



# The Kiribati Gazettes

## Acts of 2017

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Inside this issue:

*Continuation of the  
Maritime Act 2017*

The Kiribati Gazette is an official publication of the Government of Kiribati. Published on a monthly basis through the Communications Unit of the Office of Te Beretitenti, the Kiribati Gazette contains publications of Instruments, Acts, Notices and Proclamations (public and official announcements) from the Government of Kiribati

(2) The Director shall make a copy of the report referred to in subsection (1) available upon request to:

(a) if the report relates to the death of a person:

- (i) the next of kin of that person; and
- (ii) any person who appears to the Director to have a sufficient interest in the contents of the report; and

(b) the report relates to a serious injury to a person:

- (i) that person or a person acting with the authority of that person; and
- (ii) any other person who appears to the Director to have a sufficient interest in the contents of the report.

## **PART XIV NEAR – COASTAL TRADE**

### **Certificates of seaworthiness**

**165.** (1) The Minister may, on the advice of the Director, appoint a person with such qualification as he considered appropriate to be a Principal Surveyor of vessels.

(2) The Principal Surveyor may grant to a vessel a certificate of seaworthiness in the form prescribed or as near thereto as circumstances permit and such certificate shall be liable to be revoked at any time on good cause by the licensing officer.

(3) The certificate referred to in subsection (1) shall state:

- (a) whether the vessel in respect of which the certificate is granted shall be employed in coastal voyage, Pacific region voyage or unlimited voyage;
- (b) the name of the owner of the vessel;
- (c) the number of passengers (including crew) and the quantity of cargo which may be carried under different circumstances;
- (d) the period during which the vessel may be engaged in any voyage; and
- (e) the date on which the certificate shall expire.

(4) Such certificate shall, unless revoked, remain in force for not more than 12 months for steel vessels and not more than 6 months for wooden vessels from the date thereof:

Provided always that if any such vessel has been absent from Kiribati for 30 days previous to the date of expiration of the certificate last granted in respect of such vessel, such last certificate, if not revoked, shall continue in force till the return of such vessel to Kiribati.

### **Penalty on ship proceeding to sea without certificate**

166. A master or an owner shall not allow a vessel, whatever its means of propulsion, to proceed upon any voyage or excursion unless such vessel has a certificate of seaworthiness issued under section 165 or by other competent authority, valid and unexpired, which must be produced together with the certificates of competency of the officers and engineer required for the voyage, on demand, to a customs officer or other lawfully appointed officers.

Penalty: \$20,000 or 5 years imprisonment

### **Limit of passengers to be carried**

167. A master or person who is in charge of any vessel shall not carry passengers in excess of the number authorised such vessel's certificate.

Penalty: A fine not exceeding \$5,000 or 12 months imprisonment

### **Fees for application for certificates of seaworthiness**

168. The owner of any vessel requiring a certificate of seaworthiness under this Act shall pay on application such fee as may be prescribed.

### **Near-coastal trade defined**

169. For the purposes of this Part a vessel is engaged in the near-coastal trade in the following instances, namely, where the vessel-

- (a) takes on board passengers or goods at a port or place in Kiribati to be carried to or landed at another port or place in Kiribati or the same port or place in Kiribati;
- (b) takes on board passengers or goods at a place in Kiribati to be carried inside the lagoon area of the same place in Kiribati
- (c) leaves a port or place in Kiribati to undertake a shipping service within the territorial sea.

### **Near-coastal trade licences**

170. Subject to this Act, the Minister may, in respect of a vessel and subject to any conditions he thinks fit to impose, grant to a person a licence to engage that vessel in the near-coastal trade.

### **Categories of near-coastal trade licences**

171.(1) A licence granted under section 170 shall be either-

- (a) a general near-coastal trade licence;
- (b) a special near-coastal trade licence or
- (c) a lagoon near-coastal trade license

- (2) A general near-coastal trade licence entitles the holder of the licence to engage the vessel in respect of which the licence is granted in the near-coastal trade.
- (3) A special near-coastal trade licence entitles the holder of the licence to engage the vessel in respect of which the licence is granted in the particular shipping service specified in the licence.
- (4) A lagoon near-coastal trade license entitles the holder of the license to engage the vessel in respect of which the license is granted in the particular shipping service specified in the license

#### **Requirement to hold near-coastal trade licence**

172.(1) In this section 'owner', in relation to a vessel, includes, where the vessel is operated by a person other than a owner, that person.

(2) Neither the master nor the owner of a vessel shall engage the vessel in the near-coastal trade unless an appropriate near-coastal trade licence is held in respect of the vessel.

Penalty: A fine not exceeding \$10,000

#### **Limitation on grant of licences**

173.(1) A near-coastal trade licence in respect of a registered vessel can be granted to:

- (a) the owner of the vessel if he is a Kiribati person; or
- (b) a Kiribati person who is, either by himself or with other persons each of whom is a Kiribati person, the charterer of the vessel.

(2) Where, in respect of a particular shipping service, the Minister is satisfied that no Kiribati person is able to offer an efficient and adequate service in respect of a registered vessel he may, in respect of a vessel which is not a registered vessel, grant a near-coastal trade licence to a Kiribati person, either by himself or with other persons each of whom is a Kiribati person who is the chatterer of the vessel, to operate that service.

#### **Duration of near-coastal trade licences**

174.(1) Subject to subsection (3), the Minister shall determine the period for which a near-coastal trade licence is granted in respect of a vessel.

(2) In making a determination under subsection (1) the Minister shall have regard to:

- (a) the age, size and condition of the vessel;
- (b) the adequacy of existing licensed services to provide the proposed service; and
- (c) the suitability of the vessel for the proposed trade or the service.

(3) A near-coastal trade licence must not be granted for a period exceeding 12 months.



### **Licence fees for vessels registered outside Kiribati**

175. Every vessel which is registered outside Kiribati and is engaged in coasting trade shall take out a licence in the form which may be prescribed and pay such fee as may be prescribed.

### **Licence for vessels employed in trading**

176. (1) Without prejudice to section 178, no vessel shall engage in a coasting trade unless there is in force at that time a licence in the form which may be prescribed granted in respect of that vessel by the Director under this section and such fee as may be prescribed for such licence has been paid.

Provided that the Minister may by notice exempt any vessel from the restriction imposed by this subsection.

(2) Subject to subsection (3) a licence granted under this section shall:

- (a) contain such terms and conditions as regards the use for the purpose of coasting trade of the vessel concerned as the Director may in each case direct;
- (b) remain in force for 1 voyage.

Provided that the Director may revoke a licence where he is satisfied that there has been a wilful breach of any term or condition thereof.

Penalty: A fine not exceeding \$60,000 or 10 years imprisonment

### **Powers of the Minister in relation to near-coastal trade licences**

177.(1) Where, in the opinion of the Minister, it is necessary or desirable in the public interest to do so, the Minister may:

- (a) cancel or suspend a near-coastal trade licence; or
- (b) vary any condition subject to which a near-coastal trade licence was granted.

(2) Where a near-coastal trade licence:

- (a) expires;
- (b) is cancelled or suspended;
- (c) is granted to a Kiribati person and that person ceases to be a Kiribati person; or
- (d) is granted in respect of a registered vessel and the vessel ceases to be a registered vessel

the Director may require the holder of the licence to deliver the licence to him.

(3) A person shall not, without reasonable cause, fail to deliver a near-coastal trade licence to the Director within 7 days of being required to do so under subsection (2).

Penalty: A fine not exceeding \$500

### **Exemption from requirement to hold near-coastal trade licence**

**178.** The Minister may, by notice in the Gazette, declare that section 176 shall not apply:

- (a) in relation to a specified shipping service; or
- (b) for a period specified in the notice in relation to:
  - (i) a specified vessel or vessels of a specified class of vessel; or
  - (ii) vessels trading or going between a specified port or place and another specified port or place, and that declaration shall have effect accordingly.

### **Near-coastal trade permits**

**179.(1)** Where in the opinion of the Minister:

- (a) no vessel in respect of which a near-coastal trade licence has been granted is available to provide a particular shipping service; or
- (b) a particular shipping service offered by a vessel in respect of which a near-coastal trade licence has been granted is inadequate, inefficient or unreasonably costly,
- (c) and where, also in the opinion of the Minister, it is desirable in the public interest to do so,

the Minister may, subject to any conditions he thinks fit to impose, issue a near-coastal trade permit to the owner or master of any vessel, to operate that service.

(2) The Minister should not issue a permit under subsection (1) except in respect of a single voyage by a specified vessel.

### **Effects of the issue of a near-coastal trade permit**

**180.** A vessel in respect of which a permit is issued under section 179(1) shall not, for the purposes of this Part, be deemed to be engaged in the near-coastal trade solely by reason of the fact that the vessel is engaged in the shipping service specified in the permit.

### **Failure to observe the conditions of a near-coastal trade licence or permit**

**181. (1)** The holder of a near-coastal trade licence or a near-coastal trade permit that was granted or issued subject to conditions shall not fail to comply with those conditions.

Penalty: A fine not exceeding \$2,000

(2) Where, in the case of a vessel in respect of which a near-coastal trade licence or a near-coastal trade permit has been granted or issued to a person, an offence is committed under subsection (1) or under section 182(3) the Minister may cancel the near-coastal trade licence or the near-coastal trade permit.

## **Requirement to furnish information**

**182.**(1) The Minister may require:

- (a) the holder of a near-coastal trade licence or a near-coastal trade permit; or
- (b) an applicant for the grant of a near-coastal trade licence or the issue of a near-coastal trade permit,

to furnish him with such information as is prescribed about the shipping service in respect of which the licence or permit is granted or issued or is sought to be granted or issued.

(2) Where the Minister has reasonable cause to believe that a person has in respect of a vessel failed to comply with a requirement of this Part, a public officer authorised by the Minister to do so may, for the purposes of this Part:

- (a) go on board the vessel;
- (b) make a check on cargo or passengers carried on board the vessel; and
- (c) examine any accounts, shipping documents, manifests and other documents relating to the vessel.

(3) A person shall not fail, without reasonable cause:

- (a) to comply with a requirement made under subsection (1); or
- (b) to permit an officer authorised by the Minister to do so to do any of the acts referred to in subsection (2).

Penalty: A fine not exceeding \$1,000

(4) A public officer shall not, otherwise than in the performance of his official duties-

- (a) make available any record; or
- (b) divulge or communicate to any person any information, acquired by him or furnished to the Minister under subsection (1) or (2).

Penalty: A fine not exceeding \$2,000 or imprisonment not exceeding 12 months, or both

## **Licence and permit fees**

**183.**(1) The holder of a near-coastal trade licence shall pay the prescribed fee on the grant of the licence.

(2) The holder of a near-coastal trade permit shall pay the prescribed fee on the issue of the permit.

## **Near-coastal trade Regulations**

**184.(1)** The Minister may make regulations providing for or in relation to:

- (a) applications for the grant of near-coastal trade licences;
- (b) application for the issue of near-coastal trade permits;
- (c) the submission and verification of information related to the operation of vessels in respect of which near-coastal trade licences or near-coastal trade permits have been granted or issued.

(2) The Minister may make regulations to promote and provide for the efficient and orderly conduct of shipping services in Kiribati.

(3) Regulations made for the purposes of subsection (2) may provide for the introduction of a scheme for the establishment and licensing of trade routes.

## **PART XV AIDS TO NAVIGATION**

### **Interpretation**

**185.** In this Part, unless the context otherwise requires:

"aid" means a marine aid to navigation;

"light" includes a fire, lamp, streetlight or other illuminating device;

"owner" in relation to an aid or light, includes a person in possession or control of that aid or light.

### **Establishment of aids**

**186.(1)** The Minister may establish, maintain, operate, alter or remove an aid.

(2) A person shall not, without the Minister's written approval, establish, operate, alter or remove an aid.

