



SHIPPING (AMENDMENT) ACT 1999

No. 20 of 1999

AN ACT TO AMEND THE SHIPPING ACT

I assent,
TAUFA'AHAU TUPOU IV,
3rd November, 1999.

[13th October 1999]

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows: —

1.
 - (1) This Act may be cited as the Shipping (Amendment) Act 1999.
 - (2) The Shipping Act, (Cap. 136), as amended, is in this Act referred to as the Principal Act.
2. Section 3 of the Principal Act is repealed and replaced with the following:

“3. Application

- (1) This Act shall apply to all vessels registered and licensed under this Act or regulations on any voyage and in any waters and to every ship in Tongan Territorial waters or in a Tongan port or harbour, and to any ship on which Tongan seamen are employed, but does not apply to any vessel which is less than 8 metres in length or to a ship belonging to the Tongan Defence Services or the defence forces of any other

country, including but not limited to, warships, naval auxiliaries, patrol vessels and similar vessels.

- (2) Subject to any such reservation as Tonga may make, the following conventions are approved and have the force of law in Tonga, from and after the date, that Tonga deposits instruments of accession with the Secretary General of the International Maritime Organizations,
 - (a) The STCW Convention as amended from time to time;
 - (b) The Safety Convention, including the IMDG Code, and all amendments from time to time adopted under the tacit acceptance procedures unless specifically rejected by Tonga;
 - (c) The Load Line Convention 1966, including all amendments contained in the Supplement of 1981, and the Protocol of 1988, in respect of the International Conference on the Harmonized System of Survey and Certifications, and any amendments hereto from time to time adopted;
 - (d) The Collision Regulations, including all amendments from time to time adopted under tacit acceptance procedures unless specifically rejected by Tonga;
 - (e) The Tonnage Convention, and any amendments thereto from time to time adopted.
 - (3) In the event of an inconsistency between any convention referred to in sub-section (2) and this Act or regulations made thereunder, the convention prevails to the extent of the inconsistency.
 - (4) Notwithstanding sub-section (2) of this section, a convention referred to in paragraphs (a) to (e) inclusive, shall not become the law of Tonga until the Minister has given notice to that effect in the Gazette and the Minister may, give such notice at different times in respect of different conventions.”
3. Section 8 of the Principal Act is repealed and replaced with the following —

“8. Obligation to Register and License.

- (1) Every Tongan cargo ship, fishing vessel or pleasure craft of 15 metres or more in length and every Tongan passenger ship carrying passengers for gain or reward, shall be registered under this Act, as prescribed in the regulations.

- (2) Every Tongan cargo ship, fishing vessel or pleasure craft of between 8 and 15 metres in length shall be licensed under this Act, as prescribed in the regulations.”
4. Section 14 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable where it appears in paragraph (e); and
 - (ii) by deleting the amount “T\$100” from paragraph (e) thereof and substituting therefor \$1,000”.
5. Section 16 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable” where it appears in subsection (2); and
 - (ii) by deleting the amount “T\$200” from subsection (2) thereof and substituting therefor “\$2,000”.
6. Section 22 of the Principal Act is amended —
- (i) by deleting the words “guilty of an offence punishable with” and substituting therefor “liable on conviction to”.
 - (ii) by deleting the amount “T\$500” and substituting therefor “\$5,000.”
7. Section 23 of the Principal Act is amended —
- (i) by adding the words “and shall be” after the word “Act” and by adding the words “on conviction” after the word “liable” where those words appear in subsection (5); and
 - (ii) by deleting the amount “T\$200” from subsection (5) thereof and substituting therefor “\$2,000”.
8. Section 26 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable” where it appears in subsection (3), and
 - (ii) by deleting the amount “T\$200” from subsection (3) thereof and substituting therefor “\$2,000”.
9. Section 41 of the Principal Act is repealed and replaced with the following —

Maritime liens

- “41. Notwithstanding anything contained in this Act or the International Convention on Maritime Liens and Mortgages, 1993, a maritime lien is not enforceable against a ship owned by a bona fide purchaser for value without notice unless such lien had been registered prior to such purchase in the Register of Ships at the port in which the ship is registered but it is enforceable against any

previous owner and the vendor who has incurred the debt from which the maritime lien arises, irrespective of registration.”

10. Section 42 of the Principal Act is repealed and replaced with the following —

Procedure for registration of alterations

“42.

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

11. Section 46 of the Principal Act is amended by adding, a new subsection (3) to the section as follows —

“(3) The master or owner of a ship on which any colours are hoisted contrary, to this Act commits an offence and shall be liable on conviction to a fine not exceeding \$5,000 and the ship shall be liable to forfeiture.”

