

THE SCHEDULE—*continued*.

(6) The Commonwealth may at its own expense instal a meter at any convenient point in the pipe from which water from the River Murray is delivered to the Commonwealth. The readings for such meter shall be for the information of the Commonwealth, but shall not be binding on the Commissioner unless he agrees to accept them, with or without adjustments, as correct: Provided that this clause shall not prevent the Commonwealth from using such readings as evidence in any dispute relating to the amount of water supplied to the Commonwealth under this Agreement.

12. THE Commissioner undertakes on behalf of the State that the State will not base any claim for financial assistance from the Commonwealth upon any loss incurred by the State in connexion with the Morgan-Whyalla waterworks, and will not claim that any such loss should be taken into account in determining the amount of any financial assistance to be granted by the Commonwealth to the State. Loss on Morgan-Whyalla waterworks to be excluded in determining State grants.

13. THE Commonwealth will not sell or supply any water supplied to it under this Agreement, to consumers in any area which for the time being is served by a water supply system maintained by the Commissioner: Provided that— Restriction on supply to private consumers.

(a) nothing in this Agreement shall prevent the Commonwealth from providing a water supply for residential premises owned by the Commonwealth:

(b) where any residences owned by the Commonwealth and situated within the Port Augusta, Mundalio, or Nectar Brook Water District as defined by proclamation under the Waterworks Act 1932-1936, of the State, are directly supplied with water by the Commissioner, the water so supplied shall be deemed to be water supplied to the Commonwealth under this Agreement, and the Commonwealth shall not be under any liability to pay for that water otherwise than as provided in this Agreement.

14. FOR the purposes of obtaining information as to the correctness of any claim against the Commonwealth under this Agreement, the Auditor-General for the Commonwealth or any person authorized by him shall be entitled to inspect any accounts, books, records, vouchers, or other documents relating to the capital cost, revenue and expenditure of the Morgan-Whyalla waterworks; and the Commissioner shall upon request furnish the said Auditor-General or any such person with any information relating to such capital cost, revenue and expenditure. Audit.

IN WITNESS whereof the parties hereto have executed this Agreement.

SIGNED by the Right Honourable Robert Gordon Menzies, the Prime Minister of the Commonwealth of Australia, for and on behalf of the Commonwealth in the presence of—

ROBERT G. MENZIES.

N. C. TRITTON.

THE COMMON SEAL OF THE COMMISSIONER OF WATERWORKS was hereunto affixed by Malcolm McIntosh, the person for the time being holding the office of such Commissioner, in the presence of—

(L.S.)

E. L. BEAN.

M. McINTOSH,
Commissioner of Waterworks.

NATIONAL DEBT SINKING FUND ACT 1923-1950^(a)

An Act to make provision for the Redemption of the National Debt and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.
Short title
amended.

No. 32, 1918, s. 2.

Repeal of Act
No. 6, 1918.

Amendment of
Loan Act
1913-1914.

Definitions.

Inserted by
No. 19, 1928, s. 3.

1. This Act may be cited as the *National Debt Sinking Fund Act 1923-1950*.^(a)

2. The *Loans Sinking Fund Act 1918* is hereby repealed.

3.—(1.) The *Loan Act 1913-1914*^(b) is amended by omitting the proviso to section two.

(2.) The *Loan Act 1913-1914*, as amended by this Act, may be cited as the *Loan Act 1913-1923*.

4. In this Act, unless the contrary intention appears—

“Commissioner” means a member of the Commission;

“Debt” means the National Debt of the Government of the Commonwealth of Australia;

“the Commission” means the National Debt Commission appointed under this Act;

“the Financial Agreement between the Commonwealth and the States” means the Agreement set forth in the Schedule

(a) The *National Debt Sinking Fund Act 1923-1950* comprises the *National Debt Sinking Fund Act 1923* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>National Debt Sinking Fund Act 1923</i>	1923, No. 5 ..	11th August, 1923 ..	11th August, 1923
<i>National Debt Sinking Fund Act 1924</i>	1924, No. 6 ..	30th June, 1924 ..	30th June, 1924
<i>National Debt Sinking Fund Act 1925</i>	1925, No. 3 ..	8th July, 1925 ..	1st March, 1925
<i>National Debt Sinking Fund Act 1928</i>	1928, No. 19	22nd June, 1928 ..	6th September, 1928 (See <i>Gazette</i> , 1928, p. 2563)
<i>National Debt Sinking Fund Act 1929</i>	1929, No. 17 ..	25th March, 1929 ..	25th March, 1929
<i>National Debt Sinking Fund Act 1930</i>	1930, No. 72 ..	16th December, 1930	16th December, 1930
<i>National Debt Sinking Fund Act 1934</i>	1934, No. 52 ..	14th December, 1934	14th December, 1934
<i>National Debt Sinking Fund Act 1945</i>	1945, No. 27 ..	16th August, 1945 ..	16th August, 1945*
<i>Statute Law Revision Act 1950</i>	1950, No. 80 ..	16th December, 1950	31st December, 1950

* Section 10A of the *National Debt Sinking Fund Act 1923-1945* which was inserted by s. 4 (1.) of the *National Debt Sinking Fund Act 1945* was deemed to have come into operation on 1st July, 1930. See s. 4 (2.) of the *National Debt Sinking Fund Act 1945*.

(b) The *Loan Act 1913-1914* was repealed by the *Statute Law Revision Act 1934*, *infra*.

to the *Financial Agreement Act* 1928, and includes any amendment of that Agreement which is made at any time;
 "the financial year 1923-1924" means the financial year terminating on the thirtieth day of June One thousand nine hundred and twenty-four;
 "the National Debt Sinking Fund" means the Sinking Fund established under this Act.

5.—(1.) For the purposes of this Act there shall be a National Commission.
 Debt Commission, which shall be charged with the general control of all Sinking Fund moneys, and shall, subject to this Act, decide when and how those moneys shall be invested or used for the redemption of the Debt.

(2.) The Commission shall be a body corporate with perpetual succession and a common seal, and capable of suing and being sued.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document or notice, and shall deem that it was duly affixed.

6.—(1.) The Commission shall consist of the Treasurer of the Commonwealth, the Chief Justice of the High Court, the Governor of the Commonwealth Bank, the Secretary to the Treasury, the Solicitor-General and a person approved by a majority of the States as the representative of the States on the Commission.

Constitution
 of Commission.
 Amended by No.
 17, 1929, s. 2.

(1A.) The approval of a majority of the States of a person as the representative of the States on the Commission shall be given in writing by the Premiers of the States so approving, and the representative so approved shall hold office as a member of the Commission until the approval of any State so given is withdrawn, in like manner as it was given, so that the person is no longer approved by a majority of the States.

Inserted by
 No. 17, 1929, s. 2.

(1B.) The Commission shall be deemed to be duly constituted and capable of exercising its powers and carrying out its duties under this Act notwithstanding that, at any time, there is no person approved by a majority of the States as the representative of the States on the Commission.

Inserted by
 No. 17, 1929, s. 2.

(2.) The Treasurer shall be Chairman of the Commission.

(3.) In the case of the illness or absence from Australia of a Commissioner, the Governor-General may appoint a person to act during the illness or absence, as the case may be, and the person so acting shall have all the powers and perform all the duties of a Commissioner.

(4.) At any meeting of the Commission, three Commissioners shall form a quorum.

7. The Commission shall exercise such powers and perform such duties as are conferred upon it by this Act or as are prescribed or of which the execution or performance by the Commission is provided

Powers of
 Commission.
 Amended by
 No. 19, 1928, s. 4.

for by the Financial Agreement between the Commonwealth and the States.

Limitation of
operation of
Act.

8. The provisions of this Act shall not apply to the indebtedness of the Commonwealth of Australia to the Government of the United Kingdom under the *Funding Arrangements Act 1921*.^(a)

National Debt
Sinking Fund.

9.^(b)—(1.) The Treasurer shall pay into the Trust Fund, under the head of the National Debt Sinking Fund—

- (a) in each financial year for a period of fifty years, commencing with the financial year 1923-1924, a sum of One million two hundred and fifty thousand pounds;
- (b) in each financial year for the said period of fifty years, a sum equal to ten shillings per centum of the net debt created in that financial year and in any financial year prior thereto and after the thirtieth day of June One thousand nine hundred and twenty-three;
- (c) in each financial year for the said period of fifty years, a sum equal to Five pounds per centum of the total amount of debt which has up to the time of payment been redeemed and cancelled by the Commission in pursuance of this Act:

Amended by
No. 3, 1925, s. 3.

Provided that the payment to be made under this paragraph in respect of any part of the debt cancelled in the financial year in which the payment is made shall be calculated at Five pounds per centum per annum from the date of the cancellation of that part of the debt to the thirtieth day of June in that financial year:

Provided further that the provisions of this paragraph shall not apply in relation to so much of the debt as is redeemed and cancelled out of moneys paid into the National Debt Sinking Fund under paragraph (d), (e), (f), (g) or (h) of this sub-section, and under section nine A of this Act;

Inserted by
No. 6, 1924, s. 2.

- (ca) in each financial year for a period of thirty years, commencing with the financial year 1923-1924, a sum of Ninety-one thousand pounds;

Inserted by
No. 6, 1924, s. 2.

- (cb) in each financial year for a period of thirty years commencing with the financial year 1923-1924, a sum equal to One pound per centum of the expenditure of the Postmaster-General's Department out of the Loan Fund from the first day of July One thousand nine hundred and twenty-three to the end of the financial year in which the payment is made;

(a) As to a further restriction on the application of this Act see the *Loan (International Bank for Reconstruction and Development) Act 1950*, s. 9, *supra*.

(b) See also section 6 of the *Loan (International Bank for Reconstruction and Development) Act 1950*, *supra*.

- (cc) in each financial year for the period of twenty years commencing with the financial year ending on the thirtieth day of June One thousand nine hundred and fifty-four, a sum equal to One pound per centum of the expenditure of the Postmaster-General's Department out of the Loan Fund during the financial year in which the payment is made and during the twenty-nine financial years immediately prior to that year; Inserted by No. 6, 1924, s. 2.
- (d) all repayments to the Government of the Commonwealth of loans or advances made out of the Loan Fund—
- (i) to States and to Territories under the authority of the Commonwealth;
 - (ii) for the erection of wheat silos;
 - (iii) under the Nauru Island Agreement; and
 - (iv) for such purposes as are prescribed;
- (e) all moneys credited, after the commencement of this Act, to the War Service Homes Trust Account in accordance with section thirty-nine of the *War Service Homes Act* 1918-1920 in respect of purchase money and repayments of advances; Amended by No. 3, 1925, s. 3.
- (f) all unexpended balances standing to the credit of the Loan Fund which are no longer required;
- (g) all moneys received in respect of reparations under the Treaty of Peace with Germany; and Added by No. 3, 1925, s. 3.
- (h) all moneys received from the States as Sinking Fund contributions in respect of loans made by the Commonwealth to the States. Added by No. 3, 1925, s. 3.

* * * * *

Sub-sections (2.) and (3.) omitted by No. 27, 1945, s. 3.

(4.) Notwithstanding the provisions of section thirty-nine of the *War Service Homes Act* 1918-1920, the moneys specified in paragraph (e) of sub-section (1.) of this section shall, after being credited to the War Service Homes Trust Account, be dealt with in the manner directed in this section.

9AA. (1.) Notwithstanding anything contained in this Act, the total amount which the Treasurer would, but for this section, be required, in any financial year after the thirtieth day of June One thousand nine hundred and thirty, to pay into the National Debt Sinking Fund in pursuance of paragraphs (a), (b), (c), (ca), (cb) and (cc) of sub-section (1.) of the last preceding section, shall be reduced by such amount (if any) as that total amount, with all other amounts paid into the Fund in that year (except amounts paid into the Fund under paragraphs (d) and (e) of that sub-section and amounts being the proceeds arising under section fifteen of this Act from the sale or maturity of investments) exceeds the sum of the following:—

Calculation of payments to be made by the Treasurer to the Fund. Inserted by No. 72, 1930, s. 2.

- (a) the amount of ten shillings per centum on the net debt at the thirtieth day of June One thousand nine hundred and twenty-three, excluding from that debt—
 - (i) so much of the debt as related to expenditure of the Postmaster-General's Department; and
 - (ii) the amount of the net debt redeemed, during the financial years commencing on the first day of July One thousand nine hundred and twenty-three, and ending on the thirtieth day of June One thousand nine hundred and thirty, in excess of the amount which would have been redeemed during that period—
 - (1) from annual contributions to the Fund at the rate of ten shillings per centum on the net debt and on net debt created during that period, and at the rate of twenty shillings per centum on debt on account of expenditure of the Postmaster-General's Department; and
 - (2) from the accumulation of those contributions at compound interest at the rate of Five pounds per centum convertible yearly;
- (b) the amount of thirty shillings per centum on so much of the debt, as at the thirtieth day of June One thousand nine hundred and twenty-three, as related to expenditure of the Postmaster-General's Department;
Provided that this paragraph shall not apply in respect of any financial year after the thirtieth day of June One thousand nine hundred and fifty-three;
- (c) the amount required under paragraph (b) of sub-section (1.) of the last preceding section to be paid into the Fund in that year;
- (d) the amounts required under paragraphs (cb) and (cc) of sub-section (1.) of the last preceding section to be paid into the Fund in that year;
- (e) the amount of Five pounds per centum on the amount of debt redeemed prior to the first day of July One thousand nine hundred and thirty, excluding from that amount of debt—
 - (i) the amount calculated under sub-paragraph (ii) of paragraph (a) of this sub-section; and
 - (ii) the amount of debt redeemed prior to that date from moneys paid into the Fund under paragraphs (d) and (e) of sub-section (1.) of the last preceding section, and from moneys received upon the maturity of securities under section fifteen of this Act; and

- (f) the amount of Five pounds percentum on the total amount received by the Fund during the period commencing on the first day of July One thousand nine hundred and thirty, and ending on the thirtieth day of June next preceding that financial year in which payment is being made in accordance with this section, less amounts paid into the Fund during that period under paragraphs (d) and (e) of sub-section (1.) of the last preceding section and amounts received upon the sale or maturity of securities under section fifteen of this Act:

Amended by
No. 52, 1934,
s. 2.*

Provided that the amounts specified in the last two preceding paragraphs, to the extent to which they are payable on so much of the debt as related to expenditure of the Postmaster-General's Department, shall be payable only for a period of thirty years commencing from the beginning of the financial year next succeeding that in which the expenditure was incurred.

- (2.) For the purposes of sub-paragraph (ii) of paragraph (e) of the last preceding sub-section, the securities of which any redeemed debt consisted shall be deemed to have been redeemed at par.

9A. The Treasurer may in any financial year pay out of the Consolidated Revenue Fund, which is hereby appropriated for the purpose, into the National Debt Sinking Fund such sum as he may determine in addition to the sums specified in section nine of this Act.

Additional
payment to the
Sinking Fund.
Inserted by
No. 3, 1925, s. 4;
amended by
No. 80, 1950, s. 3
and First
Schedule.

10.—(1.) For the purposes of section nine of this Act, the net debt created in any financial year shall be ascertained—

Net debt.
Amended by
No. 72, 1930, s. 3.

(a) by taking the sum of—

- (i) the unexpended loan moneys at the beginning of that year,
- (ii) the total of loans raised during that year, and
- (iii) the subscriptions received during that year in respect of loans raised in previous years; and

(b) by deducting from the total thus ascertained the sum of—

- (i) the unexpended loan moneys remaining at the close of that year,
- (ii) the outstanding instalments of new loans raised during that year,
- (iii) the debt redeemed during that year out of the proceeds of any loan, and
- (iv) the expenditure during that year for the purpose of making advances or loans which are repayable in cash to the Commonwealth.

* Sub-section (2.) of section 2 of the *National Debt Sinking Fund Act 1934* reads—

"This section shall be deemed to have commenced on the date of commencement of the *National Debt Sinking Fund Act 1930*."

Added by No. 72,
1930, s. 3.

(2.) For the purposes of section nine AA of this Act, the net debt at the thirtieth day of June One thousand nine hundred and twenty-three, shall be ascertained by taking the gross debt at that date and by deducting from that amount the sum of the following amounts at that date:—

- (a) The indebtedness of the Commonwealth of Australia to the Government of the United Kingdom under the *Funding Arrangements Act 1921*;
- (b) Loans, advances and moneys repayable in cash to the Commonwealth in respect of expenditure of the Loan Fund;
- (c) Balances held in Trust Fund under the heads of the Loans Sinking Fund, the Northern Territory Sinking Fund, the Port Augusta Railway Sinking Fund and the War Loan Securities Repurchase Account; and
- (d) Unexpended balances of loan moneys.

Calculations
in relation to
overseas debts.
Inserted by No.
27, 1945, s. 4.*

10A. For the purposes of sections nine, nine AA and ten of this Act, all calculations in relation to overseas debts shall be made at the mint par of exchange prevailing on the first day of July, One thousand nine hundred and thirty.

Appropriation
of money.
Substituted by
No. 3, 1925, s. 5.

11. All moneys payable into the National Debt Sinking Fund in pursuance of sub-section (1.) of section nine of this Act, excepting moneys payable in pursuance of paragraphs (d), (e), (f), (g) and (h) of that section, shall be paid out of the Consolidated Revenue Fund, which is hereby appropriated for the purpose.

Time for
making
payments.

12. Payments to be made by the Treasurer to the National Debt Sinking Fund in any financial year may be made at such time or times during that financial year as the Treasurer determines.

Reference to
Sinking Fund
contributions
to be made in
prospectuses
of new loans.

Amended by
No. 80, 1950, s. 3
and First
Schedule.

13. Any prospectus in relation to a loan issued after the commencement of this Act shall contain a provision that, in respect of the loan referred to in the prospectus, Sinking Fund contributions shall be paid into the National Debt Sinking Fund in accordance with this Act.

Merging of
Loans Sinking
Fund into
National Debt
Sinking Fund.

14.—(1.) The Loans Sinking Fund established under the *Loans Sinking Fund Act 1918* and the Northern Territory Sinking Fund and the Port Augusta Railway Sinking Fund established under section sixty-two A of the *Audit Act 1901-1920*, shall be merged into the National Debt Sinking Fund.

(2.) References in any Act to the Loans Sinking Fund shall be construed as references to the National Debt Sinking Fund.

* Sub-section (2.) of section 4 of the *National Debt Sinking Fund Act 1945*, reads—

"The section inserted by the last preceding sub-section shall be deemed to have come into operation on the first day of July, One thousand nine hundred and thirty."

15.—(1.) All moneys standing at the credit of the Loans Sinking Fund, the Northern Territory Sinking Fund and the Port Augusta Railway Sinking Fund, shall be transferred to the credit of the National Debt Sinking Fund, and all investments of these Funds shall be deemed to be investments of the National Debt Sinking Fund.

Closing of
Loans Sinking
Fund.

(2.) All sums received as interest in respect of such investments or from the sale of such securities shall be paid into the National Debt Sinking Fund.

16. The Commission shall purchase at par all Commonwealth Stock and Bonds accepted at par by the Treasurer in payment of Probate Succession and Estate Duty, and, if surrendered before the date of maturity, all Commonwealth Stock inscribed in the name of the Public Trustee.

Commission to
purchase
certain Stock
and Bonds.

17.—(1.) The Commission may apply the National Debt Sinking Fund in repurchasing or redeeming any Commonwealth securities, or in redeeming any other portion of the debt.^(a)

Application of
National Debt
Sinking Fund.

(2.) Repurchased or redeemed securities shall not be reissued, but shall be cancelled, and the amount of the debt shall be reduced accordingly.

18.—(1.) Subject to this section, the Commission may invest any moneys standing at the credit of the National Debt Sinking Fund in the purchase of any securities of, or guaranteed by, the Government of the United Kingdom, or the Government of the Commonwealth, or the Government of any State, and may at any time sell such securities.

Investment of
National Debt
Sinking Fund.

(2.) The Commission shall not purchase any securities of, or guaranteed by, the Government of the United Kingdom, or the Government of any State, except within three years of the date of their maturity.

(3.) The Commission may invest any moneys standing at the credit of the National Debt Sinking Fund by placing such moneys on deposit in any Bank.

(4.) All sums received by the Commission as interest in respect of any investments or on the realization of any investments in pursuance of this section shall be paid into the National Debt Sinking Fund.

(5.) The Commission shall not invest moneys in accordance with this section unless it is satisfied that greater benefit will accrue to the National Debt Sinking Fund by so doing than would be the case if the Commission were to repurchase or redeem Commonwealth securities, or to redeem any other portion of the debt, in accordance with section seventeen of this Act.

(a) See also s. 7 of the *Loan (International Bank for Reconstruction and Development) Act 1950, supra.*

Action in
respect of
moneys
received under
Financial
Agreement.
Inserted by
No. 19, 1928, s. 5.

18A. Notwithstanding anything contained in this Act, all moneys received by the Commission in pursuance of the Financial Agreement between the Commonwealth and the States shall be paid into the Trust Fund under the head of the National Debt Sinking Fund, and shall be applied or invested by the Commission in accordance with the provisions of that Agreement.

Annual report
to Parliament.

19. The Commission shall, in the month of August in each year, furnish to the Treasurer, for presentation to the Parliament, a report on the operations of the Commission in relation to the National Debt Sinking Fund.

Regulations.

20. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

NATIONAL FITNESS ACT 1941^(a).

An Act relating to National Fitness.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *National Fitness Act 1941*.^(a) Short title.

2. In this Act, unless the contrary intention appears— Definitions.

“the Council” means the Commonwealth Council for National Fitness appointed under this Act;

“the Fund” means the National Fitness Fund established by this Act.

3.—(1.) The Governor-General may appoint a Commonwealth Council for National Fitness consisting of such number of members (not exceeding nine) as the Governor-General thinks fit. Commonwealth Council for National Fitness.

(2.) The Council shall advise the Minister with respect to the promotion of national fitness, and in particular in relation to—

- (a) the measures to be adopted to develop appreciation of the need for physical fitness;
- (b) the provision of facilities for instruction in the principles of physical education;
- (c) the organization of movements, and the provision of facilities, for attaining or maintaining personal physical fitness; and
- (d) the training of teachers of classes, and of leaders of movements or groups, formed for the purpose of promoting physical fitness.

(3.) The Council may make enquiries into the causes of physical unfitness in the community, and may for that purpose co-operate with the National Health and Medical Research Council.

4.—(1.) For the purposes of this Act, there shall be a Trust Account which shall be known as the National Fitness Fund. National Fitness Fund.

(2.) The Fund established in pursuance of this section shall be a Trust Account for the purposes of section sixty-two A of the *Audit Act 1901–1934*.

(3.) The following moneys shall be paid into the Fund:—

- (a) Such amounts as are appropriated from time to time by the Parliament for the purposes of the Fund, and the income

(a) No. 26, 1941; assented to on 4th July, 1941, commenced on 1st August, 1941.

derived from the investment of those amounts or any part thereof; and

- (b) Gifts of money made for the purposes of the Fund and the income derived from, and the proceeds of the realization of, gifts made for those purposes.

Application of
Fund.

5.—(1.) Subject to the next succeeding sub-section, the Minister may apply the moneys standing to the credit of the Fund for the purpose of providing assistance—

- (a) to encourage the development of national fitness in each State under the direction of a National Fitness Council appointed by the Government of the State;
- (b) to promote physical education in schools, universities and other institutions; and
- (c) for such other purposes in relation to the matters specified in sub-sections (2.) and (3.) of section three of this Act as the Minister determines.

(2.) The Minister shall deal with and apply so much of the Fund as represents a gift, or the income arising from the investment, or the proceeds of the realization, thereof, in accordance with the conditions upon which the gift was made.

Annual report.

6. The Minister shall, each year, cause a general report containing a summary of the work done under this Act during the preceding year to be prepared and laid before both Houses of the Parliament.

Regulations.

7. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

NATIONAL HEALTH SERVICE ACT 1948-1949.^(a)

An Act to provide for the Establishment of National Health Services, and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *National Health Service Act* 1948-1949.^(a) Short title.
Short title amended, No. 32, 1918, s. 2.

2. In this Act, unless the contrary intention appears—

“national health service” means a service provided, or arrangements for the provision of which are made, under this Act;

“the Director-General” means the Director-General of Health,

Definitions.

3. A person shall not be appointed as Director-General of Health unless he is a legally qualified medical practitioner of not less than ten years' standing. Director-General to be a medical practitioner.

4. The Director-General shall have the general administration of this Act but the exercise of any power or function by the Director-General under this Act shall be subject to any directions of the Minister. Administration.

5.—(1.) The Director-General may, in relation to any particular matter or class of matters, or to any particular part of the Commonwealth, by writing under his hand, delegate to any officer, or to any person included in a prescribed class of persons, all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matter or class of matters, or the part of the Commonwealth, specified in the instrument of delegation. Delegation.

(2.) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Director-General.

(a) The *National Health Service Act* 1948-1949 comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>National Health Service Act</i> 1948	1948, No. 81 ..	21st December, 1948	18th January, 1949
<i>National Health Service Act</i> 1949	1949, No. 85 ..	29th October, 1949 ..	29th October, 1949

Scheme of
sickness
benefits or
medical
services.

Substituted by
No. 85, 1949,
s. 3.

6.—(1.) The regulations may make provision—

- (a) for or in relation to the establishment, maintenance, conduct and operation of a scheme for the provision of sickness benefits or medical services by way of payments by the Commonwealth in respect of professional services rendered by medical practitioners;
- (b) in relation to any arrangements made by the Minister under sub-section (4.) of this section; and
- (c) in relation to matters incidental to a scheme established, or arrangements made, under this section.

(2.) Without prejudice to the generality of the last preceding sub-section, a scheme established under this section may—

- (a) define the circumstances in which persons shall, or shall not, be entitled to benefits or services under the scheme;
- (b) provide for participation in the scheme by medical practitioners in respect of particular classes of professional services; and
- (c) provide that the maximum fees to be charged or received by medical practitioners participating in the scheme in respect of professional services to which the scheme applies shall be the fees fixed by, or assessed under, the regulations as in force from time to time.

(3.) A maximum fee fixed by the regulations shall not be reduced unless the Minister has given not less than three months' notice of the proposed reduction by notice published in the *Gazette*.

(4.) Where an arrangement exists between a medical practitioner and a society, body or person under which professional services are rendered by that medical practitioner (whether or not a scheme established under this section applies in relation to those professional services), the Minister may make arrangements for the provision by the Commonwealth of sickness benefits or medical services, in respect of those professional services, in lieu of the benefits or services under the scheme.

(5.) Where arrangements made by the Minister under the last preceding sub-section are in operation in relation to any professional services, a scheme established under this section shall not apply in relation to those services.

(6.) Nothing in this section authorizes any form of civil conscription.

Provision of
medical and
dental
services.

7.—(1.) The Director-General may, on behalf of the Commonwealth, but subject to this Act, provide, or arrange for the provision of, prescribed medical services and prescribed dental services.

(2.) Without limiting the generality of the last preceding sub-section, the services referred to in that sub-section may include—

- (a) general medical or dental practitioner services;

- (b) consultant and specialist services;
- (c) ophthalmic services;
- (d) maternal and child health services;
- (e) aerial medical and dental services;
- (f) diagnostic and therapeutic services;
- (g) convalescent and after-care services;
- (h) nursing services; and
- (i) medical services and dental services in universities, schools and colleges.

(3.) The Director-General may, on behalf of the Commonwealth, do, or arrange for the doing of, anything which is incidental to the provision of any medical service or dental service under this section.

(4.) In particular, and without limiting the generality of the last preceding sub-section, the Director-General may, on behalf of the Commonwealth—

- (a) establish, maintain and manage hospitals, laboratories, health centres and clinics;
- (b) provide, or assist in the provision of, scholarships or training for university graduates in medicine or dentistry and for persons who have completed courses of training, approved by the Director-General, in, or in relation to, medicine or dentistry;
- (c) establish, maintain or develop, or assist in the establishment, maintenance or development of, courses of training in nursing (including dental nursing), dental hygiene, radiography, radiation-therapy, physiotherapy, biochemistry, dietetics and other matters related to medicine or dentistry;
- (d) undertake or develop, or assist in the undertaking or development of, measures (including research and epidemiological investigations) for the improvement of health (including maternal and child health) and for the prevention of disease;
- (e) encourage group practice by medical practitioners and dentists; and
- (f) disseminate information relating to health and the prevention of disease.

8. The Minister may make an arrangement with any other Minister for the performance by that other Minister of any service in connexion with a national health service. Arrangements with other Departments.

9.—(1.) The Governor-General may enter into an arrangement with the Governor of a State for the performance by that State of any service in connexion with a national health service. Arrangement with States.

(2.) An arrangement entered into under this section may provide for payments by the Commonwealth to the States in respect of capital expenditure or maintenance expenditure incurred by the

State at the request of the Commonwealth in connexion with the service performed by the State.

(3.) Any arrangement entered into under this section which provides for payments by the Commonwealth to a State in respect of any expenditure referred to in the last preceding sub-section shall provide for information to be supplied to the Minister by such persons, at such times and in such manner and form as he requires.

(4.) An arrangement entered into under this section shall provide—

(a) that any property the cost of which, or part of the cost of which, has been paid by the Commonwealth to the State under the arrangement shall not, except with the approval of the Minister, be used otherwise than for the purpose for which the property was acquired; and

(b) for the indemnification of the Commonwealth—

(i) in the event of the acquisition by the Commonwealth of property the cost of which has been paid by the Commonwealth to the State under the arrangement—against payment by way of compensation for the acquisition of that property; and

(ii) in the event of the acquisition by the Commonwealth of property the cost of which was paid in part by the Commonwealth to the State under the arrangement—against payment by way of compensation proportionate to the cost so paid.

Arrangements
to take over
State services
and hospitals.

10. The Governor-General may enter into an arrangement with the Governor of a State for the taking over by the Commonwealth from the State, for the purposes of a national health service—

(a) of any medical service or dental service provided by the State;

(b) of the whole or part of any hospital, laboratory, health centre or clinic owned or provided by the State; and

(c) of any property used in or in connexion with any such hospital, laboratory, health centre or clinic.

Arrangements
to take over
other services
and hospitals.

11. The Director-General may, on behalf of the Commonwealth, enter into an agreement for the taking over by the Commonwealth, for the purposes of a national health service—

(a) of any medical service or dental service;

(b) the whole or any part of any hospital, laboratory, health centre or clinic; or

(c) any property used in or in connexion with any hospital, laboratory, health centre or clinic,

not being a service, hospital, laboratory, health centre, clinic or property owned or provided by a State.

12. The Minister may establish a committee to manage, on behalf of the Commonwealth, but subject to any directions of the Director-General, the whole or any part of any medical service, dental service, hospital, laboratory, health centre or clinic taken over by the Commonwealth under either of the last two preceding sections.

Management committees.

13. The Director-General may, on behalf of the Commonwealth, make an agreement with any person for the performance by that person of any service in connexion with a national health service.

Agreements for the provision of services.

14. The Minister may, on behalf of the Commonwealth, arrange for, or undertake, the manufacture, for the purposes of a national health service, of medical and dental supplies, appliances and equipment, including visual aids and hearing aids.

Manufacture, &c., of medical supplies.

15.—(1.) The Director-General may, for the purposes of this Act, compile and publish a list of medical practitioners or dentists recognized by him as being specialists in any field of medical science or dental science.

Specialists.

(2.) A person shall not be recognized, for the purposes of the last preceding sub-section, as being a specialist in any field of medical science or dental science unless the Director-General is satisfied—

- (a) that his practice is wholly or mainly devoted to work in that field and that he is generally recognized by medical practitioners or dentists, as the case may be, as having special skill and experience in that field; or
- (b) that he possesses special academic qualifications in that field and that he has recently held, or holds, a hospital or other appointment affording opportunities for acquiring or demonstrating special skill and experience in that field.

(3.) For the purpose of satisfying himself as provided in the last preceding sub-section, the Director-General may have regard to any list compiled by the appropriate authority of a State, or by an appropriate professional body, of medical practitioners or dentists who are recognized by that authority or body as being specialists in any field of medical science or dental science.

(4.) A person who desires his name to be included in a list compiled under sub-section (1.) of this section shall make application to the Director-General accordingly.

(5.) The Director-General may refer any such application to an appropriate advisory committee established under this Act for consideration and report and, where an application is so referred, the Director-General shall take the report into consideration before granting or refusing the application.

16. The Minister may establish such committees as he thinks fit for the purposes of this Act.

Committees.
Amended by
No. 85, 1949, s. 4.

Officers.

17. Officers and other persons employed by the Commonwealth for the purposes of this Act shall be employed under the *Commonwealth Public Service Act 1922-1948*.^(a)

Commonwealth
officers entitled
to practise in
every State.

18. An officer of the Commonwealth who is registered as a medical practitioner, dentist, nurse, pharmacist, physiotherapist or otherwise under the law of any State shall be entitled to perform his duties, in relation to any national health service, in any other State or in any Territory of the Commonwealth, notwithstanding that he is not registered in that other State or in that Territory.

Reciprocal
agreements.

19. Where an agreement between the Government of the Commonwealth and the Government of any other part of His Majesty's dominions, or the Government of any foreign country, provides for reciprocity in matters relating to the provision of medical or dental services or benefits, the regulations may provide for modifying or adapting this Act in its application to persons affected by the agreement.

Payments to
universities.

20. The Minister may, subject to the approval of the Treasurer, make payments to universities or other appropriate bodies for the purposes of—

- (a) promoting and assisting investigation and research; and
 - (b) providing courses of training,
- in medical science or dental science.

Finance.

21.—(1.) There shall be payable out of the Trust Account established under the *National Welfare Fund Act 1943-1945* and known as the National Welfare Fund all expenditure under this Act other than expenditure of a capital nature and expenditure in respect of administrative expenses incurred by or on behalf of the Commonwealth.

(2.) Other expenditure under this Act shall be paid out of moneys from time to time appropriated by the Parliament for the purpose.

Regulations.

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular—

- (a) for prescribing matters for or in relation to—
 - (i) the establishment, maintenance or conduct of any national health service;
 - (ii) the terms and conditions (including terms and conditions as to payment) subject to which a national health service may be made available;

(a) See now the *Public Service Act 1922-1950*, *infra*.

- (iii) the persons or classes of persons to whom a national health service may be made available;
 - (iv) the duties and functions of persons performing any service in connexion with a national health service; and
 - (v) the payment of remuneration and allowances to persons providing professional services for the purpose of a national health service;
- (b) for providing for the payment of compensation to a medical practitioner or dentist who—
- (i) on the date on which a hospital, health centre or clinic is established at any place in connexion with a national health service, is in practice in or near that place;
 - (ii) undertakes to make his professional services available exclusively for the purposes of a national health service; and
 - (iii) has thereby suffered or will suffer loss arising from a diminution in the value of his practice;
- (c) for prescribing the constitution, powers, functions, duties and procedure of committees established under this Act;
- (d) prescribing the fees and allowances payable to members of committees established under this Act, other than members who are officers of the Public Service of the Commonwealth or of a State;
- (e) for the making and recovery of charges in respect of medicines, materials and appliances supplied in connexion with a national health service or in respect of the replacement or repair of any appliance so supplied;
- (ea) for investing any court of a State with federal jurisdiction with respect to any matter arising under the regulations; and
- (f) for prescribing penalties not exceeding a fine of Fifty pounds, or imprisonment for a period not exceeding six months, for any offence against the regulations.

Para. (ea)
inserted by
No. 85, 1949, s. 5.

NATIONALITY AND CITIZENSHIP ACT 1948-1950.^(a)

An Act relating to British Nationality and Australian Citizenship.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title. 1. This Act may be cited as the *Nationality and Citizenship Act*
Short title amended. 1948-1950.^(a)
No. 32, 1918, s. 2.

Commence- 2. This Act shall come into operation on a date to be fixed by
ment. Proclamation.^(a)

Repeal. 3. The Acts specified in the First Schedule to this Act are repealed.

Parts. 4. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—British Nationality.

Part III.—Australian Citizenship.

Division 1.—Citizenship by Birth or Descent.

Division 2.—Citizenship by Registration.

Division 3.—Citizenship by Naturalization.

Division 4.—Loss of Citizenship.

Part IV.—Transitional Provisions.

Part V.—Miscellaneous.

Definitions. 5.—(1.) In this Act, unless the contrary intention appears—
“alien” means a person who is not a British subject, an Irish citizen or a protected person;
“Australia” includes Norfolk Island and the Territory of Papua;
“Australian consulate” means the office of a diplomatic or consular officer of the Australian Government at which a

(a) The *Nationality and Citizenship Act 1948-1950* comprises the Acts set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Nationality and Citizenship Act 1948</i>	1948, No. 83 ..	21st December, 1948	26th January, 1949 (<i>See Gazette</i> , 1949, p. 197)
<i>Nationality and Citizenship Act 1950</i>	1950, No. 58 ..	14th December, 1950	14th December, 1950

register of births is kept, or, in a country where there is no such office or in New Guinea, such office as is approved by the Minister and includes an office of the Department of Immigration;

"British subject" means a person who is, or is deemed to be, a British subject under the provisions of this Act;

"certificate of naturalization" means a certificate of naturalization granted under this Act;

"certificate of registration" means a certificate of registration granted under this Act;

"child" includes an adopted child, a step-child and a child born out of wedlock;

"foreign country" does not include a trust territory, a state or territory which is or becomes a protectorate or protected state for the purposes of the Act of the Parliament of the United Kingdom known as the British Nationality Act, 1948, the New Hebrides or Canton Island;

"naturalized person" means a person who under any law, whether in force before or after the date of commencement of this Act, becomes or became a British subject or an Irish citizen by virtue of a certificate of citizenship or a certificate of naturalization granted to him or in which his name is or was included or, in the case of a married woman, by virtue of a declaration that she desires or desired to acquire British nationality, and includes a person who under any such law was deemed to be a naturalized British subject by reason of his residence with his father or mother, but does not include a woman who—

(a) was a British subject at birth; or

(b) at any time before the date of commencement of this Act married a British subject;

"New Guinea" means the Territory of New Guinea;

"protected person" means a person who is included in such prescribed classes of persons as are under the protection of the Government of any part of His Majesty's dominions;

"responsible parent", in relation to a child, means the father of that child, or, where the father is dead or the mother has been given the custody of the child by order of a court, or the child was born out of wedlock and resides with the mother, means the mother of that child;

"service under an Australian government" means service, whether within Australia or elsewhere, under the Commonwealth or an authority of the Commonwealth or under a State or Territory or an authority of a State or Territory;

"Territory" means a Territory under the authority of the Commonwealth;

Amended by
No. 58, 1950, s. 2.

“the Australian Government” means His Majesty’s Government in the Commonwealth of Australia;

“the United Kingdom and Colonies” includes the Channel Islands and the Isle of Man;

“trust territory” means a territory administered by the government of any part of His Majesty’s dominions under the trusteeship system of the United Nations.

(2.) References in this Act to any country to which section seven of this Act applies include references to the dependencies of that country.

(3.) For the purposes of this Act—

(a) a person born on a registered ship or aircraft shall be deemed to have been born at the place at which the ship or aircraft was registered and a person born on an unregistered ship or aircraft belonging to the government of a country shall be deemed to have been born in that country;

(b) a person shall be of full age if he has attained the age of twenty-one years and of full capacity if he is not of unsound mind;

(c) a person shall be deemed not to have attained a specified age until the commencement of the relevant anniversary of the date of his birth;

(d) the United Kingdom and Colonies shall be deemed to constitute one country; and

(e) a person shall be deemed to be ordinarily resident in a country if—

(i) he has his home in that country; or

(ii) that country is the country of his permanent abode notwithstanding that he is temporarily absent therefrom,

but he shall be deemed not to be so resident if he resides in that country for a special or temporary purpose only.

Added by
No. 58, 1950, s. 3.

(4.) The provisions of this Act (other than the definition of “New Guinea” in sub-section (1.) of this section, and sub-sections (1.) and (3.) of section twenty-five) shall be construed and applied as if the Island of Nauru were part of New Guinea.

Extension
of Act to
Territories.

6. This Act shall extend to the Territories under the authority of the Commonwealth.

PART II.—BRITISH NATIONALITY.

British
nationality
by virtue of
citizenship.

7.—(1.) A person who, under this Act, is an Australian citizen or, by an enactment for the time being in force in a country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, be a British subject.

(2.) The countries to which this section applies are the following

countries, namely, the United Kingdom and Colonies, Canada, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon.

8.—(1.) An Irish citizen who, immediately prior to the date of commencement of this Act, was also a British subject shall not by reason of anything contained in the last preceding section be deemed to have ceased to be a British subject if at any time he gives notice in the prescribed form and manner to the Minister claiming to remain a British subject on all or any of the following grounds:—

Continuance of certain Irish citizens as British subjects.

- (a) that he is or has been in the service under an Australian government;
- (b) that he is the holder of an Australian passport issued by the Australian Government; or
- (c) that he has associations by way of descent, residence or otherwise with Australia or New Guinea.

(2.) A claim under the last preceding sub-section may be made on behalf of a child who has not attained the age of sixteen years by a person who satisfies the Minister that he is the responsible parent or the guardian of the child.

(3.) Where, under the law for the time being in force in a country to which section seven of this Act applies, provision corresponding to the foregoing provisions of this section is made for enabling Irish citizens to claim to remain British subjects, a person who is, by virtue of that law, a British subject shall be deemed also to be a British subject by virtue of this section.

9.—(1.) A British subject or an Irish citizen who is not an Australian citizen shall not be guilty of an offence under any law of the Commonwealth or of a Territory (other than the *Navigation Act 1912-1942*) by reason of anything done or omitted to be done in a country to which section seven of this Act applies, in Ireland or in a foreign country unless—

Laws applicable to British subjects and Irish citizens who are not Australian citizens.

- (a) the act or omission would be an offence if he were an alien; and
- (b) in the case of an act or omission in a country to which section seven of this Act applies or in Ireland, it would be an offence if the country in which the act was done or the omission made were a foreign country.

(2.) Subject to the last preceding sub-section, a law of the Commonwealth or of a Territory in force at the date of commencement of this Act and a law of the Commonwealth or of a Territory which, although passed or made prior to that date, comes into force on or after that date shall, until provision to the contrary is made, continue to have effect in relation to Irish citizens who are not British subjects in like manner as they have effect in relation to British subjects.

PART III.—AUSTRALIAN CITIZENSHIP.

*Division 1.—Citizenship by Birth or Descent.*Citizenship
by birth.

10.—(1.) Subject to this section, a person born in Australia after the commencement of this Act shall be an Australian citizen by birth.

(2.) A person shall not be an Australian citizen by virtue of this section if, at the time of his birth—

- (a) his father was not an Australian citizen and possessed the immunity from suit and legal process which is accorded to an envoy of a foreign country accredited to His Majesty; or
- (b) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

Citizenship
by descent.

11.—(1.) Subject to this section, a person born outside Australia after the commencement of this Act shall be an Australian citizen by descent if—

- (a) at the time of the birth—
 - (i) his father was an Australian citizen; or
 - (ii) in the case of a person born out of wedlock, his mother was an Australian citizen or a British subject ordinarily resident in Australia or New Guinea; and
- (b) the birth is registered at an Australian consulate within one year after its occurrence or, in special circumstances, within such extended period as the Minister allows.

(2.) A person who, after the commencement of this Act, is born in a country to which section seven of this Act applies, and whose father, or, in the case of a person born out of wedlock, whose mother, was an Australian citizen not ordinarily resident in Australia or New Guinea at the time of the birth, shall not become an Australian citizen under this section if, under the law of that country, he became a citizen of that country at birth.

*Division 2.—Citizenship by Registration.*Registration
as Australian
citizens.

12.—(1.) The Minister may, upon application in the prescribed manner, grant a certificate of registration as an Australian citizen to a person who is a citizen of a country to which section seven of this Act applies, or an Irish citizen, and satisfies the Minister—

- (a) that he is of full age and of full capacity;
- (b) that he has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, for not less than five years during the eight years immediately preceding the date of the application or, in such specified cases as the Minister, upon application in the prescribed manner, approves, for such shorter period (not being less than twelve months) as the Minister allows;

- (c) that he is of good character;
- (d) that he has an adequate knowledge of the English language or, if he has not such a knowledge, that he has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, for a continuous period of not less than twenty years;
- (e) that he has an adequate knowledge of the responsibilities and privileges of Australian citizenship; and
- (f) that he intends, if registered, to continue to reside in Australia or New Guinea or to enter or continue in the service under an Australian government, in the service of an international organization of which the Australian Government is a member, or service in the employment of a person, society, company or body of persons resident or established in Australia or New Guinea.

(2.) Notwithstanding anything contained in the last preceding sub-section, the Minister may, upon application in the prescribed form, grant a certificate of registration as an Australian citizen to a person who is a citizen of a country to which section seven of this Act applies or an Irish citizen and is not of full age or is a woman married to an Australian citizen and is residing with her husband in Australia or New Guinea as a permanent resident.