Penalty: A fine not exceeding \$2,000.

(3) A person desiring to establish, operate, alter or remove an aid, must make written application to the Minister for his approval to do so.

### **Control of private aids**

**187. (1)** The owner of an aid shall not maintain, add to, alter or remove or vary the character of, or the mode of operating, or the position of the aid without the Minister's written approval.

Penalty: A fine not exceeding \$1,000.

(2) The Minister may, if in his opinion it is desirable for the safety or convenience of marine navigation to do so, by notice in writing served on the owner of an aid or a light, require the owner of the aid or the light to:

- (a) remove it entirely or to remove it to some other position, within the time specified in the notice;
- (b) modify it or alter its character or mode of exhibition to the extent and in the manner specified in the notice, within the time specified in the notice;
- (c) cease using it; or
- (d) not to use it except at the times and in the manner specified in the notice.

(3) A person, served with a notice under subsection (2) shall not fail, without reasonable cause, to comply with the requirements specified in the notice.

Penalty: A fine not exceeding \$2,000

(4) Where:

- (a) an owner of an aid or light fails, without reasonable cause, to comply with a requirement specified in a notice served on him under subsection (2); or
- (b) for any reason a notice under subsection (2) cannot be served on the owner of an aid or light,

the Minister may:

- (c) take possession or control of the aid or light; and
- (d) do anything:
  - (i) which the owner of the aid or light, was required to do under any notice served on him under subsection (2); or
  - (ii) which, in the opinion of the Minister, must be done for the safety of marine navigation.

(5) Costs incurred by the Government in doing anything in relation to an aid or light under subsection (4) are a debt due to the Government from the owner of the aid or light and may be sued for in a court of competent jurisdiction.

### **Inspection of aids and lights**

188.(1) A person authorised by the Minister to do so may, at any time, inspect an aid or light which, in the Minister's opinion, may affect the safety or convenience of marine navigation.

(2) Where, for the purpose of inspecting or maintaining an aid or light, it is necessary for a person authorised under subsection (1) to do so he may enter property and transport goods through or over property.

(3) A person shall not obstruct or hinder a person authorised under subsection (1) in the exercise of his powers or in the performance of his duties under subsections (1) or (2).

Penalty: A fine not exceeding \$1,000.

### **Offences in relation to aids**

**189.**(1) A person shall not without lawful authority:

- (a) make fast to, damage, destroy or allow a vessel to foul an aid;
- (b) do anything which causes the view of an aid to be obstructed so as to lessen its efficiency;
- (c) remove or do anything which interferes with an aid so as to hinder the effective use of the aid; or
- (d) go on:
  - (i) an aid; or
  - (ii) land on which an aid is situated.

Penalty: A fine not exceeding \$1, 000

(2) The Master of a vessel which damages, destroys or interferes with an aid shall give the Director notice, as soon as practicable, of the damage, destruction or fouling.

Penalty: A fine not exceeding \$1,000

### **Detention of a vessel which damages an aid**

**190.** Where a vessel damages, destroys or fouls an aid, that vessel may be detained until the cost of repairing or replacing the aid or of rendering the aid effective has been paid.

### **Navigational aid contributions**

**191.**(1) The owner or the master of a vessel that enters or leaves a port or place in Kiribati shall pay any prescribed navigational aid contributions in respect of the vessel.

(2) The owner or the master of a vessel shall not, without reasonable cause, fail to pay any prescribed navigational aid contributions in respect of the vessel within the prescribed time.

Penalty: A fine not exceeding \$1,000

(3) Where navigational aid contributions are payable in respect of a vessel, the vessel may be detained until the contributions are paid.

## **Navigational aids Regulations**

**192.** The Minister may make regulations for or in relation to:

- (a) the rates of navigational aid contributions payable in respect of vessels and the manner in which contributions are paid;
- (b) the exemption of particular vessels or of vessels of a particular class of vessels from the requirements relating to the payment of navigational aid contributions;
- (c) the returns to be made and the information to be supplied to the Director by the owner of an aid.

## **PART XVI PILOTAGE**

### **Piloting Compulsory in Kiribati ports**

**193.** Piloting in ports and harbours operated by the Kiribati Ports Authority and other ports and harbours approved by the Minister is compulsory for the following vessels when entering such ports or harbours whether on commercial purposes or not:

- (a) Passenger vessels engaged on international voyages
- (b) Any vessel carrying a marine pollutant as defined under the International Convention for the Prevention of Pollution from Vessels 73/78 and all subsequent amendments and protocols
- (c) Any vessel carrying a bulk liquid cargo with a flash point of less than 60 (sixty) degrees Celsius
- (d) Any vessel carrying any Maritime Pollutant in bulk liquid form as cargo
- (e) Any vessel carrying dangerous packaged goods as defined by the International Maritime Dangerous Goods Code.
- (f) Any other foreign vessel of 20 metres or more in length.

### **Vessel to be piloted by licensed pilot**

**194.** A vessel in a piloting area shall not be piloted by a person other than a licensed pilot.

Penalty: A fine not exceeding \$10,000.

### **Procedure for vessels before entering port**

**195.** Before a vessel enters a port the master of the vessel shall:

- (a) present the vessel at the boarding ground for that port;
- (b) give the vessel in pilotage charge to a licensed pilot who may be appointed by the registered agent.

Penalty: A fine not exceeding \$2,000

### **Circumstances in which vessels required to be piloted**

**196.** Neither the owner nor the master of a vessel shall permit the vessel to ply in, move in (other than by warping) or leave a any port area unless a licensed pilot is in charge of the vessel.

Penalty: A fine not exceeding \$5,000

### **Pilot not required in certain circumstances**

**197.** Where:

- (a) a vessel is in grave and imminent danger; or
- (b) the life of a person on board a vessel is in danger,

and it is necessary in those circumstances that the vessel be immediately brought into, moved within or taken out of a port area, that action may be taken without a licensed pilot being onboard to guide the vessel.

### **Minister to Determine Number of Pilot licenses**

**198.** The Minister in consultation with the Marine Board, may, by notice in the Gazette, determine the maximum number of pilot licences that may be issued.

### **Pilot licence, training and validity**

**199.** (1) The Director, through the advice of the Marine Board, may issue a pilot licence for a prescribed fee to a person who satisfies the Board that he holds a minimum qualification of Certificate of Competency as a Master Mariner Class 1 (Deck) and is qualified to be in pilotage charge of a vessel in a port for which the license relates but such license shall only be issued after such person has undergone a training scheme which has been approved by the Minister on the advice of the Marine Board and has passed any examination subsequent to the training scheme.

(2) The training scheme and examination shall be developed and set by the Marine Board.

(3) Any license issued by the Marine Board shall be in a form prescribed by the Minister and shall be valid for a period of 5 years.

(4) The Marine Board shall specify in a pilot licence the area in respect of which it is issued.

(5) A pilot licence is not valid except in respect of the area in which it is issued.

Penalty: A fine not exceeding \$2,000



### **Medical fitness of a pilot**

**200.** (1) A pilot shall maintain and may be examined for medical fitness following guidelines set out in the International Convention for Standards, Training and Certification of Watchkeeping '78 as amended 2010.

(2) Any proof of medical fitness issued after such an examination shall be valid for two years.

### **Revalidation of Pilot Licence**

**201.** (1) Subject to section 199 (5) above, a pilot's licence will automatically be revalidated if the pilot concerned:

- (a) has a valid medical certificate under section 200.
- (b) has completed a minimum of 20 inward and 20 outward passages as pilot within the previous 12 months and a minimum of 60 inward and 60 outward passages as a pilot within the last five years.

(2) If a pilot has not completed sufficient inward and outward passages as described in subsection (1) then he must undergo such examination as provided for in sections 199(1) and 199(2).

### **Suspension of a pilot licence**

**202.** (1) Where the Marine Board is of the opinion that a licensed pilot:

- (a) is unfit to discharge his duties as a licensed pilot because of incompetence, incapacity, or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duties as a licensed pilot,

it may request the Minister to cause an inquiry to be held into the matter.

(2) Where the Minister agrees to a request made to him under subsection (1) the Marine Board may, if it thinks fit, suspend the pilot licence of the licensed pilot in relation to whom the inquiry is to be held pending the outcome of the inquiry.

### **Inquiry into incompetence, etc. of a licensed pilot**

**203.**(1) Where the Minister agrees to a request made to him under section 202(1), the Chief Justice shall, on the request of the Minister, appoint a person appearing to the Chief Justice to be suitably qualified:

- (a) by the holding of or by having held judicial office; or
- (b) by experience as a barrister and solicitor.

to hold the inquiry.

(2) A person appointed under subsection (1) shall conduct the inquiry with the assistance of one or more assessors of nautical and pilotage experience appointed conjointly by the Director and the person appointed under subsection (1).

(3) Subject to subsection (4), an inquiry under this section is to be conducted in the prescribed manner.

(4) A pilot in respect of whom an inquiry under this section is to be held must be given, by the person appointed under subsection (1) to hold the inquiry, at least 72 hours notice of the place, day and hour for the holding of the inquiry, and is entitled:

- (a) to attend the inquiry personally and also to be represented at the inquiry by a lawyer admitted to practise in the High Court;
- (b) to be sworn and give evidence before the inquiry;
- (c) to subpoena and call witnesses;
- (d) to examine, cross examine and re-examine in accordance with the customary rules of courts of law all witnesses giving evidence before the inquiry;
- (e) to take all proper exceptions to the admissibility of evidence; and
- (f) at the conclusion of the inquiry or other proper time, to address the inquiry.

(5) The person holding an inquiry under this section and assessors appointed under subsection (2) may, for the purpose of the inquiry-

- (a) go on board any vessel where it is relevant to the inquiry to do so;
- (b) enter upon any wharf or installation within a pilotage area where it is relevant to the inquiry to do so;
- (c) require any person to answer questions relating to the subject matter of the inquiry; and
- (d) require the production of any document or certificate relevant to the inquiry.

(6) A person shall not:

- (a) hinder or obstruct a person carrying out an inquiry under subsection (1) or an assessor appointed under subsection (2);
- (b) fail to answer fully and truthfully a question put to him by a person acting in accordance with subsection (5)(c); or
- (c) fail to produce a document or certificate he has in his possession or under his control when required to do so by a person acting in accordance with subsection (5)(d).

Penalty: A fine not exceeding \$2,000

(7) A person holding an inquiry under this section shall, on the conclusion of his inquiry, make a written report on the inquiry to:

- (a) the Minister; and
- (b) the Marine Board.

(8) Where, after receiving a report under subsection (7), the Marine Board is satisfied as to any of the matters referred to in section 202(1)(a) or (b), it may:

- (a) cancel the pilotage licence of the licensed pilot in respect of whom the inquiry was held; or
- (b) suspend that licence for such period as it considers appropriate, and shall inform the licensed pilot accordingly.

(9) Where, under subsection (8), a pilotage licence is:

- (a) cancelled; or
- (b) suspended for a period exceeding 6 months,

the holder of the licence may appeal to the Court against the decision within-

- (c) the period of 30 days starting on the date the Marine Board informs the licensed pilot of its decision in accordance with subsection (8); or
- (d) such extended period as the Court, on application made either before or after the period of 30 days referred to in paragraph (c), orders.

(10) On an appeal under subsection (9) the Court may:

- (a) confirm the decision of the Marine Board;
- (b) revoke the suspension or cancellation, as the case may be; or
- (c) vary the decision of the Marine Board in such manner as it considers appropriate.

(11) A decision of the Court under subsection (10) is deemed to be a decision of the Marine Board and has effect accordingly.

