

No. 23 of 2011.

Small Craft Act 2011.

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AN ACT

Entitled

Small Craft Act 2011,

Being an Act to provide for the safety of persons using small craft in Papua New Guinea and to provide for -
(a) a system of national and provincial regulation of small craft; and
(b) the standards for construction, safety, equipping, operation and registration of small craft,
and related matters,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY

1. COMPLIANCE WITH CONSTITUTIONAL AND OTHER REQUIREMENTS.

(1) For Section 38 of the *Constitution*, this Act is a law made to give effect to the public interest in public safety, public order and public welfare to the extent that this Act regulates or restricts any of the following rights and freedoms:

- (a) the right to freedom conferred by Section 32 of the *Constitution*; and
- (b) the right to freedom of movement conferred by Section 42 of the *Constitution*; and
- (c) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (d) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (e) the right to privacy conferred by Section 49 of the *Constitution*; and
- (f) the protection from unjust deprivation of property conferred by section 53 of the *Constitution*.

(2) The purpose of this Act is a public purpose and for the purpose of Sections 41 and 42 of the *Organic Law on Provincial Governments and Local-Level Governments* (the *Organic Law*), this Act concerns and is declared to be a matter of national interest and dealing with a matter of national importance.

(3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-Level Governments* (the *Organic Law*), it is declared that this Act is an Act of Parliament on a matter specified in Sections 42 or 44 of the *Organic Law* and prevails over any Provincial or Local-level law made under Sections 42 or 44 to the extent of any inconsistency.

(4) This Act binds the State.

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2. INTERPRETATION.

In this Act unless the contrary intention appears -

- “captain” in relation to a small craft, means the person having lawful command or charge of the small craft, but does not include a pilot;
- “commercial fishing” is any fishing resulting in or intended or appearing to result in selling or trading any fish caught during fishing from a small craft registered under this Act, but excludes customary fishing as defined in Section 2 of the *Fisheries Management Act 1998*;
- “commercial small craft” means a small craft used or capable of being used at sea, which is used for hire, reward or any commercial purpose, including the carrying of passengers or cargo for reward and commercial fishing;
- “inspector” means a person appointed as a Provincial Small Craft Inspector under Section 3 of this Act, and for the purposes of this Act a Police Officer is to be regarded as an Inspector with the same functions and powers as an inspector appointed under Section 3, save for the functions and powers to issue a certificate of compliance under Section 16(3) and conduct an inspection and produce a report under Section 19(3) of this Act;
- “Maritime Province” includes the Western Province, Gulf Province, Central Province, Milne Bay Province, Northern Province, Morobe Province, Madang Province, East Sepik Province, West Sepik Province, Manus Province, New Ireland Province, East New Britain Province, West New Britain Province, Autonomous Region of Bougainville, and the National Capital District;
- “Minister” means the Minister responsible for this Act;
- “NMSA” means the National Maritime Safety Authority established by the *National Maritime Safety Authority Act 2003*, and for the purposes of this Act the General Manager of the NMSA may exercise any function, power, duty or other authority given to the NMSA by this Act;
- “owner” in relation to a small craft, includes any person having, either by law or by contract, the same rights as the owner of the small craft with respect to the possession and use of the small craft;
- “pleasure craft” means a craft or vessel that is exclusively used for pleasure and not for hire, reward or any commercial purpose;
- “sea” means all navigable waters, including inland waters or rivers;
- “small craft” means -
- (a) any craft or vessel less than 10 meters in length; or
 - (b) an air cushioned craft or vessel; or
 - (c) a pleasure craft more than 3 meters in length; or
 - (d) a dug-out canoe of any length powered by an engine and used as a commercial small craft,
- but does not include a ship registered under the *Merchant Shipping Act 1975* and dug-out canoe or other craft which in the opinion of the NMSA is of traditional build and is not used as a commercial small craft.

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PART II. - PROVINCIAL ADMINISTRATION.

3. ESTABLISHMENT OF PROVINCIAL SMALL CRAFT REGISTRATION BOARDS, REGISTRARS, INSPECTORS AND OTHER STAFF.

(1) In accordance with the provisions of this Act the Provincial Executive Council of each Maritime Province must -

- (a) establish a Provincial Small Craft Registration Board; and
- (b) appoint a Provincial Small Craft Registrar; and
- (c) appoint Provincial Small Craft Inspectors and other staff, to assist the Registration Board and Registrar as the Provincial Executive Council deems necessary.

(2) Each appointed Board, Registrar, Inspector and other staff must act in accordance with the provisions of this Act.

