

SHIPPING AND SEAMEN AMENDMENT BILL

AMENDMENTS RECOMMENDED BY LABOUR AND MINING COMMITTEE

EXPLANATORY NOTE

Clause 1, subclause (2): This amendment alters the date of commencement of *clause 6* (certificates of discharge) and *clause 9* (matters to be entered in log) from 15 October 1971 to 1 January 1972.

Clause 2: The substitution of *paragraph (e)* of the proposed *section 15A (2)* is consequential on the deregistration of the New Zealand Seamen's Industrial Union of Workers.

The new *subsections (5) to (8)* of the proposed *section 15E* provide that the Maritime Appeal Authority shall be appointed for a term of 3 years, instead of holding office during the pleasure of the Minister. He will vacate his office if he becomes bankrupt, or is convicted of an offence punishable by imprisonment, or becomes a mentally disordered person within the meaning of the Mental Health Act 1969, and may be removed from office if by reason of disability he becomes incapable of performing the functions of his office. Any deputy of the Appeal Authority shall hold office during the pleasure of the Minister.

The new *subsection (5A)* of the proposed *section 15G* provides that the applicant under any application to the Maritime Appeal Authority may appear before the Authority in support of his application or be represented by counsel or a solicitor or an agent.

The amendment to *subsection (6)* of *section 15G* requires the Appeal Authority to follow the rules of natural justice.

The amendment to *subsection (7)* of *section 15G* requires decisions of the Maritime Appeal Authority to be given in writing.

The amendment to the new *section 15H* provides that applications to the Appeal Authority are to be lodged with a Superintendent instead of being forwarded to the Secretary for Marine, and the Superintendent must refer them forthwith to the Appeal Authority.

Clause 4: Paragraph (i) of the new *section 39* provides that on return to a port in New Zealand, the master may be required to account for engagements and discharges which have taken place at ports outside New Zealand.

This amendment makes it clear that this requirement may be made by a Superintendent.

The proposed new *subsection (2)* of the new *section 39* provides that the provisions of Part II of the principal Act relating to the engagement and rating of seamen are to apply to engagements ratified by a Superintendent pursuant to *paragraph (g)* of the section in the same manner as they apply in the case of engagements made before a Superintendent.

Clause 5: Subsection (2) (a) (i) of the new *section 40A* provides that only bad conduct reports issued on or after 15 October 1971 are to be taken into account in deciding whether or not any person is a suspended person.

The amendment to that subparagraph substitutes 1 January 1972 as the relevant date. This is the amended date of the commencement of *clauses 6 and 9* of the Bill.

The effect of the amendment to *subsection (2) (a) (ii)* of the new section 40A is that a person is a suspended person if he is convicted of an offence against any enactment corresponding to an offence against paragraph (e) or paragraph (f) or paragraph (g) of section 164 (1) of the principal Act.

Paragraph (g) makes it an offence for any seaman to assault the master or any other seaman or apprentice of his ship, paragraph (h) makes it an offence for any seaman wilfully to damage his ship or steal or wilfully damage any of the stores or cargo or other articles on board, and paragraph (g) makes it an offence for any seaman to do any act of smuggling whereby loss or damage is occasioned to the master or owner of his ship. These are all offences against other Acts as well as against section 164 of the principal Act, and the offender will become a suspended person if he is convicted of such an offence, whether under section 164 of the principal Act or under that other enactment. For example, a seaman committing an assault on the master or any other seaman of his ship could be convicted either under section 164 of the principal Act or under the Crimes Act 1961 or the Police Offences Act 1927 (but not under more than 1 of those Acts).

The effect of the amendment to *subsection (2) (a) (iii)* of the new section 40A is that a person is a suspended person if he is convicted of an offence under the law of any other Commonwealth country relating to any drug, narcotic, poison, or toxic substance.

The effect of the new *subsection (2) (b) (iii)* of the new section 40A of the principal Act is that a seaman will be deemed to have received a bad conduct report if he has deserted his ship, and it will not be necessary for him to have been convicted of the offence of desertion.

The effect of the amendment to *subsection (2) (b) (iv)* of the new section 40A is that a report as to conduct in the case of a seaman discharged from a ship in respect of which certificates of discharge are not required must be given in writing.

The new *subsection (3A)* of the new section 40A is intended to make it clear that if a seaman has ceased to be a suspended person at the expiration of the period of 6 months of suspension, he will again become a suspended person if he is awarded 1 or more further bad conduct reports which, with any 1 or more of the bad conduct reports that resulted in his previous suspension, resulted in his receiving a total of 3 bad conduct reports within 36 consecutive months.

The amendment to *subsection (4)* of the new section 40A is intended to make it clear that the Appeal Authority has power to refuse an application, and that his powers are not restricted to giving either of the directions referred to in paragraphs (a) and (b) of the subsection.

The new *subsections (4A) and (4B)* relate to the right of a suspended person to engage on any home-trade ship pending the decision on any application made by him under *subsection (4)* for the last of the 3 bad conduct reports resulting in his becoming a suspended person to be disregarded, or, if he became a suspended person on being convicted of an offence specified in *subparagraph (ii) or subparagraph (iii) of subsection (2) (a)*, pending a decision on an appeal against his conviction.

The effect of these subsections is that the suspended person must first take all leave due to him. If at the expiration of the period of leave the application or appeal has not been decided, a Superintendent may consent to his being engaged on a ship engaged in the home trade. If the application

is refused or the appeal is dismissed, he is to be discharged from his ship, and the period of suspension will commence from the date of discharge, or any earlier date on which he left the service of the ship.

The amendments to *subsections (6) and (7)* are consequential on the new *subsection (4A)*.