### **Production of pilot licence**

**204.** A licensed pilot who goes on board a vessel for the purpose of acting as pilot of the vessel shall produce his pilotage licence to the master of the vessel if requested to do so by that master.

Penalty: A fine not exceeding \$500

### **Unqualified persons not to act as licensed pilot**

**205.(1)** A person, not being a licensed pilot, shall not:

- (a) hold himself out to be a licensed pilot; or
- (b) be in pilot charge of a vessel in respect of which a licensed pilot is required to be on board.

Penalty: A fine not exceeding \$2,000

## Misconduct by a licensed pilot

206.(1) Subsection (2) applies where a licensed pilot or person:

- (a) does an act which causes, or is likely to cause:
  - (i) the loss or destruction of or serious damage to a vessel; or
  - (ii) the death of or serious injury to a person on board a vessel; or
- (b) fails to do anything required to be done by him to preserve:
  - (i) a vessel from loss, destruction or serious damage; or
  - (ii) any person on board a vessel from death or serious injury.

(2) A licensed pilot shall not perform an act referred to in subsection (1)(a) or fail to do anything referred to in subsection(1)(b):

- (a) in a manner which amounts to a wilful breach or neglect of duty; or
- (b) when he is under the influence of alcohol or drugs.

Penalty: A fine not exceeding \$5,000.

(3) A licensed pilot shall not, either within or outside the pilot area for which he is licensed:

- (a) be concerned in any corrupt practice relating to a vessel, its tackle, furniture, cargo, crew, or passengers, or to persons in distress at sea or by shipwreck, or to their moneys, goods, or chattels;
- (b) lend his licence;
- (c) act as pilot when he knows his pilotage licence is suspended;
- (d) act as a pilot when in a state of intoxication;
- (e) employ on board a vessel he is piloting a boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of that vessel, with intent to enhance the expenses of pilotage for his own gain or for the gain for any other person;
- (f) refuse, or wilfully delay, without reasonable cause, to pilot a vessel upon being required to do so by the master, the owner or agent of the vessel;
- (g) unnecessarily cut a cable belonging to a vessel;
- (h) refuse, otherwise than on reasonable ground of danger to the vessel, when requested by the master of the vessel, to conduct a vessel he is piloting into a port or place within the pilotage area in respect of which he is licensed; or
- (i) quit a vessel he is piloting before the service for which he was engaged has been performed and without the consent of the master of the vessel.

Penalty: A fine not exceeding \$2,000

### **Licensed pilot not civilly liable**

**207.** A licensed pilot is not personally liable in civil proceedings:

- (a) for damage done by him; or
- (b) for loss suffered by a person as a result of an act done by him or of a failure to do anything required to be done by him,

while acting as a licensed pilot.

### **Presence of licensed pilot not to diminish responsibility of Master**

**208.**(1) The duty of a licensed pilot is to pilot a vessel subject to the authority of the master of the vessel.

(2) The master of a vessel is not relieved of his responsibility for the conduct and navigation of the vessel by reason of the vessel being in pilotage charge of a licensed pilot.

### **Owner liable for damage**

**209.** The owner of a vessel is liable for loss or damage caused by the vessel, as a result of a fault in the navigation of the vessel, notwithstanding that a licensed pilot was in pilotage charge of the vessel at the time the loss or damage was caused.

### **Civil liability for loss or damage**

**210.** Neither the Government, nor the Marine Board is liable in civil proceedings for:

- (a) damage done by; or
- (b) a loss suffered as a result of:
- (c) an act done by; or
- (d) a failure to do anything required to be done by

a licensed pilot while acting as a licensed pilot.

### **Pilot dues and charges for pilot services**

**211.** Pilot dues and charges payable are a debt due to the person to whom they are payable and may be sued for in a court of competent jurisdiction by that person.

### **Licensed pilot not to be taken to sea**

**212.**(1) Except in circumstances of unavoidable necessity, neither the owner nor the master of a vessel shall take a licensed pilot acting in the course of his duties to sea in the vessel beyond the limits of the area for which he is a licensed pilot.

Penalty: A fine not exceeding \$2,000

(2) If a licensed pilot is taken to sea-

- (a) in circumstances unavoidable necessity;
- (b) without his consent,

the Marine Board shall assess the damages suffered by the licensed pilot as a result of that action and the amount so assessed shall be deemed to be a debt due to that pilot from both the owner and operator of the vessel and may be sued for in a court of competent jurisdiction by the pilot.

### **Piloting Regulations**

**213.** The Minister may make regulations prescribing all matters that are required or permitted by this Part to be prescribed, for the carrying out or giving effect to this Part, and in particular for prescribing-

- (a) the measures necessary to facilitate the boarding of vessels by pilots;
- (b) the manner of application for the issue of a pilotage licence or a pilotage exemption certificates;
- (c) the qualifications required by an applicant for the issue of a pilot licence or a pilotage exemption certificate;
- (d) the maintenance of the efficiency of licensed pilots;
- (e) health standards of licensed pilots and medical examination to be undergone by licensed pilots; and
- (f) the procedure for and conduct of inquiries held under section 203.

## **PART XVII SAFETY REQUIREMENTS FOR SMALL CRAFT**

### **Small craft Regulations**

**214.** The Minister may, in relation to:

- (a) commercial vessels less than 10 meters in length; and
- (b) hire and drive vessels,

make regulations providing for and in relation to the following:

- i. recording of information;
- ii. identification and marking;
- iii. licensing of persons to operate or use;
- iv. operation and navigation;
- v. construction and equipment; and
- vi. survey and inspection.

PART XVIII  
MARINE RIGHTS AND LIABILITIES

*Division 1-Owner's liability*

**Owners' liability in collisions for loss and damage to goods, etc.**

215.(1) Subject to this section, where, by the fault of 2 or more vessels, damage or loss is caused:

- (a) to one or more of them;
- (b) to their cargoes or freight; or
- (c) to property on board one of either of them,

the liability to make good the damage or loss is in proportion to the degree to which each vessel was at fault.

(2) Where in respect of an incident referred to in subsection (1), after having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability is to be apportioned equally.

(3) Subsection (1) does not render a vessel liable for loss or damage to which her fault has not contributed.

(4) Subsection (1) does not affect the liability of a person under a contract of carriage, or any other contract.

(5) Subsection (1) does not:

- (a) impose any liability on a person from which he is exempted by a contract or by a written law; or
- (b) affect the right of a person to limit his liability.

(6) Damage or loss referred to in subsection (1) and caused by the fault of a vessel includes any salvage or other expenses consequent on that fault recoverable at law by way of damages.

**Owner's liability in collisions for death and personal injury**

216.(1) Where a person on board a vessel:

- (a) is killed; or
- (b) suffers personal injury,

due to the fault of that vessel and another vessel or vessels, the liability of the owners of those vessels is joint and several.

(2) Subsection (1) does not:

- (a) deprive a person of a defence on which, independently of this subsection, he might have relied in an action brought against him by a person entitled to sue in respect of the deceased person or by the injured person; or
- (b) affect the right of a person to limit his liability in cases to which that subsection relates.

(3) Where, in the circumstances referred to in subsection (1), damages are awarded and a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which that vessel was at fault, the owner of that vessel may recover by way of contribution the amount of the excess from the owner of the other vessel to the extent to which that other vessel was at fault.

(4) An amount is not recoverable under subsection (3) if it could not, by reason of a statutory or contractual limitation of or exemption from liability, or for any other reason, have been recovered in the first instance as damages by the persons entitled to sue for those damages.

(5) In addition to any other remedy a person might have, a person entitled to recover contribution under subsection (3) has, for that purpose, the same rights and powers as the persons entitled to sue for damages in the first case.

### **Application of the Collisions Convention**

217. In the case of a collision a vessel shall not, for the purposes of sections 215 and 216, be deemed to be in fault solely by reason of the fact that the vessel has infringed a provision of the Collisions Convention.

## ***Division 2-Limitation of liability***

### **Interpretation (Limitation of Liability Convention)**

218.(1) In this Division, unless the contrary intention appears:

"applied provisions of the Convention" means the provision of the Convention that, by virtue of section 99(1), have the force of law as part of the law of Kiribati;

"Convention" means the Limitation of Liability Convention.

(2) In this Part, except in so far as the contrary intention appears, a word or expression used in this Part and defined in the Convention has the same meaning as in the Convention.

### **Limitation of owners' liability**

219.(1) Subject to this Act and to any other law, the provisions of the Limitation of Liability Convention (other than sub-paragraph 1(c) of Article 1 of the Convention) have the force of law as part of the law of Kiribati.



(2) For the purposes of this Part and the applied provisions of the Convention a vessel, not being a seagoing vessel that:

- (a) is engaged in trade or commerce within Kiribati or with any other country or, being a vessel in the course of construction, is intended for use in trade or commerce within Kiribati or with any other country; or
- (b) belongs to or is under the control of the Government (including a vessel belonging to the Kiribati Police Maritime Unit) or being a vessel in the course of construction that does not belong to the Government is being built by or on behalf of or to the order of the Government,

shall be treated as if it were a seagoing vessel.

(3) In subsection (2) a vessel in the course of construction includes a vessel that has been launched but not completed and delivered under the building contract.

### **Application to determine owners' liability**

**220.**(1) Where a claim is made against or apprehended by a person in respect of liability of that person which that person may limit in accordance with the applied provisions of the Convention he may apply to the Court to determine the limit of his liability in accordance with those provisions.

(2) Where an application is made under subsection (1) the Court may:

- (a) determine the limit of the applicant's liability; and
- (b) make such order or orders as it thinks fit in respect to the constitution, administration and distribution in accordance with the applied provisions of the Convention, of a limitation fund for the payment of claims in respect of which the applicant is so entitled to limit his liability.

### **Evidence of certain matters related to the Limitation of Liability Convention**

**221.**(1) The Minister may, by notice in the Gazette, declare:

- (a) that a country specified in the notice has:
  - (i) ratified or acceded to the Convention; or
  - (ii) ratified or acceded to the Convention subject to reservations specified in the notice, as the case may be, and that the Convention has or will come into force or has or will come into force subject to those reservations, as the case may be, in respect of that country on a date specified in the notice;
- (b) that a country specified in the notice has, at the time of deposit of its instrument of ratification or accession to the Convention or at any later time, declared that the Convention extends to a territory or territories specified in the notice and that extension of the Convention has, or will, come into force on a date specified in the notice;

- (c) that a country specified in the notice has denounced the Convention and that that denunciation has taken or will take effect on a date specified in the notice; or
- (d) that a country specified in the notice has declared that the Convention shall cease to extend to a territory or territories specified in the notice and that that denunciation has taken, or will take effect on a date specified in the notice.

(2) A notice under subsection (1) is, for all purposes, prima facie evidence of the matter declared in the notice.

### **Limitation of liability Regulations**

**222.** The Minister may make regulations to prescribed matters that are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to the applied provisions of the Convention and for or in connection with that purpose may make provision for and in relation to:

- (a) the ascertainment of the tonnage of vessels including the estimation of the tonnage of vessels in circumstances where it is not possible or reasonably practicable to measure their tonnage;
- (b) the conversion of amounts of money expressed in the terms of the units of account mentioned in Article 3 of the Convention into amounts of money expressed in the currency of Kiribati; and
- (c) such matters as under the Convention are to be governed by the national law of a country that is a party to the Convention.

### ***Division 3-Exclusion of liability***

#### **Owners not to be liable in certain cases of loss of, or damage to goods**

**223.(1)** The owner of a vessel, other than a foreign vessel, shall not be liable to make good, to any extent whatever, loss or damage happening without his actual fault or privity where:

- (a) goods, merchandise or other things taken in or put on board the vessel are lost or damaged by reason of fire on board the vessel; or
- (b) specified goods taken in or put on board the vessel are lost or damaged by reason of any robbery, embezzlement, making away with or secreting of those goods.

