

# Commercial Vessels Act 1979 No 41

[1979-41]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Part 1 of Sch 2 to the [Marine Safety Act 1998 No 121](#) with effect from 1.1.2011.

### 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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# Commercial Vessels Act 1979 No 41



New South Wales

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# Commercial Vessels Act 1979 No 41



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Commercial Vessels Act 1979*.

### 2 Commencement

- (1) This Act shall not come into operation until after Her Majesty's pleasure thereon has been publicly signified in New South Wales.
- (2) Subject to subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Arrangement

This Act is divided as follows:

Part 1 Preliminary—ss 1–5A

Part 2 Permits for vessels and motors—ss 6–26

Division 1 Form and effect of permit—ss 5–13

Division 2 Issue of permits—ss 14–20

Division 3 Suspension and cancellation of permits—ss 21–26

Part 3 Surveys and checks—ss 27–30

Part 3A Safety manning of vessels—ss 30A, 30B

Part 3B Qualifications of crews of vessels—ss 30C–30Q

Part 4 Appeals—ss 31–35

Part 5 Load lines—ss 36–40

Part 6 Equipment—ss 41–42

Part 7 General—ss 43–52

Schedule 1

#### **4 Savings and transitional provisions**

Schedule 1 has effect.

##### **4A Application of Act**

(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 Minister, 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 3A, 3B and 7 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.

(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.

#### **4B Ports and Maritime Administration Act 1995**

This Act is subject to the *Ports and Maritime Administration Act 1995*.

#### **5 Definitions**

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

**certificate of competency** means a certificate of competency under Part 3B, and includes:

- (a), (b) (Repealed)
- (c) a certificate or other document recognised under section 30L, and
- (d) a certificate or licence deemed to be a certificate of competency pursuant to clause 3 of Schedule 4 to the *Commercial Vessels (Amendment) Act 1983*.

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

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

**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.

**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.

**master**, in relation to a vessel, includes:

- (a) the person who for the time being has the command, charge or management of the vessel,
- (b) in relation to a vessel the subject of a hiring agreement that has not expired or a



hiring agreement that has expired without the owner of the vessel resuming possession thereof—the person who has taken, or took, the vessel on hire,

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

**mechanical power** includes electrical power and power derived from the compression, expansion, combustion, explosion or radioactive emission of any substance.

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

**motor permit** means a permit issued under Part 2 with respect to a motor.

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

**overseas voyage** means an overseas voyage within the meaning of the [Navigation Act 1912](#) of the Commonwealth, as amended.

**owner**, in relation to a vessel or motor, includes:

- (a) a joint owner of the vessel or motor,
- (b) a person to whom a permit for the vessel or motor has been issued under Part 2, and
- (c) a person exercising or discharging, or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner, whether on the person's own behalf or on behalf of another.

**paint** does not include painting in a medium that is readily removable.

**passenger**, in relation to a vessel, does not include:

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

using the vessel for a commercial purpose.

**permit** means a permit for a vessel or motor issued under Part 2.

**permit plate**, in relation to a vessel or motor, means a permit plate issued under Part 2 to correspond to a permit for the vessel or motor.

**prescribed law** means a law of:

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

**regulation** means regulation made under this Act.

**Secretary of the Minister** means the Chief Executive of the Maritime Authority or other prescribed officer of the Minister.

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

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

**Tribunal** means a Marine Appeals Tribunal constituted under section 32.

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

**vessel permit** means a permit issued under Part 2 in respect of a vessel.

- (2) Except in so far as the context or subject-matter otherwise indicates or requires, a reference in this Act to a vessel includes a reference to machinery, fittings, components and equipment in the vessel.
- (3), (4) (Repealed)
- (5) A reference in this Act to the hiring out or taking on hire of a vessel or motor, or to a hiring agreement to which a vessel or motor is subject, is a reference to a transaction or agreement whereby possession and use of the vessel or motor is given to a person on hire on terms which do not require or admit the operation or management of the

vessel or motor by the owner of the vessel or motor or his or her servant or agent.

- (6) A reference in this Act to the use of a vessel or motor for a commercial purpose is:
- (a) in the case of a vessel—a reference to the use of the vessel:
    - (i) for the carriage of persons or goods for money or any other valuable consideration,
    - (ii) in any way in, or in connection with, a business or trade or commerce, or
    - (iii) by hiring it out, or making it available, in the course of a business or in trade or commerce, or
  - (b) in the case of a motor—a reference to the use of the motor:
    - (i) by attaching it to a vessel used for a commercial purpose, or
    - (ii) by hiring it out or making it available in the course of a business or in trade or commerce.
- (7) In reckoning the number of persons on board a vessel for the purposes of this Act, the regulations and any permit or other instrument issued or made under this Act or the regulations, children under the age of 1 year shall be disregarded.
- (8) A reference in a provision of this Act to prescribed waters is a reference to waters in relation to which it is within the competence of the Parliament of New South Wales to enact the provision.

## **5A Act to bind Crown**

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.

## **Part 2 Permits for vessels and motors**

### **Division 1 Form and effect of permit**

#### **6 Form of permits**

- (1) A permit under this Act shall be in writing in a form approved by the Minister and shall be signed on behalf of the Minister by an officer of the Minister.
- (2) The regulations may prescribe different classes of permits and the different factors by reference to which they are classified.
- (3) In a vessel permit there shall be specified:
  - (a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued, and

(b) such particulars as may be prescribed.

(4) (Repealed)

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

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

(a) the terms upon which, and the conditions and restrictions subject to which, the permit was issued, and

(b) such particulars as the Minister considers appropriate for the permit.

## **7 Effect of vessel permit**

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

## **8 Vessel to be used as provided by permit**

(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 100 penalty units 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.

