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MARINE ACT, 1986

(ACT NO. 35 OF 1986)

Marine (Preliminary Investigation Procedures) Regulations, 1990

[LEGAL NOTICE No. 79]

**MARINE ACT, 1986
(ACT NO. 35 OF 1986)**

**MARINE (PRELIMINARY INVESTIGATION PROCEDURES)
REGULATIONS, 1990**

IN exercise of the powers conferred upon me by sections 94 and 212 of the Marine Act, 1986, I have made the following Regulations.

Short title

1. These Regulations may be cited as the Marine (Preliminary Investigation Procedures) Regulations, 1990.

Purpose

2. The purpose of these Regulations is to set out the procedures to be followed by a person appointed under section 88 of the Marine Act, 1986 to carry out a preliminary investigation into a casualty.

Procedures to be followed in carrying out a preliminary investigation

3. A person appointed by the Marine Board in accordance with section 88(1) of the Marine Act, 1986 to carry out a preliminary investigation into a casualty must, when carrying out that investigation, comply with the procedures set out in the Schedule.

Citation of procedures

4. The procedures set out in the Schedule may be cited as the Marine Casualty Preliminary Investigation Procedures.

Dated at Suva this 26th day of July 1990.

A. V. TORA
Minister for Infrastructure and
Public Utilities

SCHEDULE

THE MARINE CASUALTY PRELIMINARY INVESTIGATION
PROCEDURES

PRELIMINARY INVESTIGATIONS

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1. PRELIMINARY INVESTIGATIONS

1. *Definition of 'Investigation'*

In paragraphs 2 to 18 'investigation' means a preliminary investigation made under section 88 of the Marine Act.

2. *Aims, Objectives and Conduct of Investigation*

- 2.1 Investigations are to be conducted with three important aims in mind
- to establish the facts clearly so that lessons can be learnt from the casualty and steps taken to prevent similar occurrences;
 - to enable the Marine Board to determine in accordance with Section 88 if any action is warranted in regard to the Certificate issued under provisions of the Marine Act of any person involved in the casualty;
 - to enable the Marine Board to advise the Minister whether or not a Court of Marine Inquiry is warranted.

The object of an investigation is therefore to ascertain, as far as practicable, the cause and effect of the casualty, whether or not any persons appear to have acted incorrectly and whether or not circumstances can be determined that explain such actions.

2.2 The investigation must be thorough and the resulting report be lucid and contain all relevant material.

2.3 A person conducting an investigation must bear in mind that the report could lead, after further due process, to one or more of the following actions:

- suspension or cancellation of a certificate under the provisions of Section 88 or 90;
- prosecution under the Marine Act;
- convening of a Marine Inquiry in Fiji;
- in the case of involvement of a non-Fiji ship or persons with non-Fiji certificates, action by the Administration of the country involved;
- civil action in the courts of Fiji or elsewhere where the report could be tendered as evidence.

In the event that a Marine Inquiry is convened the Counsel assisting the Court will to a large extent rely on the accuracy and completeness of the investigation report.

2.4 Since the principal objective in holding an investigation is to establish the facts, the attitude of the investigating officer towards a person making a statement should be such as to encourage full disclosure. Although the investigating officer should be firm and persistent in seeking full answers, he must not conduct his questioning in an adversarial manner.

2.5 As it may be Government policy to publish the report of the investigations particular care must be taken in preparing the report to ensure that it is accurate and contains all relevant facts, and that it is written to the high standards expected of an official document.

3. *Foreign Ships*

3.1 In accordance with general practice throughout the world, when a casualty occurs to a foreign ship in Fiji territorial waters, then, unless a Fiji ship is also involved, significant interests affected (loss of life, oil pollution etc), or a request is received from the Flag State, inquiry into the matter will usually be left to the Consul of the Flag State. This general practice does not necessarily apply within port limits or when a ship is under pilotage outside port limits. In such cases the Marine Board may consider it necessary to conduct an investigation. If in these circumstances a Fiji investigation is held, the Consul of the Flag State should be informed of the reasons for the investigation, and invited to be represented during the course of the investigation.

