

**COMMERCIAL VESSELS (AMENDMENT) ACT, 1983,
No. 114**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 114, 1983.

An Act to amend the Commercial Vessels Act, 1979, in relation to the number and qualifications of the crew of a commercial vessel, and to the penalties under that Act, and for other purposes. [Assented to, 25th November, 1983.]

See also Navigation (Commercial Vessels) Amendment Act, 1983; Navigation and Other Acts (Validation) Act, 1983.

Commercial Vessels (Amendment).

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:—

Short title.

1. This Act may be cited as the "Commercial Vessels (Amendment) Act, 1983".

Commencement.

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) Her Majesty's pleasure may be so signified by the Governor by proclamation published in the Gazette.

(3) After Her Majesty's pleasure has been so signified, the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Commercial Vessels Act, 1979, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL.

Commercial Vessels (Amendment).

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 41, 1979.

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Savings, transitional and other provisions.

6. Schedule 4 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL.

(1) Section 3—

After the matter relating to Part III, insert:—

PART IIIA.—SAFETY MANNING OF VESSELS—ss. 30A, 30B.

PART IIIB.—QUALIFICATIONS OF CREWS OF VESSELS—ss. 30c-30q.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(2) (a) Section 5 (1), definition of “certificate of competency”—

After the definition of “Board”, insert:—

“certificate of competency” means a certificate of competency under Part IIIB, and includes—

- (a) a temporary certificate of competency referred to in section 30J;
- (b) a certificate of competency referred to in section 30K;
- (c) a certificate or other document recognised under section 30L; and
- (d) a certificate or license deemed to be a certificate of competency pursuant to clause 3 of Schedule 4 to the Commercial Vessels (Amendment) Act, 1983;

(b) Section 5 (1), definition of “designation”—

After the definition of “crew”, insert:—

“designation”, in relation to a member of the crew of a vessel, includes—

- (a) the position held by that member of the crew;
- (b) a description of the duties of that member of the crew; and
- (c) the class of certificate of competency held by that member of the crew;

(c) Section 5 (1), definition of “prescribed law”—

After the definition of “permit plate”, insert:—

“prescribed law” means a law of—

- (a) the Commonwealth;
- (b) another State or a Territory of the Commonwealth;

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (c) a country that, within the meaning of the Navigation Act 1912 of the Commonwealth, as amended, is a Commonwealth country; or
 - (d) any other country prescribed for the purposes of this definition;
- (d) Section 5 (1), definition of “Tribunal”—
Omit “Marine Survey Appeals Tribunal”, insert instead “Marine Appeals Tribunal”.
- (3) Section 6 (4)—
Omit the subsection.
- (4) Section 19 (1)—
Omit the subsection.
- (5) Parts IIIA, IIIB—
After Part III, insert:—

PART IIIA.

SAFETY MANNING OF VESSELS.

Minimum complement of vessels.

30A. (1) Regulations may be made for or with respect to the minimum number of duly qualified and other crew of specified designations to be carried in a vessel in prescribed waters.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(2) The regulations referred to in subsection (1) may authorise the Board to determine the minimum number of duly qualified and other crew of specified designations to be carried in—

- (a) a vessel;
- (b) a vessel of a specified class; or
- (c) all vessels other than a vessel of a specified class.

(3) A regulation referred to in subsection (1), or a determination of the Board thereunder, may specify different requirements—

- (a) for different waters;
- (b) for the carriage of different cargoes;
- (c) for the performance (whether in port or at sea) of different operations carried out by, or in relation to, the vessel;
- (d) according to whether the vessel is in port or at sea; or
- (e) according to any other specified factor.

(4) A regulation referred to in subsection (1), or a determination of the Board thereunder, may adopt, wholly or in part, the requirements of, or made under, a prescribed law relating to the minimum number of duly qualified and other crew of specified designations to be carried in any vessel or class of vessel.

Offence.

30B. (1) Subject to subsection (2), the owner and the master of a vessel which is used in prescribed waters at any time are each guilty of an offence against this Act and liable to a penalty not exceeding \$800 if the minimum number of duly qualified and other crew of specified designations required to be carried in the vessel at that time by or under the regulations are not so carried.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), the owner 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; and
- (b) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

PART IIIb.

QUALIFICATIONS OF CREWS OF VESSELS.

Duly qualified crew.