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

(a) that, at the time of the use of the vessel, a plate that was, or purported to be, a permit plate was affixed to the vessel,

(b) that the vessel was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the vessel, would have been in accordance with the authority conferred by that permit, and

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

(3) 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,

- (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring,
- (c) where the facts alleged to constitute the offence are, in effect, that the vessel was used in prescribed waters not of a class in which the use of the vessel was authorised by a permit relating to the vessel—that, at the time of the hiring, there was delivered to the person taking the vessel on hire written particulars of the means of identifying the class or classes of water in which the use of the vessel was so authorised, and
- (d) that, at the time of the hiring, the owner had no means of knowing that the vessel would be used as charged.

### **9 Permit plate to be affixed**

- (1) Subject to subsection (2), the owner and the master of a vessel the subject of a permit are each guilty of an offence against this Act if the vessel is in prescribed waters and there is not affixed thereto as prescribed the permit plate that corresponds to the permit.
- (2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1), the owner is not guilty of the offence if it is proved:
  - (a) that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession,
  - (b) that, at the time of the hiring, the permit plate affixed to the vessel corresponded to a permit authorising that hiring, and
  - (c) that the owner had no means of knowing that the permit plate was no longer affixed to the vessel.

### **10 Certain information to be painted on vessel**

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

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

#### **11 Effect of motor permit**

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

#### **12 Motor to be used as provided by permit**

- (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.
- (2) Where the master of a vessel is proceeded against for the offence referred to in subsection (1), the master is not guilty of the offence if it is proved:
- (a) that, at the time of the use alleged to constitute the offence, a plate that was, or purported to be, a permit plate was affixed to the motor,
  - (b) that the motor was being used in a manner that, if the particulars specified in that plate had been the only particulars specified in a permit relating to the motor would have been in accordance with the authority conferred by that permit, and
  - (c) that the master had no reason to believe that the motor was being used as charged.
- (3) 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 motor, or the vessel to which it was attached, was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession,
  - (b) that, at the time of the hiring, the permit plate affixed to the motor corresponded to a permit authorising the hiring, and
  - (c) that, at the time of the hiring, the owner had no means of knowing that the motor would be used as charged.

### **13 Unauthorised hirings**

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

## **Division 2 Issue of permits**

### **14 Application for permit**

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

### **15 Permit plates and survey schedules**

- (1) With each permit there shall be issued a corresponding permit plate to be affixed to the vessel or motor to which the permit relates.
- (2) A permit plate shall specify:
  - (a) the identification number of the permit to which it corresponds,
  - (b) the classification of that permit, and
  - (c) such particulars as the Minister considers appropriate for the permit plate.
- (3) With each vessel permit there shall be issued a survey schedule for the vessel which:
  - (a) shall provide that the vessel and the parts and components of the vessel specified in the survey schedule must be periodically submitted for survey not later than the expiration of such intervals as are specified in, or ascertainable from, the survey schedule in relation to the vessel and each such part or component, and
  - (b) shall specify the nature of the survey required in each case.
- (4) The Minister may, from time to time, by notice in writing given to the holder of a vessel permit, amend the survey schedule for the vessel in the manner specified in the notice.

- (5) Where the holder of a permit:
- (a) notifies the Minister that the corresponding permit plate has been lost or destroyed, satisfactorily accounts for its loss or destruction and pays the prescribed fee, or
  - (b) returns the corresponding permit plate to the Minister because it is damaged or has become illegible and pays the prescribed fee,
- the Minister shall issue to the holder a replacement for the permit plate.
- (6) Where an officer of the Minister is of the opinion that a permit plate has been so damaged or defaced as to be illegible or misleading the officer may remove the permit plate from the vessel or motor to which it is affixed.
- (7) A person who obstructs an officer of the Minister in the exercise of the officer's powers under subsection (6) is guilty of an offence against this Act.
- (8) Where the Minister is aware that alteration or reconstruction of a vessel or motor is proposed or has commenced and by notice in writing given to the owner of the vessel personally or by post requires the owner to return to the Minister the permit plate for the vessel or motor, the owner is guilty of an offence against this Act if the owner fails to comply with the requirement within a time specified in the notice for compliance.

#### **16 Application for permit to be investigated by surveyor**

- (1) Where application is made for a vessel permit the Minister shall, whether or not the construction of the vessel has commenced, is in progress or has been completed, cause a surveyor to investigate the application in so far as it relates to the design, construction, machinery, fittings and equipment of the vessel to ascertain whether the vessel is, or will be, designed, constructed and equipped to the satisfaction of the Minister and in conformity with any law applicable to the vessel.
- (2) An investigation by a surveyor under subsection (1) may include:
- (a) such periodical inspection of a vessel while it is under construction,
  - (b) such inspection and testing of any machinery, component, fitting or equipment of a vessel, and
  - (c) such testing of any material used in the construction of the vessel or any of its machinery, components, fittings or equipment, and
  - (d) such operation of the vessel,
- as the surveyor considers to be appropriate for the surveyor's consideration of the application.
- (3) Where application is made for a permit in respect of a vessel of which construction



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

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

### **17 Payment of fees, charges and expenses**

- (1) The regulations may provide for the payment of specified fees and charges in respect of an application for a permit and investigation of the application and may provide for different fees and charges according to such different factors as are prescribed.
- (2) Without limiting the generality of subsection (1):
  - (a) fees for a vessel permit may be prescribed according to the tonnage of a vessel or otherwise according to its size or dimensions and also according to its type, class or proposed use, and
  - (b) charges may be prescribed as scales varying according to the time spent on an investigation or as a fixed amount according to the class of investigation with scales of additional charges varying according to the time in excess of a specified time spent on an investigation.
- (3) Where, at the request of an applicant for a permit, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, the applicant shall pay to the Minister the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.