Clause 5A inserts a new section 41A in the principal Act authorising the making of regulations providing for the establishment of a roster system for the engagement of seamen on ships to which the section applies and the payment of attendance money to seamen attending for the purpose of being engaged on such ships. The regulations are to be made on the advice of the Minister after consultation by him with organisations representing seamen employed on such ships and with organisations representing owners.

The regulations may provide for the several matters specified in *subsection (2)* of the new section 41A.

If any penalty provided in the regulations is imposed on any person for a breach of the regulations, proceedings for any offence constituted by the breach may not be taken in any Court.

The section applies to the following ships:

- (a) New Zealand ships (including New Zealand Government ships specified in the regulations).
- (b) Home-trade ships.
- (c) Ships other than New Zealand ships where the engagement with the crew has been entered into in New Zealand.

Clause 7: These amendments omit words that are unnecessary in view of the provisions of *subsection (4)* of the proposed section 151c.

Clause 8: The amendment to *subsection (1) (b) (ii)* of the proposed section 151c is intended to ensure that the Tribunal may exercise functions only in respect of maritime questions relating to any act or refusal of the owner or master of a ship or of any 1 or more seamen.

The amendment to the new *section 151c (1) (b) (ii)* extends the functions of the Shipping Industry Tribunal to prevent or settle, by mediation or arbitration, any question which has either led to delay in the sailing of a ship or has impeded the business of a ship.

The new *paragraph (c)* of section 151c (1) extends the functions of the Tribunal to enable it to specify any action to be taken by any person or organisation as an interim or provisional measure pending the hearing and determination by the Tribunal of any question.

The effect of the substituted *subsections (3) and (4)* is that the Tribunal will have a discretion to exercise any of its functions and powers of its own motion (the present provision), but must exercise those functions and powers on the application of an owner or charterer or master of a ship, or the agent of the owner or charterer, or of any organisation representing masters or seamen employed on ships to which the section applies. *Subsection (4) (b)* is the same as the present *subsection (4)*.

The new *subsection (1A)* inserted in the proposed section 151F provides that the Tribunal may include in its decision a direction that, in order to give effect to its decision, any person or class of persons or any organisation take any specified action or refrain from taking any specified action.

The new *subsection (2A)* inserted in the proposed section 151F makes it clear that there will be no appeal against any decision of the Tribunal and, except on the ground of lack of jurisdiction, no proceeding or decision of the Tribunal may be reviewed in any Court.

[AS REPORTED FROM THE LABOUR AND MINING COMMITTEE]
House of Representatives, 25 November 1971.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr McCready

SHIPPING AND SEAMEN AMENDMENT

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A BILL INTITULED

An Act to amend the Shipping and Seamen Act 1952

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Shipping and Seamen Amendment Act 1971, and shall be read together with and deemed part of the Shipping

and Seamen Act 1952* (hereinafter referred to as the principal Act).

(2) Sections 6 and 9 of this Act shall come into force on the (15th day of October 1971) 1st day of January 1972.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing. 5

2. The Marine Council, the Maritime Appeal Authority, and Marine Advisory Committees—The principal Act is hereby amended by repealing sections 15A to 15K (as inserted by section 15 of the Shipping and Seamen Amendment Act (No. 2) 1969) and the heading preceding section 15A, and substituting the following heading and section: 10

“The Marine Council, the Maritime Appeal Authority, and Marine Advisory Committees

“15A. The Marine Council—(1) There shall continue to be a Council to be called the Marine Council. 15

“(2) The Council shall consist of—

“(a) One member, being an officer of the Department, who shall be the Chairman of the Council:

“(b) Two members, to represent owners of New Zealand ships: 20

“(c) One member, to represent The New Zealand Merchant Service Guild Industrial Union of Workers:

“(d) One member, to represent The New Zealand Institute of Marine and Power Engineers Incorporated: 25

Struck Out

“(e) One member, to represent The New Zealand Seamen’s Industrial Union of Workers:

New

“(e) One member, to represent the industrial union of seamen (other than officers) employed in the deck department or engineroom department of New Zealand ships (including New Zealand Government ships), or, while there is no such union, to represent those seamen: 30 35

“(f) One member, to represent Federated Cooks’ and Stewards’ Union of New Zealand Industrial Union of Workers.

“(3) The members of the Council shall be appointed by the Minister, and shall hold office during the pleasure of the Minister. 40

*Reprinted, 1965, Vol. 3, p. 1631

Amendments: 1966, No. 84; 1967, No. 119; 1968, No. 55; 1969, Nos. 4, 25; 1970, No. 141

“(4) The member or members of the Council representing any organisation and the deputy of any such member shall be appointed on the nomination of that organisation.

5 “(5) The functions and powers of the Council shall not be affected by any vacancy in its membership.

“(6) The Minister may appoint any person to be the deputy of any member of the Council to act in the event of the absence from any meeting of the Council of the member whose deputy he is.

10 “(7) The fact that any person appointed as the deputy of any member of the Council attends and acts at any meeting thereof shall be conclusive evidence of his authority to do so.

“(8) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Council, and
15 the deputy of the Chairman shall have all the powers and functions of the Chairman.

“15b. Functions of Council—The functions of the Marine Council shall be—

20 “(a) To inquire into and report to the Minister upon any matter relating to the shipping industry which the Minister refers to the Council:

“(b) To consider and report to the Minister upon any proposed regulations referred to the Council pursuant to section 15b of this Act:

25 “(c) To consider any matter relating to the shipping industry (other than a matter coming within the jurisdiction of the Maritime Appeal Authority) brought before it by any member of the Council, and, if the Council thinks fit, to report thereon to the Minister.

30 “15c. Meetings and procedure—(1) Meetings of the Marine Council shall be held at such times and places as the Council or the Chairman from time to time appoints.