(3.) The Minister may, upon application in the prescribed form, include in a certificate of registration granted under this Act the names of any children not of full age of whom the grantee is the responsible parent or the guardian.

13.—(1.) A person to whom a certificate of registration as an Australian citizen has been granted shall be an Australian citizen by registration as from the date upon which the certificate is granted. Effect of registration.

(2.) A person whose name is under the last preceding section included in a certificate of registration shall, if not already an Australian citizen, be an Australian citizen by registration as from the date upon which his name is so included.

Division 3.—Citizenship by Naturalization.

14.—(1.) An alien or a protected person shall not be entitled to obtain a certificate of naturalization unless, not earlier than one year after his entry into Australia or New Guinea, he makes a declaration in the prescribed form of his intention to apply for the grant of a certificate of naturalization as an Australian citizen. Declaration of intention to apply for naturalization.

(2.) An alien or a protected person may make application in the prescribed form for the grant of a certificate of naturalization as an Australian citizen not earlier than two years and not later than seven years after the making of the declaration of intention or, in any case in which a declaration of intention is not required, not earlier than one year after his entry into Australia or New Guinea.

Substituted by
No. 58, 1950, s. 4.

(3.) The Minister may, if he considers that there are circumstances which justify his so doing, exempt a person from the requirements of sub-section (1.) of this section.

Citizenship by
naturalization.

15.—(1.) The Minister may grant a certificate of naturalization as an Australian citizen to an alien or to a protected person who has made application in accordance with the last preceding section and satisfies the Minister—

- (a) that he complies with qualifications corresponding to those specified in paragraphs (a), (c), (d), (e) and (f) of sub-section (1.) of section twelve of this Act;
- (b) that he has resided continuously in Australia or New Guinea, or partly in Australia and partly in New Guinea, throughout the period of one year immediately preceding the date of the application; and
- (c) that, in addition to the residence required under the last preceding paragraph, he has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, or has had service under an Australian government, or partly such residence and partly such service, for periods amounting in the aggregate to not less than four years during the eight years immediately preceding that date.

(2.) For the purposes of paragraph (c) of the last preceding sub-section, the Minister may, in such cases as he thinks fit—

- (a) allow residence in a country other than a foreign country to be reckoned as if it had been residence in Australia;
- (b) allow service under the Government of a country to which section seven of this Act applies, or of a province or territory of any such country, to be reckoned as if it had been service under an Australian government; and
- (c) allow periods of residence or service earlier than eight years preceding the date of the application to be reckoned in computing the aggregate period mentioned in that paragraph.

(3.) Notwithstanding anything contained in the preceding provisions of this Division, the Minister may, upon application in the prescribed form, grant a certificate of naturalization as an Australian citizen to an alien who is not of full age.

Substituted by
No. 58, 1950, s. 5.

(4.) Notwithstanding anything contained in section fourteen of this Act or in sub-section (1.) of this section, the Minister may, upon application in the prescribed form, grant a certificate of naturalization as an Australian citizen to an alien woman who satisfies him—

- (a) that she is the wife or widow of an Australian citizen; and
- (b) that she has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, for a continuous period of not less than one year.

(5.) The Minister may, upon application in the prescribed form, include in a certificate of naturalization granted under this Act the names of any children not of full age of whom the grantee is the responsible parent or the guardian.

16.—(1.) A person to whom a certificate of naturalization has been granted shall be an Australian citizen by naturalization— Effect of naturalization.

(a) in the case of a person who has attained the age of sixteen years—as from the date upon which he takes in the prescribed manner an oath of allegiance in accordance with the form contained in the Second Schedule to this Act; or

(b) in the case of a person who has not attained that age—as from the date upon which the certificate is granted.

(2.) A person whose name is under the last preceding section included in a certificate of naturalization shall, if not already an Australian citizen, be an Australian citizen by naturalization as from the date upon which his name is so included or the date upon which the grantee of the certificate of naturalization becomes an Australian citizen by naturalization, whichever is the later.

Division 4.—Loss of Citizenship.

17.—An Australian citizen of full age and of full capacity, who, whilst outside Australia and New Guinea, by some voluntary and formal act, other than marriage, acquires the nationality or citizenship of a country other than Australia, shall thereupon cease to be an Australian citizen. Loss of citizenship on acquisition of another nationality.

18.—(1.) Where, under the law of some country other than Australia, an Australian citizen acquires, at birth or whilst not of full age or by reason of marriage, the nationality or citizenship of that country, he may, at any time after attaining the age of twenty-one years or after the marriage, make a declaration renouncing his Australian citizenship. Renunciation of citizenship.

(2.) A person who became an Australian citizen by reason of the inclusion of his name in a certificate of registration or a certificate of naturalization granted to his responsible parent or his guardian may, at any time after attaining the age of twenty-one years, make a declaration renouncing his Australian citizenship.

(3.) Where a person ceases to be an Australian citizen or is deprived of his Australian citizenship under the provisions of this Division and his wife acquires, under the law of some country other than Australia, the nationality or citizenship of her husband, she may, at any time after acquiring that nationality or citizenship, make a declaration renouncing her Australian citizenship.

(4.) Subject to the next succeeding sub-section, the Minister shall register a declaration made under this section and thereupon the person making the declaration shall cease to be an Australian citizen.

(5.) Where, during a war in which Australia is engaged, a declaration is made under this section by a person who is a national or citizen of a foreign country, the Minister may refuse to register the declaration.

Loss of
citizenship
by reason of
service in
armed forces
of an enemy
country.

19. An Australian citizen who, under the law of a country other than Australia, is a national or citizen of that country and serves in the armed forces of a country at war with Australia shall, upon commencing so to serve, cease to be an Australian citizen.

Loss of
citizenship
by residence
outside
Australia.

20. An Australian citizen who is such by registration or is a naturalized person and, after the date of commencement of this Act, has resided outside Australia and New Guinea for a continuous period of seven years shall cease to be an Australian citizen unless—

- (a) he has, at least once during the second and each subsequent year, or at such other times as the Minister, in special circumstances, allows, during that period, given the prescribed notice, at an Australian consulate, of his intention to retain his Australian citizenship;
- (b) he has so resided by reason of his service under an Australian government or his service with an international organization of which the Australian Government is a member or his service in the employment of a person, society, company or body of persons resident or established in Australia or New Guinea;
- (c) he has given the notice referred to in paragraph (a) of this section for portion of that period and has had such service for the remainder of that period; or
- (d) he is a person not of full age and resides with his responsible parent or his guardian who is an Australian citizen.

Deprivation of
citizenship.

21.—(1.) Where the Minister is satisfied that an Australian citizen who is such by registration or is a naturalized person—

- (a) has shown himself by act or speech to be disloyal or disaffected towards His Majesty;
- (b) has, during any war in which Australia is or has been engaged, unlawfully traded or communicated with the enemy or been engaged on or associated with any business which was to his knowledge carried on in such a manner as to assist an enemy in that war;
- (c) was registered or naturalized by means of fraud, false representation or the concealment of some material circumstances;
- (d) was not, at the date on which he was registered or naturalized, of good character; or
- (e) has, within five years after that date, been sentenced in any country to imprisonment for a term of twelve months or more,

the Minister may, by order, deprive that citizen of his Australian citizenship, and thereupon the person in respect of whom the order is made shall cease to be an Australian citizen.

(2.) The Minister shall not make an order under this section in respect of a person unless satisfied that it is not conducive to the public good that that person should continue to be an Australian citizen.

(3.) Before making an order on any of the grounds set out in paragraphs (a), (b), (c) and (d) of sub-section (1.) of this section, the Minister shall give to the person in respect of whom the order is proposed to be made a notice in writing informing him of the ground on which the order may be made and that he may apply to the Minister to have the question whether the order should be made referred to a committee for inquiry and report and, if that person so applies, the Minister shall refer the question accordingly.

(4.) For the purposes of this section, the Governor-General may appoint a committee of inquiry, the chairman of which shall be a person who holds or has held the office of Justice or Judge of a Federal Court or of a Court of a State or Territory or who is or has been a barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing.

(5.) The practice and procedure and the powers, rights and privileges of a committee appointed under this section shall be as prescribed.

22. Where an Australian citizen who—

- (a) is a naturalized person; and
- (b) was a citizen of a country to which section seven of this Act applies and has, under a provision of the law of the country of which he was such a citizen, been deprived of citizenship of that country on grounds which, in the opinion of the Minister, are substantially similar to any of the grounds specified in sub-section (1.) of the last preceding section,

Deprivation of Australian citizenship of persons deprived of citizenship elsewhere.

the Minister may, if he is satisfied that it is not conducive to the public good that that person should continue to be an Australian citizen, by order, deprive that person of his Australian citizenship, and thereupon that person shall cease to be an Australian citizen.

23.—(1.) Where the responsible parent or the guardian of a person not of full age ceases to be an Australian citizen under section seventeen, eighteen, nineteen or twenty of this Act, that person shall cease to be an Australian citizen if he is or thereupon becomes, under the law of some country outside Australia, a national or citizen of that country.

Children of persons who lose or are deprived of citizenship.

(2.) Where a person is deprived of his Australian citizenship under section twenty-one or twenty-two of this Act, the Minister

may, by order, direct that all or any of the children of whom that person is the responsible parent or the guardian and who are not of full age shall cease to be Australian citizens, and thereupon they shall cease to be Australian citizens.

(3.) A person who has ceased to be an Australian citizen under the preceding provisions of this section may, within one year after attaining the age of twenty-one years or, in special circumstances, within such extended period as the Minister allows, make a declaration that he wishes to resume Australian citizenship and, upon the registration of the declaration in the prescribed manner, he shall again become an Australian citizen.

PART IV.—TRANSITIONAL PROVISIONS.

Definition of
British subject
for the
purposes of
this Part.

24. In this Part, "British subject" includes a person who was, immediately prior to the date of commencement of this Act, entitled in Australia or a Territory to all political and other rights, powers and privileges to which a natural-born British subject was then entitled.

Transitional
provisions.

25.—(1.) A person who was a British subject immediately prior to the date of commencement of this Act shall, on that date, become an Australian citizen if—

- (a) he was born in Australia and would have been an Australian citizen if section ten of this Act had been in force at the time of his birth;
- (b) he was born in New Guinea;
- (c) he was a person naturalized in Australia; or
- (d) he had been, immediately prior to the date of commencement of this Act, ordinarily resident in Australia or New Guinea, or partly in Australia and partly in New Guinea, for a period of at least five years.

(2.) A person shall not become an Australian citizen by virtue of the last preceding sub-section if, but for paragraph (d) of that sub-section, he would have ceased to be a British subject on the date of commencement of this Act.

(3.) A person born outside Australia and New Guinea—

- (a) who was a British subject immediately prior to the date of commencement of this Act;
 - (b) whose father was a person to whom paragraph (a), (b) or (c) of sub-section (1.) of this section applies; and
 - (c) who enters or entered Australia,
- shall become an Australian citizen on that date or on the date upon which he enters Australia, whichever is the later.

(4.) A woman who—

- (a) was a British subject immediately prior to the date of commencement of this Act;

(b) had, prior to that date, been married to a person who becomes or, if he is dead, would, but for his death, have become an Australian citizen under this section; and

(c) entered Australia prior to that date,
shall on that date become an Australian citizen.

(5.) A person who was born out of wedlock outside Australia, the countries to which section seven of this Act applies and Ireland and, prior to the date of commencement of this Act, entered Australia shall become an Australian citizen on that date if his mother was at the time of his birth a British subject ordinarily resident in Australia or New Guinea.

(6.) A person who entered Australia prior to the date of commencement of this Act and who, at the time of his entry or subsequently, was—

(a) a prohibited immigrant within the meaning of the Immigration Act; or

(b) a person who had applied for, or was issued with, a certificate of exemption under section four of that Act, shall not become an Australian citizen under this section unless, prior to that date, he had been granted permission by the Minister, or by an officer under that Act, to remain in Australia for permanent residence.

(7.) A person who enters Australia after the commencement of this Act and who, at the time of his entry, is—

(a) a prohibited immigrant within the meaning of the Immigration Act; or

(b) a person who applies for, or is issued with, a certificate of exemption under section four of that Act,
shall not become an Australian citizen under this section.

(8.) In this section—

“the Immigration Act” means the *Immigration Restriction Act* 1901, and, when considered in relation to any time, means that Act as amended as in force at that time;

“person naturalized in Australia” means—

(a) a person to whom a certificate of naturalization was granted in Australia or a Territory;

(b) a person who, by reason of the inclusion of his name in any such certificate, was deemed to be a person to whom a certificate of naturalization was granted;

(c) a person who, by virtue of any law in force in Australia or a Territory, was deemed to be a naturalized British subject by reason of his residence with his father or mother; or

(d) a married woman who, by virtue of any such law, made a declaration that she desired to acquire British nationality.

British subjects
without
citizenship.

26.—(1.) A person who—

- (a) was a British subject immediately prior to the date of commencement of this Act; and
- (b) was not at that date an Australian citizen or a citizen of a country to which section seven of this Act applies or an Irish citizen,

shall remain a British subject without citizenship, but shall cease to be a British subject without citizenship if he becomes an Australian citizen, a citizen of any such country, an Irish citizen or an alien.

(2.) Subject to the next two succeeding sub-sections, the law in force in Australia, immediately prior to the date of commencement of this Act, in relation to British nationality shall continue to apply, as if this Act had not been passed, to a person who remains, or is deemed to be, a British subject without citizenship while he remains, or is deemed to be, such a British subject.

(3.) Where a person who remains, or is deemed to be, a British subject without citizenship marries a woman who is not a British subject, she shall not, by reason of the marriage, become a British subject.

(4.) Where a woman who remains, or is deemed to be, a British subject without citizenship marries an alien or an Irish citizen she shall not, by reason of the marriage, cease to be a British subject.

(5.) A person who, after the date of commencement of this Act is born in a country outside Australia shall, if he becomes a British subject by virtue of the law in force in a country to which section seven of this Act applies but does not, under this Act or the law in force in any such country, become an Australian citizen or a citizen of any such country, be deemed to be a British subject without citizenship, but shall cease to be a British subject without citizenship if he becomes an Australian citizen, a citizen of any such country, an Irish citizen or an alien.

(6.) A person who remains, or is deemed to be, a British subject without citizenship shall, for the purposes of any application made by him for registration as an Australian citizen, be deemed to be a citizen of a country to which section seven of this Act applies.

Women who
have ceased
to be British
subjects by
reason of
marriage.

27. Where, at any time prior to the date of commencement of this Act, a woman ceased to be a British subject by reason that—

- (a) on her marriage to an alien she acquired the nationality of her husband; or
- (b) during the continuance of the marriage, her husband, being a British subject, acquired a new nationality and, by reason of her husband acquiring the new nationality, she also acquired that nationality,

she shall be deemed, for the purposes of this Act, to have been a British subject immediately prior to that date.

28.—(1.) Where a person whose British nationality was conditional upon his complying with the second proviso to sub-section (1.) of section six of the *Nationality Act* 1920, or of that Act as amended from time to time, failed to comply with that proviso, that person shall, if he would, but for that failure, have been a British subject immediately prior to the date of commencement of this Act, be deemed, for the purposes of this Act, then to have been a British subject.

Persons who have ceased to be British subjects by failure to make declaration of retention of British nationality.

(2.) In determining whether, for the purposes of the last preceding sub-section, a woman who has married an alien would, but for her failure to comply with the proviso referred to in that sub-section, have been a British subject immediately prior to the date of the commencement of this Act, the marriage shall be disregarded.

29. A person whose father or mother was granted a certificate of naturalization in Australia before the first day of January, One thousand nine hundred and twenty-one, and who, by reason only that the certificate was not a certificate of naturalization as defined in section five of the *Nationality Act* 1920, was not deemed to be a British subject, shall be deemed, for the purposes of this Act, to have been a British subject immediately prior to the date of commencement of this Act.

Children of persons naturalized before 1st January, 1921.

30.—(1.) This section shall apply to any person who—

- (a) under the provisions of sub-section (1.) of section twenty of the *Nationality Act* 1920, or of that Act as amended from time to time, ceased to be a British subject by reason that he was a minor child of a person ceasing to be a British subject; and
- (b) on the date of commencement of this Act, would, but for the provisions of that sub-section, have been either an Australian citizen, or a British subject without citizenship by virtue of section twenty-six of this Act,

Citizenship of children who cease to be British subjects on loss of British nationality of parents.

and, in determining whether, for the purposes of this section, a woman who had married an alien would, but for those provisions, have been an Australian citizen or such a subject, the marriage shall be disregarded.

(2.) If a person to whom this section applies makes a declaration in the prescribed manner, within one year after the date of the commencement of this Act or the date upon which he attains the age of twenty-one years, whichever is the later, or within such further period as the Minister allows, that he wishes to resume British nationality, the Minister shall cause the declaration to be registered.

(3.) Upon the registration of the declaration, the person who made the declaration shall become an Australian citizen or, as the case may be, a British subject without citizenship.

(4.) The provisions of section twenty-six of this Act shall apply

to a person who, under this section, becomes such a British subject without citizenship.

Application for naturalization pending at the commencement of the Act.

31.—(1.) Where an application for a certificate of naturalization was made to the Minister prior to the date of commencement of this Act but was not granted before that date and the person to whom the application relates satisfies the Minister that he complies with paragraphs (a), (b) and (c) of sub-section (1.) of section fifteen of this Act, the Minister may treat the application as if it were an application under this Act for a certificate of naturalization and the provisions of this Act shall apply accordingly.

(2.) Where an application for a certificate of naturalization was made before, or is made within two years after, the date of commencement of this Act, the Minister may grant the application notwithstanding that the provisions of section fourteen of this Act have not been complied with.

PART V.—MISCELLANEOUS.

Certificate of registration or naturalization in case of doubt.

32.—(1.) Notwithstanding anything contained in this Act, the Minister may, upon application in accordance with the prescribed form, grant a certificate of registration or a certificate of naturalization as an Australian citizen to a person with respect to whose status as an Australian citizen a doubt exists.

(2.) Before granting the certificate, the Minister may require that person to comply with such provisions of this Act as the Minister specifies.

(3.) A certificate granted under this section shall, unless it is proved that it was obtained by means of fraud, a false representation or the concealment of some material fact, be conclusive evidence that the person was an Australian citizen on the date of the certificate but without prejudice to any evidence that he was an Australian citizen at an earlier date.

Citizenship by incorporation of territory.

33.—(1.) If any territory becomes a part of Australia, the Governor-General may, by order published in the *Gazette*, declare that the persons included in such classes of persons as are specified in the order shall, as from such date as is so specified, become Australian citizens by reason of their connexion with that territory.

(2.) A person included in any such class shall, as from the date so specified, become an Australian citizen.

Legitimated children.

34.—(1.) A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage or of the commencement of this Act, whichever is the later, be treated, for the purpose of determining whether he is an Australian citizen, or was a British subject immediately prior to the date of the commencement of this Act, as if he had been born in wedlock.

(2.) A person shall not, for the purposes of this section, be deemed to have been legitimated by the subsequent marriage of his parents unless, by the law of the place in which his father was domiciled at the time of the marriage, the marriage operated immediately or subsequently to legitimate him.

35.—(1.) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death. Posthumous children.

(2.) Where the death occurred prior to, and the birth occurred after, the date of commencement of this Act, the status or description which would have been applicable to the father if he had died after that date shall be deemed to be the status or description applicable to him at the time of his death.

36.—(1.) An applicant for a certificate of naturalization shall advertise in the prescribed manner his intention to apply for naturalization and shall satisfy the Minister in the prescribed manner that he has done so. Evidence in support of application for registration or naturalization. Amended by No. 58, 1950, s. 6.

(2.) An applicant for a certificate of registration or a certificate of naturalization, being a person of full age, shall produce in support of his application—

- (a) his own statutory declaration stating his name, age, birthplace, occupation and residence, and such other matters as are prescribed; and
- (b) certificates of character from three Australian citizens, two of whom are householders and one of whom is a Justice of the Peace, a postmaster, a teacher of a public school, an officer of the Police force of the Commonwealth or of a State or a Territory, or any other person included in a class of persons approved by the Minister.

37.—(1.) A person may make representations to the Minister in respect of a person who has applied, or has advertised his intention to apply, for a certificate of registration or a certificate of naturalization. Representations to Minister with regard to any person who has applied for registration or naturalization.

(2.) The representations shall be supported by a statutory declaration.

38. Any period during which an applicant for a certificate of registration or a certificate of naturalization is confined in a gaol, reformatory, prison or hospital for the insane in Australia or New Guinea shall be disregarded in determining the period of residence for the purposes of the grant of such a certificate. Confinement in gaol not to be reckoned as residence.

39. Where a question arises under this Act whether a person was ordinarily resident in Australia or New Guinea, the question may be determined by the Minister and his decision thereon shall be final. Determination of questions of residence, &c.

Discretion of
Minister.

40. The Minister may grant or refuse an application made to him without assigning any reason.

Formalities
regarding oath
of allegiance.

41. The Minister may make arrangements for the oath of allegiance under this Act to be taken in public before a Justice, Judge or Magistrate of the Commonwealth or of a State or Territory and to be accompanied by proceedings designed to impress upon applicants the responsibilities and privileges of Australian citizenship.

Record of
certificates
and fees.

42. The Minister shall—

- (a) enrol as of record memorials of all certificates of registration and certificates of naturalization;
- (b) cancel all such certificates the holders of which have been deprived of Australian citizenship;
- (c) cause to be made indexes of certificates of registration and of certificates of naturalization and permit any person at all reasonable times to inspect the indexes and to make copies of the certificates on payment of the prescribed fee;
- (d) cause to be laid before both Houses of the Parliament as soon as practicable after the thirtieth day of June in each year a return showing the number of persons to whom certificates of registration and certificates of naturalization have been granted, their former nationality or citizenship, and the countries in which they ordinarily resided immediately before entering Australia or New Guinea; and
- (e) cause to be published in the *Gazette* from time to time a list of the names and addresses of persons to whom certificates of registration and certificates of naturalization have been granted or who have been deprived of Australian citizenship.

Evidence of
declarations.

43. A declaration made under this Act or under any other Act which was at any time in force in relation to nationality or naturalization may be proved in legal proceedings by the production of a copy of the original declaration certified by the Minister or by a person thereto authorized in writing by the Minister to be a true copy, and the production of the declaration or copy shall be evidence that the person therein named as declarant made the declaration on the date therein mentioned.

Evidence of
entries in
registers.

44. An entry in a register made under this Act or under any other Act which was at any time in force in relation to nationality or naturalization may be proved by a copy certified by the Minister or by a person thereto authorized in writing by the Minister, to be a true copy of the entry, and the copy of the entry shall be evidence of any matters authorized by or under this Act or any other such Act to be inserted in the register.

45. For the purposes of the next four succeeding sections, "certificate of naturalization" includes a certificate of naturalization issued under an Act repealed by this Act or by any other Act or under a State Act or under an Ordinance of a Territory.

Definition of certificate of naturalization for certain purposes.

46. A certificate of registration, a certificate of naturalization or an order under this Act may be proved in legal proceedings by the production of a copy of the original certificate or order certified by the Minister or by a person thereto authorized in writing by the Minister to be a true copy.

Evidence of certificates of naturalization or orders.

47.—(1.) Where the Minister is satisfied that it is desirable for any reason that a certificate of registration or a certificate of naturalization should be amended, he may amend the certificate.

Amendment of certificates.

(2.) A certificate which has been amended in pursuance of this section shall be of effect as so amended and the Minister shall cause the memorial of the certificate enrolled under section forty-two of this Act to be amended accordingly.

48. Where an order is made under this Act depriving a person of his Australian citizenship, that person shall, on or before the date upon which the order takes effect, surrender his certificate of registration or his certificate of naturalization, as the case may be, to the Minister for cancellation.

Certificate of registration or naturalization to be surrendered where order of deprivation made.

Penalty: One hundred pounds.

49. A person shall not, except in accordance with this Act or any other law or as prescribed—

Offences in relation to certificates.

(a) part with the possession of a certificate of registration or a certificate of naturalization granted to him; or

(b) receive, or have in his possession, a certificate of registration or a certificate of naturalization not granted to him.

Penalty: One hundred pounds.

50. A person shall not, for any of the purposes of this Act, knowingly make a false representation or a statement false in a material particular.

Penalty for false representation or statement.

Penalty: Imprisonment for three months.

51. Where in any Act or Ordinance or in any instrument under an Act or an Ordinance (including rules, regulations and by-laws) a reference is made to a British subject, howsoever expressed, and no distinction is made between the rights, powers, privileges, obligations, duties or liabilities of natural-born British subjects and those of naturalized British subjects, the reference shall be read as a reference to a British subject within the meaning of this Act.

Reference in other laws to British subjects.

Provisions of
this Act to be
exclusive of
State laws.

52. The provisions of this Act shall apply to the exclusion of any provisions, providing for British nationality or Australian citizenship, of any law of a State, whether the law was passed or made before or after the commencement of this section.

Regulations.

53. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for or in relation to—

- (a) the time within which anything required or authorized to be done under this Act shall be done;
- (b) the registration of anything required or authorized under this Act to be registered;
- (c) the administration and taking of an oath of allegiance for the purposes of this Act;
- (d) the giving of any notice which under this Act is required or authorized to be given to any person;
- (e) the registration of the births and deaths of persons included in any class or description of persons born or dying elsewhere than in Australia;
- (f) the imposition and recovery of fees in respect of—
 - (i) any application under this Act;
 - (ii) any registration, the making of any declaration, the grant of any certificate or the taking of the oath of allegiance authorized to be made, granted or taken under this Act; and
 - (iii) the supplying of a certified or other copy of any declaration, certificate or oath made, granted or taken under this Act;
- (g) the issue of certificates declaratory of the Australian citizenship of persons who are Australian citizens;
- (h) the conditions upon which persons may render, for reward, services in respect of applications under this Act including the charges which may be made in respect of any such service;
- (i) the imposition of penalties not exceeding a fine of Fifty pounds, or imprisonment for a period not exceeding six months, for any offence against the regulations; and
- (k) the investing of any court of a State with federal jurisdiction to order reparation for loss suffered by reason of any offence against this Act or the regulations.

THE SCHEDULES.

FIRST SCHEDULE.

Section 3.

ACTS REPEALED.

Nationality Act 1920.
Nationality Act 1925.
Nationality Act 1930.
Nationality Act 1936.
Nationality Act 1946.
Nationality Act (No. 2) 1946.

SECOND SCHEDULE.

Section 16.

OATH OF ALLEGIANCE.

I, A.B., swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King George the Sixth, his heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

NATIONALITY AND CITIZENSHIP (BURMESE) ACT 1950.^(a)

An Act to make certain Provisions with respect to British Nationality and Australian Citizenship in consequence of the fact that Burma has ceased to be part of His Majesty's Dominions.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title:

1. This Act may be cited as the *Nationality and Citizenship (Burmese) Act 1950*.^(a)

Certain persons to cease to be British subjects

2.—(1.) Subject to this Act, every person who, by virtue of section two of the Imperial Act known as the Burma Independence Act, 1947, ceased, on the fourth day of January, One thousand nine hundred and forty-eight, to be a British subject under the law of the United Kingdom but was, immediately before the date of commencement of this Act, a British subject under the law of Australia shall, upon the date of commencement of this Act, cease to be a British subject under the law of Australia.

(2.) Subject to this Act, every woman married or child born after the fourth day of January, One thousand nine hundred and forty-eight, who, immediately before the date of commencement of this Act, was a British subject under the law of Australia by reason only of marriage to, or descent from, a person who, under the last preceding sub-section, ceases to be a British subject under the law of Australia, or has died before the date of commencement of this Act and, but for his death, would have so ceased, shall, upon the date of commencement of this Act, cease to be a British subject under the law of Australia.

(3.) Neither of the last two preceding sub-sections applies to a person who, immediately before the date of commencement of this Act, had the status of a British subject under the law of the United Kingdom and did not possess that status by reason only of Australian citizenship.

Provisions with respect to Australian citizens.

3.—(1.) A person who—

(a) by virtue of section two of this Act, ceases to be a British subject; and

(b) was, immediately before the date of commencement of this Act, an Australian citizen,

shall, subject to this section, cease, on the date of commencement of this Act, to be an Australian citizen.

(a) No. 12, 1950; assented to on 1st July, 1950; commenced on 29th July, 1950.

(2.) A person referred to in the last preceding sub-section may, by a declaration made in the prescribed manner within two years after the date of commencement of this Act, elect to remain an Australian citizen.

(3.) Upon the registration, as prescribed, of a declaration so made by a person, the provisions of the last preceding sub-section and of section two of this Act shall be deemed never to have applied to that person, or to any child of his who, at the date on which the declaration is made, is under the age of eighteen years and whose name is included in the declaration.

(4.) The exercise by a person of a right of election under sub-section (2.) of this section shall not operate so as to render unlawful anything done before the date on which the election became effective which would have been lawful if the election had not been made.

4. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for or in relation to—

- (a) the imposition and recovery of fees for—
 - (i) any registration under this Act; or
 - (ii) the supplying of a certified or other copy of any declaration registered under this Act; and
 - (b) the imposition of penalties, not exceeding a fine of Fifty pounds, or imprisonment for six months, for any offence against the regulations.
-

NATIONAL OIL PROPRIETARY LIMITED AGREEMENT ACT 1937.^{(a)(b)}

An Act to approve an Agreement made between the Commonwealth of Australia of the First Part, the State of New South Wales of the Second Part, and National Oil Proprietary Limited of the Third Part, and for other purposes.

Preamble. **B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

Short title. **1.** This Act may be cited as the *National Oil Proprietary Limited Agreement Act 1937.*^{(a)(b)}

Definitions. **2.** In this Act, unless the contrary intention appears—
 “the Agreement” means the agreement a copy of which is set forth in the Schedule to this Act;
 “the Company” means National Oil Proprietary Limited;
 “the land” means the land described in the First Part of the Fourth Schedule to the Agreement.

Approval and ratification of Agreement. **3.** The Agreement is approved and ratified.

Plant, &c., to be admitted free of Customs duty. **4.** Notwithstanding anything contained in any Act relating to the imposition of duties of Customs, no duties of Customs shall be imposed and collected in respect of—

(a) the entry into Australia of the cracking plant required by the Company for the development of the shale oil industry on the land and such other plant so required by the Company as in the opinion of the Company and the Commonwealth cannot be satisfactorily and economically manufactured in Australia; and

(b) the entry into Australia, during the period ending on the thirty-first day of December, One thousand nine hundred and sixty-four, of the products required by the Company for ethylising its petrol or treating its petrol by any process in substitution for the ethylising process.

Depreciation. **5.—(1.)** Notwithstanding anything contained in the laws of the Commonwealth relating to income taxation, where depreciation is

(a) No. 23, 1937; assented to, and commenced, on 16th September, 1937.

(b) See the *National Oil Proprietary Limited Agreement Act 1939, infra*.

to be allowed in accordance with the provisions of paragraph (a) of clause sixteen of the Agreement, that depreciation shall, in lieu of the depreciation allowable by those laws, be allowed for the purpose of assessing under those laws the income of the Company derived from the business of producing petrol, oil and other products from shale mined on the land.

(2.) This section shall continue in operation for the period of twenty years from the date of the ratification of the Agreement by the Parliaments of the Commonwealth and the State of New South Wales, and no longer.

6. Without affecting the other remedies of the Commonwealth, the remedies of mandamus or injunction in the High Court of Australia or in the Supreme Court of New South Wales shall, at the suit of the Commonwealth or the Attorney-General of the Commonwealth, lie for enforcing the provisions of clause twenty-three of the Agreement.

Remedies relating to alteration of Memorandum and Articles of Association.

7. There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, such sums as are necessary for the purpose of meeting the liabilities of the Commonwealth arising under or out of the Agreement.

Appropriation.

THE SCHEDULE.

MEMORANDUM OF AGREEMENT made the twenty third day of July 1937 BETWEEN the COMMONWEALTH OF AUSTRALIA (hereinafter called "the Commonwealth") of the first part the STATE OF NEW SOUTH WALES (hereinafter called "the State") of the second part and NATIONAL OIL PROPRIETARY LIMITED (hereinafter called "the Company") of the third part WHEREAS the Commonwealth is desirous of inducing the development of the shale oil industry for national defence purposes AND WHEREAS the Commonwealth has caused experimental mining retorting and distilling operations to be carried on on certain lands within an area of about 55,000 acres situated in the Parishes of Gindantherie Goolloinboin Barton Glen Alice and Capertee Counties of Cook and Hunter State of New South Wales such area being the land referred to and described in an Authority to Prospect issued to the Commonwealth by the Secretary for Mines of the State on the eleventh day of January 1937 pursuant to Application No. 48 made at Lithgow in the said State and being the land described in the First Part of the Fourth Schedule hereto (which land is hereinafter called "the said land") AND WHEREAS the State also is desirous of developing the said industry on the said land AND WHEREAS the Commonwealth and the State have caused investigations to be made concerning the development of the said shale oil industry AND WHEREAS by notice published in the Commonwealth of Australia Gazette

(a) For variations of this Agreement see the Schedule to the *National Oil Proprietary Limited Agreement Act 1939, infra*.

THE SCHEDULE—*continued*.

dated the 28th day of May 1936 the Commonwealth invited offers from persons willing to develop the shale oil industry on the said land AND WHEREAS the Company has been formed for the purpose of developing the shale oil industry on the said land and intends forthwith to carry such purpose into execution AND WHEREAS the Company has been registered as a Proprietary Company under the Companies Act 1936 of the State AND WHEREAS the Memorandum of Association of the Company contains the condition set out in the First Schedule hereto AND WHEREAS for the purpose of developing and carrying on the shale oil industry on the said land the Company has applied to the Commonwealth and to the State for the loan of moneys and assistance in other respects which the Commonwealth and the State have agreed to grant as hereinafter appears subject to and upon the terms and conditions hereinafter mentioned to which the Company has agreed AND WHEREAS the parties hereto have agreed to execute this Agreement accordingly NOW IT IS HEREBY AGREED as follows:

1.—THE Company HEREBY COVENANTS AND AGREES with the Commonwealth and the State and as a separate agreement with each of them—

- (a) THAT it will upon and after the ratification of this Agreement by the Parliaments of the Commonwealth and the State commence and continuously proceed with the erection construction and provision on the said land or on other land purchased or leased by the Company for the purposes of the said industry of buildings improvements workings plant and machinery for the development and establishment of the shale oil industry on the said land and will expend for such purposes (inter alia) the whole of the amounts advanced to the Company by the Commonwealth and the State under this Agreement so that at the first day of January 1940 the Company shall have in operation on the said land and other lands as aforesaid complete works capable of and properly equipped for extensively carrying on the business of producing petrol and oil from the shale in the said land.
- (b) THAT in the event of the Company failing to erect construct and provide such complete works as required by the preceding sub-clause within the time as thereby provided the Company will pay as liquidated damages and not as penalty the sum of Ten thousand six hundred and sixty-six pounds thirteen shillings and four pence (£10,666 : 13 : 4) to the Commonwealth and the sum of Five thousand three hundred and thirty-three pounds six shillings and eight pence (£5,333 : 6 : 8) to the State.
- (c) If through any cause beyond the control of the Company and not arising from or due to or contributed to by any neglect default or misconduct of the Company or its agents or servants delay occurs in the erection construction and provision by the Company of such complete works as provided by paragraph (a) of this Clause the Company may from time to time within three months of the happening or occurring of the event or matter causing the delay apply in writing to the Auditor-General for an extension of time on account of such event or matter setting forth the cause of such application and the Auditor General shall if he thinks the cause sufficient and within the foregoing provisions of this paragraph (c) but not otherwise allow by writing under his hand such extension of time as he may think adequate.
- (d) UNLESS the Company shall make such application within the time and in the manner aforesaid and unless and until the Auditor General shall allow such extension or extensions of time as aforesaid the Company shall not by reason of any delay arising as in the preceding paragraph mentioned be relieved in any way or to any extent of its liability to erect construct and provide such complete works as provided by paragraph (a) of this Clause within the time as therein provided or of any other liability or obligation of the Company under this Agreement.
- (e) The expression "Auditor General" where used in this Agreement shall mean the Auditor General of New South Wales or the person acting as such for the time being.

THE SCHEDULE—*continued.*

2.—(a) SUBJECT to the provisions hereinafter contained or referred to the Commonwealth shall make advances to the Company by way of loan at interest as hereinafter mentioned to the amount of Three hundred and thirty-four thousand pounds (£334,000) upon the security hereinafter provided for.

(b) SUBJECT to the provisions hereinafter contained or referred to the State shall make advances to the Company by way of loan at interest as hereinafter mentioned to the amount of One hundred and sixty six thousand pounds (£166,000) upon the security hereinafter provided for.

3.—NO advance whatsoever shall be made by the Commonwealth or by the State until at least One hundred and sixty-six thousand six hundred and sixty seven (166,667) shares of £1 each in the Company have been subscribed and allotted subject to the payment of the whole amount thereof in cash and have been paid for to five shillings per share.

4.—THE advances so to be made by the Commonwealth and the State shall subject to the provisions of this Agreement be made from time to time to the Company as the capital of the Company is paid up in cash and the total amount of all advances made by the Commonwealth and the State shall not at any time be more than three (3) times the amount of the capital of the Company actually paid up in cash.

5.—THE Commonwealth and the State shall make their respective advances to the Company simultaneously and until the State has paid the final amount of its advances the amount of each Commonwealth advance shall be twice the amount of each State advance. Subject to the provisions of this Agreement such advances shall be made by the Commonwealth and the State within fourteen (14) days of a request therefor being lodged by the Company with the Prime Minister and the Premier.

6.—NEITHER the Commonwealth nor the State shall be liable to re-advance to the Company the whole or any part of any moneys which have been repaid by the Company to the Commonwealth or the State.

7.—IT is a condition precedent to the right of the Company to claim any advance whatsoever from the Commonwealth or the State that it has fulfilled all the obligations on its part to be fulfilled under this Agreement and under each of the Deeds of Covenant and Charge hereinafter mentioned so far as such obligations are capable of being fulfilled at the time when a claim for an advance is made.

8.—AMOUNTS advanced by the Commonwealth and the State to the Company or such parts thereof as shall for the time being remain owing by the Company shall bear interest at the rate of four and one-half (4½) per centum per annum accruing from day to day and computed from the respective dates upon which such amounts were advanced and the Company covenants and agrees with the Commonwealth to pay such interest to the Commonwealth on the amounts advanced by it (or such parts thereof as remain owing) half-yearly on the 30th day of June and the 31st day of December in each year until the whole amounts of such advances are repaid to the Commonwealth and the Company covenants and agrees with the State to pay such interest to the State on the amounts advanced by it (or such parts thereof as remain owing) half yearly on the 30th day of June and the 31st day of December in each year until the whole amounts of such advances are repaid to the State.

9.—(1) THE Company shall at or before the end of each of the first nineteen years computed from the 1st day of January 1940 apply its income for the year in the following order viz:

Firstly: in payment of reasonable working expenses (including interest) for the year.

Secondly: on account of reasonable working expenses (including interest) for previous years to the extent to which income in such years was insufficient for such purposes

Thirdly: in making reasonable provision for taxation in respect of the year

Fourthly: in payment (in reduction of principal) of an amount equal to one-twentieth of the highest amount of advances made by the

THE SCHEDULE—*continued.*

Commonwealth and the State to the Company at any time prior to the close of the year in respect of which the payment is made

Fifthly: in payment (in reduction of principal) of amounts (if any) which would have been payable fourthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid

Sixthly: in transferring to a reserve an amount to cover depreciation for the year calculated in accordance with Clause 16 of this Agreement

Seventhly: in transferring to such reserve amounts (if any) which would have been so transferable sixthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become so transferable and have not been so transferred.

Eighthly: in payment of a dividend not exceeding ten (10) per centum for the year on the subscribed capital of the Company for the time being actually paid in cash.

Ninthly: in payment of dividends (if any) which would have been payable eighthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid.

Tenthly: in payment (in reduction of principal) to the Commonwealth and to the State on account of moneys advanced by them

(2) IF the amount provided thirdly is found to exceed the amount actually required for taxation, the excess shall be paid in reduction of principal and if the said amount provided thirdly is found to be insufficient the deficiency shall be regarded and treated as a working expense in the year in which the taxation is paid.

(3) OF the amounts payable in reduction of principal, viz. the amounts payable fourthly, fifthly and tenthly, and excess provision for taxation the Company shall until all amounts advanced by the State have been repaid pay to the Commonwealth two equal third parts, and to the State one equal third part, and the Company shall make such payments simultaneously. After all amounts advanced by the State have been repaid amounts payable in reduction of principal shall be paid to the Commonwealth. When the income of the Company is sufficient to enable a payment to be made in reduction of principal, the amount payable shall be paid within six (6) weeks from the close of the year from the income of which the payment is to be made. Excess provision for taxation shall be payable in reduction of principal within one month after the amount of taxation is ascertained.

(4) The Company shall not use the depreciation reserve for the purpose of any payment in the nature of a dividend

(5) THIS Clause shall cease to have effect if within the period of nineteen years referred to in sub-clause (1) hereof the Company shall have repaid in accordance with this Agreement all amounts advanced to the Company by the Commonwealth and the State.

10.—WITHIN thirteen (13) months after the close of the period of nineteen (19) years referred to in Clause 9 hereof the Company shall repay to the Commonwealth and to the State the balances (if any) of the amounts of advances outstanding. In this respect time shall be of the essence of the contract.

11.—IF any time the Company shall be desirous of making repayments in reduction of the amounts advanced by the Commonwealth and the State in addition to the repayments hereinbefore provided for it may simultaneously tender two equal third parts of the proposed additional repayment to the Commonwealth and one equal third part thereof to the State and the Commonwealth and the State shall accept the amounts so tendered if at the time of such tenders the Company has fulfilled all the obligations on its part to be fulfilled under the provisions of this Agreement and of each of the Deeds of Covenant

THE SCHEDULE—*continued*.

and Charge hereinafter mentioned so far as such obligations are capable of being fulfilled at the time of such tenders.

12.—NOTWITHSTANDING anything in this Agreement contained before any advance is made by the Commonwealth or the State to the Company the Company shall execute and deliver to each of them the Commonwealth and the State as security for the advances to be made by it and interest thereon a Deed of Covenant and Charge in accordance with the form contained in the Second Schedule hereto with such variations modifications and additions as the Prime Minister of the Commonwealth and the Premier of the State and the Company consider necessary or desirable and so that the said Deeds of Covenant and Charge shall rank *pari passu* as a first charge on the property and assets of the Company comprised therein or subject thereto without any preference or priority one over the other.

13.—FOR the period ending on the 31st day of December 1964 the Commonwealth will grant protection to petrol produced by the Company from shale mined on the said land up to ten million gallons per annum against imported petrol and petrol produced from imported crude oil to the extent of the Customs Duty excise duty and primage at present operating but no further. If the present rates of Customs Duty (seven pence per gallon) and Primage Duty (four-tenths of one penny per gallon) on imported petrol or the present rate of Excise Duty (five and one-half pence per gallon) on petrol produced from imported crude oil are reduced during the said period ending on the 31st December 1964 a bounty equivalent to the amount of such reduction will be paid by the Commonwealth on petrol produced by the Company as aforesaid up to ten million gallons per annum. For the purposes of this clause "petrol" means petrol, naphtha, benzine, benzoline, benzol, gasoline, pentane and any other petroleum or shale spirit.

14.—THE Commonwealth shall permit the entry into Australia free of Customs Duty of the cracking plant required by the Company for the development of the shale oil industry on the said land and such other plant as in the opinion of the Company and the Commonwealth cannot be satisfactorily and economically manufactured in Australia and also during the period ending on the 31st December 1964 mentioned in Clause 13 of this Agreement the products required by the Company for ethylising its petrol or treating its petrol by any process hereafter used in substitution for the said ethylising process.

15.—(a) IF in the opinion of the Commonwealth or an authority of the Commonwealth the prices and qualities of the petrol produced by the Company from shale mined on the said land are equal to the prices and qualities of other petrols the Commonwealth will so far as may be considered practicable in the circumstances give preference to the petrol produced by the Company as aforesaid when purchasing supplies in bulk for Commonwealth Departments during a period of twenty-five years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State PROVIDED that if the petrol produced by the Company as aforesaid is blended with imported petrol or petrol produced from imported crude oil this preference shall not apply to the blend but the right to preference shall not be lost by the inclusion of any ethylising or similar substance.

(b) IF in the opinion of the State or an authority of the State the prices and qualities of the petrol produced by the Company from shale mined on the said land are equal to the prices and qualities of other petrols the State will so far as may be considered practicable in the circumstances give preference to the petrol produced by the Company as aforesaid when purchasing supplies in bulk for State Departments during a period of twenty-five years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State PROVIDED that if the petrol produced by the Company as aforesaid is blended with imported petrol or petrol produced from imported crude oil this preference shall not apply to the blend but the right to preference shall not be lost by the inclusion of any ethylising or similar substance.