30c. For the purposes of this Act, a person carrying out the duties of a member of the crew of a vessel which is used in any prescribed waters is duly qualified if the person—

- (a) holds a certificate of competency of a class which qualifies the person to carry out those duties on that vessel when used in those waters; and
- (b) complies with the terms upon which, and the conditions and restrictions subject to which, the certificate was issued or recognised, as the case may require.

Form of certificate.

30d. (1) A certificate of competency under this Act shall be in writing in a form approved by the Board and shall be signed on behalf of the Board by an officer of the Board.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (2) In a certificate of competency there shall be specified—
- (a) the terms upon which, and the conditions and restrictions subject to which, the certificate was issued; and
 - (b) such particulars as the Board considers appropriate for the certificate.

Classification of certificates.

30E. The regulations may prescribe different classes of certificates of competency and specify the different qualifications conferred by each such class of certificate.

Examinations and other conditions to be satisfied for issue of certificate.

30F. (1) Except as provided by this Part, a person shall not be issued with a certificate of competency of a particular class unless the person—

- (a) has passed such examinations;
- (b) has completed such service and training;
- (c) has passed such medical examinations; and
- (d) has satisfied such other requirements,

as may be prescribed for the issue of a certificate of that class.

(2) Without affecting the generality of subsection (1), the regulations made for the purposes of that subsection may provide for—

- (a) the holding of examinations by the Board and the conduct of any such examinations, and in particular for—
 - (i) the setting of the syllabus for each course to be undertaken by candidates for any such examination;
 - (ii) the review of the results of any such examination by the Board or by a person appointed by the Board for the purpose;
 - (iii) the prerequisites required to be satisfied before a candidate may sit for any such examination;

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (iv) the recognition for the purposes of any such examination of courses conducted by institutions within the State or completed outside the State; and
- (v) the payment of fees to sit for any such examination;
- (b) the keeping of records of service by the crews of vessels and the recognition of service outside the State; and
- (c) the conduct of medical examinations.

Application for certificate.

30G. (1) An application for a certificate of competency shall be made in a form and manner approved by the Board.

(2) At the time of making an application under subsection (1) and at such other times before the issue of a certificate of competency pursuant to the application as the Board may specify, the applicant shall furnish to the Board such documents and information as the Board may require in order to establish that the applicant is entitled to be issued with the certificate.

(3) The regulations may provide for the payment of specified fees in respect of an application for a certificate of competency and may provide for different fees according to such different factors as are prescribed.

Board to issue or refuse to issue a certificate.

30H. (1) Upon an application being duly made for a certificate of competency of any class and all fees with respect to the application being paid, the Board shall consider the application and shall—

- (a) issue the certificate to the applicant; or
- (b) refuse to issue the certificate to the applicant.

(2) The Board may issue a certificate of competency upon such terms, and subject to such conditions and restrictions, as the Board thinks fit and specifies in the certificate.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

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

(4) If the Board is satisfied that a certificate of competency has been lost or destroyed, it may, upon payment of the prescribed fee, issue a duplicate certificate of competency which shall have the same force as the original certificate.

Revalidation of certificates.

30i. (1) The holder of a certificate of competency shall—

(a) at such times as may be prescribed; and

(b) at such other times as may be specified by the Board by notice in writing given to that holder,

apply to the Board for revalidation of the certificate in accordance with this section.

(2) A certificate of competency shall not be revalidated in accordance with this section unless the holder of the certificate has passed such medical examinations, and satisfied such other requirements, as may be prescribed.

(3) Upon an application being made for revalidation of a certificate of competency, the Board shall consider the application and shall—

(a) revalidate the certificate by an endorsement to that effect on the certificate or by notice in writing to that effect given to the holder of the certificate; or

(b) refuse to revalidate the certificate.

(4) Where, in response to an application, the Board refuses to revalidate a certificate of competency, it shall give to the applicant notice in writing of its decision and of the reasons therefor.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (5) The Board may, by notice in writing given to the holder of a certificate of competency, cancel the certificate if—
- (a) that holder fails to apply for revalidation of the certificate as required by subsection (1); or
 - (b) where that holder so applies, the Board refuses to revalidate the certificate and—
 - (i) the time for lodging an appeal against the refusal to the Marine Appeals Tribunal has expired; or
 - (ii) where any such appeal has been lodged, the appeal has been withdrawn or dismissed.

Temporary certificates.

30J. (1) The Board may issue a certificate of competency under section 30H for such period as it thinks fit to an applicant who has not satisfied all of the requirements referred to in section 30F (1).