(3) Subject to Subsection (4), where a Provincial Executive Council fails within 45 days to comply with any of the requirements under Subsections (1), (5) or (6) the NMSA may make the necessary appointments in writing under this section or dismiss a person (as the case requires), and all acts and any appointments by the NMSA are to be regarded for all purposes and by each Provincial Executive Council as lawful and in accordance with this Act.

(4) Before the NMSA acts under Subsection (3) it must consult with the relevant Provincial Executive Council.

(5) The office of a Registration Board member, Registrar, Inspector or other staff becomes vacant if the person -

- (a) completes the term of their appointment; or
- (b) dies; or
- (c) becomes permanently incapable of performing their duties; or
- (d) resigns their office by written notice to the Provincial Executive Council; or
- (e) in the case of a Board member, is absent from 3 consecutive Board meetings without the written consent of the Chairperson; or
- (f) is dismissed under Subsection (6),

and must be filled in accordance with the provisions of this section.

(6) A Provincial Executive Council may dismiss a Board member, Registrar, Inspector or other staff for inability, inefficiency, incapacity or misbehavior.

4. PROVINCIAL SMALL CRAFT REGISTRATION BOARDS.

(1) Each Registration Board consists of -

- (a) a Chairperson; and
- (b) 4 other members, of whom -
 - (i) 2 are to be chosen because of their experience and expertise in the administration of a similar or related body; and

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- (ii) 2 of whom are to be chosen because of their experience and expertise in the construction or operation of small craft,

and such appointments must have regard to ensuring that as much as possible the appointment of equal numbers of women and men.

(2) The term of appointment for members of a Registration Board is 3 years, and, subject to this Act, a Board member may be reappointed.

(3) Subject to this Act, the terms and conditions of members of Registration Boards are to be determined by the relevant Provincial Executive Council.

(4) A Registration Board must meet at least 3 times in each calendar year and at such other times as the NMSA or the Chairperson or at least 2 members require.

(5) The Chairperson chairs each meeting of a Registration Board, and in the absence or unavailability of the Chairperson, a member of a Board elected by the members present chairs a Board meeting.

(6) A quorum for a Registration Board meeting is 3 members present in person.

(7) All questions are to be decided by a majority of the votes of the members present and voting.

(8) The member chairing the Board meeting has a deliberative vote and, in the event of an equality of votes, also a casting vote.

(9) Each Board must cause minutes of its meetings to be kept.

(10) Subject to this Act, the proceedings of Registration Boards are to be determined by each Board.

5. FUNCTIONS AND POWERS OF REGISTRATION BOARDS.

Acting in accordance with the provisions of this Act, within the relevant province, each Registration Board has the following functions :

- (a) to ensure that the provincial registration provisions of this Act are complied with; and
- (b) to direct and supervise the relevant Registrar, Inspectors and other staff in the execution of their functions and duties under this Act; and
- (c) to issue relevant provincial licenses, permits, certificates and other documents required to be issued under this Act; and
- (d) to review and recommend to the NMSA changes to the construction, safety and operational standards for small craft under Parts IV and V of this Act; and
- (e) to -
 - (i) monitor and review the safety of small craft operating in the relevant Province and their compliance with the provisions of this Act;

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- (ii) prepare and conduct small craft and water safety awareness and education programs; and
 - (iii) conduct safety audits of small craft operating in the relevant Province; and
 - (iv) compile statistical reports concerning such monitoring, reviews and safety audits; and
- (f) to prepare and provide, within 3 months of the completion of each calendar year, to the relevant Provincial Executive Council and the NMSA an annual report on the relevant administration and operation of the provincial registry and other provisions of this Act; and
- (g) to prepare and provide to the relevant Provincial Executive Council and the NMSA additional reports, as required, on the administration and operation of this Act; and
- (h) to execute any additional functions and duties required by NMSA in accordance with Section 10.

6. PROVINCIAL SMALL CRAFT REGISTRARS.

(1) Each Provincial Small Craft Registrar must be a person with sufficient experience or expertise in the administration of a similar or related registry to that required under this Act.

(2) Each Registrar's term of employment is 3 years, and subject to this Act, a Registrar may be reappointed.

(3) Subject to this Act, the terms and conditions of appointment for each Registrar are determined by the relevant Provincial Executive Council.

(4) Subject to this Act, each Registrar is accountable to and subject to the direction and control of the relevant Registration Board.

