

COMMERCIAL VESSELS ACT, 1979, No. 41

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 41, 1979.

An Act to regulate the use of certain vessels and of certain motors for propelling vessels; to provide for the marking of load lines on, and the carriage of certain equipment by, vessels; and for certain other purposes. [Reserved, 7th May, 1979.]

See also Navigation (Commercial Vessels) Amendment Act, 1979.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Commercial Vessels Act, 1979".

**Commence-
ment.** **2.** (1) This Act shall not come into operation until after Her Majesty's pleasure thereon has been publicly signified in New South Wales.

(2) Subject to subsection (1), the several provisions of this Act shall commence on such day or days later than the day on which Her Majesty's assent to this Act is proclaimed by the Governor in the Gazette as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Arrange-
ment.**

3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—PERMITS FOR VESSELS AND MOTORS—ss. 6–26.

DIVISION 1.—Form and Effect of Permit—ss. 6–13.

DIVISION 2.—Issue of Permits—ss. 14–20.

**DIVISION 3.—Suspension and Cancellation of Permits—
ss. 21–26.**

PART III.—SURVEYS AND CHECKS—ss. 27–30.

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PART IV.—APPEALS—*ss.* 31–35.

PART V.—LOAD LINES—*ss.* 36–40.

PART VI.—EQUIPMENT—*ss.* 41, 42.

PART VII.—GENERAL—*ss.* 43–52.

SCHEDULE 1.

4. Schedule 1 has effect.

Savings and
transitional
provisions.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires :—

Interpre-
tation.

“Board” means The Maritime Services Board of New South Wales;

“check”, in relation to a motor, means an examination of the motor and the testing of the safety and efficiency of its operation when in use;

“crew”, in relation to a vessel, means the persons (including the master of the vessel) whose duty it is to navigate or work the vessel or to carry out any other operations on the vessel;

“master”, in relation to a vessel, includes—

- (a) the person who for the time being has the command, charge or management of the vessel;
- (b) in relation to a vessel the subject of a hiring agreement that has not expired or a hiring agreement that has expired without the owner of the vessel resuming possession thereof—the person who has taken, or took, the vessel on hire;

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- (c) in relation to a vessel to which is attached a motor that is the subject of a hiring agreement that has not expired or a hiring agreement that has expired without the owner of the motor resuming possession thereof—the person who has taken, or took, the motor on hire; and
- (d) in relation to a vessel being towed or pushed by another vessel—the master for the time being of the other vessel unless he is subject to the instructions of a person on board the vessel being towed or pushed;

“mechanical power” includes electrical power and power derived from the compression, expansion, combustion, explosion or radioactive emission of any substance;

“motor” means an engine or other device for the propulsion of a vessel by mechanical power which is so designed or constructed as to be from time to time readily attached to, and detached from, a vessel;

“motor permit” means a permit issued under Part II with respect to a motor;

“owner”, in relation to a vessel or motor, includes—

- (a) a joint owner of the vessel or motor;
- (b) a person to whom a permit for the vessel or motor has been issued under Part II; and
- (c) a person exercising or discharging, or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner, whether on his own behalf or on behalf of another;

“paint” does not include painting in a medium that is readily removable;

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“passenger”, in relation to a vessel, does not include—

- (a) a member of the crew of the vessel; or
- (b) a person on board the vessel where the vessel is the subject of a hiring agreement that has not expired, or a hiring agreement that has expired without the owner resuming possession thereof, unless the person who took the vessel on hire is using the vessel for a commercial purpose;

“permit” means a permit for a vessel or motor issued under Part II;

“permit plate”, in relation to a vessel or motor, means a permit plate issued under Part II to correspond to a permit for the vessel or motor;

“regulation” means regulation made under this Act;

“survey schedule”, in relation to a vessel, means the survey schedule issued under section 15 (3) with the permit for the vessel, as amended from time to time;

“surveyor” means a person appointed by the Board to investigate, or examine and report upon, the design, construction, condition or sufficiency of a vessel or motor, or any part of the hull, construction, machinery or equipment of a vessel, or any component of a vessel or motor, for the purposes of this Act;

“Tribunal” means a Marine Survey Appeals Tribunal constituted under section 32;

“vessel” includes ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil, hovercraft and any floating object or apparatus, whether amphibious or not, used wholly or partly for the conveyance of persons or things by water;

“vessel permit” means a permit issued under Part II in respect of a vessel.

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(2) Except in so far as the context or subject-matter otherwise indicates or requires, a reference in this Act to a vessel includes a reference to machinery, fittings, components and equipment in the vessel.

(3) A reference in a provision of this Act to a vessel does not include a reference to a vessel that—

- (a) is engaged for profit or reward in the carriage of persons or goods to or from a port situated outside the limits of prescribed waters to which the provision extends;
- (b) in the case of a vessel the owner of which is deemed by section 19 (3) to have been issued with a temporary permit—is used in accordance with the authority conferred by the temporary permit;
- (c) in the case of a vessel not equipped with an engine or motor for propulsion and not of a class declared by the Board, by notice published in the Gazette, to be subject to this Act—is not used for the carriage of passengers or hired out, or otherwise made available, for the carriage of persons; or
- (d) is not used for any commercial purpose.

(4) A reference in this Act to a motor does not include a reference to a motor attached to a vessel referred to in subsection (3) (a) or (b) or a motor not used for any commercial purpose.

(5) A reference in this Act to the hiring out or taking on hire of a vessel or motor, or to a hiring agreement to which a vessel or motor is subject, is a reference to a transaction or agreement whereby possession and use of the vessel or motor is given to a person on hire on terms which do not require or admit the operation or management of the vessel or motor by the owner of the vessel or motor or his servant or agent.

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(6) A reference in this Act to the use of a vessel or motor for a commercial purpose is—

(a) in the case of a vessel—a reference to the use of the vessel—

(i) for the carriage of persons or goods for money or any other valuable consideration;

(ii) in any way in, or in connection with, a business or trade or commerce; or

(iii) by hiring it out, or making it available, in the course of a business or in trade or commerce; or

(b) in the case of a motor—a reference to the use of the motor—

(i) by attaching it to a vessel used for a commercial purpose; or

(ii) by hiring it out or making it available in the course of a business or in trade or commerce.

(7) In reckoning the number of persons on board a vessel for the purposes of this Act, the regulations and any permit or other instrument issued or made under this Act or the regulations, children under the age of 1 year shall be disregarded.

(8) A reference in a provision of this Act to prescribed waters is a reference to waters in relation to which it is within the competence of the Parliament of New South Wales to enact the provision.

PART II.

PERMITS FOR VESSELS AND MOTORS.

DIVISION 1.—*Form and Effect of Permit.*

6. (1) A permit under this Act shall be in writing in a form Form of approved by the Board and shall be signed on behalf of the permits. Board by an officer of the Board.

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(2) The regulations may prescribe different classes of permits and the different factors by reference to which they are classified.

(3) In a vessel permit there shall be specified—

- (a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued; and
- (b) such particulars as may be prescribed.

(4) Without prejudice to the generality of subsection (3), conditions and restrictions subject to which a vessel permit is issued may include conditions and restrictions for and with respect to the number and qualifications of the crew of the vessel to which the permit relates.

(5) The regulations may provide for a specified class of vessel permits to specify particulars under subsection (3) (b) that differ from the particulars to be specified in another class of vessel permits.

(6) In a motor permit there shall be specified—

- (a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued; and
- (b) such particulars as the Board considers appropriate for the permit.

Effect of
vessel
permit.

7. A vessel permit, while it is in force, authorises the use of the vessel to which it relates in prescribed waters of a class or classes specified in the permit subject to compliance with the terms, conditions and restrictions upon and subject to which the permit was issued.

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8. (1) Where a vessel is used in prescribed waters otherwise than in accordance with the authority conferred by a permit relating to the vessel, the owner and the master of the vessel are, subject to subsections (2) and (3), each guilty of an offence against this Act. Vessel to be used as provided by permit.

(2) Where the master of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- (a) that, at the time of the use of the vessel, a plate that was, or purported to be, a permit plate was affixed to the vessel;
- (b) that the vessel was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the vessel, would have been in accordance with the authority conferred by that permit; and
- (c) that the master had no reason to believe that the vessel was being used otherwise than in accordance with the authority conferred by a permit relating to the vessel.

(3) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- (a) that, at the time of the use alleged to constitute the offence, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring;
- (c) where the facts alleged to constitute the offence are, in effect, that the vessel was used in prescribed waters not of a class in which the use of the vessel was authorised by a permit relating to the vessel—that, at the time of

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the hiring, there was delivered to the person taking the vessel on hire written particulars of the means of identifying the class or classes of water in which the use of the vessel was so authorised; and

- (d) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

Permit plate
to be
affixed.

9. (1) Subject to subsection (2), the owner and the master of a vessel the subject of a permit are each guilty of an offence against this Act if the vessel is in prescribed waters and there is not affixed thereto as prescribed the permit plate that corresponds to the permit.

(2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- (a) that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring; and
- (c) that the owner had no means of knowing that the permit plate was no longer affixed to the vessel.

Certain
informa-
tion to be
painted on
vessel.

10. (1) Where a vessel permit is subject to a restriction with respect to the number of passengers that may be carried in a specified part of the vessel, the owner of the vessel is guilty of an offence against this Act unless a statement of, or to the effect of, the terms of the restriction is kept prominently and clearly painted in that part of the vessel.

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(2) Where a vessel permit is subject to a restriction with respect to the presence in a specified part of the vessel of a passenger, or a passenger of a specified class, or a passenger other than a passenger of a specified class, the owner of the vessel is guilty of an offence against this Act unless a statement of, or to the effect of, the terms of the restriction is kept prominently and clearly painted at any place on the vessel designed for entry to that part.

(3) Where a vessel permit is subject to a condition that specified equipment (not being equipment otherwise required by this Act or the regulations to be carried in the vessel) be carried in the vessel, the owner of the vessel is guilty of an offence against this Act unless a statement of, or to the effect of, the terms of the condition is kept prominently and clearly painted on the vessel as specified in the permit.

11. A motor permit, while it is in force, authorises the use of the motor to which it relates subject to compliance with the terms, conditions and restrictions upon and subject to which the permit was issued. Effect of motor permit.

12. (1) Where a motor attached to a vessel is used in prescribed waters otherwise than in accordance with the authority conferred by a permit relating to the motor, the owner and the master of the vessel are, subject to subsections (2) and (3), each guilty of an offence against this Act. Motor to be used as provided by permit.

(2) Where the master of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

(a) that, at the time of the use alleged to constitute the offence, a plate that was, or purported to be, a permit plate was affixed to the motor;

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- (b) that the motor was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the vessel, would have been in accordance with the authority conferred by that permit; and
- (c) that the master had no reason to believe that the motor was being used otherwise than in accordance with the authority conferred by a permit relating to the motor.

(3) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- (a) that, at the time of the use alleged to constitute the offence, the motor, or the vessel to which it was attached, was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- (b) that, at the time of the hiring, the permit plate affixed to the motor corresponded to a permit authorising the hiring; and
- (c) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

Unauthorised hirings.

13. A person who lets a vessel or motor out on hire is guilty of an offence against this Act unless the hiring is authorised by a permit relating to the vessel or motor, as the case may be.

DIVISION 2.—*Issue of Permits.*

Application for permit.

14. (1) Subject to this Act, upon application made in a form and manner approved by the Board, the Board may issue a permit upon such terms, and subject to such conditions and restrictions, as the Board thinks fit and specifies in the permit.

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(2) At the time of making an application under subsection (1), and at such other times before the issue of a permit pursuant to the application as the Board or its surveyor may specify, the applicant shall furnish to the Board or surveyor, as the case may be, such plans, specifications, certificates, calculations and other documents and information as the Board or surveyor may require in order to establish that, for each use proposed for the vessel or motor to which the application relates, the vessel or motor is, or will be, designed, constructed and equipped to the satisfaction of the Board and in conformity with any law applicable to the vessel or motor.

15. (1) With each permit there shall be issued a corresponding permit plate to be affixed to the vessel or motor to which the permit relates. Permit
plates
and
survey
schedules.

(2) A permit plate shall specify—

- (a) the identification number of the permit to which it corresponds;
- (b) the classification of that permit; and
- (c) such particulars as the Board considers appropriate for the permit plate.

(3) With each vessel permit there shall be issued a survey schedule for the vessel which—

- (a) shall provide that the vessel and the parts and components of the vessel specified in the survey schedule must be periodically submitted for survey not later than the expiration of such intervals as are specified in, or ascertainable from, the survey schedule in relation to the vessel and each such part or component; and
- (b) shall specify the nature of the survey required in each case.

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(4) The Board may, from time to time, by notice in writing given to the holder of a vessel permit, amend the survey schedule for the vessel in the manner specified in the notice.

(5) Where the holder of a permit—

- (a) notifies the Board that the corresponding permit plate has been lost or destroyed, satisfactorily accounts for its loss or destruction and pays the prescribed fee; or
- (b) returns the corresponding permit plate to the Board because it is damaged or has become illegible and pays the prescribed fee,

the Board shall issue to him a replacement for the permit plate.

(6) Where an officer of the Board is of the opinion that a permit plate has been so damaged or defaced as to be illegible or misleading he may remove the permit plate from the vessel or motor to which it is affixed.

(7) A person who obstructs an officer of the Board in the exercise of his powers under subsection (6) is guilty of an offence against this Act.

(8) Where the Board is aware that alteration or reconstruction of a vessel or motor is proposed or has commenced and by notice in writing given to the owner of the vessel personally or by post requires him to return to the Board the permit plate for the vessel or motor, the owner is guilty of an offence against this Act if he fails to comply with the requirement within a time specified in the notice for compliance.