3.2 In dealing with foreign ships, special tact must be employed to obtain information. Any attempt to force answers which the master may not desire to furnish should be avoided. Where the master declines to give the information, instructions should be sought from The Secretary, Fiji Marine Board.

4. *"Instrument of Appointment" and Reporting Procedure*

4.1 In the event of a casualty and the decision to hold a preliminary investigation, the Marine Board will appoint a surveyor to carry out that investigation.

4.2 Upon appointment, the investigation should take priority over the surveyor's other duties.

4.3 Whilst engaged upon the investigation all queries by third parties (Solicitors, agents act), relating to that investigation should be addressed directly to The Secretary, Fiji Marine Board.

5. Initial Procedures

5.1 Immediately on being appointed the surveyor shall ensure that Notices of Investigation, in the form as shown at FMB 5 shall be distributed as follows:

- 4 copies to each ship
- 1 copy to agent and owners/operators

The surveyor shall also contact The Secretary, Fiji Marine Board to ensure that notices are posted at all shipping offices, and establish whether the notice should be published in any newspaper.

5.2 On being appointed the surveyor must familiarise himself with all available information on the casualty. Discussion with other surveyors with special knowledge/relevant experience may be advantageous in formulating questions, but care should be exercised against any tendency to prejudge the outcome of the investigation.

5.3 A comprehensive list is to be drawn up of all persons to be interviewed.

5.4 A schedule of interviews is to be drawn up. Liaison with Owner(s)/Operator(s) is essential to ascertain availability of vessel(s) and personnel. Points to be born in mind:

- Key witnesses (persons directly involved) will occupy the greater time, possibly allowing only two interviews in any one day, whereas lesser witnesses may only require to be allocated one hour each.
- Witnesses may need to be recalled, for clarification of points, if conflicting evidence is received from other witnesses.
- in fixing a time a place for a specific interview, the surveyor should if possible avoid involving the witness in pecuniary loss (see 15 Allowances).

5.5 Where possible the interviews should be held on board the vessel(s) INVOLVED. However, it may be preferable/more convenient to interview witnesses at other locations, but bearing in mind that in addition to an interview room it may be necessary to provide a waiting room and also a room in which the stenographers can transcribe their notes.

5.6 Summonses should be served on the various witnesses (see 6). The summonses may be posted, in which case they should be sent 'Recorded Delivery'.

Although not essential, the summonses draw to the attention of the witnesses the requirements of section 88 of the Marine Act.

5.7 The surveyor should ascertain the possible need for an interpreter.

6. Form of Summons, With Warning

The attention of officers making investigations is drawn to the precise terms of section 88. The form of summons issued under sub-paragraph 88(2)(b) must include the full text of that section for the information of persons to be questioned. A proforma summons for use under this section is set out below:

MARINE ACT 1986: SECTION 88

SUMMONS

In the matter of a Preliminary Investigation respecting _____

To: (Name and address of person summoned)

You are hereby summoned to attend before me at _____ at _____ am/pm
on the _____ day of _____ 19____ and answer any questions
which I shall put to you respecting _____

You are required to bring with you and produce to me the following books,
documents and things:

Dated at _____ this _____ day of _____ 19____

(Name and designation of persons appointed to make investigation)

*Section 88 of the Marine Act 1986 provides:

(1) For the purposes of a preliminary investigation of a casualty, the Marine Board shall appoint a person as the investigator in respect of the casualty.

(2) An investigator may, for the purpose of conducting an investigation into a casualty—

- (a) go on board any vessel involved in the casualty;
- (b) require any person to answer questions relating to the casualty; and
- (c) require production of documents or certificates relating to a vessel involved in the casualty.

(3) A person shall not—

- (a) hinder or obstruct an inspector carrying out a preliminary investigation under this section;
- (b) fail to answer a question put to him by an investigator under paragraph (2)(b); or
- (c) fail to produce a document or certificate he has in his possession or under his control when requested to do so by an inspector under paragraph (2)(c).