7. FUNCTIONS AND POWERS OF PROVINCIAL SMALL CRAFT REGISTRARS.

(1) Acting in accordance with the provisions of this Act, within the relevant Province, each Provincial Small Craft Registrar has the following functions:

- (a) to establish and maintain a provincial register of small craft; and
- (b) to register small craft; and
- (c) to issue certificates of registration, licenses, permits, certificates and other documents required to be issued under this Act; and
- (d) to direct and supervise relevant Provincial Small Craft Inspectors and other staff appointed under Section 3; and
- (e) to provide to the NMSA, relevant Provincial Registration Board and other persons entitled to receive them, such reports and other documents required to be produced by the Registrar; and
- (f) to carry out such other functions and duties as directed by the relevant Provincial Registration Board; and
- (g) to execute any additional functions and duties required by the NMSA in accordance with Section 10.

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(2) Each Registrar has the power to do all things that are necessary or convenient to be done for or in connection with the performance of the Registrar's functions.

8. FUNCTIONS AND POWERS OF PROVINCIAL SMALL CRAFT INSPECTORS.

(1) Acting in accordance with the provisions of this Act, within the relevant Province, each Provincial Small Craft Inspector has the following functions :

- (a) to board, inspect, assess and question (as the case may require) any small craft, the owner, captain or any person in apparent charge of, the crew and passengers of a small craft concerning their eligibility for registration and licensing and compliance with this Act, and the provision to a Registrar of certificates of compliance under Section 16 (3) of this Act and reports under Section 19(3) of this Act; and
- (b) to investigate and report to the NMSA, relevant Provincial Registration Board and Registrar all accidents in respect of small craft which occur within the relevant province; and
- (c) to seize and detain small craft which are found to be a danger to the life or safety of passengers, crew or other persons; and
- (d) to initiate legal proceedings or impose default penalties against an owner, captain or crew of a small craft found to be in breach of the provisions of this Act; and
- (e) to carry out such other functions and duties as directed by the relevant Provincial Registration Board and Registrar; and
- (f) to execute any additional functions and duties required by the NMSA in accordance with Section 10.

(2) Each Inspector has the power to -

- (a) search for, and take possession of, any matter or thing that may afford evidence as to the commission of an offence against this Act; and
- (b) require any -
 - (i) owner, captain or person apparently in charge of; and
 - (ii) crew of; and
 - (iii) passenger on or about to board,

a small craft to give information concerning the small craft, its condition and operation; and

- (c) search for, inspect, take extracts from and make copies of any document that relates to the requirements of this Act; and
- (d) do all things that are necessary or convenient to be done for or in connection with the performance of the Inspector's functions.

(3) When carrying out the function under Subsection (1)(c), an Inspector may -

- (a) bring or require the person in charge of or the crew of the small craft to bring the craft to the nearest port or other place to which it is safe and practical to bring the craft; and
- (b) require all persons aboard to leave the small craft; and
- (c) require any person not to board the small craft.

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(4) Subject to this Act, each Inspector is accountable to and subject to the direction and control of the relevant Provincial Registration Board.

(5) When carrying out a function or exercising a power under this Act, an Inspector must carry and produce the Inspector's identity card (issued by the relevant Provincial Registrar) for confirmation by any person concerned with the exercise of the function or power.

9. DELEGATION OF FUNCTIONS AND POWERS.

(1) Subject to this section -

- (a) a Provincial Registration Board may, in writing, delegate to a Registrar its functions and powers under Section 5(c) to issue relevant provincial licenses, permits, certificates and other documents required to be issued under this Act; and
- (b) a Registrar may, in writing, delegate to an Inspector or other staff appointed under this Act, a Registrar's functions and powers under Section 7(1)(b) and (c) to register small craft and issue certificates of registration, licenses, permits, certificates and other documents required to be issued under this Act.

(2) A function or power delegated under this section -

- (a) may be made subject to such conditions, qualifications and exceptions as are set out in the instrument; and
- (b) may be revoked or varied by a subsequent instrument; and
- (c) must not be delegated by the person to whom the function or power has been delegated.

(3) A delegated function or power may be exercised by a Registration Board or Registrar, as the case may require, although the function or power has been delegated.

(4) An act or thing done by a person under a function or power delegated under this section has the same force and effect as if it had been done by the Registration Board or Registrar, as the case may require.

10. DIRECTION BY NATIONAL MARITIME SAFETY AUTHORITY.

(1) Subject to Subsection (2), the NMSA may direct -

- (a) in the case of Provincial Registration Board and Registrar -
 - (i) to establish and maintain a Small Craft Registry and Register in such form and manner as the NMSA may determine; and
 - (ii) to make such entries and connections in a Register concerning the registration and licensing of small craft as the NMSA may determine to ensure that the Register correctly complies with the provisions of this Act and records matters required to be registered and recorded under this Act; and
 - (iii) for the sole purpose of ensuring that all documents are in compliance with the provisions of this Act, to issue, amend or cancel, as the case requires, any certificate of registration, license, permit, certificate or other document required to be issued under this Act; and

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- (iv) to provide the NMSA with a written or other report on any matter to do with the administration of this Act within the function, responsibility, duty or power of the Registration Board or Registrar, as the case may require; and
 - (v) to take such other action as the NMSA reasonably requires to ensure that the provisions of this Act are complied with; and
- (b) in the case of an Inspector, to exercise any function under Section 8(1)(a), (b), (c) or (d) of this Act.