Application
for permit
to be in-
vestigated
by surveyor.

16. (1) Where application is made for a vessel permit the Board shall, whether or not the construction of the vessel has commenced, is in progress or has been completed, cause a surveyor to investigate the application in so far as it relates to the design, construction, machinery, fittings and equipment of the vessel to

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ascertain whether the vessel is, or will be, designed, constructed and equipped to the satisfaction of the Board and in conformity with any law applicable to the vessel.

(2) An investigation by a surveyor under subsection (1) may include—

- (a) such periodical inspection of a vessel while it is under construction;
- (b) such inspection and testing of any machinery, component, fitting or equipment of a vessel; and
- (c) such testing of any material used in the construction of the vessel or any of its machinery, components, fittings or equipment; and
- (d) such operation of the vessel,

as the surveyor considers to be appropriate for his consideration of the application.

(3) Where application is made for a permit in respect of a vessel of which construction has been commenced, or a vessel that has been constructed but was not, immediately before the commencement of this Part, the subject of a certificate given under regulation 27 of the Navigation (Survey and Equipment) Regulations—N.S.W. or under section 36 of the Navigation Act, 1901, or accepted under section 37 of that Act, the applicant shall, if requested so to do by a surveyor investigating the application, cause such removal or dismantling of any portion of the vessel not previously inspected by the surveyor as the surveyor considers necessary for the purposes of his investigation.

(4) Where application is made for a motor permit the Board shall cause a surveyor to investigate the design, construction and operation of the motor to ascertain whether the motor is, or will be, constructed to the satisfaction of the Board and in conformity with any law applicable to the motor having regard to the use to which the motor will be put.

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Payment
of fees,
charges
and
expenses.

17. (1) The regulations may provide for the payment of specified fees and charges in respect of an application for a permit and investigation of the application and may provide for different fees and charges according to such different factors as are prescribed.

(2) Without limiting the generality of subsection (1)—

- (a) fees for a vessel permit may be prescribed according to the tonnage of a vessel or otherwise according to its size or dimensions and also according to its type, class or proposed use; and
- (b) charges may be prescribed as scales varying according to the time spent on an investigation or as a fixed amount according to the class of investigation with scales of additional charges varying according to the time in excess of a specified time spent on an investigation.

(3) Where, at the request of an applicant for a permit, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, the applicant shall pay to the Board the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.

Board to
issue, or
refuse to
issue, a
permit.

18. (1) When investigation of an application for a permit has been completed and all fees, charges and expenses with respect to the application have been paid, the Board shall consider the application and the results of the investigation and shall —

- (a) issue such permit or permits for the vessel or motor to which the application relates as the Board considers appropriate; or
- (b) refuse to issue any permit for the vessel or motor.

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(2) Where, in response to an application, the Board refuses to issue any permit applied for, it shall give to the applicant notice in writing of its decision and of the reasons therefor.

19. (1) In this section "prescribed law" means a law of the Commonwealth or of another State of the Commonwealth or of a country that, within the meaning of the Navigation Act 1912 of the Parliament of the Commonwealth, as amended, is a Commonwealth country. ^{Temporary permits.}

(2) The Board may issue a temporary permit for such period and on such conditions as it thinks fit.

(3) Where a prescribed law provides for a vessel or motor to be subjected to inspection and investigation in the nature of a survey within the meaning of Part III and, pursuant to that law, the use of a vessel or motor has been authorised, the owner of that vessel or motor shall be deemed to have been issued with a temporary permit, expiring when that authority to use the vessel or motor expires, to use the vessel or motor —

- (a) in accordance with that authority while the condition of the vessel or motor complies with any prescribed law that would apply to that vessel or motor when used in accordance with that authority; and
- (b) subject to such conditions as may be imposed by the Board by notice in writing served on the owner of the vessel or motor.

(4) If the owner of a vessel or motor referred to in subsection (3) requests the Board so to do, the Board shall, upon being provided with such information with respect to the vessel or motor as the Board requires, and upon payment of the prescribed fee, issue the owner with a temporary permit specifying the prescribed waters in which, the manner in which, the date until which and the conditions subject to which the use of the vessel or motor is permitted by subsection (3).

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(5) The owner and the master of a vessel are each guilty of an offence against this Act and the owner of a motor is guilty of an offence against this Act —

- (a) if the vessel or motor is the subject of a temporary permit issued under subsection (2) or (4), or deemed to have been issued under subsection (3), and is used otherwise than in accordance with the authority conferred by the temporary permit; or
- (b) if the vessel or motor is the subject of a temporary permit issued under subsection (2) or (4) that has been suspended and the temporary permit is not, forthwith after the suspension, returned to the Board.

Con-
version of
temporary
permit for
certain
vessels.

20. (1) This section applies only to and in respect of a vessel or motor referred to in section 19 (3) in relation to which the prescribed law so referred to is a law of the Commonwealth or of another State of the Commonwealth.

(2) Subject to this Act, upon application made under section 14 the Board may issue a permit to the owner of a vessel or motor to which this section applies.

(3) In investigating an application referred to in subsection (2), the Board or a surveyor shall carry out only such a survey and inspection of the vessel or motor as would, at the time of the investigation, be required under the prescribed law relating to the vessel or motor and shall require the payment of only such fees and charges as would be payable under that prescribed law for such a survey and inspection.

DIVISION 3.—Suspension and Cancellation of Permits.

Suspension
of permit
by Board.

21. (1) The Board may suspend a permit by notice in writing served on the holder of the permit personally or by post—

- (a) where the permit is a vessel permit and the vessel the subject of the permit has not been submitted for survey in accordance with its survey schedule after notice has

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been given to the holder of the permit so to submit the vessel;

- (b) where the permit is a vessel permit and the Board considers that equipment carried by the vessel in compliance, or purported compliance, with Part VI requires investigation;
- (c) where the permit is a motor permit and the motor has not been submitted for checking as provided by section 28 (2) after notice has been given to the holder of the permit so to submit the motor;
- (d) if a requirement under section 29 (1) (a) with respect to the vessel or motor the subject of the permit is not complied with within a reasonable time;
- (e) if, on consideration of a report by a surveyor or of a notice given under section 22 by an officer of the Board, the Board considers that continued use of the vessel or motor the subject of the permit should not be permitted;
- (f) if any amount payable to the Board in connection with the survey of a vessel or the checking of a motor is not paid within a reasonable time after the owner of the vessel or motor has been given written notice by the Board to pay the amount; or
- (g) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such alteration or reconstruction.

(2) Where a permit is suspended under subsection (1), the holder of the permit is guilty of an offence against this Act if he fails to return to the Board forthwith the permit plate that corresponds to the permit.

(3) The Board may suspend or cancel a temporary permit if, on consideration of a notice given under section 22 by an officer of the Board, the Board considers that continued use of the vessel or motor the subject of the temporary permit should not be permitted.

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Emergency
suspension
of permit.

22. (1) Where, in the opinion of an officer of the Board, the use of a vessel or motor in accordance with a permit, or a temporary permit issued or deemed to have been issued under section 19 (2), (3) or (4), would be dangerous by reason of—

- (a) the condition of the vessel or motor or any part or component or equipment thereof; or
- (b) the absence from the vessel or motor of any part or component or equipment required by or under this Act to be present,

he may suspend the permit or temporary permit as provided by this section.

(2) In the case of a permit or temporary permit relating to a vessel, an officer referred to in subsection (1) effects a suspension so referred to by giving to the owner of the vessel, or to a person employed on, or on board, the vessel, a notice in writing stating that the permit or temporary permit has been suspended and that, subject to any other direction given in writing by the Board to the owner of the vessel, the suspension will terminate—

- (a) when the defects and deficiencies which he has specified in the notice as those by reason of which he considers use of the vessel would be dangerous have been made good to his satisfaction or to the satisfaction of a specified officer of the Board; or
- (b) at the expiration of the period of 14 days that next succeeds the giving of the notice,

whichever first occurs.

(3) In the case of a permit or temporary permit relating to a motor, an officer referred to in subsection (1) effects a suspension so referred to—

- (a) where the motor is not attached to a vessel—by giving to the owner of the motor; or

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(b) where the motor is attached to a vessel—by giving to the owner of the motor or to the owner of the vessel, or to a person employed on, or on board, the vessel,

a notice to the same effect in relation to the motor as the notice he is authorised by subsection (2) to give in relation to a vessel.

(4) Where a person employed on, or on board, a vessel is given a notice under this section addressed to the owner of the vessel, that person is guilty of an offence against this Act if he fails to transmit the notice to that owner forthwith.

(5) A person who considers that he has been adversely affected by the suspension under this section of a permit or temporary permit may, upon payment to the Board of the prescribed fees and expenses, require the Board to investigate whether the suspension was justified and the Board shall comply with the requirement.

(6) Where, after an investigation under subsection (5), the Board finds that suspension of a permit or temporary permit was not justified, it shall terminate the suspension and refund the fees and expenses paid under subsection (5) for the investigation.

23. (1) Where a permit is suspended, an officer of the Board may, at any time while the suspension is effective, remove from the vessel or motor to which the permit relates the permit plate that corresponds to the permit. Action after suspension.

(2) Where a temporary permit is suspended, an officer of the Board may, at any time while the suspension is effective, affix to the vessel or motor to which the temporary permit relates a notice to the effect that the temporary permit has been suspended.

(3) A person who obstructs an officer of the Board in the exercise of the powers conferred by subsection (1) or (2) is guilty of an offence against this Act and liable to a penalty not exceeding \$800.

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(4) Where a notice is affixed under subsection (2)—

- (a) to a vessel—the owner and the master of the vessel are each guilty of an offence against this Act; or
- (b) to a motor—the owner of the motor is guilty of an offence against this Act,

and liable to a penalty not exceeding \$800 if the notice does not remain affixed to the vessel or motor, as the case may be, while the suspension is effective.

(5) Where a permit plate has been removed from a vessel or motor under subsection (1) and the suspension of the permit to which that permit plate corresponds—

- (a) terminates under section 22 (2); or
- (b) is terminated by the Board,

the Board shall cause the permit plate to be returned to the owner of the vessel or motor to which the permit relates.

Duration
of
suspension.

24. (1) Subject to section 22 (2), a suspension of a permit or temporary permit remains effective until the Board has notified the holder of the permit or temporary permit in writing that the suspension has been terminated.

(2) A suspended permit or temporary permit has no force or effect until the suspension has been terminated.

Cancellation
of permit.

25. (1) The Board may, by notice in writing served on the holder of a permit personally or by post, cancel the permit—

- (a) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such alteration or reconstruction;

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- (b) if the permit has been suspended and a period of 1 year has elapsed without the suspension being terminated;
- (c) when the vessel or motor to which the permit relates has been lost or destroyed or, in the opinion of the Board, is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by the permit; or
- (d) where the holder of the permit has requested the cancellation and has returned to the Board the corresponding permit plate.

(2) Where a permit is cancelled, an officer of the Board may remove from the vessel or motor to which the permit relates the permit plate that corresponds to the permit.

(3) A person who obstructs an officer of the Board in the exercise of the powers conferred by subsection (2) is guilty of an offence against this Act and liable to a penalty not exceeding \$800.

26. The owner of a vessel or motor the subject of a permit is **Offences.** guilty of an offence against this Act—

- (a) if he fails forthwith to notify the Board in writing when the vessel or motor is lost or destroyed, or becomes so damaged, dismantled or dilapidated as to be unfit for use in accordance with the authority conferred by the permit;
 - (b) if the vessel or motor is used in prescribed waters when any part of the permit plate affixed thereto is illegible or misleading; or
 - (c) if he fails to furnish the Board, not later than 21 days before any alteration or reconstruction of the vessel or motor is commenced, with full particulars in writing of the proposed alteration or reconstruction.
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Commercial Vessels.

PART III.

SURVEYS AND CHECKS.

Interpre-
tation:
Pt. III.

27. In this Part (section 28 (2) (a) excepted) a reference to a survey of a vessel is a reference to such inspection, examination, testing and operation of the vessel, and any machinery, component or equipment in or on the vessel, as the surveyor to whom the vessel is submitted in accordance with its survey schedule or a requirement under section 29 considers necessary to establish whether the efficiency and sufficiency of the vessel or part of the vessel, or of the component, machinery or equipment in or on the vessel, as specified by the survey schedule or requirement, is satisfactory to the Board.

Survey of
vessels
and check
of motors.

28. (1) The owner of a vessel the subject of a permit shall cause the vessel to be submitted for survey by a surveyor in accordance with the survey schedule for the vessel.

(2) The owner of a motor the subject of a permit shall cause the motor to be submitted for checking by a surveyor not more than 1 year after the motor was last checked and found satisfactory in the course of—

- (a) the survey of a vessel under the Navigation Act, 1901;
- (b) an investigation under section 16;
- (c) a check pursuant to a requirement under section 29; or
- (d) a check pursuant to this subsection,

whichever was the latest.

Defects and
deficiencies.

29. (1) Where a vessel is submitted for survey as provided by its survey schedule or pursuant to a requirement under this section, or a motor is submitted for checking under section 28 or pursuant to such a requirement, the Board or a surveyor may require the owner of the vessel or motor, as the case may be—

- (a) to make good a specified defect or deficiency in the vessel disclosed by the survey or in the motor disclosed by the check; and

Commercial Vessels.

- (b) to submit the vessel for survey or the motor for checking when the defect or deficiency is made good.

(2) Where any part of a vessel or motor the subject of a permit sustains structural damage, the owner of the vessel or motor is guilty of an offence against this Act unless he forthwith notifies the Board in writing of the damage suffered.

