

Navigation Act 1901 No 60

[1901-60]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Children and Young Persons Legislation \(Repeal and Amendment\) Act 1998 No 158](#) (not commenced)
- **See also**
[Ports Corporatisation and Waterways Management Amendment Bill 2006](#)
- **Proposed repeal**
The Act is to be repealed on the commencement of Part 1 of Sch 2 to the [Marine Safety Act 1998 No 121](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

Contents

| | |
|---|----|
| Long title | 7 |
| Part 1 Preliminary | 7 |
| 1 Name of Act | 7 |
| 2 Repeals and savings | 7 |
| 2A Construction | 7 |
| 3 Definitions | 7 |
| 3A (Repealed) | 8 |
| 4 Act not to apply to His Majesty's ships | 8 |
| 4A Application of Act | 8 |
| 4B Ports Corporatisation and Waterways Management Act 1995 | 8 |
| 5 (Repealed) | 8 |
| Part 2 Administration | 9 |
| Division 1 The Minister | 9 |
| 6 (Repealed) | 9 |
| 7 What matters within the direction of Minister | 9 |
| 8 (Repealed) | 9 |
| 9 Minister to issue forms of instruments | 9 |
| 10 Penalties for forgery of seal and fraudulent alteration of forms | 10 |
| 11 Minister may inspect documents and muster crews | 10 |
| 12 Penalty for refusing to produce documents etc | 10 |
| 13 Powers of Minister | 11 |

| | |
|--|----|
| Division 2 Other officers | 11 |
| 14, 15 (Repealed) | 11 |
| 16 Inspectors..... | 11 |
| 17 (Repealed) | 11 |
| Division 3 Assessors | 11 |
| 18 Assessors..... | 11 |
| 19 (Repealed) | 12 |
| Division 4 General provisions | 12 |
| 20 Powers of Minister and officers..... | 12 |
| 21 Arrest of offenders..... | 12 |
| 22 (Repealed) | 13 |
| Part 3 The Court of Marine Inquiry | 13 |
| 23 Courts of Marine Inquiry | 13 |
| 24 District Court Judges to preside | 13 |
| 25 Officers | 14 |
| 26 Power to make rules | 14 |
| 27 Matters in respect of which Court may hold inquiry etc | 14 |
| 28 When Court to make inquiry..... | 15 |
| 29 Rehearing of inquiry at instance of Governor | 15 |
| 30 Presiding Judge | 15 |
| 31 Delivery of certificate cancelled or suspended..... | 16 |
| 32 Jurisdiction of Court in respect of detention of unsafe ships..... | 16 |
| Parts 4-6 (Repealed) | 17 |
| Part 7 Safety and prevention of accidents | 17 |
| Division 1 Unseaworthy ships | 17 |
| 95 Owner etc sending unseaworthy ship to sea guilty of an indictable offence | 17 |
| 96 Master taking unseaworthy ship to sea | 18 |
| 97 Punishment..... | 18 |
| 98 Power to detain unsafe ships and procedure for such detention | 18 |

| | |
|--|----|
| 99 Appeal to Court of Marine Inquiry | 19 |
| 100 Magistrates may be appointed to hear appeals | 19 |
| 101 Liability of the Government for wrongful detention in certain cases | 19 |
| 102 Ship may be detained on affidavit that ship is unsafe | 20 |
| 103 Punishment for making false statement in affidavit or declaration | 20 |
| 104 Detention of ship | 20 |
| 105 Supplemental provisions as to detention of ship | 20 |
| 106 Application to foreign ships of provisions as to detention | 21 |
| Divisions 2, 2A (Repealed) | 21 |
| Division 3 Dangerous goods | 21 |
| 110 Carriage of dangerous goods..... | 21 |
| 111 Ships not to be loaded so as to endanger their safety etc | 22 |
| 112 Stowage of cargo of grain etc..... | 22 |
| Division 4 Lights, fog-signals and sailing rules | 22 |
| 113 Regulations..... | 22 |
| 114, 115 (Repealed) | 23 |
| 116 Breaches of regulations to imply wilful default of person in charge | 23 |
| 117 If collision ensues from breach of regulations ship to be deemed in fault..... | 23 |
| 118 Inspection for enforcing regulations | 24 |
| 119 (Repealed) | 24 |
| 120 In case of collision ships to assist each other | 24 |
| Division 5 (Repealed) | 25 |
| Division 6 General provisions | 25 |
| 130 Regulations..... | 25 |
| 131 (Repealed) | 25 |
| 132 Service of order on master etc | 25 |
| Part 8 Navigable waters | 25 |
| Division 1 Definitions | 25 |
| 133 Definitions | 25 |

| | |
|---|----|
| Division 2 Powers of Minister and Governor | 26 |
| 134 Minister to be conservator of navigable waters..... | 26 |
| 135 Power to make regulations | 26 |
| 136 (Repealed) | 27 |
| Division 3 (Repealed) | 27 |
| Division 4 Obstructions in navigable waters | 27 |
| 141 Unauthorised works on navigable waters prohibited..... | 27 |
| 142 Authorised works on navigable waters | 27 |
| 143 (Repealed) | 28 |
| 144 Trees in or over navigable waters to be removed | 28 |
| Division 5 Harbour regulations | 28 |
| 145-149 (Repealed) | 28 |
| 150 Rules to be observed by all vessels in navigable waters | 28 |
| 151 (Repealed) | 28 |
| 152 Penalties for persons wilfully or negligently injuring beacons, sea-marks etc | 28 |
| 153 Jetties etc may be placed under control of Minister | 28 |
| 154 (Repealed) | 29 |
| Division 6 (Repealed) | 29 |
| Part 9 Provisions relating to seamen | 29 |
| 157 Accommodation for seamen..... | 29 |
| 158 Obligation of shipowner to crew as to seaworthiness of ships..... | 29 |
| 158A Record of employees under 16 years on ships | 30 |
| Part 10 Miscellaneous provisions and legal procedure | 30 |
| 159 Jurisdiction to follow offence and offenders..... | 30 |
| 160 (Repealed) | 30 |
| 161 Burden of proof that a ship is exempted | 30 |
| 162-165 (Repealed) | 30 |
| 165A Regulations..... | 30 |
| 166 Power to make penal regulations | 30 |

| | |
|--|-----------|
| 167 (Repealed) | 31 |
| 168 Indictable offences | 31 |
| 169 Application of penalties | 31 |
| 170 Indictments to be preferred by direction of the Minister | 31 |
| 171 Liability of owner of harbour and river steamer | 31 |
| 172 Copy of this Act etc to be kept on board ship | 31 |
| 173 Power to suspend application of Act to certain vessels | 32 |
| First Schedule | 32 |
| Second-Tenth Schedules (Repealed) | 33 |
| Eleventh Schedule Provisions to be observed with respect to accommodation on board ships | 33 |

Navigation Act 1901 No 60



New South Wales

An Act to consolidate the Acts relating to Navigation.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Navigation Act 1901*.