16.—(a) FOR the purpose of assessing under the laws of the Commonwealth relating to Income Taxation the income of the Company derived from the business of producing petrol oil and other products from shale mined from the said land depreciation shall be allowed (so far only as the Company has expended moneys from whatever source derived for the establishment of the

THE SCHEDULE—*continued.*

shale oil industry on the said land) on the basis of the recommendations made by The Newnes Investigation Committee in its Report dated the 9th April 1934 as amplified by the provisions referred to in the Third Schedule hereto.

(b) FOR the purpose of assessing under the laws of the State relating to Income Taxation and Special Income Taxation the income of the Company derived from the business of producing petrol oil and other products from shale mined from the said land depreciation shall be allowed (so far only as the Company has expended moneys from whatever source derived for the establishment of the shale oil industry on the said land) on the basis of the recommendations made by The Newnes Investigation Committee in its Report dated the 9th April 1934 as amplified by the provisions referred to in the Third Schedule hereto.

(c) THIS clause shall not operate after the expiration of the period of twenty (20) years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State.

17.—THE Commonwealth shall make available to the Company the services of Mr. L. J. Rogers MSc., B.E., and Mr. D. J. Davies during the construction and starting up of the plant to be installed by the Company for the development of the shale oil industry on the said land and the Company shall reimburse the Commonwealth for all expenditure in respect of salary wages and leave of absence attributable to the services of Messrs. Rogers and Davies while with the Company and the certificate of the Accountant, Sub-Treasury of the Commonwealth, Sydney, as to the amount to be so reimbursed shall be accepted by the Company as final and conclusive. The Company shall also be responsible for and pay all out of pocket expenses in connexion with its obtaining and utilising the services of Messrs. Rogers and Davies.

18.—WITHIN one month from the date of ratification of this Agreement by the Parliaments of the Commonwealth and the State the Company shall complete the purchase from the Commonwealth for the sum of £3,500.0.0 (such sum being payable by the Commonwealth to other persons in accordance with obligations previously contracted) of the option granted to the Commonwealth in respect of certain machinery plant and other property at Newnes by Shale Oil Investigations Proprietary Limited whose registered office is situate at 360 Collins Street Melbourne in the State of Victoria. The Company shall be deemed to have made full inquiry as to the nature and extent of such option and of the Commonwealth's title thereto and to have accepted such title and the Company shall not be entitled to make any objection or requisition with respect thereto or to the Commonwealth's power to sell and transfer the option to the Company.

19.—(a) THE State shall (the consent of the Commonwealth being hereby testified) grant under the Mining Act 1906 of the State as amended by subsequent Acts for a term expiring on 31st December 1965 subject to such rights and interests as may be lawfully subsisting therein at the date of the lease such Mineral Leases and Leases for Mining Purposes of Crown Lands forming part of the said land and of the lands described in the Second Part of the Fourth Schedule hereto as the Company may require for the development of the shale oil industry on the said land.

(b) THE Crown Lands included in the said Fourth Schedule shall be reserved from sale and from occupation under Miner's Right or Business License and from lease other than lease to the Company under this Clause and the Act of the State ratifying this Agreement shall provide accordingly. Such Act may provide for the revocation of the said reservation in the event of this Agreement being cancelled rescinded or determined for any reason whatsoever.

(c) THE rent payable by the Company to the State under any such Lease shall not exceed £1 per annum

(d) ANY mining lease to be granted under sub-clause (a) of this Clause may be for an area in excess of 640 acres—and the requirements of the Mining Act 1906 as amended and the Regulations thereunder as to marking out the land applied for and the mode of taking possession thereof shall not apply with respect to any leases to be granted under sub-clause (a) of this Clause.

(e) UPON application by the Company the Minister shall under sub-section 1 of Section 118 of the Mining Act 1906 as amended authorise the

THE SCHEDULE—*continued*.

amalgamation of the Mining Leases held by the Company from time to time whether adjoining or not. PROVIDED that any such amalgamation shall not be cancelled except at the request of the Company

(f) MINERAL Leases so issued shall provide that if the petrol produced by the Company during any year from shale won from the said land does not exceed 10,000,000 gallons no royalty shall be payable to the State for that year and if the petrol so produced by the Company during any year exceeds such quantity the Company shall for that year pay to the State under the said Leases royalty at the rate provided by the said Act on such quantity of shale whenever won as is sufficient to produce the quantity of petrol which is equal to the excess over 10,000,000 gallons of the quantity of petrol produced during such year.

(g) THE Leases issued pursuant to sub-clause (a) hereof shall contain necessary reservations to the public of authority to use roads and tracks in use and covenants by the Company to prove to the Secretary of Mines or other officer of the State from time to time the quantities of shale won from the said land and the quantities of petrol produced from the shale so won and also (in addition to the usual and other provisions to be inserted therein) provisions for the cancellation of the Leases by the Secretary of Mines of the State by notice in the Government Gazette of the State in the event of this Agreement being cancelled rescinded or determined for any reason whatsoever

20.—(a) DURING the period ending on the thirtyfirst day of December 1959 the Company shall be entitled to claim an allowance by way of preference of twenty per centum on the railway freights payable by the Company to the Commissioner for Railways for the carriage on the New South Wales Government Railways of petrol or other shale spirit or oil produced by the Company from shale won from the said land and consigned by the Company for such carriage on the said Railways PROVIDED ALWAYS that if petrol or spirit or oil so produced is blended with any other petrol spirit or oil no such allowance shall be claimable with respect to the blend but the allowance shall not be lost by the inclusion of any ethylising or similar substance (including benzol or alcohol produced in Australia up to twenty per centum of the blend)

(b) EVERY preference to which the Company is entitled under this clause shall be granted by way of rebate to it upon proof to the Commissioner for Railways that the Company is entitled thereto. A Statutory Declaration of the Secretary of the Company shall be accepted as prima facie evidence that the petrol of the Company has not been blended as aforesaid.

21.—BEFORE commencing production the Company shall at its own cost instal such additional plant as shall be necessary to permit of the production of fuel oil suitable for use in the Australian Navy.

22.—THE Company hereby COVENANTS AND AGREES with the Commonwealth and the State and as a separate covenant with each of them that it will unless prevented by matters beyond the control of the Company and which are not due to the Company's default neglect or misconduct take all steps necessary to develop and carry on continuously the shale oil industry on the said land on a commercial scale.

23.—THE Company shall not without the consent in writing of the Commonwealth or the State alter the provisions of its Memorandum of Association which are set out in the First Schedule hereto or alter the Articles of Association made in pursuance of such provisions and the Company shall at all times and in all respects observe the said provisions of its Memorandum and the Articles of Association made in pursuance thereof and without affecting the other remedies of the Commonwealth or the State the remedies of mandamus and/or injunction in the High Court of Australia or in the Supreme Court of New South Wales may at the suit of the Commonwealth or the State or the Attorney General of either of them lie for enforcing the provisions of this Clause and the Acts ratifying this Agreement may provide accordingly.

THE SCHEDULE—*continued.*

24.—IF within the period ending on the 31st December 1959 petrol is produced from Australian flow oil to an extent that it is impossible for the Company as a result of such production to operate except at a loss and if at that time the Company is not in default under this Agreement or the Deeds of Covenant and Charge hereinbefore referred to the Commonwealth and the State shall favorably consider granting adequate relief to the Company.

25.—THIS Agreement shall not be required to be registered under Part IX of the Companies Act 1936 or the Bills of Sale Act of 1898 as amended of the State but without any such registration it shall so far as any security on the Company's property or undertaking is thereby conferred be valid against the Liquidator or any creditor of the Company.

26.—THE Company shall from time to time produce all books vouchers documents papers and evidence to, and allow the said land and all buildings workings improvements works plant and machinery to be inspected by a person authorised by the Prime Minister and by a person authorised by the Premier for the purpose of ascertaining the performance or non-performance by the Company of the provisions of this Agreement on its part to be observed or performed.

27.—IF the Company shall omit to fulfil observe or perform the provisions of this Agreement on the part of the Company to be fulfilled observed or performed the Commonwealth and the State jointly may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service of the said notice upon it to rectify the said default within such reasonable time the Commonwealth and the State jointly may by notice in writing served on the Company determine this Agreement but without prejudice to any claim which the Commonwealth and/or the State may have against the Company in respect of any breach of the provisions of this Agreement on the part of the Company to be fulfilled observed and performed.

28.—ANY notice or other communication required to be or that may be served by the Commonwealth (whether jointly with the State or otherwise) on the Company shall be deemed to have been duly served if signed by or on behalf of the Secretary Prime Minister's Department, and forwarded by prepaid post addressed to the Company at its registered office and any such notice shall be deemed to have been served on the date on which it would be delivered in the ordinary course of post.

29.—ANY notice or other communication required to be or that may be served by the State (whether jointly with the Commonwealth or otherwise) on the Company shall be deemed to have been duly served if signed by or on behalf of the Under-Secretary, Premier's Department, and forwarded by prepaid post addressed to the Company at its registered office and any such notice shall be deemed to have been served on the date on which it would be delivered in the ordinary course of post.

30.—IN this Agreement unless the context otherwise requires the singular includes the plural and vice versa and the following expressions shall have the meanings respectively set opposite thereto:

"Prime Minister" includes any Minister of State of the Commonwealth or member of the Federal Executive Council for the time being acting for and on behalf of the Prime Minister:

"Premier" includes the Minister of the State for the time being acting as such:

"Commonwealth Departments" and "State Departments" mean Departments (other than corporations) under the control of a Minister of the Crown.

31.—THIS Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the State PROVIDED that if this Agreement is not ratified by

THE SCHEDULE—*continued*.

the said Parliaments before the 31st December 1937 it shall become null and void.

IN WITNESS whereof the parties hereto have executed these presents the day and year first above written

SIGNED SEALED AND DELIVERED by the
Rt. Honourable JOSEPH ALOYSIUS
LYONS the Prime Minister of the Com-
monwealth of Australia for and on
behalf of the Commonwealth in the
presence of:

L.S.
J. A. LYONS

F STRAHAN

SIGNED SEALED AND DELIVERED by the
Honourable BERTRAM SYDNEY
BARNSDALE STEVENS the Premier of the
State of New South Wales for and on
behalf of the State in the presence of:
J. W. FERGUSON.

L.S.
B S B STEVENS

THE COMMON SEAL OF NATIONAL OIL
PROPRIETARY LIMITED was hereunto
affixed by authority of the Board of
of Directors in the presence of:

L.S.
C. CHRIS. DAVIS,
N. FRAZER,
Directors

V H BARR-SMITH
Secretary

THE FIRST SCHEDULE.

1. (1) It is to be regarded as a cardinal principle of the Company that it is to be and remain under the control of persons who are subjects of His Majesty and accordingly:—

- (a) No foreigner shall be qualified to hold office as a director of the Company or to be employed as one of the principal officers of the Company.
- (b) No share in the Company shall be held by, or in trust for, or be in any way under the control of any foreigner or foreign corporation or any corporation under foreign control.

(2). In this clause the expression "foreigner" means any person who is not a subject of His Majesty, and the expression "foreign corporation" means any corporation other than a corporation established under and subject to the laws of some part of His Majesty's dominions, and having its principal place of business in those dominions.

The expression "corporation under foreign control" includes:—

- (a) a corporation of which the majority of the directors or persons occupying the position of directors by whatever name called, are foreigners;
- (b) a corporation, shareholders in which holding shares or stock conferring a majority of the votes are foreigners or foreign corporations, or persons who hold directly or indirectly for foreigners or foreign corporations;
- (c) A corporation which is by any other means, whether of a like or of a different character, in fact under the control of foreigners or foreign corporations
- (d) A corporation, the executive whereof is a corporation within (a), (b) or (c), and the expression "principal officers" of the Company shall be deemed to mean and include persons holding the following or any analogous position:—

- (i) General Manager;
- (ii) Assistant General Manager;

THE SCHEDULE—*continued.*

- (iii) Secretary;
- (iv) Assistant Secretary;
- (v) General Superintendent;
- (vi) Assistant General Superintendent;
- (vii) Marine Superintendent;
- (viii) Assistant Marine Superintendent;
- (ix) Superintendent Engineer;
- (x) Assistant Superintendent Engineer;
- (xi) Masters and officers and engineers in charge of a watch on board any of the Company's ocean steamships.

(3) Whenever a majority of the directors certify in writing that there is, in their opinion, reason to believe that any share in the company is, in violation of sub-paragraph (b) of paragraph (1) of this clause, held by or in trust for, or in any case under the control of, a foreigner or foreign corporation or any corporation under foreign control, the directors shall call on the holder of such share to prove to their satisfaction that the share in question is not so held, and unless within three weeks thereafter such proof is given, the directors shall serve such holder with a requisition in writing to transfer such share to some properly qualified person approved by them, and unless such transfer is duly made and delivered to the Company within three days after the service of such requisition the directors shall sell the share at the market price to any properly qualified person approved by them, and may authorise any officer of the company to execute on behalf of the holder a transfer of such share to the purchaser, and a transfer executed under such authority shall be valid and effective, and the purchase money shall be paid to the Company, whose receipt shall be a good discharge and shall be paid over by the Company to the late holder on his application.

(4) As from the time when any such certificate as aforesaid is signed up to the time when such proof as aforesaid is given, or such transfer is registered, the share referred to in such certificate shall not confer on the holder or owner any right to vote.

2. Every transfer of any share must contain a declaration as follows, namely:—

- (a) Where the transfer is not to a corporation a declaration by the transferee (1) that he is a natural-born subject of His Majesty, and has never taken the oath of allegiance to any foreign sovereign or state, or has otherwise become a citizen or subject of any foreign state; or (2) that he is a person naturalized by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession, and has taken the oath of allegiance to His Majesty, and is a subject of His Majesty and, in either case, that there is not any arrangement under which he will hold the said shares or any of them in trust for, or in any way under the control of, any foreigner or foreign corporation, or any corporation under foreign control, in contravention of the provisions of subclause one of clause 1 hereof; or
- (b) Where the transfer is to a corporation a declaration by some principal officer of such corporation, duly authorised by such corporation to make the same, that such corporation is not a foreign corporation, or a corporation under foreign control within the meaning of subclauses 1 and 2 of clause 1 hereof, and that to the best of his knowledge there is no arrangement under which the transferee is to hold such shares or any of them in trust for, or in any way under the control of, any foreigner or foreign corporation, or any corporation under foreign control, within the meaning of subclauses 1 and 2 of clause 1 hereof.

And where the directors think fit they may, before passing any such transfer, require such further evidence in support of any such declaration, whether by statutory declaration or otherwise as they think fit.

3. Before registering any person as a member under either of the last preceding clauses hereof the directors shall require the person proposed to be registered to provide a declaration as follows:—

THE SCHEDULE—continued.

- (a) Where the person to be registered is not a corporation a declaration by such person to the effect set forth in paragraph (a) of clause 2 hereof;
- (b) Where such a person is a corporation, a declaration in writing by some principal officer of such corporation duly authorised by such corporation to make the same, to the effect set forth in paragraph (b) of clause 2 hereof.

And where the directors think fit they may, before registering, require such further evidence in support of any such declaration whether by statutory declaration or otherwise, as they think fit.

SECOND SCHEDULE.

DEED OF COVENANT AND CHARGE.

THIS DEED made the day of One thousand nine hundred and thirty- BETWEEN NATIONAL OIL PROPRIETARY LIMITED a Company incorporated under the provisions of the Companies Act 1936 of the State of New South Wales (hereinafter termed "the Company") of the one part and "(a)" (hereinafter termed "the Lender") of the other part WHEREAS by an Agreement made the day of 1937 between the Commonwealth of Australia (hereinafter called "the Commonwealth") of the first part the State of New South Wales (hereinafter called "the State") of the second part and the Company of the third part (hereinafter called "the said Agreement") it was agreed in Clause 2 that subject to the provisions thereafter contained or referred to the Lender should make advances to the Company by way of loan at interest as therein-after mentioned to the amount of "(b)" pounds (£) upon the security of a deed of Covenant and Charge in the form of these presents AND WHEREAS the said Agreement was ratified by the following Acts of the Parliaments of the Commonwealth and the State being the of the Commonwealth and the of the State AND WHEREAS the Company has agreed to execute and deliver to the Lender this Deed of Covenant and Charge as security for the advances to be made by the Lender under the said Agreement and interest thereon and for other moneys as hereinafter referred to NOW THIS DEED WITNESSETH as follows:

1.—In pursuance of the said Agreement and of the premises the Company DOth HEREBY charge in favour of the Lender ALL AND SINGULAR its undertaking and all its assets and property whatsoever and wheresoever both present and future AND (but without limiting in any way the generality of the foregoing) ALSO its uncalled capital and unpaid calls for the time being and all present and future book debts of the Company (which undertaking assets property uncalled capital unpaid calls and book debts are hereinafter for brevity referred to as the "mortgaged premises") with the repayment to the Lender of all advances now and hereafter made by the Lender to the Company under the said Agreement and with the payment to the Lender of all principal interest and other moneys hereinafter covenanted or agreed to be paid by the Company to the Lender.

2.—In further pursuance of the said Agreement and of the premises the Company hereby covenants with the Lender as follows:

- (a) THAT the Company shall pay to the Lender interest on all amounts now and hereafter advanced by the Lender to the Company or on so much thereof as shall for the time being remain unpaid at the rate of four pounds ten shillings per centum per annum accruing from day to day and computed from the respective dates upon which such amounts were advanced by the Lender until the whole of the moneys advanced shall have been repaid to the Lender: such interest to be payable half yearly on the last day of the months of June and December in each and every year and the first of such half yearly payments to be made on the thirtieth day of June 1938.

THE SCHEDULE—*continued.*

- (b) THAT the Company shall at or before the end of each of the first nineteen years computed from the first day of January 1940 apply its income for the year in the following order viz:

Firstly: in payment of reasonable working expenses (including interest) for the year
 Secondly: on account of reasonable working expenses (including interest) for previous years to the extent to which income in such years was insufficient for such purposes
 Thirdly: in making reasonable provision for taxation in respect of the year
 Fourthly: in payment (in reduction of principal) of an amount equal to one-twentieth of the highest amount of advances made by the Commonwealth and the State to the Company at any time prior to the close of the year in respect of which the payment is made
 Fifthly: in payment (in reduction of principal) of amounts (if any) which would have been payable fourthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid
 Sixthly: in transferring to a reserve an amount to cover depreciation for the year calculated in accordance with Clause 16 of the said agreement
 Seventhly: in transferring to such reserve amounts (if any) which would have been so transferable sixthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become so transferable and have not been so transferred.
 Eighthly: in payment of a dividend not exceeding ten (10) per centum for the year on the subscribed capital of the Company for the time being actually paid in cash.
 Ninthly: in payment of dividends (if any) which would have been payable eighthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid
 Tenthly: in payment (in reduction of principal) to the Commonwealth and the State on account of moneys advanced by them to the Company

PROVIDED THAT if the amount provided thirdly is found to exceed the amount actually required for taxation the excess shall be paid in reduction of principal and if the said amount provided thirdly is found to be insufficient the deficiency shall be regarded and treated as a working expense in the year in which the taxation is paid

- (c) THAT of the amounts payable in reduction of principal under sub-clause (b) of this Clause viz. the amounts payable fourthly, fifthly and tenthly and excess provision for taxation the Company shall until all amounts advanced by the State have been repaid pay to the Commonwealth two equal third parts, and to the State one equal third part, and the Company shall make such payments simultaneously and after all amounts advanced by the State have been repaid the amounts payable in reduction of principal shall be paid by the Company to the Commonwealth. When the income of the Company is sufficient to enable a payment to be made in reduction of principal the amount payable shall be paid by the Company within six weeks from the close of the year from the income of which the payment is to be made but excess provision for taxation payable in reduction of principal shall be paid by the Company within one month after the amount of the taxation is ascertained
- (d) THAT the Company shall not use the depreciation reserve referred to in sub-paragraphs Sixthly and Seventhly in Sub-Clause (b) of this Clause for the purposes of any payment in the nature of a dividend

THE SCHEDULE—continued.

- (e) THAT Sub-Clauses (b) (c) and (d) of this Clause shall cease to have effect if within the period of nineteen years referred to in sub-clause (b) of this Clause the Company shall have repaid in accordance with the said Agreement and this Deed of Covenant and Charge and the other Deed of Covenant and Charge executed or to be executed pursuant to the said Agreement by the Company in favour of "(c)" (such Deed of Covenant and Charge being hereinafter called "the other Deed of Covenant and Charge") all amounts advanced to the Company by the Commonwealth and the State "(c)" Insert "the Commonwealth" or "the State" as the case requires:
- (f) THAT within thirteen (13) months after the close of the period of nineteen (19) years referred to in sub-clause (b) of this Clause the Company shall repay to the Lender the balance (if any) of the amounts of advances now and hereafter made by the Lender to the Company that remains unpaid and in this respect time shall be of the essence of the contract. Nothing in this sub-clause or sub-clauses (b) (c) (d) or (e) of this Clause shall affect Clause 1 of this Deed of Covenant and Charge or the provisions hereinafter contained as to the repayment to and recovery by the Lender of the advances made by it
- (g) THAT the Company will at all times during the continuance of this security observe the provisions of the Mines Inspection Act 1901 of the State and the amendments thereof and will comply with all directions and notices thereunder in reference to the mines carried on by the Company and to the mortgaged premises so far as the same may respectively be applicable thereto.
- (h) THAT the Company shall from time to time immediately on being requested so to do furnish to the Lender full true and particular returns and accounts in writing in respect of the mortgaged premises and the operations and dealings of the Company therewith with such particulars as the Lender may require AND the Company will duly enter and keep in books to be kept during the continuance of this security by the Company for that purpose true particular and complete accounts of all its dealings and all expenditure in relation to the mines carried on by the Company and to the mortgaged premises or any part thereof and of all shale and other substances obtained or treated or dealt with by or on behalf of the Company and of the yield of all petrols oils and other products from the substances so obtained treated or dealt with AND all accounts books records and papers of the Company relating in any way to the mortgaged premises shall at all times be open to inspection by the Lender or any person authorised by the Lender and such person may take copies and extracts therefrom and the Company shall at all times render to the Lender and every such person all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries accounts and books to the satisfaction of the Lender and every such person as aforesaid in such manner as the Lender and every such person may direct and will furnish the Lender with all such information as the Lender shall require concerning the operations of the Company and concerning the mortgaged premises
- (j) THAT the Company will duly and punctually pay all rates taxes duties charges outgoings and assessments of every description now or hereafter charged or chargeable upon or in respect of the mortgaged premises and every part thereof and will on demand produce to the Lender the receipt for every such payment
- (k) THAT the Company will duly and punctually pay all rents and royalties reserved by and perform and observe all covenants conditions and provisions on the part of the Lessee contained or implied in any lease or under-lease for the time being held by the Company or in which the Company is interested and will forthwith on demand produce to the Lender the receipt for every such payment AND the Company will from time to time duly apply for and

THE SCHEDULE—*continued.*

do everything in the Company's power for obtaining perfecting and maintaining the absolute title of the Company to the mortgaged premises free from encumbrances other than the said Agreement and these presents and the other Deed of Covenant and Charge AND ALSO for obtaining a renewal or extension or a fresh tenancy upon reasonable terms in the place of any and every such lease or under-lease which being at any time subject to this security shall expire during the continuance of this security except leases or under-leases which have become useless for the purposes of the Company's business.

- (f) THAT the Company will duly and punctually comply with and observe all statutes now or hereafter in force and all ordinances regulations and by-laws thereunder and all requirements and orders of any authority statutory or otherwise in all cases in which the non-compliance therewith or non-observance thereof would or might impose some charge or liability or disability upon the mortgaged premises or any part thereof or prejudicially affect this security or the Lender.
- (m) THAT the Company will not without the written consent of the Lender and except in the case of removals in the ordinary course of the Company's business remove or destroy or suffer to be removed or destroyed any part of the mortgaged premises and the Company will at all times keep the mortgaged premises in good order and condition and safeguarded from damage deterioration or loss and will on being required by the Lender so to do forthwith amend every defect therein and on the Company failing to make such amendment it shall be lawful for the Lender to remedy such failure and the costs charges and expenses incurred by the Lender shall be a debt due from the Company with interest at Five pounds ten shillings per centum per annum thereon and shall be payable on demand and while unpaid such debt and interest shall be a charge on the mortgaged premises.
- (n) THAT the Company will insure and keep insured against loss or damage by fire or otherwise in the full insurable value thereof in the names of the Commonwealth and the State with some Insurance Company to be approved of by them such of the mortgaged premises as are of an insurable nature and will punctually pay all moneys necessary for effecting and keeping up such insurance and forthwith hand to such person as the Commonwealth and the State may direct every policy and receipt relating thereto.
- (o) THAT the Company has good right to charge the mortgaged premises in the manner mentioned in Clauses 1 and 3 of these presents and that the same are free from encumbrance.
- (p) THAT the Company will forthwith on receipt thereof lodge with such person as may be nominated by the Commonwealth and the State as security under these presents and the other Deed of Covenant and Charge all mortgages liens and charges over and all documents of title to any real or personal estate whatsoever belonging to the Company or which shall have been or shall be given to secure the payment of any money to the Company.
- (q) THAT the Company will whenever requested by the Commonwealth and the State so to do execute in favour of such person as the Commonwealth and the State may direct for the further perfecting of this security and the other Deed of Covenant and Charge such legal mortgages transfers assignments sub-mortgages or other securities over all or any part of the mortgaged premises in such form and containing such powers (including power of sale) and provisions as the Commonwealth and the State shall require.
- (r) THAT the Company will not without the consent in writing of the Lender first had and obtained call up or receive in advance of calls any of the uncalled capital hereby charged beyond One hundred and sixty-six thousand six hundred and sixty-seven pounds (£166,667).

THE SCHEDULE—*continued.*

- (s) THAT the Company will once at least in every year or oftener if so required by the Lender allow the books of the Company to be fully audited by the Auditor General of the Lender and will cause him and his officers to be afforded all necessary information and facilities for such purposes.
3. AND IT IS HEREBY AGREED AND DECLARED as follows:—
- (a) THAT the Charge created by Clause one hereof in favour of the Lender shall operate as a Fixed Charge as regards all real and leasehold property and the buildings and erections thereon and all uncalled capital engines machinery plant and books of account vouchers and other documents relating in any way to the mortgaged premises or any part thereof and all securities negotiable or otherwise and documents evidencing title to or right to possession of any property and the property mentioned in covered by or evidenced by any such documents and shall operate as a Floating Security only as regards the remainder of the mortgaged premises hereby charged but so that (except only in the case of the other Deed of Covenant and Charge) the Company shall not be at liberty to create in respect of any part of the mortgaged premises any mortgage or charge in priority to or *pari passu* with this security except with the consent in writing of the Lender AND so that the charge created by these presents in favour of the Lender and the charge created by the other Deed of Covenant and Charge shall rank *pari passu* as a first charge on the mortgaged premises without any preference or priority one over the other AND without affecting the operation of the foregoing provisions of this sub-clause the Company agrees with the Lender that it will not without the previous consent in writing of the Lender sell or dispose of or part with the possession of any part of the mortgaged premises subject to the fixed Charge as aforesaid.
- (b) THAT notwithstanding anything herein or in the said Agreement contained this security shall at the option of the Lender (and notwithstanding any delay or previous waiver of the right to exercise such option) immediately become enforceable and the moneys advanced to the Company by the Lender and all other moneys hereby secured to the Lender immediately become payable in full by and recoverable from the Company without any demand or notice or expiration of time in each or any of the following events:—
- (i) If a petition is lodged or an order is made or a resolution is passed for the winding up of the Company or if a meeting is called for the purpose of considering the applying for any such order or the passing of any such resolution, or
 - (ii) If a Receiver of the undertaking or assets of the Company or any part thereof shall be appointed, or
 - (iii) If any execution or other process of any Court or authority or any distress is sued out against or levied upon any of the mortgaged premises, or
 - (iv) If the Company shall without the consent in writing of the Lender first had and obtained create or purport or attempt to create any charge or mortgage (other than the other Deed of Covenant and Charge) ranking or which might by any means be made to rank on the mortgaged premises or any part thereof in priority to or *pari passu* with these presents, or
 - (v) If the Company shall stop payment or threaten so to do or shall without the assent in writing of the Lender cease or threaten to cease to carry on its operations or business, or
 - (vi) If the Company makes default for fourteen days after the due date for the payment thereof in the payment of any interest required to be paid by Sub-clause (a) of Clause 2 of this Deed, or

THE SCHEDULE—*continued.*

- (vii) If the Company makes default in the repayment to the Lender in accordance with the provisions hereinbefore contained of the moneys advanced by the Lender to the Company or any part thereof, or
 - (viii) If the Company shall omit to fulfil observe or perform any of the covenants or provisions contained or implied in this Deed or in the other Deed of Covenant and Charge (other than covenants or provisions to make the payments referred to in paragraphs (vi) and (vii) of this sub-clause) and on its part to be observed or performed and the Company shall fail to rectify such omission for a period of twenty-one (21) days after the service of a Notice by the Lender upon it requiring it to rectify the omission, or
 - (ix) If the company shall omit to fulfil observe or perform the provisions of the said Agreement on the part of the Company to be fulfilled observed or performed (other than covenants or provisions to make the payments referred to in paragraphs (vi) and (vii) of this sub-clause) AND the Commonwealth and the State shall jointly by Notice served on the Company call upon it to rectify the omission within a reasonable time (to be stated in the Notice) after the service of the said notice AND the Company shall fail after service of such notice to rectify the omission within such reasonable time.
- (n) THAT at any time after this security becomes enforceable and the moneys hereby secured become payable under sub-clause (b) of this Clause and without giving any notice to the Company or expiration of any time the Lender may appoint in writing any person to be a Receiver (hereinafter called Receiver) of the mortgaged premises and without any notice to the Company or expiration of any time remove any such Receiver with or without appointing another in his place and in case of the removal retirement or death of any Receiver may appoint another in his place and may fix the remuneration of any such Receiver at a rate not exceeding five per centum on the gross amount of all moneys received by him PROVIDED ALWAYS that every such Receiver shall be the agent of the Company and the Company alone shall be responsible for his acts and defaults and any such Receiver so appointed shall (without any consent on the part of the Company or any notice to the Company or expiration of any time) have in addition to the powers conferred upon a Receiver by the provisions of Section 115 of the Conveyancing Act 1919-1932 the following powers viz:
- (i) To take possession of collect recover and get in the whole or any part of the mortgaged premises
 - (ii) To lease in the name of the Company or otherwise (whether the Receiver shall or shall not have so taken possession as aforesaid) the whole or any part of the mortgaged premises from year to year or for any term of years or for any term less than a year at such rent and upon such terms and conditions as to such Receiver may seem expedient
 - (iii) To carry on or concur in carrying on the business and operations of the Company and to make and effect all repairs purchases and insurances and to do all acts which the Company might do for the protection or improvement of the mortgaged premises or any of them or for obtaining income or returns therefrom
 - (iv) To borrow from the Lender or elsewhere any money which may be required for any of the purposes mentioned in the preceding sub-paragraph (iii) of this sub-clause and in the name of the Company or otherwise to secure any moneys so borrowed by mortgage or charge over the mortgaged premises or any part thereof but so that no such mortgage or charge to or in favour of any person other than the Lender shall rank

THE SCHEDULE—*continued*.

in priority to or *pari passu* with the Charge hereby created or the Charge created by the other Deed of Covenant and Charge without the written consent of the Commonwealth and of the State having been first obtained. Any moneys borrowed by a Receiver from the Lender under this power shall subject to any agreement between the Receiver and the Lender be deemed to have been borrowed by the Company upon the security of these presents and shall bear interest at the rate of Five pounds ten shillings per centum per annum and the Company hereby covenants to pay the same to the Lender accordingly but no such moneys borrowed from the Lender by a Receiver shall without the written consent of the "(d)"

rank in priority to or *pari passu* with the charge created by the other Deed of Covenant and Charge PROVIDED HOWEVER that the Lender or other person or lender lending money to the Receiver shall not be bound or entitled to inquire as to the necessity or propriety of any such borrowing nor be responsible for the mis-application or non-application of any moneys so borrowed.

"(d)" Insert
"the Common-
wealth" or
"the State"
as the case
requires.

- (v) To sell or concur in selling the Company's business and assets as a going concern and the provisions of the following paragraph shall *mutatis mutandis* apply to and with respect to any sale under this paragraph.
- (vi) To sell or concur in selling (whether such Receiver shall or shall not have so taken possession as aforesaid) all or any of the mortgaged premises either by public auction or private treaty or by tender for cash or on credit and either in one lot or in parcels and either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise and with power to allow the whole or any part of the purchase money to remain on mortgage of the property sold or on any other security or without any security and upon such other terms and conditions as such Receiver may consider expedient without being responsible for any loss occasioned thereby and with full power to buy in and rescind or vary any contract for sale and to resell without being responsible for loss and to compel the specific performance of any contract by suit in equity or otherwise and to execute assurances of all or any of the mortgaged premises in the name and on behalf of the Company or otherwise and to do all other acts and things for completing any such sale which the Receiver may deem necessary.
- (vii) To sever fixtures belonging to the Company and sell them under the aforesaid power of sale apart from any other part of the mortgaged premises
- (viii) To employ managers solicitors officers agents auctioneers workmen clerks and servants for all or any of the purposes mentioned in this Clause at such salaries or remuneration as the Receiver shall think fit.
- (ix) To make any arrangement or compromise which any such Receiver shall think expedient in the interests of the Commonwealth and the State.
- (x) To give effectual receipts for all moneys and other assets which may come to the hands of any such Receiver in exercise of any power hereby conferred which receipts shall exonerate any person paying or handing over such moneys or other assets from all liability to see to the application thereof and from all liability to inquire whether the moneys hereby secured have become payable or otherwise as to the propriety or regularity of the appointment of such Receiver.

THE SCHEDULE—*continued.*

- (xi) To carry out and enforce specific performance of or otherwise obtain the benefit of all contracts entered into or held by the Company or entered into in exercise of the powers or authorities hereby conferred.
 - (xii) To make debtors bankrupt and to wind up companies and do all things in connexion with any bankruptcy or winding up which the Receiver shall think necessary for the recovery or protection of the mortgaged premises or any part thereof for the security of the Lender.
 - (xiii) To take proceedings at law or in equity or in bankruptcy in the name of the Company or otherwise for all or any of the purposes aforesaid.
 - (xiv) To do all things necessary to perform and observe any of the covenants agreements or stipulations in this Deed or in the said agreement contained or implied and on the part of the Company to be performed and observed.
 - (xv) With the consent in writing of the Lender to delegate to any person any of the powers hereinbefore conferred upon any such receiver and any such delegation may be general or particular.
- (d) That notwithstanding a Receiver may or may not have been appointed as aforesaid it shall be lawful for the Lender at any time after this security becomes enforceable and the moneys hereby secured become payable under sub clause (b) of this Clause or otherwise and without any expiration of time or giving any notice to the Company to exercise all or any of the powers authorities and discretions conferred on a Receiver as aforesaid.
- (e) That it shall not be incumbent on the Lender to give any notice of this security to any debtors of the Company or to any person or company whomsoever or whatsoever or to enforce payment of any moneys payable to the Company or of any of the debts hereby charged or to take any steps or proceedings for that purpose unless the Lender shall think fit so to do and the Lender shall not nor shall any Receiver appointed by the Lender as aforesaid be answerable for any involuntary losses or irregularities which shall happen in or about the exercise or non-exercise of any of the powers rights or remedies conferred on the Lender or on such Receiver by these presents.
- (f) That all moneys received by any such Receiver under or by virtue of these presents shall be applied in manner following namely:
- (i) in discharge of all rents taxes rates and outgoings whatever affecting the mortgaged premises
 - (ii) in keeping down all annual sums or other payments (if any) and the interest on all principal sums (if any) having priority to the Charge hereby created;
 - (iii) in payment of all costs charges and expenses and liabilities and outgoings incurred by any and/or every such Receiver in or incidental to the exercise or performance or attempted exercise or performance of any of the powers or authorities hereby conferred;
 - (iv) in payment to the Receiver of a Commission at the rate of five per centum on the gross amount of all moneys received by him or at such lower rate as shall be specified in his appointment;
 - (v) in payment to the Commonwealth and the State of the moneys respectively secured to them by these presents and by the other Deed of Covenant and Charge or such of the same as may remain unpaid. Of the moneys available from time to time for such payments two equal third shares shall be paid to the Commonwealth and one equal third share shall be paid to the State until the State has been repaid

THE SCHEDULE—*continued*.

and thereafter to the Commonwealth. Such payments shall be in the first place in satisfaction of interest owing (if any). The surplus (if any) remaining after payment of all moneys secured hereby and by such other Deed of Covenant and Charge and after payment of the costs charges and expenses of the Commonwealth and the State in connexion with the said securities shall belong to the Company but such surplus shall not carry interest and the Receiver or the Lender shall be at liberty to pay the same to the credit of an account in the name of the Company in the books of any Bank and shall inform the Company of such payment and shall thereupon be under no further liability in respect thereof.

(g) That all moneys received by the Lender under or by virtue of the powers and authorities conferred upon it by these presents may be applied in manner following:

(i) in payment of all costs charges and expenses incurred by the Lender in the exercise or performance or attempted exercise or performance of any of the powers or authorities conferred by these presents or incurred by the "(e)"

in the exercise or performance or attempted exercise or performance of any of the powers or authorities conferred by the other Deed of Covenant and Charge.

"(e)" Insert
"the Common-
wealth" or
"the State"
as the case
requires.

(ii) in making the payments referred to in paragraphs (i) (ii) and (iii) of subclause (f) of this Clause and in payment of all costs charges and expenses and liabilities and outgoings incurred by any and/or every Receiver appointed under the other Deed of Covenant and Charge in or incidental to the exercise or performance or attempted exercise or performance of any of the powers and authorities by the other Deed of Covenant and Charge conferred;

(iii) in making the payments to the Commonwealth and the State referred to in paragraph (v) of subclause (f) of this Clause

The surplus (if any) remaining shall belong to the Company but such surplus shall not carry interest and the Lender shall be at liberty to pay the same to the credit of an account in the name of the Company in the books of any Bank and shall inform the Company of such payment and shall thereupon be under no further liability in respect thereof.

(h) That upon the exercise of any power or authority herein contained or implied no person dealing with the Lender or any Receiver appointed as aforesaid or any attorney appointed as hereinafter provided shall be bound to inquire whether any default has been made by the Company hereunder or under the said Agreement or the other Deed of Covenant and Charge or whether any moneys remain owing on the security of these presents or otherwise as to the propriety or regularity of the exercise of such power or authority and notwithstanding any impropriety or irregularity therein such exercise shall as far as regards the safety and protection of such person be deemed to be valid and effectual and the remedy of the Company in respect of any impropriety or irregularity therein shall be in damages only.

(j) That no forfeiture of any lease under the provisions of the lease or of the Mining Act 1906 or any Act amending or taking the place of the same and no sale or lease or disposition of the mortgaged premises under the provisions herein implied or contained shall affect the Company's liability upon the covenants for payment herein contained or deprive the Lender of the right to sue the Company for the amounts hereby secured;

(k) That in the event of any loss or damage by fire or otherwise the Commonwealth and the State alone shall have full power to make enforce and compromise every claim in respect of every insurance

THE SCHEDULE—continued.

and to sue for recover receive and give discharges for all insurance moneys whether the policy be in the names of the Commonwealth and the State or in the name of either of them or of the Company and whether the same shall or shall not cover other property as well as the mortgaged premises or part thereof and every such policy and the insurance moneys payable thereunder shall be held as further security for the moneys secured by this Deed and by the other Deed of Covenant and Charge and notwithstanding anything elsewhere herein contained all or any moneys received on or under any insurance over or affecting the mortgaged premises may with the written consents of the Commonwealth and the State be applied by the Company towards making good the loss or damage in respect of which the money has been received or may with the like consents be applied by it in or towards discharge of the moneys respectively secured by this Deed and the other Deed of Covenant and Charge whether due or not or may be otherwise applied by the Company with the written consents of the Commonwealth and the State as may be thought fit.

(l) That in applying any moneys received by the Lender or any Receiver appointed hereunder towards satisfaction of the moneys respectively secured by this Deed and the other Deed of Covenant and Charge the Company shall be credited with only such of the said money available for that purpose as shall be actually received in cash such credit to date from the time of such receipt.

"(f)" Insert in Deed of Covenant and Charge in favor of the Commonwealth the following:—
"The Secretary, Prime Minister's Department," and in Deed of Covenant and Charge in favor of the State of New South Wales the following:—
"The Under Secretary, The Treasury, Sydney".

(m) That statements in writing from time to time signed by the "(f)" or the person acting as such for the time being stating the respective sums advanced by the Lender to the Company on the security of this Deed and the respective dates of payment of such sums to the Company by the Lender and the interest owing thereon or on any part thereof to the date or for the period in the statement mentioned and the interest and moneys from time to time paid to or received by the Lender under this Deed and the dates of payment thereof respectively and/or stating the amounts due to the Lender upon or secured by this security including sums so due to the Lender for interest at the date or dates mentioned in such statement shall be prima facie evidence of all matters therein stated or mentioned.

(n) That it shall be lawful for the Lender or any person authorised by or on behalf of the Lender at all reasonable times to enter upon any of the mortgaged premises or into or upon any premises wherein or whereon any of the mortgaged premises may be and to inspect the state and condition of the mortgaged premises or any part thereof and to obtain particulars thereof and the Company its servants and agents shall afford the Lender and any such person as aforesaid every assistance and facility to exercise any of the powers conferred by this subclause.

(o) That neither the taking of this security nor anything herein contained shall be held to merge discharge postpone or lessen or otherwise prejudice any other security now held or hereafter taken by the Lender for payment of any money or to affect the rights and remedies conferred on the Lender by the said agreement or to affect any claim or demand which the Lender now has or may hereafter have against any other person whomsoever as surety or otherwise nor shall any other security now held or hereafter taken by the Lender abate or prejudice the powers and provisions herein contained and these presents shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge hereof shall have been given to the Company.

(p) That all things which under or by virtue of this security or of the covenants or agreements or provisions herein contained or implied the Lender is empowered to do whether alone or jointly with the

THE SCHEDULE—continued.

- “(g)” may be done by the “(h)” or by “(g)” Insert
any attorney of the Lender appointed by the “(h)” for “the Common-
such purposes generally or otherwise either in the name of the wealth” or
Lender or of “(h)” or of such attorney AND the “the State”
Company for the consideration aforesaid hereby irrevocably as the case
appoints any person or persons from time to time nominated in requires.
that behalf by the Commonwealth and the State the Attorney of “(h)” Insert in
the Company for the purposes in the name of any such person or the Deed in
the name of the Lender or the Company of doing or making and favor of the
with full power to do or make any act deed matter and thing which Commonwealth
the Company by virtue of the provisions of these presents ought to “the Prime
do or make and with full power in any such Attorney for all or any Minister of the
of such purposes powers and authorities to appoint a substitute or Commonwealth” and in
substitutes who may act in the premises in the name of the Com- the Deed in
pany the Lender the Attorney or such substitute. favor of the
State of New
South Wales
“the Premier
of the State”.
- (q) That the powers conferred on a mortgagee by the Conveyancing Act 1919-1932 shall be in augmentation of the powers herein mentioned and shall be exercisable by the Lender immediately upon or at any time after default by the Company hereunder without any notice or expiration of time as required under that Act being necessary AND all other provisions of the said Act shall be deemed to be negated or varied only so far as they are inconsistent with the terms and provisions herein expressed BUT the Company shall not be entitled to exercise the power of leasing conferred by Section 106 of that Act and sub-sections (5) (6) (7) and (8) of that Section shall not apply to any lease by the Lender hereunder.
- (r) That the Company so far as it has power so to do hereby authorises any of the following persons namely any person from time to time appointed by the Commonwealth and the State and any Receiver appointed hereunder at any time after this security becomes enforceable and the moneys hereby secured become payable under subclause (b) of this Clause or otherwise to make calls on the members of the Company in respect of the uncalled capital hereby charged and with power to control the making thereof and power to veto transfers of shares and to sue in the name of the Company or otherwise for the recovery of moneys due or becoming due in respect of calls and to give valid receipts for such moneys AND the provisions contained in the Articles of Association of the Company in regard to calls shall mutatis mutandis apply to calls made under this authority and this authority shall be exercisable to the exclusion of the powers of the Directors of the Company.
- (s) That any demand direction or notice to be or that may be made upon or given to the Company hereunder by or on behalf of the Lender (whether alone or jointly with the “(j)” “(j)” Insert
shall be deemed to be duly made or given if the same be in writing “the Common-
and signed by the “(k)” or the person acting as such wealth” or
for the time being and be left at or sent through the Post Office “the State”
addressed to the Company at the office of the Company or be as the case
affixed to some part of any land hereby charged or some building requires.
thereon or be advertised in the “(l)” “(k)” Insert in
such mode of service shall in all respects be valid and effectual Deed of
notwithstanding that the Company may be in liquidation or wound Covenant and
up or in process thereof and notwithstanding any other matter or Charge in favor
event whatsoever. Any and every notice direction or demand so of the
made or given through the Post Office shall be deemed to be made Commonwealth
or given to the Company at the time when the letter containing the following:
the same would in the ordinary course be delivered. “Secretary,
Prime
Minister’s
Department”,
and in Deed
of Covenant
and Charge in
favor of the
State
the following:
“Under
Secretary The
Treasury
Sydney”.
- “(l)” Insert in
Deed of
Covenant and
Charge in favor
of the
Commonwealth
the following:—
“Common-
wealth of
Australia”,
and in Deed
of Covenant
and Charge in
favor of the
State the
following:
“New South
Wales
Government”.
4. IN further pursuance of the said agreement and of the premises the Company hereby further covenants with the Lender that the Company will carry on and conduct the business of the Company (including the business of developing and carrying on the shale oil industry on the land containing about 55,000 acres and other land referred to in the said Agreement) in a proper and efficient manner and that the Company and its directors will carry out the

THE SCHEDULE—*continued.*

objects of the Company and exercise the powers of the Company and its directors so that the Company shall have and retain full capacity and power to fulfil in all respects the obligations of the Company under the said agreement and these presents and not otherwise and in particular that the Company will not unite or amalgamate or enter into partnership with any person company or partnership and will not declare or pay any dividend on any of the shares in the Company except in cash and in the case and to the extent permitted by the said agreement and these presents and will not otherwise distribute or cause or permit to be distributed any of the assets of the Company.