12. Section 57 of the Principal Act is amended —
- (i) by deleting the words “are each guilty of” from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
 - (ii) by deleting the amount “T\$2,000” from paragraph (b) of subsection (2) thereof and substituting therefor “\$5,000”.

13. Section 58 of the Principal Act is repealed and replaced with the following —

Application of STCW Convention and Maritime Code

“58. The STCW Convention shall have the force of law in Tonga and the Convention and the Maritime Code shall govern this Part and any regulations relating to this Part.”

14. Section 60 of the Principal Act is amended —
- (i) by deleting the words “are each guilty of” from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
 - (ii) by deleting the amount “T\$2,000” from paragraph (b) of subsection (2) thereof and substituting therefor “\$5,000”;
 - (iii) by deleting the number “6” from paragraph (c) of subsection (2) thereof and substituting therefor “2”.
15. Section 61 of the Principal Act is amended —
- (i) by deleting the words “is guilty of” where they appear in subsection (5) and substituting therefor “commits”;
 - (ii) by inserting the word “is” immediately before the word “liable” where it appears in subsection (5);
 - (iii) by deleting the amount “T\$250” from subsection (5) thereof and substituting therefor “\$2,500”.
16. Section 68 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable”;
 - (ii) by deleting the amount “T\$100” and substituting therefor “\$1,000 or to imprisonment for a term not exceeding 3 months, or both”.
17. Section 71 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable” where it appears in subsection (2);

- (ii) by deleting the amount “T\$500” from subsection (2) and substituting therefor “\$5,000 or to imprisonment for a term not exceeding 6 months, or both”.
18. Section 110 of the Principal Act is amended —
- (i) by deleting, the word “subject” and substituting therefor “liable on conviction”;
 - (ii) by deleting the amount “T\$500” and substituting therefor “\$5,000”;
 - (iii) by deleting the words “6 months” and substituting therefor “1 year”.
19. Section 111 of the Principal Act is amended —
- (i) by deleting the words “guilty of” from subsection (1) thereof and substituting therefor “charged with”;
 - (ii) by deleting the word “subject” from subsection (1) thereof and substituting therefor “liable on conviction”;
 - (iii) by deleting the amount “T\$200” from subsection (1) thereof and substituting therefor “\$2,000”.
20. Section 112 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable”;
 - (ii) by deleting the amount T\$1,000” and substituting therefor “\$10,000”.
21. Section 115 of the Principal Act is amended —
- (i) by deleting the words “punishable with” from subsection (7) thereof and substituting therefor “and the master shall be liable on conviction to”;
 - (ii) by deleting the amount “T\$20,000” from subsection (7) thereof and substituting therefor “\$100,000”.
22. Section 118 of the Principal Act is amended —
- (i) by deleting the words “are each guilty of from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
 - (ii) by deleting the amount “T\$2,000” from paragraph (b) of subsection (5) thereof and substituting therefor “\$5,000”.
23. Section 120 of the Principal Act is amended —
- (i) by deleting the words “is guilty of where they appear in subsection (2) and substituting therefor “commits”;
 - (ii) by deleting the amount “\$250” from subsection (2) thereof and substituting therefor “\$2,500”.

24. Section 122 of the Principal Act is amended —

- (i) by deleting the words “are each guilty of from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
- (ii) by deleting the words “of not less than T\$1,000 and” from paragraph (a) of subsection (2);
- (iii) by deleting the amount “T\$30,000” from paragraph (a) of subsection (2) thereof and substituting therefor “\$50,000”;
- (iv) by deleting the words “of not less than one month and” from paragraph (a) of subsection (2);
- (v) by deleting the number “3” from paragraph (a) of subsection (2) thereof and substituting therefor “5”;
- (vi) by deleting the words “of not less than T\$500, and” from paragraph (b) of subsection (2);
- (vii) by deleting the amount “T\$10,000” from paragraph (b) of subsection (2) thereof and substituting therefor “\$30,000”;
- (viii) by deleting the words “of not less than 15 days and” from paragraph (b) of subsection (2);
- (ix) by deleting the words “one year” from paragraph (b) of subsection (2) thereof and substituting therefor “3 years”.