(3) Where the Board receives a notification under subsection (2) with respect to a vessel or motor it may require the owner of the vessel to submit it to a surveyor for survey or, as the case may be, the owner of the motor to submit it to a surveyor for checking.

(4) Where the Board is of the opinion that the condition of a vessel or motor the subject of a permit may not be satisfactory, it may require the owner of the vessel to submit it to a surveyor for survey or, as the case may be, the owner of the motor to submit it to a surveyor for checking.

30. (1) Before—

- (a) a vessel is surveyed pursuant to its survey schedule or a requirement under section 29; or
- (b) a motor is checked pursuant to section 28 or a requirement under section 29,

Fees, etc.,
for survey
of vessel
and check
of motor.

the prescribed fees, charges and expenses for the survey or check, as the case may be, shall be paid.

(2) The regulations may provide for the payment of specified fees and charges in respect of the survey of a vessel and the checking of a motor and may provide for different fees, charges and expenses according to such different factors as are prescribed.

Commercial Vessels.

(3) Where, at the request of a person submitting a vessel for survey or a motor for checking, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, that person shall pay to the Board the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.

(4) Where, upon attending to survey a vessel, or to check a motor, at a place and time of which the owner of the vessel or motor, as the case may be, has been given reasonable notice by an officer of the Board, or at a place or time referred to in subsection (3), a surveyor is unable to carry out the survey or check by reason of the vessel or motor not being made available in a position or condition which permits the making of the survey or check, all fees, charges and expenses already paid shall be retained by the Board and shall be deemed not to have been paid in respect of any survey of the vessel or check of the motor subsequently carried out.

(5) Where the survey of a vessel or the check of a motor is carried out pursuant to a requirement of the Board under section 29 (4) and no defect or deficiency in the vessel or motor is found, all fees, charges and expenses paid in connection with the survey or check (other than fees, charges and expenses that the Board is entitled to retain under subsection (4)) shall be refunded.

PART IV.

APPEALS.

Objection
to certain
actions.

31. (1) A person who considers that he has been adversely affected by any one or more of the matters referred to in subsection (2) may object thereto by notice in writing to the Board specifying the grounds of the objection.

(2) The matters to which objection may be made under subsection (1) are—

- (a) rejection by a surveyor or by the Board of any document or information furnished to the Board in connection with an application for a permit;

Commercial Vessels.

- (b) rejection by a surveyor or by the Board of any part of the design or construction of a vessel or of the design, construction or sufficiency of any machinery, component, fitting or equipment of a vessel, or any material used in the construction of a vessel or any of its machinery, components, fittings or equipment;
- (c) a requirement of a surveyor that any part of a vessel be removed or dismantled for the purposes of his investigation;
- (d) rejection by a surveyor of the design or construction of a motor;
- (e) a refusal by the Board to issue a permit;
- (f) rejection by a surveyor, because of its state or condition, of any part of a vessel or of any machinery in a vessel or of any component, fitting or equipment of a vessel;
- (g) rejection by a surveyor, because of its state or condition, of a motor or any part of a motor;
- (h) rejection by a surveyor, because of its insufficiency or condition, of any navigational or safety equipment carried by a vessel;
- (i) a direction given by an officer of the Board under section 40 (3);
- (j) a decision by the Board that a vessel or motor is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by a permit to which it is subject;
- (k) any term, condition or restriction upon or subject to which a permit is granted by the Board; and
- (l) a finding of the Board under section 49.

(3) Where the Board decides to uphold an objection made under subsection (1), it shall—

- (a) inform the objector accordingly; and
- (b) give effect to its decision.

Commercial Vessels.

(4) Where the Board decides not to uphold an objection made under subsection (1)—

- (a) the Board shall inform the objector accordingly; and
- (b) the objector may, not later than 21 days after being informed of the Board's decision, give the Board written notice that he wishes to appeal against that decision.

**Marine
Survey
Appeals
Tribunal.**

32. (1) As soon as practicable after receiving a notice of appeal under section 31 (4), the Board shall convene a Marine Survey Appeals Tribunal to hear the appeal.

(2) A Marine Survey Appeals Tribunal shall consist of—

- (a) a chairman, who shall be a stipendiary magistrate nominated by the Minister administering the Justices Act, 1902;
- (b) a person nominated by the appellant; and
- (c) a person nominated by the Board.

(3) The chairman of a Tribunal shall fix a time and place for the hearing of the appeal for which it was convened and shall cause the appellant to be given not less than 7 days' notice of that time and place.

(4) Each person referred to in subsections (2) (b) and (2) (c) shall, before he sits as a member of the Tribunal, take an oath in the prescribed form that he will faithfully and impartially discharge the duties of his office as such a member.

(5) All matters relating to procedure at a sitting of a Tribunal shall be determined by its chairman.

Commercial Vessels.

33. (1) At a sitting of a Tribunal, the chairman shall, before the substance of the appeal is heard, determine whether the appellant has been adversely affected by the action appealed against and, if he determines that the appellant has not been so affected, the appeal shall be dismissed. Procedure at hearing of appeal.

(2) A Tribunal is not bound by the rules of evidence and may obtain information to assist it in its deliberations in any way it thinks fit.

(3) Subject to subsection (1) and to section 32 (4), a decision supported by a majority of the persons constituting a Tribunal is a decision of that Tribunal.

(4) In reaching a decision on an appeal before it, the Tribunal shall apply such standards with respect to the subject-matter of the objection that gave rise to the appeal as it considers to be reasonable in the circumstances.

34. At a hearing before a Tribunal—

- (a) the appellant and officers of the Board may be present and may be heard and they may be assisted by persons having expert knowledge of the matters with which the appeal is concerned who may also be heard; and
 - (b) the appellant or the Board may appear by his or its solicitor or by counsel.
- Appearances at hearing of appeal.

35. (1) A Tribunal may—

- (a) dismiss an appeal; or
 - (b) wholly or partly uphold an appeal and give such directions with respect to the subject-matter of the appeal as it thinks fit.
- Powers of Tribunal.

Commercial Vessels.

(2) The Board shall give effect to a direction given under subsection (1) (b) subject to compliance with any condition or requirement imposed by the Tribunal when giving the direction.

(3) A Tribunal may make such order with respect to the costs and expenses of an appeal heard and determined by it as it thinks fit or may refrain from making such an order.

(4) Any amount ordered to be paid under subsection (3) is recoverable as a debt in a court of competent jurisdiction.

PART V.

LOAD LINES.

Application
of Part.

36. (1) This Part does not apply to—

- (a) a vessel less than 16 metres in length overall;
- (b) a vessel of a prescribed class of vessels; or
- (c) a vessel in respect of which an exemption certificate is in force.

(2) The Board may issue a certificate to the effect that a specified vessel is exempt from the operation of this Part.

(3) An exemption certificate may be issued subject to such conditions and restrictions as the Board thinks fit and has effect only while any such conditions and restrictions are fulfilled and observed.

Interpreta-
tion:
Pt. V.

37. In this Part—

“assigned freeboard”, in relation to a vessel, means the distance to be observed between the upper edge of the deck line of the vessel and the upper edge of the load line mark for the vessel;

Commercial Vessels.

“associated mark”, in relation to a vessel, means a mark, other than a load line mark, specified in the load line certificate for the vessel as appropriate for waters so specified in conditions so specified;

“deck line”, in relation to a vessel, means the deck line of the vessel determined as prescribed;

“exemption certificate”, means a certificate issued under section 36 (2);

“load line certificate”, in relation to a vessel, means a certificate that is issued or accepted under the regulations and specifies the load line mark and any associated marks to be displayed on the vessel;

“load line mark”, in relation to a vessel, means the mark to be displayed on the vessel to indicate the lower extremity of the assigned freeboard of the vessel.

38. Regulations may be made for and with respect to—

Load line regulations.

- (a) the classes of associated marks to be displayed on vessels to which this Part applies;
- (b) the issue of load line certificates and exemption certificates;
- (c) the acceptance of certificates in the nature of load line certificates or exemption certificates issued under the law of the Commonwealth, another State of the Commonwealth or another country and conditions and restrictions relating to any such acceptance;
- (d) conditions for the assignment of freeboards to vessels to which this Part applies;
- (e) the requirements of structural strength and stability for the assignment of freeboards to vessels to which this Part applies;

Commercial Vessels.

- (f) the initial survey of a vessel for the purpose of assigning a freeboard to the vessel;
- (g) the calculation and assignment of freeboards;
- (h) the marking of load lines and associated marks;
- (i) the periodical survey and inspection of vessels in respect of which load line certificates have been issued or accepted under the regulations;
- (j) the duration of certificates issued under the regulations including their expiration, extension or prior cancellation;
- (k) applications for certificates under the regulations;
- (l) fees, charges and expenses to be paid in respect of applications, investigations and surveys under this Part; and
- (m) all matters that by this Part are authorised or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Part.

**Load line
and other
marks to be
displayed.**

39. (1) Where a vessel to which this Part applies is the subject of a permit and is used in prescribed waters later than—

- (a) the issue of the permit; or
- (b) completion of the first survey of the vessel carried out after the commencement of this Part,

whichever is the later, the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding \$800 unless there is a load line certificate in force for the vessel.

(2) Where a load line certificate is in force for a vessel to which this Part applies and the vessel is used in prescribed waters later than 1 month after the issue of the certificate without displaying the load line mark, and all associated marks, for the vessel as specified in the certificate the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding \$800.

Commercial Vessels.

(3) If a vessel to which this Part applies is used in prescribed waters after a load line certificate for the vessel has been issued and—

- (a) a copy of that certificate is not displayed on the vessel in a prominent position in a place accessible to an officer of the Board, or a surveyor, desiring to inspect it; or
- (b) particulars of the load line mark, and of all associated marks, for the vessel are not entered in any official log-book that the vessel is by law required to carry,

the owner and the master of the vessel are each guilty of an offence against this Act.

(4) It is a defence to proceedings against the owner of a vessel for an offence referred to in subsection (2) or (3) (a) if it is proved—

- (a) in the case of the offence referred to in subsection (2)—that the owner had caused the mark to the absence of which the charge relates to be displayed on the vessel and had no means of knowing that it was no longer so displayed; or
- (b) in the case of the offence referred to in subsection (3) (a)—that the owner had caused a copy of the load line certificate to the absence of which the charge relates to be displayed as prescribed and had no means of knowing that it was no longer so displayed.

40. (1) Where a vessel to which this Part applies is in prescribed waters and is so loaded that—

- (a) where an associated mark for the vessel is specified in its load line certificate as appropriate for those waters—that associated mark; or
- (b) in any other case—the load line mark,

on any side of the vessel is submerged, the owner and the master of the vessel are each guilty of an offence and liable to a penalty not exceeding \$2,000.

Sub-
mergence
of load line
marks and
other marks.

Commercial Vessels.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved—

- (a) that, in the case referred to in subsection (1) (a), if the vessel had been floating without a list in still water of the class for which the associated mark alleged to have been submerged is appropriate, that associated mark would not have been submerged; or
- (b) that, in the case referred to in subsection (1) (b), if the vessel had been floating without a list in still salt water of a specific gravity of 1.025, the load line would not have been submerged.

(3) An officer of the Board appointed by it for the purposes of this section may, by notice in writing served personally on the owner or the master of a vessel, direct that the vessel shall, in specified circumstances, or in all circumstances, be so loaded as to leave unsubmerged not less than a specified extent of its hull.

(4) Where a vessel in respect of which a direction has been given under subsection (3) is loaded otherwise than in accordance with the direction, the owner and the master of the vessel are each guilty of an offence against this Act and liable to a penalty not exceeding \$2,000.

PART VI.

EQUIPMENT.

Regulations. 41. (1) Regulations may be made for and with respect to the carriage by vessels of equipment—

- (a) for the safe and proper navigation and management of a vessel;
- (b) for the safe and proper stowage and handling of cargo in or on a vessel;
- (c) for the receipt and dispatch of communications from and to other vessels and the shore;
- (d) for the prevention of fire or explosion;

Commercial Vessels.

- (e) for the saving of life;
- (f) for making distress signals;
- (g) for the health, safety and convenience of the passengers on, and crew of, a vessel and other persons; and
- (h) for the prevention of nuisance or annoyance to the public or to persons on board a vessel.

(2) The regulations may prescribe the position and manner in which any prescribed equipment is to be carried, the labelling of prescribed equipment, the displaying of notices relating to prescribed equipment and the displaying or making available of instructions for the proper use of prescribed equipment.

42. (1) Subject to subsections (2) and (3), the owner and the master of a vessel are each guilty of an offence against this Act if the vessel is in prescribed waters and—

Offences relating to carriage of equipment.

- (a) equipment prescribed for carriage by the vessel is not so carried;
- (b) equipment prescribed for carriage by the vessel is so carried but—
 - (i) is defective; or
 - (ii) is carried otherwise than in the position or manner prescribed for the carriage of that equipment;
- (c) any equipment carried by the vessel is not labelled as prescribed for that equipment;
- (d) any notice or instruction prescribed for display in relation to equipment carried by the vessel is not so displayed; or
- (e) any instruction regarding the proper use of equipment carried by the vessel is not made available as prescribed.

Commercial Vessels.

(2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1) (a) or (b) (ii) he is not guilty of the offence if it is proved that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession and—

- (a) in the case of the offence referred to in subsection (1) (a)—that, at the time of the hiring, the equipment to the absence of which the charge relates was carried on the vessel and that the owner had no means of knowing that the equipment was no longer carried on the vessel; or
- (b) in the case of the offence referred to in subsection (1) (b) (ii)—that, at the time of the hiring, the equipment to which the charge relates was carried in the position and manner prescribed for that equipment and that the owner had no means of knowing that the equipment was no longer so carried.