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule are to the extent therein expressed hereby repealed.
- (2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.
- (3) All rules, rules of Court or regulations duly made and all forms duly prescribed under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made or prescribed under the authority of this Act.
- (4) All proclamations duly made, authorities duly given, leases or licences duly granted, and certificates duly issued, and all acts or things duly done under the authority of any Act hereby repealed shall be deemed to have been made, given, granted, issued or done under the corresponding provisions of this Act, but at the date at which the same respectively were in fact made, given, granted, issued or done.

2A Construction

This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

3 Definitions

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires:

certificate, in relation to a master, mate or engineer, includes a certificate of competency within the meaning of the [Commercial Vessels Act 1979](#).

harbour-master means any duly appointed harbour-master or assistant harbour-master, and includes any person acting in the capacity of harbour-master.

master means every person except a pilot having command or charge of any ship.

Merchant Shipping Act means the Imperial Act, the *Merchant Shipping Act 1894* or any Act amending the same or in substitution therefor.

officer of the Minister means any delegate of the Minister or any officer of such a delegate.

owner includes the manager or secretary of any body corporate or company.

passenger means every person carried in any ship other than the master and crew, and the owner of the ship and his or her family and servants.

port includes place.

ship means every description of vessel used in navigation not propelled by oars.

surveyor has the same meaning as it has in the [Commercial Vessels Act 1979](#).

the Jurisdiction means the navigable waters lying within one nautical league of the coast and the inland navigable waters of New South Wales.

(2) In this Act, a reference to a failure to do any act or thing includes a reference to a refusal to do that act or thing.

3A (Repealed)

4 Act not to apply to His Majesty's ships

Nothing in this Act contained shall apply to any ship belonging to or in the service of His Majesty.

4A Application of Act

The provisions of this Act relating to ships using steam power for the purpose of navigation and to steam navigation shall apply, with such modifications (if any) as may be prescribed by regulations made under this Act, to ships propelled by mechanical power and to the navigation of such ships.

4B Ports Corporatisation and Waterways Management Act 1995

This Act is subject to the [Ports Corporatisation and Waterways Management Act 1995](#).

5 (Repealed)

Part 2 Administration

Division 1 The Minister

6 (Repealed)

7 What matters within the direction of Minister

The Minister shall have and is hereby invested with full powers to carry out the provisions of this Act relating to steam navigation, and shall also undertake the general superintendence of all matters within the Jurisdiction relating to:

- (a) (Repealed)
- (b) the preservation of ports, harbours, havens, and navigable creeks and rivers within the Jurisdiction,
- (c) (Repealed)
- (d) the regulation of light-houses,
- (e) the superintendence of lights and other sea, harbour, or river marks,
- (f) the placing or removing of moorings,
- (g), (h) (Repealed)
- (i) steam and other ferry boats,
- (j) harbour and river steamers,
- (k) and the several matters hereinafter particularly described.

8 (Repealed)

9 Minister to issue forms of instruments

- (1) The Minister may prepare and sanction forms of various books, instruments, and papers required by this Act, or any regulations thereunder, and may make all necessary alterations therein; and shall before finally issuing or altering any such form give such public notice thereof as may be deemed necessary; and shall issue every such form in writing, or marked with some other distinguishing mark, and shall cause the same to be supplied at such moderate prices as the Minister may fix, or may license any persons to print and sell the same.
- (2) Every such book, instrument, and paper as aforesaid shall be made in the form so sanctioned; and no such book, instrument, or paper as aforesaid, unless made in such form, shall be admissible in evidence in any civil proceeding on the part of any owner or master of any ship.

- (3) Every such book, instrument, or paper if made in a form purporting to be a proper form and to be signed or marked as aforesaid shall be taken to be made in the form hereby required unless the contrary is proved.

10 Penalties for forgery of seal and fraudulent alteration of forms

Whosoever:

- (a) forges, assists in forging, or procures to be forged such signature or other distinguishing mark as aforesaid, or
- (b) fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered any form issued by the Minister with the view of evading any of the provisions of this Act or any conditions contained in such form,

shall for each such offence be deemed guilty of an indictable offence.

11 Minister may inspect documents and muster crews

The Minister may, in cases where there is reason to suspect that the provisions of this Act or the *Commercial Vessels Act 1979* are not complied with, exercise the following powers, that is to say:

- (a) require the owner, master, or any of the seamen of any ship being within any port in the Jurisdiction to produce any official log-books or other documents relating to any such seaman in their respective possession or control, and
- (b) require any such master to produce a list of all persons on board his or her ship, and
- (c) take copies of such official log-books or documents or of any part thereof,
- (d) muster the crew of any such ship,
- (e) summon the master to appear and give any explanation concerning such ship, or her crew, or the said official log-books or documents.

12 Penalty for refusing to produce documents etc

If any person:

- (a) upon requisition duly made, refuses or neglects to produce any such official log-book or document as he or she is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or
- (b) impedes any such muster of a crew as aforesaid, or
- (c) refuses or neglects to give any explanation which he or she is hereinbefore required to give, or
- (d) knowingly misleads or deceives any person hereinbefore authorised to demand any

such explanation,

he shall for each such offence incur a penalty not exceeding 0.5 penalty unit.

13 Powers of Minister

The Minister may by summons in writing require the attendance of any person upon any inquiry authorised by the Minister; and may require answers or returns to any questions, and may require and enforce the production of all books, papers, log-books, accounts, agreements, or other documents relating to any such inquiry, and may administer oaths, or in lieu thereof require any person examined to make and subscribe a statutory declaration of the truth of the statements made in the Minister's examination.

