

No. VI.

An Act to amend the law relating to Unseaworthy Ships and the “Navigation Act of 1871” and for other purposes. [18th October, 1881.]

NAVIGATION LAW
AMENDMENT.
—

WHIEREAS the existing law is insufficient to prevent Ships from being sent to sea in an unseaworthy state from Ports and places in New South Wales and the lives of seamen are thereby wrongfully imperilled And whereas it is expedient to amend in certain particulars the “Navigation Act of 1871” and to make provision for the granting of certificates to Marine Surveyors Be it therefore 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 :—

1. This Act when specially referred to may be cited as the “Navigation Law Amendment Act of 1881” and the following series of

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Acts namely the "Navigation Act of 1871" (being the Act thirty-fifth Victoria number seven and hereinafter cited as the "Principal Act")—the "Navigation Act Amendment Act of 1873" (being the Act thirty-sixth Victoria number thirty)—the "Navigation Act further Amendment Act of 1879" (being the Act forty-third Victoria number thirteen) shall be read with this Act and with it may be collectively cited as the "Navigation Acts 1871–1881."

Unseaworthy Ships.

Owner &c. sending
unseaworthy ship to
sea guilty of a
misdemeanour.
39 & 40 Vic. c. 80
s. 4.

2. Every registered owner of a British ship and the agent of such owner who sends or attempts to send or is party to the sending or attempting to send such ship to sea from any port or place in New South Wales in so unseaworthy a state that the life of any person is likely to be thereby endangered shall be guilty of a misdemeanour. But the provisions of this section shall be subject to the following exceptions and in all proceedings under this or the next following section the Court shall give effect to and be governed by the following rules—

- (1.) It shall not be an offence under this section to send any ship to sea under tow of a steam-tug or steam-ship for the purpose of taking such ship to some port or place for the express purpose of being refitted repaired docked or beached.
- (2.) It shall not be an offence under this section to send or attempt to send or to be party to sending a ship to sea being in an unseaworthy state as aforesaid when the taking of such ship to sea by the master would be within the saving provided by the third section hereof.
- (3.) If the defendant prove that the business of loading ballasting or keeping such ship in proper order whether as to hull machinery tackle gear or other equipment whatsoever had been entrusted to any managing owner director ship's husband or other person and if the defendant also prove that he was not privy or party to the particular act or condition alleged as the cause of unseaworthiness he shall be entitled to an acquittal.
- (4.) Where an agent or other person acting under a general or particular authority from any such owner or from any such managing owner or director shall load or cause or permit to be loaded or ballasted or be privy to the loading or ballasting of any such ship in such a manner as to render her unfit to proceed to sea with safety such agent and every such owner and director shall be jointly and severally liable under this section but shall be entitled to an acquittal if he prove that the act of such agent or other person was in violation of any general or special direction in writing given by him or by any of his co-owners to such agent or person and that he had no knowledge of the act of such agent or person before the ship so loaded or ballasted proceeded to sea.
- (5.) It shall not be necessary in any prosecution under this section to prove that the defendant gave an express direction to take the ship to sea or committed or attempted to commit some act for the purpose of sending the ship to sea but the Court shall presume the acquiescence of any such owner or agent as aforesaid in the sending or taking of the ship to sea to be equivalent to an actual sending or taking her to sea by the defendant.
- (6.) Every ship loaded so as to immerse when in port the horizontal line of the disc painted or delineated as hereinafter provided shall whilst so loaded be deemed to be unseaworthy and unfit to proceed to sea.

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(7.) The defendant may give evidence in the same way as any other witness on his own behalf for the purpose of proving any matter permitted by this or the next following section.

3. Every master of a British ship who knowingly takes such ship to sea from any port or place in New South Wales in so unseaworthy a state that the life of any person is likely to be thereby endangered shall be guilty of a misdemeanour unless he proves that he took such ship to sea under circumstances declared by sub-section one of the next preceding section hereof not to constitute an offence under that section or unless he proves that the taking of such ship to sea was necessary in order to prevent her from going ashore or that it was impossible to put the ship in a seaworthy state at such port or place and that the crew consented to his putting to sea for the purpose of refitting repairing docking or beaching such ship at some suitable port or place.

Master taking unseaworthy ship to sea.
39 & 40 Vic. c. 80 s. 4.

4. Any person convicted of a misdemeanor under either of the last preceding sections shall be liable to such fine not exceeding one thousand pounds as the Court may award or to be imprisoned with or without hard labour for any term not exceeding three years or (if the Court shall think fit) to be fined and imprisoned within the aforesaid limits.