(3) Where the master of a vessel is proceeded against for the offence referred to in subsection (1) (b) (i) he is not guilty of the offence if it is proved that, at the time the offence is alleged to have been committed—

- (a) he was the master of the vessel by reason of his being the person taking the vessel on hire under a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession; and
- (b) he did not know, and had no means of knowing, that the equipment was defective.

PART VII.
GENERAL.

Control of
number of
passengers.

43. (1) In this section “authorised person” in relation to a vessel means a person concerned in the management or operation of the vessel or in the conduct of operations at its berth.

Commercial Vessels.

(2) A person is guilty of an offence against this Act if he boards, or attempts to board, or remains in, a vessel after an authorised person for the vessel has informed him that his presence in the vessel has caused, or would cause, the maximum number of passengers authorised to be carried in the vessel, for the voyage or excursion in which it is engaged, to be exceeded.

(3) A person is guilty of an offence against this Act if he enters, or attempts to enter, or remains in, a part of a vessel after an authorised person for the vessel has informed him that his presence in that part of the vessel has caused, or would cause, the maximum number of passengers authorised to be carried in that part of the vessel for the voyage or excursion in which it is engaged to be exceeded.

44. A person on board a vessel is guilty of an offence against Offences. this Act if—

- (a) being a passenger—
 - (i) he is in a part of the vessel in respect of which a notice is displayed at each place on the vessel designed for entry to that part; and
 - (ii) he would have contravened such a notice if he had entered that part at such a place,
whether or not he in fact entered that part at such a place;
- (b) being a passenger, he is on any roof, awning or mast on the vessel;
- (c) he obstructs a person engaged in the navigation or other operation of the vessel;
- (d) he wilfully damages or puts to wrongful use any part of the vessel or any equipment on the vessel; or
- (e) he removes, damages or defaces any permit plate or any sign or notice on the vessel that relates to its safe and proper use.

Commercial Vessels.

Obstruction
of naviga-
tion, etc.,
by
passenger.

45. (1) In this section "authorised person" in relation to a vessel means a person on board the vessel who is concerned in the navigation, operation or management of the vessel.

(2) Subject to subsection (3), a passenger on a vessel is guilty of an offence against this Act if he fails to comply with a direction, given by an authorised person for the vessel, to move to or from a part of the vessel, or to cease an activity in which he is engaged on the vessel.

(3) A person is not guilty of an offence under subsection (2) if it is proved that the direction with which he failed to comply was not given in the interests of safety or of the proper and orderly management, operation or navigation of the vessel.

Identifica-
tion of
owner and
master.

46. (1) The master of a vessel is guilty of an offence against this Act if an officer of the Board requires him to supply all the information he has regarding the identity and address of the owner of the vessel and he fails to comply with the requirement.

(2) A person on board a vessel is guilty of an offence against this Act if an officer of the Board requires him to supply all the information he has regarding the identity and address of the owner or the master of the vessel and he fails to comply with the requirement.

Service, etc.,
of notices,
etc.

47. (1) Where, pursuant to this Act, the Board is authorised or obliged to give a notice, notification, direction or authorisation or to require anything to be done or omitted, the notice, notification, direction or authorisation may be given, or the requisition made, by the Secretary of the Board or an officer of the Board appointed by the Board for the purpose.

Commercial Vessels.

(2) A notice, notification, direction or authorisation to be given to, or served upon, a person under, or for the purposes of, this Act or the regulations may be addressed to that person by name, or by description as the owner, the master or the person having the care or custody of a specified vessel.

(3) A notice, notification, direction or authorisation to be given to, or served upon, the owner of a vessel under, or for the purposes of, this Act is sufficiently given or served if it is delivered to a person employed on or on board the vessel.

(4) Where a person employed on or on board a vessel is given or served with a notice, notification, direction or authorisation in accordance with subsection (3) that is addressed to the owner of the vessel, he is guilty of an offence against this Act if he fails to transmit the notice, notification, direction or authorisation to the owner of the vessel forthwith.

48. (1) Where the Board is of the opinion that a provision of this Act or the regulations should not apply to, or is unnecessary in relation to, a particular vessel or motor or a class of vessels or motors or that action taken with respect to a particular vessel or motor is as effective as, or more effective than, the action required by that provision, the Board may—

- (a) by notice in writing given to the owner of the vessel or motor exempt the vessel or motor; or
- (b) by notice published in the Gazette exempt that class of vessels or motors,

from the operation of the provision.

(2) The Board may, by a notice given or published under subsection (1) or by a subsequent notice given or published in the same way as the earlier notice, require compliance with specified conditions instead of compliance with the provision of this Act or the regulations to which the exemption relates and a breach of such a condition shall be deemed to be a breach of that provision.

Commercial Vessels.

(3) The Board may revoke a notice given or published under subsection (1) by another notice given or published in the same way as the notice revoked.

(4) Where a condition is imposed by a notice under subsection (2) requiring the carriage or installation in a vessel of any equipment or component not otherwise required by or under this Act to be carried or installed, the Board shall, by the same notice, impose a further condition requiring the owner of the vessel, while the exemption granted remains in force, to keep prominently and clearly painted in a specified position on the vessel a statement to the effect that the vessel is required under this Act to carry that equipment or install that component.

(5) A breach of a condition imposed under subsection (4) is an offence against this Act.

Advice by
Board on
design,
etc.

49. (1) Where a person requests the Board to investigate the acceptability to the Board and its surveyors of a particular form or manner of design or construction of vessels or motors, or the use of a particular material in the construction of vessels or motors, or the use of a particular kind of machinery, component, fitting or equipment on a vessel, the Board may, in its absolute discretion, decide to carry out the investigation subject to payment of such expenses as it considers to be appropriate.

(2) A finding of the Board made and communicated under subsection (1)—

(a) is not binding upon a surveyor investigating an application for a permit, surveying a vessel, checking a motor or determining the sufficiency of the equipment of a vessel; and

(b) may be revoked at any time.

Commercial Vessels.

50. In any proceedings brought for the recovery of a **Evidence.** penalty under this Act or the regulations and at the hearing of an appeal under Part IV—

(a) a document purporting to be a copy of a permit, load line certificate or load line exemption certificate, or of any notice, notification, direction or authorisation given under this Act or the regulations and to be certified by the Secretary of the Board to be a true copy of the original document is, without production of the original document, evidence of the contents of the document of which it purports to be a copy; and

(b) a certificate signed by the Secretary of the Board to the effect—

(i) that, at a specified time, a permit relating to a specified vessel or motor was, or was not, in force; or

(ii) that, at a specified time, a load line certificate or a load line exemption certificate was, or was not, in force in relation to a specified vessel,

is, without proof of the signature or official position of the Secretary, evidence of the facts certified.

51. (1) Except where some other penalty is prescribed, the **Penalties.** penalty for an offence against this Act is \$400.

(2) Proceedings for the recovery of a penalty under this Act shall be disposed of by a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(3) All penalties imposed for offences against this Act or a regulation shall, after payment to the clerk of the court, be by him paid to the Board.

Commercial Vessels.

Regulations.

52. (1) The Board, with the approval of the Governor, may make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing, for or with respect to—

- (a) applications for permits and matters arising in relation to permits and permit plates subsequent to their issue;
- (b) surveying vessels;
- (c) checking motors;
- (d) investigating equipment carried by a vessel;
- (e) the safety of vessels;
- (f) the safety, health and convenience while on a vessel of the public and other persons carried by a vessel; or
- (g) the method of calculating the tonnage or other measurement of a vessel for the purpose of the application of this Act or the regulations or of any standard acceptable to the Board.

(2) A regulation may—

- (a) be of general application or limited by reference to time, place or circumstances;
 - (b) be restricted in its application to a specified class of subject-matter or to all specified subject-matter other than subject-matter of a specified class;
 - (c) make both the owner and the master of a vessel liable for a breach of a regulation committed from, or in the use of, the vessel; and
 - (d) may impose a penalty not exceeding \$400 for a breach of a regulation.
-

Commercial Vessels.

SCHEDULE 1.

Sec. 4.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. Where, immediately before the commencement of Part II, a vessel was the subject of an unexpired certificate under regulation 27 of the Navigation (Survey and Equipment) Regulations—N.S.W. or an unexpired certificate under the Navigation Act, 1901, certifying compliance with Part IV of that Act, the Board shall issue to the owner of the vessel—

- (a) a vessel permit under section 14 that authorises the use of the vessel to the same extent as was authorised by that certificate;
- (b) a corresponding permit plate under section 15 (1); and
- (c) a survey schedule for the vessel under section 15 (3).

2. Where a motor was attached to a vessel referred to in clause 1 at the time of the survey of the vessel under the Navigation (Survey and Equipment) Regulations—N.S.W. or under the Navigation Act, 1901, that last preceded the commencement of Part II, the Board shall, under that Part, issue to the owner of the motor—

- (a) a motor permit under section 14 that authorises the use of the motor to the same extent as was authorised by the certificate referred to in clause 1; and
- (b) the corresponding permit plate under section 15 (1).

3. Where the Board is required by clause 1 or 2 to issue a permit in respect of a vessel or motor—

- (a) this Act does not apply; and
- (b) the Navigation Act, 1901, and the regulations made thereunder as in force immediately before the commencement of Part II, continue to apply,

to and in respect of the vessel or motor, as the case may be, until the applicable permit, permit plate and, in the case of a vessel, survey schedule have been issued.

Reserved for the signification of Her Majesty's pleasure.

A. R. CUTLER,
Governor.

Government House,
Sydney, 7th May, 1979.

1917

Commercial Record

1917

1917

1917

The first of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The second of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The third of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The fourth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The fifth of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The sixth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The seventh of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The eighth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The ninth of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The tenth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The eleventh of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The twelfth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The thirteenth of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

The fourteenth of the year was a very wet one, with many heavy showers. The temperature was generally low, and the wind was strong and variable.

The fifteenth of the year was a very dry one, with only a few scattered showers. The temperature was generally high, and the wind was strong and variable.

COMMERCIAL VESSELS BILL, 1979

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Navigation (Commercial Vessels) Amendment Bill, 1979, is cognate with this Bill.

The objects of this Bill are—

- (a) to regulate, by a system of permits, the use for commercial purposes, and the hiring out for commercial or other purposes, of vessels and “outboard” motors used for propelling vessels;
- (b) to provide for periodic surveys of those vessels and for annual checks of those motors;
- (c) to provide for the marking of load lines on certain larger vessels; and
- (d) to require certain equipment to be carried on the vessels with which the proposed Act deals.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement (including the suspension clause required by section 736 of the (Imperial) Merchant Shipping Act, 1894).

Clause 3. Arrangement.

Clause 4 gives effect to the savings and transitional provisions in Schedule 1.

Clause 5. Interpretation.

Clause 6 provides for the form of permits under the proposed Act for vessels and motors and authorises the making of regulations prescribing different classes of permits.

Clause 7 specifies the authority conferred by a permit for a vessel.

Clause 8 prohibits the use of a vessel otherwise than in accordance with the authority conferred by a permit.

Clause 9 prohibits the use of a vessel unless there is affixed thereto a plate (“permit plate”) specifying certain particulars relating to a permit for the vessel.

Clause 10 requires that there be painted on a vessel in appropriate places the effect of certain restrictions and conditions subject to which the permit for the vessel was issued, being restrictions and conditions with respect to the number of passengers that may be carried on the vessel, the presence of passengers in certain parts of the vessel and the carriage on the vessel of certain equipment.

Clause 11 specifies the authority conferred by a permit for a motor.

Clause 12 prohibits the use of a motor otherwise than in accordance with the authority conferred by a permit.

Clause 13 prohibits the hiring out of a vessel or motor unless the hiring is authorised by a permit.

Clause 14 provides for applications for, and the issue of, permits.

Clause 15 provides for the issue with each permit of a corresponding permit plate to be affixed to the vessel or motor and also provides, in the case of a vessel, for the issue of a survey schedule specifying the times at which the vessel and its components are to be submitted for survey.

Clause 16 requires the Maritime Services Board ("the Board") to cause a surveyor to investigate an application for a permit.

Clause 17 deals with the fees and charges payable in respect of an application and the investigation thereof and also requires an applicant to pay certain travelling and accommodation expenses of a surveyor in certain cases.

Clause 18 authorises the Board to issue such vessel and motor permits as it considers appropriate or, subject to its giving written reasons, to refuse to issue a permit.

Clause 19 provides for the issue of temporary permits and deems certain vessels to have been issued with temporary permits.

Clause 20 provides for the acceptance, for the purpose of issuing a vessel permit, of a survey of the vessel carried out under a law of the Commonwealth or of another State of the Commonwealth.

Clause 21 specifies the circumstances in which, and the manner in which, a permit may be suspended.

Clause 22 deals with the suspension of a permit in an emergency.

Clause 23 authorises an officer of the Board to remove from a vessel or motor the permit plate that corresponds to a suspended permit.

Clause 24 deals with the duration of the suspension of a permit.

Clause 25 specifies the circumstances in which, and the manner in which, a permit may be cancelled and provides for the removal from a vessel or motor of the permit plate that corresponds to a cancelled permit.

Clause 26 creates certain offences with respect to a vessel or motor the subject of a permit.

Clause 27. Interpretation: Part III.

Clause 28 requires a vessel the subject of a permit to be from time to time submitted for survey in accordance with its survey schedule and a motor the subject of a permit to be checked annually.

Clause 29 deals with the rectification of defects and deficiencies discovered during the survey of a vessel or the checking of a motor and authorises the Board to require a vessel to be submitted for survey, or a motor for checking, if it suspects that there are any defects or deficiencies in the vessel or motor.

