

[Legal Notice No. 69]

**SHIPPING (MARINE INQUIRIES AND INVESTIGATIONS)
REGULATIONS 2011**

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**SHIPPING ACT 1998
(No. 5 of 1998)**

**SHIPPING (MARINE INQUIRIES AND INVESTIGATIONS)
REGULATIONS 2011**

IN exercise of the powers conferred upon me by sections 92(2)(u) and 220 of the Shipping Act 1998, I do hereby make these Regulations -

PART 1 - PRELIMINARY

1. These Regulations may be cited as the Shipping (Marine Inquiries and Investigations) Regulations 2011.

Citation

2. (1) In these Regulations, unless the context otherwise requires -

Interpretation

“Board of marine inquiry” means any Board of marine inquiry appointed under section 86 of the Act, and “Board” has the same meaning;

“Casualty Investigation Code” means the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident as adopted and amended from time to time by the IMO;

“Director” means the Director of Marine holding office in accordance with the Maritime Safety Administration Act 2009;

“IMO” means the International Maritime Organization;

“ISM Code” includes any safety management procedure applying under the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted and amended from time to time by the IMO;

“investigator” means a person appointed under these Regulations to conduct an investigation;

“marine inquiry” means an inquiry conducted by a Board of marine inquiry in accordance with these Regulations;

“preliminary investigation” means a preliminary investigation conducted under section 85 of the Act, and in accordance with Part 3 of these Regulations;

“safety” includes all aspects of maritime safety involving ships, crews, passengers, cargo, maritime infrastructure (including workers at and users of such infrastructure), and the protection of the marine environment;

“safety review” means the extension of a preliminary investigation to review safety related issues conducted from time to time by the Administration in accordance with Part 5 of these Regulations; and

“voyage data recorder” means any device installed on board a vessel which has the capacity to record data of any nature, or which has the purpose of recording data from various instruments on board the vessel, or making voice recordings, and “VDR” is the corresponding acronym.

(2) All words and phrases in these Regulations shall have the same meaning as is given to them under the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (as amended from time to time), unless a contrary intention appears.

PART 2 – GENERAL PRINCIPLES TO BE APPLIED IN MARINE INQUIRIES AND INVESTIGATIONS

General Principles
relating to
investigations and
safety reviews

3. (1) A preliminary investigation under section 85 of the Act, and a safety review conducted in accordance with Part 5, must be conducted so as to –

(a) be unbiased and free from any commercial considerations or influences;

- (b) be functionally independent from all persons involved in the incident or subject matter of the investigation, and from the Administration and any other government agency having responsibilities in relation to any matter under investigation;
- (c) ensure a free flow of information to the fullest extent possible; and
- (d) achieve a timely outcome consistent with the Act and these Regulations, based upon methodical investigation of all relevant factors and underlying conditions that may have contributed to the incident under investigation, and all failures that may exist in the whole chain of responsibility.

(2) Nothing in sub-regulation (1)(b) shall restrict the right of the Administration's officers from conducting an authorised preliminary investigation in accordance with these Regulations.

(3) A preliminary investigation and safety review must be conducted so as to achieve compliance with, and meet the objectives of, the Casualty Investigation Code, relevant IMO resolutions, the ISM Code and the recommendations or instruments published from time to time by the International Labour Organizations.

(4) A safety review must -

- (a) include consideration of systemic and regulatory issues, and not focus only on the proximate causes of the relevant incidents;
 - (b) give full consideration to the adequacy of relevant managerial and regulatory systems and process (both on board vessels and external to the operation of a vessel), and whether these were followed by all relevant persons;
 - (c) aim to prevent future accidents by ~~determining all causes and contributing~~ factors to the casualty or incident, and all other relevant circumstances; and
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- (d) contribute to safe shipping operations and the development of effective maritime regulation in Solomon Islands.

General Principles
relating to Marine
Inquiries

4. (1) The proceedings of a Board of marine inquiry conducted in accordance with these Regulations must be undertaken in accordance with the principles stated in regulation 3(1) and (4), and –

- (a) take full account of the principles of natural justice and procedural fairness; and
- (b) be unbiased and free from any commercial considerations or influences;

(2) All persons appointed to be a member of a Board of marine inquiry may be required to sign a Code of Conduct approved for this purpose by the Director.

(3) A Marine Inquiry must be conducted so as to achieve compliance with, and meet the objectives of, the Casualty Investigation Code, relevant IMO resolutions, the ISM Code and the recommendations or instruments published from time to time by the International Labour Organisation.