Division 2 Other officers

14, 15 (Repealed)

16 Inspectors

The Minister may appoint any person to act as an inspector to report to the Minister upon any of the following matters, that is to say:

- (a) the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused,
- (b) whether the provisions of this Act or the *Commercial Vessels Act 1979* or any regulation made thereunder have been complied with, and
- (c) generally upon any matter whatsoever in relation to which jurisdiction, authority, or power is by this Act or the *Commercial Vessels Act 1979* conferred upon the Minister.

17 (Repealed)

Division 3 Assessors

18 Assessors

- (1) Assessors to assist in a Court of Marine Inquiry shall be appointed by the Minister from a list of persons compiled by him or her in accordance with the rules made under subsection (4).
- (2) Such list shall be in force for one year only, but persons included in any such list may be included in any subsequent list.
- (3) The Minister may at any time add any person to or withdraw any person from any such list.
- (4) The Governor may make rules:
 - (a) generally for or with respect to the compilation by the Minister of the list of

assessors from persons of nautical, engineering or special skill and in particular for or with respect to:

- (i) the grouping of persons included in the list in different classes according to their skills,
 - (ii) the qualifications or experience necessary to enable a person to be eligible for inclusion in the list,
- (b) the appointment to Courts of Marine Inquiry of assessors from the list compiled by the Minister.

19 (Repealed)

Division 4 General provisions

20 Powers of Minister and officers

The Minister and every person deputed by the Minister to act in the Minister's behalf, and every inspector appointed in pursuance of the provisions of this Act, and every surveyor, shall have the following powers, that is to say:

- (a) they may at all reasonable times go on board any ship or vessel, of what description soever to which any of the provisions of this Act or the [Commercial Vessels Act 1979](#) extend, for the purpose of examining the hull and machinery, and making any report thereon required by the Minister,
- (b) they may inspect any boats, equipments, or materials on board or belonging to any such ship or vessel to which the provisions of this Act or the [Commercial Vessels Act 1979](#) extend,
- (c) they may go on board any such ship or vessel and inspect the same for the purpose of inquiring into or reporting upon the nature and causes of any accident or damage which such ship or vessel has sustained or caused, or is alleged to have sustained or caused.

21 Arrest of offenders

(1) Whosoever:

- (a) wilfully impedes the Minister or any person deputed as aforesaid, or any inspector or surveyor in the execution of the Minister's or his or her duty, or
- (b) aids or abets therein,

may be apprehended and detained by any person so deputed as aforesaid, or inspector, or surveyor, or by any person called to his or her assistance, until such offender can be conveniently taken before a Magistrate or an authorised officer within the meaning of the [Criminal Procedure Act 1986](#).

(2) Whosoever:

- (a) offends as aforesaid, or
- (b) refuses or neglects to attend as a witness when duly required upon any inquiry authorised by the Minister, or
- (c) refuses or neglects to make any answer, or to furnish any return or to produce any document in his or her possession or power, or to take any oath or subscribe any declaration as aforesaid,

shall for each offence incur a penalty not exceeding 0.5 penalty unit:

Provided that no person shall be required in obedience to any summons to travel more than 16 kilometres from his or her place of abode at the time of receiving such summons, unless such reasonable allowances for expenses incident to his or her attendance to give evidence be tendered to him or her on the scale allowed in that behalf to a witness attending on subpoena to give evidence before the Supreme Court.

22 (Repealed)

Part 3 The Court of Marine Inquiry

23 Courts of Marine Inquiry

There is hereby conferred upon such District Courts as may be proclaimed by the Governor for the purpose jurisdiction to hear and determine inquiries, appeals, and references under this Act, under and according to the terms and provisions of the *District Courts Act 1912* and any Act amending the same (so far as they are applicable), and of this Act; and a District Court exercising such jurisdiction shall be a court of record, and be called a Court of Marine Inquiry; and no appeal shall lie from a District Court exercising such jurisdiction.

24 District Court Judges to preside

- (1) Any one or more of the District Court Judges may sit as a Court of Marine Inquiry, and shall be assisted by one or more of the assessors appointed under this Act; such assessor or assessors shall have power to advise, but not to adjudicate, on any matter before the Court.
- (2) Where an inquiry involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, or engineer, the Court shall hold the inquiry with the assistance of not less than two assessors having experience in the merchant service.

25 Officers

All officers of the said District Courts shall act as officers of Courts of Marine Inquiry.

26 Power to make rules

- (1) The Judges of the District Courts, or any three of them, may make rules to regulate the procedure and practice of Courts of Marine Inquiry, and such rules shall have the same force and effect as if they had formed a part of this Act, notwithstanding that they may conflict with the provisions of the *District Courts Act 1912* or any Act amending the same.
- (2) Rules made as aforesaid shall be published in the Gazette, and shall take effect from the date of publication.
- (3) Until rules are made and published under this section, or so far as such rules do not extend, the presiding Judge may, in any particular case, give such directions as may seem fit.

27 Matters in respect of which Court may hold inquiry etc

- (1) A Court of Marine Inquiry is hereby authorised to make inquiries as to shipwrecks and other casualties affecting ships, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships in the following cases, namely:
 - (a) where a shipwreck or casualty occurs to a ship on or near the coast of New South Wales or in the course of a voyage to a port within New South Wales,
 - (b) where a shipwreck or casualty occurs in any part of the world to a British ship registered in New South Wales,
 - (c) where some of the crew of a ship which has been wrecked or to which a casualty has occurred and who are competent witnesses to the facts are found in New South Wales,
 - (d) where the incompetency or misconduct has occurred on board a ship on or near the coasts of New South Wales, or on board a ship in the course of a voyage to a port within New South Wales,
 - (e) where the incompetency or misconduct has occurred on board a British ship registered in New South Wales,
 - (f) where the master, mate, or engineer of a ship who is charged with incompetency or misconduct on board that ship is found in New South Wales.
- (2) The said Court shall have the same jurisdiction over the matter in question as if it had occurred within its ordinary jurisdiction, but subject to all provisions, restrictions, and conditions as would have been applicable if it had so occurred.