Clause 30 deals with the fees and charges payable in respect of the survey of a vessel or the checking of a motor and also requires an applicant for a survey or check to pay certain travelling and accommodation expenses of a surveyor.

Clause 31 enables a person adversely affected by certain decisions of a surveyor or the Board to object to the Board and, where the Board decides not to uphold the objection, authorises an appeal to a Marine Survey Appeals Tribunal ("a Tribunal").

Clause 32 provides for the constitution of a Tribunal consisting of a stipendiary magistrate as chairman, a nominee of the appellant and a nominee of the Board.

Clause 33 provides for the procedure at a sitting of a Tribunal.

Clause 34 provides for appearances before a Tribunal.

Clause 35 deals with the powers of a Tribunal.

Clause 36 specifies the vessels to which Part V (relating to load lines) applies.

Clause 37. Interpretation: Part V.

Clause 38 provides for the making of regulations with respect to load lines and associated marks.

Clause 39 creates certain offences with respect to load lines.

Clause 40 creates certain offences with respect to the degree to which the hull of a vessel may be submerged.

Clause 41 provides for the making of regulations with respect to the carriage by vessels of certain equipment.

Clause 42 creates certain offences with respect to the equipment required to be carried by vessels.

Clause 43 is directed to controlling the number of passengers on a vessel.

Clause 44 creates certain offences by persons on board a vessel.

Clause 45 requires the directions of certain persons in authority on a vessel to be complied with.

Clause 46 facilitates identification of the owner or master of a vessel.

Clause 47 deals with the giving and serving of notices, etc., by the Board.

Clause 48 authorises the Board, in certain circumstances, to exempt a vessel or motor from a provision of the proposed Act or the regulations made thereunder.

Clause 49 authorises the Board to give general advice on a particular form or manner of design or construction of a vessel or motor and on certain incidental matters.

Clause 50 facilitates the giving of certain evidence in proceedings under the proposed Act.

Clause 51 deals with the recovery of penalties imposed under the proposed Act and their payment to the Board.

Clause 52 authorises the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 contains certain savings and transitional provisions.

COMMERCIAL VESSELS BILL, 1979

No. , 1979.

A BILL FOR

An Act to regulate the use of certain vessels and of certain motors for propelling vessels; to provide for the marking of load lines on, and the carriage of certain equipment by, vessels; and for certain other purposes.

[MR FERGUSON—20 *February*, 1979.]

See also Navigation (Commercial Vessels) Amendment Bill, 1979.

Commercial Vessels.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5

PART I.

PRELIMINARY.

1. This Act may be cited as the "Commercial Vessels Act, Short title. 1979".

2. (1) This Act shall not come into operation until after Commence-
10 Her Majesty's pleasure thereon has been publicly signified in New ment.
South Wales.

(2) Subject to subsection (1), the several provisions of this Act shall commence on such day or days later than the day on which Her Majesty's assent to this Act is proclaimed by the
15 Governor in the Gazette as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Arrange-
ment.

PART I.—PRELIMINARY—ss. 1–5.

20 **PART II.—PERMITS FOR VESSELS AND MOTORS—ss. 6–26.**

DIVISION 1.—Form and Effect of Permit—ss. 6–13.

DIVISION 2.—Issue of Permits—ss. 14–20.

**DIVISION 3.—Suspension and Cancellation of Permits—
ss. 21–26.**

25 **PART III.—SURVEYS AND CHECKS—ss. 27–30.**

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PART IV.—APPEALS—*ss.* 31–35.

PART V.—LOAD LINES—*ss.* 36–40.

PART VI.—EQUIPMENT—*ss.* 41, 42.

PART VII.—GENERAL—*ss.* 43–52.

5 SCHEDULE 1.

4. Schedule 1 has effect.

Savings and
transitional
provisions.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires :—

10 “Board” means The Maritime Services Board of New South
Wales;

“check”, in relation to a motor, means an examination of
the motor and the testing of the safety and efficiency
of its operation when in use;

15 “crew”, in relation to a vessel, means the persons (including
the master of the vessel) whose duty it is to navigate
or work the vessel or to carry out any other operations
on the vessel;

“master”, in relation to a vessel, includes—

20 (a) the person who for the time being has the
command, charge or management of the vessel;

(b) in relation to a vessel the subject of a hiring
agreement that has not expired or a hiring
agreement that has expired without the owner
of the vessel resuming possession thereof—the
25 person who has taken, or took, the vessel on
hire;

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- 5 (c) in relation to a vessel to which is attached a motor that is the subject of a hiring agreement that has not expired or a hiring agreement that has expired without the owner of the motor resuming possession thereof—the person who has taken, or took, the motor on hire; and
- 10 (d) in relation to a vessel being towed or pushed by another vessel—the master for the time being of the other vessel unless he is subject to the instructions of a person on board the vessel being towed or pushed;

“mechanical power” includes electrical power and power derived from the compression, expansion, combustion, explosion or radioactive emission of any substance;

- 15 “motor” means an engine or other device for the propulsion of a vessel by mechanical power which is so designed or constructed as to be from time to time readily attached to, and detached from, a vessel;

- 20 “motor permit” means a permit issued under Part II with respect to a motor;

“owner”, in relation to a vessel or motor, includes—

- (a) a joint owner of the vessel or motor;
- (b) a person to whom a permit for the vessel or motor has been issued under Part II; and
- 25 (c) a person exercising or discharging, or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner, whether on his own behalf or on behalf of another;

- 30 “paint” does not include painting in a medium that is readily removable;

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“passenger”, in relation to a vessel, does not include—

- (a) a member of the crew of the vessel; or
- (b) a person on board the vessel where the vessel is the subject of a hiring agreement that has not expired, or a hiring agreement that has expired without the owner resuming possession thereof, unless the person who took the vessel on hire is using the vessel for a commercial purpose;

5

10 “permit” means a permit for a vessel or motor issued under Part II;

“permit plate”, in relation to a vessel or motor, means a permit plate issued under Part II to correspond to a permit for the vessel or motor;

“regulation” means regulation made under this Act;

15 “survey schedule”, in relation to a vessel, means the survey schedule issued under section 15 (3) with the permit for the vessel, as amended from time to time;

20 “surveyor” means a person appointed by the Board to investigate, or examine and report upon, the design, construction, condition or sufficiency of a vessel or motor, or any part of the hull, construction, machinery or equipment of a vessel, or any component of a vessel or motor, for the purposes of this Act;

25 “Tribunal” means a Marine Survey Appeals Tribunal constituted under section 32;

30 “vessel” includes ship, lighter, barge, boat, raft, craft, hydroplane, hydrofoil, hovercraft and any floating object or apparatus, whether amphibious or not, used wholly or partly for the conveyance of persons or things by water;

“vessel permit” means a permit issued under Part II in respect of a vessel.

Commercial Vessels.

(2) Except in so far as the context or subject-matter otherwise indicates or requires, a reference in this Act to a vessel includes a reference to machinery, fittings, components and equipment in the vessel.

5 (3) A reference in a provision of this Act to a vessel does not include a reference to a vessel that—

(a) is engaged for profit or reward in the carriage of persons or goods to or from a port situated outside the limits of prescribed waters to which the provision extends;

10 (b) in the case of a vessel the owner of which is deemed by section 19 (3) to have been issued with a temporary permit—is used in accordance with the authority conferred by the temporary permit;

15 (c) in the case of a vessel not equipped with an engine or motor for propulsion and not of a class declared by the Board, by notice published in the Gazette, to be subject to this Act—is not used for the carriage of passengers or hired out, or otherwise made available, for the carriage of persons; or

20 (d) is not used for any commercial purpose.

(4) A reference in this Act to a motor does not include a reference to a motor attached to a vessel referred to in subsection (3) (a) or (b) or a motor not used for any commercial purpose.

(5) A reference in this Act to the hiring out or taking on
25 hire of a vessel or motor, or to a hiring agreement to which a vessel or motor is subject, is a reference to a transaction or agreement whereby possession and use of the vessel or motor is given to a person on hire on terms which do not require or admit the operation or management of the vessel or motor by the owner
30 of the vessel or motor or his servant or agent.

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(6) A reference in this Act to the use of a vessel or motor for a commercial purpose is—

(a) in the case of a vessel—a reference to the use of the vessel—

- 5 (i) for the carriage of persons or goods for money or any other valuable consideration;
- (ii) in any way in, or in connection with, a business or trade or commerce; or
- 10 (iii) by hiring it out, or making it available, in the course of a business or in trade or commerce;

(b) in the case of a motor—a reference to the use of the motor—

- (i) by attaching it to a vessel used for a commercial purpose; or
- 15 (ii) by hiring it out or making it available in the course of a business or in trade or commerce.

(7) In reckoning the number of persons on board a vessel for the purposes of this Act, the regulations and any permit or other instrument issued or made under this Act or the regulations, 20 children under the age of 1 year shall be disregarded.

(8) A reference in a provision of this Act to prescribed waters is a reference to waters in relation to which it is within the competence of the Parliament of New South Wales to enact the provision.

25

PART II.

PERMITS FOR VESSELS AND MOTORS.

DIVISION 1.—*Form and Effect of Permit.*

6. (1) A permit under this Act shall be in writing in a form ^{Form of} approved by the Board and shall be signed on behalf of the ^{permits.} Board by an officer of the Board.

30

Commercial Vessels.

(2) The regulations may prescribe different classes of permits and the different factors by reference to which they are classified.

(3) In a vessel permit there shall be specified—

- 5 (a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued; and
- (b) such particulars as may be prescribed.

(4) Without prejudice to the generality of subsection (3), conditions and restrictions subject to which a vessel permit is issued
10 may include conditions and restrictions for and with respect to the number and qualifications of the crew of the vessel to which the permit relates.

(5) The regulations may provide for a specified class of vessel permits to specify particulars under subsection (3) (b)
15 that differ from the particulars to be specified in another class of vessel permits.

(6) In a motor permit there shall be specified—

- (a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued; and
- 20 (b) such particulars as the Board considers appropriate for the permit.

7. A vessel permit, while it is in force, authorises the use of the vessel to which it relates in prescribed waters of a class or classes specified in the permit subject to compliance with the
25 terms, conditions and restrictions upon and subject to which the permit was issued. ^{Effect of vessel permit.}

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8. (1) Where a vessel is used in prescribed waters otherwise than in accordance with the authority conferred by a permit relating to the vessel, the owner and the master of the vessel are, subject to subsections (2) and (3), each guilty of an offence
5 against this Act.

(2) Where the master of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- 10 (a) that, at the time of the use of the vessel, a plate that was, or purported to be, a permit plate was affixed to the vessel;
- 15 (b) that the vessel was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the vessel, would have been in accordance with the authority conferred by that permit; and
- (c) that the master had no reason to believe that the vessel was being used otherwise than in accordance with the authority conferred by a permit relating to the vessel.

20 (3) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- 25 (a) that, at the time of the use alleged to constitute the offence, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring;
- 30 (c) where the facts alleged to constitute the offence are, in effect, that the vessel was used in prescribed waters not of a class in which the use of the vessel was authorised by a permit relating to the vessel—that, at the time of

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- the hiring, there was delivered to the person taking the vessel on hire written particulars of the means of identifying the class or classes of water in which the use of the vessel was so authorised; and
- 5 (d) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

9. (1) Subject to subsection (2), the owner and the master of a vessel the subject of a permit are each guilty of an offence against this Act if the vessel is in prescribed waters and there is not affixed thereto as prescribed the permit plate that corresponds to the permit. Permit plate to be affixed.

10

(2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- 15 (a) that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- 20 (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring; and
- (c) that the owner had no means of knowing that the permit plate was no longer affixed to the vessel.

10. (1) Where a vessel permit is subject to a restriction with respect to the number of passengers that may be carried in a specified part of the vessel, the owner of the vessel is guilty of an offence against this Act unless a statement of, or to the effect of, the terms of the restriction is kept prominently and clearly painted in that part of the vessel. Certain information to be painted on vessel.

25

Commercial Vessels.

(2) Where a vessel permit is subject to a restriction with respect to the presence in a specified part of the vessel of a passenger, or a passenger of a specified class, or a passenger other than a passenger of a specified class, the owner of the vessel is guilty of
5 an offence against this Act unless a statement of, or to the effect of, the terms of the restriction is kept prominently and clearly painted at any place on the vessel designed for entry to that part.

(3) Where a vessel permit is subject to a condition that specified equipment (not being equipment otherwise required by
10 this Act or the regulations to be carried in the vessel) be carried in the vessel, the owner of the vessel is guilty of an offence against this Act unless a statement of, or to the effect of, the terms of the condition is kept prominently and clearly painted on the vessel as specified in the permit.

15 **11.** A motor permit, while it is in force, authorises the use of the motor to which it relates subject to compliance with the terms, conditions and restrictions upon and subject to which the permit was issued. **Effect of motor permit.**

12. (1) Where a motor attached to a vessel is used in pre-
20 scribed waters otherwise than in accordance with the authority conferred by a permit relating to the motor, the owner and the master of the vessel are, subject to subsections (2) and (3), each guilty of an offence against this Act. **Motor to be used as provided by permit.**

(2) Where the master of a vessel is proceeded against
25 for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

(a) that, at the time of the use alleged to constitute the offence, a plate that was, or purported to be, a permit plate was affixed to the motor;

Commercial Vessels.

- 5 (b) that the motor was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the vessel, would have been in accordance with the authority conferred by that permit; and
- (c) that the master had no reason to believe that the motor was being used otherwise than in accordance with the authority conferred by a permit relating to the motor.