Punishment.

5. In every contract of service express or implied between the owner of a ship and the master or any seaman thereof and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship there shall be implied notwithstanding any agreement to the contrary an obligation on the owner of the ship that he and the master and every agent charged with loading such ship or fitting or ballasting her or preparing her for or sending her to sea shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep her in a seaworthy condition during the voyage.

Obligation of shipowner to crew as to seaworthiness of ships.
Ib. s. 5.

6. Where a British ship being in any port or place in New South Wales is by reason of the defective condition of her hull equipment or machinery or by reason of overloading or improper loading or ballasting unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which she is intended any such ship (hereinafter referred to as "unsafe") may be provisionally detained for the purpose of being surveyed and either finally detained or released as follows—

Power to detain unsafe ships and procedure for such detention.
Ib. s. 6.

- (1.) If the Marine or a Local Marine Board or where there is no such Board a Police Magistrate has reason to believe on complaint or otherwise that a British ship is unsafe such Board or Magistrate may provisionally order the detention of the ship for the purpose of being surveyed.
- (2.) When a ship has been provisionally detained there shall be forthwith served on the master of such ship a written statement of the grounds of her detention and the Marine or a Local Marine Board may if they think fit appoint some competent person or persons to survey the ship and report thereon to the Board.
- (3.) Such Board on receiving the said report may either order the ship to be released or if in their opinion the ship is unsafe may order her to be finally detained either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations or the unloading or reloading of cargo or the proper ballasting of such ship as the Board think necessary to ensure her safety for sea-going purposes and may from time to time vary or add to any such order.

(4.)

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(4.) Before the order for final detention is made a copy of the report shall be served upon the master of the ship and within seven days after such service the owner or master of the ship or the owner's agent may appeal to the Governor in Council against such order for final detention.

(5.) Where a ship has been provisionally detained the owner or master of the ship at any time before the person appointed under this section to survey the ship makes such survey may require that he shall be accompanied by such certificated Marine Surveyor as the owner or master may select and in such case if the surveyors agree the Board or Local Marine Board shall cause the ship to be detained or released accordingly but if they differ such Board may act as if the requisition had not been made and the owner and master shall have the like appeal touching the report of the official surveyor as hereinbefore provided.

(6.) The Marine or Local Marine Board may at any time if satisfied that a ship detained under this Act is not unsafe order her to be released either with or without conditions.

Liability of the Government for wrongful detention in certain cases.

7. If any ship shall be detained wrongfully and without reasonable and probable cause under the powers conferred by the sixth section of this Act the owner of such ship may bring an action for compensation against the Government for loss or damage sustained by him in consequence of such detention including the costs of or incidental to the detention and survey of the ship. In such action the Colonial Treasurer shall be the nominal defendant and the action shall be tried before the Chief Justice of the Supreme Court or a Deputy-Judge appointed by him sitting as in Vice-Admiralty in accordance with the provisions contained in the Acts and Rules in force for the time being regulating the practice of the Vice-Admiralty Court and subject to the same right of appeal from the Order or Decree of the Court as is by law incident to the jurisdiction in Vice-Admiralty. All damages and costs of suit adjudged against such nominal defendant shall be paid pursuant to the provisions of the sixth and seventh sections of the "Claims against the Colonial Government Act."

Ship may be detained on affidavit that she is unsafe.

8. Where a joint or several affidavit or statutory declaration by at least one-fourth of the crew of a foreign-going ship or by at least two of the crew of a coast trade ship (which affidavit or declaration the President of the Marine Board Chairman of a Local Marine Board (or in the absence of such officer the Vice-President or Vice-Chairman of such Board) or a Police Magistrate where there is no such Board is hereby authorized to take and for that purpose to administer an oath or take a solemn declaration as the case may be) is made to the Marine or Local Marine Board or to a Police Magistrate that a British ship is unsafe the Board or Magistrate shall take all proper and reasonable measures for ascertaining whether the ship ought to be detained under this Act or not.

Punishment for making false statement in affidavit or declaration.

9. If any person shall in any such affidavit or declaration as aforesaid knowingly make a false statement as to the state of the hull machinery or equipment of any ship or as to any other matter relating to such ship or to her cargo loading or ballasting for the purpose of procuring her detention under this Act such person shall be guilty of a misdemeanour and be liable to the like punishment as is provided by section four of this Act for the misdemeanour of sending or taking to sea an unseaworthy ship.