### **18 Minister to issue, or refuse to issue, a permit**

- (1) When investigation of an application for a permit has been completed and all fees, charges and expenses with respect to the application have been paid, the Minister shall consider the application and the results of the investigation and shall:
  - (a) issue such permit or permits for the vessel or motor to which the application relates as the Minister considers appropriate, or

(b) refuse to issue any permit for the vessel or motor.

(1A) The Minister may issue a permit upon such terms, and subject to such conditions and restrictions, as the Minister thinks fit and specifies in the permit.

(1B) Without affecting the generality of subsection (1), the Minister 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.

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

## 19 Temporary permits

(1) (Repealed)

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

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

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

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

(4) (Repealed)

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

(a) if the vessel or motor is the subject of a temporary permit issued under subsection (2), or deemed to have been issued under subsection (3), and is used otherwise than in accordance with the authority conferred by the temporary permit, or

(b) if the vessel or motor is the subject of a temporary permit issued under subsection (2) that has been suspended and the temporary permit is not, forthwith after the suspension, returned to the Minister.

## **20 Conversion of temporary permit for certain vessels**

- (1) This section applies only to and in respect of a vessel or motor referred to in section 19 (3) in relation to which the prescribed law so referred to is a law of the Commonwealth or of another State or Territory of the Commonwealth.
- (2) Subject to this Act, upon application made under section 14 the Minister may issue a permit to the owner of a vessel or motor to which this section applies.
- (3) In investigating an application referred to in subsection (2), the Minister or a surveyor shall carry out only such a survey and inspection of the vessel or motor as would, at the time of the investigation, be required under the prescribed law relating to the vessel or motor and shall require the payment of only such fees and charges as would be payable under that prescribed law for such a survey and inspection.

## **Division 3 Suspension and cancellation of permits**

### **21 Suspension of permit by Minister**

- (1) The Minister may suspend a permit by notice in writing served on the holder of the permit personally or by post:
  - (a) where the permit is a vessel permit and the vessel the subject of the permit has not been submitted for survey in accordance with its survey schedule after notice has been given to the holder of the permit so to submit the vessel,
  - (b) where the permit is a vessel permit and the Minister considers that equipment carried by the vessel in compliance, or purported compliance, with Part 6 requires investigation,
  - (c) where the permit is a motor permit and the motor has not been submitted for checking as provided by section 28 (2) after notice has been given to the holder of the permit so to submit the motor,
  - (d) if a requirement under section 29 (1) (a) with respect to the vessel or motor the subject of the permit is not complied with within a reasonable time,
  - (e) if, on consideration of a report by a surveyor or of a notice given under section 22 by an officer of the Minister, the Minister considers that continued use of the vessel or motor the subject of the permit should not be permitted,
  - (f) if any amount payable to the Minister in connection with the survey of a vessel or the checking of a motor is not paid within a reasonable time after the owner of the vessel or motor has been given written notice by the Minister to pay the amount, or
  - (g) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such

alteration or reconstruction.

- (2) Where a permit is suspended under subsection (1), the holder of the permit is guilty of an offence against this Act if the holder fails to return to the Minister forthwith the permit plate that corresponds to the permit.
- (3) The Minister may suspend or cancel a temporary permit if, on consideration of a notice given under section 22 by an officer of the Minister, the Minister considers that continued use of the vessel or motor the subject of the temporary permit should not be permitted.

## **22 Emergency suspension of permit**

- (1) Where, in the opinion of an officer of the Minister, the use of a vessel or motor in accordance with a permit, or a temporary permit issued or deemed to have been issued under section 19 (2) or (3) would be dangerous by reason of:
  - (a) the condition of the vessel or motor or any part or component or equipment thereof, or
  - (b) the absence from the vessel or motor of any part or component or equipment required by or under this Act to be present,the officer may suspend the permit or temporary permit as provided by this section.
- (2) In the case of a permit or temporary permit relating to a vessel, an officer referred to in subsection (1) effects a suspension so referred to by giving to the owner of the vessel, or to a person employed on, or on board, the vessel, a notice in writing stating that the permit or temporary permit has been suspended and that, subject to any other direction given in writing by the Minister to the owner of the vessel, the suspension will terminate:
  - (a) when the defects and deficiencies which the officer has specified in the notice as those by reason of which the officer considers use of the vessel would be dangerous have been made good to the officer's satisfaction or to the satisfaction of a specified officer of the Minister, or
  - (b) at the expiration of the period of 14 days that next succeeds the giving of the notice,whichever first occurs.
- (3) In the case of a permit or temporary permit relating to a motor, an officer referred to in subsection (1) effects a suspension so referred to:
  - (a) where the motor is not attached to a vessel—by giving to the owner of the motor, or

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

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

- (4) Where a person employed on, or on board, a vessel is given a notice under this section addressed to the owner of the vessel, that person is guilty of an offence against this Act if he or she fails to transmit the notice to that owner forthwith.
- (5) A person who considers that he or she has been adversely affected by the suspension under this section of a permit or temporary permit may, upon payment to the Minister of the prescribed fees and expenses, require the Minister to investigate whether the suspension was justified and the Minister shall comply with the requirement.
- (6) Where, after an investigation under subsection (5), the Minister finds that suspension of a permit or temporary permit was not justified, the Minister shall terminate the suspension and refund the fees and expenses paid under subsection (5) for the investigation.