“(2) Any 3 members of the Council may at any time call a special meeting of the Council.

35 “(3) Four members of the Council shall form a quorum at any meeting.

“(4) The Chairman shall preside at all meetings of the Council at which he is present. In the absence of the Chairman and his deputy from any meeting, the members present shall
40 appoint one of their number to preside as Chairman of that meeting.

“(5) All questions arising at any meeting shall be decided by a majority of the valid votes recorded thereon.

“(6) The Chairman or other member presiding at any meeting shall not have a deliberative vote, but in the case of an equality of votes shall have a casting vote.

“(7) Subject to this section, the Council may regulate its procedure in such manner as it thinks fit. 5

“15D. **Certain proposed regulations to be referred to Council or Marine Advisory Committee for report**—(1) Regulations shall not be made pursuant to the following provisions of this Act except on the recommendation of the Minister made after consideration by him of a report on the proposed regulations by the Marine Council or by a Marine Advisory Committee appointed under section 15r of this Act, namely: 10

“(a) Regulations made pursuant to subsection (10) of section 17 of this Act (which relates to the carrying of certificated officers): 15

“(b) Regulations made pursuant to subsection (2) of section 55 of this Act (which relates to the carrying of seamen and apprentices or boys).

“(2) Notwithstanding anything in subsection (1) of this section, where the Minister considers that any organisation that is concerned with the manning of any particular class or classes of ship is not represented on the Marine Council, he may refer any proposed regulations relating to the manning of that class or those classes of ship to a Marine Advisory Committee appointed under section 15r of this Act instead of to the Marine Council, and in that case the regulations shall not be made except on the recommendation of the Minister after consideration by him of a report of the committee on the proposed regulations. 20 25

“15E. **The Maritime Appeal Authority**—(1) There shall be a Maritime Appeal Authority (hereinafter referred to as the Appeal Authority). 30

“(2) The person appointed as the Appeal Authority shall be a barrister or solicitor of not less than 7 years' practice of the Supreme Court, whether he holds or has held any judicial office. 35

“(3) The Appeal Authority shall be appointed by the Minister, after consultation with the Minister of Justice.

“(4) The Minister may appoint a person, being a person qualified for appointment as the Appeal Authority, to be a deputy for and act in the absence, from whatever cause, of the Appeal Authority. 40

“(5) *The Appeal Authority and any deputy of the Appeal Authority shall hold office during the pleasure of the Minister.*

New

- “ (5) The person appointed as the Appeal Authority shall be appointed for a term of 3 years, but may from time to time be reappointed.
- 5 “ (6) The person appointed as the Appeal Authority shall cease to hold office if he—
- “ (a) Is adjudged bankrupt; or
- “ (b) Is convicted of any offence punishable by imprisonment; or
- 10 “ (c) Becomes a mentally disordered person within the meaning of the Mental Health Act 1969,—
- and, if by reason of disability he becomes incapable of performing the functions of his office, he may be removed from office by the Minister.
- 15 “ (7) The person appointed as the Appeal Authority may at any time resign his office by notice in writing to the Minister.
- “ (8) Any deputy of the Appeal Authority shall hold office during the pleasure of the Minister.
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- 20 “ **15F. Functions of Appeal Authority**—The functions of the Appeal Authority shall be to consider and determine applications made to the Authority pursuant to section 40A of this Act.
- “ **15G. Meetings and procedure of Appeal Authority**—
- 25 (1) Meetings of the Appeal Authority shall be held at such times and places as he considers necessary.
- “ (2) The Appeal Authority may receive as evidence any statement, document, information, or matter which may in his opinion assist him to deal effectually with the application
- 30 being considered, whether or not the evidence would be otherwise admissible in a Court of law.
- “ (3) Subject to subsection (2) of this section, the Evidence Act 1908 shall apply to the Appeal Authority, and to all applications before the Authority, in the same manner as if
- 35 the Authority were a Court within the meaning of that Act.
- “ (4) The Appeal Authority shall, within the scope of his jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act, except
- 40 sections 2 and 4A, shall apply accordingly.
- “ (5) Every application to the Appeal Authority shall be considered at such place and at such time as he deems convenient having regard to the nature of the matters to be
- 45 place to place.

New

“(5A) The applicant shall be entitled to appear before the Appeal Authority in support of his application or be represented by counsel or a solicitor or an agent.”

“(6) Except as otherwise provided by this section, the Appeal Authority shall determine his own procedure, but shall follow the rules of natural justice.” 5

“(7) Every application heard by the Appeal Authority shall be determined by the decision in writing of the Appeal Authority alone, and shall be final.” 10

“**15H. Applications to Appeal Authority**—Every application to the Appeal Authority shall be in writing specifying the grounds thereof, and shall be **(forwarded to the Secretary for Marine, who shall)** lodged with a Superintendent, who shall forthwith refer it to the Appeal Authority.” 15

“**15I. Marine Advisory Committees**—(1) The Minister may from time to time, for the purpose of obtaining advice on any particular matter arising out of or in relation to this Act, appoint not less than 3 persons to constitute a Marine Advisory Committee, one of whom shall be appointed as the Chairman of the committee.” 20

“(2) The members of a Marine Advisory Committee—

“(a) Shall, so far as practicable, include 1 or more representatives of persons interested in the matter in respect of which the committee is constituted:” 25

“(b) If the Minister considers it necessary, may include persons having special knowledge of the matter.

“(3) A Marine Advisory Committee consisting of 3 members shall not hold a meeting unless all the members are present.” 30

“(4) At a meeting of a Marine Advisory Committee consisting of more than 3 members, the Chairman of the committee, together with half or a majority, as the case may be, of the other members shall form a quorum.