(2) In subsection (1):

"foreign vessel" means a vessel that is capable of being registered;

"specified goods" means gold, silver, diamonds, jewels or precious stones where the true nature and value of those goods have not, at the time of shipment, been declared by the owner or shipper of those goods in the bills of lading or otherwise in writing.

**PART XIX**  
**MARINE POLLUTION**

*Division 1 – Marine Pollution Fees and Prevention*

**Marine Pollution Fees**

**224.** (1) For the purpose of this Part, there shall be a marine pollution fee payable by every vessels entering Kiribati port.

(2) The rates shall be as prescribed in the regulation made by the Minister under this Act.

**Reporting of Marine Pollution Incidents**

**225.** All incidents during which a marine pollutant escapes into the marine environment or is suspected of escaping into the marine environment shall be reported to the Director as soon as practicable after the incident.

Penalty: A fine not exceeding \$50,000

**Ships capable of carrying 2,000 tonnes or more of Oil or Oil products as cargo**

**226.** All ships capable of carrying 2,000 tonnes or more of Oil or Oil products as cargo, shall comply with the following:

- (a) carry an International Certificate of Civil Liability,
- (b) have proof that their owners are members of the International Tanker Owners Pollution Federation (ITOPF), and
- (c) have coverage under the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) or the Tanker Owners Pollution Indemnification Agreement (TOPIA) schemes, depending on the size of the ship.

**Insurance requirements for all ships not covered by the Civil Liability Convention 2001**

**227.** (1). Any ship that carries Heavy Fuel Oil or Distillate Oils in tanks whether adjacent or not to the hull of the ship must have proof of insurance cover to the amount sufficient to provide for response, clean-up costs and damage liabilities incurred if a marine pollutant is released into the marine environment.

(2) If the oils mentioned in subsection (1) are solely for the use of the ship that contains them as bunkers then the provisions of the International Convention of Civil Liability for Bunker Oil Pollution Damage 2001 shall apply. This subsection does not apply to oils maintained on board for the supply of bunkers to other ships or fishing boats.

(3) Any ship that carries bulk liquid chemicals or other marine pollutants as defined in the International Convention for the Prevention of Pollution from Ship 73/78 annex II supplemented by the rules and regulations of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (CBC) which if released into the marine environment would cause damage to the flora and fauna of that environment shall carry proof of insurance cover to the amount sufficient to provide for response, clean-up costs and damage liabilities incurred if a marine pollutant is released into the marine environment.

(4) Any ship that carries in packaged form substances which are classified in the International Convention for the Prevention of Pollution from Ship 73/78 annex II supplemented by the rules and regulations of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk which if released into the marine environment would cause damage to the flora and fauna of that environment shall carry proof of insurance cover to the amount sufficient to provide for response, clean-up costs and damage liabilities incurred if a marine pollutant is released into the marine environment.

(5) Except as provided for any ship classed in subsections (1), (2) and (3) the contributions to any response, clean-up costs and compensations for any liabilities arising shall be governed by the rules of the International Convention on Civil Liability for Oil Pollution Damage or the International Fund for Compensation for Oil Pollution Damage 1971 and all subsequent protocols and amendments or the International Convention on Limitation of Liability on Marine Claims 1976 whichever is applicable.

(6) In the case of ships which comply with subsection (3) if the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (HNS) and any subsequent protocols and amendments are ratified by the Republic of Kiribati then the rules governing the HNS convention will take precedence over subsection (5)

### **Register for vessels carrying liquids in bulk**

228. The Director shall cause to be made available a register in which the record of vessels carrying liquids in bulk arriving in Kiribati shall be made.

### **Compliance with International Convention Requirements**

229.(1). All ships designed to carry liquids in bulk 150GT and over and all other ships 400GT and over entered in the register shall comply fully with MARPOL 73/78 and all subsequent amendments and protocols.

(2) All foreign ships of the same tonnages mentioned in subsection (1) entering or operating within Kiribati exclusive economic zone shall comply fully with MARPOL 73/78 as far as their flag states have ratified the Convention.

(3) Any foreign vessel that does not comply with the requirements in subsection (2) shall be denied entry into any port in Kiribati, except the right of innocent passage of a ship transiting Kiribati waters and not calling at any port.

## **Procedure to ensure compliance**

**230.** (1). The Director or any shipping inspector authorised by him or any suitably trained Police Officer may board any vessel referred to in this section and ascertain compliance by that vessel with the provisions of MARPOL 73/78 as it applies within Kiribati waters.

(2) Any vessel found not to be in compliance may:

- (a) if in a port within Kiribati, be detained by any of those monitoring officers described in subsection (1) until the vessel has complied with provisions of MARPOL 73/78,
- (b) if boarded at sea by any of those monitoring officers during the course of normal fisheries compliance monitoring operations, and found to be non-compliant, the vessel may either be directed to the nearest port for further inspection and assessment or instructed to leave Kiribati waters.

(3) An officer or officers who boards or board a vessel under subsection (1) shall identify himself or themselves to the Master of the vessel boarded and state the reason or purpose for boarding the vessel.

(4) A Master, Officer or crew member of the vessel boarded shall not obstruct a monitoring officer in the performance of his duties.

Penalty: A fine of not exceeding \$10,000 or 12 months imprisonment

## **Discharge of Marine Pollutants**

**231.** No ship shall discharge or cause to be discharged any marine pollutant whilst within Kiribati waters, except in exceptional circumstances for the safety of life.

## **Offences**

**232.**(1)A Master and crew of any vessel within Kiribati territorial waters or exclusive economic zone, and any Kiribati registered ship engaged on an international voyage whether within Kiribati territorial waters of exclusive economic zone or not, shall ensure that the vessel does not discharge a marine pollutant in excess of the concentration provided in the Convention or which causes a sheen upon the water, or within an area proscribed by the Convention.

Penalty: A fine not exceeding \$250,000 and /or a maximum of 3 years in prison.

(2) A Master and crew of any vessel shall not cause a vessel by their omission or negligence to discharge a marine pollutant during the course of collision or grounding within Kiribati waters.

Penalty: A fine not exceeding \$500,000 and / or a maximum of 5 years in prison.

(3) The Master of any ship shall not cause another ship to discharge a marine pollutant.

Penalty: A fine not exceeding \$500,000 and / or a maximum of 5 years imprisonment.

(4) When fixing a penalty for offences committed under this section of the Act the Court shall take into account any reparations made by the owners or charterers of the vessel or vessels involved to any organisation, person or persons who have a legitimate claim against them.

(5) Any organisation, person or persons making a civil damages claim against the owners or charterers of the vessel or vessels involved in an incident must prove their claim as required by law.

### **Strict Liability and Statutory Defences**

**233.** (1) An owner of a vessel involved in an incident which results in the release of a pollutant into the maritime environment in addition to any costs and fines imposed by the previous section shall be held strictly liable for any costs incurred by the Republic in responding to incident and in restoring the maritime environment to the condition it was in prior to the incident and any civil claims brought by any individual affected in any way whatsoever by the release.

(2) If two or more vessels are involved in an incident which results in the release of a pollutant into the maritime environment, the liability shall be apportioned in the same manner as to their blame for the incident.

(3) An owner may escape the provisions of subsection (1) if he can prove that the release was caused by any of the following:

- (a) An act of war, hostilities, civil war, insurrection, or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) Was due wholly to anything done, or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) Was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

### ***Division 2 – Marine Pollution response***

#### **Response, Command and Plan Levels and Organisation**

**234.** (1) The Minister shall appoint a National On-Scene Commander from amongst the shipping inspectors.

(2) The responses, commands and plans to any marine pollution shall be carried out in accordance to the prescribed level of procedures provided in Schedule 4.

## **Powers of the National On – Scene Commander**

**235.** (1) In the event of a marine pollution incident there shall be a National On-Scene Commander who shall be the final decision maker in the time of the incident.

(2) The National On-Scene Commander shall have the following powers:

- a) direct the marine pollution response and if necessary may direct any on-going salvage operations;
- b) declare exclusion zones whether on the surface or aerial at the site of any accident, incident and mishap as they think necessary.
- c) give to any salvor deadlines with regard to the production of reports and salvage plans
- d) give approval to any salvage plan ;
- e) right to enter any property or public space in order to enact clean-up operations or place pollution prevention equipment. This right of entry does not extend to the entry of dwellings or other buildings unless it necessary for on- going operation then only with the express permission of the owners or occupiers of the dwellings or buildings

(3) No person or organisation shall interfere or obstruct a National On - Scene Commander in the performance of his duties.

Penalty: A fine not exceeding \$20,000 and /or six months imprisonment.

(4) A person or organisation shall not continue to interfere with or obstruct the On-Scene Commander in the performance of his duties.

Penalty: A fine not exceeding \$1,500 for each day the offence is committed.

## **Reporting of Accidents, Incidents or Mishaps**

**236.** (1) The Master of any ship involved in an accident, incident or mishap that may result in marine pollution within Kiribati territorial waters shall report such an accident, incident or mishap to the Director as soon as is practicable by the most practical means

(2) The Master of any ship involved in an accident, incident or mishap within Kiribati exclusive economic zone which results in the escape of a pollutant into the marine environment shall report such an accident, incident or mishap to the Director Marine as soon as is practicable by the most practical means.

(3) The Master of a ship registered under this Act involved in an accident, incident or mishap whether within Kiribati territorial waters, exclusive economic zone or not shall report such an accident, incident or mishap to the Director as soon as is practicable by the most practical means.



Penalty: A fine not exceeding \$50,000 for each of any subsection in this section

(4) The Director shall develop or cause to be developed a database of accidents, incidents and mishaps involving ships registered under this Act.

## **PART XX SHIPPING INSPECTORS**

### **Appointment of Shipping Inspectors**

**237** The Director may appoint any person or marine officer of Marine Division to be a Shipping Inspector.

### **Functions and powers of a Shipping Inspector**

**238.**(1) Upon receiving a complaint or when he has reason to believe that any vessel, by reason of an accident or of by reason of the defective condition of her hull or other reasons the Director may, by writing signed by him, authorise a shipping inspector to report to him:

- (a) upon the condition of the vessel or the nature or cause of an accident or damage to a vessel;
- (b) as to whether or not this Act has been complied with; or
- (c) as to whether or not a vessel is fit to proceed to sea without serious danger to human life.

(2) Where a shipping inspector:

- (a) is required to report under subsection (1); or
- (b) has reasonable cause to believe that a vessel is being used in the commission of an offence against this Act,

he may do all or any of the following:

- (i) go on board a vessel, including a vessel under construction, and inspect the vessel or its equipment or any part of the vessel and its equipment, any cargo or articles on board the vessel and any document carried in or on the vessel pursuant to this Act;
- (ii) enter premises and make such examination and investigation and require the production of such books and documents as he considers necessary for the performance of his duty;
- (iii) require the owner or master of a vessel or a seafarer on a vessel to produce any document in his possession or under his control relating to the crew of the vessel:



- (iv) require the master of a vessel to produce a list of all persons on board the vessel;
- (v) require the master of a vessel to muster the crew of the vessel;
- (vi) require the master of a vessel to give an explanation of any matter concerning the vessel or her crew.

(3) A shipping inspector shall not exercise any of his powers under subsection (2) so that the vessel is unreasonably detained or delayed.

(4) The Director shall issue to each shipping inspector an identification card containing:

- (a) a photograph of the inspector and the signature of the inspector, verified by the signature of the Director; and
- (b) a note of any limitations in the instrument of appointment of the inspector.

(5) Before a shipping inspector enters premises, boards a vessel or makes a requirement of a person under subsection (2), he shall, if requested to do so, produce his written authorisation from the Director and the identification card issued to him under subsection (4).