(2) Before the NMSA acts under Subsections (1) it must consult with the relevant Provincial Registration Board.

PART III. - REGISTRATION AND LICENSING OF SMALL CRAFT.

Division 1 - Registration.

11. REQUIREMENT TO REGISTER.

(1) Whenever a small craft is operated or goes to sea, the small craft must be registered in accordance with the provisions of this Act in the maritime province where the craft is usually located or where the craft operates at the time of registration.

(2) Any owner or captain of a small craft who fails to comply with the provisions of Subsection (1) is each and severally guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 3 months, or both.

12. REGISTRATION AND MARKING OF SMALL CRAFT.

(1) Upon application for registration by the owner of a small craft, the Registrar of the relevant Maritime Province must register the craft provided the provisions of this Act are complied with.

(2) An application for registration must be -

(a) completed and signed by the owner; and

(b) accompanied by -

(i) proof of ownership of the craft to the satisfaction of the Registrar; and

(ii) evidence of compliance with the Construction and Safety Standards applicable to the craft under Part IV of this Act to the satisfaction of the Registrar.

(3) For the purposes of Subsection (2)(b)(ii), a certificate of compliance from an Inspector is to be taken as satisfying a Registrar as to compliance with the relevant construction and safety standards under Part IV of this Act.

(4) Where the provisions of Subsection (2) are complied with, the Registrar must -

(a) register the craft by allotting a registration number to the craft; and

(b) enter in the Register -

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- (i) the name, if any, and description of the craft (including but not limited to the date the craft was built); and
 - (ii) the name and address of the owner of the craft; and
 - (iii) the registration number of the craft; and
 - (iv) the district or place where the craft is usually moored or located; and
 - (v) the date of registration; and
 - (vi) such other details as the NMSA may require; and
- (c) issue to the owner a certificate of registration of the craft.

(5) Where a craft is registered under this Act, the owner must mark and maintain, or cause to be marked and maintained, the craft with the registration number of the craft and Load Line markings in accordance with the Marking and Load Line Requirements in the First Schedule of this Act.

(6) After consulting with each Provincial Small Craft Registration Board, Schedule 1 may be amended by the NMSA by notice published in the National Gazette.

(7) Registration under this section is for a period of 3 years and may be renewed upon further application by the owner.

(8) The owner and captain of a small craft must produce the certificate of registration for examination by an Inspector upon demand.

13. CHANGE OF OWNERSHIP OR REGISTRATION DETAILS.

(1) Within 14 days of any change of the ownership, name, description, appearance or other details of registration of a small craft registered under this Act, the registered owner of the small craft must notify the relevant Registrar in writing of the change and forward the certificate of registration to the Registrar.

(2) Where the Registrar receives a notification and certificate of registration under Subsection (1), the Registrar must -

- (a) if the Registrar is satisfied as to the accuracy and correctness of the notification, amend the register accordingly, cancel the existing certificate of registration and issue a new certificate of registration; or
- (b) if the Registrar is not satisfied as to the accuracy and correctness of the notification -
 - (i) advise the registered owner in writing that the registration of the craft and certificate of registration will be cancelled after 14 days of the date of the Registrar's advice if the owner is not able to provide the Registrar with evidence to the satisfaction of the Registrar that the notification of change is accurate and correct; and
 - (ii) if the Registrar receives such evidence from the registered owner, amend the register, cancel the existing certificate of registration and issue a new certificate of registration; or
 - (iii) if the Registrar does not receive such evidence from the registered owner, cancel the craft's registration and certificate of registration.

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Division 2 - Licensing of Commercial Small Craft.

14. REQUIREMENT TO LICENSE COMMERCIAL SMALL CRAFT.

(1) The owner of a commercial small craft must license the craft in accordance with the provisions of this Act in the Maritime Province where the craft is located or where the craft is proposed to operate at the time of licensing.

(2) Any owner of a commercial small craft who fails to comply with the requirements of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 1 year, or both.

15. TYPES OF LICENSES WHICH MAY BE ISSUED.

For the purpose of this Division, licenses may be applied for and issued for the operation of -

- (a) Commercial Passenger Small Craft; or
- (b) Commercial Fishing Small Craft; or
- (c) Commercial Cargo Small Craft; or
- (d) Commercial Mixed Use Small Craft (where such craft is proposed to be used for more than one commercial use).