“(5) At a meeting of a Marine Advisory Committee every question shall be decided by a majority of the valid votes thereon. The Chairman shall not have a deliberative vote, but in the case of an equality of votes shall have a casting vote.” 35

“(6) Subject to this section, a Marine Advisory Committee may regulate its procedure in such manner as it thinks fit.” 40

“**15J. Remuneration and travelling expenses**—(1) The Marine Council, the Appeal Authority, and every Marine Advisory Committee are hereby declared to be statutory Boards within the meaning of the Fees and Travelling Allowances Act 1951.” 45

“(2) There shall be paid to the members of the Council, to the Appeal Authority, and to members of any Marine Advisory Committee, out of money appropriated by Parliament, remuneration by way of fees or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly:

“Provided that any money received pursuant to this section by any member of the Council or of any such committee who is an employee of the Public Service shall be subject to the provisions of the State Services Act 1962.”

3. Consequential repeal—Section 15 of the Shipping and Seamen Amendment Act (No. 2) 1969 is hereby consequentially repealed.

4. Engagements of seamen on foreign-going or home-trade ships—(1) The principal Act is hereby further amended by repealing section 39, and substituting the following section:

“39. (1) The following provisions shall have effect with respect to all seamen engaged in New Zealand to be entered on board any foreign-going Commonwealth ship, or on board any home-trade ship (whether or not she is a Commonwealth ship) for which an agreement is required, namely—

“(a) The agreement may be contained in more than 1 document if the Superintendent before whom the agreement is first signed gives his approval:

“(b) The agreement may relate to more than 1 ship if the Secretary for Marine has given his approval:

“(c) The agreement shall (subject to the provisions of this section as to substitutes) be signed by each seaman in the presence of a Superintendent:

“(d) If any seaman so wishes, the Superintendent shall cause any parts of the agreement to be explained to him:

“(e) When the crew is first engaged, the agreement shall be signed in duplicate, and 1 part shall be retained by the Superintendent, and the other shall be delivered to the master, or, in the case of an agreement relating to more than 1 ship, shall be delivered to the owner, and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship:

- “(f) Where a substitute is engaged in the place of a seaman who duly signed the agreement, and whose services are within 24 hours before the ship puts to sea lost by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before a Superintendent, and, when not practicable, the master shall, before the ship puts to sea if practicable, and if not, then as soon afterwards as possible, cause any parts of the agreement to be explained if the substitute so wishes, and the substitute shall thereupon sign the agreement in the presence of a witness who shall attest an entry in the official log book affirming the engagement of the substitute: 5 10
- “(g) The engagement of a substitute shall be reported to the Superintendent in the first port at which the ship arrives after the engagement and there ratified by the Superintendent, upon his being satisfied that the seaman so shipped is qualified: 15
- “(h) The agreement may be made for a voyage, or, if the voyages of the ship average less than 6 months in duration, may be made to extend over 2 or more voyages (agreements so made to extend over 2 or more voyages being in this Act referred to as running agreements), but running agreements shall not extend beyond 6 months from the date thereof, or the first arrival of the ship at her final port of destination in New Zealand after that date, but, if the master so decides, shall extend until the completion of the discharge of cargo consequent on that arrival: 20 25 30
- “(i) On return to a port in New Zealand, the master may be required by a Superintendent to account for engagements and discharges which have taken place at ports outside of New Zealand, and, if upon request for such an account, the master refuses to provide the information or wilfully makes a false account, he commits an offence against this Act: 35
- “(j) Where the agreement is signed on board the ship or at any place other than a mercantile marine office, the extra expense (if any) caused by the attendance of the Superintendent shall be borne by the ship: 40

5 “(k) In determining the fees payable upon the engagement and discharge of seamen, the crew shall be deemed to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates; and all intermediate engagements and discharges shall be deemed to be engagements and discharges of a single seaman.”

New

10 “(2) The provisions of this Part of this Act relating to the engagement and rating of seamen shall, with the necessary modifications, apply in the case of engagements ratified by a Superintendent pursuant to paragraph (g) of subsection (1) of this section as they apply in the case of engagements made before a Superintendent.”

15 (2) The principal Act is hereby consequentially amended—
 (a) By repealing section 40:
 (b) By omitting from section 41 the words “or section 40”:
 (c) By omitting from section 41 the words “paragraph (g) of the said section 39 and paragraph (c) of subsection (1) of the said section 40”, and substituting the words “paragraph (h) of the said section 39”.

20 **5. Persons not permitted to be engaged—**(1) The principal Act is hereby further amended by inserting, after section 40, the following section:

25 “40A. (1) This section applies to—
 “(a) Every New Zealand ship (including any New Zealand Government ship):

30 “(b) Every Commonwealth ship:
 “(c) Every foreign ship which is engaged in the home-trade;—

but does not apply to a pleasure yacht.

“(2) For the purposes of this section—

35 “(a) The expression ‘suspended person’ means any person who—

 “(i) Has been awarded 3 or more bad conduct reports within any period of 36 consecutive months, being reports awarded on or after the (15th day of October 1971) 1st day of January 1972; or

“(ii) Has been convicted of a crime against section 163 of this Act (which relates to misconduct endangering ship or life) or an offence against section 164 of this Act (which relates to offences against discipline) or an offence against any provision of any other enactment corresponding to any of the offences specified in paragraph (e) or paragraph (f) or paragraph (g) of subsection (1) of the said section 164, being a crime or an offence committed after the commencement of this 5
section; or

“(iii) Has been convicted of an offence against the Narcotics Act 1965 or an offence against the Customs Act 1966 relating to any drug, narcotic, poison, or toxic substance, *(being, in either case)* 15
or an offence against any like enactment of any other Commonwealth country, being, in any such case, an offence committed after the commencement of this section:

“(b) A person shall be deemed to have been awarded a 20
bad conduct report if—

“(i) A statement that his conduct has been bad has been entered in the official log book pursuant to paragraph (d) of section 178 of this Act; or

“(ii) He has been awarded any report of con- 25
duct other than ‘very good’ at the time of his discharge from any Commonwealth ship other than a New Zealand ship; or

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“(iii) He has been convicted of an offence 30
against section 157 of this Act of deserting from his ship; or

“(iii) He has deserted from his ship; or

“(iv) On his discharge from any ship in respect of which certificates of discharge are not required 35
to be given, the master has reported in writing to a Superintendent that in his opinion the conduct of that person has been bad and has informed that person in writing that the report has been made.