### **23 Action after suspension**

- (1) Where a permit is suspended, an officer of the Minister may, at any time while the suspension is effective, remove from the vessel or motor to which the permit relates the permit plate that corresponds to the permit.
- (2) Where a temporary permit is suspended, an officer of the Minister may, at any time while the suspension is effective, affix to the vessel or motor to which the temporary permit relates a notice to the effect that the temporary permit has been suspended.
- (3) A person who obstructs an officer of the Minister in the exercise of the powers conferred by subsection (1) or (2) is guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units.
- (4) Where a notice is affixed under subsection (2):
  - (a) to a vessel—the owner and the master of the vessel are each guilty of an offence against this Act, or
  - (b) to a motor—the owner of the motor is guilty of an offence against this Act, and liable to a penalty not exceeding 10 penalty units if the notice does not remain affixed to the vessel or motor, as the case may be, while the suspension is effective.
- (5) Where a permit plate has been removed from a vessel or motor under subsection (1) and the suspension of the permit to which that permit plate corresponds:
  - (a) terminates under section 22 (2), or

(b) is terminated by the Minister,

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

#### **24 Duration of suspension**

- (1) Subject to section 22 (2), a suspension of a permit or temporary permit remains effective until the Minister has notified the holder of the permit or temporary permit in writing that the suspension has been terminated.
- (2) A suspended permit or temporary permit has no force or effect until the suspension has been terminated.

#### **25 Cancellation of permit**

- (1) The Minister may, by notice in writing served on the holder of a permit personally or by post, cancel the permit:
  - (a) as from the commencement of any proposed alteration or reconstruction of the vessel or motor to which the permit relates or during the carrying out of any such alteration or reconstruction,
  - (b) if the permit has been suspended and a period of 1 year has elapsed without the suspension being terminated,
  - (c) when the vessel or motor to which the permit relates has been lost or destroyed or, in the opinion of the Minister, is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by the permit, or
  - (d) where the holder of the permit has requested the cancellation and has returned to the Minister the corresponding permit plate.
- (2) Where a permit is cancelled, an officer of the Minister may remove from the vessel or motor to which the permit relates the permit plate that corresponds to the permit.
- (3) A person who obstructs an officer of the Minister in the exercise of the powers conferred by subsection (2) is guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units.

#### **26 Offences**

The owner of a vessel or motor the subject of a permit is guilty of an offence against this Act:

- (a) if the owner fails forthwith to notify the Minister in writing when the vessel or motor is lost or destroyed, or becomes so damaged, dismantled or dilapidated as to be unfit for use in accordance with the authority conferred by the permit,

- (b) if the vessel or motor is used in prescribed waters when any part of the permit plate affixed thereto is illegible or misleading, or
- (c) if the owner fails to furnish the Minister, not later than 21 days before any alteration or reconstruction of the vessel or motor is commenced, with full particulars in writing of the proposed alteration or reconstruction.

## **Part 3 Surveys and checks**

### **27 Definition**

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

### **28 Survey of vessels and check of motors**

- (1) The owner of a vessel the subject of a permit shall cause the vessel to be submitted for survey by a surveyor in accordance with the survey schedule for the vessel.
- (2) The owner of a motor the subject of a permit shall cause the motor to be submitted for checking by a surveyor not more than 1 year after the motor was last checked and found satisfactory in the course of:
  - (a) the survey of a vessel under the *Navigation Act 1901*,
  - (b) an investigation under section 16,
  - (c) a check pursuant to a requirement under section 29, or
  - (d) a check pursuant to this subsection,whichever was the latest.

### **29 Defects and deficiencies**

- (1) Where a vessel is submitted for survey as provided by its survey schedule or pursuant to a requirement under this section, or a motor is submitted for checking under section 28 or pursuant to such a requirement, the Minister or a surveyor may require the owner of the vessel or motor, as the case may be:
  - (a) to make good a specified defect or deficiency in the vessel disclosed by the survey or in the motor disclosed by the check, and
  - (b) to submit the vessel for survey or the motor for checking when the defect or

deficiency is made good.

- (2) Where any part of a vessel or motor the subject of a permit sustains structural damage, the owner of the vessel or motor is guilty of an offence against this Act unless the owner forthwith notifies the Minister in writing of the damage suffered.
- (3) Where the Minister receives a notification under subsection (2) with respect to a vessel or motor the Minister may require the owner of the vessel to submit it to a surveyor for survey or, as the case may be, the owner of the motor to submit it to a surveyor for checking.
- (4) Where the Minister is of the opinion that the condition of a vessel or motor the subject of a permit may not be satisfactory, it may require the owner of the vessel to submit it to a surveyor for survey or, as the case may be, the owner of the motor to submit it to a surveyor for checking.

### **30 Fees etc for survey of vessel and check of motor**

- (1) Before:
  - (a) a vessel is surveyed pursuant to its survey schedule or a requirement under section 29, or
  - (b) a motor is checked pursuant to section 28 or a requirement under section 29,the prescribed fees, charges and expenses for the survey or check, as the case may be, shall be paid.
- (2) The regulations may provide for the payment of specified fees and charges in respect of the survey of a vessel and the checking of a motor and may provide for different fees, charges and expenses according to such different factors as are prescribed.
- (3) Where, at the request of a person submitting a vessel for survey or a motor for checking, a surveyor attends at a place where, or at a time when, the surveyor would not, except in response to that request, have been engaged on official duties, that person shall pay to the Minister the travelling and accommodation expenses of the surveyor incurred by reason of that attendance.
- (4) Where, upon attending to survey a vessel, or to check a motor, at a place and time of which the owner of the vessel or motor, as the case may be, has been given reasonable notice by an officer of the Minister, or at a place or time referred to in subsection (3), a surveyor is unable to carry out the survey or check by reason of the vessel or motor not being made available in a position or condition which permits the making of the survey or check, all fees, charges and expenses already paid shall be retained by the Minister and shall be deemed not to have been paid in respect of any survey of the vessel or check of the motor subsequently carried out.



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

## **Part 3A Safety manning of vessels**

### **30A Minimum complement of vessels**

- (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.
- (2) The regulations referred to in subsection (1) may authorise the Minister 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 Minister 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 Minister 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.

### **30B Offence**

- (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 10 penalty units 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.