16. LICENSE TO OPERATE A COMMERCIAL SMALL CRAFT.

(1) Upon application by the owner of a commercial small craft in accordance with the provisions of this Act, the relevant Registrar may issue a license for the craft only where the provisions of this Act are complied with.

(2) An application for a license to operate a commercial small craft must be accompanied by -

- (a) proof of ownership and registration of the craft to the satisfaction of the Registrar; and
- (b) evidence to the satisfaction of the Registrar that the owner and captain of the commercial small craft have the necessary qualifications and experience to operate the craft safely and in compliance with this Act; and
- (c) evidence and compliance with the relevant construction, safety and operational standards under Parts IV and V of this Act to the satisfaction of the Registrar.

(3) For the purpose of Subsection (2)(b), a certificate of compliance from an Inspector is to be taken as satisfying the Registrar as to evidence of compliance with the relevant construction, safety and operational standards under Parts IV and V of this Act.

(4) A license to operate commercial small craft may be issued subject to terms and conditions determined by the relevant Provincial Small Craft Registration Board.

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- (5) Where the provisions of Subsection (2) are complied with, a Registrar must -
- (a) license the craft to operate in the license type applicable to the craft; and
 - (b) enter in the register details of the license, the date of issue and any terms and conditions determined under Subsection (4); and
 - (c) issue to the owner a license to operate the commercial small craft in the license type applicable together with any terms and conditions determined under Subsection (4).
- (6) A license issued under this section is -
- (a) for a period not exceeding 12 months; and
 - (b) not transferable.
- (7) For the purpose of administrative convenience and efficiency -
- (a) an application for a license under this Division may be made in conjunction with an application for registration under Division 1; and
 - (b) a license may be issued as a single document with a certificate of registration.

17. DISPLAY OF LICENSE.

When a commercial small craft is licensed under this Act, the owner and captain of the craft must affix and display the license (or a certified true copy) in a prominent position on the craft.

18. OFFENCE TO OPERATE A COMMERCIAL SMALL CRAFT WITHOUT LICENSE OR IN BREACH OF ANY LICENSE CONDITIONS AND TERMS.

Where a commercial small craft is operated or goes to sea -

- (a) in contravention of any of the provisions of this Division; or
- (b) in breach of any of the terms and conditions of the craft's license to operate,

the owner and captain of the craft are each and severally guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding 2 years, or both.

19. REVIEW AND CANCELLATION OF LICENSE.

(1) Within 30 days of an event referred to in Subsection (2), the owner of a commercial small craft licensed under this Act and any Inspector who is aware of such event, must notify the relevant Registrar in writing of the event.

- (2) The events referred to in Subsection (1) are -
- (a) a change in the structure of the craft from that which is recorded in the register and license of the craft; and
 - (b) any noncompliance with the Construction, Safety and Operating Standards applying to the craft.

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(3) Where the Registrar receives a notification under Subsection (1) the Registrar must, in the case of a change in the structure of the craft under Subsection (2)(a), cause the craft to be inspected by an Inspector or other person nominated by the Registrar, who must inspect the craft forthwith and provide a written report to the Registrar on the safety of the craft to operate under the license and the terms and conditions of the license.

- (4) If the report referred to under Subsection (3) states that the craft is -
- (a) unsafe, the Registrar must cancel the license immediately and notify the owner of the cancellation; or
 - (b) safe, the Registrar must amend the register and license to record the structural change.

(5) Where the Registrar receives a notification of any noncompliance with the construction, safety or operating standards applying to the craft, the Registrar must cancel the license immediately and notify the owner, in writing, of the cancellation.

- (6) A relevant Registrar must cancel a license to operate a commercial small craft and notify the owner of the craft of the cancellation if -
- (a) any term or condition of the license has not been complied with; or
 - (b) the owner or captain of the licensed craft is convicted of an offence under this Act; or
 - (c) the Registrar receives a written report from an Inspector that the craft does not comply with the construction, safety or operating standards applying to the craft.

(7) Where a license is cancelled, the owner of the craft must return the license to the relevant Registrar within 7 days of the date of notification of cancellation.

20. VALIDITY AND RECOGNITION OF REGISTRATION AND LICENSE.

For the purposes of this Act registration and licensing of a small craft in one Maritime Province and a current certificate of registration and current license issued in one Maritime Province are to be regarded as -

- (a) valid throughout Papua New Guinea; and
- (b) meeting the registration and licensing requirements under this Act.