“(3) Any person who is a suspended person pursuant to subparagraph (i) of paragraph (a) of subsection (2) of this section shall cease to be a suspended person for the purposes of this section at the expiration of 6 months from the date of his last bad conduct report, unless since that date he has become a suspended person pursuant to any other provision of that subsection.

New

“(3A) Where any person who has ceased to be a suspended person pursuant to subsection (3) of this section is subsequently awarded 1 or more bad conduct reports, then, for the purpose of determining whether or not he has again become a suspended person, any 1 or more bad conduct reports awarded to him within the period specified in subparagraph (i) of paragraph (a) of subsection (2) of this section shall be taken into account, notwithstanding that they had previously been taken into account for the purpose of determining that he was a suspended person.

“(4) On application in writing made by any suspended person to the Maritime Appeal Authority appointed under section 15E of this Act, the Authority, unless he refuses the application, may direct, either absolutely or conditionally, that—

“(a) From a specified date the applicant shall cease to be a suspended person; or

“(b) A bad conduct report in respect of the applicant shall be disregarded in determining whether or not he is a suspended person:

“Provided that an application by a person who is a suspended person pursuant to subparagraph (i) of paragraph (a) of subsection (2) of this section shall be lodged with the Secretary for Marine within 1 month after the date on which the applicant became a suspended person pursuant to that subparagraph.

New

“(4A) Where—

“(a) Any person who is a suspended person pursuant to subparagraph (i) of paragraph (a) of subsection (2) of this section has applied under subsection (4) of this section for a direction that the last bad conduct report that resulted in his becoming a suspended person be disregarded; or

New

“(b) Any person who is a suspended person pursuant to subparagraph (ii) or subparagraph (iii) of the said paragraph (a) has appealed against the conviction that resulted in his becoming a suspended person,— 5

then, if that person has taken all leave that was due to him at the time when he became a suspended person and the application or appeal has not been determined before the expiration of that period of leave, he may, with the consent of a Superintendent, be engaged to be entered on board any ship to which this section applies, being a ship engaged in the home trade. 10

“(4B) Where—

“(a) Any person has engaged to be entered on board any ship pursuant to subsection (4A) of this section; and 15

“(b) His application is refused or, as the case may be, his appeal is dismissed,—

he shall, unless he has already left the service of the ship, be discharged on the date on which the master receives advice that the application has been refused or, as the case may be, the appeal has been dismissed, if on that date the ship is in any port or, if not, he shall be discharged on the date on which the ship next arrives in any port. 20 25

“(4c) Where any person to whom subsection (4B) of this section applies is a suspended person pursuant to subparagraph (i) of paragraph (a) of subsection (2) of this section, the period of 6 months specified in subsection (3) of this section shall be deemed to commence on the date on which he is discharged pursuant to the said subsection (4B) or, as the case may be, on the earlier date on which he left the service of the ship. 30

“(5) On application in writing made to the Appeal Authority by a person in respect of whom a (*bad report has been made under paragraph (d) of section 178 of this Act, the Authority may direct*) bad conduct report has been deemed to have been awarded pursuant to paragraph (b) of subsection (2) of this section, the Authority, unless he refuses the application, may direct that the report shall be disregarded in determining whether or not the applicant is a suspended person for the purposes of this section: 35 40

“Provided that an application under this subsection shall be made within 14 days after the making of the bad report.

“(6) Subject to the provisions of subsection (4A) of this section, no suspended person shall be engaged to be entered on board any ship to which this section applies:

5 “Provided that with the consent of a Superintendent a person suspended pursuant to subparagraph (i) of paragraph (a) of subsection (2) of this section may be engaged if the period between the dates of awarding the last 2 bad reports exceeds 12 months and the person has served regularly as a seaman during that period.

10 “(7) Subject to the provisions of (subsection (6)) subsections (4A) and (6) of this section, every person commits an offence against this Act who—

“(a) Being a suspended person, offers himself for engagement on or engages to be entered on board any

15 ship to which this section applies; or

“(b) Knowingly offers a suspended person for engagement on any ship to which this section applies or knowingly engages a suspended person on any such ship.”

20 (2) Section 172 of the principal Act is hereby amended by repealing the proviso to subsection (3) (as added by section 16 (2) of the Shipping and Seamen Amendment Act (No. 2) 1969), and substituting the following proviso:

25 “Provided that nothing in this subsection shall derogate from the provisions of section 40A of this Act.”

(3) Section 16 of the Shipping and Seamen Amendment Act (No. 2) 1969 is hereby consequentially amended by repealing subsection (2).

New

30 **5A. Regulations as to engagement of seamen**—The principal Act is hereby further amended by inserting, after section 41, the following section:

35 “41A. (1) Without limiting the general power to make regulations conferred by section 504 of this Act, regulations may be made under that section, on the advice of the Minister after consultation by him with organisations which appear to him to be representative of seamen employed on ships to which this section applies and with organisations which appear to him to be representative of owners of such

40 ships, with respect to the allocation of seamen to ships to which this section applies or any classes of such ships, and the payment of attendance money to seamen attending for the purpose of being engaged on such ships.