(6) A person shall not:

- (a) obstruct or hinder a shipping inspector in the exercise of his powers under subsection (2);
- (b) fail to produce books or documents in his possession or under his control when required to do so by a shipping inspector; or
- (c) fail to comply with a request made by a shipping inspector under subsection(2)(iii), (iv), (v) and (vi).

Penalty: A fine not exceeding \$1,000

#### **Persons deemed to be marine checkers**

**239.** A person who is a Shipping Officer or a Surveyor shall, for the purposes of section 240, be deemed to be a marine checker.

#### **Clearance of vessels by marine checkers, etc.**

**240.(1)** This section applies to a vessel:

- (a) which is a registered vessel: or
- (b) in respect of which a licence is held to engage the vessel in the near-coastal trade and the vessel is so engaged: and
- (c) which is at a prescribed port or place in Kiribati.

(2) A vessel to which this section applies shall not go to sea unless a marine checker at the prescribed port or place has issued in respect of the vessel a Marine Clearance in the prescribed form.

(3) Neither the owner nor the master of a vessel to which this section applies shall allow the vessel to go to sea from a prescribed port or place without the clearance required by subsection (2).

Penalty: A fine not exceeding \$1,000

(4) Where a marine checker has reasonable cause to believe that a vessel is being used in the commission of an offence against this Act (whether or not the vessel is at a prescribed port or place) he shall have and may exercise the powers of a shipping inspector under section 238(2) and section 238(6), with appropriate modifications, shall apply accordingly.

### **Detention of a vessel**

**241.**(1) Where, under this Act, a vessel is liable to be detained, the Director may, without warrant and with such assistance as he considers necessary, take or cause to be taken such action as he thinks necessary to detain that vessel.

(2) For the purpose of detaining a vessel under subsection (1) the Director may require any person to do or refrain from doing any specified act.

(3) A person shall not fail to comply with a requirement made of him under subsection (2).

Penalty: A fine not exceeding \$5,000

(4) A seafarer who does or refrains from doing an act in pursuance of a requirement made of him under subsection (2) is not by virtue of his compliance with that requirement in breach of his agreement.

### **Special exemptions**

**242.**(1) Where this Act requires a vessel or person to take a specified action or to comply with a specified requirement and:

- (a) the action actually taken or the provision actually made as regards the subject matter of the requirement is at least as effective as actual compliance with the requirement;
- (b) compliance with the requirement would cause undue hardship; or
- (c) compliance with the requirement would not be in the public interest.

the Minister may, by notice in the Gazette, direct that the vessel or person shall not be required to take the specified action or to comply with the specified requirement.

(2) The Minister shall lay before Parliament, at least once in each year, a report stating the cases and circumstances in which he has exercised his power under subsection (1) during the preceding year.

## **PART XXI**

### **SUBMARINE CABLES WRECKS AND HULKS**

#### **Break or injury to submarine cable or pipeline**

**243.**(1) Subject to subsection (2), a person shall not wilfully, or through negligence:

- (a) break or injure, or cause a vessel to break or injure, a submarine telegraph or telephone cable in such manner as might interrupt or obstruct telegraphic or telephonic communications; or
- (b) break or injure, or cause a vessel to break or injure, a submarine pipeline or a submarine high-voltage power cable.

Penalty: A fine not exceeding \$1,000 or not exceeding 6 months imprisonment or both.

(2) It is not an offence under subsection (1) if:

- (a) the breakage of, or injury to, the cable or pipeline was caused by persons acting with the sole object of saving their lives or their vessels; and
- (b) those persons took all necessary precautions to avoid breaking or injuring the cable or pipeline.

#### **Vessels wrecked**

**244.**(1) In this section and section 245, unless the contrary intention appears:

"owner" in relation to a vessel wrecked, means a person to whom the vessel wrecked:

- (a) belongs;
- (b) belonged at the time at which it became a vessel wrecked; or
- (c) has belonged at any time after the time at which it became a vessel wrecked;

"vessel" includes part of a vessel and any item of tackle, equipment, cargo, stores or ballast of, or belonging to, a vessel;

"vessel wrecked" means a vessel that:

- (a) is wrecked, stranded, sunk or abandoned; or
- (b) is lying on the sea-bed within the territorial seas of Kiribati, and includes a wreck.

(2) Where, in respect of a vessel wrecked, the Minister is of the opinion that:

- (a) it is, or is likely to be or become, an obstruction or danger to navigation; or
- (b) it is in the public interest to do so,

he may do all or any of the following:

- (c) serve a notice on the owner of the vessel wrecked requiring him to raise, remove or destroy the vessel within the time specified in the notice, or to light or buoy the vessel until it is raised, removed or destroyed;
- (d) where the owner of a vessel wrecked fails to comply with the requirements of a notice served on him under subsection (2)(c);
  - (i) remove, destroy or deal with the vessel wrecked in such manner as he thinks fit; or
  - (ii) sell, in such manner as he thinks fit:
    - i. the vessel or any part of it so raised or removed; and
    - ii. and any other property recovered in the raising or removal;

and out of the proceeds of sale, pay, after deduction of any expenses incurred by him, the net proceeds of the sale to the persons entitled to them;

- (e) recover from the owner, as a debt due to the Government, any and all expenses incurred by him in the lighting, buoying, raising, removal or destruction of the vessel wrecked and not recovered from the proceeds of any sale under subsection (2)(d).

(3) Subject to subsection (4), where, after reasonable enquiry, the Minister is unable to ascertain the identity or place of abode of the owner of a vessel wrecked, notice for the purposes of subsections (2)(c) and (d) shall be deemed to have been served on the owner of the vessel wrecked if the Minister publishes the notice in the Gazette.

(4) Notice served must state:

- (a) any action the Minister intends to take under subsection (2)(d); and
- (b) the period (not being less than 14 days after the date of the publication of the notice) after which he intends to take that action.

(5) The powers given to the Minister under this section for the removal of vessels wrecked are in addition to and not in derogation of any other powers given in respect of vessels wrecked under this or any other law.

## **Wreck Removal Insurance**

**245.** (1) All ships of 300GT or over operating between ports within Kiribati and all foreign fishing vessels operating within Kiribati territorial waters and exclusive economic zone shall carry sufficient insurance cover, so that if such a vessel became a wreck or constructive total loss either within Kiribati territorial waters or exclusive economic zone, that such a wreck can be removed without recourse to funds provided by the Republic.

(2) Proof of such cover shall be carried on board the ship.

Penalty: A fine not exceeding \$5,000

## **Sinking of hulks**

**246.**(1) In this section "hulk" includes any vessel, lighter or wreck.

(2) A person shall not, without the permission of the Director, deliberately sink or cause to be sunk a hulk within Kiribati waters.

Penalty: A fine not exceeding \$5,000

(3) A person who wishes to sink a hulk within Kiribati waters must make a written application for permission to do so to the Director.

(4) The Director in granting permission to sink a hulk within Kiribati waters may direct or specify:

- (a) a place or places at which the hulk may not be sunk;
- (b) a place at which alone the hulk may be sunk;
- (c) the minimum depth of water in which the hulk may be sunk;
- (d) the method of sinking the hulk;
- (e) the time at which the hulk is to be sunk;
- (f) that the hulk be not sunk except in the presence of the Director or a person appointed by the Director to witness the sinking of the hulk.

(5) A person given permission to sink a hulk by the Director shall comply with or observe any directions or specifications imposed by the Director under subsection (4).

Penalty: A fine not exceeding \$5,000

## **Prohibition on approaching dangerous wrecks**

**247.**(1) Subject to subsection (2) of this Part, where the Director is satisfied that:

- (a) because of anything contained within a vessel wrecked, the vessel wrecked is in a condition which makes it a potential danger to life or to property; and
- (b) the vessel wrecked ought to be protected from unauthorised interference.

The Director may, by notice in the Gazette, declare an area around the vessel to be a prohibited area.

(2) A notice under subsection (1) must contain a description of:

- (a) the vessel wrecked;
- (b) the place where that vessel is; and
- (c) the extent of the area declared to be a prohibited area.

(3) Subject to subsection (4) a person shall not, without the written authority of the Director, enter an area declared to be a prohibited area in accordance with subsection (1).

Penalty: A fine not exceeding \$1,000

(4) It is not an offence under subsection (3) if the person entered the prohibited area:

- (a) in pursuance of some duty or function imposed on him by law; or
- (b) out of necessity due to stress of weather or navigational hazard.

## **PART XXII**

### **PORT STATE CONTROL**

#### **Port State Inspection on foreign ships**

**248.** (1) The Minister shall, by notice in writing published in the Gazette, appoint a reputable and suitably qualified person to be the Port State Control Officer to inspect and survey foreign vessels for the purpose of this Part.

(2) The Port State Control Officer shall be responsible and have the power to board and to carry out, in relation to foreign ships, obligations in respect of port state control contained in the relevant international conventions set forth in Schedule 1.

#### **Duties and Functions of the Port State Control Officer**

**249.** (1) The Port State Control Officer shall carry out a port state control inspections on all ships.

(2) During the inspection the Port State Control Officer shall inspect the followings:

- (a) certificates and documents;
- (b) the crew and the overall condition of the ships; and
- (c) the hygienic conditions of the ship.

(3) In the absence of a certificate or documents, or there is clear grounds for believing that the crew or the condition of the ship does not substantially meet the requirement, a more detailed inspection shall be carried out in accordance with the IMO recommendations.

(4) In the case of deficiencies in which to the Port State Control Officer are clearly hazardous to safety, health or environment, a detention or a formal prohibition of the ship to continue operation may be ordered.

(5) In the case of a detention, the Port State Control Officer shall, as soon as possible, notify in writing the flag state or its consul or its nearest diplomatic representative of all the circumstances in which intervention was deemed necessary.

(6) Where deficiencies which caused the detention cannot be remedied in the port of inspection, the Port State Control Officer may allow the ship to proceed to the nearest appropriate repair port available as chosen by the master and agreed to by the Port State Control Officer, provided that the conditions determined by the Port State Control Officer and agreed to by the competent authority of the flag state are complied with.

(7) If the ship proceeds to sea without complying with the conditions, the Port State Control Officer or the Director shall immediately alert the next port, if known, the flag state and all other Maritime Authorities it considers appropriate.

(8) The Authority may, upon the request of another Authority, endeavour to secure evidence and provide assistance relating to the suspected violations of the requirement under the International Conventions and Protocols.

#### **Non-Convention vessels**

**250.** The Minister may make regulations in respect of vessels that are excluded from the provisions of the Convention.

### **PART XXIII LEGAL PROCEEDINGS**

#### **Government vessels not subject to certain proceedings**

**251.** (1) This Act does not:

- (a) authorise proceedings in rem in respect of a claim against the Republic for the arrest, detention or sale of a Government vessel; or
- (b) give a person a right to take a lien on a Government vessel or on cargo or other property belonging to the Republic.

(2) Where proceedings in rem have been instituted in a court against a Government vessel or cargo or other property belonging to the Republic, the court may, if satisfied that the proceedings were instituted in the reasonable belief that the vessel was not a Government vessel or the cargo or other property did not belong to the Republic, order, upon such terms as it thinks fit, that the proceedings shall be treated as if they were in personam duly instituted against the Government or against such person as the court regards as the proper person to be sued in the circumstances.

#### **False declaration as to ownership, etc.**

**252.**(1) A person shall not, in a declaration made under or for the purposes of this Act, or in a document required to be produced for the purposes of this Act:

- (a) wilfully make or assist in making, or procure to be made a false statement concerning the title to, ownership of, or the interest existing in, a vessel; or
- (b) utter, produce or make use of a declaration or document containing a false statement, knowing the statement to be false.