21. CO-OPERATION BY PROVINCIAL BOARDS, REGISTRARS AND INSPECTORS.

Each Provincial Board, Registrar and Inspector appointed under this Act must, on request of other Provincial Boards, Registrars and Inspectors, as the case may require -

- (a) provide information and certified documents from the Provincial register; and
- (b) undertake investigations and assessments of small craft within their province; and
- (c) provide written reports on the investigations and assessments made under Paragraph (b).

PART IV. - CONSTRUCTION AND SAFETY OF SMALL CRAFT.

22. CONSTRUCTION OF SMALL CRAFT.

(1) Small craft registered or licensed under this Act must be constructed in accordance with the applicable construction standards as specified in Schedule 2.

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(2) After consulting with each Provincial Small Craft Registration Board, Schedule 2 may be amended by the NMSA by notice published in the National Gazette.

23. SAFETY OF SMALL CRAFT.

(1) Small craft registered or licensed under this Act must comply with the applicable safety standards as specified in Schedule 3.

(2) After consulting with each Provincial Small Craft Registration Board, Schedule 3 may be amended by the NMSA by notice published in the National Gazette.

24. OFFENCE TO OPERATE A SMALL CRAFT IN BREACH OF APPLICABLE CONSTRUCTION OR SAFETY STANDARDS.

Where a small craft is operated or goes to sea without the craft complying with any applicable construction or safety standards as specified in Schedules 2 and 3, the owner and captain of the craft are each and severally guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

PART V. - OPERATION OF SMALL CRAFT.

25. OPERATION STANDARDS.

(1) A small craft registered or licensed under this Act must be operated in accordance with the applicable operation standards as specified in Schedule 4.

(2) After consulting with each Provincial Small Craft Registration Board, Schedule 4 may be amended by the NMSA by notice published in the National Gazette.

26. OFFENCE TO OPERATE A SMALL CRAFT IN BREACH OF APPLICABLE OPERATION STANDARDS.

Where a small craft is operated or goes to sea without the craft complying with any applicable operation standards as specified in Schedule 4, the owner and captain of the craft are each and severally guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

PART VI. - MISCELLANEOUS PROVISIONS.

27. OFFENCE TO OPERATE A SMALL CRAFT IN A RECKLESS, DANGEROUS OR CARELESS MANNER.

(1) A person who -

(a) operates a small craft in a reckless, dangerous or careless manner; or

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- (b) being the owner or captain of a small craft, allows a person to operate the craft in a reckless, dangerous or careless manner,

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

(2) Where a person is injured or dies as a result of the commission of an offence under Subsection (1), the penalty for the offence is a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 10 years, or both.

28. OFFENCE TO OPERATE A SMALL CRAFT UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES.

(1) A person who -

- (a) operates a small craft under the influence of alcohol or a drug not taken for medical purposes; or
(b) being the owner or captain of a small craft, allows a person to operate a small craft under the influence of alcohol or a drug not taken for medical purposes; or
(c) being the captain or person in charge of or a crew member of a small craft during a voyage, consumes or is under the influence of alcohol or a drug not taken for medical purposes,

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

(2) Where a person is injured or dies as a result of the commission of an offence under Subsection (1), the penalty for the offence is a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 10 years, or both.

29. OFFENCE TO PROVIDE FALSE OR MISLEADING INFORMATION.

A person who, in any application or document made under or for the purpose of this Act, or in any other document or evidence produced to or for a Registrar or Inspector -

- (a) wilfully assists in making, or procures to be made a false or misleading statement; or
(b) utters, produces or makes use of any declaration or document containing any false or misleading statement, knowing the same to be false or misleading,

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 12 months, or both.

30. OBSTRUCTION OF AN INSPECTOR.

(1) A person who, without lawful excuse (proof of which is on the person), hinders or obstructs, or aids or assists a person to hinder or obstruct, an Inspector in the performance, execution or carrying out of any function, power or duty conferred on the Inspector by this Act is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 12 months, or both.

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(2) A person who contravenes or fails to comply with a lawfully given direction by an Inspector is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 12 months, or both.

31. GENERAL AND CONTINUING OFFENCES.

(1) Any owner or captain of a small craft who fails to perform any duty or obligation imposed on them by this Act for which no penalty is provided elsewhere is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a period not exceeding 12 months, or both.

(2) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance of the offence, every owner and captain of a small craft who commits that offence is, in addition to any other penalty, liable to a fine not exceeding K1,000.00 for every day during which the offence continues.

32. PROTECTION FROM PERSONAL LIABILITY.

The NMSA, each Provincial Registration Board, Registrar, Inspector and staff (acting under direction from a Registrar) are not liable to any loss or damage caused by the good faith exercise of any function, power or duty under this Act.