Supplemental provisions as to detention of ship.
Ib. s. 12.

10. (1.) An officer authorized by the Marine or Local Marine Board to act as a detaining officer under this Act shall have for the purpose of carrying out his duties under this Act the same powers as an Inspector under the principal Act.

(2.)

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- (2.) An order for the detention of a ship provisional or final and an order varying the same shall be served as soon as may be on the master of the ship.
- (3.) When a ship has been detained under this Act she shall not be released by reason of her register being subsequently closed or transferred.
- (4.) For the purposes of a survey under this Act any person authorized to make the same may go on board a ship and inspect the same and every part thereof and the machinery equipments and cargo and may require the unloading or removal of any cargo ballast or tackle.
- (5.) The provisions of the principal Act with respect to persons who wilfully impede an Inspector or disobey a requisition or order of an Inspector shall apply to officers authorized to detain inspect or survey a ship as if those provisions were herein enacted.

Grain Cargoes.

11. No cargo of which more than one-third consists of wheat Stowage of cargo of grain &c. Ib. s. 22. maize oats barley or any other kind of grain hereinafter referred to as grain cargo shall be loaded on board any ship in any port or place in New South Wales unless such grain cargo be contained in bags sacks or barrels or secured from shifting by boards bulkheads or otherwise. If the managing owner or master or the agent of such owner who is charged with the loading of such ship or the sending her to sea knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of this section he shall for every such offence incur a penalty not exceeding one hundred pounds.

Deck and Load-lines.

12. Every British ship (not being under twenty tons register Marking of deck lines. Ib. s. 25. and employed solely in the coasting trade or employed solely in fishing or a pleasure yacht) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable and indicating the position of each deck which is above water. The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

13. With respect to the marking of a load-line on British ships Marking of load-line on foreign-going British ships. Ib. s. 26. the following provisions shall have effect:—

- (1.) The owner of every British ship (not being within the exceptions mentioned in the last preceding section) shall before entering his ship outwards from any port or place in New South Wales upon any voyage for which he is required so to enter her or (if that is not practicable) as soon after as may be mark upon each of her sides amidships or as near thereto as is practicable in white or yellow on a dark ground or in black on a light ground a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through its centre.
- (2.) The centre of such disc shall indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage.
- (3.) He shall also upon so entering her insert in the form of entry delivered to the Collector or other principal officer of Customs a statement in writing of the distance in feet and inches between

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between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

- (4.) If default is made in delivering this statement any officer of Customs may refuse to enter the ship outwards.
- (5.) The master of the ship shall enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew and no Shipping Master shall proceed with the engagement of the crew until this entry is made.
- (6.) The master of the ship shall also enter a copy of this statement in the official log-book.
- (7.) When a ship has been marked as by this section required she shall be kept so marked until her next return to a port of discharge in New South Wales.

Marking of load-line
in case of coast-trade
ships.
Ib. s. 27.

14. With respect to the marking of a load-line on British coast-trade ships the following provisions shall have effect:—

- (1.) The owner of every coast-trade ship over twenty tons register shall before proceeding to sea from any port mark upon each of her sides amidships or as near thereto as is practicable in white or yellow on a dark ground or in black on a light ground a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through its centre.
- (2.) The centre of this disc shall indicate the maximum load-line in salt water to which the owner intends to load the ship until notice is given of an alteration.
- (3.) He shall also once in every twelve months immediately before the ship proceeds to sea send or deliver to the Collector or other principal officer of Customs of the port of registry of the ship a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.
- (4.) The owner before the ship proceeds to sea after any renewal or alteration of the disc shall send or deliver to the Collector or other principal officer of Customs of the port of registry of the ship notice in writing of such renewal or alteration together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.
- (5.) If default is made in sending or delivering any notice or statement required by this section to be sent or delivered the owner shall be liable to a penalty not exceeding one hundred pounds.
- (6.) When a ship has been marked as by this section required she shall be kept so marked until notice is given of an alteration.

Penalty for offences
in relation to marks
on ships.
Ib. s. 28.

15. Any owner or master of a British ship who neglects to cause his ship to be marked as by this Act required or to keep her so marked or who allows such ship to be so loaded as to immerse in salt water the centre of the disc and any person who conceals removes alters defaces or obliterates or suffers any person under his control to conceal remove alter deface or obliterate any of the said marks except in the event of the particulars thereby denoted being lawfully altered shall for each offence incur a penalty not exceeding one hundred pounds If any of the marks required by this Act is in any respect inaccurate so as to be likely to mislead the owner of the ship shall incur a penalty not exceeding one hundred pounds.

