection or copying as required by subsection (1), and it is a defence to such a prosecution to show that the contravened regulation was not so available as required.
- (3) The defence available under subsection (2) is not available to a person who had sufficient knowledge of the requirements of the contravened provision for which he is being prosecuted, or who possessed or who had reasonable access, in any event, to the requirements of the contravened provision independently of the procedure required under subsection (1).

- (4) The Director may charge a reasonable fee for any copying services he provides, commensurate to that charged generally in the public service, when a person requests copies of an adopted regulation under subsection (1).
- (5) For the purposes of this section, and for greater certainty, “adopted regulation” means any code, treaty, convention, statute, rule, by-law, resolution, form, ordinance, order or regulation adopted and incorporated by reference under section 206(1)(u).

208 Delegation of powers.

- (1) Where, in this Act or the regulations, a power is expressed to be given to a person, that person may delegate the power, in whole or in part and on the conditions he considers appropriate, in writing to the person named as his delegate in the document containing the written delegation.
- (2) Subsection (1) does not apply to permit a surveyor or an inspector to delegate powers, but a surveyor or inspector may have powers delegated to him by another person.
- (3) A person named in a document as a delegate of a power in accordance with subsection (1) shall not further delegate that power.
- (4) No person shall delegate a power granted under this Act or the regulations other than in accordance with subsection (1).
- (5) A person who delegated a power under subsection (1) may revoke the delegation at will by notifying the delegate in writing.
- (6) A reference in this Act or in the regulations to a person who may exercise a power granted under this Act includes any lawful delegate of that person, within the terms of his delegation.
- (7) Except where expressly provided otherwise in this Act, no person may delegate a power under this section if the power is—
 - (a) to make regulations, to issue dispensations or to grant exemptions; or
 - (b) of a quasi-judicial nature;and a delegation purporting to do so in contravention of this subsection is null and void.

209 Owner's obligation to keep ship seaworthy.

Notwithstanding any agreement to the contrary, in:

- (a) every contract of service, express or implied, between the owner or master of a ship and any member of the crew of that ship; and

- (b) every contract of carriage, express or implied, between the owner or master of a ship and any passenger on that ship

there is an implied term binding and obliging the owner that the owner of the ship and the master, and every agent or other person charged with preparing the ship for sea, or sending it to sea, will use all reasonable means to ensure the seaworthiness of the ship at the commencement of the voyage, and to keep it seaworthy during the voyage.

210 Appointment of examiners.

The Minister may appoint one or more suitable persons as examiners for the purpose of conducting examinations of masters, mates, engineers and other officers, and for the purpose of examining seafarers and issuing or approving the issue of seafarer's certificates of qualification and competency, and to perform related duties.