New

- “(2) Without limiting the generality of subsection (1) of this section, regulations made pursuant to that subsection may provide for—
- “(a) The control and administration of engagement systems by officers of the Department: 5
- “(b) The registration of persons for the purpose of engagement on ships to which the regulations apply:
- “(c) The registration of employers, being the owners or charterers of ships or their agents, for the purpose of employing persons to serve on ships to which the regulations apply: 10
- “(d) Financial contributions to be made by employers to enable the payment of attendance money and the training of seamen and expenses associated with the operation of engagement systems: 15
- “(e) The payment of attendance money to persons who are registered for the purpose of engagement and for whom employment is not available:
- “(f) The attendance of registered persons at engagement centres: 20
- “(g) The allocation of persons to ships requiring seamen:
- “(h) The hearing and determining of objections to being allocated to a ship:
- “(i) The hearing and determining of any objection by a master of a ship to the engagement of a person on that ship: 25
- “(j) The suspension of persons from engagement systems for periods of up to 14 days upon failure to attend engagement centres or failure or refusal to join a ship: 30
- “(k) The suspension or removal from engagement systems of persons who are suspended persons pursuant to the provisions of section 40A of this Act or whose discharges have been withheld pursuant to section 59 of this Act: 35
- “(l) The granting of leave of absence from engagement systems for a limited period and procedure for appeal when leave refused:
- “(m) The establishment and review of engagement centres at ports: 40
- “(n) The transfer of registration of persons between engagement centres:
- “(o) The voluntary termination of registration by any person or company: 45

New

- “(p) The removal from the register of employers of any person or company and procedure for appeal against such removal:
- 5 “(q) The establishment and review of the number of persons to be registered in respect of various categories of seamen at particular engagement centres or at all engagement centres:
- 10 “(r) Qualifications for the admission of persons to seamen’s registers or a person or company to employers’ registers, and the procedure for appeal where admission is refused:
- “(s) For periods of probationary service of up to 6 months during which a person may be provisionally registered only:
- 15 “(t) The training of persons who are registered or intending to be registered:
- “(u) The recruitment of persons wishing to become registered:
- 20 “(v) The determination by officers of the Department of questions relating to any engagement system which may arise between an organisation representative of seafarers and an employer or group of employers or an organisation representing employers.
- 25 “(3) Regulations made pursuant to this section shall apply to the following ships, and to persons engaged or to be engaged as seamen on such ships and to the owners or charterers of such ships or their agents and to the masters of such ships, namely:
- 30 “(a) Any New Zealand ship (including a New Zealand Government ship specified in the regulations):
- “ (b) Any ship engaged in the home-trade:
- “ (c) Any ship other than a New Zealand ship where the agreement with the crew for the time being in force has been entered into in New Zealand.
- 35 “(4) The Minister may exempt any ships or classes of ships from any requirements of any regulations made pursuant to this section, either absolutely or subject to such conditions as he thinks fit.
- 40 “(5) Every person commits an offence who does any act in contravention of or fails to comply with any provision of any regulations made pursuant to this section.

New

“(6) Where—
 “(a) Any person does any act in contravention of or fails to comply with any provision of any regulations made pursuant to this section; and
 “(b) Any penalty is imposed on that person in respect of that act or failure pursuant to any provision of the regulations otherwise than in proceedings in any Court for an offence,—
 proceedings shall not be taken in any Court for any offence constituted by that act or failure.”

6. Seaman entitled to certificate of discharge—(1) Section 58 of the principal Act is hereby amended by repealing subsection (4) (as substituted by section 7 (1) of the Shipping and Seamen Amendment Act (No. 2) 1969), and substituting the following subsection:

“(4) Where a seaman serving on any New Zealand ship or any home-trade ship (whether or not she is a Commonwealth ship) is discharged before a Superintendent, the Superintendent shall inform him of the statement entered in the official log book in relation to that seaman pursuant to paragraph (d) of section 178 of this Act, and shall give the seaman a copy of that statement—

“(a) If the master has reported the conduct of the seaman to be bad:

“(b) If the seaman so requires in any other case.”

(2) Section 7 of the Shipping and Seamen Amendment Act (No. 2) 1969 is hereby consequentially amended by repealing subsection (1).

7. Settlement of questions by Superintendent—(1) The principal Act is hereby further amended by repealing section 151A (as inserted by section 25 of the Shipping and Seamen Amendment Act 1959) and the heading thereto, and substituting the following heading and section:

“Settlement of Questions by Superintendent 35

“151A. (1) Where a question, other than the award of a bad report of conduct, has arisen between the master or owner or charterer, or the agent of the owner or charterer, of a New Zealand ship and a seaman or apprentice or between seamen of different categories, either party may refer the question to a Superintendent for his decision. 40

“(2) A Superintendent, or a person appointed under subsection (4) of this section, may hear and decide a question referred to a Superintendent under this section. The procedure at any such hearing shall be such as the Superintendent or person so appointed in his sole discretion considers suitable.

“(3) In any case where the Superintendent is of opinion that the question raised is frivolous or vexatious, or is one which ought to be decided by a Court of law, or is one which might more appropriately be dealt with under section 77 of this Act, or is one which might more appropriately be dealt with under the disputes procedure of an award or industrial agreement, he may refuse to deal with it.

“(4) Where in the opinion of the Superintendent a question referred to him under subsection (1) of this section could be better dealt with by some other person, the Superintendent may appoint that other person to hear and decide the question, and the person so appointed shall, in respect of that question, have all the powers of a Superintendent under this section other than powers of reference.