Load-line to be
altered if Board so
direct.

16. If upon the report of any duly authorized officer the Marine or a local Marine Board shall after inspection of any foreign-going or coast-trade ship registered in the colony be of opinion that the load-line as marked under the thirteenth or fourteenth sections of this Act on the sides

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sides of such ship is placed too near the line of the ship's deck and that the hull of such ship could not be immersed as far as such load-line to ensure her safety at sea such Board shall be empowered to give notice to the owner or master of such ship calling upon him to alter the position of such load-line as by such notice is directed or to shew cause before the Board why the same shall not be so altered as directed and if within fourteen days after the service of such notice such load-line shall not be so altered such owner or master shall (unless he shall have shewn cause to the satisfaction of the Board against the alteration of the load-line) incur a penalty not exceeding one hundred pounds.

17. Where under this Act a ship is authorised or ordered to be detained any commissioned officer on full pay in the Naval or Military Service of Her Majesty or any officer of the Marine or a Local Marine Board or of the Customs or any officer of the Police Force may detain the ship and if the ship after such detention or after service on the master of any notice of or order for such detention proceeds to sea without having been duly released the master of the ship shall be guilty of a misdemeanour and shall be liable to the like punishment provided in section four and the owner and any person who sends the ship to sea if such owner or person be party or privy to the offence shall incur a penalty not exceeding one hundred pounds. Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorized to detain the ship or other officer as aforesaid the owner and master of the ship shall each be liable to pay all expenses of and incidental to such officer being so taken to sea and also a penalty not exceeding one hundred pounds or (at the option of the prosecutor) not exceeding ten pounds for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he is taken and such expenses may be recovered in like manner as the penalty.

Enforcing detention
of ship.
Ib. s. 34.

18. Where any order notice statement or document requires for the purpose of any provision of this Act to be served on the master of a ship the same shall be served where there is no master and the ship is in the jurisdiction of the Marine Board on the managing owner of the ship or if there is no managing owner on some agent of the owner residing in New South Wales or where no such agent is known or can be found by affixing a copy thereof to the mast of the ship. Any such order notice statement or document may be served by delivering a copy thereof personally to the person to be served or by leaving the same at his last place of abode or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship. Any person who obstructs the service of any order notice statement or document on the master of a ship shall incur a penalty not exceeding ten pounds and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanour.

Service of order on
master &c.
Ib. s. 35.

19. The name and address of the managing owner for the time being of every British ship registered at any port or place in New South Wales shall be registered at the Custom-house of the ship's port of registry. Where there is not a managing owner there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner and any person whose name is so registered shall for the purposes of the "Navigation Acts 1871-1881" be under the same obligations and subject to the same liabilities as if he were the managing owner. If default is made in complying with this section the owner shall be liable or if there be more owners than one each owner shall be liable in proportion to his interest in the ship to a penalty not exceeding in the whole one hundred pounds each time the ship leaves any port in New South Wales.

Ship's managing
owner or manager to
be registered.
Ib. s. 36.

*Navigation Law Amendment.**Overloading Foreign Ships.*

Application to
Foreign ships of
provisions as to
detention.
Ib. s. 13.

20. Where a foreign ship being in any port in New South Wales is unsafe by reason of overloading improper loading or ballasting the provisions of this Act with respect to the detention of ships shall apply to such ship as if she were a British ship but with the following modifications:—

- (1.) A copy of the order for the provisional detention of the ship shall be forthwith served on the Consular Officer for the State to which the ship belongs at or nearest to the place where the ship is detained
- (2.) Where a ship has been provisionally detained the Consular Officer on the request of the owner or master of the ship may require that the person authorized to survey the ship shall be accompanied by such person as the Consular Officer may select and in such case if the Surveyor and such person agree the Marine or Local Marine Board shall cause the ship to be detained or released accordingly but if they differ such Board may act as if the requisition had not been made and the owner and master shall have the same right of appeal to the Governor in Council as is hereinbefore provided by this Act with respect to the detention of British ships

In this section the expression "Consular Officer" means any Consul-General Vice-Consul Consular Agent or other Officer recognized by the Governor as a Consular Officer of a Foreign State.

Amendments &c. of
Navigation Acts.