Regional and
International
Cooperation

5. (1) Any notifications of a preliminary investigation, safety review and a proceeding of a Boards of marine inquiry must be given to coastal States and flag States having any involvement or interest in a subject under investigation, review or inquiry in accordance with the notification requirements stated in the Casualty Investigation Code.

(2) Agreement shall be reached with the Administrations of any State having a substantial interest in any matter or incident under investigation, review or inquiry in accordance with these Regulations, as to which State shall be the marine investigating State for the purposes of the Casualty Investigation Code.

(3) In accordance with the Casualty Investigation Code, cooperation must be extended during any preliminary investigation, safety review or marine inquiry to any substantially interested State which is conducting a parallel investigation in relation to the relevant incident, and such coordination as is practicable must be facilitated with the Administration of any such State.

(4) Copies of draft and final reports arising from any preliminary investigation, safety review or marine inquiry must be provided in a timely manner to any substantially interested State, and an opportunity for comment must be extended to the Administration of any such State in accordance with the Casualty Investigation Code.

PART 3 – PRELIMINARY INVESTIGATIONS

6. (1) The Director may appoint the Administration's Marine Investigating Officer or any other suitably qualified officer of the Administration to undertake a preliminary investigation. Authorised investigators

(2) At any time during a preliminary investigation the Director may appoint any other suitably qualified and experienced person to assist an investigator.

(3) Any person appointed under sub-regulation (2) to assist an investigator is authorised to exercise the powers provided for in section 85 of the Act.

7. (1) Whenever the Director causes a preliminary investigation to be held under section 85 of the Act, the Director shall – Scope of preliminary investigations

- (a) identify the incident, casualty or event that is to be the subject of the investigation;
- (b) set out any specific aspects of the incident, casualty or event that area to be investigated; and
- (c) set a date by which the investigation is to be completed, which shall ordinarily be within 14 days.

(2) During the course of a preliminary investigation the investigator shall –

- (a) identify all vessels involved in the incident, casualty or event under investigation;
- (b) determine the status of the registration of each such vessel, and ascertain all certificates required to be held by each vessel, and the status of them;
- (c) determine all other legal requirements applying to the vessel at the time of the incident, casualty or even under investigation;

- (d) identify all relevant masters, crew members, owners, shippers, passengers and witnesses of the incident, casualty or event under investigation;
- (e) obtain as many signed statements as possible from all relevant masters, crew members, owners, shippers, passengers and witnesses; and
- (f) otherwise investigate and report upon all relevant issues, matters and occurrences.

findings of a preliminary investigation

8. (1) The investigator must ensure that the report of a preliminary investigation provides details of all matters referred to in regulation 7(2), and identifies possible grounds for further inquiry into –

- (a) all issues relating to safety arising from the incident, casualty or event under investigation;
- (b) any failure of duty by any person or agency, including matters relating to the navigation, management or working of a vessel, or the discharge of any statutory responsibility;
- (c) possible breaches of laws; and
- (d) possible failure to observe international convention obligations and accepted international best practice.

(2) The report of a preliminary investigation shall not make any findings in relation to blame, fault, culpability or breach of any legal obligation.

(3) The report of a preliminary investigation shall only be given to the Director, who shall then make it available only to the Minister.

recommendations of a preliminary investigation

9. (1) Subject to sub-regulations (2) and (3), the report of a preliminary investigation shall make one of the following recommendations –

- (a) that a Board of marine inquiry be convened in accordance with section 86 of the Act; or
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- (b) that the preliminary investigation be extended to consider certain issues by means of a safety review conducted in accordance in accordance with Part 5 of these Regulations; or
 - (c) that no grounds exist to justify any further investigation, review or inquiry.
- (2) A recommendation that a Board of marine inquiry be convened shall only be made if –
- (a) there is *prima facie* evidence that a failure of duty, breach of law or failure to observe international obligations has been committed by any person or vessel; or
 - (b) the investigator has not been given full access to all necessary information, evidence and records, and considers that such access can be best achieved by use of the powers vested in a Board of marine inquiry; or
 - (c) the circumstance of the case require that a comprehensive independent inquiry be undertaken in the national interest, or to fulfil Solomon Islands obligations under international maritime law.
- (3) A recommendation that a safety review be conducted shall only be made if –
- (a) the issues identified in sub-regulation (2) are not indicated in the outcomes and findings of the preliminary investigations, and are unlikely to arise in the course of further investigation, review or inquiry; and
 - (b) there are safety related issues that require further investigation and review.
- (4) Where a recommendation is made that a Board of marine inquiry should be convened, the report of the preliminary investigation shall identify all interested parties and recommend that notice should be given, and the rights under section 86(4) and (5) of the Act should be extended, to those parties.
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Confidentiality of preliminary investigation findings and recommendations

10. (1) All evidence given to and collected by an investigator under this Part, and all the reports, findings and recommendations shall be kept confidential, and may only be used for the purposes of a safety review or Board of marine inquiry established and conducted in accordance with these Regulations.