- (3) An inquiry shall not be held under this section into any matter:
 - (a) which has once been the subject of an investigation or inquiry, and has been reported on by a competent court or tribunal in any part of His Majesty's dominions, or
 - (b) with reference to which an investigation or inquiry has been commenced in the United Kingdom, or
 - (c) in respect of which the certificate of a master, mate, or engineer has been cancelled or suspended by a naval court constituted under the Merchant Shipping Act.
- (4) The said Court, holding an inquiry under this section, shall have the same powers of cancelling and suspending certificates, and shall exercise those powers in the same manner as a court holding a similar investigation or inquiry in the United Kingdom.
- (5) The said Court, for the purposes of any inquiry under this section, shall, so far as relates to the summoning of parties, and compelling the attendance of witnesses, have all the powers of the Supreme Court.

28 When Court to make inquiry

A Court of Marine Inquiry shall, when requested by the Minister and may in any case where it thinks fit, make any inquiry under the last preceding section.

29 Rehearing of inquiry at instance of Governor

The Governor may, where such inquiry as aforesaid has been made, order the case to be reheard by a Court of Marine Inquiry, either generally or as to any part thereof, and shall do so:

- (a) if new and important evidence, which could not be produced at the inquiry, has been discovered,
- (b) if for any other reason there has, in the opinion of the Governor, been ground for suspecting that a miscarriage of justice has occurred.

30 Presiding Judge

- (1) The senior District Court Judge present shall preside at any sitting of a Court of Marine Inquiry.
- (2) Every inquiry under this Act shall be in open court. The decision of the Court shall be delivered by the presiding Judge in open court. In the event of an equality of votes the presiding Judge shall have a casting as well as a deliberative vote.
- (3) The presiding Judge shall in every case forward to the Governor a copy of the decision of the Court, together with notes of the evidence given; and any member of the Court

who dissents from the decision may likewise forward his or her written reasons for so dissenting.

31 Delivery of certificate cancelled or suspended

- (1) A master, mate, or engineer whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his or her certificate to the said Court on demand, or, if not so demanded, to the Minister, or as the Minister directs.
- (2) If a master, mate or engineer fails without sufficient cause to comply with this section he or she shall for each offence be liable to a penalty not exceeding 1 penalty unit.

32 Jurisdiction of Court in respect of detention of unsafe ships

- (1) A Court of Marine Inquiry shall hear and determine in open court any appeal or reference in pursuance of this Act in respect of the detention of a ship alleged to be unsafe; and the procedure of that Court on the hearing and determining of such appeal or reference shall be as provided in pursuance of this Act in respect of inquiries as to shipwrecks.
- (2) Any Judge or assessor of the Court may survey the ship, and shall, for the purposes of this Act, have all the powers of an inspector under this Act.
- (3) The presiding Judge of the Court may appoint any competent person or persons to survey the ship and report thereon to the Court.
- (4) Any Judge or assessor of the Court, and any person appointed by the presiding Judge of the Court to survey a ship, may go on board the 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; and any person who wilfully impedes such Judge, assessor, or person in the execution of the survey, or fails to comply with any requisition made by him or her, shall be liable to a penalty not exceeding 0.5 penalty unit.
- (5) The Court shall have the same power as the Superintendent has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.
- (6) The owner and master of the ship, and any person appointed by the owner or master, and also any person appointed by the Minister, may attend at any inspection or survey made in pursuance of this section.
- (7) The presiding Judge shall send to the Governor such report as may be directed by the rules, and each assessor shall either sign the report, or report to the Governor the reasons for his or her dissent.

Parts 4-6

33-94 (Repealed)

Part 7 Safety and prevention of accidents

Division 1 Unseaworthy ships

95 Owner etc sending unseaworthy ship to sea guilty of an indictable offence

Every registered owner of a 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 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 an indictable offence. 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:

- (a) It shall not be an offence under this section to send any ship to sea under tow of a steam-tug or steamship for the purpose of taking such ship to some port for the express purpose of being refitted, repaired, docked, or beached.
- (b) 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 next following section.
- (c) If the defendant proves 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 proves that he or she was not privy or party to the particular act or condition alleged as the cause of unseaworthiness, he or she shall be entitled to an acquittal.
- (d) 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, loads, or causes or permits to be loaded or ballasted, or is 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 or she proves that the act of such agent or other person was in violation of any general or special direction in writing given by him or her or by any of his or her co-owners to such agent or person, and that he or she had no knowledge of the act of such agent or person before the ship so loaded or ballasted proceeded to sea.
- (e) 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.

96 Master taking unseaworthy ship to sea

Every master of a ship who knowingly takes such ship to sea from any port 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 an indictable offence, unless he or she proves:

- (a) that he or she took such ship to sea under circumstances declared by subdivision (a) of the last preceding section not to constitute an offence under that section, or
- (b) that the taking of such ship to sea was necessary in order to prevent her from going ashore, or
- (c) that it was impossible to put the ship in a seaworthy state at such port, and that the crew consented to his or her putting to sea for the purpose of refitting, repairing, docking, or beaching such ship at some suitable port.

97 Punishment

Any person convicted of an indictable offence under either of the last preceding sections shall be liable to such fine not exceeding 20 penalty units as the Court may award, or to be imprisoned for any term not exceeding three years, or, if the Court thinks fit, to be fined and imprisoned within the aforesaid limits.

98 Power to detain unsafe ships and procedure for such detention

Where a ship being in any port in New South Wales is, by reason of the defective condition of her hull, equipment, or machinery, or by reason of undermanning or 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, or for ascertaining the sufficiency of the crew, and either finally detained or released, as follows:

- (a) If the Minister has reason to believe on complaint or otherwise that a ship is unsafe, the Minister may provisionally order the detention of the ship for the purpose of being surveyed, or for ascertaining the sufficiency of the crew, and for the latter purpose may muster the crew.
- (b) When a ship has been provisionally detained, the Minister shall cause to be served forthwith on the master of such ship a written statement of the grounds of her detention, and the Minister may if the Minister thinks fit appoint some competent

person to survey the ship and report thereon to the Minister.