10 (3) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), he is not guilty of the offence if it is proved—

- 15 (a) that, at the time of the use alleged to constitute the offence, the motor, or the vessel to which it was attached, was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession;
- (b) that, at the time of the hiring, the permit plate affixed to the motor corresponded to a permit authorising the hiring; and
- 20 (c) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

13. A person who lets a vessel or motor out on hire is guilty of an offence against this Act unless the hiring is authorised by a permit relating to the vessel or motor, as the case may be. ^{Unauthorised hirings.}

25

DIVISION 2.—Issue of Permits.

14. (1) Subject to this Act, upon application made in a form and manner approved by the Board, the Board may issue a permit upon such terms, and subject to such conditions and restrictions, as the Board thinks fit and specifies in the permit. ^{Application for permit.}

Commercial Vessels.

(2) At the time of making an application under subsection (1), and at such other times before the issue of a permit pursuant to the application as the Board or its surveyor may specify, the applicant shall furnish to the Board or surveyor, as
5 the case may be, such plans, specifications, certificates, calculations and other documents and information as the Board or surveyor may require in order to establish that, for each use proposed for the vessel or motor to which the application relates, the vessel or motor is, or will be, designed, constructed and equipped to the satisfaction
10 of the Board and in conformity with any law applicable to the vessel or motor.

15. (1) With each permit there shall be issued a corresponding permit plate to be affixed to the vessel or motor to which the permit relates.

Permit
plates
and
survey
schedules.

15 (2) A permit plate shall specify—

(a) the identification number of the permit to which it corresponds;

(b) the classification of that permit; and

(c) such particulars as the Board considers appropriate for
20 the permit plate.

(3) With each vessel permit there shall be issued a survey schedule for the vessel which—

(a) shall provide that the vessel and the parts and components of the vessel specified in the survey schedule must
25 be periodically submitted for survey not later than the expiration of such intervals as are specified in, or ascertainable from, the survey schedule in relation to the vessel and each such part or component; and

(b) shall specify the nature of the survey required in each
30 case.

Commercial Vessels.

(4) The Board may, from time to time, by notice in writing given to the holder of a vessel permit, amend the survey schedule for the vessel in the manner specified in the notice.

(5) Where the holder of a permit—

- 5 (a) notifies the Board that the corresponding permit plate has been lost or destroyed, satisfactorily accounts for its loss or destruction and pays the prescribed fee; or
- (b) returns the corresponding permit plate to the Board because it is damaged or has become illegible and pays
- 10 the prescribed fee,

the Board shall issue to him a replacement for the permit plate.

(6) Where an officer of the Board is of the opinion that a permit plate has been so damaged or defaced as to be illegible or misleading he may remove the permit plate from the vessel

15 or motor to which it is affixed.

(7) A person who obstructs an officer of the Board in the exercise of his powers under subsection (6) is guilty of an offence against this Act.

(8) Where the Board is aware that alteration or recon-

20 struction of a vessel or motor is proposed or has commenced and by notice in writing given to the owner of the vessel personally or by post requires him to return to the Board the permit plate for the vessel or motor, the owner is guilty of an offence against this Act if he fails to comply with the requirement within a time

25 specified in the notice for compliance.

16. (1) Where application is made for a vessel permit the Board shall, whether or not the construction of the vessel has commenced, is in progress or has been completed, cause a surveyor to investigate the application in so far as it relates to the design, construction, machinery, fittings and equipment of the vessel to

30

Application for permit to be investigated by surveyor.

Commercial Vessels.

ascertain whether the vessel is, or will be, designed, constructed and equipped to the satisfaction of the Board and in conformity with any law applicable to the vessel.

(2) An investigation by a surveyor under subsection (1) may include—

- (a) such periodical inspection of a vessel while it is under construction;
- (b) such inspection and testing of any machinery, component, fitting or equipment of a vessel; and
- 10 (c) such testing of any material used in the construction of the vessel or any of its machinery, components, fittings or equipment; and
- (d) such operation of the vessel,

as the surveyor considers to be appropriate for his consideration of
15 the application.

(3) Where application is made for a permit in respect of a vessel of which construction has been commenced, or a vessel that has been constructed but was not, immediately before the commencement of this Part, the subject of a certificate given under
20 regulation 27 of the Navigation (Survey and Equipment) Regulations—N.S.W. or under section 36 of the Navigation Act, 1901, or accepted under section 37 of that Act, the applicant shall, if requested so to do by a surveyor investigating the application, cause such removal or dismantling of any portion of the vessel not
25 previously inspected by the surveyor as the surveyor considers necessary for the purposes of his investigation.

(4) Where application is made for a motor permit the Board shall cause a surveyor to investigate the design, construction and operation of the motor to ascertain whether the motor is,
30 or will be, constructed to the satisfaction of the Board and in conformity with any law applicable to the motor having regard to the use to which the motor will be put.

Commercial Vessels.

17. (1) The regulations may provide for the payment of specified fees and charges in respect of an application for a permit and investigation of the application and may provide for different fees and charges according to such different factors as are prescribed.

Payment
of fees,
charges
and
expenses.

(2) Without limiting the generality of subsection (1)—

- 10 (a) fees for a vessel permit may be prescribed according to the tonnage of a vessel or otherwise according to its size or dimensions and also according to its type, class or proposed use; and
- 15 (b) charges may be prescribed as scales varying according to the time spent on an investigation or as a fixed amount according to the class of investigation with scales of additional charges varying according to the time in excess of a specified time spent on an investigation.

(3) Where, at the request of an applicant for a permit, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, the applicant shall pay to the Board the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.

18. (1) When investigation of an application for a permit has been completed and all fees, charges and expenses with respect to the application have been paid, the Board shall consider the application and the results of the investigation and shall —

Board to
issue, or
refuse to
issue, a
permit.

- 25 (a) issue such permit or permits for the vessel or motor to which the application relates as the Board considers appropriate; or
- 30 (b) refuse to issue any permit for the vessel or motor.

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(2) Where, in response to an application, the Board refuses to issue any permit applied for, it shall give to the applicant notice in writing of its decision and of the reasons therefor.

19. (1) In this section "prescribed law" means a law of the ^{Temporary} Commonwealth or of another State of the Commonwealth or of ^{permits.} a country that, within the meaning of the Navigation Act 1912 of the Parliament of the Commonwealth, as amended, is a Commonwealth country.

(2) The Board may issue a temporary permit for such 10 period and on such conditions as it thinks fit.

(3) Where a prescribed law provides for a vessel or motor to be subjected to inspection and investigation in the nature of a survey within the meaning of Part III and, pursuant to that law, the use of a vessel or motor has been authorised, the owner 15 of that vessel or motor shall be deemed to have been issued with a temporary permit, expiring when that authority to use the vessel or motor expires, to use the vessel or motor —

(a) in accordance with that authority while the condition of the vessel or motor complies with any prescribed law that would apply to that vessel or motor when used in 20 accordance with that authority; and

(b) subject to such conditions as may be imposed by the Board by notice in writing served on the owner of the vessel or motor.

25 (4) If the owner of a vessel or motor referred to in subsection (3) requests the Board so to do, the Board shall, upon being provided with such information with respect to the vessel or motor as the Board requires, and upon payment of the prescribed fee, issue the owner with a temporary permit specifying 30 the prescribed waters in which, the manner in which, the date until which and the conditions subject to which the use of the vessel or motor is permitted by subsection (3).

Commercial Vessels.

(5) The owner and the master of a vessel are each guilty of an offence against this Act and the owner of a motor is guilty of an offence against this Act —

- 5 (a) if the vessel or motor is the subject of a temporary permit issued under subsection (2) or (4), or deemed to have been issued under subsection (3), and is used otherwise than in accordance with the authority conferred by the temporary permit; or
- 10 (b) if the vessel or motor is the subject of a temporary permit issued under subsection (2) or (4) that has been suspended and the temporary permit is not, forthwith after the suspension, returned to the Board.

20. (1) This section applies only to and in respect of a vessel or motor referred to in section 19 (3) in relation to which the 15 prescribed law so referred to is a law of the Commonwealth or of another State of the Commonwealth.

Con-
version of
temporary
permit for
certain
vessels.

(2) Subject to this Act, upon application made under section 14 the Board may issue a permit to the owner of a vessel or motor to which this section applies.

20 (3) In investigating an application referred to in subsection (2), the Board or a surveyor shall carry out only such a survey and inspection of the vessel or motor as would, at the time of the investigation, be required under the prescribed law relating to the vessel or motor and shall require the payment of only such fees 25 and charges as would be payable under that prescribed law for such a survey and inspection.

DIVISION 3.—Suspension and Cancellation of Permits.

21. (1) The Board may suspend a permit by notice in writing served on the holder of the permit personally or by post—

Suspension
of permit
by Board.

- 30 (a) where the permit is a vessel permit and the vessel the subject of the permit has not been submitted for survey in accordance with its survey schedule after notice has

Commercial Vessels.

- been given to the holder of the permit so to submit the vessel;
- 5 (b) where the permit is a vessel permit and the Board considers that equipment carried by the vessel in compliance, or purported compliance, with Part VI requires investigation;
- 10 (c) where the permit is a motor permit and the motor has not been submitted for checking as provided by section 28 (2) after notice has been given to the holder of the permit so to submit the motor;
- (d) if a requirement under section 29 (1) (a) with respect to the vessel or motor the subject of the permit is not complied with within a reasonable time;
- 15 (e) if, on consideration of a report by a surveyor or of a notice given under section 22 by an officer of the Board, the Board considers that continued use of the vessel or motor the subject of the permit should not be permitted;
- 20 (f) if any amount payable to the Board in connection with the survey of a vessel or the checking of a motor is not paid within a reasonable time after the owner of the vessel or motor has been given written notice by the Board to pay the amount; or
- 25 (g) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such alteration or reconstruction.

(2) Where a permit is suspended under subsection (1), the holder of the permit is guilty of an offence against this Act if he fails to return to the Board forthwith the permit plate that 30 corresponds to the permit.

(3) The Board may suspend or cancel a temporary permit if, on consideration of a notice given under section 22 by an officer of the Board, the Board considers that continued use of the vessel or motor the subject of the temporary permit should 35 not be permitted.

Commercial Vessels.

22. (1) Where, in the opinion of an officer of the Board, the use of a vessel or motor in accordance with a permit, or a temporary permit issued or deemed to have been issued under section 19 (2), (3) or (4), would be dangerous by reason of—

Emergency
suspension
of permit.

- 5 (a) the condition of the vessel or motor or any part or component or equipment thereof; or
- (b) the absence from the vessel or motor of any part or component or equipment required by or under this Act to be present,

10 he may suspend the permit or temporary permit as provided by this section.

(2) In the case of a permit or temporary permit relating to a vessel, an officer referred to in subsection (1) effects a suspension so referred to by giving to the owner of the vessel, or to a person employed on, or on board, the vessel, a notice in writing stating that the permit or temporary permit has been suspended and that, subject to any other direction given in writing by the Board to the owner of the vessel, the suspension will terminate—

- 20 (a) when the defects and deficiencies which he has specified in the notice as those by reason of which he considers use of the vessel would be dangerous have been made good to his satisfaction or to the satisfaction of a specified officer of the Board; or
- 25 (b) at the expiration of the period of 14 days that next succeeds the giving of the notice,
- whichever first occurs.

(3) In the case of a permit or temporary permit relating to a motor, an officer referred to in subsection (1) effects a suspension so referred to—

- 30 (a) where the motor is not attached to a vessel—by giving to the owner of the motor; or

Commercial Vessels.

(b) where the motor is attached to a vessel—by giving to the owner of the motor or to the owner of the vessel, or to a person employed on, or on board, the vessel,

a notice to the same effect in relation to the motor as the notice
5 he is authorised by subsection (2) to give in relation to a vessel.

(4) Where a person employed on, or on board, a vessel is given a notice under this section addressed to the owner of the vessel, that person is guilty of an offence against this Act if he fails to transmit the notice to that owner forthwith.

10 (5) A person who considers that he has been adversely affected by the suspension under this section of a permit or temporary permit may, upon payment to the Board of the prescribed fees and expenses, require the Board to investigate whether the suspension was justified and the Board shall comply with the
15 requirement.

(6) Where, after an investigation under subsection (5), the Board finds that suspension of a permit or temporary permit was not justified, it shall terminate the suspension and refund the fees and expenses paid under subsection (5) for the investigation.

20 **23.** (1) Where a permit is suspended, an officer of the Board may, at any time while the suspension is effective, remove from the vessel or motor to which the permit relates the permit plate
that corresponds to the permit. Action after suspension.

(2) Where a temporary permit is suspended, an officer of
25 the Board may, at any time while the suspension is effective, affix to the vessel or motor to which the temporary permit relates a notice to the effect that the temporary permit has been suspended.

(3) A person who obstructs an officer of the Board in the exercise of the powers conferred by subsection (1) or (2) is guilty
30 of an offence against this Act and liable to a penalty not exceeding \$800.

Commercial Vessels.

(4) Where a notice is affixed under subsection (2)—

(a) to a vessel—the owner and the master of the vessel are each guilty of an offence against this Act; or

5 (b) to a motor—the owner of the motor is guilty of an offence against this Act,

and liable to a penalty not exceeding \$800 if the notice does not remain affixed to the vessel or motor, as the case may be, while the suspension is effective.

10 (5) Where a permit plate has been removed from a vessel or motor under subsection (1) and the suspension of the permit to which that permit plate corresponds—

(a) terminates under section 22 (2); or

(b) is terminated by the Board,

15 the Board shall cause the permit plate to be returned to the owner of the vessel or motor to which the permit relates.