- (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 3B Qualifications of crews of vessels**

### **30C Duly qualified crew**

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.

### **30D Form of certificate**

- (1) A certificate of competency under this Act shall be in writing in a form approved by the Minister and shall be signed on behalf of the Minister by an officer of the Minister.
- (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 Minister considers appropriate for the certificate.

### **30E Classification of certificates**

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

### **30F Examinations and other conditions to be satisfied for issue of certificate**

- (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 Minister 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 Minister or by a person appointed by the Minister for the purpose,

(iii) the prerequisites required to be satisfied before a candidate may sit for any such examination,

(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.

### **30G Application for certificate**

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

(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 Minister may specify, the applicant shall furnish to the Minister such documents and information as the Minister 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.

### **30H Minister to issue or refuse to issue a certificate**

(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 Minister 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 Minister may issue a certificate of competency upon such terms, and subject to such conditions and restrictions, as the Minister thinks fit and specifies in the certificate.
- (3) Where, in response to an application, the Minister refuses to issue a certificate of competency applied for, the Minister shall give to the applicant notice in writing of the Minister's decision and of the reasons therefor.
- (4) If the Minister is satisfied that a certificate of competency has been lost or destroyed, the Minister may, upon payment of the prescribed fee, issue a duplicate certificate of competency which shall have the same force as the original certificate.

### **30I Revalidation of certificates**

- (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 Minister by notice in writing given to that holder,
- apply to the Minister 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 Minister 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 Minister refuses to revalidate a certificate of competency, the Minister shall give to the applicant notice in writing of the Minister's decision and of the reasons therefor.
- (5) The Minister 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 Minister 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.

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

**30J, 30K (Repealed)**

**30L Recognition of certificates of other States etc**

(1) A person who holds a certificate or other document which:

(a) was issued under a prescribed law, and

(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 Minister 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 Minister 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 Minister upon such terms, and subject to such conditions and restrictions, as the Minister 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 Minister unless the recognition is withdrawn under section 30N (1) (j).

**30M Incompetency and misconduct of holders of certificates**

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.

**30N Disciplinary action**

(1) Where the Minister is satisfied, after an inquiry, that the holder of a certificate of

competency:

- (a) is incompetent,
- (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 Minister may do any one or more of the following things:

- (e) the Minister may reprimand the holder of the certificate,
- (f) the Minister may reduce the status of the certificate by altering the class of the certificate,
- (g) the Minister may limit the authority conferred by the certificate by the imposition of any terms, conditions or restrictions,
- (h) the Minister may suspend the certificate for a specified period,
- (i) except in the case of a certificate of competency recognised under section 30L, the Minister may cancel the certificate,
- (j) in the case of a certificate of competency recognised under section 30L, the Minister may withdraw the Minister's recognition.

(2) The Minister 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) the Minister's 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 Minister on the matter.

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

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

(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 Minister 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.

### **300 Delivery of suspended or cancelled certificates**

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

### **30P Emergency suspension of certificate**

- (1) Where, upon application by an officer of the Minister, a 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 Magistrate may authorise the officer to suspend the certificate as provided by this section.
- (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 Minister 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.

### **30Q Offences**

A person is guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units 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.

## **Part 4 Appeals**

### **31 Objection to certain actions**

- (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 object thereto by notice in writing to the Minister specifying the grounds of the objection.
- (2) The matters to which objection may be made under subsection (1) are:
  - (a) rejection by a surveyor or by the Minister of any document or information furnished to the Minister in connection with an application for a permit,
  - (b) rejection by a surveyor or by the Minister of any part of the design or construction of a vessel or of the design, construction or sufficiency of any machinery, component, fitting or equipment of a vessel, or any material used in the construction of a vessel or any of its machinery, components, fittings or equipment,
  - (c) a requirement of a surveyor that any part of a vessel be removed or dismantled for the purposes of the surveyor's investigation,
  - (d) rejection by a surveyor of the design or construction of a motor,
  - (e) a refusal by the Minister to issue a permit,
  - (f) rejection by a surveyor, because of its state or condition, of any part of a vessel or of any machinery in a vessel or of any component, fitting or equipment of a vessel,
  - (g) rejection by a surveyor, because of its state or condition, of a motor or any part of a motor,
  - (h) rejection by a surveyor, because of its insufficiency or condition, of any



navigational or safety equipment carried by a vessel,

- (i) a direction given by an officer of the Minister under section 40 (3),
  - (j) a decision by the Minister that a vessel or motor is so damaged, dismantled or dilapidated as to be permanently unfit for use in accordance with the authority conferred by a permit to which it is subject,
  - (k) any term, condition or restriction upon or subject to which a permit is granted by the Minister, and
  - (l) a finding of the Minister under section 49.
- (3) Where the Minister decides to uphold an objection made under subsection (1), the Minister shall:
- (a) inform the objector accordingly, and
  - (b) give effect to the Minister's decision.
- (4) Where the Minister decides not to uphold an objection made under subsection (1):
- (a) the Minister shall inform the objector accordingly, and
  - (b) the objector may, not later than 21 days after being informed of the Minister's decision, give the Minister written notice that he or she wishes to appeal against that decision.

### **31A Appeal against certain decisions**

- (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 Minister of any such matter, give the Minister 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 Minister referred to in section 30A (2),
  - (b) a refusal by the Minister 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 Minister,
  - (d) a refusal by the Minister to revalidate a certificate of competency under section 30I, or
  - (e) a decision by the Minister under section 30N (1).