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

(4) An investigator carrying out an investigation under this section shall, upon the conclusion of his investigation send to the Marine Board a written report containing a full statement of his conclusions in respect of the casualty accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

- (5) Upon receipt of a report under subsection (4), the Marine Board may—
- (a) request the Minister to cause a marine inquiry to be held in relation to the casualty in accordance with section 89; and
 - (b) if the Board considers it is necessary or desirable to do so, suspend any certificate of competency or certificate of satisfactory service issued to a qualified seaman pending the outcome of that marine inquiry.

7. *Legal Representation During Investigation*

7.1 Although an interviewee is entitled to legal representation, it is considered that the investigation will generally be more fruitful if it can be conducted in a relatively informal atmosphere on a person to person basis, and with the interviewee put at ease. Where legal representation is sought it should be pointed out that the purpose of the investigation is primarily to establish what happened and how it happened. Should the interviewee insist on legal representative it must be allowed.

7.2 The role of any legal adviser attending an interview must primarily be to keep a watching brief on the proceedings. He should be given the opportunity to confer with his client on request when the investigating officer completed his questioning. The witness will then be given the opportunity to add a clarifying statement to the response of any question or on any additional matter relevant to the investigation. This in turn may, of course, give rise to the investigating officer asking further questions.

7.3 In no circumstances shall the investigating officer enter into arguments with the legal adviser.

8. *Persons permitted to be present at an interview*

8.1 No person should be interviewed in the presence of another interviewee or a person connected with the casualty such as a ship owner, agent or any person who may derive reward from the findings.

8.2 The persons to be present should normally be limited to the following, but others, at the discretion of the investigating officer and without object from the interviewee, may also be present:

- (a) stenographer;
- (b) interpreter, where the native tongue of the interviewee is not English and where the investigating officer considers an interpreter is necessary or desirable;
- (c) Consul or other representative of Flag State;
- (d) legal representative;
- (e) a trainee in accordance with 8.3 below, or a person with specialised knowledge of a technical nature required by the investigator.

8.3 A surveyor observing the conduct of the investigation for training purposes may be present but subject to the following:

- only where the interviewee understands clearly the reason for the presence of the additional persons, and has no objections;
- in general only one such trainee may be present;

- the trainee shall not ask any questions nor make any comment during the interview, however, where mutually agreed, he may seek to have questions asked that may assist the investigation; and
- should it appear to the investigating officer that the presence of the trainee is causing hesitation or discomfort to the interviewee then the trainee's presence shall be immediately terminated.

9. *Nervousness in persons being questioned*

Some persons are inclined to be nervous when being questioned. Everything reasonably possible should be done to assist such persons to make a clear and full statement of the facts.

10. *Questioning of persons summoned*

10.1 Persons required to answer questions under section 88 of the Marine Act should be advised of the provisions of that section particularly the requirement to answer all questions put.

10.2 In view of the compulsion for an interviewee to answer all questions put during a P.I. it should be made clear that, in the event of a Court of Marine Inquiry or other legal proceedings being convened, the record of interview would not generally be admissible unless agreed to by the interviewee. Nor would the record of interview be released to a third party without the permission of the interviewee.

10.3 It is preferred that questions under section 88 are not answered under oath as it is considered more important to obtain the facts than to collect evidence which might be allowance in court. The formality introduced by the administration of the oath is liable to create an atmosphere which could inhibit the interviewee from making a full and frank statement. Furthermore, a person intent on lying or generally distorting the facts, is hardly likely to be dissuaded from such a course merely because he has sworn to tell the truth. Where, however, a person asks to be examined under oath it shall be administered in accordance with FMB 6.

10.4 Where an interviewee appears to be prevaricating he should be reminded of the requirement for him to answer fully and truthfully. He should also be reminded of his right to legal representation. If he wishes to exercise that right, questioning should be suspended to enable him to obtain representation. The interview should then, if necessary, be started afresh while maintaining all records of the original interview.