5. AND IT IS FURTHER HEREBY AGREED AND DECLARED as follows:

- (a) That if at any time the Company shall be desirous of making repayments in reduction of the amounts advanced by the Commonwealth and the State in addition to the repayments provided for in sub-clause (b) of Clause 2 of this Deed the Company may simultaneously tender two equal third parts of the proposed additional repayment to the Commonwealth and one equal third part thereof to the State, and the Commonwealth and the State shall accept the amounts so tendered if at the time of such tenders the Company has fulfilled all the obligations on its part to be fulfilled under the provisions of the said agreement and of this Deed and of the other Deed of Covenant and Charge so far as such obligations are capable of being fulfilled at the time of such tenders.
- (b) That in this deed unless the context otherwise requires the singular includes the plural and vice versa, the word "person" includes a corporation, and the expressions "Prime Minister" and "Premier" have the same meaning as they have in the said agreement.
- (c) That it is a condition hereof that the provisions of the Moratorium Act, 1932, and of any amendment thereof shall not apply hereto but are expressly excluded.

IN WITNESS whereof the parties have executed these presents the day and year first hereinbefore written.

THE COMMON SEAL OF NATIONAL OIL
 PROPRIETARY LIMITED was here-
 unto affixed by authority of the
 Board of Directors in the presence
 of—

Secretary.

Director.

THE THIRD SCHEDULE.

The period to be taken for purposes of depreciation in respect of expenditure on any item shall be the estimated economic life of the item or 20 years whichever is less.

The provisions in respect of depreciation shall apply to items of a like nature to those referred to in the said report of the Newnes Investigation Committee and to other capital items.

THE FOURTH SCHEDULE.

FIRST PART.

County of Hunter Parishes of Glen Alice and Capertee, and County of Cook, Parishes of Barton, Gindantherie and Goollooinboin, containing an area of about 55,000 acres being the Crown lands within the following boundaries: Commencing at the south-eastern corner of Portion 1 (one) of 1760 acres, Parish of Glen Alice, County of Hunter; and bounded thence by part of the southern boundary of that Portion; by Portion 21, a line, Portions 17, 26, 2, 7,

THE SCHEDULE—*continued.*

8 and 9 and 25, of that Parish, Portion 7, Parish of Gindantherie, County of Cook; Portions 16, 11, 12, 13, 14 and 15 Parish of Glen Alice, County of Hunter; Portions 6, 5, 4, 3, 2, 1 and again Portion 7, Parish of Gindantherie, County of Cook; Portions 119, 120 and 121, Parish of Goollooinboin, County of Cook, to the north-east corner of Portion 111 of 849 acres ex road, in the lastmentioned Parish; thence by the lastmentioned Portion to its most southerly-south-eastern corner; thence by a line due south about 200 chains to the northern boundary of Portion MP 32 of 640 acres, Parish of Gindantherie County of Cook; thence by the northern boundary of that Portion and of Portions MP 31 and MP 22 to the south-western corner of Portion 12 of 171 acres ex road; thence by Portions 12 and 8 to the south-eastern corner of Portion 12 aforesaid; thence by a line due east about 423 chains to a point due south of the south-eastern corner of Portion ML 18 of 640 acres, Parish of Barton, County of Cook; thence by a line north about 48 chains to that corner of that Portion; thence by the east boundaries of Portions ML 18, Parish of Barton, County of Cook MP 42, MP 41 and ML 17, Parish of Gindantherie, County of Cook and ML 4 Parish of Capertee, County of Hunter, to the north-east corner of the lastmentioned Portion; thence by a line north about 445 chains to the southern boundary of the Parish of Jamieson, County of Hunter; then by that Parish and the Parish of Coorongooba, to the north-eastern corner of Portion 19, Parish of Glen Alice County of Hunter; thence by that Portion and Portions 10 and 1, to the point of commencement—exclusive of Portions MPs. 16, 27 and 28, Parish of Gindantherie and MP 10, Parishes of Gindantherie and Barton, County of Cook, also Portions 9, 10, 11, 20, 21 and 23, Parish of Gindantherie, County of Cook, and Portions 1 and 25, Parish of Barton, County of Cook.

SECOND PART:

County Cook, Parishes of Gindantherie, Barton, Cook, Clwydd, Rock Hill, and Marangaroo, containing an area of about 460 acres, being the Crown land within Portion ML 4, and that part of Portion ML 3 within Portion MP 10, Parishes of Gindantherie and Barton, also that part of Portion ML 3 south of the north boundary of Portion MP 43, Parish of Barton, and shown on plans catalogued M.13424.R. and M.13553R. in the Mines Department.

NATIONAL OIL PROPRIETARY LIMITED AGREEMENT ACT 1939.^(a)

An Act to approve an Agreement made between the Commonwealth of Australia of the First Part, the State of New South Wales of the Second Part, and National Oil Proprietary Limited of the Third Part.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

- | | |
|--|---|
| Short title. | 1. This Act may be cited as the <i>National Oil Proprietary Limited Agreement Act 1939.</i> ^(a) |
| Commence-
ment. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Approval and
ratification of
Agreement. | 3. The Agreement a copy of which is set forth in the Schedule to this Act is approved and ratified. |
| Construction of
<i>National Oil
Proprietary
Limited
Agreement Act
1937.</i> | 4. The <i>National Oil Proprietary Limited Agreement Act 1937</i> shall be read and construed as if the Fourth Schedule to the Agreement, a copy of which is set forth in the Schedule to that Act, contained, and had at the date of execution of that Agreement contained, words excluding from that Schedule the lands described in the First Part of the Schedule to the Agreement a copy of which is set forth in the Schedule to this Act. |

THE SCHEDULE.

MEMORANDUM OF AGREEMENT made the 25th day of October one thousand nine hundred and thirty-nine BETWEEN THE COMMONWEALTH OF AUSTRALIA (hereinafter called "the Commonwealth") of the first part THE STATE OF NEW SOUTH WALES (hereinafter called "the State") of the second part and NATIONAL OIL PROPRIETARY LIMITED (hereinafter called "the Company") of the third part and intended to be read and construed as if endorsed upon the agreement made on the twenty-third day of July one thousand nine hundred and thirty-

^(a) No. 47, 1939; assented to, and commenced, on 8th December, 1939. See s. 2.

THE SCHEDULE—*continued*.

seven between the same parties as are parties hereto which was ratified by the National Oil Proprietary Limited Agreement Act 1937 of the Commonwealth and the National Oil Proprietary Limited Agreement Ratification Act 1937 of the State.

WHEREAS it is necessary to vary the said agreement as hereinafter mentioned NOW IT IS HEREBY AGREED as follows:—

1. (a) Notwithstanding the terms of Clause 19 of the said agreement made the twenty-third day of July one thousand nine hundred and thirty-seven that clause and the other parts of that agreement shall be read and construed as if the Fourth Schedule to that agreement contained and had at the date of execution of such agreement contained words excluding from the said Fourth Schedule the lands described in the First Part of the Schedule to this agreement.

(b) The Act of the State ratifying this agreement shall provide accordingly for the revocation of the reservation enacted by Section eight of the National Oil Proprietary Limited Agreement Ratification Act 1937 so far as concerns the land described in the First Part of the Schedule to this agreement.

2. (a) Notwithstanding the provisions of Clause 12 of the said agreement made the twenty-third day of July one thousand nine hundred and thirty-seven and the terms of the Deed of Covenant and Charge dated the twenty-eighth day of March one thousand nine hundred and thirty-nine registered Number 868 Book 1841 made by the Company in favour of the Commonwealth the Prime Minister of the Commonwealth shall have power to release without any consideration the lands described in the Schedule hereto from the provisions of Clause 12 of the said agreement and of the said Deed of Covenant and Charge to the intent that such lands shall cease to be comprised in or subject to such Deed of Covenant and Charge and the Prime Minister may deliver up to the Company all documents of title to any of the said lands.

(b) Notwithstanding the provisions of Clause 12 of the said agreement made the twenty-third day of July one thousand nine hundred and thirty-seven and the terms of the Deed of Covenant and Charge dated the twenty-eighth day of March One thousand nine hundred and thirty-nine registered Number 869 Book 1841 made by the Company in favour of the State the Premier of the State shall have power to release without any consideration the lands described in the Schedule hereto from the provisions of Clause 12 of the said agreement and of the said Deed of Covenant and Charge to the intent that such lands shall cease to be comprised in or subject to such Deed of Covenant and Charge and the Premier may deliver up to the Company all documents of title to any of the said lands.

3. In this agreement unless the context otherwise requires the expressions "Prime Minister" and "Premier" have the same respective meanings as they have in the said agreement dated the twenty-third day of July one thousand nine hundred and thirty-seven.

4. This agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the State.

IN WITNESS whereof the parties hereto have executed these presents the day and year first above written—

SIGNED SEALED AND DELIVERED by the Honourable HATTIL SPENCER FOLL the Minister for the Interior of the Com- monwealth of Australia for and on behalf of the Commonwealth of Aus- tralia in the presence of: A. STREET.	}	H. S. FOLL.
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SIGNED SEALED AND DELIVERED by the Honourable LEWIS ORMSBY MARTIN the Minister for Public Works of the State of New South Wales for and on behalf of the State in the presence of: R. A. JOHNSON.	}	L. O. MARTIN.
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THE COMMON SEAL OF NATIONAL OIL PROPRIETARY LIMITED was hereunto affixed by authority of the Board of Directors in the presence of: V. BARR SMITH, Secretary.	}	GEO. F. DAVIS, Director. (L.S.)
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THE SCHEDULE—*continued.*

THE SCHEDULE REFERRED TO.

First Part:

All that piece or parcel of Crown land situate in the Shire of Blaxland, Parish of Gindantherie, County of Cook and State of New South Wales, being part of M.L. 25, Lithgow Mining Division:—

Commencing at the south-western corner of portion 2, Parish of Gindantherie; and bounded thence on the north by the southern boundary of that portion bearing 89 degrees 53 minutes 30 seconds 16 chains 3.7 links and part of the southern boundary of portion 3 bearing 89 degrees 57 minutes 30 second 12 chains 34.2 links; on the east by a line bearing 179 degrees 33 minutes 21 chains 55.8 links; on the south by a line bearing 270 degrees 48 chains 60.7 links to the eastern boundary of portion 7; on the west by part of that boundary bearing 6 minutes 11 chains 38.7 links to the southwestern corner of portion 1; again on the north by the southern boundary of that portion, being lines successively bearing 89 degrees 45 minutes 30 seconds 15 chains 5.5 links and 89 degrees 43 minutes 10 seconds 5 chains 0.5 link; and again on the west by part of the eastern boundary of that portion bearing 359 degrees 52 minutes 45 seconds 10 chains 4.5 links to the point of commencement; having an area of 84 acres 34 $\frac{3}{4}$ perches or thereabouts.

Second Part:

All that piece or parcel of land, having an area of 107 acres 1 rood 13 perches or thereabouts, situate in the Shire of Blaxland, Parish of Gindantherie, County of Cook and State of New South Wales, being part of portions 1, 2 and 3:—

Commencing on the right bank of Capertee River at the northeastern corner of the said portion 2; and bounded thence on the east by part of the eastern boundary of that portion bearing 179 degrees 52 minutes 45 seconds 21 chains 10.6 links; on the north by lines successively bearing 90 degrees 8 minutes 45 seconds 11 chains 43.6 links, 93 degrees 20 minutes 75.8 links and 99 degrees 42 minutes 20 seconds 75.8 links; on the south east by a line bearing 192 degrees 53 minutes 40 seconds 2 chains 87.9 links; on the east by a line bearing 179 degrees 33 minutes 8 chains 79.4 links to the southern boundary of the said portion 3; on the south by part of that boundary and the southern boundary of the said portion 2 bearing 269 degrees 57 minutes 30 seconds 12 chains 34.2 links and 269 degrees 53 minutes 30 seconds 16 chains 3.7 links respectively; again on the east by part of the eastern boundary of the said portion 1 bearing 179 degrees 52 minutes 45 seconds 10 chains 4.5 links to the south eastern corner of that portion; again on the south by the southern boundary of that portion being lines successively bearing 269 degrees 43 minutes 10 seconds 5 chains 0.5 link and 269 degrees 45 minutes 30 seconds 15 chains 5.5 links; on the west by the western boundary of that portion, bearing 360 degrees 20 chains 71.2 links to the right bank of Capertee River aforesaid; and generally on the north, northwest and northeast by that river downwards to the point of commencement; but excluding thereout the road, 2 chains wide and variable width, within the said portions 1, 2 and 3, and having an area of 7 acres 26 $\frac{1}{2}$ perches or thereabouts, which area has been deducted from the total.

NATIONAL WELFARE FUND ACT 1943-1950.^(a)

An Act to establish a National Welfare Fund.

BE it enacted by the King's Most Excellent Majesty, the Senate, Preamble
and the House of Representatives of the Commonwealth of
Australia, for the purpose of appropriating the grant originated in
the House of Representatives, as follows:—

1. This Act may be cited as the *National Welfare Fund Act 1943-1950*.^(a) Short title.
Amended by
No. 32, 1918, s. 2.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commence-
ment.
3. In this Act, unless the contrary intention appears—
Definitions.
 - "companies" includes all bodies or associations, corporate or unincorporate, but does not include partnerships; Amended by
No. 41, 1945, s. 3.
 - "the National Welfare Fund" means the Trust Account established by this Act and known as the National Welfare Fund.
- 4.—(J.) There shall be a Trust Account which shall be known as the National Welfare Fund. Establishment
of National
Welfare Fund.
 (2.) The Trust Account established under the last preceding sub-section shall be a Trust Account for the purposes of section sixty-two A of the *Audit Act 1901-1934*.
- 5.—(L.) There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, for the purposes of the National Welfare Fund—
Appropriations
for purposes
of National
Welfare Fund.
 - (a) in the financial year which commenced on the first day of July, One thousand nine hundred and fifty—
Substituted by
No. 41, 1945, s. 4.
Sub-sections (1)
and (2) sub-
stituted by No.
52, 1950, s. 2.
 - (i) the amount of social services contribution which becomes payable under the *Social Services Contribution Assessment Act 1945-1948* in that financial year; and

(a) The *National Welfare Fund Act 1943-1950* comprises the Acts set out in the following table:

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>National Welfare Fund Act 1943</i>	1943, No. 12 ..	20th March, 1943 ..	20th March, 1943
<i>National Welfare Fund Act 1945</i>	1945, No. 41 ..	11th October, 1945 ..	1st July, 1945 (See s. 2)
<i>National Welfare Fund Act 1950*</i>	1950, No. 52 ..	14th December, 1950	11th January, 1951

* Section 4 of this Act is as follows:—

" 4. Sections six, seven, eight and nine of the *National Welfare Fund Act 1945* are repealed."

- (ii) an amount of Thirty million pounds; and
- (b) in each financial year thereafter—
 - (i) the amount of social services contribution which becomes payable under the *Social Services Contribution Assessment Act 1945-1948* in that financial year; and
 - (ii) the amount by which the amount calculated under the next succeeding sub-section for that financial year exceeds the amount specified in sub-paragraph (i) of this paragraph.

(2.) The amount calculated under this sub-section for a financial year is the amount which bears the same proportion to the sum of the amounts specified in paragraph (a) of the last preceding sub-section as the collections of tax under the *Pay-roll Tax Assessment Act 1941-1942* in that financial year bear to the collections of that tax in the financial year which commenced on the first day of July, One thousand nine hundred and fifty.

(3.) There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, for the purposes of the National Welfare Fund, in each financial year, a sum equivalent to the collections of tax in that financial year under the *Pay-roll Tax Assessment Act 1941-1942*.

Application
of National
Welfare Fund.
Amended by No.
41, 1945, s. 5,
and by No. 52,
1950, s. 3.

6. Moneys standing to the credit of the National Welfare Fund shall be applied in making such payments as are directed by any law of the Commonwealth to be made from the Fund, in relation to health services, unemployment or sickness benefits, invalid and age pensions, widows' pensions, family allowances, or other welfare or social services.

Interest from
National
Welfare Fund
to be credited
to Fund.

7. Interest from the investment of any moneys standing to the credit of the National Welfare Fund shall be credited to the Fund.

NAURU ISLAND AGREEMENT ACT 1919.^{(a)(b)}

An Act to approve the agreement^(b) made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Nauru Island Agreement Act* Short title.
1919.^{(a)(b)}

2. This Act shall commence on a date to be fixed by Commence-
Proclamation.^(a)ment.

3. The agreement^(b) made between His Majesty's Government in Approval of
London, His Majesty's Government of the Commonwealth of agreement.
Australia, and His Majesty's Government of the Dominion of New
Zealand, in relation to the Island of Nauru (a copy of which agree-
ment is set forth in the Schedule to this Act) is approved.

THE SCHEDULE.

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN
LONDON, HIS MAJESTY'S GOVERNMENT OF THE COMMON-
WEALTH OF AUSTRALIA, AND HIS MAJESTY'S GOVERN-
MENT OF THE DOMINION OF NEW ZEALAND.

WHEREAS a Mandate for the administration of the Island of Nauru has been conferred by the Allied and Associated Powers upon the British Empire and such Mandate will come into operation on the coming into force of the Treaty of Peace with Germany, and

WHEREAS it is necessary to make provision for the exercise of the said Mandate and for the mining of the phosphate deposits on the said Island.

Now, therefore, His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand do hereby agree as follows:—

(a) No. 8, 1919; assented to on 28th October, 1919; commenced on 28th October, 1920. See *Gazette*, 1920, p. 2004.

(b) See also the further agreement set forth in the Schedule to the *Nauru Island Agreement Act* 1932, *infra*.

THE SCHEDULE—*continued.*

ARTICLE 1.

The Administration of the Island shall be vested in an Administrator.

The first Administrator shall be appointed for a term of five years by the Australian Government; and thereafter the Administrator shall be appointed in such manner as the three Governments decide.

The Administrator shall have power to make ordinances for the peace, order, and good government of the Island, subject to the terms of this Agreement, and particularly (but so as not to limit the generality of the foregoing provisions of this Article) to provide for the education of children on the Island, to establish and maintain the necessary police force, and to establish and appoint courts and magistrates with civil and criminal jurisdiction.

ARTICLE 2.

All the expenses of the administration (including the remuneration of the Administrator and of the Commissioners), so far as they are not met by other revenue, shall be defrayed out of the proceeds of the sales of the phosphates.

ARTICLE 3.

There shall be a Board of Commissioners, comprising three members, one to be appointed by each of the Governments who are parties to this agreement.

ARTICLE 4.

Each of the Commissioners shall hold office during the pleasure of the Government by which he is appointed.

ARTICLE 5.

The three Governments, or if they are unable to agree a majority of them, shall fix the remuneration of the Commissioners.

ARTICLE 6.

The title to the phosphate deposits on the Island of Nauru and to all land, buildings, plant, and equipment on the island used in connexion with the working of the deposits, shall be vested in the Commissioners.

ARTICLE 7.

Any right, title or interest which the Pacific Phosphate Company or any person may have in the said deposits, land, buildings, plant and equipment (so far as such right, title and interest is not dealt with by the Treaty of Peace) shall be converted into a claim for compensation at a fair valuation.

ARTICLE 8.

The amount of the said compensation shall be contributed by the Governments of the United Kingdom, the Commonwealth of Australia, and the Dominion of New Zealand in proportions to be mutually agreed upon, or in the event of their failing to agree within three months of this agreement coming into force, then in the same proportions as the first allotment of phosphates under Article 14 of this agreement. Any other capital necessary for working expenses shall be contributed by the three Governments in the same proportions.

ARTICLE 9.

The deposits shall be worked and sold under the direction, management, and control of the Commissioners subject to the terms of this Agreement.

It shall be the duty of the Commissioners to dispose of the phosphates for the purpose of the agricultural requirements of the United Kingdom, Australia and New Zealand, so far as those requirements extend.

ARTICLE 10.

The Commissioners shall not, except with the unanimous consent of the three Commissioners, sell or supply any phosphates to, or for shipment to, any country or place other than the United Kingdom, Australia or New Zealand.

ARTICLE 11.

Phosphates shall be supplied to the United Kingdom, Australia and New Zealand at the same f.o.b. price, to be fixed by the Commissioners on a basis which will cover working expenses, cost of management, contribution to Administrative expenses, interest on capital, a sinking fund for the redemption of capital and for other purposes unanimously agreed on by the Commissioners and other charges.

Any phosphates not required by the three Governments may be sold by the Commissioners at the best price obtainable.

THE SCHEDULE—*continued.*

ARTICLE 12.

All expenses, costs, and charges shall be debited against receipts; and if by reason of sales to countries other than the United Kingdom, Australia or New Zealand, or by other means or circumstances, any surplus funds are accumulated, they shall be credited by the Commissioners to the three Governments in the proportion in which the three Governments have contributed under Article 8 of this Agreement and held by the Commissioners in trust for the three Governments to such uses as those Governments may direct, or if so directed by the Government for which they are held shall be paid over to that Government.

ARTICLE 13.

There shall be no interference by any of the three Governments with the direction, management, or control of the business of working, shipping, or selling the phosphates, and each of the three Governments binds itself not to do or to permit any act or thing contrary to or inconsistent with the terms and purposes of this Agreement.

ARTICLE 14.

Until the readjustment hereinafter mentioned, each of the three Governments shall be entitled to an allotment of the following proportions of the phosphates produced or estimated to be produced in each year, namely:—

United Kingdom	..	..	..	42 ⁹ / ₁₀
Australia	..	..	..	42 ⁹ / ₁₀
New Zealand	..	..	..	16 ⁹ / ₁₀

Provided that such allotment shall be for home consumption for agricultural purposes in the country of allotment, and not for export.

At the expiration of the period of five years from the coming into force of this agreement, and every five years thereafter, the basis of allotment shall be readjusted in accordance with the actual requirements of each country.

If in any year any of the three Governments does not require any portion of its allotment, the other Governments shall be entitled, so far as their requirements for home consumption extend, to have that portion allotted among themselves in the proportions of the percentages to which they are entitled as above.

Where any proportion of the allotment of one of the Governments is not taken up by that Government, that Government shall, when the phosphates are sold, be credited with the amount of the cost price as fixed by the Commissioners under the first paragraph of Article 11; but if such phosphates are sold to a purchaser other than one of the Governments any profit above the said cost price shall be carried to the surplus fund mentioned in Article 12.

ARTICLE 15.

The agreement shall come into force on its ratification by the Parliaments of the three countries.

Dated this second day of July in the year of Our Lord One thousand nine hundred and nineteen.

Signed by the Right Honourable David
Lloyd George for and on behalf of
His Majesty's Government in
London, in the presence of—
ERNEST EVANS.

(Sgd.) D. LLOYD GEORGE.

Signed by the Right Honourable
William Morris Hughes for and on
behalf of the Government of the
Commonwealth of Australia, in the
presence of
R. R. GARRAN.

(Sgd.) W. M. HUGHES.

Signed by the Right Honourable
William Ferguson Massey for and on
behalf of the Government of the
Dominion of New Zealand, in the
presence of
R. R. GARRAN.

(Sgd.) W. F. MASSEY.

NAURU ISLAND AGREEMENT ACT 1932.^(a)

An Act to approve an Agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Nauru Island Agreement Act 1932.*^(a)

Approval of Agreement.

2. The Agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru (a copy of which Agreement is set forth in the Schedule to this Act) is approved.

THE SCHEDULE.

AGREEMENT between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia and His Majesty's Government of the Dominion of New Zealand.

WHEREAS a Mandate for the administration of the Island of Nauru has been conferred upon His Majesty; AND WHEREAS by an Agreement dated the Second day of July 1919 between His Majesty's Government in London the Government of the Commonwealth of Australia and the Government of the Dominion of New Zealand (hereinafter called the "Contracting Governments") it is among other things provided that—

^aARTICLE I.

The Administration of the Island shall be vested in an Administrator.

The first Administrator shall be appointed for a term of five years by the Australian Government and thereafter the Administrator shall be appointed in such manner as the three Governments decide.

The Administrator shall have power to make ordinances for the peace order and good government of the island subject to the terms of this Agreement and particularly (but so as not to limit the generality of the foregoing provisions of this Article) to provide for the education of children on the island to establish and maintain the necessary police force and to establish and appoint courts and magistrates with civil and criminal jurisdiction":

(a) No. 54, 1932; assented to, and commenced, on 28th November, 1932.

THE SCHEDULES—continued.

AND WHEREAS the Government of the Commonwealth of Australia have appointed Brigadier-General Thomas Griffiths, C.M.G., C.B.E., D.S.O., to be the first Administrator.

AND WHEREAS it is expedient to make further provision for the good government of the island under the terms of the Mandate and of the Treaty of Peace with Germany subject to the terms of the Agreement aforesaid:

IT IS HEREBY FURTHER AGREED between the three Governments as follows:

1. All ordinances made by the Administrator shall be subject to confirmation or disallowance in the name of His Majesty, whose pleasure in respect of such confirmation or disallowance shall be signified by one of His Majesty's Principal Secretaries of State, or by the Governor-General of the Commonwealth of Australia acting on the advice of the Federal Executive Council of the Commonwealth, or by the Governor-General of the Dominion of New Zealand acting on the advice of the Executive Council of the Dominion, according as the Administrator shall have been appointed by His Majesty's Government in London, or by the Government of the Commonwealth of Australia, or by the Government of the Dominion of New Zealand, as the case may be.

2. The Administrator shall conform to such instructions as he shall from time to time receive from the Contracting Government by which he has been appointed.

3. Copies of all ordinances, proclamations and regulations made by the Administrator shall be forwarded by him to the Contracting Government by which he has been appointed, for confirmation or disallowance, and to the two other Contracting Governments for their information; and the Administrator shall supply through the Contracting Government by which he has been appointed such other information regarding the administration of the Island as either of the other Contracting Governments shall require.

4. All such reports as are required to be rendered to the Council of the League of Nations in virtue of Article 22 of the aforesaid Treaty of Peace or otherwise shall be transmitted by the Administrator through the Contracting Government by which he has been appointed to His Majesty's Government in London for presentation to the Council on behalf of the British Empire as Mandatory.

Dated this 30th day of May in the year of Our Lord One thousand nine hundred and twenty-three.

Signed by His Grace the Duke of Devonshire for and on behalf of His Majesty's Government in London, in the presence of:—	}	DEVONSHIRE.
W. C. HANKINSON.		

Signed by the Right Honourable Sir Joseph Cook for and on behalf of the Government of the Commonwealth of Australia, in the presence of:—	}	JOSEPH COOK.
(J. C. W. FUHRMAN.		

Signed by Colonel the Honourable Sir James Allen for and on behalf of the Government of the Dominion of New Zealand, in the presence of:—	}	JAMES ALLEN.
C. KNOWLES.		

NAVAL DEFENCE ACT 1910-1949.^(a)

An Act relating to Naval Defence.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

Short title.
Short title
amended,
No. 32 of 1918,
s. 2.
Parts.

1. This Act may be cited as the *Naval Defence Act 1910-1949*.^(a)

2. This Act is divided into Parts as follows:—

Part I.—Introductory.

Part II.—Administration.

Part III.—The Naval Forces.

Part IV.—The Service of the Naval Forces.

Part V.—Obligations in respect of Naval Training.

Part VI.—Special Powers in relation to the Naval Forces.

Part VII.—Miscellaneous.

Definitions.

3. In this Act, unless the contrary intention appears—

“Active service” means service in or with a force which is engaged in operations against the enemy, and includes any naval or military service in time of war;

“Commission” includes warrant.

Inserted by
No. 45, 1918, s. 2.

“The Defence Act” means the *Defence Act 1903-1910* as amended from time to time and includes any Act for the time being in force in substitution for that Act;

“Governor-General” means the Governor-General of the Commonwealth, or the person for the time being administering the Government of the Commonwealth, acting with the advice of the Executive Council;

“The Naval Discipline Act” means the Imperial Act called The Naval Discipline Act as amended from time to time

(a) The *Naval Defence Act 1910-1949* comprises the *Naval Defence Act 1910* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act.	Year and Number.	Date of Assent.	Date of Commencement.
<i>Naval Defence Act 1910</i>	1910, No. 30 ..	25th November, 1910	25th November, 1910
<i>Naval Defence Act 1911</i>	1911, No. 16 ..	22nd December, 1911	22nd December, 1911
<i>Naval Defence Act 1912</i>	1912, No. 21 ..	24th December, 1912	24th December, 1912
<i>Naval Defence Act 1918</i>	1918, No. 45 ..	25th December, 1918	25th December, 1918
<i>Statute Law Revision Act 1934</i>	1934, No. 45 ..	6th August, 1934 ..	6th August, 1934
<i>Commonwealth Public Service Act 1948</i>	1948, No. 35 ..	26th June, 1948 ..	1st September, 1948 (See Gazette, 1948 p. 3115)
<i>Naval Defence Act 1949</i>	1949, No. 72 ..	28th October, 1949 ..	1st January, 1950

and includes any Act for the time being in force in substitution for that Act;

"Naval establishment" includes any Naval College, instructional establishment, ship, vessel, or boat used for services auxiliary to Naval Defence, and any dock, shipyard, foundry, machine shop, work, or establishment in connexion with Naval Defence;

"Officer" means a commissioned officer, subordinate officer, or warrant officer, but does not include a petty officer;

"Prescribed" means prescribed by this Act or the Regulations;

"Regulations" means the regulations relating to the Naval Forces whether made in pursuance of this Act, the Defence Act, or any other power;

"Seaman" means a member of the Naval Forces not being an officer, and includes any person serving in any capacity on board a vessel of the Naval Forces when engaged in any naval service;

"This Act" includes all regulations under this Act;

"Time of War" means any time during which a state of war actually exists, and includes the time between the issue of a proclamation of the existence of war or of danger thereof, and the issue of a proclamation declaring that the war or danger thereof, declared in the prior proclamation, no longer exists;

"War" means any invasion or apprehended invasion of or attack or apprehended attack on the Commonwealth or any territory under the control of the Commonwealth by an enemy or armed force, and includes actual war in which the Naval Forces take part.

4. The Defence Act is amended as set out in the First Schedule, and that Act as so amended may continue to be cited as the *Defence Act 1903-1910*.^(a) Amendment of Defence Act.

5. Part I., sections thirty, forty-three, forty-six, forty-seven, fifty-one, fifty-three and fifty-eight of Part III. and Parts IV. to XIV. both inclusive of the Defence Act shall, subject to this Act, continue to apply in relation to the Naval Forces: Application of Defence Act.

Provided that, in the application of those Parts and sections in relation to the Naval Forces, any reference to the Minister shall be construed as a reference to the Minister administering this Act. Proviso added by No. 45, 1918, s. 3.

6. Nothing in this Act shall be taken as an appropriation of any public moneys. Act does not appropriate money.

(a) The amendments so made have been incorporated in the print of the *Defence Act 1903-1950*, *supra*.

PART II.—ADMINISTRATION.

Naval Board.

7.—(1.) The Governor-General may appoint a Board of Administration for the Naval Forces, to be called the Naval Board.

(2.) The Naval Board shall have such powers and functions as are prescribed.

Power to appoint officers.

8. The Governor-General may—

(a) appoint and promote officers of the Naval Forces, and issue commissions to them; and

(b) appoint an officer to command the whole or any portion of the Naval Forces.

Proviso added by
No. 45, 1918,
s. 4.

Provided that subordinate officers and officers appointed provisionally or on probation shall not receive commissions.

Continuance of existing officers.

9. Officers of the Naval Forces holding office at the commencement of this Act shall continue to hold office as if appointed under this Act.

Appointment does not create a civil contract.

10. The appointment or promotion of an officer under this Act shall not create a civil contract between the King or the Commonwealth and the officer.

Officers not to be appointed or promoted except provisionally until they have passed prescribed examination.

11.—(1.) Subject to sub-section (2.) a person shall not be appointed to be an officer in the Naval Forces or promoted to any higher rank therein unless he has passed the prescribed examination for the rank to which he is appointed or promoted.

(2.) A person who has not passed the prescribed examination for any particular rank may be appointed provisionally to be an officer of that rank.

(3.) A person provisionally appointed to be an officer of any particular rank shall cease to hold office as an officer of that rank if he fails to pass the prescribed examination for the rank to which he has been provisionally appointed within the prescribed time, not exceeding eighteen months, after his appointment.

(4.) The requirements of this section may be dispensed with by the Governor-General in the case of persons who are officers of the King's Regular Naval Forces.

Added by
No. 45, 1918, s. 5.

(5.) Notwithstanding anything contained in this section, an officer who, at the commencement of a time of war, holds a provisional appointment as an officer of a particular rank, or who is, during a time of war, appointed provisionally as an officer of a particular rank, may continue to hold office as an officer of that rank during the continuance of the time of war and for a period not exceeding eighteen months thereafter, even though he has not passed the prescribed examination for that rank.

12. Every officer shall hold his appointment during the pleasure of the Governor-General, but the commission of an officer shall not be cancelled except for cause and after he has had notice, in manner prescribed, of the cause, and has been called upon to answer in his defence.

Appointments to be held during pleasure.

13.—(1.) Except in time of war, an officer may by writing under his hand resign his commission at the expiration of any time not being less than three months from the date of the receipt of the resignation.

Resignation by officer of his commission.

(2.) The resignation shall not have effect until it has been accepted by the Governor-General.

(3.) For special reasons the Governor-General may accept any resignation at any time after the receipt thereof.

14. Non-commissioned officers, and petty officers shall be appointed and shall hold their offices as prescribed.

Appointment of non-commissioned and petty officers.

15. The seniority of officers in their respective ranks shall be as prescribed.

Amended by No. 45, 1918, s. 6. Seniority.

16. The Governor-General may appoint any person to be an officer, or promote any officer to a higher rank for distinguished service or for marked ability and gallantry on active service, without that person having passed the prescribed examination for the rank to which he is appointed or promoted.

Appointment or promotion for distinguished service.

17. The ages for the compulsory retirement of officers and members of the Naval Forces shall be as prescribed, but in special cases the Governor-General may extend the prescribed age of retirement for a period not exceeding two years.

Retiring age.

18.—(1.) The Governor-General may establish Naval Colleges and Instructional Establishments for the purpose of imparting education in the various branches of naval science and in the subjects connected with the naval profession, and for the purpose of qualifying persons for the naval service.

Naval College.

(2.) Persons receiving instruction or training at any Naval College or Instructional Establishment shall be subject to this Act and the regulations.

Naval Forces.

PART III.—THE NAVAL FORCES.

19. The Naval Forces shall be divided into two branches called the Permanent Naval Forces and the Citizen Naval Forces.

Permanent Naval Forces.

20. The Permanent Naval Forces shall consist of officers who are appointed officers of those Forces, and seamen who have enlisted

or engaged as members of those Forces and who are bound to continuous naval service for the term of their enlistment or engagement.

Citizen Naval
Forces.
Amended by
No. 21, 1912, s. 2.

21.—(1.) The Citizen Naval Forces shall be divided into the Naval Reserve Forces and the Naval Volunteer Reserve Forces.

(2.) The Naval Reserve Forces shall consist of officers and seamen who are not bound in time of peace to continuous naval service and who are paid for their services as prescribed and of persons who are liable under the Defence Act to be trained in the Citizen Forces and who are allotted to the Naval Forces.

(3.) The Naval Volunteer Reserve Forces shall consist of officers and seamen who are not bound in time of peace to continuous naval service and who are not ordinarily paid for their services in time of peace.

Power to raise
Naval Forces.

22. The Governor-General may raise, maintain, and organize such Permanent and Citizen Naval Forces as he deems necessary for the defence and protection of the Commonwealth and of the several States.

Section 23,
repealed by
No. 45, 1934, s. 2
and Fourth
Schedule.

* * * * *

Naval Forces to
be raised by
voluntary
enlistment.

24. Except as provided in the Defence Act, the Naval Forces shall be raised and kept by voluntary enlistment only.

Period of
enlistment.

25. Enlistment in the Naval Forces shall be for such period as is prescribed, but no prescribed period shall be less than two years.

Enlistment of
persons under
twenty-one
years of age in
Permanent
Naval Forces.

Inserted by
No. 16, 1914, s. 2.

25A.—(1.) Any person under the age of twenty-one years may, with the consent in writing of his parent or guardian, enlist for service in the Permanent Naval Forces for such period as is prescribed, but that period shall not exceed the time required for him to attain the age of thirty years.

(2.) The enlistment of any person in pursuance of this section shall be binding on him both during his infancy and after he attains his majority.

Oath of
enlistment.

26.—(1.) Every person enlisting in the Naval Forces shall take and subscribe an oath or affirmation of enlistment in accordance with the form in the Second Schedule.

(2.) The oath or affirmation of enlistment shall be taken before an officer, a Justice of the Peace, or a prescribed person.

(3.) The oath or affirmation of enlistment shall bind the person subscribing it to serve in the Naval Forces in accordance with the tenor of the oath until he is discharged, dismissed, or removed therefrom, or until his resignation is accepted.

27. Persons in any part of the King's Dominions may, subject to the law in force in that part, voluntarily enlist as members of the Naval Forces of the Commonwealth, and this Act shall apply to persons who enlist as members of the Naval Forces in parts beyond the limits of the Commonwealth to the same extent as if they had enlisted within the limits of the Commonwealth.

Enlistment in any part of the King's Dominions.

28.—(1.) A member of the Naval Forces shall be entitled to be discharged therefrom at the expiration of the period of service for which he enlisted, unless such expiration occurs in time of war, in which case he shall not be entitled to his discharge until the time of war has terminated.

Discharge on expiration of period of service.

Amended by No. 45, 1918, s. 7.

(2.) When a seaman becomes entitled to be discharged he shall be discharged with all convenient speed, but until discharged he shall remain a member of the Naval Forces.

Added by No. 45, 1918, s. 7.

29.—(1.) A seaman of the Citizen Naval Forces may, except in time of war, claim his discharge before the expiration of the period of service for which he enlisted subject to the following conditions:—

Discharge prior to expiration of period of service.

- (a) He shall give three months' notice in writing to his commanding officer of his intention to claim his discharge; and
- (b) He shall, if a member of the Naval Reserve Forces, pay such sum not exceeding Two pounds as is prescribed; or
- (c) He shall, if a member of the Naval Volunteer Reserve Forces, pay such sum not exceeding One pound as is prescribed.

(2.) Any payment under this section may for special reasons be waived by any authorized officer.

(3.) This section shall not apply to persons undergoing training or liable to be trained in pursuance of the Defence Act.

30. The Governor-General may at any time by order published in the *Gazette*—

Disbanding, &c., of Corps.

- (a) disband any corps or portion of a corps; or
- (b) dispense with the services of any officer or seaman.

PART IV.—THE SERVICE OF THE NAVAL FORCES.

31. The Permanent Naval Forces are liable to continuous naval service, and shall at all times be liable to be employed on any naval service, including active service, and the defence and protection of the Commonwealth and of the several States.

Service of Permanent Naval Forces.

32.—(1.) The Citizen Naval Forces are not liable in time of peace to continuous naval service, but are liable to such naval service as the regulations prescribe.

Service of Citizen Forces.

(2.) The Citizen Forces shall only be liable to be employed on active service when called out for active service by proclamation.

(3.) Nothing in this section shall prevent the employment on active service or any naval service of any members of the Citizen Forces who volunteer for such service.

Limits of service.

33. Members of the Naval Forces may be required to serve for training or any naval service either within or beyond the limits of the Commonwealth.

Drill and training.

34. The Naval Forces shall be subject to such drill training and inspection as are prescribed by the regulations.

Service or training with King's Naval Forces.

35.—(1.) The Governor-General may, for the purpose of naval service or training, place any part of the Naval Forces on board any ship of the King's Navy or in any naval training establishment or school in connexion with the King's Navy.

(2.) The members of the Naval Forces while so placed shall—

- (a) be under the command of the officer commanding the ship, training establishment, or school; and
- (b) be subject to the laws and regulations to which the members of the King's Naval Forces on the ship or attending the training establishment or school are subject.

Application of Naval Discipline Act and King's Regulations.

Amended by No. 21, 1912, s. 3.

36. The Naval Discipline Act and the Naval Discipline (Dominion Naval Forces) Act 1911 and the King's Regulations and Admiralty Instructions for the time being in force in relation to the King's Naval Forces shall, subject to this Act and to any modifications and adaptations prescribed by the regulations, apply to the Naval Forces.

Command where Imperial and Dominion Forces acting together.

Substituted by No. 16, 1911, s. 3; amended by No. 21, 1912, s. 4.

37.—(1.) Whenever in pursuance of an order made by the Governor-General or any person acting under the authority of the Governor-General the Commonwealth Naval Forces or any part thereof are acting with any part of the King's Naval Forces and any part of the Naval Forces of any part of the King's Dominions, or with any part of any of those Forces, then, subject to any order made by the Governor-General, under the next following sub-section, the Forces so acting together shall, while so acting, be deemed to be one force or unit of a force in command of the senior naval officer present and acting in a position of command, and, subject to his orders, all officers in the force or unit shall have, as regards command and discipline in relation to the Commonwealth Naval Forces, the same powers and authority as if they were officers of the Commonwealth Naval Forces.

(2.) Where any arrangement has been made between the Government of the Commonwealth and the Government of the United Kingdom or the Government of any part of the King's Dominions in relation to any joint action or mutual action in relation to training or service by the Naval Forces of the Commonwealth

and the Naval Forces of the King and the Naval Forces of any part of the King's Dominions or any of those Forces, the Governor-General may, by order published in the *Gazette*, give such directions or instructions as he thinks fit to carry out the arrangement.

(3.) Any order made by the Governor-General in pursuance of this section shall have effect as if it were enacted in this Act.

PART V.—OBLIGATIONS IN RESPECT OF NAVAL TRAINING.

38. Persons who are liable under the Defence Act to be trained in the Junior or Senior Cadets and who are allotted to the Naval Forces shall be subject to this Act and the regulations.

Cadets to be subject to regulations.

39. Commissioned rank in the Junior and Senior Naval Cadets shall be deemed honorary rank in the Naval Forces, but shall not confer any right to command in those Forces.

Commissioned rank in Cadets.

40. Persons who are liable under the Defence Act to be trained in the Citizens Forces and who are allotted to the Naval Forces shall be subject to training as prescribed, and shall be subject to this Act and the regulations, and shall while undergoing training be deemed to be members of the Citizen Naval Forces.

Persons liable to compulsory naval training to be subject to Act and regulations.

40A.—(1.) Persons employed upon sea-going vessels who are liable under the Defence Act to be trained in the Citizen Forces and who are allotted to the Naval Forces may be permitted to perform the prescribed training for the year during one consecutive period of the year.

Training of persons serving on board ship.
Inserted by No. 21, 1912, s. 5.

(2.) In the event of the vessel on which they are serving not being in a convenient port at the expiration of the prescribed training, they may be permitted to undergo such further training, not exceeding the training prescribed for one year, as may be convenient, and the additional training so undergone shall be deducted from the training required for the following year.