Penalty: A fine not exceeding \$5,000 or not exceeding 2 years imprisonment or both

(2) A person shall not in a declaration made under or for the purposes of this Act, wilfully make a false statement in relation either to his being a qualified person or a Kiribati person or to another person being a qualified person or a Kiribati person.

Penalty: A fine not exceeding \$5,000 or not exceeding 2 years imprisonment or both

#### **False declarations and statements**

**253.** A person shall not knowingly:

- (a) make a false declaration, statement or representation;
- (b) give false evidence on oath; or
- (c) alter, produce or make use of a false declaration, statement or representation,

in connection with an application, report, record or proceeding under this Act.

Penalty: A fine not exceeding \$2,000 or not exceeding 12 months imprisonment or both

#### **Mode of making declaration**

**254.**(1) A declaration required by this Act may be made before the Director, a delegate of the Director, the Registrar, a delegate of the Registrar, a Justice of the Peace, a Single Magistrate or a lawyer of the High Court of Kiribati.



(2) For foreign vessels a declaration shall be made before persons authorized to witness declarations or affidavits in the country where the authorized agent or a Kiribati diplomat has an office

(3) A declaration required by this Act may be made on behalf of a corporation by any person so authorised under the common seal of that corporation.

### **Service of notices and documents**

**255.** Where a notice or other document authorised or required by this Act is to be served upon or given or delivered to the master of a vessel, it can be served upon, given or delivered to him:

- (a) by leaving it for him on board the vessel with a person being or appearing to be in command or charge of the vessel; and
- (b) by explaining to that person the purport of the notice or document.

### **Proof of documents**

**256.(1)** All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 257.

(2) This section applies to the following documents:

- (a) certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by a person required or authorised by this Act to issue, grant, give or make such a certificate or document;
- (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by a person required or authorised by this Act to make such an endorsement;
- (c) a certificate given or made by the Director asserting the negative of any circumstance, fact or thing.

### **Admissibility of documents in evidence**

**257.(1)** Where a certificate or other document is by this Act declared to be admissible in evidence it is, on its production from proper custody, admissible in evidence in any court, and, subject to all just exceptions, is conclusive evidence of the matters stated in it.

(2) A copy of a certificate or other document referred to in subsection (1) or an extract from such a certificate or document is also admissible in evidence:

- (a) if proved to be an examined copy or extract; or
- (b) if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other document is entrusted.

(3) A person who is required or authorised by this Act to issue, grant, give or make a certificate or other document, shall furnish a certified copy of the certificate or document to any person applying at a reasonable time for a certified copy or certified extract.

### **Averment**

**258.** In proceedings for an offence against this Act an averment by the prosecutor contained in the information or complaint that at a specified time:

- (a) a specified person was a delegate of the Minister or the Registrar or the Director;
- (b) a specified person was a shipping officer, a surveyor, a shipping inspector or a marine checker;
- (c) a specified person was or was not the holder of a specified licence or certificate;
- (d) a specified safety, load line or survey certificate was or was not in force in respect of a specified vessel, is prima facie evidence of the matter averred.

### **Recovery of fines by distress**

**259.** Where:

- (a) a court adjudges a person convicted of an offence against this Act to pay a fine or any other money, and that person is the master of a vessel or the owner of a vessel; and
- (b) the fine or other money is not paid within the time and in the manner limited by the conviction or specified in the order of the court,

the court may, in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the vessel or the equipment of the vessel, as the case requires.

### **Limitation of actions**

**260.(1)** An action is not maintainable:

- (a) to enforce a claim or lien against a vessel or its owners in respect of any damage or loss to another vessel, its cargo or freight, or any property on board the vessel, or damage for loss of life or personal injuries suffered by any person on board the vessel, caused by the default of the former vessel, whether that vessel was wholly or partly in fault; or
- (b) in respect of any salvage services, unless proceedings in that matter are commenced within 2 years from the date when the damage or loss or injury was caused or the salvage services were rendered.

(2) An action is not maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings in that matter are commenced within one year from the date of payment.

(3) A court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any period mentioned in this section to such an extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel (not being a Government vessel) within Kiribati waters, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(4) For the purposes of this section, the expression "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

## **PART XXIV REPEAL AND TRANSITIONAL**

### **Repeals and transitional provisions**

**261.**(1) Subject to section 262(2), the following Acts are repealed:

- (a) the Merchant Shipping Act 1983;
- (b) the Harbour Ordinance Chapter 40;
- (c) the Shipping Act 1990;

together with all subsidiary legislation made under those Acts.

(2) A certificate, licence, instrument or document having a like or a similar effect to a:

- (a) registration certificate;
- (b) certificate of competency;
- (c) safety certificate;
- (d) survey certificate;
- (e) near-coastal trade licence;
- (f) a pilot licence.

in force immediately prior to the commencement day remains in force:

- i. for a period of 1 year from the appointed day; or
- ii. until the date of the expiration of that certificate, licence, instrument or document.

whichever is the earlier.

#### **Automatic registration of certain vessels, etc.**

**262.** (1) A vessel that:

- (a) was, immediately before the appointed day, registered at a port in Kiribati in accordance with the Merchant Shipping Act; and
- (b) is wholly owned by a qualified person or by persons each of whom is a qualified person,

shall immediately on receipt by the Director of an application by its owner or owners, as the case may be, be deemed to be a registered vessel, and the Director shall in that case issue a registration certificate in respect of the vessel and cause the name of the vessel to be entered in the Register.

(2) Notwithstanding section 261(1), the Merchant Shipping Act shall continue to apply to and in respect of a vessel referred to in subsection (1) until-

- (a) the vessel is registered under this Act; or
- (b) the expiration of a period of 1 year after the appointed day,

whichever first occurs.

#### **Transitional provision in respect of tonnage certificates**

**263.** Until regulations are made prescribing the manner in which the tonnage of a vessel is to be ascertained for the purpose of section 23, the tonnage of a vessel may, if the Director so approves in a particular case, be taken to be the tonnage of the vessel as ascertained in, and evidenced in writing in a form generally recognised in, another country, unless, in the opinion of the Director, the vessel has been altered since the tonnage of the vessel was so ascertained.

### **PART XXV MISCELLANEOUS**

#### **Regulations**

**264.** (1) The Minister may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed, for the carrying out or giving effect to this Act, and in particular for: miscellaneous

- (a) regulating or prohibiting the discharge of polluting matter from vessels including prescribing areas of Kiribati waters where such matters may or may not be discharged;

- (b) prescribing the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act;
- (c) prescribing forms to be used for or in connection with this Act;
- (d) prescribing the means by which, and the conditions subject to which, a vessel or a class of vessel may be exempted from compliance with the regulations or any provision of the regulations;
- (e) regulating the timing and scheduling of vessels, especially domestic vessels; and
- (f) specifying penalties not exceeding:

- i. where the offender is a natural person - a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both; or
- ii. where the offender is a body corporate; a fine not exceeding \$20,000, for a contravention of, or a failure to comply with the regulations.

(2) The Minister may make regulations for or in respect of any savings or transitional matter connected with the coming into force of this Act.

#### **Delegation by the Director**

**265.** (1) The Director may, by writing signed by him, delegate all or any of his powers and functions under this Act, except this power of delegation.

(2) A delegation under subsection (1) may be made subject to such conditions, exceptions or qualifications as are specified in the instrument of delegation.

(3) A delegation under subsection (1) is revocable, in writing, at will, and does not affect the exercise of a power or the performance of a function by the Director.

#### **Minister, etc. to have seal**

**266.** (1) For the purposes of this Act:

- (a) the Minister;
- (b) the Director;
- (c) the Registrar;
- (d) the Principal Surveyor, and
- (e) the Marine Board,

are each to have a seal. the design of which is to be approved by the Minister in writing.

(2) All courts or other persons acting judicially shall take judicial note of a seal referred to in subsection

**SCHEDULE 1**  
**(section 99, 248(2))**

**List of international conventions having force of law in Kiribati**

1. The Salvage Convention 1989.
2. The International Convention for the Prevention of Pollution from Ship 73/78 annexes 1 to 6 (Marpol 73/78) and all amendments and protocols subsequent to the convention.
3. The 1992 protocols to the International Convention Civil Liability for Oil Pollution Damage (CLC) and the International Fund for Compensation for Oil Pollution Damage 1971(The Fund) and all subsequent protocols and amendments.
4. The International Convention of Civil Liability for Bunker Oil Pollution Damage 2001.
5. The International Convention for the Safety of Life At Sea, 1974, (SOLAS) together with all Protocols, Codes and IMO Resolutions made mandatory under SOLAS;
6. The Maritime Labour Convention 2006 (MLC2006)
7. The International Convention on Tonnage Measurements of Ships (1969) as amended;
8. The International Convention on Load Lines, 1966 and Protocol of 1988, as amended in 2003 and as amended from time to time;
9. The Convention on the International regulations for Preventing Collisions at Sea (1972), as amended (COLREG);
10. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 2010 and any other amendments.

**SCHEDULE 2**  
(section 127(1), 144(1))

**Serving Capacity and STCW Regulation Endorsement**

**Deck**

<b>1</b>	<b>Regional Certificate</b>	<b>Function</b>	<b>STCW Regulation</b>	<b>Alternative name for certificate</b>
	Master Class 1	Master unlimited GT, unlimited area	Reg. II/2	Master Unlimited
	Master Class 2	Master <3000 GT, unlimited area Ch. Mate unlimited tonnage, unlimited area	Reg. II/2 Regs. II/2	Master <3000
	Master Class 3	Master <3000 GT, near coastal area Subject to endorsement: Master <500 GT, unlimited area	Reg. II/2.8 Regs. II/3.7	Master <3000 (NCV)
	OOW Deck	OOW Deck >500 GT, unlimited area Subject to endorsement: Ch. Mate <3000 GT unlimited area Ch. Mate <500 GT unlimited area Ch. Mate <3000 GT near coastal area	Reg. II/1  Reg. II/2.8 Reg. II/3 Reg. II/2.8	OOW Deck
	Master Class 4	Master <500 GT, near coastal area Subject to endorsement: OOW Deck <500 GT unlimited area OOW Deck <3000 GT near coastal area	Reg. II/3.7  Regs. II/3 Regs II/2.8	Master <500
	Master Class 5	Master <200 GT, near coastal area Chief Mate <500 GT, near coastal area	Reg. II/3.7	Master <200
	Master Class 6	Master <20 GT, near coastal area	-	Master <20
	Certificate of Proficiency  Able Seafarers Deck	Watchkeeper Rating as able seafarer deck	Reg. II/5	>500GT
	Certificate of Proficiency	Ratings forming part of a navigational watch	Reg. II/4	>500GT

SCHEDULE 3  
(Section 90(3), 91)

**International Certificate and Statutory Records**

**International Voyage**

- i. Certificate of registry
- ii. Official Log Book in format prescribed by the Administration
- iii. Safe Manning Certificate
- iv. International Tonnage Certificate
- v. International Load Line Certificate
- vi. International Passenger Ship Safety Certificate including all appendices and addendums if certified to carry more than 12 passengers
- vii. International Cargo Ship Safety Equipment Certificate including all appendices and addendums
- viii. Certificate of Compliance with the Bunker Convention 2000
- ix. International Safety Management System Certificate
- x. Document of Compliance
- xi. Certificate of entry into an International Protection and Indemnity Club including marine pollution according to the class of vessel, and wreck removal cover
- xii. Certificate of Insurance for Hull and Machinery
- xiii. Certificate of Civil Liability if tanker over 2,000 deadweight tonnes
- xiv. If vessel certified to carry oil in bulk then if vessel is 150GT or above otherwise all vessels 400GT or above an International Oil Pollution Prevention Certificate and any supplements attached thereto
- xv. Oil Record Book or Books in the format proscribed by the convention
- xvi. International Pollution Prevention Certificate for the Carriage of Noxious Liquids in Bulk if vessel so classed
- xvii. International Maritime Dangerous Goods (IMDG) Code if vessel classed to carry harmful substances in packaged form
- xviii. International Sewage Pollution Prevention Certificate
- xix. If 400GT or above or certified to carry more than 15 persons a Garbage Management Plan
- xx. If 400GT or above or certified to carry more than 15 persons a Garbage Record Book in the format prescribed in the convention
- xxi. If 400GT or above an International Air Pollution Prevention Certificate
- xxii. International Cargo Safety Construction Certificate
- xxiii. Certificate of Class issued by Recognised Organisations
- xxiv. International Cargo Ship Safety Radio Certificate
- xxv. International Ship Security Certificate
- xxvi. Certificate of Financial Security which complies with the provisions of the Maritime Labour Convention 2006 as amended by June 2014 amendments.