(2) A certificate of competency referred to in subsection (1) shall be designated by the Board as a temporary certificate of competency.

(3) A temporary certificate of competency remains in force—

- (a) until the expiration of the period specified in the certificate; or
- (b) until it is cancelled,

whichever first occurs.

(4) The Board may, by notice in writing given to the holder of a temporary certificate of competency, cancel that temporary certificate at any time for any reason it thinks fit.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.***Certificates for service.**

30K. (1) In this section, “prescribed date”, in relation to a member of the crew of a vessel, means the date on which a regulation takes effect under Part IIIA requiring a minimum number of duly qualified crew of that member’s designation to be carried in the vessel.

(2) The Board may issue a certificate of competency under section 30H to an applicant who—

- (a) has not satisfied all of the requirements referred to in section 30F (1);
- (b) has, before the prescribed date, served as a member of the crew of a vessel for an aggregate period of at least 3 years in the period of 5 years immediately before that date, being an applicant who was not, immediately before that date, required to be duly qualified by or under this Act or the Navigation Act, 1901, to carry out the duties of a member of the crew of the applicant’s designation;
- (c) has satisfied the Board that the duties carried out during the service referred to in paragraph (b) are similar to the duties that the applicant will be qualified to carry out pursuant to the certificate; and
- (d) has made application for the certificate within such period immediately after the prescribed date as may be prescribed.

(3) Without affecting the generality of section 30H (2), the terms upon which, and the conditions and restrictions subject to which, a certificate of competency is issued pursuant to subsection (2) may include terms, conditions and restrictions that limit the qualification conferred by the certificate to vessels and waters of a class in which the holder of the certificate gained experience.

Recognition of certificates of other States, etc.

30L. (1) A person who holds a certificate or other document which—

- (a) was issued under a prescribed law; and

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.***AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.***

(b) qualifies the person under the prescribed law to carry out the duties of a member of the crew of a vessel,

may apply to the Board for the recognition of that certificate or other document in New South Wales as a certificate of competency under this Act.

(2) Upon an application being made under subsection (1), the Board may, by an endorsement on the certificate or other document or by notice in writing given to the applicant, recognise the certificate or other document as a certificate of competency of a class specified by the Board upon such terms, and subject to such conditions and restrictions, as it thinks fit and specifies in that endorsement or notice.

(3) A certificate or other document recognised under this section shall be deemed to be a certificate of competency issued under this Act of the class specified by the Board unless the recognition is withdrawn under section 30N (1) (j).

Incompetency and misconduct of holders of certificates.

30M. For the purposes of this Part, the holder of a certificate of competency is—

- (a) incompetent if that holder is inefficient in the performance of any duties as a member of the crew of a vessel; and
- (b) guilty of misconduct if, in relation to those duties, that holder is guilty of careless navigation, drunkenness, improper conduct or, without reasonable cause or excuse, failure of duty.

Disciplinary action.

30N. (1) Where the Board is satisfied, after an inquiry, that the holder of a certificate of competency—

- (a) is incompetent;

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (b) is guilty of misconduct;
 - (c) has not complied with the terms upon which, and the conditions and restrictions subject to which, the certificate was issued or recognised, as the case may require; or
 - (d) obtained the certificate by fraud or misrepresentation,
- the Board may do any one or more of the following things:—
- (e) the Board may reprimand the holder of the certificate;
 - (f) the Board may reduce the status of the certificate by altering the class of the certificate;
 - (g) the Board may limit the authority conferred by the certificate by the imposition of any terms, conditions or restrictions;
 - (h) the Board may suspend the certificate for a specified period;
 - (i) except in the case of a certificate of competency recognised under section 30L, the Board may cancel the certificate;
 - (j) in the case of a certificate of competency recognised under section 30L, the Board may withdraw its recognition.

(2) The Board shall, before holding an inquiry under subsection (1) in respect of the holder of a certificate of competency, give notice in writing to that holder of—

- (a) its intention to hold the inquiry;
- (b) the subject-matter of the inquiry; and
- (c) the period during which that holder may make representations to the Board on the matter.