33. FEES.

(1) The fees to be imposed in Schedule 5 are to be fixed and made payable in the manner detailed in that schedule for any -

- (a) application made or certificate of registration or license issued; and
- (b) amendment to the register, registration or license; and
- (c) inspection and issuing of a certificate of compliance; and
- (d) other duty or function where a fee is imposed by the schedule.

(2) Fees are to be paid to and used by each Provincial Registration Board to offset the cost of administration of this Act.

(3) Any fee must be paid at the time an application is made under this Act and prior to the issuing of any certificate of registration, license, certificate of compliance or other document.

(4) After consulting with each Provincial Small Craft Registration Board, the NMSA may amend Schedule 5 by notice published in the National Gazette.

(5) Where a fee is not paid in accordance with Subsection (3), any application is deemed to be incomplete.

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34. FORMS.

(1) After consulting with each Provincial Small Craft Registration Board, the NMSA may specify the forms to be used for and under this Act.

(2) All persons, including but not limited to Registrars, Inspectors and owners of small craft, must use the forms specified by the NMSA concerning any application, function or duty specified in the forms.

35. EVIDENCE.

(1) For the purposes of any prosecution or other legal proceedings under or concerning this Act, a certificate appearing to be signed by a relevant Registrar is admissible and sufficient evidence of the matters stated in the certificate concerning -

- (a) a Register of small craft and particular entries and matters contained in the register; or
- (b) a certificate of registration for a small craft; or
- (c) a license to operate a commercial small craft.

(2) For the purposes of this section, a certificate that purports to have been signed by a Registrar is presumed, unless the contrary is proved, to have been signed by that person.

36. EXEMPTION OF FOREIGN SMALL CRAFT TEMPORARILY IN PAPUA NEW GUINEA.

(1) The NMSA may, by notice published in the National Gazette, exempt foreign small craft (other than commercial small craft) from the provisions and requirements of this Act while such craft are temporarily in Papua New Guinea for a period not exceeding 90 days.

- (2) A notice under Subsection (1) may exempt foreign small craft by -
- (a) class or type of small craft; or
 - (b) area in which a small craft operates or goes to sea; or
 - (c) individual small craft.

37. PROSECUTION OF OFFENCES.

(1) A prosecution for an offence under this Act may be instituted in a District Court by appropriate proceedings in the name of a Provincial Small Craft Registrar or the General Manager of the NMSA.

(2) A prosecution in a District Court may be commenced, prosecuted and proceeded with in accordance with -

- (a) any rules of practice established by the Court for proceedings by the State in revenue matters; or
- (b) the usual practice established by the Court in civil cases; or
- (c) any directions of the Court or a Judge.

(3) In a prosecution, the Court may award costs against any party or claimant.

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(4) Any penalty imposed by a Court for an offence under this Act and any default penalty paid under Section 38 is to be paid to the respective Provincial Small Craft Registration Board and used by the Board to offset its costs in administering and enforcing this Act.

38. DEFAULT PENALTY.

(1) Subject to the NMSA determining that a default penalty is not suitable due to the seriousness of the offence and prohibiting the use of this section of the Act, where a Provincial Small Craft Registrar is satisfied that an offence has been committed under this Act, the Registrar may impose a default penalty not exceeding K500.00.

(2) Subject to Subsection (1), where a Provincial Small Craft Registrar is satisfied that a person has committed an offence under this Act, the Registrar may issue to the person a notice specifying the offence and requiring the person to pay to the respective Provincial Small Craft Registration Board a default penalty not exceeding K500.00.

(3) Upon receipt of a notice under Subsection (2) the person must -

- (a) If the person admits the commission of the offence, pay the default penalty to the respective Provincial Small Craft Registration Board within 14 days of the date the notice was issued to the person; or
- (b) If the person denies the commission of the offence, notify the Registrar in writing within 14 days of the date the notice was issued to the person that the offence is not admitted.

(4) Where an offence is admitted and a default penalty is paid in accordance with Subsection (3)(a), no further proceedings for the offence may be instituted against the person making the admission and paying the default penalty.

(5) Where an offence is denied and no default penalty is paid in accordance with Subsection (3)(b), the Registrar or the General Manager of the NMSA may prosecute the person in accordance with the provisions of Section 37.

SCHEDULES.

SCHEDULE 1.

MARKING AND LOAD LINE REQUIREMENTS.

1. Marking of registered number.

For all small craft registered under this Act -

- (a) the registration number of the craft must be legibly and permanently printed on both sides of the craft 120cm from the centre of the bow of the craft; and
- (b) letters and numbers must be not less than 15cm in height and 3cm in width of the stroke.