25. Section 129 of the Principal Act is amended —

- (i) by deleting the words “are each guilty of from subsection (3) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (3).
- (ii) by deleting the words “of not less than T\$1,000 and” from paragraph (a) of subsection (3);
- (iii) by deleting the amount “T\$30,000” from paragraph (a) of subsection (3) thereof and substituting therefor “\$50,000”;
- (iv) by adding the words “to a term of” to paragraph (a) of subsection (3) thereof immediately before the word “imprisonment”;
- (v) by deleting the words “of not less than one month and” from paragraph (a) of subsection (3);
- (vi) by deleting the number “3” from paragraph (a) of subsection (3) thereof and substituting therefor “5”;
- (vii) by deleting the words “of not less than T\$500 and” from paragraph (b) of subsection (3);

- (viii) by deleting the amount “T\$10,000” from paragraph (b) of subsection (3) thereof and substituting therefor “\$30,000”;
 - (ix) by adding the words “to a term of” to paragraph (b) of subsection (3) thereof immediately, before the word “imprisonment”;
 - (x) by deleting the words “of not less than 15 days and” from paragraph (b) of subsection (3);
 - (xi) by deleting the words “one year” from paragraph (b) of subsection (3) thereof and substituting therefor “3 years”.
26. Section 130 of the Principal Act is repealed and replaced with the following —

Application of Part VII

“130.

- (1) The following Conventions and Regulations will govern this Part and any regulations relating to this Part:
 - (a) the Collision Regulations;
 - (b) the Load Line Convention.,
 - (c) the Safety Convention
 - (d) the Tonnage Convention.
 - (2) This Part will apply to all vessels which are registered and licensed under this Act. The Minister shall ensure by means of regulations that appropriate measures are adopted to preserve the safety of vessels, crew, passengers and cargo not subject to the conventions”.
27. Section 131 of the Principal Act is amended —
- (i) by deleting the words “are each guilty, of” from subsection (3) thereof and substituting therefor the word “commit” and by inserting the word, “are” immediately before the word “liable” where it appears in subsection (3);
 - (ii) by deleting the amount “T\$2,000” from paragraph (b) of subsection (3) thereof and substituting therefor “\$5,000”.
28. Section 136 of the Principal Act is amended —
- (i) by deleting the words “are each guilty of” from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
 - (ii) by deleting the amount “T\$2,000” from paragraph (a) of subsection (2) thereof and substituting therefor “5,000”;

- (iii) by deleting the words “6 months” from paragraph (a) of subsection (2) thereof and substituting therefor “5 years”;
 - (iv) by deleting the amount “T\$500” from paragraph (b) of subsection (2) thereof and substituting therefor “\$10,000”;
 - (v) by deleting the words one month” from paragraph (b) of subsection (2) thereof and substituting therefor “3 years”.
29. Section 138 of the Principal Act is amended —
- (i) by deleting the words “is guilty of where they appear in subsection (3) and substituting therefor “commits”;
 - (ii) by deleting the words “of not less than T\$1,000 and” from subsection (3) thereof;
 - (iii) by adding the words “to a term of” immediately before the word “imprisonment” in subsection (3) thereof;
 - (iv) by deleting the words “of not less than one month and” from subsection (3) thereof.
30. Section 139 of the Principal Act is amended —
- (i) by deleting the words “is guilty of” where they appear in subsection (3) and substituting therefor “commits”;
 - (ii) by deleting the amount “T\$2,000” from subsection (3) thereof and substituting therefor “\$5,000”.
31. Section 141 of the Principal Act is amended —
- (i) by deleting the words “are each guilty of” from subsection (2) thereof and substituting therefor the word “commit” and by inserting the word “are” immediately before the word “liable” where it appears in subsection (2);
 - (ii) by deleting the words “of not less than T\$1,000 and” from paragraph (a) of subsection (2) thereof;
 - (iii) by deleting the amount “T\$30,000” from paragraph (a) of subsection (2) thereof and substituting therefor “\$50,000”;
 - (iv) by adding the words “to a term of” immediately before the word “imprisonment” where it appears in paragraph (a) of subsection (2) thereof;
 - (v) by deleting the words “of not less than one month and” from paragraph (a) of subsection (2) thereof;
 - (vi) by deleting the number “3” from paragraph (a) of subsection (2) thereof and substituting therefor “5”;
 - (vii) by deleting the words “of not less than T\$500 and” from paragraph (b) of subsection (2) thereof;