- (c) The Minister on receiving the said report may either order the ship to be released, or, if in the Minister's opinion the ship is unsafe, the Minister 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 or the manning thereof as the Minister thinks necessary to ensure her safety for sea-going purposes, and may from time to time vary or add to any such order.
- (d) 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 or she shall be accompanied by such certificated marine surveyor as the owner or master selects. In such case if the surveyors agree the Minister shall cause the ship to be detained or released accordingly, but if they differ 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 hereinafter provided.
- (e) The Minister 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.

99 Appeal to Court of Marine Inquiry

Before the order for final detention of a ship alleged to be unsafe is made, a copy of the report of the survey of the ship shall be served upon the master of the ship, and, within seven days after that service, the owner or master may appeal to a Court of Marine Inquiry in manner directed by the rules of that Court.

100 Magistrates may be appointed to hear appeals

- (1) The Governor may appoint any stipendiary magistrates to sit as Judges of Courts of Marine Inquiry for the purpose of hearing and determining such appeals, and any one or more of the stipendiary magistrates so appointed may so sit, and all the provisions of this Act relating to Judges of a Court of Marine Inquiry shall apply to such stipendiary magistrates so sitting.
- (2) Where any such ship has been provisionally detained the Minister may at any time if he or she thinks it expedient refer the matter to a Court of Marine Inquiry.

101 Liability of the Government for wrongful detention in certain cases

- (1) If any ship is detained wrongfully and without reasonable and probable cause under the powers conferred by the next preceding section, the owner of such ship may bring proceedings in the Supreme Court for compensation against the Government for loss or damage sustained by him or her in consequence of such detention, including the costs of or incidental to the detention and survey of the ship.

(2), (3) (Repealed)

102 Ship may be detained on affidavit that ship is unsafe

Where a joint or several affidavit or statutory declaration by at least two of the crew of a ship is made to the Minister that a ship is unsafe, the Minister shall take all proper and reasonable measures for ascertaining whether the ship ought to be detained under this Act or not.

103 Punishment for making false statement in affidavit or declaration

Whosoever in any such affidavit or declaration as aforesaid knowingly makes a false statement, for the purpose of procuring the detention under this Act of any ship, shall be guilty of an indictable offence and be liable to the punishment provided in section 97.

104 Detention of ship

- (1) 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 His Majesty, or any officer of the Minister, or of the customs or of the police force may detain the ship.
- (2) 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 an indictable offence, and shall be liable to the punishment provided in section 97; 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 2 penalty units.
- (3) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his or her duty any officer authorised 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 2 penalty units, or (at the option of the prosecutor) not exceeding 0.5 penalty unit for every day until such officer returns, or until such time as would enable him or her after leaving the ship to return to the port from which he or she is taken, and such expenses may be recovered in like manner as the penalty.

105 Supplemental provisions as to detention of ship

- (1) Any officer authorised to act as a detaining officer under this Act shall have, for the purpose of carrying out his or her duties under this Act, the same powers as an inspector under this Act; and the provisions of this Act with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply to persons committing the like offences in respect of detaining officers.
- (2) An order for the detention of a ship, provisional or final, or any 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 Division any person authorised 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.

106 Application to foreign ships of provisions as to detention

- (1) Where a foreign ship being in any port in New South Wales is unsafe by reason of overloading, improper loading, or ballasting, or undermanning, the provisions of this Act with respect to the detention of ships shall apply to such ship, but with the following modifications:
 - (a) 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.
 - (b) Where the ship has been provisionally detained the consular officer on the request of the owner or master of the ship may require that the person authorised to survey the ship shall be accompanied by such person as the consular officer selects; and in such case if the surveyor and such person agree, the Minister shall cause the ship to be detained or released accordingly, but if they differ it may act as if the requisition had not been made.
- (2) In this section the expression **consular officer** means any consul-general, vice-consul, consular agent, or other officer recognised by the Governor as a consular officer of a Foreign State.

Divisions 2, 2A

107-109F (Repealed)

Division 3 Dangerous goods

110 Carriage of dangerous goods

- (1) No person shall be entitled to carry in any ship or to require the master or owner thereof to carry therein any aquafortis, oil of vitriol, gunpowder, nitroglycerine, or any other goods of a dangerous nature.
- (2) If any person carries or sends by any ship any goods of a dangerous nature without distinctly marking their nature on the outside of the package containing the same and giving notice in writing to the master or owner at or before the time of carrying or sending the same to be shipped, he or she shall for every such offence incur a penalty not exceeding 2 penalty units.

- (3) The master or owner of any ship may refuse to take on board any parcel or package that he or she suspects to contain goods of a dangerous nature, and may, to satisfy himself or herself of the contents thereof, require such parcel or package to be opened in his or her presence.

111 Ships not to be loaded so as to endanger their safety etc

- (1) If the carriage on any ship or vessel of any cargo, live stock, provisions, water, or stores would endanger her safety, or interfere with the comfort of her passengers, no master or owner of such ship or vessel shall allow such cargo, live stock, provisions, water, or stores to be carried or stowed on board.
- (2) The Minister may require the master or owner of any steamship entitled by her certificate to carry a certain quantity of live stock to provide such fittings for such stock as the Minister deems requisite.
- (3) The Minister shall be the proper authority to determine whether in any case the safety of the ship is endangered or the comfort of the passengers interfered with.
- (4) Any master or owner who after notification from the Minister that his or her ship or vessel is loaded in any manner as hereinbefore prohibited proceeds to sea or gets under weigh shall be liable to a penalty not exceeding 2 penalty units.

112 Stowage of cargo of grain etc

- (1) No cargo of which more than one-third consists of wheat, 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 is contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise.
- (2) Any managing owner, or master, or the agent of such owner, who being 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 shall for every such offence be liable to a penalty not exceeding 2 penalty units.

Division 4 Lights, fog-signals and sailing rules

113 Regulations

- (1) In this Division:

seaplane includes any aircraft designed to manoeuvre on the water.

ship includes any boat, barge, punt craft or other vessel of whatever description and however propelled, and includes a seaplane.