(2) No report of a preliminary investigation may be used in any civil, criminal or disciplinary proceedings, except for any inquiry under the Death and Fire Inquiry Act [Cap. 9].

PART 4 - PROCEEDINGS OF BOARDS OF MARINE INQUIRY

Investigating a marine inquiry

11. Nothing in these Regulations affects the power of the Director to cause a marine inquiry to be conducted under sections 84 and 86 of the Act, in the absolute discretion of the Director, whether a preliminary investigation has been undertaken or not.

Independence of the Board to be maintained

12. (1) To ensure that the objectives of functional independence of the proceedings of Boards of marine inquiry are maintained, the Chairperson of the Board and members appointed by the Minister must not hold positions within the Administration, or in any company or agency that is, or is likely to be, the subject of any aspect of the Inquiry.

(2) Expert advisers appointed to assist a Board of marine inquiry may be officers of the Administration, but may not participate in determining any findings of the Board.

(3) Board members shall be entitled to receive sitting allowances and reimbursement of expenses that are consistent with allowances paid to members of Government boards and committees.

Marine inquiry procedures

13. (1) Unless special circumstances warrant the application of alternative procedures, a Board of marine inquiry shall apply the following procedural requirements –

- (a) leave to appear as a party before a marine inquiry must be sought by all persons, companies and agencies, unless they have been determined to be interested parties to which section 86 (4) and (5) of the Act apply;

- (b) the Board may conduct such preliminary hearings as are necessary to prescribe the procedural requirements of the Board, and the time for giving statements, evidence or submissions to the Board;
 - (c) all proceedings shall be held in public, but the Board may determine that special circumstances exist to justify the taking of evidence in private hearing, if –
 - (i) the nature of the evidence justifies a claim for confidentiality based upon commercial or other considerations; or
 - (ii) there is a possibility that unfair or unjustifiable action may be taken against the person giving evidence in relation to that person's employment, or any office held by that person; or
 - (iii) any other matter of public interest or procedural fairness justifies the taking of the evidence in private hearing;
 - (d) a Board is not strictly bound by the rules of evidence applicable to the courts, and subject to the rights and duties stated in section 86 of the Act, the Board may inform itself in any way it considers appropriate;
 - (e) evidence in chief from all witnesses may consist of written statements, with cross-examination only by leave of the Board;
 - (f) expert evidence is to be admissible in the form of written and signed statements;
 - (g) claims that certain evidence is of a confidential nature may be made by or on behalf of persons giving evidence before a Board, and the Board may approve any necessary arrangements for keeping certain evidence confidential;
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- (h) the order in which evidence is to be given or received shall be in the Board's discretion, and shall take account of the availability of witnesses and the convenience applying to their attendance; and
- (i) oral addresses and written submission may be made by or on behalf of persons entitled to appear before the Board.

(2) Any other procedural requirement imposed by Board under sub-regulation (1) must be consistent with the rights and duties stated in section 86(4) and (5) of the Act.

owers relating to
yage Data
records

14. (1) A Board of marine inquiry may require information contained in any VDR on board an vessel which is the subject of the inquiry to be downloaded and transcribed, and made available in a usable form to the inquiry.

(2) When imposing a requirement under sub-regulation (1) the Board may stipulate the type of information that is to be provided, and the time frame of recordings or other data that are to be downloaded, transcribed and made available.

(3) All information provided under this regulation shall be kept confidential by the Board, and shall only be released in accordance with a court order to that effect, but the Board shall be free to use the information to make its findings and recommendations.

(4) This regulation shall be implemented and applied so as to conform with the requirements applying under the Casualty Investigation Code, or any other relevant guideline or requirement of the IMO relevant to VDR's.

ompellability of
itnesses

15. (1) A person appearing before a Board of marine inquiry, or is required to make a statement or provide any record or evidence to a Board of marine inquiry, must provide full and truthful evidence, and complete and records or documents, and may not refuse to do so on the grounds of self-incrimination.

(2) Any answer or evidence given by a person to a Board of marine inquiry may not be used as evidence against that person in any civil or criminal proceeding taken against that person.