24. (1) Subject to section 22 (2), a suspension of a permit or temporary permit remains effective until the Board has notified the holder of the permit or temporary permit in writing that the suspension has been terminated. Duration
of
suspension.

20 (2) A suspended permit or temporary permit has no force or effect until the suspension has been terminated.

25. (1) The Board may, by notice in writing served on the holder of a permit personally or by post, cancel the permit— Cancellation
of permit.

25 (a) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such alteration or reconstruction;

Commercial Vessels.

- (b) if the permit has been suspended and a period of 1 year has elapsed without the suspension being terminated;
- 5 (c) when the vessel or motor to which the permit relates has been lost or destroyed or, in the opinion of the Board, is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by the permit; or
- 10 (d) where the holder of the permit has requested the cancellation and has returned to the Board the corresponding permit plate.

(2) Where a permit is cancelled, an officer of the Board may remove from the vessel or motor to which the permit relates the permit plate that corresponds to the permit.

- 15 (3) A person who obstructs an officer of the Board in the exercise of the powers conferred by subsection (2) is guilty of an offence against this Act and liable to a penalty not exceeding \$800.

26. The owner of a vessel or motor the subject of a permit is **Offences.** guilty of an offence against this Act—

- 20 (a) if he fails forthwith to notify the Board in writing when the vessel or motor is lost or destroyed, or becomes so damaged, dismantled or dilapidated as to be unfit for use in accordance with the authority conferred by the permit;
- 25 (b) if the vessel or motor is used in prescribed waters when any part of the permit plate affixed thereto is illegible or misleading; or
- 30 (c) if he fails to furnish the Board, not later than 21 days before any alteration or reconstruction of the vessel or motor is commenced, with full particulars in writing of the proposed alteration or reconstruction.
-

Commercial Vessels.

PART III.

SURVEYS AND CHECKS.

27. In this Part (section 28 (2) (a) excepted) a reference to a survey of a vessel is a reference to such inspection, examination, testing and operation of the vessel, and any machinery, component or equipment in or on the vessel, as the surveyor to whom the vessel is submitted in accordance with its survey schedule or a requirement under section 29 considers necessary to establish whether the efficiency and sufficiency of the vessel or part of the vessel, or of the component, machinery or equipment in or on the vessel, as specified by the survey schedule or requirement, is satisfactory to the Board.

Interpretation:
Pt. III.

28. (1) The owner of a vessel the subject of a permit shall cause the vessel to be submitted for survey by a surveyor in accordance with the survey schedule for the vessel.

Survey of vessels and check of motors.

(2) The owner of a motor the subject of a permit shall cause the motor to be submitted for checking by a surveyor not more than 1 year after the motor was last checked and found satisfactory in the course of—

- 20 (a) the survey of a vessel under the Navigation Act, 1901;
(b) an investigation under section 16;
(c) a check pursuant to a requirement under section 29; or
(d) a check pursuant to this subsection,

whichever was the latest.

25 29. (1) Where a vessel is submitted for survey as provided by its survey schedule or pursuant to a requirement under this section, or a motor is submitted for checking under section 28 or pursuant to such a requirement, the Board or a surveyor may require the owner of the vessel or motor, as the case may be—

Defects and deficiencies.

- 30 (a) to make good a specified defect or deficiency in the vessel disclosed by the survey or in the motor disclosed by the check; and

Commercial Vessels.

(b) to submit the vessel for survey or the motor for checking when the defect or deficiency is made good.

(2) Where any part of a vessel or motor the subject of a permit sustains structural damage, the owner of the vessel or motor **5** is guilty of an offence against this Act unless he forthwith notifies the Board in writing of the damage suffered.

(3) Where the Board receives a notification under subsection (2) with respect to a vessel or motor it may require the owner of the vessel to submit it to a surveyor for survey or, as the **10** case may be, the owner of the motor to submit it to a surveyor for checking.

(4) Where the Board is of the opinion that the condition of a vessel or motor the subject of a permit may not be satisfactory, it may require the owner of the vessel to submit it to a surveyor for **15** survey or, as the case may be, the owner of the motor to submit it to a surveyor for checking.

30. (1) Before—

(a) a vessel is surveyed pursuant to its survey schedule or a requirement under section 29; or

20 (b) a motor is checked pursuant to section 28 or a requirement under section 29,

the prescribed fees, charges and expenses for the survey or check, as the case may be, shall be paid.

Fees, etc.,
for survey
of vessel
and check
of motor.

(2) The regulations may provide for the payment of **25** specified fees and charges in respect of the survey of a vessel and the checking of a motor and may provide for different fees, charges and expenses according to such different factors as are prescribed.

Commercial Vessels.

(3) Where, at the request of a person submitting a vessel for survey or a motor for checking, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, that person shall pay to the Board the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.

(4) Where, upon attending to survey a vessel, or to check a motor, at a place and time of which the owner of the vessel or motor, as the case may be, has been given reasonable notice by an officer of the Board, or at a place or time referred to in subsection (3), a surveyor is unable to carry out the survey or check by reason of the vessel or motor not being made available in a position or condition which permits the making of the survey or check, all fees, charges and expenses already paid shall be retained by the Board and shall be deemed not to have been paid in respect of any survey of the vessel or check of the motor subsequently carried out.

(5) Where the survey of a vessel or the check of a motor is carried out pursuant to a requirement of the Board under section 29 (4) and no defect or deficiency in the vessel or motor is found, all fees, charges and expenses paid in connection with the survey or check (other than fees, charges and expenses that the Board is entitled to retain under subsection (4)) shall be refunded.

PART IV.**APPEALS.**

25 31. (1) A person who considers that he has been adversely affected by any one or more of the matters referred to in subsection (2) may object thereto by notice in writing to the Board specifying the grounds of the objection. **Objection to certain actions.**

(2) The matters to which objection may be made under subsection (1) are—

- 30 (a) rejection by a surveyor or by the Board of any document or information furnished to the Board in connection with an application for a permit;

Commercial Vessels.

- 5 (b) rejection by a surveyor or by the Board of any part of the design or construction of a vessel or of the design, construction or sufficiency of any machinery, component, fitting or equipment of a vessel, or any material used in the construction of a vessel or any of its machinery, components, fittings or equipment;
- (c) a requirement of a surveyor that any part of a vessel be removed or dismantled for the purposes of his investigation;
- 10 (d) rejection by a surveyor of the design or construction of a motor;
- (e) a refusal by the Board to issue a permit;
- (f) rejection by a surveyor, because of its state or condition, of any part of a vessel or of any machinery in a vessel or of any component, fitting or equipment of a vessel;
- 15 (g) rejection by a surveyor, because of its state or condition, of a motor or any part of a motor;
- (h) rejection by a surveyor, because of its insufficiency or condition, of any navigational or safety equipment carried by a vessel;
- 20 (i) a direction given by an officer of the Board under section 40 (3);
- (j) a decision by the Board that a vessel or motor is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by a permit to which it is subject;
- 25 (k) any term, condition or restriction upon or subject to which a permit is granted by the Board; and
- (l) a finding of the Board under section 49.
- 30 (3) Where the Board decides to uphold an objection made under subsection (1), it shall—
- (a) inform the objector accordingly; and
- (b) give effect to its decision.

Commercial Vessels.

(4) Where the Board decides not to uphold an objection made under subsection (1)—

(a) the Board shall inform the objector accordingly; and

5 (b) the objector may, not later than 21 days after being informed of the Board's decision, give the Board written notice that he wishes to appeal against that decision.

32. (1) As soon as practicable after receiving a notice of appeal under section 31 (4), the Board shall convene a Marine Survey Appeals Tribunal to hear the appeal. **Marine
Survey
Appeals
Tribunal.**

10 (2) A Marine Survey Appeals Tribunal shall consist of—

(a) a chairman, who shall be a stipendiary magistrate nominated by the Minister administering the Justices Act, 1902;

(b) a person nominated by the appellant; and

15 (c) a person nominated by the Board.

(3) The chairman of a Tribunal shall fix a time and place for the hearing of the appeal for which it was convened and shall cause the appellant to be given not less than 7 days' notice of that time and place.

20 (4) Each person referred to in subsections (2) (b) and (2) (c) shall, before he sits as a member of the Tribunal, take an oath in the prescribed form that he will faithfully and impartially discharge the duties of his office as such a member.

(5) All matters relating to procedure at a sitting of a
25 Tribunal shall be determined by its chairman.

Commercial Vessels.

33. (1) At a sitting of a Tribunal, the chairman shall, before the substance of the appeal is heard, determine whether the appellant has been adversely affected by the action appealed against and, if he determines that the appellant has not been so affected, the appeal shall be dismissed.

Procedure
at hearing
of appeal.

(2) A Tribunal is not bound by the rules of evidence and may obtain information to assist it in its deliberations in any way it thinks fit.

(3) Subject to subsection (1) and to section 32 (4), a decision supported by a majority of the persons constituting a Tribunal is a decision of that Tribunal.

(4) In reaching a decision on an appeal before it, the Tribunal shall apply such standards with respect to the subject-matter of the objection that gave rise to the appeal as it considers to be reasonable in the circumstances.

34. At a hearing before a Tribunal—

Appearances
at hearing
of appeal.

(a) the appellant and officers of the Board may be present and may be heard and they may be assisted by persons having expert knowledge of the matters with which the appeal is concerned who may also be heard; and

(b) the appellant or the Board may appear by his or its solicitor or by counsel.

35. (1) A Tribunal may—

Powers of
Tribunal.

(a) dismiss an appeal; or

(b) wholly or partly uphold an appeal and give such directions with respect to the subject-matter of the appeal as it thinks fit.

Commercial Vessels.

(2) The Board shall give effect to a direction given under subsection (1) (b) subject to compliance with any condition or requirement imposed by the Tribunal when giving the direction.

(3) A Tribunal may make such order with respect to the 5 costs and expenses of an appeal heard and determined by it as it thinks fit or may refrain from making such an order.

(4) Any amount ordered to be paid under subsection (3) is recoverable as a debt in a court of competent jurisdiction.

PART V.

10

LOAD LINES.

36. (1) This Part does not apply to—

Application
of Part.

(a) a vessel less than 16 metres in length overall;

(b) a vessel of a prescribed class of vessels; or

15 (c) a vessel in respect of which an exemption certificate is in force.

(2) The Board may issue a certificate to the effect that a specified vessel is exempt from the operation of this Part.

(3) An exemption certificate may be issued subject to such conditions and restrictions as the Board thinks fit and has 20 effect only while any such conditions and restrictions are fulfilled and observed.

37. In this Part—

Interpreta-
tion:
Pt. V.

25 “assigned freeboard”, in relation to a vessel, means the distance to be observed between the upper edge of the deck line of the vessel and the upper edge of the load line mark for the vessel;

Commercial Vessels.

- “associated mark”, in relation to a vessel, means a mark, other than a load line mark, specified in the load line certificate for the vessel as appropriate for waters so specified in conditions so specified;
- 5 “deck line”, in relation to a vessel, means the deck line of the vessel determined as prescribed;
- “exemption certificate”, means a certificate issued under section 36 (2);
- 10 “load line certificate”, in relation to a vessel, means a certificate that is issued or accepted under the regulations and specifies the load line mark and any associated marks to be displayed on the vessel;
- 15 “load line mark”, in relation to a vessel, means the mark to be displayed on the vessel to indicate the lower extremity of the assigned freeboard of the vessel.

38. Regulations may be made for and with respect to—

Load line regulations.

- (a) the classes of associated marks to be displayed on vessels to which this Part applies;
- 20 (b) the issue of load line certificates and exemption certificates;
- (c) the acceptance of certificates in the nature of load line certificates or exemption certificates issued under the law of the Commonwealth, another State of the Commonwealth or another country and conditions and restrictions relating to any such acceptance;
- 25 (d) conditions for the assignment of freeboards to vessels to which this Part applies;
- (e) the requirements of structural strength and stability for the assignment of freeboards to vessels to which this
- 30 **Part applies;**

Commercial Vessels.

- (f) the initial survey of a vessel for the purpose of assigning a freeboard to the vessel;
- (g) the calculation and assignment of freeboards;
- (h) the marking of load lines and associated marks;
- 5 (i) the periodical survey and inspection of vessels in respect of which load line certificates have been issued or accepted under the regulations;
- (j) the duration of certificates issued under the regulations including their expiration, extension or prior cancellation;
- 10 (k) applications for certificates under the regulations;
- (l) fees, charges and expenses to be paid in respect of applications, investigations and surveys under this Part; and
- 15 (m) all matters that by this Part are authorised or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Part.

39. (1) Where a vessel to which this Part applies is the subject of a permit and is used in prescribed waters later than— **Load line and other marks to be displayed.**

- 20 (a) the issue of the permit; or
- (b) completion of the first survey of the vessel carried out after the commencement of this Part,

whichever is the later, the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding

25 \$800 unless there is a load line certificate in force for the vessel.

(2) Where a load line certificate is in force for a vessel to which this Part applies and the vessel is used in prescribed waters later than 1 month after the issue of the certificate without displaying the load line mark, and all associated marks, for the

30 vessel as specified in the certificate the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding \$800.

Commercial Vessels.

(3) If a vessel to which this Part applies is used in prescribed waters after a load line certificate for the vessel has been issued and—

- 5 (a) a copy of that certificate is not displayed on the vessel in a prominent position in a place accessible to an officer of the Board, or a surveyor, desiring to inspect it; or
- (b) particulars of the load line mark, and of all associated marks, for the vessel are not entered in any official log-book that the vessel is by law required to carry,
- 10 the owner and the master of the vessel are each guilty of an offence against this Act.