(3) Where the Board takes any action referred to in subsection (1) (e)–(j) against a person, the Board shall give notice in writing to the person of—

- (a) its decision and the reasons therefor; and
- (b) subject to subsection (4), the date on which the decision takes effect.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(4) A decision under subsection (1) to suspend, cancel or withdraw the recognition of a certificate of competency shall not take effect before—

- (a) the time for lodging an appeal against the decision to the Marine Appeals Tribunal has expired; or
- (b) where any such appeal has been lodged, the appeal has been withdrawn or dismissed,

unless the Board is satisfied that there are reasonable grounds for believing that service on a vessel by the holder of the certificate before the decision takes effect may be dangerous.

(5) A suspended certificate of competency has no force or effect until the expiration of the period of suspension.

Delivery of suspended or cancelled certificates.

30o. (1) Where a certificate of competency is cancelled or suspended under this Act, the holder of the certificate is guilty of an offence against this Act if that holder fails to deliver the certificate forthwith to the Board.

(2) Where a suspended certificate of competency is delivered to the Board, the Board shall, upon the termination of the suspension, return the certificate to the holder of the certificate.

Emergency suspension of certificate.

30p. (1) Where, upon application by an officer of the Board, a stipendiary magistrate is satisfied from the information contained in the application that there are reasonable grounds for believing that service on a vessel by the holder of a certificate of competency may be dangerous by reason of the incompetence or misconduct of the holder of the certificate, the stipendiary magistrate may authorise the officer to suspend the certificate as provided by this section.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(2) An officer referred to in subsection (1) effects a suspension so referred to by giving to the holder of the certificate of competency notice in writing that the certificate has been suspended.

(3) A suspension under this section terminates—

- (a) at the expiration of the period of 14 days that next succeeds the giving of the notice of suspension; or
- (b) if the Board gives a direction in writing to that effect to the holder of the certificate,

whichever first occurs.

(4) A suspended certificate of competency under this section has no force or effect until the suspension is terminated.

Offences.

30Q. A person is guilty of an offence against this Act and liable to a penalty not exceeding \$800 if the person—

- (a) falsely represents himself or herself to be a duly qualified member of the crew of a vessel;
- (b) serves on a vessel as a duly qualified member of the crew when not so qualified;
- (c) falsifies any record of service, cheats in any examination or bribes any examiner in order to obtain a certificate of competency; or
- (d) is guilty of misconduct.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

(6) Section 31A—

After section 31, insert:—

Appeal against certain decisions.

31A. (1) A person who considers that he or she has been adversely affected by any one or more of the matters referred to in subsection (2) may, not later than 21 days after being informed by the Board of any such matter, give the Board written notice of appeal against the matter.

(2) The matters against which an appeal may be made under subsection (1) are—

- (a) a determination by the Board referred to in section 30A (2);
- (b) a refusal by the Board to issue or recognise a certificate of competency;
- (c) any term upon which, or any condition or restriction subject to which, a certificate of competency is issued or recognised by the Board;
- (d) a refusal by the Board to revalidate a certificate of competency under section 30I; or
- (e) a decision by the Board under section 30N (1).

(7) (a) Section 32 (1) —

After “31 (4)”, insert “or 31A (1)”.

(b) Section 32 (1), (2)—

Omit “Marine Survey Appeals Tribunal” wherever occurring, insert instead “Marine Appeals Tribunal”.

Commercial Vessels (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE NUMBER AND QUALIFICATIONS OF THE CREW OF A COMMERCIAL VESSEL—*continued.*

- (8) (a) Section 50 (a)—
After “permit,” insert “certificate of competency.”
- (b) Section 50 (b) (i)—
Omit “or” where lastly occurring.
- (c) Section 50 (b) (ii)—
Omit “vessel,” insert instead “vessel; or”.
- (d) Section 50 (b) (iii)—
After section 50 (b) (ii), insert:—
(iii) that, at a specified time, a person held, or did not hold,
a certificate of competency of a specified class,
- (9) (a) Section 52 (1) (f)—
Omit “or”.
- (b) Section 52 (1) (g)—
Omit “Board.”, insert instead “Board;”;
- (c) Section 52 (1) (h)–(j)—
After section 52 (1) (g), insert:—
(h) the maximum number of hours a day during which a
member of the crew of a vessel may remain on duty;
(i) the number and qualifications of the crew of a vessel; or
(j) applications for certificates of competency and matters
arising in relation to certificates of competency sub-
sequent to their issue.
-

Commercial Vessels (Amendment).

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES.