40B. Notwithstanding anything contained in any law relating to navigation shipping or seamen in force in the Commonwealth or any State or part of the Commonwealth, a person employed upon a sea-going vessel who is liable to be trained in the Citizen Forces and who is allotted to the Naval Forces may for the purposes of undergoing the prescribed training be granted such leave of absence without pay from the vessel upon which he is employed as may be necessary or convenient for the purpose of carrying out the prescribed training.

Seamen may be granted leave of absence from ship.
Inserted by No. 21, 1912, s. 5.

PART VI.—SPECIAL POWERS IN RELATION TO THE NAVAL FORCES.

41.—(1.) In addition to any powers contained in section sixty-three of the Defence Act, ^(a) the Governor-General may—

Power to build ships and construct docks, shipyards, foundries, &c., for naval purposes.

Substituted by
No. 35, 1948, s. 5.

- (a) acquire or build and maintain ships, vessels, or boats, for Naval Defence, or for service auxiliary to Naval Defence;
- (b) acquire or construct and maintain docks, shipyards, foundries, machine shops, and other works or establishments in connexion with Naval Defence; and
- (c) authorize the employment of any persons in a civil capacity in connexion with the Naval Forces or in connexion with any services auxiliary to Naval Defence or any works or establishments under this section, not being employment which the Public Service Board, declares by notice published in the *Gazette* to be employment of a civil administrative or civil clerical nature.

(2.) The provisions of section sixty-three of the Defence Act shall apply in relation to the above-mentioned powers as if they were included in that section.

Added by
No. 35, 1948, s. 5.

(3.) Persons employed in a civil capacity in pursuance of this section shall not be subject to the *Commonwealth Public Service Act* 1922-1948,^(a) but shall be engaged for such periods and shall be subject to such conditions as are prescribed.

Added by
No. 35, 1948, s. 5.

(4.) The fixing of rates of salary for persons so employed, other than rates fixed by an industrial award, order, determination or agreement, shall be subject to the approval of the Public Service Board.

Transfers
between King's
Naval Forces
and Common-
wealth Naval
Forces.

42.—(1.) The Governor-General may—

- (a) accept the transfer to the Commonwealth Naval Forces of any vessel of the King's Naval Forces or of the Naval Forces of any part of the King's Dominions;
- (b) accept the transfer to the Commonwealth Naval Forces of any officers and seamen of the King's Naval Forces or of the Naval Forces of any part of the King's Dominions;
- (c) transfer to the King's Naval Forces or to the Naval Forces of any part of the King's Dominions any vessel of the Commonwealth Naval Forces; and
- (d) transfer to the King's Naval Forces or to the Naval Forces of any part of the King's Dominions any officers or seamen of the Commonwealth Naval Forces.

(2.) Any transfer in pursuance of this section may be for such period and subject to such conditions as the Governor-General thinks desirable.

(3.) Subject to the conditions of transfer, all officers and seamen of the King's Naval Forces or of the Naval Forces of any part of the King's Dominions transferred in pursuance of this section to the Commonwealth Naval Forces shall, while so transferred, be

(a) See now the *Public Service Act* 1922-1950, *infra*.

deemed to be members of the Commonwealth Naval Forces, and shall be subject to this Act and the regulations so far as they are applicable.

(4.) Subject to the conditions of transfer, all officers and seamen of the Commonwealth Naval Forces transferred in pursuance of this section to the King's Naval Forces or to the Naval Forces of any part of the King's Dominions shall, while so transferred, be subject to the laws and regulations governing the King's Naval Forces or the Naval Forces of the part of the King's Dominions to which they are transferred so far as those laws and regulations are applicable.^(a)

PART VII.—MISCELLANEOUS.

43. When any member of the Naval Forces—

(a) is killed on active service or on duty, or

(b) dies, or becomes incapacitated from earning his living from wounds or disease contracted on active service,

Provision in case of death or incapacity on active service or on duty.

provision shall be made for his widow and family or for himself, as the case requires, out of the Consolidated Revenue Fund at the prescribed rates.^(b)

44. Funds may be established in such manner and subject to such provisions as are prescribed for providing for the payment of annuities or gratuities to members of the Naval Forces permanently injured in the performance of their duties, and for the payment of annuities or gratuities to members of the Permanent Naval Forces who are retired on account of age or infirmity.

Funds for annuities or gratuities in case of injury or retirement.

44A. Officers of the King's Naval Forces, and officers of the Commonwealth Naval Forces, and officers of the Naval Forces of any part of the King's Dominions shall be eligible for appointment as officers to constitute Naval courts-martial.

Officers eligible to constitute Courts-martial.
Inserted by No. 16, 1911, s. 4.

44B.—(1.) When in pursuance of an order made by the Governor-General or any person acting under the authority of the Governor-General the Commonwealth Naval Forces are acting with the King's Naval Forces, or with the Naval Forces of any part of the King's Dominions, the naval officer upon whom the command devolves may convene courts-martial and appoint officers to constitute courts-martial for the trial of members of the Commonwealth Naval Forces in respect of charges triable by courts-martial, and, subject to any directions or instructions given by the Governor-General or prescribed by the regulations, may approve, confirm, mitigate, or remit any sentence passed by a court-martial.

Inserted by No. 16, 1911, s. 4.
Amended by No. 21, 1912, s. 6.

^(a) Held by the High Court that a seaman of the Commonwealth Naval Forces who has been unconditionally transferred to the King's Naval Forces and who has been found guilty of murder by a court-martial may be sentenced to death in accordance with s. 45 of the *Naval Discipline Act 1866* (Imp.) notwithstanding the provisions of s. 98 of the *Defence Act 1903-1941*. *The King v. Bevan ex parte Elias and Gordon*, (1942) 66 C.L.R. 452; 48 A.L.R. 170; 16 A.L.J. 213.

^(b) But see s. 24 of the *Repatriation Act 1920-1950*, *infra*.

Provided that a sentence of death passed by any court-martial on any member of the Commonwealth Naval Forces shall be not carried into effect until it has been confirmed by the Governor-General.

(2.) This section shall not affect any power, under the Defence Act, of the Governor-General or any delegate of the Governor-General in relation to courts-martial.

Saving of
certain
appointments,
&c.

Inserted by
No. 72, 1949, s. 3.

44c. Any appointment, promotion or extension of the age for retirement of an officer or man of the Naval Forces, and any transfer of an officer of the Citizen Naval Forces, effected under the National Security (Naval Forces) Regulations as in force under the *National Security Act 1939-1946*, prior to the first day of January, One thousand nine hundred and forty-seven, being an appointment, promotion, extension or transfer which was, by virtue of those Regulations as in force under the *Defence (Transitional Provisions) Act 1946-1948*, subsisting immediately prior to the commencement of this section, shall continue until otherwise determined by the Governor-General.

Regulations.

Amended by
No. 72, 1949, s. 4.

45.—(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the discipline and good government of the Naval Forces, or for carrying out or giving effect to this Act, and in particular prescribing matters for or in relation to—

- (a) the good government of Naval establishments;
- (b) the discipline of persons receiving instruction or training in or employed in or in connexion with Naval establishments;
- (c) the regulation and control of shipping in time of war or for the purposes of any naval operation or practice; and
- (d) the fixing of charter rates and establishment charges in respect of ships requisitioned for naval purposes.

(2.) The regulations may provide penalties for breaches thereof, not exceeding imprisonment with hard labour for three months, in the case of imprisonment, or Twenty pounds, in the case of pecuniary penalties.

(3.) The power to make regulations contained in this section is in addition to any power to make regulations contained in the Defence Act.

THE FIRST SCHEDULE.

Consequential amendments in the *Defence Act 1903-1910.*^(a)

Section.	Extent of Amendment.
4	Omit "sailor" from definition of "member" and insert in its stead "seaman". Omit definition "Naval Discipline Act". Omit definition "Naval Commandant". Omit "Sailor" and insert in its stead "Seaman".
8	Omit paragraph II.
9	Omit "and the Director of the Naval Forces". Omit "or no Director of the Naval Forces, or if these officers or either of them" and insert in their stead "or if he". Omit "their" wherever it occurs and insert in its stead "his".
11A	After "Citizen" wherever it occurs insert "Military".
14	After "Active" insert "Military". Omit "Naval or".
18	After "Warrant Officers" insert "and". Omit "and petty officers".
19	After "Active" insert "Military".
20	After "Reserve" wherever it occurs insert "Military". After "Active" insert "Military".
21	Omit "or below the rank of commander in the Naval Forces".
23	After "Permanent" insert "Military".
28	Omit "and a Board of Administration for the Naval Forces, to be called the Naval Board". Omit "and the Naval Board". Omit "respectively".
31	After "Permanent" insert "Military". Omit "petty officers and sailors". Omit "naval or".
32	Omit the section.
36	After "Permanent" insert "Military Forces", after "Volunteer" insert "Military", and before "Reserves" insert "Military".
37	After "Active" insert "Military". Omit "or sailor".
40	Omit "or sailor".
41	Omit "or sailor".
42	After "Active" insert "Military".
44	After "officer" insert "or". Omit "or sailor".
48	Omit the section.
54	Omit the section.
56	Omit the section.
57	Omit "Defence Force" and insert in its stead "Military Forces".
63	Omit paragraph (a).
73	Omit "sailor" insert "seaman".
112	Omit "sailor" wherever it occurs and insert in its stead "seaman".

(a) The amendments so made have been incorporated in the print of the *Defence Act 1903-1950*, *supra*.

THE SECOND SCHEDULE.

OATH.

I swear that I will well and truly serve our Sovereign Lord the King in the
Naval Forces of the Commonwealth of Australia for
the term of years or until sooner lawfully discharged dismissed or
removed and that I will resist His Majesty's enemies and cause His Majesty's
peace to be kept and maintained and that I will in all matters appertaining to
my service faithfully discharge my duty according to law. So help me God!

AFFIRMATION.

I solemnly and sincerely affirm and declare that I will well and truly serve
our Sovereign Lord the King in the Naval Forces of the
Commonwealth of Australia for the term of years, or until
sooner lawfully discharged dismissed or removed and that I will resist His
Majesty's enemies and cause His Majesty's peace to be kept and maintained
and that I will in all matters appertaining to my service faithfully discharge
my duty according to law.

NAVAL PROPERTIES TRANSFER ACT 1925.^(a)

An Act to ratify an Agreement entered into between the Prime Minister of the Commonwealth and the Premier of the State of New South Wales respecting the surrender to the State of certain Land and for other purposes.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Naval Properties Transfer Act* Short title.
1925.^(a)

2. This Act shall commence on a date to be fixed by Commence-
Proclamation.^(a) ment.

3.—(1.) The Agreement (in this Act referred to as “the Principal Agreement”) made between the Commonwealth and the State and Ratification of
set out in the First Schedule to this Act is hereby ratified and Agreement.
confirmed.

(2.) The Agreement made between the Commonwealth and the State and set out in the Second Schedule to this Act is hereby ratified and confirmed.

4. All the estate and interest of the Commonwealth in the lands, Certain land
being portion of Goat Island, referred to in the Principal Agreement surrendered
and delineated on the plan thereunto annexed marked “B” and to State.
described in the Schedule thereto are hereby surrendered to the State.

^(a) No. 19, 1925; assented to on 26th September, 1925; not yet proclaimed to commence (31st December, 1950).

THE FIRST SCHEDULE.

AGREEMENT made the twenty sixth day of October One thousand nine hundred and fifteen between The Honourable William Arthur Holman the Premier of the State of New South Wales (hereinafter referred to as "the Premier" which expression shall where the context so admits or requires be deemed to include his successors in office the Premier for the time being of the State of New South Wales) for and on behalf of the Government of the said State but not so as to incur or come under any personal liability of the one part and The Right Honourable Andrew Fisher the Prime Minister of the Commonwealth of Australia (hereinafter referred to as the "Prime Minister" which expression shall where the context so admits or requires be deemed to include his successors in office the Prime Minister for the time being of the Commonwealth of Australia) for and on behalf of the Government of the said Commonwealth (but not so as to incur or come under any personal liability) of the other part

WHEREAS the Commonwealth Government being desirous of establishing a Naval Depot and Dockyard in the said Commonwealth entered into negotiations with the Government of the said State as a result of which it was agreed between the Premier and the Prime Minister that the said Commonwealth Government should establish such Naval Depot and Dockyard on a site in the Harbour of Port Jackson in the said State consisting of Cockatoo Island and Schnapper Island and the waters adjacent thereto respectively upon the terms and conditions hereinafter set out AND WHEREAS in pursuance of such agreement the Commonwealth Government on the first day of February One thousand nine hundred and thirteen entered into possession of the said Cockatoo Island and Schnapper Island and of all improvements buildings structures erections dockyards machinery plant and stores thereon respectively NOW THIS AGREEMENT WITNESSETH that in pursuance of such Agreement and in consideration of the reciprocal undertakings and agreements hereinafter contained and to be performed on the part of the Premier and the Prime Minister THEY do hereby agree with each other as follows:—

1. THIS Agreement shall be deemed to have come into operation on and shall take effect as from the first day of February One thousand nine hundred and thirteen—

2. THE Premier for the consideration set out in Clause 7 hereof will within a reasonable time from the date of this Agreement cause to be effectually vested in the Commonwealth of Australia in fee simple free from encumbrances reservations conditions and provisos the said Site consisting of Cockatoo Island and Schnapper Island as shown in the plan hereunto annexed marked "A" Together with all improvements buildings structures erections dockyards machinery material stores and plant erected constructed or placed thereon and all tools and appliances used in connexion therewith—

3. THE Premier will within such reasonable time as aforesaid cause to be granted to the said Commonwealth Government the right to reclaim in fee simple the area abutting on said Cockatoo Island and Schnapper Island as shown in and coloured blue in the said Plan hereunto annexed and for that purpose to fill in the said area and to do all things necessary or convenient for the reclamation thereof and will cause a grant of the area so to be reclaimed to be issued to the Commonwealth of Australia in fee simple free from all encumbrances reservations conditions and provisos also the right of using the area shown bounded by green lines in the said plan hereunto annexed and the exclusive right of establishing buoys within that area AND ALSO the right to erect wharves and jetties abutting on any part of the said Cockatoo Island or Schnapper Island and within the area bounded by green lines as shown in the said plan hereunto annexed.

4. ALL liabilities for salaries wages and cost of materials except the cost of materials referred to in Clause 8 hereof owing by the said State Government in connexion with the Fitzroy and Sutherland Dockyards situated on said Cockatoo Island up to the thirty-first day of January One thousand nine hundred and thirteen will be discharged by the said State Government—

THE FIRST SCHEDULE—*continued.*

5. THE Premier undertakes to provide an adequate supply of fresh water at the said Cockatoo Island and Schnapper Island at the rate ruling for the time being in respect of supplies to large users of water in the Metropolitan Area of the said State—

6. THE Prime Minister undertakes to hand over and deliver up possession to the State Government of that portion of Goat Island situated in Port Jackson aforesaid at present in possession of the Commonwealth Government and shown coloured pink on the Plan hereunto annexed marked "B" and described in the Schedule to these presents and will cause to be surrendered to His Majesty the King for the said State all the estate and interest of the Commonwealth of Australia in the said portion in consideration of the sum of Thirteen thousand pounds to be paid to the said Commonwealth Government by the said State Government which sum shall be set off against the sum of Thirteen thousand pounds payable by the said Commonwealth Government to the said State Government in respect of the said portion of Goat Island which became vested in the said Commonwealth as transferred property under the Constitution of the Commonwealth of Australia—

7. THE Commonwealth Government will pay to the said State Government for the said site consisting of Cockatoo Island and Schnapper Island Together with all improvements buildings structures erections dockyards machinery and plant erected constructed or placed thereon and all tools and appliances used in connexion therewith as mentioned in Clause 2 hereof and Together with all rights granted or to be granted to the Commonwealth in pursuance of this Agreement the sum of Eight hundred and sixty-seven thousand seven hundred sixteen pounds nine shillings as mentioned and set out in the annexure hereto marked "C" and for the purpose of payment of the same the said sites and property shall be treated as if transferred to the Commonwealth under Section 85 Sub-section 1 of the Constitution of the Commonwealth of Australia—

8. THE Commonwealth Government shall be deemed to have taken over from the State Government all material stores and plant ordered by the State Government for use at the said site and on the high seas on the first day of February one thousand nine hundred and thirteen and will refund to the State Government any money paid and indemnify the State Government against all liabilities in respect thereof The Commonwealth Government will also take over all liability for material and plant ordered by the Agent General before the first day of February one thousand nine hundred and thirteen but not then shipped for the use of the aforesaid dockyards The Commonwealth Government will also take over all liability in connexion with any Agreements entered into by the State Government with any employees at the said Dockyards for the retention of their services for specific terms—

9. THE Commonwealth Government will pay to the State Government the sum of Sixty-six thousand and eighty-five pounds fifteen shillings and eleven pence as set out in the valuation attached hereto and marked "D" for stores material in stock or stored at Cockatoo Island and for work executed by the State Government for the Commonwealth Government under the contracts entered into between the said Governments for the construction of war vessels and payment of the said sum of Sixty-six thousand and eighty-five pounds fifteen shillings and eleven pence if not already made will be made in cash by the said Commonwealth Government within two months from the date of this Agreement.

10. IF after the execution of this Agreement and after the transfer of the said site to the said Commonwealth Government is completed any matters requiring adjustment or any disagreement in connexion with the said transfer or the valuations annexed hereto marked "C" and "D" arise such matters in dispute or requiring adjustment shall be referred to Colonel David Miller, C.M.G. I.S.O. V.D. or to the Secretary to the Department of Home Affairs for the time being of the Commonwealth acting for the said Commonwealth Government and the Director-General of Public Works for the time being of the said State acting for the said State Government and their decision on such

THE FIRST SCHEDULE—*continued*.

matters shall be binding and in the event of their failure to agree upon any matter so referred to them as aforesaid they shall have power to appoint an umpire whose decision in such cases shall be final in the event of failure on the part of said representatives to agree as to the appointment of an Umpire as aforesaid within one month from the time of their failure to agree on any question referred to them as aforesaid the Governor-General may appoint an Umpire whose decision in such case shall be final—

11. In the event of any Legislative authority being necessary on the part of the State Parliament to confirm or render effective this agreement or any part thereof the Premier undertakes to obtain such Legislative authority without delay—

IN WITNESS whereof the parties hereto have hereunder set their hands and seals the day and year first above written.

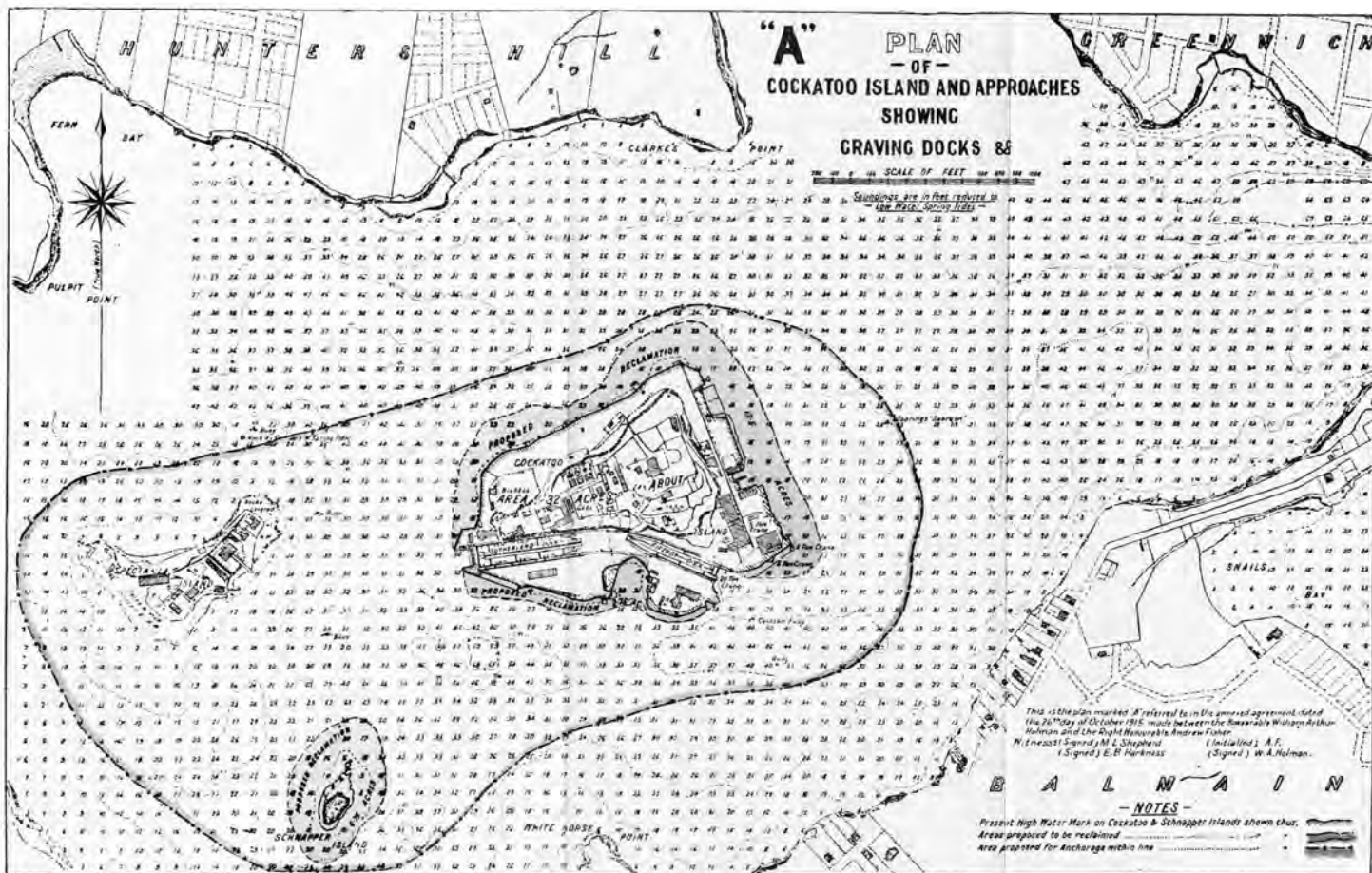
THE SCHEDULE REFERRED TO.

All that piece or parcel of land situate in the parish of Petersham county of Cumberland and State of New South Wales being part of Goat Island in Port Jackson:—

Commencing on the high water mark of the southern shore of the said Goat Island at a point bearing 93 degrees 6 minutes and distant 4 chains 29.8 links from Trigonometrical Station 144; and bounded thence generally on the east by lines successively bearing 3 degrees 51 minutes 99.3 links, 329 degrees 4 minutes 2 chains 7 links 17 degrees 24 minutes 4 chains 27 links and 324 degrees 30 minutes 1 chain 48.3 links thence on the north by a line bearing 267 degrees 54 minutes 2 chains 79 links to high water mark on the western shore of the said Island and thence by that high water mark southerly and easterly to the point of commencement: be the said several dimensions all a little more or less having an area of 3 acres 0 roods 33 perches or thereabouts—

Signed sealed and delivered by the said Andrew }
Fisher in the presence of } ANDREW FISHER (L.S.).
M. L. SHEPHERD.

Signed sealed and delivered by the said William }
Arthur Holman in the presence of } W. A. HOLMAN (L.S.).
E. B. HARKNESS.



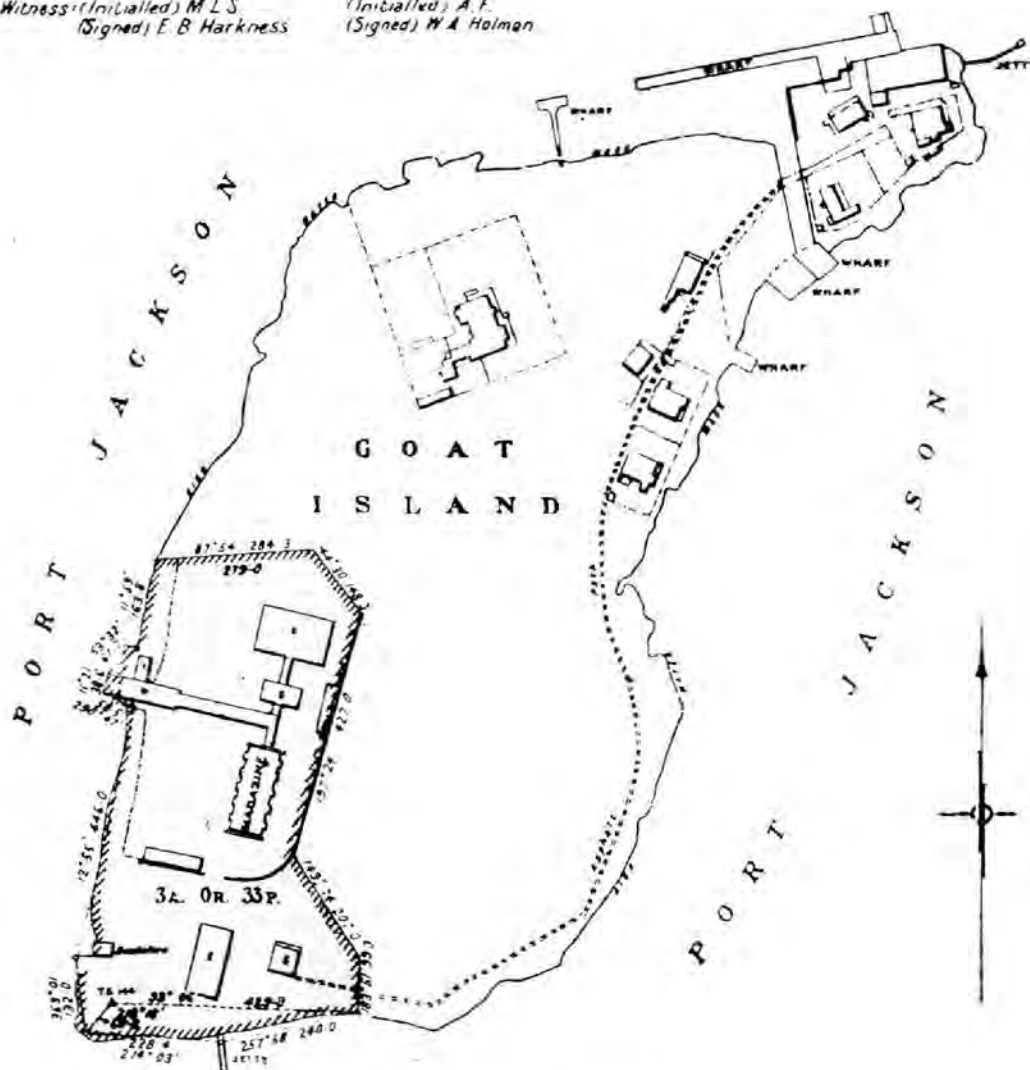
Plan of
— GOAT ISLAND —
— Parish of Petersham—County of Cumberland —

— Scale of Chains —

— Scale of Chains —

This is the plan marked "B" referred to in the annexed agreement dated the 26th day of October 1915 made between the Honourable William Arthur Holman and the Right Honourable Andrew Fisher.

Witness: (Initialed) M.L.S. (Initialed) A.F.
(Signed) E.B. Harkness (Signed) W.A. Holman



NOTE: Boundaries of Area to be reconveyed shown thus

ANNEXURE "C".
COCKATOO ISLAND DOCKYARD.
(Including Schnapper Island, &c.).
SUMMARY of Schedules showing the Valuations agreed upon.

Sched- ule.	No. of Folio.	Particulars.	Valuation.
1	1	<i>Cockatoo Island</i> .—Freehold land 32 ac., plus 4¼ ac. reclaimed .. Fee simple of bed of harbour with right to reclaim 15¾ ac. ..	£96,500 0 0 9,000 0 0 £105,500 0 0
		<i>Schnapper Island</i> .—Freehold land four-tenths of an acre Fee simple of bed of harbour with right to reclaim 6¼ ac. ..	1,300 0 0 3,375 0 0 4,675 0 0
2	1	Exclusive right to establish buoys and construct wharfs and jet- ties inside certain area ..	.. 10,000 0 0
		COCKATOO ISLAND.	
3(a)	4	Offices, houses and sheds on higher part of Island	£17,165 0 0
3(b)	2	Offices, houses and sheds in lower part of Island	2,724 0 0
			19,889 0 0
4	1	Fencing, paths, &c.	.. 1,900 0 0
5(a)	9	Furniture, fittings, floor coverings, &c., in offices, &c., on higher part of Island	937 3 4
5(b)	5	Furniture, fittings, floor coverings, &c., in offices, &c., on lower part of Island	212 8 9
			1,149 12 1
6	5	Workshops, &c.	.. 150,985 0 0
7	1	Tram-lines and turntables ..	.. 5,038 10 0
8	1	Piping—Hydraulic and air ..	.. 1,024 12 6
9	1	Electrical plant—Cables ..	.. 6,110 0 0
10	9	Do. Machines ..	.. 11,500 0 0
11	4	Cranes	.. 34,118 0 0
		Particulars.	
12	2	Sutherland and Fitzroy Docks, with all other plant connected therewith	.. 350,000 0 0
13(a)	3	Machines, Machine Shop, Sec. A	11,029 10 0
(b)	2	Do. B	5,555 10 0
(c)	2	Do. C	5,677 10 0
(d)	1	Do. D	8,521 10 0
(e)	2	Do. E	3,713 0 0
(f)	1	Do. F	2,825 0 0
(g)	1	Old Boiler Shop ..	1,427 0 0
(h)	1	Moulding Shop ..	12,051 12 0
(i)	1	Blacksmiths' Shop ..	7,971 0 0
(k)	2	New Boiler Shop ..	10,689 10 0
(l)	3	Northern Shipyard ..	15,329 18 6
(m)	2	Southern Shipyard ..	7,722 0 0
(n)	1	Shipwrights' Shop ..	1,834 0 0
(o)	1	Pattern Shop ..	543 10 0
(p)	1	Bolt Shop ..	1,866 10 0
(q)	1	New Joiners' Shop ..	1,037 10 0
(r)	1	Coppersmith and Plumbers' Shop ..	947 0 0
(s)	1	Tool Room ..	768 0 0
(t)	1	Inspector Store ..	595 0 0
			100,104 10 6
		Carried forward	£801,944 5 1

ANNEXURE "C"—*continued*.

Sched- ule.	No. of Folio.	Particulars.	Valuation.
		Brought forward	£801,944 5 1
14	16	Tools	23,065 2 3
15	4	Floating Equipment	7,731 0 0
16	1	Power House—Electric Plant	6,000 0 0
17	1	Miscellaneous	27,317 0 0
18	9	Shafting, Pulleys, &c.	1,609 1 8
			£867,716 9 0

This is the Annexure marked "C" referred to in the annexed Agreement dated the twenty-sixth day of October, 1915, made between the Honourable William Arthur Holman of the one part and the Right Honourable Andrew Fisher of the other part—

Witness M. L. S.
E.B.H.

A. F.
W. A. H.

ANNEXURE "D".

SUMMARY of Schedules showing Values agreed upon.

Schedule.	Particulars.	Valuation.
A	Warship Construction Expenditure	£34,732 7 9
B	Gun Mountings	4,293 2 7
C	Furnishings and Fittings of Commonwealth Offices	263 11 4
D	Store Account	26,796 14 3
	Total	£66,085 15 11

This is the annexure marked "D" referred to in the annexed Agreement dated the twenty-sixth day of October, 1915, made between the Honourable William Arthur Holman of the one part and the Right Honourable Andrew Fisher of the other part.

Witness. M. L. S.
E. B. H.

A. F.
W. A. H.

THE SECOND SCHEDULE.

THIS AGREEMENT made the twelfth day of September One thousand nine hundred and twenty-four BETWEEN THE HONOURABLE SIR GEORGE WARBURTON FULLER the Premier of the State of New South Wales for and on behalf of the Government of the said State of the one part and THE HONOURABLE STANLEY MELBOURNE BRUCE P.C., M.C. the Prime Minister of the Commonwealth of Australia for and on behalf of the Government of the said Commonwealth of the other part.

WHEREAS this Agreement is supplemental to an Agreement under seal (hereinafter called "the Principal Agreement") made the twenty-sixth day of October One thousand nine hundred and fifteen between the Honourable William Arthur Holman for and on behalf of the Government of the State of New South Wales of the one part and the Right Honourable Andrew Fisher for and on behalf of the Government of the Commonwealth of Australia of the other part and is intended to be annexed thereto

THE SECOND SCHEDULE—*continued.*

AND WHEREAS as certain errors have been discovered in certain of the annexures to the Principal Agreement and for the purpose of correcting the same the parties hereto desire to vary the Principal Agreement in manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH—

1. THE words and figures "Cockatoo Island—Freehold land 32 acres plus $4\frac{1}{4}$ acres reclaimed" written in the column headed "Particulars" in Annexure "C" to the Principal Agreement shall be read and construed as though the words and figures "Cockatoo Island—Freehold land 32 acres including $4\frac{1}{4}$ acres reclaimed" had at all material times been written therein in place of the words and figures first mentioned in this clause.

2. THE words and figures "Fee simple of bed of harbour with right to reclaim $15\frac{1}{4}$ acres" written in the said column headed "Particulars" in Annexure "C" to the Principal Agreement shall be read and construed as though the words and figures "Fee simple of bed of harbour with right to reclaim $16\frac{1}{4}$ acres" had at all material times been written therein in place of the words and figures first mentioned in this clause.

3. THE words and figures "Fee simple of bed of harbour with right to reclaim 6 $\frac{1}{2}$ acres" written in the seventh and eighth lines of the column headed "Particulars" in the said Annexure "C" shall be read and construed as though the words and figures "Fee simple of bed of harbour with right to reclaim 6 $\frac{3}{4}$ acres" had at all material times been written therein in place of the words and figures first mentioned in this clause.

4. SAVE and except as it is varied by this Agreement the Principal Agreement shall remain in full force and effect.

5. IN the event of any Legislative Authority being necessary on the part of the State Parliament to confirm or render effective the Principal Agreement and this Agreement or any part of the Principal Agreement or this Agreement the Premier undertakes to obtain such Legislative Authority without delay. In the event of any Legislative Authority being necessary on the part of the Commonwealth Parliament to confirm or render effective the Principal Agreement and this Agreement or any part of the Principal Agreement or this Agreement the Prime Minister undertakes to obtain such Legislative Authority without delay.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED SEALED AND DELIVERED by }
the said The Honourable Sir } (Signed) GEORGE W. FULLER. (L.S.)
George Warburton Fuller in the }
presence of—
(Signed) F. C. G. TREMLETT.

SIGNED SEALED AND DELIVERED by }
the said The Honourable Stanley } (Signed) S. M. BRUCE. (L.S.)
Melbourne Bruce P.C. M.C. in }
the presence of—
(Signed) F. STRAHAN.

NAVIGATION ACT 1912-1950.

An Act relating to Navigation and Shipping.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

Short title and
commence-
ment.
Short title
amended.
No. 32, 1918,
s. 2.

1.—(1.) This Act may be cited as the *Navigation Act 1912-1950*^(a) and shall commence on a day to be fixed by proclamation after the King's approval thereto has been proclaimed in the Commonwealth.

Added by No.
32, 1919, s. 3.

(2.) It shall not be necessary to proclaim that the whole Act shall commence on the one date, but the several Parts, Divisions, Sections,

(a) The *Navigation Act 1912-1950* comprises the *Navigation Act 1912* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:—

Act	Year and Number	Reserved for Royal Assent	Royal Assent Proclaimed	Proclaimed to commence
<i>Navigation Act 1912</i>	1913, No. 4	24th December, 1912	24th October, 1913 (<i>See Gazette</i> , 1913, p. 2895)	<i>See footnote (a) on p. 2793 infra</i>
<i>Navigation Act 1919</i>	1919, No. 32	28th October, 1919	20th December, 1919 (<i>See Gazette</i> , 1919, p. 2481)	23rd December, 1919 (<i>See Gazette</i> , 1919, p. 2483), (but <i>see footnote (a) on p. 2793 infra</i> .)
<i>Navigation Act 1920</i>	1921, No. 1	17th November, 1920	3rd March, 1921 (<i>See Gazette</i> , 1921, p. 391)	21st March, 1921 (<i>See Gazette</i> , 1921, p. 455)
<i>Navigation Act 1925</i>	1925, No. 8	20th July, 1925	13th August, 1925 (<i>See Gazette</i> , 1925, p. 1233)	24th August, 1925 (<i>See Gazette</i> , 1925, p. 1281)
<i>Navigation Act 1926</i>	1926, No. 8	15th February, 1926	1st March, 1926 (<i>See Gazette</i> , 1926, p. 285)	3rd March, 1926 (<i>See Gazette</i> , 1926, p. 287)
<i>Navigation (Maritime Conventions) Act 1934</i>	1934, No. 49	6th August, 1934	6th December, 1934 (<i>See Gazette</i> , 1934, p. 2485)	24th December, 1934 (<i>See Gazette</i> , 1934, p. 2557)
<i>Navigation Act 1935</i>	1935, No. 30	13th April, 1935	11th July, 1935 (<i>See Gazette</i> , 1935, p. 969)	1st October, 1935 (<i>See Gazette</i> , 1935, p. 997)
<i>Navigation Act 1942</i>	1943, No. 1	12th June, 1942	10th February, 1943 (<i>See Gazette</i> , 1943, p. 431)	17th February, 1943 (<i>See Gazette</i> , 1943, p. 469)
<i>Statute Law Revision Act 1950</i>	1950, No. 80	—*	—*	—*

* The *Statute Law Revision Act 1950* (No. 80 of 1950) was assented to on 16th December, 1950 and commenced on 31st December, 1950.

NOTE.—Throughout this Act the references in the margin to Statutes are for the purposes of comparison only.

and Schedules may be proclaimed to commence on such dates as are respectively fixed by proclamation: ^(a)

Provided that notwithstanding that a date has been so fixed for the commencement of any Part, Division, Section or Schedule, such date of commencement may, at any time prior to that date, be postponed to such later date as is fixed by proclamation.

Added by
No. 1, 1921,
s. 5.

1A. The provisions of this Act expressed to apply to ships registered in Australia shall, subject to sections two and three of this Act, also apply to, and be in force on, other British ships whose first port of clearance and whose port of destination are within the Commonwealth.

Application to
British ships
on round
voyages.
Constitution,
s. 5.

Inserted by
No. 1, 1921,
s. 6.

2.—(1.) This Act shall not apply in relation to any Australian-trade ship, limited coast-trade ship, or river and bay ship, or her master or crew, unless the ship—

Application
of Act.

Amended by
No. 32, 1919,
s. 4.

(a) is engaged in trade or commerce with other countries or among the States or with or among the Territories under the authority of the Commonwealth; or

(b) is on the high seas, or in waters which are used by ships

(a) Certain sections of the *Navigation Act 1912* were proclaimed to commence on 2nd March, 1920, but this proclamation was annulled by s. 3 of the *Navigation Act 1920* which reads as follows:—

“(1.) Any proclamation issued prior to the commencement of this Act in pursuance of sub-section (2.) of section one of the Principal Act, whereby any Parts, Divisions, Sections or Schedules of that Act are proclaimed to commence, is hereby annulled, and any Parts, Divisions, Sections or Schedules of that Act, the commencement of which has been so proclaimed, shall not be deemed to have commenced on the date fixed in any such proclamation.

(2.) The issue of any proclamation annulled by this section shall not affect the power to proclaim, in pursuance of sub-section (2.) of section one of the Principal Act, the respective dates upon which any Parts, Divisions, Sections or Schedules of that Act shall commence.”

The following sections of the Act have since been proclaimed to commence on the under-mentioned dates:—

Sections 1, 1A, 2, 3, 6-10, 14, 43, 44, 47A, 50, 77, 85, 88, 91, 92, 122A, 132, 135-138, 187, 204A, 259-265A, 269A, 284-293, 317A, 378-380, 384, 386, 387, 389, 391-396, 399-405, 407, 410A, 413, 414, 416, 418A, 422, 423, 423A, 424, 425, and Schedules I., II., IV. and V.—

To commence on 1st July, 1921. *See Gazette*, 1921, p. 489.

Sections 123 and 231—

To commence on 1st October, 1921. *See Gazette*, 1921, pp. 489 and 1230.

Sections 11-13, 26, 28-42, 45-47, 48, 49, 51-76, 78-84, 86, 87, 89, 90, 93, 94, 99-115, 127-131, 133, 134, 139, 140, 142-148, 164-176, 177-186, 388, 390, 397, 398, 406, 410, 411, 412, 415, 417, 418 and 419—

To commence on 1st March, 1922. *See Gazette*, 1921, p. 1377 and 1922, p. 67.

Sections 116-120, 122, 124-126, 149-163, 294-317, 318-329, 381, 382, 383, 385, 408, 409 and Schedule III.—

To commence on 1st February, 1923. *See Gazette*, 1922, p. 2757.

Section 235—

To commence on 1st March, 1923. *See Gazette*, 1923, p. 289.

Sections 4, 5, 15-25, 27, 187A, 188-201, 201A, 202-204, 205, 206, 206A, 207-217, 217A, 218-230, 232-234, 248-258, 258A, 268, 269, Part V. (sections 270-283), Part IX. (sections 356-367 and 369-377), sections 420 and 421—

To commence on 1st October, 1923. *See Gazette*, 1923, p. 990.

Sections 293A and 422A—

To commence on 31st August, 1925. *See Gazette*, 1925, p. 1285.

Sections 40A, 40B, 46A, 187A, 191, 191A, 191B, 192A, 215, 229, 230, 253A, 258B, 265 and 251 and Schedules VI. and VII.—

To commence 15th April, 1935. *See Gazette*, 1935, p. 536.

Section 231A—

To commence on 1st October, 1935. *See Gazette*, 1935, p. 997.

Sections 197A, 198A, 206B, 206C, 206D, 206E, 206F, 206G, 206H, 216 and 216A—

To commence on 31st October, 1935. *See Gazette*, 1935, p. 1225.

Sections 218, 218A, 219, 219A, 219B, 219C, 220, 220A, 221, 221A, 222, 222A, 223, 223A, 224, 224A, 225, 225A, 226, 226A, and 227—

To commence on 30th March, 1936. *See Gazette*, 1935, p. 1060.

Sections 372, 373, 375A, 375B, and 377A—

To commence on 17th February, 1943. *See Gazette*, 1943, pp. 469-470.

The remaining sections have not yet been proclaimed (31st December, 1950).

engaged in trade or commerce with other countries or among the States;^(a) or

(c) is in the territorial waters of any Territory under the authority of the Commonwealth.

(2.) This Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.^(b)

Exemptions.

CF. M.S.A. 1894,
s. 741.

N.Z. 1908, No.
178, s. 2 (3).

3. This Act shall not apply to ships belonging to the King's Navy, or the Navy of the Commonwealth or of any British possession, or to the Navy of any foreign Government.

Application of
provisions
relating to
steam-ships.
M.S.A. 1894,
s. 743.

4. The provisions of this Act relating to steam-ships shall apply, with such modifications as are prescribed, to ships propelled by electricity or other mechanical power.

Parts.

Amended by
No. 1, 1921,
s. 7 and by
No. 80, 1950,
s. 3 and First
Schedule.

5. This Act is divided into Parts as follows:—

Part I.—Introductory, ss. 1–9.

Part II.—Masters and Seamen, ss. 10–176.

Part III.—Foreign Seamen, ss. 177–186.

Part IV.—Ships and Shipping, ss. 187–269A.

Part V.—Passengers, ss. 270–283.

Part VI.—The Coasting Trade, ss. 284–293A.

Part VII.—Wrecks and Salvage, ss. 294–329.

Part VIII.—Pilots and Pilotage, ss. 330–355.

Part IX.—Courts of Marine Inquiry, ss. 356–377A.

Part X.—Legal Proceedings, ss. 378–405.

Part XI.—Miscellaneous, ss. 406–425.

Definitions.

6. In this Act, unless the contrary intention appears—

“Vessel” means any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation:

“Ship” includes every vessel used in navigation not ordinarily propelled by oars only;

“Foreign-going ship” includes every ship (other than an

(a) Held by the High Court (Knox C.J., Gavan Duffy, Rich and Starke J.J.; Isaacs and Higgins J.J. dissenting) that Parliament is not at liberty to regulate the manning of ships not engaged in inter-State or foreign trade or commerce merely because they go on the high seas or on waters used by ships so engaged, nor to direct its Courts to deal with a collision between ships not so engaged because the collision occurs in a river at a short distance outside the course normally used by ships that are so engaged. *R. v. Turner; ex parte Marine Board of Hobart, Tasmania v. Commonwealth*, (1927) 39 C.L.R. 411; 1 A.L.J. 59; 33 A.L.R. 174. See also this case (especially the judgments of Isaacs, Higgins, and Powers, J.J.) as to the meaning of the expression “waters which are used by ships engaged in trade or commerce with other countries or among the States”.