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2. Load Line Marking.

For all commercial small craft licensed under this Act, a Load Line must be legibly and permanently marked on the craft in a manner approved by the NMSA.

SCHEDULE 2.

CONSTRUCTION STANDARDS FOR SMALL CRAFT.

For all commercial small craft licensed under this Act, the craft must be constructed to the following standards:

- (a) wooden craft - To the construction standard approved by the NMSA.
- (b) steel and other metal craft - To the construction standard approved by the NMSA.
- (c) fiberglass craft - To the construction standard approved by the NMSA.

SCHEDULE 3.

SAFETY STANDARDS FOR SMALL CRAFT.

1. For all small craft registered under this Act, the craft must have the following safety equipment, in good working order, on the craft whenever it is operated or goes to sea:

- (a) lifejackets (approved by the NMSA) for all persons on the craft.
- (b) a pair of oars or paddles.
- (c) a waterproof torch with spare battery and bulb.
- (d) a stainless steel mirror.
- (e) an anchor, with length (not less than 20m) of rope attached.
- (f) a sea anchor, with length of rope attached to allow for proper deployment.
- (g) a bucket or bailer.
- (h) tools and spare parts for the craft's engine (if craft is fitted with an engine).
- (i) sail or tarpaulin (preferably bright orange in colour) as an alternative means of propulsion (if the craft is fitted with an engine).
- (j) whistle or horn.
- (k) emergency food and water, sufficient for all persons on the craft for 24 hours.

2. For craft travelling out of sight of land, they must have a reliable compass.

3. For craft travelling at night, they must have navigation lights approved by NMSA.

4. For commercial small craft licensed under the Act, in addition to the safety equipment for all craft specified in Section 1 above, the craft must have the following safety equipment, in good working order, on the craft whenever it is operated or goes to sea -

- (a) commercial passenger small craft – Safety equipment approved by the NMSA.
- (b) commercial fishing small craft – Safety equipment approved by the NMSA.
- (c) commercial cargo small craft – Safety equipment approved by the NMSA.
- (d) commercial mixed use small craft – Safety equipment approved by the NMSA.

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SCHEDULE 4.

OPERATING STANDARDS.

- 1 For all small craft registered under this Act the following Operating Standards apply whenever the craft is operated or goes to sea:
 - (a) observance of the *International Regulations for Preventing Collisions at Sea 1972*.
 - (b) voyage reporting requirements approved by the NMSA.

- 2 For all commercial small craft licensed under this Act the following Operating Standards apply whenever the craft is operated or goes to sea:
 - (a) commercial passenger small craft -
 - (i) passenger numbers: Maximum passenger numbers to be carried as approved by the NMSA.
 - (ii) manning: Crew numbers approved by the NMSA.
 - (iii) captain and crew to have qualifications and competency standards approved by the NMSA.
 - (iv) other Operating Standards approved by the NMSA.
 - (b) commercial fishing small craft -
 - (i) manning: Crew numbers approved by the NMSA.
 - (ii) captain and crew to have qualifications and competency standards approved by the NMSA.
 - (iii) other Operating Standards approved by the NMSA.
 - (c) commercial cargo small craft -
 - (i) manning: Crew numbers approved by the NMSA.
 - (ii) cargo: Maximum Loads approved by the NMSA.
 - (iii) captain and crew to have qualifications and competency standards approved by the NMSA.
 - (iv) dangerous and hazardous cargoes: Dangerous and hazardous cargoes to be handled and stored in a manner approved by the NMSA.
 - (d) commercial mixed use small craft -
Applicable passenger numbers, manning, maximum loads and handling of dangerous and hazardous goods standards approved by the NMSA.

SCHEDULE 5.

FEES.

1. The amount of fees is to be determined by the NMSA and paid to the relevant Provincial Registration Board.
2. The fees to be charged are -
 - (a) application for registration; and
 - (b) alteration or amendment of register; and
 - (c) issue of certificate of registration; and
 - (d) issue of amended or replacement certificate of registration; and

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- (e) Application for license to operate or amendment or alteration of license to operate -
 - (i) commercial passenger small craft; and
 - (ii) commercial fishing small craft; and
 - (iii) commercial cargo small craft; and
 - (iv) commercial mixed use small craft; and
- (f) issue of certificate of compliance; and
- (g) inspection and report on Commercial Small Craft under Section 19(3).

I certify that the above is a fair print of the *Small Craft Act 2011* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Small Craft Act 2011* was made by the National Parliament on 21 June 2011.

Speaker of the National Parliament.