- (2) The Governor may make regulations not inconsistent with this Act for or with respect

to the prevention of collisions at sea or in inland navigable waters and, in particular, for or with respect to:

- (a) the lights to be carried and exhibited by ships,
 - (b) the fog signals to be carried and used by ships, and
 - (c) the steering and sailing rules to be observed by ships.
- (3) The regulations made pursuant to subsection (2) may adopt, with or without modification, any international regulations for the prevention of collisions at sea.
- (4) The owner or master of a ship who contravenes the regulations made pursuant to subsection (2), or causes those regulations to be contravened, is guilty of an offence and liable to a penalty not exceeding 1 penalty unit.
- (5) The regulations in force immediately before the repeal of the Seventh Schedule by the [Navigation \(Commercial Vessels\) Amendment Act 1983](#) and contained in that Schedule shall, notwithstanding that repeal, continue in force and shall be deemed to have been made under subsection (2).
- (6) Except to the extent that a regulation made pursuant to subsection (2) otherwise provides, the regulations referred to in subsection (5) shall, in addition to the waters to which they applied immediately before the repeal of the Seventh Schedule by the [Navigation \(Commercial Vessels\) Amendment Act 1983](#), be deemed to apply to all inland navigable waters.

114, 115 (Repealed)

116 Breaches of regulations to imply wilful default of person in charge

In case any damage to person or property arises from the non-observance by any ship of any regulation made in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship or, in the case of a seaplane, the pilot or other person on duty in charge of the seaplane at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

117 If collision ensues from breach of regulations ship to be deemed in fault

If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any regulation made by or in pursuance of this Act, the ship by which such regulation has been infringed shall be deemed to be in fault unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

118 Inspection for enforcing regulations

The following steps may be taken in order to enforce compliance with the said regulations, that is to say:

- (a) any surveyor, or such other person as the Minister may direct, may inspect any ship for the purpose of seeing that such ship is properly provided with lights and with the means of making fog signals in pursuance of the said regulations, and shall for that purpose have the powers given to inspectors under this Act,
- (b) if a surveyor or a person the subject of a direction under paragraph (a) finds that any ship is not so provided as aforesaid, he or she shall give to the master or owner notice in writing pointing out the deficiency and also what is in his or her opinion requisite in order to remedy the same,
- (c) every notice so given shall be communicated in such manner as the Minister may direct to the Collector of Customs at every port from which such ship may seek to clear or at which her transire is obtained; and no Collector to whom such communication is made shall clear such ship outwards or grant her a transire or allow her to proceed to sea without a certificate under the hand of a surveyor or a person the subject of a direction under paragraph (a), to the effect that the said ship is properly provided with lights and with the means of making fog signals in accordance with the said regulations.

119 (Repealed)

120 In case of collision ships to assist each other

- (1) In every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he or she can do so without danger to his or her own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as is practicable and necessary in order to save them from any danger caused by such collision; and in case he or she fails to do so and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to be an act of misconduct or a default of which his or her certificate (if any) may be cancelled or suspended.
- (2) Whenever a ship has suffered or caused any accident occasioning loss of life or serious injury to any person, the master of the ship shall, within 24 hours after the accident or as soon as practicable thereafter, forward to the Minister in writing a report of the accident which includes details of the probable cause of the accident, the name of the ship, the place at which the ship is registered and the place at which the accident occurred.
- (3) The master of a ship who fails to comply with subsection (2) is guilty of an offence and liable to a penalty not exceeding 1 penalty unit.

Division 5

121-129 (Repealed)

Division 6 General provisions

130 Regulations

The Governor may make regulations not inconsistent with this Act for or with respect to the examination and adjustment of compasses on ships and, in particular, for or with respect to:

- (a) the certification of persons to adjust compasses,
- (b) the issue of deviation cards in respect of compasses, and
- (c) the payment of fees to persons who adjust compasses.

131 (Repealed)

132 Service of order on master etc

- (1) Where any order, notice, statement, or document requires for the purpose of any provision of this Part 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 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.
- (2) Any such order, notice, statement, or document may be served:
 - (a) by delivering a copy thereof personally to the person to be served, or
 - (b) by leaving the same at his or her last place of abode, or
 - (c) in the case of a master, by leaving it for him or her on board the ship with the person being or appearing to be in command or charge of such ship.
- (3) Whosoever obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding 0.5 penalty unit; and if the owner or master of the ship is party or privy to such obstruction he or she shall be guilty of an indictable offence.

Part 8 Navigable waters

Division 1 Definitions

133 Definitions

In this Part, unless the context or subject-matter otherwise indicates or requires:

master means every person having command or charge of a vessel.

navigable waters means any port, harbour, haven, roadstead, channel, navigable river or creek or arm of the sea within the Jurisdiction.

vessel means any ship, boat, barge, punt, craft, or other vessel of whatever description and however propelled.

Division 2 Powers of Minister and Governor

134 Minister to be conservator of navigable waters

The Minister shall be the proper authority to act as conservator of all navigable waters within the Jurisdiction.

135 Power to make regulations

The Governor may make regulations:

- (a) prohibiting the throwing overboard of sick or the carcasses of dead animals from any ship or vessel within such limits in any navigable water as the regulations may prescribe, under a penalty not exceeding 0.5 penalty unit,
- (b) prohibiting under a like penalty the throwing any sick or dead animal into, or leaving such animal on, the shore of any navigable waters,
- (c) prohibiting owners, lessees, or occupants of manufactories, chemical works, slaughter-houses, and other establishments from allowing refuse matter to be deposited or flow into navigable waters in the vicinity of any local government area under a penalty not exceeding 1 penalty unit, and not exceeding 0.1 penalty unit for every day that such regulation is infringed,
- (d) for and with respect to the inspection and testing of machinery and appliances for the loading and unloading of vessels,
- (e) for and with respect to the prevention of the use of defective machinery or appliances for the loading or unloading of vessels,
- (f) for and with respect to the protection of the health and the security from injury of persons engaged in the loading or unloading of vessels and of persons engaged in the handling or storage of cargo in or upon any wharf,
- (g) for and with respect to the use of lights or fire in the holds of vessels,
- (h) for and with respect to the safety of persons going on and coming from vessels, and the provision of means of escape from the holds of vessels while cargo is being loaded or unloaded,
- (i) for and with respect to the marking on packages or articles of cargo of the weight

thereof before the same are loaded on vessels,

(j) regulating or prohibiting smoking on any vehicular ferry,

(k) regulating the display of lights on vehicles using a vehicular ferry and prohibiting the display on any such vehicle of any light which might tend to endanger navigation,

and such regulations shall be of the same force as if they had been enacted in this Act.