21. Upon the passing of this Act the following repeals and amendments of the "Navigation Act of 1871" and the Acts amending the same shall take effect viz.—

- (1.) Section sixty-nine of the "Navigation Act of 1871" is hereby repealed but without prejudice to the past operation thereof.
- (2.) Notwithstanding anything to the contrary contained in the "Navigation Act Amendment Act of 1873" it shall be lawful for the Marine Board to make regulations imposing penalties in no case to exceed the sum of one hundred pounds for the violation or infringement of any regulation made by such Board under the authority of the "Navigation Acts 1871-1881."
- (3.) Where by the said last-mentioned Acts or any regulation made thereunder the master of a harbour and river steamer is subject to any penalty or liability the owner of any such steamer shall equally with and to the same extent as the master thereof be subject to every such penalty or liability.
- (4.) For the purposes of the said Acts or any regulation thereunder the word "Passenger" shall mean and include every person carried in any ship other than the master and crew and the owner of the ship his family and servants.
- (5.) The powers and authorities conferred upon the Marine Board and Local Marine Board by and all other the provisions contained in the eighty-seventh and subsequent sections of the Principal Act as amended by this Act which relate to the cancellation and suspension of certificates shall extend to authorize any such Board to institute investigations or direct the same to be instituted touching any shipwreck collision or casualty whatsoever or touching any misconduct or violation of the law as declared by the Principal or this Act or touching any other act or omission charged against any master mate or engineer as evidencing or from which any such Board might reasonably infer incompetency or misconduct on the part of such master mate or engineer.
- (6.) The Marine Board shall have power to make such order as it may deem just with respect to the costs of any investigation authorized

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authorized to be instituted by such Board pursuant to the provisions of the "Navigation Acts 1871-1881."

- (7.) In lieu of the word "twenty-eight" contained in sub-section (5) of section eighty-eight of the said Principal Act the word "twenty-seven" shall be substituted.
- (8.) The provisions respecting the burden of proof contained in the one hundred and twenty-fifth section of the principal Act are hereby extended and declared to be read as if the words "or person" were inserted after the word ship wherever such last-mentioned word occurs in the said section.

22. The master or owner of every ship shall within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year or as soon after as possible produce to the Shipping Master at the port or place at which the said ship may be the certificates of competency or service which the master mate or engineer of such ship is required by law to possess. Upon production of every such certificate the Shipping Master shall give to the master or owner a certificate of such production. And no officer of Customs shall grant a clearance or transire for any such ship without the production of such last mentioned certificate. And if any such ship attempts to ply or go to sea without such clearance or transire any such officer may retain her until the said certificate is produced.

Production of certificate.
17 & 18 Vic. c. 104 s. 162.

Certificated Marine Surveyors.

23. The Marine Board may from time to time cause examinations of such persons as desire to qualify themselves as marine surveyors to be held and for that purpose such Board may make regulations respecting the forms of certificates the time place and manner of holding such examinations and the persons by whom the same shall be held the subjects of examination and the conditions to which candidates must conform.

Marine Board to grant certificates to marine surveyors.

24. The Marine Board shall issue to every person who has passed such examination to the satisfaction of the Board a certificate to be called "a certificate of competency."

Certificate of competency.

25. Every person who shall prove to the satisfaction of the Marine Board that he has for a period of three years practised as a Marine Surveyor at any port in the Colony shall if in all other respects of good repute and character be entitled to a certificate to be issued to him by such Board and to be called "a certificate of service."

Certificate of service.

26. The Marine Board may cancel the certificate of any Marine Surveyor granted under this Act and whether of competency or of service if such Board shall be of opinion that any charge of fraud collusion neglect of duty or other misconduct preferred before such Board against such Surveyor has been established. Provided always that the person charged with such misconduct shall before such cancellation be called upon to show cause to the said Board against the cancellation of his certificate.

When Marine Board may cancel certificate of Marine Surveyor.

27. After the first day of January eighteen hundred and eighty-two no person shall practise as a Marine Surveyor survey any vessel or give a certificate of such survey purporting to be the certificate of a Marine Surveyor or intended to have that effect unless he holds either a certificate of service or of competency under this Act under a penalty of one hundred pounds. Provided always that nothing in this section contained shall apply to any person directed by a Police Magistrate under section six hereof to survey or examine any vessel at any port or place other than Sydney or Newcastle.

Penalty on uncertificated persons practising as Marine Surveyors.

28. All penalties incurred under this Act may be recovered and shall be applied in pursuance of the provisions relating to the recovery and application of penalties contained in the Principal Act.

Penalties how recoverable.