(b) Held by the High Court that this provision is a legislative declaration of the Parliament that if valid and invalid provisions are found in the Act, however interwoven, no provision within the power of Parliament shall fail because of such conjunction, but shall operate on so much of its subject matter as Parliament might lawfully have dealt with. *Newcastle and Hunter River Steamship Co. Ltd. v. Attorney-General for the Commonwealth*, (1921) 29 C.L.R. 357; 27 A.L.R. 373. The sub-section was also applied in *Hume v. Palmer*, (1926) 38 C.L.R. 441; 33 A.L.R. 66.

Australian-trade ship) employed in trading or going between places in Australia and places beyond Australia:

"Australian-trade ship" includes every ship (other than a limited coast-trade ship or river and bay ship) employed in trading or going between places in Australia, and every ship employed in trading between (a) Australia and (b) territories under the authority of the Commonwealth, New Zealand, or the islands of the Pacific:

"Limited coast-trade ship" means a sea-going ship exclusively engaged in making short voyages from and to any port in Australia within limits (not exceeding the limits for home-trade or coast-trade ships, as the case may be, fixed for the port, at the commencement of this section, by any State law) determined for the port by the Governor-General: Amended by No. 1, 1921, s. 8.

"River and bay ship" includes every ship which trades exclusively within the limits of any port, bay, or river, or within prescribed limits in any gulf or gulfs, within the Commonwealth, including a Territory being part of the Commonwealth and also includes any ship or class of ships, specified by the Minister by notice in the *Gazette*, which trades exclusively within the limits of a specified port, bay or river and within a radius of three nautical miles seaward from the entrance of the port, bay or river: Amended by No. 1, 1921, s. 8.

"Boilers and machinery" includes engines and everything connected therewith employed in propelling a steamship, and every description of machinery used on a ship for the purposes of the ship or her cargo, and all other apparatus or things attached to or connected therewith or used with reference to any engine or under the care of the engineer:

"Equipment" includes boats, tackle, pumps, apparel, furniture, life-saving appliances of every description, spars, masts, rigging, and sails, fog signals, lights and signals of distress, medicines and medical and surgical stores and appliances, and every thing or article belonging to or to be used in connexion with, or necessary for the navigation and safety of, the ship, including apparatus for preventing or extinguishing fires, buckets, compasses, charts, axes, lanterns, and loading and discharging gear and apparatus of all kinds:

"Owner" includes the manager or secretary of any company or body corporate or any person to whom the whole or a part of a ship belongs:

"Master" means any person having command or charge of a ship: Amended by No. 1, 1921, s. 8.

"Officer" in relation to a ship means the master, mates, and engineers of the ship:

"Seaman" means every person employed or engaged in any capacity on board a ship, except masters, pilots, and apprentices and persons temporarily employed on the ship in port:

"Apprentice" means a person bound by indenture for the sea service to a ship-owner or master:

"Agreement" means the ship's articles of agreement with the crew:

N.S.W. 1898,
No. 40, s. 3.

"Desertion" means the absence of a seaman or apprentice from his ship without lawful cause or excuse, with the intention of not returning thereto:

Amended by
No. 1, 1921,
s. 8.

"Discharge" means the certificate of the discharge of a seaman from a ship in which he served:

"Wages" includes emoluments of any kind:

"Incompetent" means unable, from any cause whatever, to perform efficiently the duty of the person in relation to which the word is used:

"Misconduct" includes careless navigation, drunkenness, tyranny, any failure of duty or want of skill, or any improper conduct:

Amended by
No. 49, 1934,
s. 3 and by
No. 80, 1950,
s. 3 and First
Schedule.

"Passenger" means any person carried on board a ship with the knowledge or consent of the owner, agent or master of the ship other than—

(a) the master and crew, or the owner, his family or servants; and

M.S.A. 1932,
s. 33.

(b) any person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

Inserted by
No. 1, 1921,
s. 8.

"The Director" means the Director of Navigation for the Commonwealth:

Inserted by
No. 1, 1921,
s. 8.

"Deputy Director" means the Deputy Director of Navigation for a State and includes the Director:

"Collector" means the Chief Officer of Customs at any port:

"Official" includes all persons in the service of the Commonwealth or of a State employed under this Act for any purpose or duty in relation to which the term is used:

Amended by
No. 1, 1921,
s. 8.

"Superintendent" means—

(a) the Superintendent at a mercantile marine office under this Act, and, where not otherwise provided, the Superintendent for the port where the ship in reference to which he is acting is, and, at ports where no mercantile marine office has been established, the Collector; and

- (b) a duly appointed deputy of such Superintendent:
- "Proper authority" means—
- (a) at a port in Australia, a Deputy Director or a Superintendent; Amended by
No. 1, 1921,
s. 8.
 - (b) at a port in any other part of the British Dominions, a Superintendent, or, in the absence of a Superintendent, the Chief Officer of Customs at or near the port;
 - (c) at a port elsewhere, the British Consular Officer, or if there is no such officer at the port, any two British merchants resident at or near the place, or if there is only one British merchant so resident, that British merchant:
- "Pilot" means any person appointed or licensed as such under this Act, and not belonging to a ship, who has the conduct thereof:
- "Justice" means any Justice of the Peace:
- "Consul" includes Consul-General, Vice-Consul, Consular Officer or Agent recognised as such by the Governor-General:
- "Court" means any Court, Magistrate, or Justice having jurisdiction in the matter to which the proceeding relates:
- "Answer questions" means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information, and belief, truly answer all questions asked under the authority and for the purposes of this Act; Amended by
No. 1, 1921,
s. 8.
- "Documents" includes books:
- "Effects" includes all personal property and documents:
- "Go to sea" or "proceed to sea" includes the getting under way for the purpose of going to sea, plying, or running of a ship or proceeding on a voyage; Amended by
No. 49, 1934,
s. 3.
- "Take to sea" has a meaning corresponding with "go to sea":
- "Send to sea" has a meaning corresponding with "go to sea":
- "Harbour" means and includes harbours properly so called whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers, and haven, roadstead, channel, or creek:
- "Port" includes place and harbour:
- "Tidal waters" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour:
- "This Act" includes the Regulations:
- "The Merchant Shipping Act" means the Imperial Act known as the *Merchant Shipping Act* 1894, and includes any Imperial Act amending it or substituted for it:

Definition of
"The
Convention for
the Safety of
Life at Sea,"
inserted by
No. 1, 1921,
s. 8 and
omitted by
No. 49, 1934,
s. 3.
Inserted by
No. 32, 1919,
s. 5.

* * * * *

"Territory under the authority of the Commonwealth" includes any territory governed by the Commonwealth under a Mandate:

Any reference to failure to do any act or thing includes a reference to refusal or neglect to do that act or thing.

Definition of
coasting trade.
Amended by
No. 32, 1919,
s. 6, and by
No. 1, 1921,
s. 9.

7. A ship shall be deemed to be engaged in the coasting trade, within the meaning of this Act, if she takes on board passengers or cargo at any port in a State, or a Territory under the authority of the Commonwealth, to be carried to, and landed or delivered at, any other port in the same State or Territory or in any other State or other such Territory:^(a)

Provided that a ship shall not be deemed to be engaged in the coasting trade by reason of the fact that she carries—

- (a) passengers who hold through tickets to or from a port beyond Australia and the Territories under the authority of the Commonwealth; or
- (b) cargo consigned on a through bill of lading to or from a port beyond Australia and those Territories and which is not transhipped to or from any ship trading exclusively in Australian waters which is not licensed under this Act; or
- (c) mails between any ports in Australia or in any of those Territories; or
- (d) as passengers, pilots who are proceeding from their home station for the purpose of meeting vessels requiring their services, or who are returning to their home station after piloting vessels:

Provided further that the Governor-General may by order declare that the carrying of passengers or cargo between ports in any Territory under the authority of the Commonwealth, or between ports in any such Territory and any other Australian ports, or ports in any other such Territory shall not be deemed engaging in the coasting trade.

Added by
No. 30, 1935,
s. 3.

Provided also that—

- (a) subject to paragraph (b) of this proviso, a British ship of not less than ten thousand tons gross tonnage and a sea speed of not less than fourteen knots shall not be deemed to engage in the coasting trade, within the meaning of this Act, by reason of the fact that she takes on board, or

(a) Held by the High Court that the provisions of this Act, insofar as they purport to prescribe rules of conduct in respect of ships engaged solely in the domestic trade of a State, are invalid but that, by virtue of s. 2 (2.) (see the footnote thereto *supra*) neither the whole Act nor ss. 14, 43, 44, 135, 136, 288 and 293 nor the First and Second Schedules are invalid by reason of their embracing in a collective expression a particular provision which is *ultra vires* the Parliament. *Newcastle and Hunter River Steamship Co. Ltd. v. Attorney-General for the Commonwealth*, (1921) 29 C.L.R. 357; 27 A.L.R. 373.

carries, any passenger who is to be, or is being, conveyed without break of journey, transshipment, or second call at any intermediate port, from a port in Australia (in this proviso referred to as "the first port of embarkation") to another port in Australia (in this proviso referred to as "the port of destination") with which the first port of embarkation is not connected by rail;

- (b) such a ship shall be deemed to engage in the coasting trade if, having carried a passenger to the port of destination specified in his passage ticket, she carries him on the same voyage to any other port in Australia beyond the first port at which the ship thereafter calls, which first port is—
- (i) the first port of embarkation; or
 - (ii) connected with that other port by rail.

* * * * *

S. 8 repealed by
No. 49, 1934,
s. 4.

9. In relation to any particular matters of class of matters, or as to any particular part or port of the Commonwealth, the Minister may by writing under his hand delegate any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the powers or class of matters specified or the part or port defined in the instrument of delegation.

Delegation by
a Minister.

PART II.—MASTERS AND SEAMEN.

Amended by
No. 1, 1921,
s. 10.

- Division 1.—General, ss. 10-12.
- Division 2.—The Superintendent, s. 13.
- Division 3.—Officers, ss. 14-27.
- Division 4.—Supplying Seamen, ss. 28-33.
- Division 5.—Apprentices, ss. 34-38.
- Division 6.—Rating of Seamen, ss. 39-42.
- Division 7.—The Crew, ss. 43-45.
- Division 8.—The Agreement, ss. 46-60.
- Division 9.—Discharge of Seamen, ss. 61-68.
- Division 10.—Seamen's Wages, ss. 69-94.
- Division 11.—Seamen's Money Orders, ss. 95-98.
- Division 12.—Discipline, ss. 99-115.
- Division 13.—Provisions, ss. 116-122A.
- Division 14.—Health, ss. 123-134.
- Division 15.—Accommodation, ss. 135-138.
- Division 16.—Protection of Seamen, ss. 139-148.
- Division 17.—Property of Deceased Seamen, ss. 149-160.
- Division 18.—Relief to Seamen's Families, ss. 161-162.
- Division 19.—Distressed Seamen, s. 163.
- Division 20.—The Master, ss. 164-169.
- Division 21.—The Log, ss. 170-175.
- Division 22.—Inquests, s. 176.

DIVISION 1.—GENERAL.

Application.
M.S.A. 1894,
s. 260.

10. The provisions of this Part of this Act relating to ships and to their owners, masters, and crews, shall, unless the subject-matter requires a different application, apply only to British ships and to their owners, masters, and crews.

Power to
exempt British
ships.

11. The Governor-General, where he is satisfied that the laws and regulations of any part of the British Dominions relating to any subject-matter dealt with in this Part of this Act are as effective as the provisions of this Part of this Act relating thereto, may by proclamation direct that (subject to such conditions, limitations, and exceptions as are expressed in the proclamation), on proof of a ship registered in that part of the British Dominions having complied with those laws and regulations, she shall not be required to comply with the provisions of this Part of this Act relating to that subject-matter.

Registry of
seamen.
Cf. *ib.*,
s. 252.

12. A General Register of Seamen shall be kept at the places and in the manner prescribed.

DIVISION 2.—THE SUPERINTENDENT.

Mercantile
marine
offices.
Ib., s. 240.

13.—(1.) An office called the Mercantile Marine Office shall be established in each such port as the Minister thinks fit.

(2.) An officer called the superintendent shall be appointed at each Mercantile Marine Office.

(3.) Deputy superintendents may be appointed at any Mercantile Marine Office and shall have the same powers as the superintendent.

DIVISION 3.—OFFICERS.

Certificates of
officers.
Ib., s. 92.

14.^(a)—(1.) If a ship registered in Australia or engaged in the coasting trade goes to sea without a duly certificated master and officers, according to the scale set out in Schedule I. or as prescribed, the master and owner of the ship shall be guilty of an offence.

(2.) Every British ship (other than those registered in Australia or engaged in the coasting trade), when going to sea from any place in Australia shall be provided with a duly certificated master and such duly certificated officers as are, by the law of that part of the British Dominions in which the ship is registered, prescribed as being necessary for her when going to sea from any place in that part of the British Dominions.

Penalty: One hundred pounds.

Certificates of
competency.
Ib., s. 93.
N.Z. 1908, s. 22.
Amended by
No. 1, 1921,
s. 11.

15.—(1.) Certificates of competency (in this Division referred to as certificates) shall be granted in accordance with this Act for each of the following grades of officers (that is to say):—

Foreign-going ship (steam sail or other motive power)—

(a) See footnote (a) to s. 7, *supra*.

- Master
- First mate
- Second mate
- Limited coast-trade ship (steam sail or other motive power)—
 - Master
 - First mate
 - Second mate
- River and bay ship (steam sail or other motive power)—
 - Master
 - Mate
- Engineers—
 - First class
 - Second class
 - First class motor engineer
 - Second class motor engineer
 - First class coast engineer
 - Second class coast engineer
 - Third class coast engineer
 - First class marine engine-driver
 - Second class marine engine-driver

{ For vessels propelled
 by other motive
 power than steam.

(2.) The holder of a foreign-going certificate may ship in the corresponding or any lower grade in an Australian-trade ship, a limited coast-trade ship, or a river and bay ship. Amended by
No. 1, 1921,
s. 11.

(3.) The holder of a second-mate's foreign-going certificate may ship as first mate of a limited coast-trade ship, or as mate of a river and bay ship.

(4.) The holder of a limited coast-trade certificate may ship in the corresponding or any lower grade in a river and bay ship. Amended by
No. 1, 1921,
s. 11.

(5.) The holder of a second class engineer's certificate, or of a coast engineer's certificate, shall be deemed to be duly certificated for service in such ships and for such voyages and in such capacities as are prescribed.

(6.) The regulations shall be so framed as—

- (a) to allow the holder of an engineer's certificate of any grade to serve in such ships, and for such voyages, and in such capacities, as will enable him to qualify for a certificate of the next higher grade;
- (b) to allow the holder of a third or second class coast engineer's certificate to qualify for a coast engineer's certificate of the next higher grade by service in river and bay ships.

16. Examinations of candidates for certificates shall be held at such places and under such rules as are prescribed. Examinations
for certificates.
M.S.A. 1894,
s. 94.

17. No person shall be admitted to examination for a certificate unless he is a British subject, and speaks the English language intelligibly, and possesses the prescribed qualifications. Candidates
must be British
subjects.
N.Z. 1908,
s. 23 (4.).

Issue of
certificates,
M.S.A. 1894,
s. 98.

18.—(1.) Subject to the condition in the next sub-section mentioned, a certificate in the form prescribed shall be delivered to every applicant who passes the prescribed examination satisfactorily, and gives satisfactory evidence that he possesses the qualifications prescribed for the holder of the certificate, and of his sobriety, experience, ability, physical fitness, and general good conduct.

(2.) The Minister may, at any time before the delivery of a certificate—

- (a) require a re-examination of the applicant by the examiners who made the examination or by any other examiners; and
- (b) order a further inquiry into the applicant's testimonials and character;

and if not satisfied with the result may order that a certificate shall not be delivered to the applicant.

Certificates in
duplicate.
Ib., s. 100.

19. All certificates shall be in duplicate, and one part shall be delivered to the person entitled to the certificate, and the other shall be preserved and recorded in the manner directed by the Minister.

Incapacity of
certificated
person.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

20.—(1.) If at any time the holder of any certificate appears to be unfit to perform the duties required of him, the Minister may require him to submit himself for medical examination, and, if it then appears that the unfitness exists and is likely to be permanent, may require the delivery of the certificate to him.

(2.) The holder shall thereupon, on demand by the Minister, deliver up his certificate.

Penalty: Twenty-five pounds.

(3.) The Minister shall thereupon cause an inquiry to be held by a Court of Marine Inquiry into a charge of incompetency against the grantee.

(4.) If the Court finds that the charge is not proved, the certificate shall be returned to the grantee; but if the Court finds that the charge is proved, the certificate shall be retained by the Minister, and a certified copy thereof, with the result of the inquiry indorsed thereon by the Registrar of the Court, shall be delivered to the grantee.

(5.) If, where the Court has found the charge to be proved, it appears at any time thereafter to the Minister that the unfitness no longer exists, the Minister may cause an inquiry into the matter to be held by a Court of Marine Inquiry, and if the Court finds that the unfitness no longer exists, the finding shall be indorsed on the certified copy of the certificate by the Registrar of the Court, and the original certificate shall be returned to the grantee.

Lost
certificates.
Ib., s. 101.

21. If any person proves to the satisfaction of the Minister that he has lost or been deprived of a valid certificate granted to him under this Act, the Minister may cause a certified copy of the certificate to

be delivered to him, and the certified copy shall have all the effect of the original.

22. Any master's or officer's certificate recognised by the Ministry of Transport of the United Kingdom shall be recognised for the purposes of this Act.

Imperial certificates.
N.Z. 1908,
s. 21 (3).
Amended by
No. 80, 1950,
s. 3 and First
Schedule.

23. Every officer who is the lawful holder of a valid certificate appropriate to a position of any grade shall be deemed duly certificated in that grade and in all lower grades.

Imperial certificates.
M.S.A. 1891,
s. 92 (3).

24.—(1.) All uncanceled and unexpired certificates of competency for masters or ship's officers issued under any State Act shall continue as if issued under this Act, but shall be valid only for the purposes for which, and to the extent to which, they would have been valid in accordance with the provisions of the State Act under which they were issued.

State certificates of competency.

(2.) Any such certificate may be dealt with as if issued under this Act.

(3.) The holder of any such certificate may, subject to any prescribed restrictions and limitations, surrender it for a certificate of a similar or corresponding grade under this Act.

25.—(1.) No person shall—

(a) engage as an officer unless he is duly certificated; or

(b) take into employment as an officer any person who is not duly certificated.

Penalty: One hundred pounds.

Employment of uncertificated persons.
Ib., s. 92 (2).

(2.) For the purpose of this section "officer" means an officer who is required to be duly certificated in compliance with section fourteen of this Act, but does not include officers carried in excess of that requirement.

26. No person shall engage or go to sea as an officer, in any ship registered in Australia or engaged in the coasting trade, who is not—

(a) a British subject; and

(b) thoroughly conversant with the English language.

British nationality and English language.
Cf. Ib., s. 12.

27. Whoever—

(a) makes any false representation for the purpose of obtaining any certificate for himself or any other person; or

(b) forges or fraudulently alters any certificate or any official copy thereof; or

(c) fraudulently uses a certificate or a copy of a certificate which is forged, altered, cancelled, or suspended, or to which he is not justly entitled;

Offences in connexion with certificates.
Cf. Ib., s. 10.

Para. (d)
omitted by
No. 1, 1921,
s. 12.

* * * * *

shall be guilty of an indictable offence.

DIVISION 4.—SUPPLYING SEAMEN.

Application of
Division.

28. This Division shall apply to all ships, British and foreign.

Definition of
seaman and
apprentice.

Inserted by
No. 1, 1921,
s. 13.

28A. For the purposes of this Division, "seaman" and "apprentice" include any person who is seeking employment as a seaman or apprentice (as the case may be) or who is engaged or supplied, or who is offered for engagement or supply, as a seaman or apprentice on board a ship.

Engagement
and supply of
seamen.

CL M.S.A. 1894,
s. 111.

29.—(1.) No person, other than a superintendent, a seamen's inspector, or the owner, master, mate, or engineer of a ship, shall engage or supply a seaman or apprentice to be entered on board the ship.

(2.) No person shall employ, for the purpose of engaging or supplying a seaman or apprentice to be entered on board a ship, any person, other than a superintendent, a seamen's inspector, or the owner, master, mate, or engineer of the ship.

Penalty: Fifty pounds or three months' imprisonment.

Seamen's
inspector.

30.—(1.) A seamen's inspector may be appointed for any port.

(2.) The seamen's inspector for a port shall—

- (a)** keep a register of persons desiring to be entered as seamen or apprentices on board ships at the port; and
- (b)** supply seamen and apprentices to be entered on board ships at the port.

Receiving
seamen
supplied in
contravention
of Act.

31. No person shall receive or accept for service on board any ship any seaman or apprentice, unless he is satisfied that the seaman or apprentice has not been engaged or supplied in contravention of this Act.

Penalty: Fifty pounds or three months' imprisonment.

Penalty for
receiving fees
for supply.

CL M.S.A.
1906, s. 112.

32. No person shall demand or receive, directly or indirectly, from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever for providing or promising to provide him with employment.

Penalty: Twenty-five pounds.

Apprenticeship
premiums.
S.A. 1881,
No. 237, s. 51.

33. Nothing in this Division shall refer to any premium on apprenticeship charged by any ship-owner.

DIVISION 5.—APPRENTICES.

Indentures.

N.S.W. 1898,
No. 46, s. 13.

34. All indentures of apprenticeship to the sea service made in Australia shall be in the prescribed form, and shall be executed by the parties thereto in the presence of a superintendent.

35.—(1.) Before the execution of the indentures, the superintendent shall satisfy himself that the intended apprentice—

Binding of apprentices.
M.S.A. 1894,
s. 107.

- (a) freely consents to be bound;
- (b) has attained the age of fourteen years;
- (c) is of sufficient health and strength and physically fit for the service of the sea; and
- (d) is to be bound to a person who is a proper person for the purpose.

(2.) All indentures of apprenticeship made in Australia whereby a person under the age of twenty-one years is bound without the concurrence of his parent or guardian, shall, with the approval of the Minister, be voidable by the parent or guardian.

Indentures voidable in certain cases.
N.S.W. 1898,
No. 46, s. 13.

(3.) Indentures of apprenticeship shall be in duplicate, and one part shall be recorded and kept as directed by the Minister, and the other with an indorsement thereon of the fact that it has been recorded, shall be handed to the master of the apprentice.

Recording of indentures.

36. In the event of the death or desertion of an apprentice, or the cancellation or assignment of his indentures, his master shall as soon as practicable send notice thereof, for record, to the superintendent.

Notice of death, &c.
M.S.A. 1894,
s. 108.

Penalty: Ten pounds.

37. The master of every ship, except limited coast-trade ships of less than fifty tons gross registered tonnage and river and bay ships, shall, before taking an apprentice to sea—

Entry of indentures on articles.
Ib., s. 109.

- (a) cause his name to be entered on the ship's articles, together with the date of his indentures and of any assignment thereof, and the name of every port at which they have been registered;
- (b) cause him to appear before the superintendent; and
- (c) produce the indentures, and every assignment thereof, to the superintendent.

Production of apprentice.

Penalty: Five pounds.

Provided that, in the case of other than foreign-going ships, it shall not be necessary to cause the apprentice to reappear before the superintendent more frequently than once in six months:

Provided also that, in the case of foreign-going ships, it shall not be necessary to cause the apprentice to reappear before the superintendent except at the last port of departure from Australia.

38. Where the owner of any ship carrying an apprentice dies, becomes insolvent, or ceases to have any interest in the ship, the indentures shall cease, and a proportionate part of the premium paid (if any) shall be repaid, and until repaid shall be a charge upon the ship:

Insolvency of owner.
N.Z. 1908,
s. 38.

Provided that the name of the person by whom the ship has been

acquired may, with the consent of the apprentice and of the superintendent, be inserted in the indentures as the master of the apprentice in lieu of the previous owner, in which case the indentures shall continue.

DIVISION 6.—RATING OF SEAMEN.

Rating of
A.B.
M.S.A. 1893,
s. 126.
M.S.A. 1906,
s. 58.

39.—(1.) A seaman shall not be entitled to the rating of A.B., that is to say, an able-bodied seaman, unless he has served at sea for at least three years before the mast or as an apprentice and is eighteen years of age, but employment in limited coast-trade ships under thirty tons shall only count as sea service up to the period of two years of that employment:

Continuance of
rating as A.B.
Amended by
No. 1, 1921,
s. 14.

Provided that any seaman who has been lawfully rated as A.B. before the commencement of this Division shall continue to be entitled to be so rated.

Rating of
O.S.

(2.) A seaman shall not be entitled to the rating of O.S., that is to say, an ordinary seaman, unless he has served at sea for at least one year before the mast or as an apprentice and is seventeen years of age.

Substituted by
No. 1, 1921,
s. 14.

(3.) No seaman shall be rated as "greaser" who has not served six months as fireman at sea.

Added by
No. 1, 1921,
s. 14.

(4.) No seaman shall be rated as "fireman" who has not served six months as a trimmer or fireman at sea.

Added by
No. 1, 1921,
s. 14.

(5.) No seaman shall be rated as "shipwright" or "ship's carpenter" who has not served an apprenticeship as shipwright, or three years at sea as ship's carpenter, as the case may be.

Added by
No. 1, 1921,
s. 14.

(6.) After the expiration of twelve months from the commencement of this Division, a seaman shall not be permitted to engage in any capacity unless he satisfies the superintendent that he can pull an oar and handle a boat:

Provided that this sub-section shall not apply to the engagement of a seaman who has not previously served at sea.

Added by
No. 1, 1921,
s. 14.

(7.) Notwithstanding anything contained in this section, persons rated as greasers, firemen, shipwrights or ship's carpenters, before the commencement of this Division, shall continue to be entitled to be so rated.

Proof of title
to rating.
Inserted by
No. 1, 1921,
s. 15.

40. A superintendent before whom a seaman is engaged shall refuse to enter him as A.B., O.S., greaser, fireman, shipwright or ship's carpenter in the agreement, unless the seaman gives satisfactory proof of his title to be so rated.

Minimum age
for employment
at sea.
Inserted by
No. 49, 1934,
s. 5.

40A.—(1.) A person shall not engage another person for service at sea in any capacity unless the superintendent is satisfied that that other person has attained the age of fourteen years:

Provided that this sub-section shall not apply to service in ships where only members of the same family are employed, or to service in any training ship approved by the Director.

(2). A person shall not engage another person for service at sea in the stokehold of a steamship, in the capacity of fireman or trimmer, unless the superintendent is satisfied that that other person has attained the age of eighteen years:

Provided that this sub-section shall not apply to service in any training ship approved by the Director.

40B.—(1.) A person shall not engage or re-engage any person under the age of eighteen years for service at sea in any capacity unless the person under the age of eighteen years produces to the superintendent a certificate signed by a medical inspector of seamen, or, at a port at which there is no medical inspector of seamen, by a duly qualified medical practitioner, that he is physically fit for service at sea in that capacity:

Medical examination of young persons employed at sea.

Inserted by No. 49, 1934, s. 5.

Provided that this sub-section shall not apply to service in ships where only members of the same family are employed.

(2.) A certificate of fitness granted under the last preceding sub-section shall have force for a period of one year, but may be renewed from year to year by indorsement by a medical inspector of seamen, or, at a port at which there is no medical inspector of seamen, by a duly qualified medical practitioner, after medical examination of the holder thereof.

41.—(1.) No seaman shall be permitted to engage in any capacity unless he delivers to the superintendent, or, in the case of a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, to the person engaging him—

Discharge or permit to be produced.

N.Z. 1908, s. 52.

(a) a discharge from his last ship; or

S. 40 of Act No. 4 of 1913 renumbered and amended by No. 1, 1921, s. 16.

(b) a permit to sign articles granted by the superintendent.

S. 41 of Act No. 4, of 1913 repealed by No. 1, 1921, s. 17.

(2.) The superintendent shall not grant such permit unless he is satisfied, after questioning the applicant and if necessary making a practical test of his qualifications, that the applicant is qualified for the position he seeks.

42.—(1.) When the master of a ship disrates a seaman, he shall forthwith enter or cause to be entered in the official log-book a statement of the disrating, and furnish the seaman with a copy of the entry, and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

Notice of disrating of seaman.

M.S.A. 1906, s. 59.

(2.) Any reduction of wages consequent on the disrating of the seaman shall be deemed to be a deduction from wages within the meaning of section seventy-six of this Act.

DIVISION 7.—THE CREW.

43.^(a) Every ship registered in Australia, and every other ship (British or foreign) engaged in the coasting trade, shall carry as

Ship's complement. N.Z. 1908, s. 54.

(a) See footnote (a) to s. 7, *supra*.

crew the number and description of persons specified in the scales set out in Schedule II. or prescribed, or specified for the ship by the Minister, after advice from the Marine Council to be appointed under this Act:

Provided that the Minister may exempt any ships from the operation of this section in regard to boys or apprentices.

Penalty.

N.Z. 1908, s. 54.
Amended by
No. 1, 1921,
s. 18.

44.^(a)—(1.) The owner of a ship to which the last preceding section applies shall not suffer her to go to sea and the master shall not take her to sea without carrying the crew prescribed or specified in the last preceding section.

Penalty: One hundred pounds.

Limitation
of action.

(2.) If a ship proceeds to sea being short in her crew of not more than one-fifth of her engine-room staff,^(b) or one-fifth of her deck complement, the master or owner shall not be liable under this section if it is proved that the breach was not occasioned through any fault of his own.^(c)

Employment of
crew in loading
and unloading.
Amended by
No. 1, 1921,
s. 19.

45.—(1.) Except as prescribed, a member of the crew of a foreign-going ship (whether British or foreign) shall not be employed in handling cargo or ballast in connexion with the loading or unloading of a ship:

Provided that the regulations shall not allow the employment of the crew of such ship in handling cargo or ballast where a sufficiency of shore labour is available.

Inserted by
No. 1, 1921,
s. 19.

(1A.) The rates of wages to be paid in any port in Australia to shore labourers employed in handling cargo or ballast in connexion with the loading or unloading of any such ship shall be not less than the rates in any scale prescribed, under an award or agreement (if any) made or agreed to under any Commonwealth or State Act, for the payment of such labour at that port.

Penalty (on master, owner, agent or charterer) for any offence against either of the last two preceding sub-sections: One hundred pounds.

Inserted by
No. 1, 1921,
s. 19.

(1B.) If a sufficiency of shore labour cannot be obtained at such rates of wages it shall, for the purposes of this section, be deemed to be not available, and, in that case, the crew may be employed to the extent of the insufficiency.

(2.) The regulations may forbid the employment, except as prescribed, of members of the crews of Australian-trade ships in handling cargo or ballast in connexion with the loading or unloading of ships.

(a) See footnote (a) to s. 7 *supra*.

(b) Held by the High Court that firemen and trimmers are part of the engine-room staff. *Day v. Yates*, (1931) 45 C.L.R. 32; 4 A.L.J. 410; 37 A.L.R. 128.

(c) Held by the High Court that the excuse contained in this sub-section is established when it is proved that the defendant honestly endeavoured to obtain a full crew and that his failure did not arise from an omission to do something which he reasonably ought to have done. *Day v. Yates, supra*.

DIVISION 8.—THE AGREEMENT.^(a)Agreement to
be entered into.M.S.A. 1894,
s. 113.

46.—(1.) The master of a ship, other than a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, who engages any seaman in Australia, shall enter into an agreement with him in the prescribed form,^(b) in the presence of the superintendent.^(c)

(2.) No master of any such ship shall carry any seaman engaged in Australia to sea without having entered into such agreement, and no owner of any such ship shall, knowingly or unknowingly, suffer or permit any seaman to be so carried to sea in the ship.^(c)

Penalty: Five pounds in respect of each seaman.

(3.) The agreement shall be—^(c)

Form of
agreement.

Ib. s. 114.

(a) framed so as to admit of stipulations (not contrary to law) approved by the superintendent being introduced therein at the joint will of the master and seamen;

Amended by
No. 1, 1921,
s. 20.

(b) prepared, in duplicate, by or under the supervision of the superintendent after the production of the load-line certificate;

Substituted by
No. 1, 1921,
s. 20.

* * * * *

Para. (c)
repealed by
No. 1, 1921,
s. 20.

(d) signed by the master and seamen in the presence of and attested by the superintendent;

(e) signed by the master before being signed by any seaman;

(f) dated at the time of signature by the master; and

(g) read over and explained by the superintendent to each seaman before he signs it.

(4.) The superintendent shall retain one part of the agreement, and deliver the other part to the master.^(a)

(5.) When a crew is first engaged, the part of the agreement delivered to the master shall contain a special place or form for the descriptions and signatures of substitutes, or persons engaged subsequently to the first departure of the ship.^(a)

Provision for
substitutes.
Ib., s. 115 (3).

(a) The inconsistency of certain State legislation (purporting to affect the common law obligations of a seaman's contract of employment) with Division 8 of Part II. of this Act was considered by the High Court in *Huddart Parker Ltd. v. Colter*, (1942) 66 C.L.R. 624; 49 A.L.R. 27; 16 A.L.J. 53.

(b) As to whether a valid contract of service may be made before the signing of the articles see *McKernan v. Fraser*, (1931) 46 C.L.R. 343 at pp. 358 and 369; 38 A.L.R. 113. at pp. 117 and 122. Held by the High Court (Isaacs, Higgins and Starke, J.J.; Knox, C.J. and Gavan Duffy, J. dissenting) that the provisions of s. 77 (2.) requiring wages to be paid monthly do not preclude seamen from inducing owners to enter into a more beneficial agreement, approved by the Superintendent. *Federated Seamen's Union of Australasia v. Commonwealth Steamship Owners' Association*, (1922) 30 C.L.R. 144.

(c) Held by the High Court that the provisions of this Act requiring the engagement of seamen to be effected in the manner provided for by this Act are, so far as they purport to extend to a ship registered in the United Kingdom whose "first port of clearance and port of discharge" are not in the Commonwealth, rendered void by the *Colonial Laws Validity Act 1865*. *Union Steamship Co. of New Zealand Ltd. v. Commonwealth*, (1925) 36 C.L.R. 130; 31 A.L.R. 269.

Insertion in agreement of particulars as to load line.

M.S.A. 1932, s. 51.

Inserted by No. 49, 1934, s. 6.

46A.—(1.) In the case of a ship registered in Australia and required by this Act to be provided with a load line certificate, there shall be inserted in the agreement, before it is signed by any member of the crew, the particulars as to the position of the deck-line and load lines specified in the certificate.

(2.) A superintendent shall not proceed with the engagement of the crew of a ship to which this section applies until—

- (a) there is produced to him the load line certificate for the time being in force in respect of the ship; and
- (b) he is satisfied that the particulars required by this section have been inserted in the agreement.

Seamen to have knowledge of English.

M.S.A. 1906, s. 12.

47.—(1.) No seaman shall be permitted to sign any agreement who in the opinion of the superintendent does not possess a knowledge of the English language sufficient to enable him to fully understand the necessary orders that may be given to him in the performance of his duties.

(2.) No master or owner shall engage any seaman not possessing such knowledge.

Penalty for an offence against this sub-section: Twenty pounds.

Employment of aliens.

9 & 10 Geo. V. c. 92, ss. 5, 12 and 15.

Inserted by No. 1, 1921, s. 21.

47A.—(1.) No alien shall be permitted to engage or shall be employed in any capacity on any ship registered in the United Kingdom or in Australia unless he produces to the superintendent or, in the case of a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, to the person engaging him, satisfactory proof of his nationality.

Penalty: One hundred pounds.

(2.) No former enemy alien shall be permitted to engage or shall be employed in any capacity on any ship registered in the United Kingdom or in Australia.

Penalty: One hundred pounds.

(3.) For the purposes of this section the expression "former enemy alien" means an alien who is a subject or citizen of the German Empire or any component State thereof, or of Austria, Hungary, Bulgaria, or Turkey, or who, having at any time been such subject or citizen, has not changed his allegiance as a result of the recognition of new States or territorial re-arrangements, or been naturalized in any other foreign State or in the United Kingdom or in any British Possession in accordance with the laws thereof and when actually resident therein and does not retain, according to the law of his State of origin, the nationality of that State.

Substitutes.

M.S.A. 1894, s. 115 (4).

48. If a seaman who has signed the agreement is not on board at the time specified in the agreement, or if within twenty-four hours of the ship's putting to sea the services of a seaman are lost by death,

desertion, or other unforeseen cause, and the master engages a substitute—

- (a) the engagement shall, when practicable, be made before a superintendent or Customs officer; but
- (b) when that is not practicable, the master shall, when finally going to sea, or as soon thereafter as practicable, cause the agreement to be read over and explained to the substitute, who shall thereupon sign it in the presence of a witness who shall attest the signature, and the master shall subsequently report the transaction, in the prescribed form, to the superintendent at the first port of call.

Amended by
No. 1, 1921,
s. 22.

Penalty: Ten pounds.

49. When, in the case of a ship not registered in Australia, the agreement is made out in accordance with the law of the place where the crew was engaged, and the master engages single seamen in Australia, those seamen shall sign the agreement in the presence of a superintendent, and no other agreement shall be required, but in all other respects the requirements of this Act shall be complied with.

Single seamen
on original
articles.
N.Z. 1908,
s. 41 (6).

50.—(1.) An agreement may be made for a voyage, or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made to extend over two or more voyages are in this Act referred to as “running agreements.”

Running
agreements.
M.S.A. 1894,
s. 115 (5).

(2.) A running agreement shall not extend beyond six months from the date thereof:

Amended by
No. 1, 1921,
s. 23.

Provided that every such agreement shall, subject to sub-sections (3), (4) and (5) of this section, remain in force until the ship's arrival at her port of destination, and the crew shall be considered engaged when the agreement is first signed, and discharged when the employment ends.

(3.) When a ship, the crew of which have been engaged under a running agreement which has been in force more than six months, reaches a port in Australia other than her port of destination, and the ship is not then proceeding, either directly or by intermediate ports, to the port of discharge mentioned in the agreement, the master may discharge any seaman, and any seaman may obtain his discharge.

Added by
No. 1, 1921,
s. 23.

(4.) No seaman shall be discharged, nor be entitled to be discharged, under the last preceding sub-section, unless he has received from, or given to, the master, on any day other than Saturday and at least twenty-four hours before the ship leaves the port, twenty-four hours' notice of the proposed or required discharge.

Added by
No. 1, 1921,
s. 23.

(5.) Any seaman discharged, or who claims his discharge, under sub-section (3.) of this section, shall be entitled to receive from the master or owner—

Added by
No. 1, 1921,
s. 23.

- (a) a free passage to a proper return port, being either the port of discharge mentioned in the agreement or such other port as is mutually agreed upon with the approval of the proper authority;
- (b) wages, at the rate provided for in his agreement, until he arrives at the proper return port;
- (c) where a passage to the proper return port is not made available to him at the time he is discharged and it is necessary for the seaman to obtain accommodation ashore, an allowance for victualling and accommodation at the rate of five shillings per day for the period during which it is necessary for him to reside ashore and until the passage to the proper return port is made available; and
- (d) where the passage provided to the proper return port is otherwise than by sea, an allowance for victualling at the rate of three shillings per day for the period occupied by the journey:

Provided that if his return to the proper return port is delayed by any act or default of the seaman, he shall not be entitled to wages or allowance for victualling and accommodation during the period of the delay.

Added by
No. 1, 1921,
s. 23.

(6.) Victualling and accommodation allowances provided for in this section may be sued for and recovered by the seaman in the same manner as wages.

Agreement
with master or
owner.
M.S.A. 1894,
s. 116.

51. In the case of limited coast-trade ships, the agreement may, notwithstanding anything in this Act, be made with either owner or master. In the case of Australian-trade ships the agreement shall, notwithstanding anything in this Act, be made with the master.

Changes in
crew.
Ib. s. 117.

52.—(1.) The master of every foreign-going ship shall, before finally leaving Australia, sign and send to the nearest superintendent, on the prescribed form, a full and accurate statement of every change which takes place in his crew before finally leaving Australia.

Penalty: Five pounds.

(2.) Such statement shall be admissible in evidence.

Copy of
agreement to
be exhibited.
Ib. s. 120.

53. (1.) The master of every ship shall, at the beginning of every voyage or engagement, cause a legible copy of the agreement (omitting signatures) to be posted up in some part of the ship which is accessible to the crew, and shall use all reasonable precautions to keep it so posted during the voyage.

(2.) No person shall wilfully deface or destroy any such copy.

Penalty: Five pounds.

54. The master of every foreign-going ship shall, within forty-eight hours after arrival at her final port of destination in Australia or upon the discharge of his crew, whichever first happens, deliver the agreement to the superintendent.

Agreement to be delivered to superintendent.
M.S.A. 1894, s. 118 (3).

Penalty: Fifty pounds.

55.—(1.) Every erasure, interlineation, or alteration in the agreement, shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in the erasure, interlineation, or alteration.

Erasures and alterations.
Ib. s. 122.

(2.) Such consent may be proved by the written attestation—

- (a) of the witness attesting the signature of the person so interested; or
- (b) of some justice; or
- (c) in any part of the King's dominions beyond Australia—of a shipping master or superintendent; or
- (d) elsewhere than in the King's dominions—of a British Consul, or, where there is no British Consul, two British merchants.

56. Any person who—

- (a) fraudulently alters an agreement, or
- (b) makes a false entry in an agreement, or
- (c) delivers a false copy of an agreement,

shall be guilty of an indictable offence.

Offences.
Ib. s. 121.

57. A seaman may, in any proceeding, bring forward evidence to prove the contents of the agreement, or otherwise to support his case, without producing or giving notice to produce the agreement or a copy thereof.

Evidence as to agreement.
Ib. s. 123.

58.—(1.) The master of any ship—

- (a) on signing the agreement before a superintendent, shall produce to him the certificates of competency which the master and officers are required to hold; and
- (b) in the case of a running agreement, shall also, before the second and every subsequent voyage, produce to the superintendent the certificate of competency of any officer then first engaged by him who is required to be certificated.

Certificates of officers to be produced.
Ib. s. 103.

(2.) The superintendent shall satisfy himself that the officers are properly certificated.

59. In—

- (a) every contract of service, express or implied, between the owner of a ship and the master, or between the owner or master and any seaman or apprentice, and
- (b) every instrument of apprenticeship relating to the sea,

Obligation as to seaworthiness.
Ib. s. 458.

there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner and the master, and every agent charged with loading the ship or preparing her for sea or sending her to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage begins, and to keep her in seaworthy condition for the voyage during the voyage.^(a)

Fees to be paid.
N.Z. 1908,
s. 159.

60.—(1.) The person engaging or discharging any seaman shall pay the whole of the prescribed fees, and may retain from the wages of any seaman engaged or discharged such proportion of those fees as is prescribed.^(b)

(2.) All such fees with costs may be recovered from any such person in a summary manner.

DIVISION 9.—DISCHARGE^(b) OF SEAMEN.

Discharges to be given.
M.S.A. 1894,
ss. 127, 128.

61.—(1.) When a seaman is discharged^(b) from any ship (except a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship) the master shall sign and give the seaman, in the presence of the superintendent, a discharge in the prescribed form.

(2.) When a seaman is discharged from a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, the master shall sign and forthwith deliver to the superintendent a discharge of the seaman in the said form attested by a witness.

Amended by
No. 1, 1921,
s. 24.

(3.) When discharging a seaman, the master shall, if he has not already done so, return to him all his previous discharges taken possession of by the master at the time of the seaman's engagement.

Penalty for contravention of any of the preceding sub-sections: Ten pounds.

Sanction required for discharge of seamen not shipped in Australia.
Cf. M.S.A. 1906, s. 30.

62. (1.) A seaman not shipped in Australia shall not be discharged (except at the end of his service at the time specified in his agreement) unless the master has previously obtained the sanction of the superintendent indorsed on the agreement.

(2.) The superintendent shall examine into the grounds on which a seaman is to be discharged, and may, if he think fit, administer

(a) A ship is not seaworthy within the meaning of this section if there is a defect in its equipment or appliances sufficient to render it unfit for the due and safe carrying of the crew or the cargo, not being a defect which can be readily cured during the voyage. *Per Rich and Williams, J.J.*, in *Buddart Parker Ltd. v. Colter*, (1942) 66 C.L.R. 624; 49 A.L.R. 27; 16 A.L.J. 53.