(1) (a) Section 8 (1)—

Omit the subsection, insert instead:—

(1) Subject to subsections (2) and (3), the owner and the master of a vessel which is used in prescribed waters are each guilty of an offence against this Act and liable to a penalty not exceeding \$10,000 unless—

- (a) a permit relating to the vessel is in force; and
- (b) the vessel is used in accordance with the authority conferred by the permit.

(b) Section 8 (2) (c)—

Omit the paragraph, insert instead:—

(c) that the master had no reason to believe that the vessel was being used as charged.

(2) (a) Section 12 (1)—

Omit the subsection, insert instead:—

(1) Subject to subsections (2) and (3), the owner and the master of a vessel which is used in prescribed waters and to which a motor is attached are each guilty of an offence against this Act unless—

- (a) a permit relating to the motor is in force; and
- (b) the motor is used in accordance with the authority conferred by the permit.

Commercial Vessels (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES—*continued.*

(b) Section 12 (2) (c)—

Omit the paragraph, insert instead:—

- (c) that the master had no reason to believe that the motor was being used as charged.

(3) (a) Section 51 (1)—

After “Act is”, insert “a penalty not exceeding”.

(b) Section 51 (2)—

Omit the subsection.

(4) Sections 51A, 51B, 51C—

After section 51, insert:—

Proceedings for offences.

51A. (1) Proceedings for an offence against this Act or a regulation shall be disposed of summarily—

- (a) before a court of petty sessions constituted by a stipendiary magistrate; or
(b) before the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence against this Act or a regulation are brought before a court of petty sessions, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$2,000 or the maximum penalty provided by this Act or the regulation in respect of the offence, whichever is the lesser.

Commercial Vessels (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES—*continued.*

(3) If proceedings for an offence against this Act or a regulation are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulation in respect of the offence.

Proceedings for detention and forfeiture of vessels.

51B. (1) Where proceedings for an offence against section 8 are instituted in the Supreme Court in its summary jurisdiction in respect of a vessel alleged to have been used in prescribed waters without a permit being in force, that Court may, upon conviction for the offence of the person who was the owner of the vessel at the time the offence was committed, order the vessel to be forfeited to the Board.

(2) The Supreme Court shall not order a vessel to be forfeited under subsection (1) unless—

- (a) an application for the order has been made by or on behalf of the Board; and
- (b) a person has previously been convicted of an offence against section 8 in respect of the use of the vessel in prescribed waters without a permit being in force.

(3) Any vessel forfeited under this section becomes the property of the Board and may be sold or otherwise dealt with as the Board thinks fit.

(4) Where an application is made under subsection (2) (a) for an order for the forfeiture of a vessel, the Supreme Court may make such orders as it thinks fit with respect to the detention of the vessel pending the determination of the application.

Commercial Vessels (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES—*continued.***Offences by corporations.**

51c. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the knowledge of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or a regulation on any corporation by which an offence against the provision is actually committed.

SCHEDULE 3.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2 (2)—

Omit “later than the day on which Her Majesty’s assent to this Act is proclaimed by the Governor in the Gazette”.

Commercial Vessels (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 3—

From the matter relating to Part I, omit “5”, insert instead “5A”.

(3) Section 4A—

After section 4, insert:—

Application of Act.

4A. (1) This Act does not apply to or in relation to—

- (a) a vessel that is not used for any commercial purpose and that is not used by the Crown;
- (b) a vessel belonging to an arm of the Defence Force of Australia or to the naval, military or air forces of a country other than Australia;
- (c) a vessel (other than a fishing vessel) proceeding on an overseas voyage or an inter-State voyage;
- (d) a fishing vessel proceeding on an overseas voyage;
- (e) an off-shore industry vessel to which the Navigation Act 1912 of the Commonwealth, as amended, applies; or
- (f) a vessel that is—
 - (i) not equipped with an engine or motor for propulsion;
 - (ii) not of a class declared by the Board, by order published in the Gazette, to be subject to this Act; and
 - (iii) not used for the carriage of passengers or hired out, or otherwise made available, for the carriage of persons.

(2) This Act (Parts IIIA, IIIB and VII excepted) does not apply to or in relation to a vessel the owner of which is deemed by section 19 (3) to have been issued with a temporary permit and which is used in accordance with the authority conferred by the temporary permit.