136 (Repealed)

Division 3

137-140 (Repealed)

Division 4 Obstructions in navigable waters

141 Unauthorised works on navigable waters prohibited

- (1) Any person who drives piles, or constructs or erects any wharf, jetty, wall, or other erection, or in any manner whatsoever reclaims or attempts to reclaim any land beyond or below the high-water mark of any navigable waters unless expressly authorised according to the law in that behalf shall be liable for every such offence to a penalty not exceeding 0.5 penalty unit.
- (2) Such person so offending shall also be liable to a further penalty not exceeding 0.1 penalty unit for every day during which any such work as aforesaid, whether completed or incomplete, remains unremoved after notice in writing under the hand of the Minister for Public Works to remove the same has been served upon such persons either personally or by leaving such notice at or transmitting the same by post to his or her last known place of abode or business.
- (3) If not removed within twenty-one days after such service the said Minister may cause such work to be removed, and may recover at law from such person in any Court of competent jurisdiction the whole charges and expenses thereby incurred together with costs.
- (4) (Repealed)

142 Authorised works on navigable waters

- (1) The Governor may authorise the driving of piles, and the construction or erection of any wharf, jetty, wall, or other erection, or work, or the reclaiming in any manner of any land beyond or below the high-water mark of any navigable waters for any purpose connected with the convenience of the public or the improved navigation of such waters.
- (2) The said Minister for Public Works may cause such works to be executed by such

persons and in such manner as he or she thinks fit out of any moneys at his or her disposal applicable to such or to like public works.

(3) (Repealed)

143 (Repealed)

144 Trees in or over navigable waters to be removed

If any tree is felled on the bank of any navigable waters, so that any part of such tree is in or over such waters or within high-water or flood mark, and the same is not removed within ten days after having been so felled, the owner or occupier of the land from which such tree was so felled shall incur a penalty not exceeding 0.5 penalty unit for every tree so cut and not removed, in addition to the actual cost of removing the same, such cost to be assessed by the magistrate at the time of imposing such penalty.

Division 5 Harbour regulations

145-149 (Repealed)

150 Rules to be observed by all vessels in navigable waters

- (1) The Minister may, by notification published in the Gazette, limit the speed of vessels within navigable waters. Any such notification may apply to:
 - (a) vessels generally or to any particular class or classes of vessels or to vessels other than vessels of a particular class or classes,
 - (b) navigable waters generally or to any particular portion or portions thereof or to navigable waters other than a particular portion or portions.
- (2) If any vessel to which any such notification applies shall exceed the speed specified therein the master or owner of such vessel shall be guilty of an offence and shall incur a penalty not exceeding 1 penalty unit.

151 (Repealed)

152 Penalties for persons wilfully or negligently injuring beacons, sea-marks etc

- (1) Whosoever removes, or wilfully injures or destroys, any lightship, light-moorings, buoy, beacon, or sea-mark, being public property and used for the convenience of navigation within the Jurisdiction, shall be deemed guilty of an indictable offence.
- (2) Any person who negligently injures or destroys any such public property as aforesaid shall incur a penalty not exceeding 1 penalty unit.

153 Jetties etc may be placed under control of Minister

- (1) The Governor, by notification in the Gazette, may declare that any public jetty, pier,

quay, or landing-place in any port within the jurisdiction of the Minister shall be under the control and management of the Minister.

- (2) Upon such notification the Governor may frame regulations to be enforced under a penalty, in any case not exceeding 1 penalty unit:
 - (a) for the proper use and enjoyment of any such jetty, pier, quay, or landing-place by the public, and
 - (b) for the due control and management of such jetty, pier, quay, or landing-place.

154 (Repealed)

Division 6

155, 156 (Repealed)

Part 9 Provisions relating to seamen

157 Accommodation for seamen

- (1) Every place in any ship occupied by seamen or apprentices and appropriated to their use shall be subject to the provisions set out in the Eleventh Schedule, and the owner of any such ship in respect of which any of the provisions of that Schedule is not complied with shall for each such offence be liable to a penalty not exceeding 0.5 penalty unit.
- (2) Every place so occupied and appropriated shall be kept free from goods and stores of any kind, not being the personal property of the crew in use during the voyage, and if any such place is not so kept free the master shall forfeit and pay to each seaman or apprentice lodged in that place the sum of ten cents, for each day during which, after complaint has been made to him or her by any two or more of the seamen so lodged, it is not so kept free.
- (3) Such fees as the Minister fixes shall be paid in respect of an inspection for the purposes of this section, not exceeding the fees specified in the Eleventh Schedule.

158 Obligation of shipowner to crew as to seaworthiness of ships

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 or she 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.

158A Record of employees under 16 years on ships

- (1) The master of a ship must record the names and dates of birth of all persons under the age of 16 years who are employed on the vessel.
- (2) That record must be maintained on a separate register, or in the ship's articles.

Maximum penalty: 20 penalty units.

Note—

This section continues section 28A of the [Seamen's Act 1898](#) which gives effect to Article 4 of ILO Convention No 58 (*Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea*). Provisions restricting employment of children under the age of 15 years (as provided under Article 2) are contained in Part 4 to the [Children \(Care and Protection\) Act 1987](#).

Part 10 Miscellaneous provisions and legal procedure

159 Jurisdiction to follow offence and offenders

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either:

- (a) in the place in which the same actually was committed or arose, or
- (b) in any place in which the offender or person complained against may be.

160 (Repealed)

161 Burden of proof that a ship is exempted

If in any legal proceeding under this Act any question arises whether any ship or person is or is not within the provisions of this Act or of some part thereof, such ship or person shall be taken to be within such provisions unless proof to the contrary is adduced.

162-165 (Repealed)

165A Regulations

The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed by regulation or which are necessary or convenient for carrying this Act into effect.

166 Power to make penal regulations

The Governor may make regulations:

- (a) imposing penalties, in no case to exceed the sum of 2 penalty units, for the violation or infringement of any regulation made by him or her in pursuance of the powers conferred by this Act, and
- (b) imposing penalties, in no case to exceed 0.5 penalty unit, for the neglect of any duty

or obligation imposed by this Act in respect of which violation or neglect no other penalty has been prescribed.