“(5) Where in the opinion of the Superintendent a question referred to him under subsection (1) of this section should be dealt with by the Shipping Industry Tribunal established by section 151B of this Act, the Superintendent shall refer the question to that Tribunal, *(and the Tribunal may exercise in respect of the question the powers with which it is vested)*.

“(6) A Superintendent, or a person appointed under subsection (4) of this section, who gives a decision on a question referred to him under this section shall record that decision in a document under his hand, and that document shall be admissible in evidence. The Superintendent to whom that question was first referred shall send a copy of the decision to each party to the question.

“(7) Subject to subsections (8) and (9) of this section, every decision of a Superintendent on any question referred to him under this section, or of a person appointed under subsection (4) of this section to decide any such question, shall be final and binding on each party to the question.

“(8) Where any question referred to a Superintendent under this section is decided by the Superintendent or by a person appointed under subsection (4) of this section, any party to the question who is dissatisfied with the decision may,

by notice in writing to the Superintendent to whom the question was first referred, given within 48 hours after a copy of that decision was given to that party, require that the decision of the Superintendent or person so appointed be referred for decision to the said Shipping Industry Tribunal, and thereupon the decision of the Superintendent or person appointed as aforesaid shall have no effect, and the Superintendent shall forthwith refer the question to that Tribunal for decision, *(and the Tribunal may exercise in respect of the question the powers with which it is vested)*.

“(9) Where any party to any question decided by a Superintendent under this section or by a person appointed under this section refuses or fails to comply with that decision, the Superintendent to whom the question was first referred shall forthwith refer the question for decision to the said Shipping Industry Tribunal, *(and the Tribunal may exercise in respect of the question the powers with which it is vested)*.”

(2) Section 25 of the Shipping and Seamen Amendment Act 1959 is hereby consequentially repealed.

8. New sections as to Shipping Industry Tribunal inserted—The principal Act is hereby further amended by inserting, after section 151A (as substituted by section 7 (1) of this Act), the following heading and sections:

“Shipping Industry Tribunal

“151B. **Shipping Industry Tribunal**—(1) There is hereby established a tribunal to be known as the Shipping Industry Tribunal.

“(2) The Tribunal shall consist of not more than 3 persons, who shall be appointed by the Governor-General on the recommendation of the Minister after consultation by the Minister with organisations which appear to him to be representative of owners of New Zealand ships and of masters and seamen employed on New Zealand ships.

“(3) Members of the Tribunal shall hold office during the pleasure of the Minister.

“151C. **Functions of Tribunal**—(1) The Shipping Industry Tribunal shall have the following functions:

“(a) To make all such suggestions and do all such things as appear to it to be right and proper to encourage and assist the prevention or settlement by amicable agreement of questions to which the functions of the Tribunal extend under paragraph (b) of this subsection:

“(b) To prevent or settle, by mediation or arbitration, any question—

5 “(i) Referred to it under section 151A of this Act; or

“(ii) Which, being a question relating to any act or refusal of the master or owner of any ship or of any 1 or more seamen, has led to delay in the sailing of a ship or impeded the business of a ship; or

10 “(iii) Which has involved refusal on the part of any 1 or more seamen to carry out duties customarily associated with the preparing of a ship for sea, or the loading or unloading of cargo or passengers.

New

15 “(c) To specify any action to be taken by any specified person or organisation as an interim or provisional measure pending the hearing and determination by the Tribunal of any question.

20 “(2) Every member of the Tribunal may exercise the functions of the Tribunal within any part of New Zealand, either jointly or independently, in respect of:

“(a) Any New Zealand ship (including a New Zealand Government ship):

“(b) Any ship engaged in the home trade:

25 “(c) Any ship other than a New Zealand ship where agreement with the crew for the time being in force has been entered into in New Zealand.

Struck Out

30 “(3) The Tribunal may exercise any of its functions and powers—

“(a) Of its own motion, where it is satisfied that other processes of settlement available to the parties involved in the question have not been implemented or have not been effective; or

35 “(b) On the application of an owner or charterer or master of a ship to which this section applies, or the agent of any owner or charterer, or of an organisation representing masters or seamen employed on ships to which this section applies.

New

“(3) The Tribunal may exercise any of its functions and powers of its own motion, where it is satisfied that other processes of settlement available to the parties involved in the question have not been implemented or have not been effective.” 5

Struck Out

“(4) The Tribunal shall exercise its functions and powers if a question is referred to it pursuant to subsection (5) or subsection (8) or subsection (9) of section 151A of this Act.” 10

New

“(4) The Tribunal shall exercise its functions and powers—
 “(a) On the application in writing of an owner or charterer or master of a ship to which this section applies, or the agent of any owner or charterer, or of an organisation representing masters or seamen employed on ships to which this section applies; or 15
 “(b) If a question is referred to it pursuant to subsection (5) or subsection (8) or subsection (9) of section 151A of this Act.” 20

“151D. Procedure of Tribunal—(1) In the hearing and determining of a question or in any other proceedings before the Shipping Industry Tribunal—

- “(a) The procedure of the Tribunal shall be within the discretion of the Tribunal: 25
 “(b) The proceedings of the Tribunal shall take place in private unless the Tribunal, in any particular case, having due regard to the parties to the proceedings and to the public interest, considers that the proceedings should take place in public: 30
 “(c) The Tribunal shall not be bound to act in a formal manner and shall not be bound by any rules of evidence, and may receive any evidence that it considers relevant to the question before it: 35
 “(d) The Tribunal shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities and legal forms.

“(2) The Tribunal may determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the question or other proceedings, and may require that those cases be
5 presented within the respective periods so determined.