10.5 The person making the investigation should, while interviewing, carefully bear in mind that:

- (1) he is not sitting in judgement but is trying to ascertain the facts relating to the casualty;
- (2) he must express no opinion as to what should or should not have been done by persons in the ship on ships concerned, etc.;
- (3) he must not enter into argument with the person being questioned nor in any way allow himself to act or appear to act under bias or prejudice; and
- (4) he must not ask question designed to suggest a particular answer, questions implying the adoption of one view of disputed facts, nor questions resting on assumptions which depend on knowledge not available to the person at the time of the casualty.

11. Questions to be asked

11.1 General

Instructions 11 are to be treated as guidelines and not as absolute instructions. Departure from these instructions may be necessary to meet special circumstances and surveyors should be guided by their experience and if necessary seek confirmation for a proposed course of action from the Marine Board.

11.2 Preparation and Conduct of Interview

11.2.1 Where possible proper verbatim recording of interviews should be undertaken, and in this respect the services of a professional court reporting service is recommended. Investigators must, where possible, be provided with competent stenographers, interpreters (where necessary), office facilities and, if required, tape recorders.

Where it is intended to record the interview by tape recorder, the agreement of the person interviewed must be obtained before the interview commences.

11.2.2 To avoid the possibility of overlooking vital points the investigating officer should, prior to questioning any person carefully prepare himself for the task and, using any knowledge already available about the incident, make a plan as to how the questioning is to proceed. The questions asked should elicit all the information required to attain the objectives of the investigation as set out in Instruction 2. They should cover the points listed below, so far as these points are relevant to the case but it is emphasised that, as the lists are not exhaustive, additional information may be required. The investigating officer should where ever possible visit the vessel and familiarise himself with all relevant features of the ship.

11.2.3 Interviewers should have ready at hand corrected charts, parallel rulers, dividers, nautical publications, plans of the vessel, etc. as may be appropriate, and should allow witnesses fullest access to these whilst answering questions. Where a witness may be required to mark a chart or plan, sufficient copies should be prepared in advance to cover anticipated needs.

11.2.4 To make most economical and effective use of the time available for the interview a statement should be obtained prior to the interview. The statement is then available for the Investigator to base his inquiry. This also obtains, in advance, many of the answers required under 12.5. The form of statement is at FMB 2, and should be sent under covering letter (FMB 3) with the summons referred to at 6.

Where a statement is given under this instruction, the statement should be read back to the interviewee at the start of the interview and, with his agreement, it may form part of the record of interview.

11.2.5 Where the services of an interpreter are used, a brief statement should be obtained from the interpreter stating name, address and experience.

At the completion of the record of an interview that has been interpreted the following form of words should be added:

"I hereby state that I have truly and faithfully, to the best of my ability, interpreted questions asked during the interview by _____ into the _____ language and have truly and faithfully, to the best of my ability, interpreted the answers given by _____ in the _____ language into the English language.

Signed _____

Name _____

11.2.6 Where the investigating officer finds he has omitted a particular point or when information from a subsequent witness opens up an issue not covered, or contradicts information already given a previous witness may be recalled for further questioning.

11.2.7 The Master shall be interviewed to authenticate documents, establish ownership and authenticate relevant dates and times.

11.3 *Information Generally Required in All Cases*

11.3.1 *Particulars of the ship*

(Note: The accuracy of information taken from Lloyd's Register or other publications should be confirmed by questioning the appropriate witness.)

Details from the Certificate of Registry.

Name and address of owners and operators (if applicable) also, if an overseas ship, of agents.

Name and address of charterer, and type of charter.

Net and gross tonnages, and dimensions.

Means of propulsion; rig, if any; particulars of engines.

Type of ship.

When, where and by whom built.

Any relevant structural or other peculiarities.

Full details and description of certificates held, their dates of issue and expiry and annual endorsement, and issuing authorities.

Particulars of Navigational Aids

Shipboard and Company Standing Orders/Operational Instructions

11.3.2 Documents to be produced

(Note: Documents should be produced that may have relevance to the investigation. Where appropriate original documents should be retained. Where the retention of documents is not possible authenticated and dated photocopies should be taken).