### **32 Marine Appeals Tribunal**

- (1) As soon as practicable after receiving a notice of appeal under section 31 (4) or 31A (1), the Minister shall convene a Marine Appeals Tribunal to hear the appeal.
- (2) A Marine Appeals Tribunal shall consist of:
  - (a) a chairperson, who shall be a Magistrate nominated by the Minister administering the *Local Court Act 2007*,
  - (b) a person nominated by the appellant, and
  - (c) a person nominated by the Minister.
- (3) The chairperson of a Tribunal shall fix a time and place for the hearing of the appeal for which it was convened and shall cause the appellant to be given not less than 7 days' notice of that time and place.
- (4) Each person referred to in subsections (2) (b) and (2) (c) shall, before he or she sits as a member of the Tribunal, take an oath in the prescribed form that he or she will faithfully and impartially discharge the duties of his or her office as such a member.
- (5) All matters relating to procedure at a sitting of a Tribunal shall be determined by its chairperson.

### **33 Procedure at hearing of appeal**

- (1) At a sitting of a Tribunal, the chairperson shall, before the substance of the appeal is heard, determine whether the appellant has been adversely affected by the action appealed against and, if he or she determines that the appellant has not been so affected, the appeal shall be dismissed.
- (2) A Tribunal is not bound by the rules of evidence and may obtain information to assist it in its deliberations in any way it thinks fit.
- (3) Subject to subsection (1) and to section 32 (4), a decision supported by a majority of the persons constituting a Tribunal is a decision of that Tribunal.
- (4) In reaching a decision on an appeal before it, the Tribunal shall apply such standards with respect to the subject-matter of the objection that gave rise to the appeal as it considers to be reasonable in the circumstances.

### **34 Appearances at hearing of appeal**

At a hearing before a Tribunal:

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

- (b) the appellant or the Minister may appear by the appellant's or the Minister's Australian legal practitioner.

### **35 Powers of Tribunal**

- (1) A Tribunal may:
  - (a) dismiss an appeal, or
  - (b) wholly or partly uphold an appeal and give such directions with respect to the subject-matter of the appeal as it thinks fit.
- (2) The Minister shall give effect to a direction given under subsection (1) (b) subject to compliance with any condition or requirement imposed by the Tribunal when giving the direction.
- (3) A Tribunal may make such order with respect to the costs and expenses of an appeal heard and determined by it as it thinks fit or may refrain from making such an order.
- (4) Any amount ordered to be paid under subsection (3) is recoverable as a debt in a court of competent jurisdiction.

## **Part 5 Load lines**

### **36 Application of Part**

- (1) This Part does not apply to:
  - (a) a vessel less than 16 metres in length overall,
  - (b) a vessel of a prescribed class of vessels, or
  - (c) a vessel in respect of which an exemption certificate is in force.
- (2) The Minister may issue a certificate to the effect that a specified vessel is exempt from the operation of this Part.
- (3) An exemption certificate may be issued subject to such conditions and restrictions as the Minister thinks fit and has effect only while any such conditions and restrictions are fulfilled and observed.

### **37 Definitions**

In this Part:

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

**associated mark**, in relation to a vessel, means a mark, other than a load line mark,

specified in the load line certificate for the vessel as appropriate for waters so specified in conditions so specified.

**deck line**, in relation to a vessel, means the deck line of the vessel determined as prescribed.

**exemption certificate**, means a certificate issued under section 36 (2).

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

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

### **38 Load line regulations**

Regulations may be made for and with respect to:

- (a) the classes of associated marks to be displayed on vessels to which this Part applies,
- (b) the issue of load line certificates and exemption certificates,
- (c) the acceptance of certificates in the nature of load line certificates or exemption certificates issued under the law of the Commonwealth, another State of the Commonwealth or another country and conditions and restrictions relating to any such acceptance,
- (d) conditions for the assignment of freeboards to vessels to which this Part applies,
- (e) the requirements of structural strength and stability for the assignment of freeboards to vessels to which this Part applies,
- (f) the initial survey of a vessel for the purpose of assigning a freeboard to the vessel,
- (g) the calculation and assignment of freeboards,
- (h) the marking of load lines and associated marks,
- (i) the periodical survey and inspection of vessels in respect of which load line certificates have been issued or accepted under the regulations,
- (j) the duration of certificates issued under the regulations including their expiration, extension or prior cancellation,
- (k) applications for certificates under the regulations,
- (l) fees, charges and expenses to be paid in respect of applications, investigations and surveys under this Part, and

- (m) all matters that by this Part are authorised or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Part.

### **39 Load line and other marks to be displayed**

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

(a) the issue of the permit, or

(b) completion of the first survey of the vessel carried out after the commencement of this Part,

whichever is the later, the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units unless there is a load line certificate in force for the vessel.

- (2) Where a load line certificate is in force for a vessel to which this Part applies and the vessel is used in prescribed waters later than 1 month after the issue of the certificate without displaying the load line mark, and all associated marks, for the vessel as specified in the certificate the owner and the master are each guilty of an offence against this Act and liable to a penalty not exceeding 10 penalty units.

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

(a) a copy of that certificate is not displayed on the vessel in a prominent position in a place accessible to an officer of the Minister, or a surveyor, desiring to inspect it, or

(b) particulars of the load line mark, and of all associated marks, for the vessel are not entered in any official log-book that the vessel is by law required to carry,

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

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

(a) in the case of the offence referred to in subsection (2)—that the owner had caused the mark to the absence of which the charge relates to be displayed on the vessel and had no means of knowing that it was no longer so displayed, or

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

#### **40 Submergence of load line marks and other marks**

- (1) Where a vessel to which this Part applies is in prescribed waters and is so loaded that:
  - (a) where an associated mark for the vessel is specified in its load line certificate as appropriate for those waters—that associated mark, or
  - (b) in any other case—the load line mark,on any side of the vessel is submerged, the owner and the master of the vessel are each guilty of an offence and liable to a penalty not exceeding 20 penalty units.
- (2) It is a defence to a prosecution for an offence under subsection (1) if it is proved:
  - (a) that, in the case referred to in subsection (1) (a), if the vessel had been floating without a list in still water of the class for which the associated mark alleged to have been submerged is appropriate, that associated mark would not have been submerged, or
  - (b) that, in the case referred to in subsection (1) (b), if the vessel had been floating without a list in still salt water of a specific gravity of 1.025, the load line would not have been submerged.
- (3) An officer of the Minister appointed by the Minister for the purposes of this section may, by notice in writing served personally on the owner or the master of a vessel, direct that the vessel shall, in specified circumstances, or in all circumstances, be so loaded as to leave unsubmerged not less than a specified extent of its hull.
- (4) Where a vessel in respect of which a direction has been given under subsection (3) is loaded otherwise than in accordance with the direction, the owner and the master of the vessel are each guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units.