167 (Repealed)

168 Indictable offences

- (1) All indictable offences created by this Act may be prosecuted by information at the suit of the Attorney-General, and shall be punishable with fine or imprisonment, or both, as the Court thinks fit.
- (2) All offences against this Act, or any regulation made under this Act, in respect of which any pecuniary penalty is imposed, and all proceedings for the recovery of any expenses or sum of money by this Act made payable or recoverable shall (unless otherwise hereinbefore provided for) be dealt with summarily by a Local Court.

169 Application of penalties

Any Court imposing any penalty under this Act of which no specific application is provided may, if it thinks fit, direct that a part not exceeding one moiety thereof shall be applied to compensate any person for any wrong or damage which he or she may have sustained by reason of the offence in respect of which such penalty is imposed, and, subject to such directions or specific application as aforesaid, all such penalties shall be paid to the Minister and by the Minister paid into the Treasury to the consolidated revenue.

170 Indictments to be preferred by direction of the Minister

- (1) No indictment shall be preferred for any offence against this Act unless under the direction of the Minister.
- (2) No suit or proceeding shall be commenced for the recovery of any penalty or forfeiture for any such offence, except where such penalty or forfeiture is made payable to the owner of a vessel, and, except in any other cases in which directions to the contrary are hereinbefore contained, unless under the direction of the Minister.
- (3) In any indictment preferred, or suit or proceeding instituted under this Act, the averment that the Minister has directed the same to be preferred or instituted shall be sufficient proof of the fact unless the contrary is shown.

171 Liability of owner of harbour and river steamer

Where, under this Act, or any regulation made under this Act, the master of a harbour and river steamer is subject to any penalty or liability, the owner of such steamer shall equally with and to the same extent as the master be subject to such penalty or liability.

172 Copy of this Act etc to be kept on board ship

The master of every ship to which this Act applies shall provide himself or herself with a

copy thereof, and also of all regulations made by virtue of this Act with respect to the exhibition of lights, and shall at all times keep the same on board his or her ship; and in case he or she refuses or neglects to do so shall be subject to a penalty not exceeding 0.1 penalty unit.

173 Power to suspend application of Act to certain vessels

(1) The Governor on the recommendation of the Minister may from time to time, by notification published in the Gazette, declare that, subject to such conditions, limitations, and restrictions (if any) as are expressed in the notification, the provisions of this Act, or such of them as are mentioned in the notification, shall not apply to such vessels or classes of vessels as are specified in the notification.

A notification under this subsection shall have effect according to its tenor.

(2) Where under subsection (1) the Governor has declared that any provision of this Act shall not apply to any specified vessels or class of vessels the Governor may by regulations make such further or other provision for or in relation to such vessels or class of vessels as he or she may deem necessary or convenient for carrying out the provisions and objects of this Act.

(3) Subsection (2) shall not prejudice the generality of any provision of this or any other Act which confers power to make regulations.

(4) In this section **vessel** shall have the meaning ascribed to it in section 133.

First Schedule

(Section 2)

| Reference to Act | Title or short title | Extent of repeal |
|------------------|--|-------------------------------|
| 25 Vic No 17 | <i>"Navigable Waters Protection Act of 1862"</i> | The whole. |
| 35 Vic No 7 | <i>"Navigation Act of 1871"</i> | The whole. |
| 36 Vic No 30 | <i>"Navigation Act Amendment Act of 1873"</i> | The whole. |
| 43 Vic No 13 | <i>"Navigation Act Further Amendment Act of 1879"</i> | The whole unrepealed portion. |
| 45 Vic No 6 | <i>"Navigation Law Amendment Act of 1881"</i> | The whole. |
| 46 Vic No 8 | <i>"Wharfage and Tonnage Rates Amendment Act 1882"</i> | The whole unrepealed portion. |
| 60 Vic No 36 | <i>"Navigation Acts Amendment Act 1896"</i> | The whole. |
| Act No 32 1899 | <i>"Navigation (Amendment) Act 1899"</i> | The whole. |
| Act No 54 1900 | <i>"Navigation (Amendment) Act 1900"</i> | The whole. |

Second-Tenth Schedules (Repealed)

Eleventh Schedule Provisions to be observed with respect to accommodation on board ships

(Section 157)

EVERY place in a ship occupied by seamen or apprentices, and appropriated to their use, shall be such as to make the space which it is required by this Act to contain available for the proper accommodation of the men who are to occupy it, and shall be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from effluvia which may be caused by cargo or bilge water.

A place so occupied and appropriated as aforesaid shall not authorise a deduction from registered tonnage under the tonnage regulations of the Merchant Shipping Act unless there be in the ship properly constructed privies for the use of the crew, of such number and of such construction as may be approved by the surveyor of ships.

Every place so occupied and appropriated as aforesaid shall, whenever the ship is registered or re-registered, be inspected by one of the surveyors of ships under this Act, who shall, if satisfied that the same is in all respects such as is required by this Act, give to the collector of customs a certificate to that effect; and if the certificate is obtained, but not otherwise, the space shall be deducted from the register tonnage.

No deduction from tonnage as aforesaid shall be authorised unless there is permanently cut in a beam, and cut in or painted on or over the doorway or hatchway of every place so occupied and appropriated, the number of men which it is constructed to accommodate, with the words "certified to accommodate seamen."

Upon any complaint concerning any place so occupied and appropriated as aforesaid, a surveyor of ships may inspect the place, and if he or she finds that any of the provisions of this Act with respect to the same are not complied with he or she shall report the same to the chief officer of customs at the port where the ship is registered, and thereupon the registered tonnage shall be altered and the deduction aforesaid in respect of space disallowed, unless and until it be certified by the surveyor, or by some other surveyor of ships, that the provisions of this Act in respect of the place are fully complied with.

Maximum fees for inspection

The fee for each visit to the ship shall not exceed one dollar.

The aggregate amount of the fees for any such inspection shall not exceed two dollars, whatever be the number of separate visits.

When the accommodation is inspected at the same time with the measurement of the tonnage, no separate fees shall be charged for the inspection.