- Ship's Register
- Official Log Book
- Deck Log Book
- Port Log, Log Abstract and Cargo Log Book
- Engine Movement Record
- Engine Room Log Book
- Course Recorder Roll
- Soundings Book
- Night Order Book
- Standing Orders
- Company Standing Orders
- Compass Error Book
- Radar Log Book
- Repair Requisition Records
- Bar Records—daily purchases—voyage receipts etc.
- Current Statutory Certificates
- Crew List
- Passenger List
- Radio Log
- Voyage Plan
- Charts and record of Chart Corrections.
- Any other documentation relevant to the inquiry.

11.3.3 Particulars of voyage

Port at which voyage commenced and port at which it was to have ended, with dates.

Details of cargo

Port last left, and date.

Draught and any list

Port bound for at time of occurrence.

Any occurrence during the voyage that may have a material bearing on the casualty or unusual occurrence whether or not it appears to be relevant.

11.3.4 Particulars of personnel

Total number of crew (including master) and passenger carried, with names (crew and passenger lists may be attached).

Number of persons injured, or known to be dead, with names.

Full names of persons possibly involved in the occurrence, (e.g. master, pilot, officer-of-the-watch, engineer officer-of-the-watch, lookout, helmsman), their capacity and period of service in the ship and the description, number, date and place of issue of all certificates, licences or permits issued to those persons. (It should be noted that some may hold more than one certificate of competency).

Conduct of persons involved and any observed factors affecting their competency, e.g.: state of health, other physical or mental condition, including sobriety.

11.3.5 *Particulars of weather and tide*

Direction and force of wind.

Direction and state of sea.

Atmospheric conditions and visibility.

State and height of the tide.

Direction and strength and tidal and other currents, bearing in mind local conditions.

11.3.6 *Particulars of the occurrence*

Date, time and place of the occurrence.

Details of the occurrence and of the events leading up to it and following it.

Details of the performance of relevant equipment with special regard to any malfunction.

Extracts from all relevant ship and, if applicable, shore documents including details of entries in official, bridge, rough and engine room log books, data log print out, computer printouts, course and engine speed recorder, radar log etc.

Details of communications made between vessel and radio stations, S.A.R. centres and control centres, etc., with transcript of tape recordings where available.

11.3.7 *Assistance after the occurrence*

If assistance was summoned, by what means.

If assistance was offered or given, by whom and of what nature, and whether the assistance was effective and competent.

If assistance was offered and refused, the reason for refusal.

11.4 *Additional Information Required in Cases of Collision*

Local or other special rules for navigation.

Obstructions, if any, to manoeuvring, e.g. by a third vessel, shallow water, beacon, buoy, etc.

Circumstances affecting visibility and audibility, e.g. state of sun, dazzle of shore lights, strength of wind and ship board noise and whether any door or window could obstruct visibility and/or audibility.

For each ship: time, position, course and speed of ship when presence of other ship first became known, and all subsequent alterations of course and speed, and time at which they occurred, up to collision.

Lights and day signals carried and operated in ship, and those seen in other ship.

Sound signals, including fog signals made by ship and when, and those heard from other ship and when.

If a listening watch was kept on VHF radio channel 16, or other frequency, and any messages sent, received or overheard.

Bearing and distance of other ship, if observed by radar, time of observations and subsequent alterations of bearing.

If other ship was plotted and by what method (autoplot, reflection plotter etc.)

Number of radars carried on ship, number operational at time of casualty, together with ranges used on each radar.

Bearing, distance and heading of other ship, if sighted visually, time of sighting, and subsequent alterations.

Whether steering by hand or automatic

Details of lookout

The parts of each ship which first came into contact and the angle between the ships at that time.

Nature and extent of damage

Compliance with statutory requirement to give name and nationality to other ship and to stand by after collision.

(Note: information as in cases of foundering may also be required.)

11.5 *Additional Information Required in Cases of Stranding*

Details of voyage plan, or evidence of voyage planning.

Last accurate position and how obtained.

Subsequent opportunities for *obtaining* position lines or positions, by celestial or terrestrial observations, *radio, radar* or otherwise, or by lines of soundings and, if not taken, why not.

Subsequent weather and tidal or other currents experienced.

Subsequent courses, speeds and allowances made for compass error, leeway and tidal or other current.