Held by the High Court (*Rich and Williams, J.J.*; *McTiernan, J.*, dissenting) that a seaman injured during a voyage on a ship to which this section applies through a defect in equipment amounting to unseaworthiness cannot set up against the owner any contractual duty of care implied at common law but must rely on the contractual obligation as to seaworthiness implied under the section. *Ibid.*

(b) Held by the High Court (*Knox, C.J.*, *Isaacs, Higgins, Rich and Starke, J.J.*) that the provisions of this Act requiring the engagement or (*Higgins, J.*, dissenting) discharge of seamen to be effected in the manner provided for by this Act are, so far as they purport to extend to a ship registered in the United Kingdom whose "first port of clearance and port of discharge" are not in the Commonwealth, rendered void by the *Colonial Laws Validity Act 1865*. *Union Steamship Co. of New Zealand Ltd. v. Commonwealth* (1925) 36 C.L.R. 130; 31 A.L.R. 269.

oaths, and may grant or refuse his sanction as he thinks just; but his sanction shall not be unreasonably withheld.

(3.) A master of a ship not complying with this section shall be guilty of an indictable offence, and in any legal proceeding for the offence it shall lie on the master to prove that the sanction was obtained or was unreasonably withheld and it shall be a good defence if the master proves that under the circumstances it was not reasonably practicable for him to apply for the sanction.

63. No person shall give to any seaman a discharge which falsely indicates the capacity in which the seaman actually served or the time during which he served in that capacity.

False discharges.
Cf. N.Z. 1908, s. 53 (3).

Penalty: Fifty pounds.

64. The superintendent shall attest every discharge made before him, and shall keep every discharge received by him until the seaman applies for it, when he shall deliver it to the seaman.

Attestation.
N.S.W. 1898, No. 46, s. 35.

65. If the master or not less than two of the seamen of any limited coast-trade ship of less than fifty tons gross registered tonnage or any river and bay ship so desire, the seamen of that ship may be discharged as provided in the case of ships other than such limited coast-trade ships and river and bay ships.

Limited coast-trade and river and bay ships.
M.S.A. 1894, s. 127 (3).

66. The master, on the discharge of every certificated officer, shall return to him his certificate of competency if it has been delivered to and detained by him.

Return of certificate of competency.
1b, s. 128 (2).

Penalty: Twenty pounds.

67.—(1.) Upon every discharge effected before a superintendent the master shall make and sign, in the prescribed form, and forthwith deliver to the superintendent, a report of the conduct, character, and qualifications of the seaman discharged (in the next succeeding section referred to as the report of character).

Reports of seaman's character.
Cf. 1b, s. 129.
Amended by No. 1, 1921, s. 25.

(2.) The superintendent shall, if the seaman desires, indorse on his discharge a copy of the report.

68. Whoever—

- (a) knowingly makes any false certificate of discharge or report of character; or
- (b) forges or fraudulently alters any certificate of discharge or report of character or copy thereof; or
- (c) fraudulently uses any certificate of discharge or report of character, or copy thereof, which is forged or altered or does not belong to him,

Offences as to discharges.
M.S.A. 1894, s. 130.

shall be guilty of an indictable offence.

DIVISION 10.—SEAMEN'S WAGES.

Advance and Allotment.

Advance
of wages
prohibited.
M.S.A. 1894,
s. 140.
U.S. 1898,
c. 28, s. 10.

69.—(1.) An agreement made in Australia shall not contain any stipulation for the payment in advance, to any seaman or other person, of the wages or any portion thereof.

(2.) No ship-owner, master, or other person, shall pay or agree to pay any wages in advance to or on account of any seaman engaged in Australia.

Penalty: Fifty pounds.

(3.) Any agreement relating to advance of wages to or on account of any seaman engaged in Australia shall be void, and no deduction shall be made from any such seaman's wages, nor shall any person have any right of action or set-off against any such seaman or his assignee, in respect of any money paid or alleged to have been paid as an advance of wages.

Allotment
notes.
Cf. M.S.A.
1894, s. 141.

70.—(1.) A seaman engaged in Australia on a foreign-going ship for a voyage calculated to exceed two months may, before the commencement of the voyage, make stipulations, subject to the approval of the superintendent as to terms and conditions, for the allotment, during his absence, by means of an allotment note—

(a) to his grand-parents, parents, wife, brothers, sisters, children, or grand-children, or any of them; or

(b) to a Savings Bank,

of any portion of the wages which he may earn on the voyage.

M.S. (Seamen's
Allotment)
Act 1911
(1 & 2 Geo. V.,
c. 8), s. 1.

(2.) Except by agreement with the master an allotment note shall not provide for payment of a greater sum than three-fourths of the seaman's wages.

Amended by
No. 1, 1921,
s. 26.

(3.) The stipulations shall be inserted in the agreement, and shall state the amounts and times of the payments to be made, and the persons to whom they are to be made.

(4.) All allotment notes shall be in the prescribed form.

(5.) Except as provided in this Act, no allotment of the wages of any seaman engaged in Australia shall be made, and no stipulation for such allotment shall be valid.

M.S.A. 1906,
s. 61.

(6.) The superintendent before whom a seaman is engaged shall, after the seaman has signed the agreement, inquire of the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation shall insert it in the agreement, and any such stipulation shall be deemed to have been agreed to by the master.

Right to sue
upon allotment
notes.
M.S.A. 1894,
s. 143.

71.—(1.) When an allotment note is made in favour of any person, he may sue for and recover the wages allotted by it, when and as they are made payable, with costs, from any person who has authorized the drawing of the note, in a County Court, District Court, or Local Court of any State, or in a court of summary jurisdiction.

(2.) In any such proceeding, it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or master, or some authorized agent; and the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court by—

- (a) the official statement of the change in the crew caused by his absence, signed and sent to the superintendent by the master, as by this Act is required; or
- (b) a certified copy of some entry in the official log-book to the effect that he has left the ship; or
- (c) such other evidence as the Court, in its absolute discretion, considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

(3.) No recovery shall be made on an allotment note if the seaman is shown, in manner aforesaid, to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid.

(4.) The wife of a seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereby forfeit all right to further payment of any allotment of his wages made in her favour, but the Minister may direct the allotment to be made in favour of any other relative of the seaman to whom an allotment may be made under this Act.

72.—(1.) Payment under an allotment note shall, except as provided by sub-section (2.) of this section, begin at the expiration of one month from the date of the agreement and shall be made at the expiration of every subsequent month after the first month, and shall be made only in respect of wages earned before the date of payment.

Commence-
ment of
payment.

M.S.A. 1906,
s. 62.

(2.) By agreement with the master an allotment note may be granted to a seaman providing for payment at a period earlier than one month from the date of the agreement and at intervals more frequent than one month.

1 & 2 Geo. V.,
c. 8, s. 1.

73. An allotment to a Savings Bank shall be in favour of such persons, and carried into effect in such manner, as is prescribed.

Allotment to
Savings Banks.
M.S.A. 1894,
s. 142 (1).

74. The sums received by a Savings Bank on an allotment note shall be paid out only on application made, through a superintendent, by the seaman himself, and in case of his death by some person to whom his property, if under One hundred pounds in value, may be paid under this Act.

Payments by
Savings Banks.
Ib., s. 142 (2).

Payment of Wages.

75. When a seaman is discharged before a superintendent, the master or owner of the ship shall pay his wages through or in the presence of a superintendent.

Wages to be
paid before a
superintendent.
N.Z. 1908,
s. 58.

Penalty: Ten pounds.

On discharge
of seaman
master to
deliver account
of wages.
M.S.A. 1894,
s. 132.

76.—(1.) Every master shall, before discharging a seaman, deliver to him at the time prescribed a full and true account, in the prescribed form, of his wages, and of all deductions to be made therefrom on any account whatever.

Penalty: Five pounds.

Deductions
from wages.

(2.) No deduction from the wages of any seaman, except in respect of any matter happening after such delivery, shall be allowed unless it is included in the account so delivered.

(3.) The master shall during the voyage enter in a book to be kept for that purpose, as they occur, the various matters in respect of which any deductions from wages are made and the amounts of the respective deductions which shall be initialed or signed by the seaman and no deduction shall be allowed unless so entered.

(4.) The Minister may disallow any such deduction.

Time for
payment of
wages on
foreign-going
ships.

Cf. *ib.* ss. 134-5,
N.Z. 1908, s. 62.
Amended by
No. 1, 1921,
s. 27.

77.—(1.) The master or owner of every foreign-going ship registered in Australia shall pay, subject to all just deductions, the wages due to the crew as follows:—

(a) during any period the ship is engaged in the coasting trade, the full amount of wages then earned shall be paid to every seaman monthly, not later than the first day of each month, or, if the ship is not, at the time when any monthly payment falls due, in a port in Australia where there is a banking institution (other than a savings bank), then within twenty-four hours of the ship's arrival at such a port; and

(b) during any period the ship is in parts outside the coasting trade limits, three-fourths of the amount of the wages then earned shall be paid to every seaman within twenty-four hours of the ship's arrival at any port at which cargo is to be loaded or discharged and at which there is a branch, agency or correspondent of the Commonwealth Bank;

Provided that this provision shall not apply to cases where the seaman by the terms of his agreement is wholly compensated by shares in the profits of the adventure.

Wages to be
paid monthly
on Australian-
trade and
limited
coast-trade
ships.

ib. s. 63.
Amended by
No. 1, 1921,
s. 27.

(2.) In cases where the seamen are engaged on time or running agreement on an Australian-trade or limited coast-trade ship, all wages earned shall be paid monthly not later than the first day of each month, or thereafter within twenty-four hours after the ship first arrives at any port in Australia at which there is a banking institution (other than a savings bank).^(a)

(a) Held by the High Court (Isaacs, Higgins and Starke, *J.J.*; Knox, *C.J.*, and Gavan Duffy, *J.*, dissenting) that the provisions of this section do not preclude seamen from inducing owners to enter into an agreement, approved by the superintendent, for the payment of wages fortnightly; nor the Commonwealth Court of Conciliation and Arbitration from inserting a provision in an award providing for fortnightly payments or for payment within four hours after arrival at a port. *Federated Seamen's Union of Australasia v. Commonwealth Steamship Owners' Association*, (1922) 30 C.L.R. 144.

(3.) Every master or owner who, without sufficient cause, fails to make payment at any prescribed time, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days during which payment is delayed beyond that time, and that sum shall be recoverable in the same manner as wages. N.Z. 1908, s. 62.

78. In the event of a seaman's wages not being paid or settled at the end of the voyage or engagement, as provided in this Act, then, unless the delay is due to the seaman's act or default, or to any reasonable dispute as to liability, or to any other cause which is not the wrongful act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of final settlement. Wages to run on in certain cases. M.S.A. 1894, s. 134 (c).

79. If a seaman consents, the final settlement of his wages may, subject to the regulations, be left to a superintendent, and the receipt of the superintendent shall in that case operate as a release given by the seaman. Superintendent may receive wages. N.Z. 1908, s. 61 (b).

80. The following rules shall be observed with respect to the settlement of wages:— Settlement of wages.

(a) Where a seaman is discharged, and the settlement of his wages completed, before a superintendent, the master or owner and the seaman shall, in the presence of the superintendent, sign in the form prescribed a mutual release of all claims in respect of the past engagement: Release to be signed before superintendent. M.S.A. 1894, s. 136.

Provided that the seaman may except from the release any specified claim against the master or owner; and in that case a note of any claim so excepted shall be entered upon the release. (a) M.S.A. 1906, s. 60.

(b) The release shall be attested by the superintendent and retained by him, and shall be admissible in evidence. Attestation.

(c) The release shall operate as a mutual discharge and settlement of all claims between the parties thereto in respect of the past engagement, other than any excepted claims noted upon the release as above-mentioned. To be a discharge.

(d) In cases in which discharge and settlement are required to take place before a superintendent, no payment, receipt, settlement, or discharge, otherwise made, shall operate or be admitted as evidence of the release or satisfaction of any claim: No other receipt to be a discharge.

Provided that this paragraph shall not apply to any payment, receipt, settlement, or discharge in respect of an excepted claim noted on a release as above-mentioned.

(e) Upon any payment being made by a master before a Voucher to be given to master and to be evidence.

(a) Held by the Full Court of the Supreme Court of Queensland that the release refers to claims then due and not to inchoate claims or rights which might afterwards accrue. *Australasian United Steam Navigation Co. Ltd. v. Lewis*, 1937 St.R.Qd. 217; 31 Q.J.P.R. 98.

superintendent, the latter shall, if required, sign and give to the master a statement of the whole amount so paid, and the statement shall, as between the master and his employer, be admissible in evidence to prove that the master has made the payments therein mentioned.

Decision of
questions by
superintendent.
M.S.A. 1894,
s. 137.
N.Z. 1908,
s. 65.

81.—(1.) A superintendent may hear and decide the following questions between a master or owner and a seaman or apprentice:—

- (a) any question whatever which both parties request him in writing to hear and decide; and
- (b) any claim for wages not exceeding Five pounds in amount which either party requests him to hear and decide.

(2.) If the superintendent is of opinion that any question is one which ought to be decided by a Court, he may refuse to decide it.

(3.) The decision of the superintendent shall be final and conclusive as to the rights of the parties.

(4.) Any document under the hand of the superintendent purporting to be such decision shall be admissible as evidence thereof.

Rights of Seamen in respect of Wages.

Right to wages
and provisions
when to begin.
M.S.A. 1894,
s. 155.

82. A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

No forfeiture
of lien.
Ib. s. 156.

83.—(1.) No seaman or apprentice shall, by any agreement—

- (a) be deprived of any remedy for the recovery of his wages; or
- (b) forfeit his lien upon the ship for his wages; or
- (c) abandon his right to wages in case of the loss of the ship; or
- (d) abandon any right that he may have or obtain in the nature of salvage.

(2.) The lien for seamen's and apprentices' wages shall have priority of all other liens.

Stipulations
inconsistent
with Act to be
void.

Agreement
for salvage
service.

(3.) Every stipulation in any agreement, inconsistent with any provision of this Act, shall be void.^(a)

(4.) Nothing in this section shall apply to a stipulation made by any seaman, belonging to a ship which according to the terms of the agreement is to be employed exclusively on salvage service, with respect to the remuneration to be paid to him for salvage service to be rendered by that ship to any other ship.

^(a) Held by the High Court (Isaacs, Higgins and Starke, JJ.; Knox, C.J., and Gavan Duffy, J., dissenting) that the provisions of s. 77 (2.) requiring wages to be paid monthly do not preclude the seamen from inducing owners to enter into a more beneficial agreement, approved by the superintendent. *Federated Seamen's Union of Australasia v. Commonwealth Steamship Owners' Association*, (1922) 30 C.L.R. 144.

84. The right to wages shall not depend on the earning of freight: and every seaman and apprentice who would be entitled to demand and recover any wages, if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover his wages, notwithstanding that freight has not been earned.

Wages not to be dependent on the earning of freight.
M.S.A. 1894, s. 157.

But in all cases of wreck or loss of the ship, proof that any seaman has not exerted himself to the utmost to save the ship, human life, cargo, stores, and equipment, shall bar his claim to wages.

85.—(1.)^(a) Where the service of a seaman belonging to a ship (other than a river and bay ship) registered in Australia terminates, before the period contemplated in his agreement, by reason of the wreck or loss of the ship, he shall be entitled—

Right to wages in case of termination of service by wreck.

- (a) to conveyance, by or at the cost of the owner, to the port of engagement, or, at the master's option, to the port of discharge mentioned in the agreement, or to such other port as is mutually agreed upon, with the approval of the proper authority, between the master and the seaman; and

Dr. s. 158, and cf. 15 and 16 Gen. 5 ch. 42, s. 1.

Sub-sec. (1.) substituted by No. 1, 1921, s. 28, and amended by No. 49, 1934, s. 7.

- (b) to wages, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, at the rate to which he was entitled on that date:

Substituted by No. 49, 1934, s. 7.

Provided that a seaman shall not be entitled to receive wages under this section—

Substituted by No. 49, 1934, s. 7.

- (i) if the owner shows that the unemployment was not due to the wreck or loss of the ship; nor
- (ii) in respect of any day if the owner shows that the seaman was able to obtain suitable employment on that day.

(1A.) In this section "seaman" includes every person employed or engaged in any capacity on board the ship, but, in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

Inserted by No. 49, 1934, s. 7.

(2.) Where a seaman, whose service terminates by reason of the wreck or loss of the ship, has been engaged by the run, he shall be entitled to the wages to which he would have been entitled on the termination of the run, subject to all just deductions.

Wages by the run.
Cf. N.Z. 1908, s. 79 (3).

86. No seaman or apprentice shall be entitled to wages—

- (a) for any period during which he unlawfully fails to work

Wages not to accrue during refusal to work or imprisonment.

(a) Held by the Full Court of the Supreme Court of Queensland that where owing to heavy seas the thrust shaft had broken and the ship was adrift and had to be towed to port where she remained for less than three weeks, the adventure was not frustrated and was not therefore a wreck so as to entitle a discharged seaman to the benefits of this sub-section. *Australian United Steam Navigation Co. Ltd. v. Lewis*, 1937 St.R.Qd. 217; 31 Q.J.P.R. 98. For a review of English decisions on the meaning of "wreck" used in a similar context see *ibid.*

M.S.A. 1894, s. 159.

when required, whether before or after the time fixed by the agreement for his beginning work; or

(b) unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned; or

(c) for any period during which he is, by reason of illness caused by his own wilful act or default, incapable of performing his duty.

M.S.A. 1894,
Ib. s. 160.

Deduction of
cost of
obtaining
conviction.
Ib. s. 161.

87. Whenever, in any proceeding relating to wages, it is proved that a seaman or apprentice has in the course of the voyage been lawfully convicted of an offence, the Court may direct that any part of the wages due to the seaman or apprentice, not exceeding Two pounds, shall be applied in reimbursing any costs properly incurred by the master in procuring the conviction.

Compensation
for premature
discharge.
Cf. ib. s. 162.
Amended by
No. 1, 1921,
s. 29.

88.—(1.) If a seaman is discharged, otherwise than in accordance with the terms of his agreement or the provisions of this Act, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he has earned, compensation not being less than one month's wages, and may recover that compensation as if it were wages duly earned.^(a)

Amended by
No. 1, 1921,
s. 29.
Cf. M.S.A.
1906. s. 32.

(2.) If the seaman is so discharged elsewhere than at the port of discharge mentioned in the agreement, the provisions of sub-sections (5) and (6) of section fifty of this Act shall also apply as if the seaman had been discharged in pursuance of sub-section (3) of that section.^(a)

Wages in full
up to time of
discharge.
N.Z. 1908,
s. 79 (1).

89. Every seaman (wherever engaged) who is discharged in Australia before the completion of the full term of his engagement, shall be paid and may recover the full amount of wages due up to the time of his discharge.

Wages not to
be attached, &c.
Ib. s. 83.
M.S.A. 1894,
s. 163.

90.—(1.) As to wages due or accruing to a seaman or apprentice—

(a) they shall not be subject to attachment or arrestment from any Court;

(b) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making it;

(c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and

(d) a payment of wages to the seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of those wages, or any attachment, encumbrance, or arrestment thereof.

^(a) *Per* the Supreme Court of New South Wales, if a seaman is discharged against his will, and without justification, elsewhere than at the port of discharge mentioned in the agreement, he is entitled to be repatriated free of expense as well as to be compensated as provided for in sub-sec. (1.) of this section. The case was, however, decided on the interpretation of a clause in the agreement. *McKernan v. Australian Commonwealth Shipping Board*, (1928) 29 S.R. (N.S.W.) 107; 46 W.N. (N.S.W.) 32.

(2.) Nothing in this section shall affect the provisions of this Act with respect to allotment notes.

Mode of Recovering Wages.

91.—(1.) The Supreme Court of any State, and any Court having Admiralty jurisdiction, and any Court having civil jurisdiction in respect of the amount of the claim, shall have jurisdiction to try and determine the following causes:—

Jurisdiction of Court as to wages.
N.Z. 1908, s. 85.

- (a) Any claim by or on behalf of a seaman of a ship for wages earned by him on board the ship, whether under a special contract or otherwise;
- (b) Any claim by or on behalf of the master of a ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship.

(2.) If any such cause tried in the Supreme Court of a State, or in a Court having Admiralty jurisdiction, the plaintiff does not recover Fifty pounds, he shall only be entitled to such costs as the Court or a Judge allows, such costs not to exceed reasonable costs on the scale usually allowed in any inferior Court in which the cause might have been brought, unless the Court or Judge certifies that the cause was a fit one to be tried in the higher Court.

(3.) The last preceding sub-section shall not apply to a proceeding for the recovery of wages instituted by or on behalf of any seaman or apprentice in any case where—

Ib. s. 84 (2).
M.S.A. 1894, s. 165.

- (a) the owner of the ship is declared bankrupt or insolvent; or
- (b) the ship is under arrest or is sold by the authority of any Court; or
- (c) the case has been referred to the Court by an inferior Court; or
- (d) neither the owner nor the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

92.—(1.) Where any sum not exceeding Fifty pounds is due for wages to any seaman or apprentice, he, or a person duly authorized on his behalf, may sue for and recover it with costs in a County Court, District Court, or Local Court of a State or a Court of summary jurisdiction, in or near the place—

Summary proceedings for wages.
cf. Ib. s. 164.

- (a) where the service has terminated; or
- (b) where the seaman or apprentice has been discharged; or
- (c) where the person from whom the wages are due is, or resides.

(2.) Every judgment or order for payment made by the Court under this section shall contain a direction that the person liable shall pay the amount thereby made payable within a time to be named

in the judgment or order, and that in default he shall be imprisoned for any term not exceeding three months, unless the amount is sooner paid.

(3.) Every judgment or order made under this section shall be final and without appeal.^(a)

Wages not recoverable abroad in certain cases.
Cf. M.S.A.
1894, s. 166.

93. (1.) Where a seaman is engaged in Australia for a voyage or engagement which is to terminate in Australia he shall not be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as is required by law and with the written consent of the master or proves such ill-usage on the part or by the authority of the master as to warrant reasonable apprehension of danger to his life or health if he were to remain on board.

(2.) If a seaman, on his return to Australia, proves that the master or owner has been guilty of any conduct or default which, but for this section, would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover, in addition to his wages, such compensation as the Court hearing the case thinks reasonable.

Master's remedies for wages.
Ib. s. 167.

94.—(1.) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages as a seaman has by law or custom.

(2.) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3.) If in any proceeding in any Court touching the claim of a master in respect of wages, or of such disbursements or liabilities as aforesaid, any right of set-off or counter-claim is set up, the Court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

DIVISION II.—SEAMEN'S MONEY ORDERS.

Regulations as to money orders,
N.Z. 1908,
s. 72.

95.—(1.) Regulations under the *Post and Telegraph Act* 1901 may provide for the issue of money orders called seamen's money orders, and prescribe the time and mode of their payment, and the persons by or to whom they are to be paid.

(2.) All regulations so made shall, while in force, be binding upon

(a) In *Australian Steamships Pty. Ltd. v. Abbott* ((1927) 39 C.L.R. 148; 1 A.L.J. 27) the High Court held that no appeal lay from the decision of a District Court of New South Wales on a claim for wages (not exceeding £50) due under the provisions of s. 132 (1.) (b). Similarly held by the Supreme Court of New South Wales in *Edgecombe v. Australian Steamship Proprietors Ltd.*, (1922) 22 S.R. (N.S.W.) 653; 39 W.N. (N.S.W.) 248.

all persons interested or claiming to be interested in the orders, as well as upon the officers employed in issuing or paying them.

96. The Minister may, if he thinks fit, cause the amount of any seaman's money order to be paid to the person in whose favour it has been granted, or to the personal representative, or any legatee or next-of-kin of that person, notwithstanding that the order is not in his possession, and after such payment the Commonwealth and the Postmaster-General shall be free from liability in respect of the money order.

Right of Minister to cause money order to be paid.
N.Z. 1908, s. 73.

97. Every officer in the Postal Service who grants or issues a seaman's money order with a fraudulent intent shall be guilty of an indictable offence.

Fraud by postal officials.
Ib. s. 74.

98. Where—

- (a) the balance of wages due to a seaman is more than Five pounds; and
- (b) the seaman asks the master of the ship to afford him facilities for remitting all or any part of the balance to a savings bank, or to a relative in whose favour an allotment note may be made,

Facilities to seamen for remitting wages.
M.S.A. 1906, s. 63.

the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of Five pounds, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port, or otherwise than conditionally on the seaman going to sea in the ship.

Penalty: Ten pounds.

DIVISION 12.—DISCIPLINE.

99. Any master, seaman, or apprentice who by wilful breach of duty or by neglect of duty, or by reason of drunkenness—

Acts tending to endanger ship or life.
M.S.A. 1894, s. 220.

- (a) does any act tending to the immediate loss, destruction, or serious damage of the ship or cargo, or tending immediately to endanger the life or limb of a person belonging to or on board the ship; or
- (b) fails to do any lawful act proper and requisite to be done by him for preserving the ship or cargo from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board the ship from immediate danger to life or limb,

shall be guilty of an indictable offence.

100. The acts specified in Column 1 hereunder shall be offences against discipline, and a seaman or apprentice committing any one

Offences against discipline.

of them shall be liable to a punishment not exceeding the punishment set opposite to the offence in Column 2 hereunder:—

Column 1.	Column 2.
<i>Offences.</i>	<i>Punishments.</i>
Cf. M.S.A. 1894, s. 221. Desertion.	Forfeiture of all accrued wages not exceeding Twenty pounds, or a penalty of Twenty pounds. Penalty of Ten pounds.
Failure or refusal without reasonable cause to join the ship or proceed to sea in the ship. Cf. <i>ib.</i> s. 221 (<i>b</i>). Absence without leave from duty without reasonable cause, such absence not amounting to desertion or not treated as such by the master.	Forfeiture of two days' wages, with an additional forfeiture of two days' wages for every twenty-four hours of absence, or a penalty of Twenty pounds.
Cf. <i>ib.</i> s. 225 (<i>b</i>). Insubordination at sea, or wilful disobedience to any lawful command at sea.	One month's imprisonment or forfeiture of ten days' wages.
Insubordination, or wilful disobedience to any lawful command. Cf. <i>ib.</i> s. 225 (<i>c</i>). Continued wilful disobedience to lawful commands, or continued wilful failure in duty.	Forfeiture of two days' wages, or a penalty of Ten pounds.
Cf. <i>ib.</i> s. 225 (<i>d</i>). Assaulting master or ship's officer without lawful justification.	Forfeiture of two days' wages for each day during which the offence continues.
Cf. <i>ib.</i> s. 225 (<i>e</i>). Conspiring with any other of the crew to disobey lawful commands at sea, neglect duty at sea, or impede the navigation of the ship or progress of the voyage.	Three months' imprisonment, or a penalty of Twenty pounds.
<i>ib.</i> s. 225 (<i>f</i>). Wilfully damaging the ship.	Six months' imprisonment.
Embezzling or wilfully damaging the cargo, stores, or equipment of the ship.	Twelve months' imprisonment, or a penalty equal in amount to the loss sustained.
Secreting a stowaway or deserter.	Six months' imprisonment, or a penalty equal in amount to the loss sustained. Forfeiture of two days' wages.

Any forfeiture under this section (except where expressed to be of accrued wages) shall be out of such wages as have accrued or may accrue to the person committing the offence; and wages shall not be deemed to include salvage.

101.—(1.) If a seaman or apprentice commits any act of smuggling by which loss or damage is occasioned to the master or owner of the ship, he may be ordered by any court of summary jurisdiction to pay to the master or owner a sum sufficient to recoup the loss or damage, and that sum may, without prejudice to any other remedy, be deducted from any wages due to him.

Smuggling by crew.
M.S.A. 1894,
s. 225 (g).

(2.) Nothing in this section shall relieve any seaman or apprentice from any penalty incurred on account of any act of smuggling.

102. The master or an officer of a ship who, without lawful justification, assaults any person belonging to the ship, shall be guilty of an offence.

Assaults on crew.
N.Z. 1908,
s. 131.

Penalty: Twenty pounds, or imprisonment for three months.

103. No person shall—

- (a) by any means whatever persuade a seaman or apprentice to commit any breach of his agreement; or
- (b) wilfully harbor or secrete a seaman or apprentice who has deserted from or wilfully failed to join his ship.

Inciting to breach of agreement.
M.S.A. 1894,
s. 236.

Penalty: Twenty pounds.

104.—(1.) No person shall secrete himself and go to sea in a ship without the consent of some person entitled to give that consent.

Stowaways.
Ib. s. 237.

Penalty: Twenty pounds, or imprisonment for four weeks.

(2.) Every person whom the master of a ship is legally compelled to convey, and every person who goes to sea in a ship without such consent as aforesaid, shall, so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline as if he were a member of the crew, and signed the agreement.

Stowaways and distressed seamen liable to discipline.

105. Whenever a seaman or apprentice is charged before any Court with desertion or absence without leave from duty, the Court upon proof of the offence—

Seamen may be sent on board in lieu of penalty.
Ib. s. 224.

- (a) shall, instead of enforcing the whole or any part of the penalties prescribed, if the master or owner or his agent so requires, cause him to be conveyed on board for the purpose of proceeding on the voyage: Provided that the Court may decline to exercise this power in any particular case if for any special reason it thinks it advisable so to do; and
- (b) may also order any expenses, properly incurred by or on behalf of the master or owner by reason of the offence, to be deducted from any wages which the offender has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Proceedings
against seaman
after departure
of ship.

N.S.W. 1898,
No. 46, s. 88.
Cf. N.Z. 1908,
s. 133 (5).

106. When proceedings have been instituted against a seaman who has deserted from his ship or who has failed or refused without reasonable cause to join his ship or proceed to sea, and a warrant has been issued for his apprehension, but he has not been apprehended until—

- (a) after the departure of the ship from Australia; or
- (b) so shortly before the departure of the ship that he cannot conveniently be brought to trial prior to her departure; or
- (c) so shortly before such departure that the master cannot reasonably be expected to attend for the purpose of prosecuting him,

Amended by
No. 1, 1921,
s. 30.

the owner or agent of the ship may continue the proceedings against the seaman and upon the hearing of the charge, verified copies of the agreement, and of the entry in the log-book, in which respectively the offender's name appears, shall be admissible in evidence.

Failure to join
or desertion.
Certificates of
discharge may
be withheld.

Cf. N.Z. 1909,
s. 26.

Cf. M.S.A.
1906, s. 65 (2).

Inserted by
No. 1, 1921,
s. 31.

106A.—(1.) Where any seaman lawfully engaged in Australia wilfully or through misconduct fails to join his ship, or having joined his ship deserts her before her departure, and no proceedings under this Act have been instituted against the seaman in respect of the offence, the Minister, on a report by the superintendent, may direct that the seaman's certificates of discharge shall be withheld from him for such period, not exceeding one month, as the Minister thinks fit.

(2.) While a seaman's certificates of discharge are so withheld then, notwithstanding anything to the contrary contained in this Act—

- (a) no superintendent shall grant to the seaman a permit to sign articles; and
- (b) no officer having the custody of documents shall furnish, to any person, copies of that seaman's certificates of discharge, or any of them, or certified extracts of any particulars of his service or character.

Deserter may
be apprehended.
N.S.W. 1898,
No. 46, s. 91.

107. On complaint of a master, or mate, or owner or agent of a ship, that any other ship (British or foreign) has on board any seaman who has deserted from the first-mentioned ship, any justice, or officer of Customs or police, may detain the seaman and lodge him in safe custody until he is dealt with according to law:

Provided that the seaman shall be so dealt with as soon as possible.

List of deserters
to be shown.
M.S.A. 1894,
s. 230.

108.—(1.) Every superintendent shall exhibit in his office a list of seamen who, to the best of his knowledge and belief, have deserted, or failed to join their ships after signing the agreement.

No action for
exhibiting.

(2.) No superintendent shall be liable to any action in respect of any entry in such list.

109. Subject to the provisions of section one hundred of this Act, when a seaman or apprentice is sentenced to imprisonment for any offence, the whole or any of the wages due to him at the time of his arrest shall be paid to him by the master or owner.

Payment of wages when imprisoned.
M.S.A. 1894,
s. 137.

110.—(1.) When a seaman belonging to a foreign-going ship is imprisoned on summary conviction for any term, and his ship is about to leave Australia before the expiration of his sentence, the Minister may, with the consent of the seaman, cause the seaman to be delivered to the master of the ship at any time within twenty-four hours before sailing, and the master shall keep the seaman on board under custody till the ship has left port.

Foreign-going seamen may be returned to their ship.
N.Z. 1908,
s. 133 (4).

(2.) All expenses incurred in connexion with such delivery and custody shall be paid by the master.

111. If any offence within the meaning of this Act of desertion, or absence without leave, or against discipline, is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine and for which it is intended to enforce the fine—

Entry in the log of offences and offender's defence.
M.S.A. 1894,
s. 228.

- (a) an entry of the offence or act shall be made in the official log-book, and signed by the master and also by the mate or one of the crew; and
- (b) the offender, if still in the ship, shall, before the next arrival of the ship at any port, or if the ship is at the time in port before her departure therefrom, be furnished with a copy of the entry or have it distinctly read over to him, and he may thereupon make such reply thereto as he thinks fit; and
- (c) a statement of a copy of the entry having been so furnished or of the entry having been so read over, and of the offender's reply (if any) shall be entered and signed in manner aforesaid; and
- (d) in any subsequent legal proceeding the entries required by this section shall, if practicable, be produced or proved, and in default of that production or proof the Court hearing the case may in its discretion refuse to receive evidence of the offence or act of misconduct.

112.—(1.) Whenever a question arises as to forfeiture of wages of a seaman or apprentice for desertion, it shall be sufficient evidence of desertion to show—

Evidence of desertion in proceeding for forfeiture.
Ib. s. 231.

- (a) that the seaman or apprentice belonged to the ship; and
- (b) either that he unlawfully left the ship before the completion of the voyage or engagement; or, if the voyage was to terminate in Australia and the ship has not returned, that he is unlawfully absent from her; and

(c) that an entry of his desertion has been duly made in the official log-book, and indorsed by a superintendent of mercantile marine or a consul.

(2.) The desertion shall thereupon be deemed to be proved, unless the seaman or apprentice can show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

Questions as to
forfeiture and
deductions.

M.S.A. 1894,
s. 233.

113. Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Forfeiture
under unusual
agreement.

1b. s. 234.

114. If a seaman contracts for wages by the voyage or by the run or by the share, and not by a stated period of time, the amount of forfeiture to be incurred under this Act shall be such as the Court determines when any question of forfeiture of such wages comes before it.

Deduction of
fines.

M.S.A. 1906,
s. 44.

Amended by
No. 1, 1921,
s. 32.

115.—(1.) Every fine imposed on a seaman, for any act of misconduct for which his agreement imposes a fine, shall be deducted and paid as follows:—

If the offender is discharged in Australia, and the offence, and the entry in the log-book required by this Act in respect thereof, are proved to the satisfaction of the superintendent before whom the offender is discharged, the master or owner shall deduct the fine from the wages of the offender, and pay it to the superintendent.

(2.) The master or owner shall not, without reasonable cause, fail to pay the fine promptly to the superintendent.

Penalty: Five pounds.

(3.) An act of misconduct for which a fine has been inflicted and paid by, or deducted from the wages of, the seaman, shall not be otherwise punished under this Act.

DIVISION 13.—PROVISIONS.

Bad provisions
or water.

M.S.A. 1894,
s. 198.

116.—(1.) If three or more of the crew of a ship consider that their provisions or water are of bad quality, or deficient in quantity, they may complain thereof to a superintendent, who shall examine the provisions and water or cause them to be examined.

Amended by
No. 1, 1921,
s. 33.

(2.) If the Deputy Director is satisfied, from the report of the superintendent or other official making the examination, that the provisions or water are of bad quality or deficient in quantity, he shall, by writing, require the master to provide provisions and water of good quality, or sufficient in quantity, as the case may be, and to

cease to use or supply to the crew any provisions or water found to be of bad quality, and the master shall comply with the requisition.

Penalty: Twenty pounds.

(3.) The superintendent or person making the examination shall enter the result thereof in the official log-book.

(4.) If the Deputy Director certifies that there was no reasonable ground for the complaint, each of the complainants shall be liable to forfeit out of his wages a sum not exceeding one week's wages.

Amended by
No. 1, 1921,
s. 33.

(5.) For the purposes of sub-section (2) of this section, any requirement made by the Deputy Director may be made by telegram signed by the Deputy Director and addressed to the master of the ship in question.

Added by
No. 1, 1921,
s. 33.

117. The master of every ship registered in Australia or engaged in the coasting trade for which an agreement with the crew is required under this Act shall furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale set out in Schedule III. applicable to the ship, or as is prescribed.

Statutory scale
of provisions.
M.S.A. 1906,
s. 25.

Penalty: One hundred pounds, in addition to any compensation awarded under the next following section:

Provided that, if the master proves to the satisfaction of the Court that the failure was not due to any default or neglect on his part, no penalty shall be incurred.

118.—(1.) On every ship registered in Australia or engaged in the coasting trade in either of the following cases, namely:—

Supplying bad
water or
provisions.

(a) if during a voyage the allowance of any of the provisions required by the prescribed scale is reduced; or

M.S.A. 1894,
s. 100.

(b) if it is shown that any of the provisions are or have during the voyage been of bad quality,

the seaman shall receive, as compensation for that reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to, and to be recoverable as, wages:—

Compensation.

(i) if his allowance is reduced by not more than one-third of the quantity required by the prescribed scale, a sum not exceeding One shilling a day;

(ii) if his allowance is reduced by more than one-third of that quantity, a sum not exceeding Two shillings a day;

(iii) in respect of bad quality, a sum not exceeding Two shillings a day.

(2.) Provided that if it is shown to the satisfaction of the Court—

(a) that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in their place; or

(b) that, although the provisions actually required by the scale were not supplied, provisions containing on the whole the same or a greater amount of wholesome nutriment were supplied in their place,
the Court shall take those circumstances into consideration, and shall modify or refuse the compensation as justice requires.

Weights and
measures.
M.S.A. 1894,
s. 201.

119. In the event of any dispute as to the quantities of articles served out to the crew of a ship, the master shall cause the quantities to be weighed or measured in the presence of a witness by just and correct weights and measures.

Penalty: Ten pounds.

Inspection of
provisions.
Ib. s. 206.
Amended by
No. 80, 1950,
s. 3 and First
Schedule.

120.—(1.) The provisions and water for the use of the crews of ships leaving any port in Australia for a place beyond Australia or New Zealand shall be inspected by such persons and under such circumstances as the Minister directs:

Provided that, where the provisions or water have already been inspected and approved by an officer of the Ministry of Transport of the United Kingdom, no further inspection shall be required unless complaint be made or the Minister deem further inspection necessary.

M.S.A. 1906,
s. 26.

(2.) If the person so inspecting finds that the provisions or water are not of good quality, the ship shall be detained until provisions or water are supplied to his satisfaction.

(3.) If any provisions or water are found deficient in quality under this section, the master of the ship shall be guilty of an offence, unless it is proved to the satisfaction of the Court—

(a) that the finding of the inspecting official was not justified;
or

(b) that the responsibility for the defects in the provisions or water rests upon some other person.

Penalty: One hundred pounds.

(4.) The owner of any ship, or his agent, or any other person, supplying or causing to be supplied provisions or water which are afterwards found deficient under this section shall be guilty of an offence unless it is proved to the satisfaction of the Court—

(a) that the provisions or water were not deficient when supplied; or

(b) that when the provisions or water were supplied he did not know and had no reasonable cause to believe that they were deficient in quality, and had taken reasonable precautions to ascertain that they were not so deficient.

Penalty: One hundred pounds.

(5.) The master of every ship, and every person having charge of any provisions or water liable to inspection, shall give the inspecting officer every reasonable facility for the purpose of his inspection under this section.

Penalty: Twenty-five pounds.

121.—(1.) Every British ship of five hundred tons gross registered tonnage or upwards, registered in Australia or engaged in the coasting trade, and going to sea from any port in Australia, shall carry a duly certificated cook, who is able to prove one month's service at sea in some capacity.

Certificated
cooks.
Cf. M.S.A.
1906, s. 27.

(2.) A cook shall not be deemed to be duly certificated, within the meaning of this section, unless he is the holder of—

Amended by
No. 1, 1921,
s. 34 and by
No. 80, 1950,
s. 3 and First
Schedule.

- (a) a certificate issued as prescribed; or
- (b) a certificate granted or approved by the Ministry of Transport of the United Kingdom; or
- (c) certificates of discharge showing at least two years' service as cook prior to the commencement of this section, or at least six months' service as first or second cook on a passenger ship prior to that date.

(3.) The cook shall be rated in the ship's articles as ship's cook, or, in the case of ships of not more than one thousand tons gross registered tonnage, or ships in which the crew or three-fourths of the crew provide their own provisions, either as ship's cook or as cook and steward.

Amended by
No. 1, 1921,
s. 34.

Penalty (on master or owner) for contravention of any of the above sub-sections: Fifty pounds.

(4.) The Minister may cancel or suspend the certificate of any cook for incompetency or misconduct.

122. All provisions examined or inspected under this Division and found to be of bad quality shall be disposed of as the Minister directs.

Disposal of bad
provisions.

122A.—(1.) Every foreign-going steamship of more than three thousand tons gross registered tonnage, registered in Australia, shall be provided with a mechanically cooled refrigerating chamber of such capacity and design as to be capable of preserving, in good condition, fresh meat in accordance with the scale set out in Schedule III., or as prescribed, for the consumption of the crew, between the principal ports of supply on the projected voyage of the ship.

Refrigerating
chambers.
Added by
No. 1, 1921,
s. 35.

(2.) The master and owner of any such ship which goes to sea without compliance with this section shall be guilty of an offence.

Penalty: One hundred pounds.

(3.) In the case of a ship built before the commencement of this Division, the Minister, if he is satisfied that the provision of a refrigerating chamber is impracticable, or is under the circumstances of the case unnecessary or unreasonable, may, by writing under his hand, exempt the ship from the provisions of this section.

DIVISION 14.—HEALTH.

123.—(1.) The Minister may appoint any person legally qualified as a medical practitioner in any State to be a Medical Inspector of Seamen, and may fix his remuneration.

Medical
Inspector.
Cf. M.S.A.,
1894, s. 204 (2).

Medical
examination
of seamen.
Cf. M.S.A.
1894, s. 203.

(2.) A Medical Inspector of Seamen shall, on application by the owner or master of a ship, or by the superintendent, examine any seaman applying for employment or employed in that ship, and give to the superintendent a report under his hand stating whether the seaman is in a fit state for duty at sea, and a copy of the report shall be given to the master or owner.

(3.) The applicant for the examination shall pay to the superintendent the prescribed fees.

Scale of
medicines.
Cf. ib. s. 200.
Amended by
No. 80, 1950,
s. 3 and First
Schedule.

124.—(1.) The Minister may issue scales of medicines and medical stores suitable for different classes of ships and voyages, and may also prepare or sanction books containing instructions for dispensing those medicines and stores.

(2.) The master or owner of every foreign-going ship shall provide and cause to be kept on board a supply of medicine and medical and surgical stores and appliances of the prescribed quality according to the scale appropriate to the ship and the voyage, and also the said books or one of them, or a book similar to that issued by the Ministry of Transport of the United Kingdom.

Penalty: One hundred pounds.

(3.) The master or owner of every such ship, except such as are exempted by order of the Minister, shall provide and cause to be kept on board a sufficient quantity of anti-scorbutics as prescribed, and the master shall serve out the anti-scorbutics to the crew in the prescribed manner.

Penalty: One hundred pounds.

(4.) If a master of a ship is convicted under this section through the act or default of the owner, he may recover the penalty and costs from the owner.

(5.) The owner or master shall not be liable to any penalty under this section if he proves that the non-compliance did not arise from any default on his part.

(6.) Any person, other than the master or owner, who is in any way a party to failure to comply with this section, shall be liable to the same penalty as the master or owner for a like offence.

(7.) If a seaman or apprentice fails to take the anti-scorbutics when served out, that fact shall be entered in the official log-book, and the entry signed by the medical practitioner on board, if any.

Medical stores,
sale, &c.
Ib. s. 200 (7).

125.—(1.) No person shall manufacture, sell, supply, keep, or offer for sale any medicines or medical or surgical stores for sea use which are not of good quality or are deficient in strength.

Penalty: Twenty pounds.

(2.) The standards set out in the British Pharmacopœia shall, where applicable, and except as prescribed, apply to medicines, medical stores, and anti-scorbutics for sea use, and all medicines,

medical stores, or anti-scorbutics which do not comply with or are not equal to the standard applicable thereto, or the prescribed standard, shall be deemed to be either not of good quality or deficient in strength.

126.—(1.) The Minister may nominate any duly qualified person to inspect the medicines, medical and surgical stores, and anti-scorbutics, required by this Part of this Act to be carried.

Inspection of medicines.
M.S.A. 1891,
s. 202.

(2.) The master, on being required by that person, shall make good any deficiency in quantity or quality of such articles.

Penalty: Twenty pounds.