16. (1) The Board shall prepare a draft report, which shall be provided on a confidential basis to – Draft and Final Reports

- (a) interested State parties in accordance with regulation 5(4); and
- (b) a person, company or agency about whom adverse conclusions are made.

(2) A person to whom a draft report has been provided shall be given 7 days to make comment upon the proposed findings and recommendations.

(3) After taking account of any comments submitted under sub-regulation (2) the Board shall ensure that the final Report is prepared and submitted to the Minister as soon as practicable.

(4) The Director shall ensure that action is taken to implement any recommendation made in a report of a Board of marine inquiry, and that any safety issue is rectified, and shall report to the Minister on all remedial action taken, not later than 2 months after the completion of a Report.

17. (1) A report prepared by a Board of marine inquiry shall be kept confidential until their release is approved by the Minister. Confidentiality of Reports

- (2) No person shall be liable to any civil or criminal proceedings relating to the publication of a true account of any evidence taken in public in pursuance of the powers conferred by these Regulations, or of any report made public by the authority of the Minister.

18. (1) Prior to making any recommendation for the suspension or cancellation of a certificate held by a qualified seaman, the Board shall ensure that a statement is given to the seaman which – Recommendations affecting certified seafarers

- (a) identifies the nature of the subject matter under inquiry by the Board; and
- (b) states the case against the seaman which the Board considers should be proceeded with.

(2) The Board shall ensure that the relevant seaman is given an opportunity to respond to the case stated by the Board, either verbally or by written submission, before the Board makes its recommendations.

- (3) All relevant information relating to the involvement of a qualified seaman in a matter which is the subject of a marine inquiry shall be given by the Board to the Director in a timely manner, and in sufficient detail and with sufficient support evidence, so as to –
- (a) permit the Director to exercise the powers of suspension stated in section 86(11) of the Act, pending the outcome of any marine inquiry; and
 - (b) enable the Director to make a properly informed decision prior to the exercise of the powers stated in section 87 of the Act.

PART 5 – SAFETY REVIEWS

Investigating a safety review

19. The Director or the Minister may order that a safety review be conducted in accordance with this Part after the conduct of a preliminary investigation, whether a recommendation has been made for the safety review to be undertaken or not.

Appointment of additional advisers

20. The Director may appoint additional advisers for the conduct of a safety review in accordance with this Part, and such advisers shall have the rights and powers stated in section 85 of the Act.

Report of a safety review

21. (1) Within the time stipulated by the Director, the persons responsible for carrying out a safety review shall provide a Report to the Director and the Minister which –

- (a) presents the findings of the safety review in relation to each safety issue relevant to the Review;
- (b) makes recommendations for any change of procedure, role, function, power or personnel, or for any addition to or alteration to the organisational structure or other human resource issue relevant to the Administration or any other agency or company whose activities have been subject to investigation; and
- (c) identifies the need for any reform of the marine laws enforced by the Administration, or any other Ministry or agency whose functions and powers apply to the maritime sector.

(2) A report of a safety review shall include the following statement in its introduction –

“This Report is not written with litigation of legal proceedings of any nature in mind, and pursuant to the provisions of the Shipping (Marine Inquiries and Investigations) Regulations, shall be inadmissible in any judicial proceedings whose purpose is to attribute or apportion blame in any way.”

(3) A report of a safety review shall not be admissible as evidence in any legal proceedings, except for any inquiry under the Death and Fire Inquiry Act [Cap. 9].

22. The Director shall ensure that action is taken to implement any recommendation made in a report of a safety review, and that any safety issue is rectified, and shall report to the Minister on all remedial action taken, not later than 2 months after the completion of a Report. Implementation of findings and recommendations

PART 6 – MISCELLANEOUS PROVISIONS

23. Any person who – Offences against these Regulations

- (a) divulges any information that is required under these Regulations to be kept confidential;
- (b) makes a report prepared in accordance with these Regulations available to any person who is not entitled to receive the Report as provided for by these Regulations;
- (c) acts in any manner during the discharge of a function or duty under these Regulations that is prompted by bias or other commercial or improper considerations; or
- (d) provides any false or misleading information during a preliminary investigation, safety review or marine inquiry –

commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units.

24. These Regulations shall be read and construed as supplementary to and not in derogation of other relevant laws, and in particular the Commissions of Inquiry Act and any other laws that relate to the exercise of investigatory powers and to procedural fairness. Applications of other laws

MADE AT HONIARA this twentieth-third day of September, 2011.

HON. JACKSON FIULAUA
Minister for Infrastructure Development

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