Commercial Vessels (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (3) This Act does not apply to or in relation to—
- (a) a motor attached to a vessel referred to in subsection (1) (b)–(e) or (2); or
 - (b) a motor that is not used for any commercial purpose and that is not used by the Crown.
- (4) (a) Section 5 (1), definitions of “fishing vessel”, “inter-State voyage”—
- Before the definition of “master”, insert:—
- “fishing vessel” means a vessel used wholly or principally for the taking, catching or capturing of fish for sale or for the processing or carrying of fish so taken, caught or captured;
- “inter-State voyage” means an inter-State voyage within the meaning of the Navigation Act 1912 of the Commonwealth, as amended;
- (b) Section 5 (1), definition of “overseas voyage”—
- After the definition of “motor permit”, insert:—
- “overseas voyage” means an overseas voyage within the meaning of the Navigation Act 1912 of the Commonwealth, as amended;
- (c) Section 5 (3), (4)—
- Omit the subsections.

Commercial Vessels (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 5A—

After section 5, insert:—

Act to bind Crown.

5A. This Act binds the Crown, not only in right of New South Wales but also so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(6) Section 12 (2) (b), (3) (c)—

Omit “vessel” wherever occurring, insert instead “motor”.

(7) Section 14 (1)—

Omit the subsection, insert instead:—

(1) An application for a permit shall be made in the form and manner approved by the Board.

(8) Section 18 (1A), (1B)—

After section 18 (1), insert:—

(1A) 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.

(1B) Without affecting the generality of subsection (1), the Board may refuse to issue a permit for a vessel or motor if it is not designed, constructed or equipped in conformity with the provisions of the Uniform Shipping Laws Code within the meaning of section 427 of the Navigation Act 1912 of the Commonwealth, as amended.

Commercial Vessels (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Section 48 (1)—

Omit the subsection, insert instead:—

(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 person, vessel or motor or a class of persons, vessels or motors or that action taken by, or with respect to, a particular person, 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 person or to the owner of the vessel or motor, as the case may be, exempt the person, vessel or motor from the operation of that provision; or
- (b) by notice published in the Gazette exempt that class of persons, vessels or motors from the operation of that provision.

(10) (a) Section 52 (2) (a), (b)—

Omit the paragraphs.

(b) Section 52 (2) (d)—

Omit “may”.

(c) Section 52 (3)—

After section 52 (2), insert:—

- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind;
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body; or

Commercial Vessels (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) adopt wholly or partially or by reference any provisions of the Uniform Shipping Laws Code within the meaning of section 427 of the Navigation Act 1912 of the Commonwealth, as amended,
or may do any combination of those things.

SCHEDULE 4.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Declarations of vessels subject to Act.

1. A declaration in force under section 5 (3) (c) of the Principal Act, immediately before the commencement of Schedule 3 (3) and (4) (c), shall, on that commencement, be deemed to have been made by an order under section 4A (1) (f) of the Principal Act, as amended by this Act.

Marine Survey Appeals Tribunal.

2. A Marine Survey Appeals Tribunal convened to hear an appeal under section 32 of the Principal Act before the commencement of Schedule 1 (7) (b) shall, if the appeal has not been determined immediately before that commencement, be deemed to be a Marine Appeals Tribunal convened under section 32 of the Principal Act, as amended by this Act, to hear that appeal.

Existing certificates of competency, etc.

3. (1) In this clause—

“appointed day” means the day on which Schedule 1 (5) commences;

“existing certificate” means—

- (a) a certificate of competency or of service as a master, mate or engineer issued or deemed to have been issued under Part VI of the Navigation Act, 1901; or
- (b) a license as a coxswain or as a driver of a motor boat, or a certificate of competency as a marine motor engineer, issued or deemed to have been issued under the Navigation (Manning) Regulations—N.S.W.

Commercial Vessels (Amendment).

SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) An existing certificate which is in force immediately before the appointed day shall, on the appointed day, be deemed to be a certificate of competency issued under the Principal Act, as amended by this Act.

(3) If, on the appointed day, different classes of certificates of competency are prescribed pursuant to section 30E of the Principal Act, as amended by this Act, the regulations referred to in that section shall provide for the method of determining the class of any certificate of competency deemed to have been issued under the Principal Act by virtue of subclause (2).

(4) An existing certificate that, immediately before the appointed day, is suspended shall be deemed to be in force for the purposes of subclause (2), but on the appointed day shall be deemed to have been suspended under the Principal Act, as amended by this Act.

Regulations.

4. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act and the Navigation (Commercial Vessels) Amendment Act, 1983.

(2) A provision made under subclause (1) may take effect as from a day appointed and notified under section 2 (3) or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.