- (viii) by deleting the amount “T\$10,000” from paragraph (b) of subsection (2) thereof and substituting therefor “\$30,000”;
 - (ix) by adding the words “to a term of immediately before the word “imprisonment” where it appears in paragraph (b) of subsection (2) thereof;
 - (x) by deleting the words “of not less than 15 days and” from paragraph (b) of subsection (2) thereof;
 - (xi) by deleting the words “one year” from paragraph (b) of subsection (2) thereof and substituting therefor “3 years”.
32. Section 144 of the Principal Act is amended —
- (i) by deleting the words “is guilty of” where they appear in subsection (2) and substituting therefor “commits”;
 - (ii) by deleting the words “of not less than T\$1,000 and” from subsection (2) thereof;
 - (iii) by deleting the amount “T\$30,000” from subsection (2) thereof and substituting therefor “\$250,000”;
 - (iv) by adding the words “to a term of” immediately before the word “imprisonment” where it appears in subsection (2) thereof;
 - (v) by deleting the words “of not less than one month and” from subsection (2) thereof.
 - (vi) by deleting the number “3” from subsection (2) thereof and substituting therefor “15”.
33. Section 146 of the Principal Act is amended —
- (i) by deleting the words “is guilty of” where they appear in subsection (2) and substituting therefor “commits”;
 - (ii) by deleting the words “of not less than T\$1,000 and” from subsection (2) thereof;
 - (iii) by deleting the amount “T\$30,000” from subsection (2) thereof and substituting therefor “\$250,000”;
 - (iv) by adding the words “to a term of” immediately before the word “imprisonment” where it appears in subsection (2) thereof;
 - (v) by deleting the words “of not less than one month and” from subsection (2) thereof;
 - (vi) by deleting the number “3” from subsection (2) thereof and substituting therefor “15”.
34. Section 162 of the Principal Act is amended —
- (i) by adding the words “on conviction” after the word “liable” where it occurs in subsection (2) thereof,

- (ii) by deleting the words “penalty of T\$100” from subsection (2) thereof and substituting therefor “fine not exceeding \$1,000”.
- 35. Section 163 of the Principal Act is amended —
 - (i) by adding the words “on conviction” after the word “liable” where it occurs in subsection (3) thereof;
 - (ii) by deleting the words “penalty, of T\$200” from subsection (3) thereof and substituting therefor “fine not exceeding \$2,000”.
- 36. Section 164 of the Principal Act is amended —
 - (i) by adding the words “on conviction” after the word “liable” where it occurs in subsection (4) thereof;
 - (ii) by deleting the words “penalty of T\$100” from subsection (4) thereof and substituting therefor “fine not exceeding \$1,000”.
- 37. Section 168 of the Principal Act is amended —
 - (i) by deleting the words “shall be guilty of” and substituting the word “commits”;
 - (ii) by inserting the word “is” immediately before the word “liable” and the words “on conviction” immediately after the word “liable”;
 - (iii) by deleting the words “penalty of T4200” and substituting therefor “fine not exceeding \$2,000”.
- 38. Section 169 of the Principal Act is amended —
 - (i) by deleting the words “shall be guilty of” from subsection (3) thereof and substituting therefor the word “commits”;
 - (ii) by inserting the word “is” immediately before the word “liable” and the words “on conviction” immediately after the word “liable” where it appears in subsection (3) thereof;
 - (iii) by deleting the words “penalty of T\$200” from subsection (3) thereof and substituting therefor “fine not exceeding \$2,000”.
- 39. Section 178 of the Principal Act is amended —
 - (i) by adding the words “on conviction” after the word “liable”;
 - (ii) by deleting the words “penalty of the value of the gross proceeds of the sale” and substituting therefor “fine not exceeding \$100,000”;
 - (iii) by deleting the number “5” and substituting therefor “10”;
 - (iv) by adding the following sentence, “In addition to any such fine or term of imprisonment the person shall pay the value of the gross proceeds of any sale to the proper owners or if there is no such proper owner to the general revenue of the Kingdom”.
- 40. Section 179 of the Principal Act is amended —

- (i) by deleting the words “shall be guilty of” from subsection (1) thereof and substituting therefor the word “commits”;
 - (ii) by inserting the word “is” immediately before the word “liable” and the words “on conviction” immediately after the word “liable” where it occurs in subsection (1);
 - (iii) by deleting the words “penalty of T\$100” from subsection (1) thereof and substituting therefor “fine not exceeding \$1,000”.
41. Section 180 of the Principal Act is amended —
- (i) by inserting the words “on conviction” after the word “liable”;
 - (ii) by deleting the words “penalty of T\$300” and substituting therefor “fine not exceeding \$3,000”.
42. Sections 196(2)(a) and 198 of the Principal Act are amended by inserting between the words “any” and “master” the following:
- “owner,”
43. Section 203 of the Principal Act is amended —
- (i) by inserting the words “on conviction” after the word “liable” where it appears in subsection (4) thereof,
 - (ii) by deleting the amount “T\$50” from subsection (4) thereof and substituting therefor “\$5,000”.
44. Section 205 of the Principal Act is amended —
- (i) by inserting the words “upon conviction” after the word “liable”;
 - (ii) by deleting the amount “T\$100” and substituting therefor “\$1,000”.

Passed in the Legislative Assembly this 13th day of October, 1999.