Number and description of compasses and when last examined or adjusted, record of subsequent observations of deviations.

Compass error; when and how obtained.

Effect on compass of any magnetic cargo, electrical disturbance or local attraction.

Radar/s in use, and respective ranges used, and evidence of radar performance monitoring and logging.

Charts, sailing directions and relevant notices to mariners held, if corrected to date, and if any warnings they contain had been observed.

Soundings taken, when, and by what means.

Draught of ship before stranding and how determined.

Position of stranding and how determined.

Cause and nature of any engine or steering failure before the stranding.

Readiness of anchors, their use and effectiveness.

Nature and extent of damage

Action taken, and movements of ship, after stranding.

(Note: information as in cases of foundering may also be required.)

11.6 Additional Information Required in Cases of Foundering

Draught and free board leaving last port and changes consequent upon consumption of stores and fuel.

Freeboard appropriate to zone and date.

Particulars of any alterations to hull or equipment, or to their condition, since survey, and by whom such alterations sanctioned.

Stability data and when determined.

Factors affecting stability, e.g. structural alterations, nature, weight, distribution and shift of any cargo and ballast, free surface in tanks or of loose water in ship.

Subdivision by watertight bulkheads.

Watertight integrity of hatches, scuttles, ports and other openings.

Number and capacity of pumps and their effectiveness; the position of suction.

Cause and nature of any defects in engines or pumps.

Time and cause of water first entering ship.

Other circumstances leading up to foundering.

Measures taken to prevent foundering.

Position where ship foundered and how established.

Life-saving appliances provided and used, and any difficulties experienced in their use.

11.7 Engineroom Orders

In all cases where a collision or a stranding is the subject of an investigation, and the movements of her engine are involved, the master or officer on watch and other persons in a position to speak with knowledge are to be asked whether the orders to the engineroom were promptly carried out. If there is any doubt on the matter, the person making the investigation shall refer to it in his report.

12. Preparation of Records of Interviews

12.1 It is desirable that the information given by a person should be identified by a signature on the written record. The record of interview shall be completed and read over by the interviewee before signature. In addition to signing the record of interview each preceding page should be initialled at the foot. When utilising services of an interpreter see also 8.2.

12.2 The subject matter of the investigation shall be uniformly stated on the first page of the transcript of answers given by each person interviewed as, for example:

'Preliminary Investigation conducted by
(name and designation) at (place)
_____ at _____
(date)
on _____ into the circumstances attending the collision 110(name) (name)
between the _____ and the _____
(place) (date)
at _____ on _____

12.3 When the transcript extends beyond one page, each subsequent page shall be headed with a short reference to the subject matter, e.g.

(name) (name)
 'Collision between _____ and _____
 (name)
 Investigation by _____
 (name)
 Deposition of _____ continued.

A supply of sheets so headed is to be prepared before the investigation is begun, and the sheets of each record of interview are to be numbered consecutively.

12.4 Questions and answers should be numbered consecutively in one series throughout each interview and from interviewee to interviewee, so that for any number in the series there will be only one question and corresponding answer to which the number relates. Where an interviewee is recalled numbering of questions is to continue consecutively from the last numbered question put to the immediately previous interviewee.

12.5 If a prior statement has not been obtained as described in 11.2.4 the routine questions concerning name, address, certificate, period of service on the vessel, duties in general and duties at the time of the incident should be followed with a question requiring the witness to state in his own words the exact sequence of events, as observed by him, as they occurred before, during and after the incident. This should be followed, if necessary, by additional questions to elicit information omitted, or explain inconsistency in that, or with another, witness's information, or to elicit any further information required under 11. (See FMB 4).

12.6 Except for a question requesting a witness to describe in his own words the exact sequence of events, as observed by him, questions should be carefully structured so as to ask only one question at a time.

12.7 Each interviewee shall be entitled to correct spelling or other transcription errors in the transcript before signing it and initialling each page. Each such correction should be initialled.

12.8 Should an interviewee, on reading the transcript, wish to materially alter the answer to any question he should not be permitted to do so, but should be asked a further question or questions, e.g. "Having read the transcript of your record of interview is there any answer you would wish to rephrase, or correct?"