(4) It is a defence to proceedings against the owner of a vessel for an offence referred to in subsection (2) or (3) (a) if it is proved—

- 15 (a) in the case of the offence referred to in subsection (2)—that the owner had caused the mark to the absence of which the charge relates to be displayed on the vessel and had no means of knowing that it was no longer so displayed; or
- 20 (b) in the case of the offence referred to in subsection (3) (a)—that the owner had caused a copy of the load line certificate to the absence of which the charge relates to be displayed as prescribed and had no means of knowing that it was no longer so displayed.

25 **40.** (1) Where a vessel to which this Part applies is in prescribed waters and is so loaded that—

- (a) where an associated mark for the vessel is specified in its load line certificate as appropriate for those waters—that associated mark; or
- 30 (b) in any other case—the load line mark,
- on any side of the vessel is submerged, the owner and the master of the vessel are each guilty of an offence and liable to a penalty not exceeding \$2,000.

Sub-
mergence
of load line
marks and
other marks.

Commercial Vessels.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved—

- 5 (a) that, in the case referred to in subsection (1) (a), if the vessel had been floating without a list in still water of the class for which the associated mark alleged to have been submerged is appropriate, that associated mark would not have been submerged; or
- 10 (b) that, in the case referred to in subsection (1) (b), if the vessel had been floating without a list in still salt water of a specific gravity of 1.025, the load line would not have been submerged.

(3) An officer of the Board appointed by it for the purposes of this section may, by notice in writing served personally on the owner or the master of a vessel, direct that the vessel shall, in 15 specified circumstances, or in all circumstances, be so loaded as to leave unsubmerged not less than a specified extent of its hull.

(4) Where a vessel in respect of which a direction has been given under subsection (3) is loaded otherwise than in accordance with the direction, the owner and the master of the 20 vessel are each guilty of an offence against this Act and liable to a penalty not exceeding \$2,000.

PART VI.

EQUIPMENT.

41. (1) Regulations may be made for and with respect to the **Regulations.** 25 carriage by vessels of equipment—

- (a) for the safe and proper navigation and management of a vessel;
- (b) for the safe and proper stowage and handling of cargo in or on a vessel;
- 30 (c) for the receipt and dispatch of communications from and to other vessels and the shore;
- (d) for the prevention of fire or explosion;

Commercial Vessels.

- (e) for the saving of life;
- (f) for making distress signals;
- (g) for the health, safety and convenience of the passengers on, and crew of, a vessel and other persons; and
- 5 (h) for the prevention of nuisance or annoyance to the public or to persons on board a vessel.

(2) The regulations may prescribe the position and manner in which any prescribed equipment is to be carried, the labelling of prescribed equipment, the displaying of notices relating
 10 to prescribed equipment and the displaying or making available of instructions for the proper use of prescribed equipment.

42. (1) Subject to subsections (2) and (3), the owner and the master of a vessel are each guilty of an offence against this Act if the vessel is in prescribed waters and—

Offences relating to carriage of equipment.

- 15 (a) equipment prescribed for carriage by the vessel is not so carried;
- (b) equipment prescribed for carriage by the vessel is so carried but—
 - (i) is defective; or
 - 20 (ii) is carried otherwise than in the position or manner prescribed for the carriage of that equipment;
- (c) any equipment carried by the vessel is not labelled as prescribed for that equipment;
- 25 (d) any notice or instruction prescribed for display in relation to equipment carried by the vessel is not so displayed; or
- (e) any instruction regarding the proper use of equipment carried by the vessel is not made available as prescribed.

Commercial Vessels.

(2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1) (a) or (b) (ii) he is not guilty of the offence if it is proved that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession and—

- 10 (a) in the case of the offence referred to in subsection (1) (a)—that, at the time of the hiring, the equipment to the absence of which the charge relates was carried on the vessel and that the owner had no means of knowing that the equipment was no longer carried on the vessel; or
- 15 (b) in the case of the offence referred to in subsection (1) (b) (ii)—that, at the time of the hiring, the equipment to which the charge relates was carried in the position and manner prescribed for that equipment and that the owner had no means of knowing that the equipment was no longer so carried.

20 (3) Where the master of a vessel is proceeded against for the offence referred to in subsection (1) (b) (i) he is not guilty of the offence if it is proved that, at the time the offence is alleged to have been committed—

- 25 (a) he was the master of the vessel by reason of his being the person taking the vessel on hire under a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession; and
- (b) he did not know, and had no means of knowing, that the equipment was defective.

30

PART VII.**GENERAL.**

43. (1) In this section “authorised person” in relation to a vessel means a person concerned in the management or operation of the vessel or in the conduct of operations at its berth. **Control of number of passengers.**

Commercial Vessels.

(2) A person is guilty of an offence against this Act if he boards, or attempts to board, or remains in, a vessel after an authorised person for the vessel has informed him that his presence in the vessel has caused, or would cause, the maximum number of
5 passengers authorised to be carried in the vessel, for the voyage or excursion in which it is engaged, to be exceeded.

(3) A person is guilty of an offence against this Act if he enters, or attempts to enter, or remains in, a part of a vessel after an authorised person for the vessel has informed him that his
10 presence in that part of the vessel has caused, or would cause, the maximum number of passengers authorised to be carried in that part of the vessel for the voyage or excursion in which it is engaged to be exceeded.

44. A person on board a vessel is guilty of an offence against Offences.
15 this Act if—

- (a) being a passenger—
 - (i) he is in a part of the vessel in respect of which a notice is displayed at each place on the vessel designed for entry to that part; and
 - 20 (ii) he would have contravened such a notice if he had entered that part at such a place,
whether or not he in fact entered that part at such a place;
- (b) being a passenger, he is on any roof, awning or mast on
25 the vessel;
- (c) he obstructs a person engaged in the navigation or other operation of the vessel;
- (d) he wilfully damages or puts to wrongful use any part of the vessel or any equipment on the vessel; or
- 30 (e) he removes, damages or defaces any permit plate or any sign or notice on the vessel that relates to its safe and proper use.

Commercial Vessels.

45. (1) In this section "authorised person" in relation to a vessel means a person on board the vessel who is concerned in the navigation, operation or management of the vessel.

Obstruction of navigation, etc., by passenger.

(2) Subject to subsection (3), a passenger on a vessel is guilty of an offence against this Act if he fails to comply with a direction, given by an authorised person for the vessel, to move to or from a part of the vessel, or to cease an activity in which he is engaged on the vessel.

(3) A person is not guilty of an offence under subsection (2) if it is proved that the direction with which he failed to comply was not given in the interests of safety or of the proper and orderly management, operation or navigation of the vessel.

46. (1) The master of a vessel is guilty of an offence against this Act if an officer of the Board requires him to supply all the information he has regarding the identity and address of the owner of the vessel and he fails to comply with the requirement.

Identification of owner and master.

(2) A person on board a vessel is guilty of an offence against this Act if an officer of the Board requires him to supply all the information he has regarding the identity and address of the owner or the master of the vessel and he fails to comply with the requirement.

47. (1) Where, pursuant to this Act, the Board is authorised or obliged to give a notice, notification, direction or authorisation or to require anything to be done or omitted, the notice, notification, direction or authorisation may be given, or the requisition made, by the Secretary of the Board or an officer of the Board appointed by the Board for the purpose.

Service, etc., of notices, etc.

Commercial Vessels.

(2) A notice, notification, direction or authorisation to be given to, or served upon, a person under, or for the purposes of, this Act or the regulations may be addressed to that person by name, or by description as the owner, the master or the person
5 having the care or custody of a specified vessel.

(3) A notice, notification, direction or authorisation to be given to, or served upon, the owner of a vessel under, or for the purposes of, this Act is sufficiently given or served if it is delivered to a person employed on or on board the vessel.

10 (4) Where a person employed on or on board a vessel is given or served with a notice, notification, direction or authorisation in accordance with subsection (3) that is addressed to the owner of the vessel, he is guilty of an offence against this Act if he fails to transmit the notice, notification, direction or authorisa-
15 tion to the owner of the vessel forthwith.

48. (1) Where the Board is of the opinion that a provision of this Act or the regulations should not apply to, or is unnecessary in relation to, a particular vessel or motor or a class of vessels or
20 motor is as effective as, or more effective than, the action required by that provision, the Board may—

- (a) by notice in writing given to the owner of the vessel or motor exempt the vessel or motor; or
- (b) by notice published in the Gazette exempt that class of
25 vessels or motors,

from the operation of the provision.

(2) The Board may, by a notice given or published under subsection (1) or by a subsequent notice given or published in the same way as the earlier notice, require compliance with specified
30 conditions instead of compliance with the provision of this Act or the regulations to which the exemption relates and a breach of such a condition shall be deemed to be a breach of that provision.

Commercial Vessels.

(3) The Board may revoke a notice given or published under subsection (1) by another notice given or published in the same way as the notice revoked.

(4) Where a condition is imposed by a notice under subsection (2) requiring the carriage or installation in a vessel of any equipment or component not otherwise required by or under this Act to be carried or installed, the Board shall, by the same notice, impose a further condition requiring the owner of the vessel, while the exemption granted remains in force, to keep prominently and clearly painted in a specified position on the vessel a statement to the effect that the vessel is required under this Act to carry that equipment or install that component.

(5) A breach of a condition imposed under subsection (4) is an offence against this Act.

15 **49.** (1) Where a person requests the Board to investigate the acceptability to the Board and its surveyors of a particular form or manner of design or construction of vessels or motors, or the use of a particular material in the construction of vessels or motors, or the use of a particular kind of machinery, component, fitting
20 or equipment on a vessel, the Board may, in its absolute discretion, decide to carry out the investigation subject to payment of such expenses as it considers to be appropriate.

Advice by
Board on
design,
etc.

(2) A finding of the Board made and communicated under subsection (1)—

- 25 (a) is not binding upon a surveyor investigating an application for a permit, surveying a vessel, checking a motor or determining the sufficiency of the equipment of a vessel; and
- (b) may be revoked at any time.

Commercial Vessels.

50. In any proceedings brought for the recovery of a **Evidence.** penalty under this Act or the regulations and at the hearing of an appeal under Part IV—

- 5 (a) a document purporting to be a copy of a permit, load line certificate or load line exemption certificate, or of any notice, notification, direction or authorisation given under this Act or the regulations and to be certified by the Secretary of the Board to be a true copy of the original document is, without production of the original document, evidence of the contents of the document of which it purports to be a copy; and
- 10
- (b) a certificate signed by the Secretary of the Board to the effect—
- 15 (i) that, at a specified time, a permit relating to a specified vessel or motor was, or was not, in force; or
- (ii) that, at a specified time, a load line certificate or a load line exemption certificate was, or was not, in force in relation to a specified vessel,
- 20 is, without proof of the signature or official position of the Secretary, evidence of the facts certified.

51. (1) Except where some other penalty is prescribed, the **Penalties.** penalty for an offence against this Act is \$400.

(2) Proceedings for the recovery of a penalty under this Act shall be disposed of by a court of petty sessions constituted by a stipendiary magistrate sitting alone.

25

(3) All penalties imposed for offences against this Act or a regulation shall, after payment to the clerk of the court, be by him paid to the Board.

Commercial Vessels.

52. (1) The Board, with the approval of the Governor, may make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing, for or with respect to—
- Regulations.
- (a) applications for permits and matters arising in relation to permits and permit plates subsequent to their issue;
 - (b) surveying vessels;
 - 10 (c) checking motors;
 - (d) investigating equipment carried by a vessel;
 - (e) the safety of vessels;
 - (f) the safety, health and convenience while on a vessel of the public and other persons carried by a vessel; or
 - 15 (g) the method of calculating the tonnage or other measurement of a vessel for the purpose of the application of this Act or the regulations or of any standard acceptable to the Board.
- (2) A regulation may—
- 20 (a) be of general application or limited by reference to time, place or circumstances;
 - (b) be restricted in its application to a specified class of subject-matter or to all specified subject-matter other than subject-matter of a specified class;
 - 25 (c) make both the owner and the master of a vessel liable for a breach of a regulation committed from, or in the use of, the vessel; and
 - (d) may impose a penalty not exceeding \$400 for a breach of a regulation.
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Commercial Vessels.

SCHEDULE 1.

Sec. 4.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. Where, immediately before the commencement of Part II, a vessel was the subject of an unexpired certificate under regulation 27 of the Navigation 5 (Survey and Equipment) Regulations—N.S.W. or an unexpired certificate under the Navigation Act, 1901, certifying compliance with Part IV of that Act, the Board shall issue to the owner of the vessel—
- (a) a vessel permit under section 14 that authorises the use of the vessel to the same extent as was authorised by that certificate;
 - 10 (b) a corresponding permit plate under section 15 (1); and
 - (c) a survey schedule for the vessel under section 15 (3).
2. Where a motor was attached to a vessel referred to in clause 1 at the time of the survey of the vessel under the Navigation (Survey and Equip- 15 ment) Regulations—N.S.W. or under the Navigation Act, 1901, that last preceded the commencement of Part II, the Board shall, under that Part, issue to the owner of the motor—
- (a) a motor permit under section 14 that authorises the use of the motor to the same extent as was authorised by the certificate referred to in clause 1; and
 - 20 (b) the corresponding permit plate under section 15 (1).
3. Where the Board is required by clause 1 or 2 to issue a permit in respect of a vessel or motor—
- (a) this Act does not apply; and
 - 25 (b) the Navigation Act, 1901, and the regulations made thereunder as in force immediately before the commencement of Part II, continue to apply,
- to and in respect of the vessel or motor, as the case may be, until the applicable permit, permit plate and, in the case of a vessel, survey schedule have been issued.

BY AUTHORITY

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