### **Part 6 Equipment**

#### **41 Regulations**

- (1) Regulations may be made for and with respect to the carriage by vessels of equipment:
  - (a) for the safe and proper navigation and management of a vessel,
  - (b) for the safe and proper stowage and handling of cargo in or on a vessel,
  - (c) for the receipt and dispatch of communications from and to other vessels and the shore,
  - (d) for the prevention of fire or explosion,

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

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

#### **42 Offences relating to carriage of equipment**

- (1) Subject to subsections (2) and (3), the owner and the master of a vessel are each guilty of an offence against this Act if the vessel is in prescribed waters and:
- (a) equipment prescribed for carriage by the vessel is not so carried,
  - (b) equipment prescribed for carriage by the vessel is so carried but:
    - (i) is defective, or
    - (ii) is carried otherwise than in the position or manner prescribed for the carriage of that equipment,
  - (c) any equipment carried by the vessel is not labelled as prescribed for that equipment,
  - (d) any notice or instruction prescribed for display in relation to equipment carried by the vessel is not so displayed, or
  - (e) any instruction regarding the proper use of equipment carried by the vessel is not made available as prescribed.
- (2) Where the owner of a vessel is proceeded against for the offence referred to in subsection (1) (a) or (b) (ii) the owner is not guilty of the offence if it is proved that, at the time the offence is alleged to have been committed, the vessel was the subject of a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession and:
- (a) in the case of the offence referred to in subsection (1) (a)—that, at the time of the hiring, the equipment to the absence of which the charge relates was carried on the vessel and that the owner had no means of knowing that the equipment was no longer carried on the vessel, or

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

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

(a) he or she was the master of the vessel by reason of being the person taking the vessel on hire under a hiring agreement that had not expired or a hiring agreement that had expired before the owner resumed possession, and

(b) he or she did not know, and had no means of knowing, that the equipment was defective.

## Part 7 General

### 43 Control of number of passengers

- (1) In this section **authorised person** in relation to a vessel means a person concerned in the management or operation of the vessel or in the conduct of operations at its berth.
- (2) A person is guilty of an offence against this Act if the person boards, or attempts to board, or remains in, a vessel after an authorised person for the vessel has informed the person that his or her presence in the vessel has caused, or would cause, the maximum number of passengers authorised to be carried in the vessel, for the voyage or excursion in which it is engaged, to be exceeded.
- (3) A person is guilty of an offence against this Act if the person enters, or attempts to enter, or remains in, a part of a vessel after an authorised person for the vessel has informed the person that his or her presence in that part of the vessel has caused, or would cause, the maximum number of passengers authorised to be carried in that part of the vessel for the voyage or excursion in which it is engaged, to be exceeded.

### 44 Offences

A person on board a vessel is guilty of an offence against this Act if:

(a) being a passenger:

(i) the person is in a part of the vessel in respect of which a notice is displayed at each place on the vessel designed for entry to that part, and

(ii) the person would have contravened such a notice if the person had entered that part at such a place,



whether or not the person in fact entered that part at such a place,

- (b) being a passenger, the person is on any roof, awning or mast on the vessel,
- (c) the person obstructs a person engaged in the navigation or other operation of the vessel,
- (d) the person wilfully damages or puts to wrongful use any part of the vessel or any equipment on the vessel, or
- (e) the person removes, damages or defaces any permit plate or any sign or notice on the vessel that relates to its safe and proper use.

#### **45 Obstruction of navigation etc by passenger**

- (1) In this section **authorised person** in relation to a vessel means a person on board the vessel who is concerned in the navigation, operation or management of the vessel.
- (2) Subject to subsection (3), a passenger on a vessel is guilty of an offence against this Act if he or she fails to comply with a direction, given by an authorised person for the vessel, to move to or from a part of the vessel, or to cease an activity in which he or she is engaged on the vessel.
- (3) A person is not guilty of an offence under subsection (2) if it is proved that the direction with which he or she failed to comply was not given in the interests of safety or of the proper and orderly management, operation or navigation of the vessel.

#### **46 Identification of owner and master**

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

#### **47 Service etc of notices etc**

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

- (2) A notice, notification, direction or authorisation to be given to, or served upon, a person under, or for the purposes of, this Act or the regulations may be addressed to that person by name, or by description as the owner, the master or the person having the care or custody of a specified vessel.
- (3) A notice, notification, direction or authorisation to be given to, or served upon, the owner of a vessel under, or for the purposes of, this Act is sufficiently given or served if it is delivered to a person employed on or on board the vessel.
- (4) Where a person employed on or on board a vessel is given or served with a notice, notification, direction or authorisation in accordance with subsection (3) that is addressed to the owner of the vessel, the person is guilty of an offence against this Act if the person fails to transmit the notice, notification, direction or authorisation to the owner of the vessel forthwith.

#### **48 Exemptions**

- (1) Where the Minister 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 Minister 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.

#### **Editorial note—**

For exemptions under this section, see the Historical notes at the end of this Act.