13. *Supply of Copies of Records or Interviews*

13.1 A copy of a record of interview shall be made available to the interviewee as soon as possible.

13.2 No record of interview or other document shall be made available to any other person, and any request shall be referred to The Secretary of the Marine Board.

14. *Report to Fiji Marine Board*

14.1 A report shall be prepared by the investigating officer and forwarded, with a file compiled of 'transcripts of interview', supporting papers, and any recommendations arising from the casualty, addressed to The Secretary, Fiji Marine Board.

14.2 The report should present a clear picture of the events leading up to, during, and subsequent to the incident, and a reader must be able to comprehend fully the circumstances without recourse to a study of the transcripts or other documents.

14.3 In preparing the report the following layout is suggested as a guide:

- (a) Synopsis of casualty;
- (b) Authority to conduct Investigation (copy of appointment of investigating officer);
- (c) Brief details of interviews conducted and inspections made;
- (d) Technical details of vessels involved and details of statutory certificates held;
- (e) Sequence of events;
- (f) Brief details of serious injuries to persons and damage to vessels of other property;
- (g) Conclusions in respect of the casualty, including extent to which casualty resulted from actions, or non actions, of any person or persons;
- (h) Recommendations, in accordance with 14.6 (not published);
- (i) a summary of the records of interview with reference to relative questions and answers, substantiating sequence of events (not published).
- (j) Copies of relevant log extracts, charts, or other relevant documents.

14.4 In the 'Sequence of Events' section only factual matters should be included. Most of this material will be derived from the records of interview and great care must be taken to ensure that, where conflicting statements or information have not been resolved, this is made clear. For instance, in reconstructing the sequence of events, if the Master states he saw one thing and the helmsman states he saw something else, one recollection should not be accepted to the exclusion of the other. In such circumstances the 'Sequence of Events' section should include both views, and any opinion the investigating officer may have as to correctness should be confined to the 'Conclusions'.

14.5 The 'Conclusions' must be clear and as unambiguous as possible. Where there appear to be mitigating circumstances these should be stated; however, care must be taken not to invent excuses for the actions or inactions of those involved.

14.6 The 'Recommendations' will not form part of the report, but should be included as an attachment under separate advice, to the report.

14.7 Where the investigating officer has doubts about the relevance of material to the report he should contact The Fiji Marine Board.

14.8 It should be noted that an investigation is not considered complete until the report has been examined by Marine Board and approved for publication. Where it is considered that important matters have been overlooked or misinterpreted the investigating officer may be required to make further inquiries and seek further statements from witnesses.

15. Allowances to persons summoned

As a general rule, payment of allowances is not to be made to persons summoned under section 88. Where the question of payment is raised, the witness should apply in writing to the Secretary, Marine Board giving full details of his claim.

16. Privilege of investigation documents

Basic policy is not to claim privilege in respect of documents resulting from an investigation. Should it be considered in any case that the circumstances are so special as to warrant a departure from this policy in the interests of the proper functioning of the Marine Board and the Public Service, action will be taken by the Marine Board to consult the Solicitor-General before the matter comes before a Court in order that any possible action to preserve those interests might be taken.

17. *Official Secrets Act*

This Act has the effect of protecting the confidentiality of information coming into the hands of civil servants in the course of their duties.

The investigating officer shall not disclose any affairs or matters revealed by way of his investigations other than by his report and this report shall be made to the Marine Board. (See 13.)

FORM: FMB 1

MARINE ACT, 1986

APPOINTMENT OF PERSON UNDER SECTION 88

In pursuance of the powers and functions conferred on the Marine Board by section 88 of the Marine Act 1986

I, _____ hereby appoint _____ to make a preliminary investigation under that section into the circumstances of _____

Dated this _____ day of _____ 19 _____

President
Fiji Marine Board

FORM: FMB 2

MARINE ACT 1986: SECTION 88

STATEMENT BY _____ (Full Name) _____

CONCERNING THE PRELIMINARY INVESTIGATION INTO THE
CIRCUMSTANCES OF THE _____

(Description of casualty)

ON _____ (Date) _____

Full name _____

Permanent address _____

Date of Birth _____

Occupation on date of Casualty _____

Professional qualification _____

Career details _____

Previous service on ship _____

Would you state, in your own words, the sequence of events, observed by you, leading up to and subsequent to the casualty _____ (To be continued overleaf and on subsequent pages as necessary. Please initial and date the foot of each page and sign final page. You may wish to complete this statement with the assistance of a legal advisor.)