“(3) The Tribunal may require evidence or argument to be presented in writing, and may decide the matters on which the Tribunal will hear oral evidence or argument.

“(4) Any party to proceedings before the Tribunal may
10 appear personally or may be represented by an agent or, with the consent of the Tribunal, by a barrister or solicitor.

“(5) The cost of representation shall be borne by the party so represented.

“(6) Any party to proceedings before the Tribunal may
15 call witnesses to the proceedings, and produce before the Tribunal such books, papers, or other documents as he thinks fit and the Tribunal considers relevant.

“151E. **Particular powers of Tribunal**—The Shipping Industry Tribunal may, in relation to any question or proceedings before it—
20

“(a) Take evidence on oath or affirmation:

“(b) Give advice or a direction in pursuance of the hearing, including a provisional or interim direction relating to any or all of the matters in question:

25 “(c) Hear and determine the question or proceedings in the absence of a party who has been summoned or served with a notice to appear:

“(d) Sit at any place:

“(e) Adjourn from time to time or from place to place:

30 “(f) Refer any matter to an expert and accept his report as evidence:

“(g) Direct parties to be joined or struck out:

“(h) Allow the amendment, on such terms as it thinks fit, of any question or proceedings:

35 “(i) Correct, amend, or waive any error, defect, or irregularity, whether in substance or in form:

“(j) Summon before it the parties to the question or proceedings, and witnesses, and compel the production before it of books, papers, documents, and things for the purpose of reference to such entries or matters only as relate to the question or proceedings:

40 “(k) Generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the question or proceedings.
45

“151F. **Decisions of Tribunal**—(1) The Shipping Industry Tribunal shall record its decision on any question or in any proceedings, together with its reasons, in a document signed by it, and that document shall be admissible in evidence without proof of that signature. The Secretary for Marine shall cause a copy of that document to be given in the manner specified in section 507 of this Act to every party affected by the decision, whether or not that party appeared at the hearing. 5

New

“(1A) Any decision of the Tribunal may include a direction, in order to give effect to the decision, that any specified person or class of persons or any specified organisation shall take any specified action or refrain from any specified action. 10

“(2) The decision of the Tribunal on any question or in any proceedings shall be final and binding on and be complied with by every party or person to whom the decision is directed. 15

New

“(2A) No appeal shall lie from any decision of the Tribunal, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Tribunal shall be liable to be challenged, reviewed, quashed, or called in question in any Court. 20

“(3) Every person commits an offence who fails to comply with or does any act in contravention of or likely to prevent or hinder compliance with any decision of the Tribunal under this section. 25

“(4) Where any maritime organisation commits an offence against this section, every person holding any office in the organisation shall be deemed also to have committed the offence unless he proves that the offence occurred without his knowledge or that he did everything in his power to prevent the commission of the offence. 30

“(5) If a company commits an offence against this section, the manager and every director of the company shall be deemed also to have committed the offence, unless he proves that the offence was committed without his knowledge or that he did everything in his power to prevent the commission of the offence. 35 40

“(6) Where any person holding any office in any maritime organisation commits an offence against this section, that organisation shall be deemed also to have committed that offence.

5 “(7) Where the manager or any director of a company commits an offence against this section, the company shall be deemed also to have committed the offence.

“(8) Every person who commits an offence against this section is liable on summary conviction—

10 “(a) In the case of an individual, to a fine not exceeding \$100 and, where the offence is a continuing one, to a further fine not exceeding \$20 for every day on which the offence has continued:

15 “(b) In the case of a body corporate, to a fine not exceeding \$2,000, and, where the offence is a continuing one, to a further fine not exceeding \$200 for every day on which the offence has continued.

20 “(9) In this section, the term ‘maritime organisation’ means any organisation representing masters or seamen employed on New Zealand ships or any categories of such masters or seamen, whether a national organisation or not.

25 “151G. **Protection of Tribunal**—The members of the Shipping Industry Tribunal shall have, in the performance of their functions and duties, the same protection and immunity as a Judge of the Court of Arbitration.

30 “151H. **Tribunal to be Commission of Inquiry**—For the purposes of carrying out its functions under this Act, the Shipping Industry Tribunal shall, subject to the provisions of this Act, be a commission of inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act, except sections 2, 4A, and 14, shall, so far as they are applicable, apply to the Tribunal accordingly.

35 “151I. **Remuneration and travelling allowances**—There may be paid, from the Consolidated Revenue Account out of money appropriated by Parliament for the purpose, to the members of the Shipping Industry Tribunal remuneration by way of fees, salary or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling
40 Allowances Act 1951; and the provisions of that Act shall apply accordingly as if they were members of a statutory Board within the meaning of that Act.”

9. Matters to be entered in log—(1) Section 178 of the principal Act is hereby amended by repealing paragraph (d) (as substituted by section 31 of the Shipping and Seamen Amendment Act 1959), and substituting the following paragraph: 5

“(d) A statement of the conduct and ability of each of his crew as having been either ‘very good’ or ‘bad’:

“Provided that—

“(i) The master shall not enter a statement that the conduct of a seaman has been bad, unless there is entered in the official log book an offence committed by the seaman, or unless the seaman has been censured by the master for misconduct and this fact has been entered in the official log book: 10

“(ii) The master shall not enter a statement that the ability of a seaman has been bad, unless the seaman has been found by the master to be inefficient and that fact has been entered in the official log book:” 15

(2) The following enactments are hereby consequentially repealed: 20

(a) Section 31 of the Shipping and Seamen Amendment Act 1959:

(b) Paragraph (b) of subsection (2) of section 7 of the Shipping and Seamen Amendment Act (No. 2) 1969: 25

(c) Subsection (2) of section 11 of the Shipping and Seamen Amendment Act (No. 2) 1970.