- Deck Rating			
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### Engineering

Engineer Class 1	Ch. Engineer >3000 kW unlimited area	Reg. III/2	Engineer Unlimited
Engineer Class 2	Ch. Engineer <3000 kW unlimited area 2 <sup>nd</sup> Engineer >3000kW unlimited area Ch. Engineer >3000 kW, near coastal area	Reg. III/3 Reg. III/2 Reg. III/2	Engineer <3000
OOW Engine	OOW Engine, unlimited propulsion power, unlimited area  Subject to endorsement:  2 <sup>nd</sup> Engineer <3000 kW unlimited area  2 <sup>nd</sup> Engineer >3000 kW near coastal area	Reg. III/1   Reg. III/3  Reg. III/2	OOW Engine
Engineer Class 3	Ch. Engineer <750 kW, near coastal area 2 <sup>nd</sup> Engineer <3000kW near coastal area Subject to endorsement: Ch. Engineer <750 kW, unlimited area Ch. Engineer <3000 kW, near coastal area	- -  Reg. III/3 Reg. III/3	Engineer <750
Engineer Class 4	Ch. Engineer <500 kW, near coastal area 2 <sup>nd</sup> Engineer <750 kW, near coastal area OOW Engine <3000 kW, near coastal area Subject to endorsement: Ch. Engineer <300 kW unlimited area 2 <sup>nd</sup> Engineer <750 kW unlimited area	- - Reg. III/1  -	Engineer <500
Engineer Class 5	Ch. Engineer < 300 kW, near coastal area 2 <sup>nd</sup> Engineer <500 kW, near coastal area	-	Engineer <300
Certificate of Proficiency  Able Seafarers Engine	Watchkeeper Rating as Able Seafarer Engine	Reg. III/5	>750kW
Certificate of Proficiency  Engine Rating	Ratings duly certified to be a part of an engine-room watch	Reg. III/4	>750kW

## Domestic Voyage

- i. Domestic Passenger Ship Certificate if carrying more than 12 passengers
- ii. If vessel certified to carry oil in bulk then if vessel is 150GT or above otherwise all vessels 400GT or above an International Oil Pollution Prevention Certificate and any supplements attached thereto
- iii. If over 400GT Oil Record Book or Books in the format proscribed by the convention
- iv. International Maritime Dangerous Goods (IMDG)Code if vessel classed to carry harmful substances in packaged form
- v. International Sewage Pollution Prevention Certificate if applicable
- vi. If 400GT or above or certified to carry more than 15 persons a Garbage Management Plan
- vii. If 400GT or above or certified to carry more than 15 persons a Garbage Record Book in the format prescribed in the convention
- viii. If 400GT or above an International Air Pollution Prevention Certificate
- ix. If less than 24 metres between perpendiculars and not constructed using traditional methods a Domestic Load Line Certificate
- x. If 24 metres or more in length between perpendiculars and not constructed using traditional methods an International Load Line Certificate
- xi. If 24 metres or more in length between perpendiculars and not constructed using traditional methods an International Tonnage Certificate
- xii. If carrying 12 or more passengers a Safe Crewing Document
- xiii. Domestic Safety Construction Certificate unless build using traditional methods
- xiv. If certified to carry 12 or more passengers and not of traditional build a Certificate of Class from a recognised organisation
- xv. Domestic Cargo Ship Safety Certificate
- xvi. Domestic Safety Radio Certificate

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**SCHEDULE 4**  
**(section 234(2))**

**Marine Pollution Response, Command and Plans**

**Response**

(1) There shall be three levels of response to any marine pollution incident

(i).Local Response: this is for a minor incident which can be handled by the installation or ship at the centre of the incident where no pollutants actually enter the marine environment or those that do can be handled by the equipment on site.

(ii).Regional Response: This is for an incident where a marine pollutant has escaped into the marine environment the quantity of which cannot be handled by the equipment on site or that there may be a need to use small quantities of dispersants to effect the clean - up operation

(iii). National Response: This response level is for any escape of marine pollutants into the marine environment which cannot be handled by the responses indicated in (i) and (ii) or has occurred in an area which is extremely sensitive and/or contains species which may be endangered by the marine pollutant released or dispersant which may be used to effect clean-up if any. The Director of Marine can at their discretion class any release of a marine pollutant into the environment as a National Response, and release which is outside of declared port or harbour limits or within the Exclusive Economic Zone will automatically become a National Response.

**Commands**

(2) There shall be three levels of command in any marine pollution response they being:

- i. Local On Scene Commander (LOSC): Shall be suitably qualified and trained so that they can take command in any situation where the response level described in (1)(i) is adequate too effect a clean – up operation, they shall be appointed by the owners or operators of the facility involved
- ii. Regional On Scene Commander (ROSC): Shall be suitably qualified and trained so that they can take command of any situation where the response level described in (1)(ii) is adequate to effect a clean – up operation. They shall be appointed by local authority, or in the absence of a local authority the next level of government
- iii. National On Scene Commander (NOSC): Shall be suitably qualified and trained so that they can take command in all other situations. They shall be appointed by the Minister or if so delegated the Director of Marine

- iv. As the response level increases it is expected that the commander at the lower level will assist the person relieving them.

## Plans

(3) For the purpose of this section the Local Response Level the following procedures shall be observed –

- i. The operators or controllers of any facility which is capable of transferring a Marine Pollutant capable of entering the marine environment from that facility shall develop or cause to be developed a Marine Pollution Response Plan which shall be approved by the Minister on the advice of the Director of Marine. The facility shall also appoint a suitably qualified and trained person to act a Local On-Scene Commander
- ii. Any facility which handles any bulk liquid marine pollutant shall have on site sufficient floating booms to encircle the largest ship capable of using their facility, a stock of absorbent material capable of absorbing any marine pollutant the facility is likely to handle, and any other equipment necessary to comply with the facilities Marine Pollution Response Plan or have in place contracts with third party organisations which enables rapid access to such equipment.
- iii. All other facilities shall carry a stock of equipment necessary to comply with the facilities Marine Pollution Response Plan or have in place contracts with third party organisations which enables rapid access to such equipment.

(4) For the purpose of the Regional Response Plan the following shall be observed –

- i. The Regional On-Scene Commander is responsible for the Marine Pollution Response at a regional level that person shall develop or cause to be developed a Marine Pollution Response Plan which shall be approved by the Minister on the advice of the Director of Marine.
- ii. The organisation responsible for the Marine Pollution Response shall either maintain such stocks of equipment necessary to comply with the Marine Pollution Response Plan or have in place contracts with third party organisations which enables rapid access to such equipment.

(5) For the purpose of the National Response Plan the following be observed -

- i. The National On-Scene Commander shall develop or cause to be developed a National Marine Pollution Response Plan which shall be approved by the Minister. The Director of Marine shall appoint a suitably qualified and trained person to be National On – Scene Commander
- ii. The National On-Scene Commander shall ensure that sufficient stocks of equipment is maintained necessary to comply with the National Marine Pollution Response Plan or that contracts are in place with third party governments and organisations to enable such equipment as necessary be deployed as rapidly as possible

# MARITIME ACT 2017

## Explanatory Memorandum

The maritime sector of the Republic of Kiribati is covered by numerous Acts and Ordinances, many of which are contradictory or are no longer relevant to the modern maritime world. This has made it difficult for operators of shipping services to find with ease the law that governs the shipping service they operate and of the safety requirements for the vessels they operate.

More importantly Kiribati has become a party to a number of International Maritime Conventions promulgated by the International Maritime Organisations. The commitment of Kiribati to these conventions would be made manifest if a new legislation were made to give recognition to these conventions as part of the laws of Kiribati and to make provisions that ought to be complied with by domestic and foreign shipping operators. This Act is meant to address those issues and with the ultimate view of ensuring that all shipping operators need not look into a number of Acts to ascertain their rights and obligations when operating a shipping service. The relevant provisions of the Merchant Shipping Act of 1983, the Shipping Act of 1990 and the Harbour Ordinance from the colonial days are now consolidated in one single Maritime Act.

Part I covers the name of the Act which is the Maritime Act 2017. It also sets out how the date when the Act will come into force.

Part II covers the interpretation of certain words and the application of the Act.

The Minister is empowered to do a number of things under the Act. Part III of the Act however sets out the general powers of the Minister in addition to what is set out in the Act itself. Bearing in mind the multiple powers and duties of the Minister under the Act, this Part makes it clear that the Minister may delegate his powers to the Director of Marine.

The Act also deals with registration of vessels in Kiribati. Part IV deals with the nationality of vessels and the use of the Kiribati flag for Kiribati registered vessels. It obliges such vessel to fly the Kiribati flag and prohibits other vessels, which are not registered in Kiribati to fly the Kiribati flag unless they do so as a matter of courtesy when in Kiribati ports.

Part V deals with the Registration of Vessels under the Act. There are many aspects of the registration of vessels and therefore this Part is divided into a number of divisions.

Division 1 introduces one important figure in our Maritime Law. It is the Director of Marine who will be referred to in the Act as the Director. Recognising that the Director occupies a central

position in the Act with a number of powers and obligations under the Act and further recognizing that the position he holds is a technical position the Act makes it clear that when exercising his powers or performing his duties under the Act he is answerable to the Minister only. This accountability does not extend to the performance of his duties as an administrative officer of the Marine Division of the Ministry.

Division 2 introduces two other important features in the registration of vessels. It is the Registrar of vessels and the Register of vessels. This Division makes it clear the Director would be the Registrar of Vessels. The register would hold all prescribed particulars of vessels registered under the Act. The register would be open to public inspection.

Division 3 deals with the actual registration of vessels. Section 18 deals with shares in a vessel and how those shares may be registered. Section 19 makes it clear that the port of registry is Betio and section 20 makes it mandatory for vessels, which are not foreign vessels and which are owned by qualified persons, to be registered. Section 21 provides for regulations to be made for the registration of government vessels which regulations may provide for circumstances in which government vessels may be exempt. The body that will consider the circumstances in which government vessels may be made exempt is the Marine Board.

Section 22 provides for restrictions in the registration of vessels. It also gives the power to the Minister to take steps to remove a vessel from the register if he has reasonable cause to believe or he does believe that should not continue to be registered.

Section 23 provides for the survey of a vessel. The survey in this regard is the survey for the tonnage and measurement of a vessel. All these things must be performed by a surveyor. This is an important requirement for without the certificate of a surveyor under this section, a vessel cannot be registered.

Section 24 provides for the marking of vessels before they can be registered. It also gives the Minister power to exempt certain vessels from having to comply with this section by publishing the names of such vessels in the gazette.

Section 25 deals with who can apply for the registration of a vessel and section 26 deals with the need for a declaration as to ownership before a vessel is registered. Section 27 deals with the actual registration of the vessel in the register by the Registrar.

The other sections in this division are as follows: -

Section 28: provisional registration of vessels acquired by qualified persons outside Kiribati; when it can be granted, how it can be granted and who can grant it.