FORM: FMB 3

SUGGESTED LETTER TO ACCOMPANY FMB 2

(Address)

Dear (Name)

I write in connection with the enclosed summons to attend the Preliminary Investigation into the circumstances surrounding the _____ (Description of Casualty _____)

It would assist my investigation, and speed the interview process, if you would make a signed statement regarding the casualty in advance of our meeting. For this purpose I attach an outline form of statement for you to complete. I should be grateful if you would return the completed statement as soon as possible to the address shown on the summons as the place of interview.

I look forward to meeting you at (Venue of interview) on (Date)

Yours sincerely

Investigating Officer

FORM: FMB 4

EXAMPLE OF QUESTIONS

The initial part of an interview should follow standard format, to the point where an interviewee has been asked to describe the sequence of events, as observed by himself, in his own words. From that point the questioning will depart from any standard, but should be carried out in accordance with 11.

The following example shows the questions that form the initial part of an interview with a Master. Many of the questions are appropriate to other interviewees:

- (a) May I have your full name
- (b) What is your permanent address
- (c) What is your date of birth
- (d) Where were you born
- (e) On (Date/time) who was Master of the (name of ship)
- (f) I have a copy of a ship's Register, marked "Document 1"
- (g) Is the copy accurate
- (h) Are these the Articles of Agreement for that ship
- (i) Could you please identify your signature on the Articles
- (j) Who owns (name of ship)
- (k) Is (name of ship) on Charter
- (l) (If so) to whom is the vessel chartered
- (m) What professional qualifications do you hold

- (n) Have you previously served on this ship
- (o) Would you outline your career to date
- (p) Where were you at the time of the casualty
- (q) What were you doing at the time of the casualty
- (r) Would you state, in your own words, the sequence of events, as observed by you, leading up to the casualty, and what happened subsequently.

Note 1: When documents are required to be authenticated the question should take the form—

“Would you please identify document number _____”

Note 2: During a narrative answer, detailing the sequence of events, the surveyor may find it beneficial to interrupt the narrative with questions on points requiring clarification, rather than waiting until the completion of the narrative.

Note 3: The routine questions and transcribing of example question (r) are time consuming. By obtaining a statement as at FMB 2 time can be saved and a higher level of planning for the interview may be possible.

Form: FMB 5

NOTICE TO THE PUBLIC OF PRELIMINARY INVESTIGATION

A Preliminary Investigation has been ordered into the circumstances attending the casualty (1) _____

The Preliminary Investigation is being conducted by (2) _____

Any person having information material to the casualty or information that may assist in the Investigation should contact (3) _____

The Officer conducting the Investigating may be contacted by one of the following means:

- (a) In person or by telephoning the Secretary, Fiji Marine Board, Shipping Office, Princess Wharf, Suva.
- (b) or in writing to: The Secretary
Fiji Marine Board
P.O. Box 326
Suva, FIJI

(1) Enter description of casualty
(2) & (3) Name of Officer Investigating the casualty.

ADMINISTRATION OF THE OATH

Where, for any reason, it is necessary to administer an oath to a witness, the swearing of that witness must be kept as simple as possible. The intent by the witness to make an oath must be clear and if the form of oath shown below is not appropriate, the witness should be allowed to make what ever form of oath he or she desires.

The Oath

(A Bible or other appropriate religious book should be available)

The investigation shall require the witness to take the Bible (or other religious book) in his right hand, and then require the witness to repeat after him the following oath:

"I swear by Almighty God that the evidence I shall give in these proceedings shall be the truth, the whole truth and nothing but the truth."

Any oath differing from the above Oath shall be recorded.