- (2) The Minister may, by a notice given or published under subsection (1) or by a subsequent notice given or published in the same way as the earlier notice, require compliance with specified conditions instead of compliance with the provision of this Act or the regulations to which the exemption relates and a breach of such a condition shall be deemed to be a breach of that provision.
- (3) The Minister may revoke a notice given or published under subsection (1) by another notice given or published in the same way as the notice revoked.
- (4) Where a condition is imposed by a notice under subsection (2) requiring the carriage or installation in a vessel of any equipment or component not otherwise required by or under this Act to be carried or installed, the Minister shall, by the same notice, impose a further condition requiring the owner of the vessel, while the exemption granted

remains in force, to keep prominently and clearly painted in a specified position on the vessel a statement to the effect that the vessel is required under this Act to carry that equipment or install that component.

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

#### **49 Advice by Minister on design etc**

- (1) Where a person requests the Minister to investigate the acceptability to the Minister and the Minister's surveyors of a particular form or manner of design or construction of vessels or motors, or the use of a particular material in the construction of vessels or motors, or the use of a particular kind of machinery, component, fitting or equipment on a vessel, the Minister may, in the Minister's absolute discretion, decide to carry out the investigation subject to payment of such expenses as it considers to be appropriate.
- (2) A finding of the Minister made and communicated under subsection (1):
  - (a) is not binding upon a surveyor investigating an application for a permit, surveying a vessel, checking a motor or determining the sufficiency of the equipment of a vessel, and
  - (b) may be revoked at any time.

#### **50 Evidence**

In any proceedings brought for the recovery of a penalty under this Act or the regulations and at the hearing of an appeal under Part 4:

- (a) a document purporting to be a copy of a permit, certificate of competency, load line certificate or load line exemption certificate, or of any notice, notification, direction or authorisation given under this Act or the regulations and to be certified by the Secretary of the Minister to be a true copy of the original document is, without production of the original document, evidence of the contents of the document of which it purports to be a copy, and
- (b) a certificate signed by the Secretary of the Minister to the effect:
  - (i) that, at a specified time, a permit relating to a specified vessel or motor was, or was not, in force,
  - (ii) that, at a specified time, a load line certificate or a load line exemption certificate was, or was not, in force in relation to a specified vessel, or
  - (iii) that, at a specified time, a person held, or did not hold, a certificate of competency of a specified class,

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

certified.

## **51 Penalties**

- (1) Except where some other penalty is prescribed, the penalty for an offence against this Act is a penalty not exceeding 4 penalty units.
- (2) (Repealed)
- (3) All penalties imposed for offences against this Act or a regulation shall, after payment to the registrar of the court, be paid by the registrar to the Minister.

## **51A Proceedings for offences**

- (1) Proceedings for an offence against this Act or a regulation shall be disposed of summarily:
  - (a) before the Local Court, 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 the Local Court, the maximum monetary penalty that the Local Court may impose in respect of the offence is, notwithstanding any other provision of this Act, 20 penalty units or the maximum monetary penalty provided by this Act or the regulation in respect of the offence, whichever is the lesser.
- (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.

## **51B Proceedings for detention and forfeiture of vessels**

- (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 Minister.
- (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 Minister, 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 Minister and may

be sold or otherwise dealt with as the Minister 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.

### **51C Offences by corporations**

- (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.

### **52 Regulations**

- (1) The Minister, with the approval of the Governor, may make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing, for or with respect to:
- (a) applications for permits and matters arising in relation to permits and permit plates subsequent to their issue,
  - (b) surveying vessels,
  - (c) checking motors,
  - (d) investigating equipment carried by a vessel,
  - (e) the safety of vessels,
  - (f) the safety, health and convenience while on a vessel of the public and other persons carried by a vessel,

- (g) the method of calculating the tonnage or other measurement of a vessel for the purpose of the application of this Act or the regulations or of any standard acceptable to the Minister,
- (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 subsequent to their issue.

(2) A regulation may:

- (a), (b) (Repealed)
- (c) make both the owner and the master of a vessel liable for a breach of a regulation committed from, or in the use of, the vessel, and
- (d) impose a penalty not exceeding 4 penalty units for a breach of a regulation.

(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
- (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 1 Savings and transitional provisions**

(Section 4)

### **Part 1 Provisions consequent on enactment of this Act**

- 1** Where, immediately before the commencement of Part 2, a vessel was the subject of an unexpired certificate under regulation 27 of the *Navigation (Survey and Equipment) Regulations—N.S.W.* or an unexpired certificate under the *Navigation Act 1901*, certifying compliance with Part 4 of that Act, the Minister shall issue to the owner of the vessel:
  - (a) a vessel permit under section 14 that authorises the use of the vessel to the same extent as was authorised by that certificate,

- (b) a corresponding permit plate under section 15 (1), and
  - (c) a survey schedule for the vessel under section 15 (3).
- 2** Where a motor was attached to a vessel referred to in clause 1 at the time of the survey of the vessel under the *Navigation (Survey and Equipment) Regulations—N.S.W.* or under the [Navigation Act 1901](#), that last preceded the commencement of Part 2, the Minister shall, under that Part, issue to the owner of the motor:
- (a) a motor permit under section 14 that authorises the use of the motor to the same extent as was authorised by the certificate referred to in clause 1, and
  - (b) the corresponding permit plate under section 15 (1).
- 3** Where the Minister is required by clause 1 or 2 to issue a permit in respect of a vessel or motor:
- (a) this Act does not apply, and
  - (b) the [Navigation Act 1901](#), and the regulations made thereunder as in force immediately before the commencement of Part 2, continue to apply,
- to and in respect of the vessel or motor, as the case may be, until the applicable permit, permit plate and, in the case of a vessel, survey schedule have been issued.

## Part 2 Regulations

### 4 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - [Regulatory Reduction Act 1996](#), but only in relation to amendments made to this Act or the regulations
- (2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than its date of 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, 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.