Section 29: deals with loss of registry certificate and how a new one can be issued.

Section 30: deals with change in ownership and includes the duty to report change in ownership and powers of Registrar when he receives notice of change of ownership.



Section 31 deals with circumstances where a vessel is lost or a qualified person no longer owns such vessel.

Section 32 deals with the obligation by an owner to register alterations to a vessel.

Section 33: deals with the duty of the Registrar to retain documents used in registration of vessel.

Section 34: deals with when the obligation by the Registrar arises to issue a registry or registration certificate along with the duty to keep the certificate and when it can be used.

Section 35: deals with the power of the Registrar to grant new certificate of registration.

Section 36: deals with power of Minister to inquire into ownership of registered vessels.

Section 37: deals with the duty by ship owners to pay for annual registration fees.

Section 38: deals with the power of the Minister to make regulations and the kind of subjects which can be covered by such regulations.

Section 39 gives the Registrar power to dispense with evidence by persons required to provide such evidence if such evidence could be obtained from other sources.

Division 4 deals with the registration of foreign vessels. It provides for the appointment of authorised agents who would assist with the registration of foreign vessels. The aim of this division is to provide for one register for all vessels registered in Kiribati including foreign vessels and how foreign vessels with their seafarers can end up registered in the Register for Vessels or the Register for Seafarers kept in Betio registry.

Part VI deals with agents and the regulation of agents, especially for foreign vessels. It sets out the need for agents to take out a license and their duties for their principals and how they can be answerable for the default of their principals. It also sets out the need for a security to be provided and the power of the Minister to cancel the licence issued to agents.

Part VII with transfers or transmission of ownership in a vessel. Three main things, amongst other things, are highlighted for compliance. One is the importance of a Act of sale; another is the declaration of transfer and the third is the registration of the transfer. This Part also deals with transmission on the death of an owner or transmission following a sale ordered by the Court. It also deals with liabilities of owners to those having a beneficial interest in the vessel and also the proceedings to be adopted where a vessel is to be forfeited.

Part VIII deals with the way a vessel can be made a security. It covers such matters as the creation of a mortgage, the priority of mortgages, the rights and powers of a mortgagee, the transfer of a mortgage, the transmission of a mortgage by operation of the law, maritime liens and time limitation for maritime liens.

Part IX deals with safety. It is a very important element in maritime law and for this reason a large portion of the Act is devoted to it. In fact, one fifth of the Act is directly on the issue of safety whilst the whole Act itself concentrates on the issue of safety. This is the obligation of Kiribati under the Safety on the Law of the Sea Convention, Load Line Conventions and other Conventions to which Kiribati is a party to.

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Division 1 of Part IX deals with the type of vessels that are covered under the Act and to which the safety requirements apply. It also sets out the type of vessels that are not covered. It also provides vessels obligations under International Laws in terms of the vessels capacity and construction.

Division 2 deals with the mustering requirements. This is to ensure that all crew and the vessel itself is ready and able to deal with emergencies that may arise when the vessel is operated.

Division 3 deals with safety management systems for certain vessels and in respect of certain voyages which management systems must comply with the International Safety Management Code or the ISM Code. The System has to be audited at the appropriate intervals and certificate would be issued,

Division 4 deals with safety certificates required for vessels constructed to undertake or vessels undertaking international voyages. Again the need to comply with International Maritime Conventions, Code and other instruments by such vessels is reiterated. Certification and Statutory Records to be carried by vessels engaged in domestic voyage are provided for in Schedule 3 of this Act.

Division 5 deals with safe navigation. What is stressed here is the obligations or duties of a Master of a vessel to assist when there is a collision and to respond to distress signal.

Divisional 6 deals with the establishment of another body which will also assist the Minister as he ensures Convention safety requirements are met and satisfied. This is the Marine Board established under section 96 of the Act. Both the Director and the Board must act in accordance with the directions of the Minister although both the Director and the Marine Board are key advisors to the Minister on marine safety issues under the Act. Section 98 deals with the appointment of internationally recognized surveyors who would be required to survey vessels to ensure such vessels comply with international safety standards. The Division is also deals with the auditing of the internationally recognized surveyors.

Division 7 deals with International Maritime Conventions which are covered by this Act and which will have the force of law in Kiribati once this law comes into force. Such conventions are set out in Schedule 1 of the Act. Schedule 1 however may be amended by order of Minister. This Division also sets out specific requirements to be satisfied by certain types of vessels pursuant to such Conventions. It also deals with applications for a survey and the issue of survey certificates and includes the power of a surveyor to board a vessel or a vessel under construction in the performance of his duties.

Division 8 deals with safety equipment. This Division highlights the need for vessels not to go to sea without being fitted with the equipment that the vessel is required to carry. Further such equipment must be ready for use and that Master should have knowledge to operate such equipment.



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Division 9 deals with duties of a vessel to assist a person found at sea including a duty to assist in case of a collision.

Division 10 deals with the power of the Director in respect of hazardous goods and the duties of a Master or owner to comply with the directions given by the Director in the exercise of his powers under this Division.

Division 11 deals with the duty of a Master not to carry passengers in excess of the numbers permitted for the vessel that he is a Master of.

Division 12 deals specifically with the requirement to comply with load line requirements.

Division 13 deals specifically with unsafe vessels. It defines unsafe vessels. The division also deals with the need to comply with manning requirements as failure to do so may render the vessel unsafe.

Division 14 deals with the need to report incidents on vessels and where necessary the power to cause inquiries to be conducted in respect of such incidents.

Division 15 deals with the comfort and well-being of passengers in a vessel which is not a convention vessel but it is registered under this Act. It sets out the power of the Director and the duty of the Master to comply.

Division 16 deals with the power of the Minister to make regulations on all safety issues. It sets out the kind of matters that can be covered by the regulations including matters relating to the safety of vessels.

Part X deals with the Registrar of Seafarers and the Register for Seafarers. It provides for who the Registrar of Seafarers is and also provides for what is to be entered in the Register for Seafarers.

Part XI deals with seafarers in general. It comprises of 2 divisions.

Division 1 deals with the application of this Part of this Act. It sets out which vessels must comply with the requirement for seafarers set out in the Act. It also sets out how vessels can be exempted from the requirements of the Act.

Division 2 deals with the certification of seafarers. It sets out the power of the Director to issue certificates and to vary certificates. These certificates have to comply with the STCW provisions as provided for in Schedule 2 of this Act. It also sets out the requirement for all seafarers to hold the necessary certificates and the need for them to maintain their fitness. It also provides for the recognition of certificates issued by other flag states.

It further provides for procedures in the application for certificates and the power of the Director to receive reports on seafarers and to pass the question of a suspension or cancellation of seafarers certificates to the Marine Board. It also provides for the appeal procedure to be followed by a seafarer where a seafarer is aggrieved by the decision of the Marine Board. This divisions is concluded with the Minister's power to make regulations for seafarers including certification and employment agreements.

Part XII deals with the vessel's records. These are the records that must be maintained on a vessel and include a Log Book, a Crew's List and other prescribed log books.

Part XIII deals with what should be done in case of an accident on board a vessel. It also provides for the requirement of reporting and inquiring where necessary.

Part XIV deals with near coastal. It covers such matters as the need for the seaworthiness of vessels issued by the Principal Surveyor appointed by the Minister, and certificates that may be issued in that regards and how it operates in terms of limits on passengers. It also deals with the issuance of near coastal licences and the types of licences or permits that may be granted. It also provides for powers of the Minister to suspend or revoke such licences.

Part XV deals with aids to navigation. It provides for how such aids may be provided, how they should be maintained including penalties for damaging such aids. It also provides with need the Minister's power to make regulation for these aids.

Part XVI deals with piloting. It makes piloting compulsory in Kiribati ports and also sets out how piloting may be avoided in certain circumstances. It also covers areas from the examinations to be passed by pilot applicants and the role of the Marine Board in setting examinations and in issuing piloting licences. It also provides for the suspension of pilot licences including powers to carry out inquiries in relation to piloting negligence and appeals by affected pilots. It further provides for the limitation of liabilities in respect of the government and the Marine Board from damages arising out of piloting incidences. The Minister is also given a power to make regulation for the carrying out or giving effect to this Part.

Part XVII provides for regulations to be made by the Minister in relation to safety on small crafts.

Part XVIII deals with Marine Rights and Liabilities in general. It is divided into 3 divisions.

Division 1 deals with the owner's liability in specified instances especially in collision instances. It covers such areas as the apportionment of liability amongst the vessels involved in a collision as well as liabilities of an owner in respect of death or injuries resulting from a collision. It makes clear the application of the Collision Convention in respect of collisions involving vessels governed by this Act.

Division 2 deals with Limitation of Liability of an owner as applicable under the Convention. It also deals with the power of the Minister to make regulations governing the limitation of liability as provided for in the Convention.

Division 3 deals with circumstances where an owner's liability may be excluded.

Part XIX deals with marine pollution fee and prevention. It is divided into divisions.

Division 1 deals with marine pollution fees payable by vessels entering Kiribati ports. The rates shall be as prescribed by the regulation. It also aims to highlight the obligations of an owner or master to comply with the International Convention for the prevention of marine pollution and other related conventions, codes and other requirements.

Division 2 relates to responses to marine pollution. It provides for the appointment of a National On-Scene Commander who would be responsible for providing on the scene responses to marine pollution. The responses, commands and plans to any marine pollution shall be carried out in accordance to the prescribed level of procedures provided in Schedule 4 of the Act

Part XX provides for the appointment of shipping inspectors. Such inspectors would be the right hand persons for the Director when it comes to the inspection of vessels. This Part provides for powers which they have when they inspect vessels.

Related to this is the position of a marine checker. Like the shipping inspector a marine checker assists the Director in ensuring compliance with maritime law before such vessels are cleared to go to sea. It also provides the Minister to exempt vessels from having to comply with the provisions under this Part but when he does exercise such power he must put a report to Parliament each year setting out how he has exercised such power.

Part XXI deals with submarine cables, wrecks and hulks. It provides for powers of the Minister in relation to wrecks and hulks that may become an obstruction to navigation. It further provides for the removal of wrecks or the sinking of hulks.

Part XXII deals with the duties of Kiribati as a port state control. It provides for the powers of a port state control officer to board a vessel for survey to ensure compliance with international conventions. A failure to comply with international convention requirements may subject a vessel to detention.

Part XXIII deals with legal proceedings that may be related to this Act. It provides actions in rem in respect of government vessels and also sets out how declarations may be made. It also touches on how documents may be proved in legal proceedings and it creates offences relating to declarations made under this Act. It also provides for the sale of a vessel to recover an unpaid fine. It also provide for a limitation of action of 2 years in respect of claims to enforce a lien.

Part XXIV deals with repeal and transitional provisions. It provides for the repeal of the Merchant Shipping Act, 1983, the Shipping Act 1990 and the Harbours Ordinance. It also

provides for steps to be taken in the transitional period in respect of the registration of vessels and other related matters. It also gives the Director power to delegate his powers and functions under the Act.

Part XXV deals with miscellaneous matters including the Minister power to make regulations. It also allows the Director to delegate all or any of his powers and functions under this Act. This Part also provides for a seals for the Minister, Director, the Registrar, Principal Surveyor and the Marine Board and makes the Court take judicial notice of such seals in court proceedings.

**Hon. Willie Tokataake**  
Minister for MICTTD  
August, 2017

## **LEGAL REPORT**

I hereby certify that in my opinion none of the provisions of the above Act conflicts with the Constitution and that the Beretitenti may properly assent to the Act.

**Mrs Tetiro MaateSemilota**  
Attorney General  
August, 2017

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Maritime Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 17th August 2017 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 23 day of  
October 2017.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**