127.—(1.) If the master or a seaman or apprentice belonging to a ship—

(a) receives any hurt or injury or contracts disease in the service of the ship; or

(b) suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default, or to his own misbehaviour),

Owner liable for medical attendance, &c.
M.S.A. 1906,
s. 34.
Amended by
No. 1, 1921,
s. 36.

the expense of providing the necessary surgical and medical advice, attendance, and medicine, and also the expense of the maintenance of the master, seaman or apprentice until he is cured, ^(a) or dies, ^(a) or is brought ^(a) or taken back, ^(a) if shipped in the King's Dominions, to the port where, in accordance with his agreement, he is entitled to be discharged, or such other port as is mutually agreed upon with the approval of the proper authority, and of his conveyance thither, and in case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction therefor from his wages, ^(b)

(2.) If the master, or a seaman or apprentice is suffering from disease or illness and is, for the purpose of preventing infection, or otherwise for the convenience of the ship, temporarily removed from his ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship, shall be defrayed in like manner.

And for maintenance.
Amended by
No. 1, 1921,
s. 36.

(3.) The expense of all medicines, surgical and medical advice, and attendance given to a master, seaman, or apprentice whilst on board his ship, shall be defrayed in like manner.

And for expenses on board.

(4.) In all other cases, any reasonable expenses duly incurred by the owner in respect of illness, and also any reasonable expenses duly

Deduction from wages for burial.

(a) Held by the High Court that one of these events must actually occur before the shipowner's liability to pay maintenance terminates and a certificate, given pursuant to s. 132, that a seaman is cured is neither presumptive nor conclusive evidence for the purpose of this section. *Lawrence v. Buddart Parker Ltd.*, (1930) 43 C.L.R. 440; 30 S.R. (N.S.W.) 221; 47 W.N. (N.S.W.) 110; 4 A.L.J. 34.

(b) Held by the Supreme Court of Queensland that where the shipowner offers to convey a seaman to his home port and the seaman, being fit to travel, declines the offer, the obligation of the shipowner is completely at an end. *Myrhe v. Burns Philp and Co. Ltd.*, 1935 St.R. Qd. 145.

incurred by the owner in respect of the burial of any master, seaman or apprentice who dies whilst on service, may, if duly proved, be deducted from the wages of the master, seaman or apprentice.

Recovery of
expenses from
owner.

M.S.A. 1894,
s. 208;

M.S.A. 1906,
s. 35.

128.—(1.) If—

- (a) any of the expenses attendant on the illness, hurt, or injury of a seaman or apprentice, which are to be paid under this Act by the master or owner, are paid by any authority on behalf of the Commonwealth, or
- (b) any other expenses in respect of the illness, hurt, or injury of any seaman or apprentice whose wages are not accounted for under this Act to that authority are so paid,

those expenses shall be repaid to the authority by the master of the ship.

(2.) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the ship, and be recoverable—

- (a) from the master or owner of the ship for the time being; or
- (b) where the ship has been lost—from the person who was the owner of the ship immediately prior to the time of her loss or abandonment; or
- (c) where the ship has been transferred to some person not being a British subject—either from the owner for the time being or from the person who was the owner at the time of transfer,

Amended by
No. 1, 1921,
s. 37.

as a debt to the Crown, either by ordinary process of law or in the same court and manner as wages due to seamen.

(3.) In any proceeding for such recovery, a certificate of the facts, signed by the said authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that the expenses were duly paid by that authority.

Certificate
where seaman
left behind.

Cl. ib., s. 36.

Amended by
No. 1, 1921,
s. 38.

129.—(1.) The master of a ship shall not leave a seaman or apprentice behind at any place in Australia (except where the seaman is discharged in accordance with this Act), unless he previously obtains indorsed on the agreement a certificate from the superintendent, stating the cause of the seaman or apprentice being left behind, whether the cause be unfitness or inability to go to sea, desertion, or disappearance, or otherwise.

Amended by
No. 1, 1921,
s. 38.

(2.) The superintendent shall examine into the grounds on which a seaman or apprentice is to be left behind, and for that purpose may, if he thinks fit, administer oaths, and may grant or refuse the certificate as he thinks fit; but the certificate shall not be unreasonably withheld.

(3.) If the master fail to comply with this section, he shall, without prejudice to his liability under any other provision of this Act, be

guilty in respect of each offence of an indictable offence, and in any legal proceeding for the offence it shall lie on the master to prove that the certificate was obtained, or could not be obtained without unreasonable delay to the ship, or was unreasonably withheld.

130.—(1.) The master of a ship leaving a seaman or apprentice behind at any place in Australia, on the ground of his unfitness or inability to go to sea, shall deliver to the superintendent a full and true account of the wages due to the seaman or apprentice, and shall pay to the seaman or apprentice the amount of such wages, or, if for any reason payment direct to the seaman or apprentice is not practicable, shall pay the wages due to the superintendent.

Account of wages where seaman left behind.

M.S.A. 1906, ss. 37, 38.

Amended by No. 1, 1921, s. 39.

Penalty: Twenty pounds, in addition to payment of wages.

(2.) The master shall not knowingly deliver a false account of such wages.

Penalty: Twenty-five pounds, in addition to payment of wages.

131. Any person wrongfully forcing a seaman or apprentice on shore from any ship and leaving him behind, or otherwise causing him to be wrongfully left behind at any place either on shore or at sea, shall be guilty of an indictable offence.

Wrongfully leaving seaman behind.

Ib., s. 43.

Amended by No. 1, 1921, s. 39.

132.—(1.) Where a seaman or apprentice belonging to a ship registered in Australia is left on shore at any place in Australia, in any manner authorized by law, by reason of illness^(a) or accident in the service of the ship incapacitating him from following his duty, he shall be entitled^(b)—

Seaman left on shore sick or injured.

Cf. N.Z. 1911, ss. 4-6.

Substituted by No. 1, 1921, s. 40.

(a) if landed at his home port, as specified in the agreement, to receive wages, at the rate fixed by his agreement, up to the expiration of one week after the date of his recovery, as certified by his medical attendant^(c) or by a medical inspector of seamen:

Provided that, in cases where his engagement expires^(d) within one month from the date he was left

(a) See sub-section (5) (c) of this section and the footnote thereto (*infra*).

(b) See footnote (a) to s. 92 (3), *supra*.

(c) Held by the Supreme Court of New South Wales that the words "his medical attendant" mean the medical practitioner who attends the seaman, and are not confined to the medical attendant who is employed by the seaman. *Lawrence v. Huddart Parker Ltd.*, (1929) 29 S.R. (N.S.W.) 542; 46 W.N. (N.S.W.) 184. The decision in this case was reversed on appeal to the High Court but on other grounds, the High Court expressing, for the guidance of the parties, agreement with the Supreme Court on this point. *Lawrence v. Huddart Parker Ltd.*, (1930) 43 C.L.R. 440; 30 S.R. (N.S.W.) 221; 47 W.N. (N.S.W.) 110; 4 A.L.J. 34. Held by the High Court that a certificate given pursuant to this section is neither presumptive nor conclusive evidence for the purpose of s. 127. *Ibid.* As to what constitutes a certificate of recovery see *Australian Steamships Pty. Ltd. v. Murphy*, (1934) 50 C.L.R. 568; 1934 V.L.R. 278; 40 A.L.R. 277; 8 A.L.J. 143. A seaman whose home was in Port Pirie met with an accident and was treated at the Royal Adelaide Hospital by various doctors including the Honorary Surgeon in charge of the ward. The Honorary Surgeon gave the seaman's employer a certificate "that he has now recovered from the effects of his injury and is fit to return to his home port". Held by the Supreme Court of South Australia that the Honorary Surgeon was the seaman's "medical attendant" within the meaning of this section and that the certificate was a certificate of the seaman's "recovery". *Radeliffe v. Howard Smith Ltd.*, 1948 S.A.S.R. 133.

(d) Held by the Supreme Court of Victoria that the word "expires" means when the term, certain or uncertain, ascertainable from the contract, comes to an end by effluxion of time and does not include determination by act of the parties. *Johansen v. Huddart Parker Ltd.*, 1922 V.L.R. 750; 44 A.L.T. 60; 28 A.L.R. 366.

on shore, the time for which he shall be so entitled to be paid wages shall not exceed a period of one month, and in other cases, it shall not exceed a period of three months, from the date he was left on shore; or

- (b) if landed at a port other than his home port, to receive, after his recovery,^(a) certified as provided in the last preceding paragraph, a free passage to his home port, with wages, at the rate fixed by his agreement, until arrival at that port.^(b)

Provided that if, after recovery, the seaman or apprentice rejoins his ship, or takes other employment, or is offered and refuses employment on some other vessel proceeding to his home port, at a similar rate of pay to that received by him immediately prior to his being left on shore, and with the right of discharge from that vessel on arrival at his home port, his right to continue to receive wages under this sub-section shall then cease.

(2.) The master, owner, or agent of the ship—

- (a) shall deposit with the superintendent an amount sufficient, in the opinion of the superintendent, to cover the liability of the owner in respect of the seaman or apprentice under the preceding sub-section and under section one hundred and twenty-seven of this Act; or
- (b) may, with the consent of the superintendent, give security for the payment, on demand, of the actual amount of the owners' liability.

(3.) If there is a public hospital at, or convenient to, the port where the seaman or apprentice is left on shore, but the seaman or apprentice elects to be treated and maintained elsewhere than in that hospital, the liability of the owner in respect of the surgical and medical advice, attendance, medicine, and maintenance shall be limited to the amount of the expenses that would be payable if the seaman or apprentice were treated and maintained as an in-patient of that hospital.

(4.) On the recovery of the seaman or apprentice, the balance (if any) of any amount deposited in pursuance of sub-section (2.) of this section, after the discharge of the liability in respect of which

(a) Held by the High Court that the seaman is entitled to receive wages not from the date of recovery but from the date he was left on shore. *Brahn v. Australian Steamships Proprietary Ltd.*, (1922) 31 C.L.R. 136; 1923 V.L.R. 375; 29 A.L.R. 199.

(b) For discussions by the High Court on the interpretation of clauses in agreements worded similarly to this paragraph see *Lawrence v. Huddart Parker Ltd.*, (1930) 43 C.L.R. 440; 30 S.R. (N.S.W.) 221; 47 W.N. (N.S.W.) 110; 4 A.L.J. 34; and *Australian Steamships Pty. Ltd. v. Murphy*, (1934) 50 C.L.R. 568; 1934 V.L.R. 278; 40 A.L.R. 277; 8 A.L.J. 143. A seaman alleged that the hernia with which he was suffering was caused by an accident in the course of his employment. The shipping company agreed to pay a specified sum, with a denial of liability, in full settlement of all liability whether under this Act, the award or the *Seamen's Compensation Act* 1911. The Director refused to record the memorandum on the grounds that it referred primarily to this section and was not proper to be recorded. The Supreme Court of Victoria, pursuant to the power conferred by paragraph 8 (c) of the *Seamen's Compensation Act* 1911, ordered the Director to record the memorandum. *In re Slater and McIlwraith McEachern Ltd.*, (1937) 43 A.L.R. (C.N.) 659.

the amount was deposited, shall be returned to the master, owner or agent by whom it was deposited.

(5.) The illness, hurt or injury which shall entitle a seaman or apprentice to the benefits provided for in this section shall—

- (a) be such as wholly to incapacitate him from the performance of his duty, and
- (b) be, or appear to be, of such a nature as to require, or be likely to require, medical treatment for a period of not less than fourteen days, and
- (c) so far as can be ascertained, be an illness contracted^(a) on board the ship, or in the service of the ship or her owner, or a hurt or injury sustained in the service of the ship or her owner:

Provided that if the illness is due to his own wilful act or default or to his misbehaviour, or is a venereal disease, the seaman or apprentice shall not be entitled to the benefits provided for in this section.

(6.) The master of any ship registered in Australia who fails to comply with any requirement of this section shall be guilty of an offence.

Penalty: One hundred pounds.

133.—(1.) The owner or master of every—

- (a) foreign-going ship, or
- (b) Australian-trade ship on a voyage between consecutive ports of call which exceeds a prescribed distance,

having one hundred persons or upwards on board shall cause to be carried as part of her complement, a duly qualified medical practitioner.

Penalty: One hundred pounds.

(2.) The owner or master of every—

- (a) foreign-going ship, or
- (b) Australian-trade ship on a voyage between consecutive ports of call which exceeds a prescribed distance,

having more than ten and less than one hundred persons on board, and not carrying a duly qualified medical practitioner as part of her complement, shall cause to be carried as part of her complement a person certified to by a medical inspector or by an approved authority as qualified to render "first aid."

Penalty: Fifty pounds.

134.—(1.) The owner of every foreign-going ship registered in Australia, and going to sea from any port in Australia to any port beyond Australia and New Zealand, shall cause to be carried in the

Certain ships to carry medical man.

M.S.A. 1894, s. 209.

Certain ships to carry person qualified to render "first aid."

Supply of clothing, blankets, and tobacco.

(a) As to the meaning of "contracted" see *Herbert v. Interstate Steamships Pty. Ltd.*, 1931 S.A.S.R. 393. Special leave to appeal refused by High Court. In that case an illness developed at sea which the evidence indicated was contracted prior to the signing of articles; the Supreme Court of South Australia held that an action brought under this section to recover wages therefore failed. See also *Burns Philp and Co. Ltd. v. Myrhe*, (1934) 51 C.L.R. 463; 40 A.L.R. 397; 28 Q.J.P.R. 138; 8 A.L.J. 154, in which the High Court considered the meaning of similar words in a seaman's articles.

ship a supply of all articles of clothing ordinarily required for a seaman's use, having special reference to the voyage then entered upon, and also a supply of woollen blankets and of tobacco sufficient for the wants of the crew.

(2.) All such articles shall be of good quality, and shall be sold to the crew at a price not exceeding ten per cent. advance on the wholesale cost price at the port of shipment.

Penalty: Fifty pounds.

DIVISION 15.—ACCOMMODATION.

Accommoda-
tion for officers.
Cf. N.Z. 1908,
s. 121.

135.^(a) The owner of every steam-ship registered in Australia, or engaged in the coasting trade, shall—

Inserted by
No. 1, 1921,
s. 41.

- (a) make provision to the satisfaction of the medical inspector or the prescribed official for the adequate ventilation of the officers' rooms, engine-room, and stoke-hole; and
- (aa) make provision, where such can be provided without detriment to the safe navigation of the ship, for a wheel-house or, if such is not practicable, such temporary shelter as may be prescribed; and
- (b) except as in the next two paragraphs mentioned, provide for each officer, up to at least four, a separate room having a cubic content of not less than one hundred and eighty feet, and having a separate entrance to the deck, and not opening directly into the engine-room; or
- (c) in the case of limited coast-trade steam-ships of less than three hundred tons gross registered tonnage—provide for each two officers a separate room, having a cubic content of not less than three hundred and fifty cubic feet, and having a separate entrance to the deck, and not opening directly into the engine-room; or
- (d) in the case of river and bay ships—provide for the officers such accommodation as is prescribed.

Penalty: Twenty pounds, with Five pounds for every day after the first day during which such default continues.

Accommodation
for seamen and
apprentices.
Cf. M.S.A. 1894,
s. 210.

Cf. M.S.A.
1906, s. 64.

Amended by
No. 1, 1921,
s. 42.

136.^(a)—(1.) Every place in a ship registered in Australia or engaged in the coasting trade, which is appropriated to the berthing accommodation of seamen or apprentices, shall—

- (a) have for each seaman or apprentice a space of not less than one hundred and forty cubic feet and of not less than eighteen superficial feet measured on the deck or floor of that place, and of not less than five feet measured between bunks clear of all encumbrances at the forward or narrow end;
- (b) not be below the winter load-line of the ship:

(a) See footnote (a) to s. 7, *supra*.

- (c) be kept free from all goods and stores not being the personal property in use of the crew, and be so constructed as to be wind and weather proof and adequately lighted and properly adapted for the preservation of the health and comfort of the seamen berthed therein;
- (cc) if such is required by the medical inspector, regard being had to the construction and situation of the berthing accommodation provided and to the trade in which the ship is employed or likely to be employed, such means of artificial heating and mechanical ventilation as are, in his opinion, necessary for the preservation of the health and comfort of the crew; Inserted by
No. 1, 1921,
s. 42.
- (d) not have built in it, or so near to it as to be in the opinion of a qualified medical inspector nominated by the Minister likely to be prejudicial to the health of the occupants, any paint or chain locker, latrine, or similar erection;
- (e) be so constructed as to insure that no bilge water, or effluvium therefrom or from any other cause, shall be allowed to penetrate the space to such an extent or in such manner as would be detrimental to the health and comfort of the persons berthed therein;
- (f) be ventilated in such manner as to insure a flow of not less than the prescribed quantity of fresh air per hour for each seaman or apprentice, evenly diffused by means approved by a qualified medical inspector nominated by the Minister, with an intake and out-take of such size and so arranged as to prevent such draught as would in the opinion of the medical inspector be likely to be prejudicial to the health of the seamen or apprentices; and Amended by
No. 1, 1921,
s. 42.
- (g) be fitted with bunks made of metal of the prescribed construction.

Penalty (on the owner): One hundred pounds.

(2.) The owner of every such ship shall provide, on an open deck, a separate mess-room of sufficient size and conveniently arranged for the taking of meals by the seamen and apprentices.

In cases where, in the opinion of the Minister, compliance with this requirement would involve such structural alterations of the ship as are not practicable, the owner shall provide equivalent accommodation in some other part of the ship not below the winter load-line, or, if in the opinion of the Minister this is not practicable, shall provide folding or sliding tables of sufficient size to enable the seamen or apprentices to take their meals in comfort in the forecastle.

Penalty: One hundred pounds.

(3.) The owner of every such ship shall provide such sanitary, hospital, and lavatory accommodation, including bath-rooms and Amended by
No. 1, 1921,
s. 42.

facilities for washing clothes, as in the opinion of a qualified medical inspector nominated by the Minister is sufficient for the requirements of the crew, and in the case of steam-ships the provision shall include an adequate supply of hot fresh water, as prescribed, for the use of all members of the crew.

Penalty: One hundred pounds.

Amended by
No. 1, 1921,
s. 42.

(4.) Sub-sections (2.) and (3.) of this section shall not apply to limited coast-trade ships of less than three hundred tons gross registered tonnage or river and bay ships, but the owner of every such ship shall make such provision as is prescribed for accommodation for the taking of meals by the seamen and apprentices, and for their sanitary and lavatory accommodation, including bath-rooms.

Amended by
No. 1, 1921,
s. 42.

(5.) If the requirements of the foregoing sub-sections of this section in regard to any space in the ship appropriated to the use of the seamen and apprentices are not complied with, the master or owner shall pay to each seaman and apprentice affected thereby the sum of Five shillings for each day during which, after complaint has been made to the master by two or more of the persons so affected, the cause of complaint is allowed to continue and the seaman or apprentice may recover any amount due under this sub-section in the same manner as if that amount were wages.

(6.) If the Minister is satisfied, on expert evidence, that it is not practicable to make any alterations necessary to meet the requirements of paragraph (a) of sub-section (1.) of this section, the Minister may permit similar and equivalent accommodation in another part of the ship to be substituted for the crew space which does not fulfil the requirements of this Act.

Application to
ships built
before com-
mencement
of Act.

Amended by
No. 1, 1921,
s. 43.

137. The Minister may by order in writing exempt a ship built before the commencement of this Division from compliance with any or all of the provisions of this Division (except paragraphs (c), (d), (e), and (f) of sub-section (1.) of the last preceding section) if he is satisfied that the accommodation in the ship for officers and men is not insanitary, or that all such alterations have been made in the ship as are in his opinion necessary to make the accommodation sanitary.

Service on
notice.

138. For the purpose of any prosecution or proceeding under this Division, service on or notice to the master or agent of a ship shall be service on or notice to the owner.

DIVISION 16.—PROTECTION OF SEAMEN.

Facilities for
making
complaints.
Cf. M.S.A.
1894, s. 211.

139.—(1.) Any seaman or apprentice may demand permission to go ashore at a convenient time in order to consult a superintendent or justice, or to take legal proceedings against the master or any officer of his ship.

(2.) No master or officer, knowing that any seaman is desirous of

going ashore for any such purpose, shall prevent his going or unreasonably refuse him leave.

Penalty: Fifty pounds.

(3.) A seaman or apprentice who by any false statement or pretence obtains leave to go ashore for any such purpose shall be guilty of an offence.

Penalty: Two pounds.

(4.) This section shall not apply to any seaman who has not asked for leave of absence for any such purpose within seven days after the arrival of his ship in port; or, if the cause of action or prosecution accrued after the arrival, then within three days from its accrual.

140. An assignment or sale of salvage prior to the accruing thereof shall not bind a seaman or apprentice, and a power of attorney or authority to receive any such salvage shall not be irrevocable.

Assignment of salvage.
Cf. M.S.A. 1894, s. 212.

141. A debt exceeding Five shillings incurred by a seaman after he is engaged shall not be recoverable until the termination of his agreement.

Not liable for debt till end of agreement.
Ib. s. 213.

142. No person shall demand or receive from a seaman or apprentice payment in respect of his board or lodging in the house of that person for a longer period than the seaman or apprentice has actually resided or boarded therein.

Illegal charge for maintenance.
Ib. s. 215.

Penalty: Ten pounds.

143.—(1.) Any person who receives, or takes into his possession or under his control, any money or effects of a seaman or apprentice, and does not return them or pay their value when required by the seaman or apprentice (subject to such deduction as is justly due by the seaman or apprentice), or absconds therewith, shall be guilty of an offence.

Illegally detaining effects.
Ib. s. 216.

Penalty: Ten pounds.

(2.) A court of summary jurisdiction may, besides inflicting a penalty, by order direct that the amount of the money or the value of the effects, subject to such deduction as aforesaid (if any), or the effects themselves, shall be forthwith delivered to the seaman or apprentice.

144. No person shall, within twenty-four hours after the arrival of a ship in Australia, or within twenty-four hours before her projected departure therefrom,

Soliciting seamen.
Ib. s. 217.

(a) solicit a seaman belonging to the ship to become a lodger at any house, or

(b) take out of the ship any effects of a seaman, except under his direction, and with the permission of the master.

Penalty: Twenty-five pounds.

Persons not to
board ship
arriving.

M.S.A. 1894,
s. 218.

145.—(1.) No person, not being in the King's service, or not authorized by law, shall—

- (a) go on board any ship which is about to arrive, is arriving, or has arrived at the end of her voyage, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or
- (b) remain on board a ship in Australia after being warned to leave by the master or by a police officer, or by an officer of Customs.

Penalty: Twenty pounds or imprisonment for six months.

(2.) Any officer of the ship, or of Customs or police, may take any offender under this section into custody, and cause him forthwith to be taken before a proper Court to be dealt with.

Foreign ships.
Ib. s. 219.

146. Whenever it is made to appear to the Governor-General—

- (a) that in any foreign country provisions similar to those in the last preceding section are in force in that country in regard to British ships: and
- (b) that the Government of that country is desirous that the provisions of the last preceding section shall apply to ships of that country within Australia.

the Governor-General may order that those provisions shall apply to the ships of that country to the same extent as to British ships.

Exemptions
from serving on
jury.

147. Masters and seamen of all ships shall be exempt from serving on juries in any Federal or State Court.

Rescission of
contract.
Ib. s. 168.

148.—(1.) In any proceeding before any Court affecting the relation between a seaman or apprentice and the master or owner of any ship, the Court may rescind any contract in existence between the parties on such terms as the Court deems just.

(2.) This power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

(3.) Any of the parties to any such contract may institute proceedings under this section for the rescission of the contract.

DIVISION 17.—PROPERTY OF DECEASED SEAMEN.

Application.
Amended by
No. 1, 1921,
s. 44.

149. This Division applies only to ships registered in Australia.

Effects of dead
seamen to be
taken charge of.
Ibid., s. 169.
Amended by
No. 1, 1921,
s. 45.

150.—(1.) If a seaman or apprentice dies on a voyage of the ship to which he belongs, the master of the ship shall take charge of any money and effects belonging to the seaman or apprentice which are on board the ship.

(2.) The master may if he thinks fit cause any of the effects to be sold by auction at the mast, or by public auction.

(3.) The master shall enter in the official log-book the prescribed particulars.

(4.) The entry in the log-book shall be signed by the master and attested by one of the officers and also by one of the seamen.

(5.) The said money, effects, proceeds of sale of effects, and any balance of wages due after making all lawful deductions, are in this Division referred to as the property of the seaman or apprentice.

151.—(1.) Where a seaman or apprentice dies as aforesaid, and the ship, prior to arrival in Australia, remains for forty-eight hours at some port elsewhere, the master shall report the case to the British Consul at the port, or if the port is in the British dominions, to the Superintendent or Officer of Customs there, and shall give to the consul or officer any information he requires as to the destination of the ship and probable length of the voyage.

Death of seamen abroad.
M.S.A. 1894,
s. 170.

(2.) The consul or officer may, if he thinks it expedient, require the property to be paid and delivered to him, and shall thereupon give to the master a receipt therefor, and indorse upon the agreement such particulars with respect thereto as the Minister requires.

(3.) The receipt shall be produced by the master to a superintendent within forty-eight hours after his arrival at his port of destination in Australia.

(4.) Where the ship proceeds at once to a port in Australia, without touching at a port elsewhere, or the consul or officer does not require the payment and delivery of the property as aforesaid, the master shall, within forty-eight hours after his arrival at his port of destination in Australia, pay and deliver the property to the superintendent.

(5.) In all cases where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the consul or officer to whom payment and delivery is made as aforesaid such account in such form as he requires of the property of the deceased.

(6.) A deduction claimed by the master in the account shall not be allowed unless verified by an entry in the official log-book, and also by such other vouchers (if any) as are reasonably required by the consul or officer to whom the account is given.

152.—(1.) If the master fails to comply with the provisions of this Act with respect to—

Penalty for not accounting for effects.
Ib. s. 171.

(a) taking charge of the property of a deceased seaman or apprentice, or

(b) making in the official log-book the proper entries relating thereto, or

(c) procuring the proper attestation of those entries, or

(d) the payment or delivery of the property,

he shall be accountable for the property to the Minister, and shall pay and deliver it accordingly, and shall, in addition, for each offence be liable to a penalty not exceeding treble the value of the property not accounted for, or, if that value is not ascertained, not exceeding Fifty pounds.

(2.) If any such property is not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for it, and the property shall be recoverable from him accordingly; and if he fails to account for and pay or deliver it he shall, in addition to his liability therefor, be liable to the same penalty as the master for a like offence.

(3.) The property may be recovered in the Court and manner in which the wages of seamen may be recovered under this Act.

Effects of deceased seamen other than on board ship.

M.S.A. 1894, s. 172.

Amended by No. 1, 1921, s. 46.

153. If a seaman or apprentice belonging, or who has belonged within the period of six months prior to his death, to a ship the voyage of which is to terminate elsewhere than in the United Kingdom, dies at any place out of Australia, leaving any money or effects elsewhere than on board the ship, the Chief Officer of Customs in the case of the British dominions, and in other cases the British Consul at or near the place, shall claim and take charge of the money and effects; and they shall be deemed to be property of a deceased seaman or apprentice within the meaning of this Division.

Recovery of wages due to deceased seamen.
Ib. s. 174.

154.—(1.) Where a seaman or apprentice is lost with his ship, the Minister may recover the wages due to him from the owner of the ship in the same Court and the same manner as that in which seamen's wages are recoverable, and shall deal with those wages in the same manner as with the wages of other deceased seamen or apprentices.

(2.) In any proceeding under this section, if it is shown in evidence that the missing ship left port twelve months or more before the institution of the proceedings and has not been heard of since the time of departure, the ship shall be deemed to have been lost with all hands on board on such date as the Court determines.

(3.) Any official list of the crew, made out in accordance with this Act, or the certificate of any consul or public officer at any port beyond the Commonwealth stating that certain seamen and apprentices were shipped in the ship from that port, shall, in the absence of proof to the contrary, be deemed sufficient evidence that they were on board the ship at the time of her loss.

Seamen dying in Australia.
Ib. s. 175.

155. If a seaman or apprentice dies in Australia, and is at the time of his death entitled to claim from the master or owner of the ship in which he has served any effects or unpaid wages, the master or owner shall pay and deliver or account for such property to the superintendent or as the Minister directs.

Penalty: Fifty pounds.

156.—(1.) Where any property of a deceased seaman or apprentice comes into the hands of the Minister, the Minister, after deducting such sum as he thinks proper for expenses incurred in respect of that seaman or apprentice or of his property, shall, subject to the provisions of this Act, deal with the residue as follows:—

Right of
Minister to
dispose of
effects.
M.S.A. 1894,
s. 176.

(a) If the property exceeds in value One hundred pounds, he shall pay and deliver the residue to the legal personal representative of the deceased;

(b) If the property does not exceed in value One hundred pounds, he may either—

(i) pay or deliver the residue to any claimant who is proved to his satisfaction to be the widow or a child of the deceased, or to be legally entitled to the personalty of the deceased, or to be a person entitled to take out representation, although no such representation has been taken out, and shall be thereby discharged from all further liability in respect of the residue so paid or delivered; or

(ii) require representation to be taken out, and pay and deliver the residue to the legal personal representative of the deceased;

(c) If the deceased was, at the time of his death, a subject of a foreign country between which and the United Kingdom an agreement exists respecting the disposal of the property of deceased seamen of the respective nationalities of that country and the United Kingdom, and if the property does not exceed in value One hundred pounds, the Minister may, in terms of that agreement, pay and deliver the residue to the Consul of the country of which the deceased was a subject, and the Minister shall be thereby discharged from all further liability in respect of the residue so paid or delivered.

Added by
No. 1, 1921,
s. 47.

(2.) Every person to whom any such residue is so paid or delivered shall apply it in due course of administration.

Penalty: Twenty pounds.

157.—(1.) Where a deceased seaman or apprentice has left a will, the Minister may refuse to pay or deliver the above-mentioned residue—

Wills of
deceased
seamen.
1b. s. 177.

(a) if the will was made on board ship—to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first or only mate of the ship; and

(b) if the will was not made on board ship—to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in

writing and is signed or acknowledged by the testator in the presence of and is attested by two witnesses, one of whom is a superintendent, or is a minister of religion officiating in the place in which the will is made, or is a justice, or, where there are no such persons, a British Consul, or Officer of Customs.

(2.) Where the Minister refuses under this section to pay or deliver the residue to a person claiming under a will, the residue shall be dealt with as if no will had been made.

Creditors' claims,
M.S.A. 1894,
s. 178.

158.—(1.) A creditor shall not be entitled to claim from the Minister any property of a deceased seaman or apprentice by virtue of representation obtained as creditor.

(2.) A creditor shall not be entitled to obtain payment of his debt out of the property, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after the death.

(3.) The demand shall be made by the creditor delivering to the Minister an account in writing, in a form approved by the Minister, and verified by a statutory declaration.

(4.) If, before the demand is made, any claim to the property of the deceased made by any person has been allowed, the Minister shall give notice to the creditor of the allowance of the claim.

(5.) If no claim has been allowed, the creditor shall satisfy the Minister as to the justice of his account, and the Minister may then pay over to the creditor such sum as he allows, and the Minister shall thereby be discharged from all further liability in respect of the money so paid; but otherwise the demand shall be disallowed.

(6.) In any case the Minister may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the property of the deceased is made by any person as widow, next of kin, or legatee, and allowed by the Minister under this Act, the Minister may pay and deliver it to that person.

Amended by
No. 1, 1921,
s. 48.

(7.) Where the property has been paid and delivered by the Minister to any person, as widow, next of kin, or legatee of the deceased or as Consul of the country of which the deceased was a subject, whether before or after the demand made by the creditor, the creditor shall have the same rights and remedies against that person as if he had received the property as the legal personal representative of the deceased.

Disposal of effects when no claim.
Ib. s. 179.

159. Where no claim to the property of a deceased seaman or apprentice is substantiated within six years after the receipt of the property by the Minister, the Minister may in his absolute discretion, if any subsequent claim is made, either allow or refuse the claim, and, subject to the allowance of any such claim, the property or

the proceeds thereof shall be paid into the Consolidated Revenue Fund.

160. Every person who, for the purpose of obtaining, either for himself or for any other person, any property of any deceased seaman or apprentice—

- (a) forges or fraudulently alters any document purporting to show or assist in showing any right to the property; or
- (b) makes use of any document which has been so forged or fraudulently altered as aforesaid; or
- (c) gives any false evidence knowing it to be false; or
- (d) makes any false representation knowing it to be false,

shall be guilty of an indictable offence.

Offences in connexion with deceased seamen's property.

M.S.A. 1894, s. 180.

DIVISION 18.—RELIEF TO SEAMEN'S FAMILIES.

161.—(1.) Where, during the absence of any seaman on a voyage, his wife, or any of his children or step-children, becomes chargeable to or obtains relief from any public body or institution for the relief of destitute persons in Australia, that institution shall be entitled to be reimbursed, out of the wages of the seaman earned during the voyage, any sums properly expended during his absence in the maintenance of those members of his family or any of them, so that the sums do not exceed the following proportions of his wages, that is to say:—

Relief of families by public institutions.
Ib. s. 182.
N.Z. 1908, s. 101.

- (a) If only one of those members is chargeable or obtains relief, one-half of the wages;
- (b) If two or more of those members are chargeable or obtain relief, two-thirds of the wages.

(2.) If, during the absence of any seaman, any sums have been paid by the owner of his ship to or on behalf of any such member as aforesaid, under an allotment note made by the seaman in favour of the member, any claim for reimbursement shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

162.—(1.) For the purpose of obtaining reimbursement as aforesaid, such official as the Minister authorizes may give to the owner or agent of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make a claim, and requiring the owner or agent to retain that proportion in his hands for a period not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring the owner or agent, immediately on the seaman's return, to give notice in writing thereof to the official.

Reimbursement of institutions.
M.S.A. 1894, s. 183.
N.Z. 1908, s. 102.

(2.) The owner or agent, after receiving any such notice, shall retain the said proportion of wages, and give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim.

Penalty: Five pounds.

(3.) The institution may, upon the seaman's return, apply to a court of summary jurisdiction for an order for reimbursement; and the Court may make a summary order for the reimbursement to the whole extent claimed, or to such lesser amount as, under the circumstances, it thinks fit; and the owner or agent shall pay to the institution out of the seaman's wages the amount so ordered to be paid by way of reimbursement, and shall pay the residue of the wages to the seaman.

(4.) If no order for reimbursement is obtained within the period mentioned in the notice given to the owner or agent as aforesaid, the proportion of wages to be retained by him shall immediately on the expiration of that period, and without deduction, be payable to the seaman.

DIVISION 19.—DISTRESSED SEAMEN.

Ship liable
for expenses of
distressed
seamen.

M.S.A. 1906,
s. 42.

N.Z. 1908,
s. 108.

163.—(1.) Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Commonwealth, or are incurred by any Government and repaid to that Government by or on behalf of the Commonwealth, on account of any distressed seaman or apprentice, either for his maintenance, necessary clothing, conveyance to the port where he was shipped, or in case of death for his burial, or otherwise in accordance with this Act, those expenses, together with the wages (if any) due to the seaman or apprentice, shall be a charge upon the ship, whether British or foreign, to which the distressed seaman or apprentice belonged, and shall be a debt to the Crown—

- (a) from the master or owner of the ship for the time being; or
- (b) where the ship has been lost—from the person who was owner of the ship immediately prior to the time of her loss or abandonment; or
- (c) where the ship has been transferred to some person not being a British subject—either from the owner for the time being or from the person who was the owner at the time of transfer,

and also, if the ship is a foreign ship, from the person, whether principal or agent, who engaged the seaman or apprentice for serving in the ship.

(2.) The debt, in addition to any penalties which may have been incurred, may be recovered by the Minister on behalf of the Commonwealth either by ordinary process of law, or in the Court and manner in which wages may be recovered by seamen.

(3.) In any proceeding for such recovery, the production of the account (if any) of the expenses furnished, and proof of payment of the expenses by or on behalf of the Minister, or by his direction, shall be sufficient evidence that the expenses were incurred or repaid under this Act by or on behalf of the Commonwealth.

Amended by
No. 1, 1921,
s. 49.

(4.) For the purposes of this section "distressed seaman" shall include any master, seaman, or apprentice—

- (a) who, by reason of having been discharged from or left behind by or shipwrecked in any British ship beyond the limits of Australia, is in distress there; or
- (b) who, being a British subject, has been engaged by any person acting as principal or agent to serve in a ship belonging to the Government or to a subject or citizen of a foreign country, and is in distress in any place outside Australia.

(5.) For the purposes of this section, excepted expenses are expenses incurred in cases where the Minister is satisfied that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge by a Naval Court on the ground of misconduct.

DIVISION 20.—THE MASTER.

164.—(1.) All ships may be searched by any Officer of Customs, or by any officer of police authorized in writing by the Deputy Director.

All ships may be searched.
Amended by No. 1, 1921, s. 50.

(2.) No master of any ship shall—

- (a) refuse to permit an Officer of Customs or an authorized officer of police to thoroughly search the ship; or
- (b) fail to cause the ship to be hove to when called upon or signalled in the prescribed manner so to do, by any such officer, for the purpose of enabling the officer to board the ship; or
- (c) conceal any person on board his ship.

Amended by No. 1, 1921, s. 50.

Penalty: Twenty pounds.

165.—(1.) The master—

- (a) of a foreign-going ship whose crew is discharged in Australia; and
- (b) of an Australian-trade ship or limited coast-trade ship, shall make out and sign a list of the crew in the prescribed form and containing the prescribed particulars.

List of crew.
M.S.A. 1894, s. 253.

(2.) The list of the crew—

- (a) in a case of a foreign-going ship shall be delivered by the master to the superintendent within forty-eight hours after the arrival of the ship at her port of destination in Australia, or upon the discharge of the crew, whichever first happens; and
- (b) in the case of an Australian-trade ship or a limited coast-trade ship, shall be transmitted by the master or owner to some superintendent in Australia on or within twenty-one days after the termination of the agreement.

Amended by No. 1, 1921, s. 51.

Penalty: Five pounds.

Record of
births, deaths,
and marriages.
M.S.A. 1894,
s. 254.
Amended by
No. 1, 1921,
s. 52.

166.—(1.) The master of every ship registered in Australia, and of every other ship (British or foreign) carrying passengers to any port in Australia, shall record every birth death and marriage happening on board his ship, and the prescribed particulars concerning them, and, upon his arrival at any port in Australia, shall transmit to the superintendent in the prescribed form a return of the facts recorded by him in respect of any birth death or marriage.

Added by
No. 1, 1921,
s. 52.

(2.) In the case of a British ship the record required by this section shall be made in the official log-book.

Penalty: Five pounds.

Agreements to
be produced.
Ib. s. 257.
Amended by
No. 1, 1921,
s. 53.

167.—(1.) Whenever a foreign-going ship arrives at any principal port in Australia, as defined by the regulations (other than the final port of destination), the master shall immediately deliver to the superintendent the agreement with the crew, and also all indentures and assignments of apprenticeships.

Penalty: Twenty pounds.

(2.) The superintendent shall return the documents to the master within a reasonable time before his departure, with a certificate indorsed on the agreement stating the times when the documents were delivered and returned.

Amended by
No. 1, 1921,
s. 53.

(3.) If it appears that any breach of this Part of this Act has taken place, the superintendent shall make an indorsement to that effect on the agreement.

Documents to
be handed over
to master's
successor.
Ib., s. 258.

168.—(1.) If during the progress of a voyage the master is removed or superseded, or for any other reason quits the ship, he shall deliver to his successor the various documents in his custody relating to the navigation of the ship and to the crew thereof.

Penalty: One hundred pounds.

(2.) His successor shall, immediately on assuming the command of the ship, enter in the official log-book a list of the documents so delivered to him.

Burial of
deceased
persons.
Amended by
No. 1, 1921,
s. 54.

169. The master of any British or foreign ship in port shall, with all convenient despatch, cause the body of any person who dies on board to be buried on shore.

Penalty: One hundred pounds.

DIVISION 21.—THE LOG.

Application.

170.—This Division applies only to ships registered in Australia or engaged in the coasting trade.

Official log to
be kept.
Ib., s. 230.

171.—(1.) An official log in the prescribed form shall be kept in every ship other than a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship.

(2.) Forms of official log-books may be different for different classes of ships, and the particulars to be inserted therein shall be as prescribed.

(3.) The official log may, at the discretion of the master or owner, be kept distinct from, or united with, the ship's log, but so that in all cases the spaces in the official log-book be duly filled up.

(4.) An entry required by this Act in an official log-book shall be—

- (a) made as soon as possible after the occurrence to which it relates;
- (b) made and dated so as to show the date of the occurrence and of the entry respecting it.

Penalty: Thirty pounds.

(5.) No person shall, more than twenty-four hours after the arrival of a ship at her final port of discharge, make in the official log-book any entry of any occurrence which happened before her arrival.

(6.) Every entry in the official log-book shall be signed by the master, and by an officer or some other member of the crew, and also—

Amended by
No. 1, 1921,
s. 55.

- (a) if it is an entry of illness, injury, or death—by the medical officer on board (if any); and
- (b) if it is an entry of wages due to, or of the sale of the effects of, a deceased seaman or apprentice—by both an officer and some member of the crew besides the master; and
- (c) if it is an entry of wages due to a seaman who enters the King's naval service—by the seaman, or the officer authorized to receive the seaman into that service.

Penalty (on the master): Ten pounds.

(7.) Every entry made in an official log-book in manner provided by this Act shall be admissible in evidence.

172. Whoever wilfully destroys or mutilates or renders illegible any entry in, or wilfully makes a false or fraudulent entry in or omission from, an official log-book, shall be guilty of an indictable offence.

Offences in
regard to
official log.
M.S.A. 1894,
s. 241 (3).

173.—(1.) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at the port of destination in Australia, or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the superintendent.

Delivery of
official log.
Ib. s. 242.

(2.) The master or owner of every Australian-trade or limited coast-trade ship for which an official log-book is required to be kept shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver the official log-book for the preceding half-year to some superintendent in a State in which the ship plies or trades.

Penalty: Ten pounds.

Transmission of
logs and crew
lists to
superintendent,
M.S.A. 1894,
s. 243.

Amended by
No. 1, 1921,
s. 56.

174.—(1.) Where for any reason the official log-book ceases to be required in respect of a ship, the master or owner of the ship shall, if the ship is then in Australia within one month, and if she is elsewhere within six months, after the cessation transmit to the superintendent at the port to which the ship belonged the official log-book made up to the time of the cessation.

(2.) If a ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, transmit to the superintendent the official log-book (if any) duly made out to the time of the loss or abandonment.

Penalty (on master or owner): Ten pounds.

Engineer's
logs.
CE. N.Z. 1908,
s. 156.

Amended by
No. 1, 1921,
s. 57.

175.—(1.) On every steam-ship (other than a river and bay ship) of fifty tons gross registered tonnage or over, the chief or only engineer shall keep an engine-room log-book in the prescribed form, and the entries required to be made therein shall be signed by the chief engineer and by the engineer on watch at the time of any occurrence being recorded, or, where there is only one engineer, by him, and shall be countersigned by the master.

Penalty: Five pounds.

Amended by
No. 1, 1921,
s. 57.

(2.) The engine-room log shall be kept under the supervision of the master, and shall be produced when required to a Deputy Director or surveyor.

Penalty: Five pounds.

(3.) Nothing in this section shall affect the duty or liability of the master in regard to the official log.

DIVISION 22.—INQUESTS.

Investigation
of accidents.
M.S.A. 1894,
s. 690.

176.—(1.) Where a case of death, or accident incapacitating from work, happens on board any foreign-going ship, the master shall report it to the superintendent at the port in Australia where the ship first arrives, and the superintendent shall inquire into the cause of the death or accident, and shall make in the official log an entry of the result of the inquiry, and a copy of such entry shall be forwarded to the Minister:

Proviso added
by No. 1, 1921,
s. 58.

Provided that in any case where the first call of the ship is at a port other than one of the principal ports, as defined by the Regulations, and it is intended that the ship shall proceed thence to one of the principal ports, the Deputy Director may direct that the inquiry shall be deferred until the arrival of the ship at the principal port, where the inquiry shall be made by the superintendent at that port.

Amended by
No. 1, 1921,
s. 58.

(2.) If it appears to the Deputy Director on the report of the superintendent that the death or accident has been caused by violence or other improper means, he shall report the matter to the Minister, and, if the emergency of the case so requires, shall take immediate steps for bringing the offender to justice.

PART III.—FOREIGN SEAMEN.

177. In this Part of this Act—

“Seaman” means a seaman belonging to a foreign ship.

Definition of
seaman.

178. If any seaman is absent from his duty without leave whilst his ship is within Australia, any justice upon complaint on oath may issue his warrant for the apprehension of the seaman, and thereupon may, at the request of the Consul of the country to which the ship belongs, and on proof of the absence without leave, order the seaman to be conveyed on board the ship, or delivered to the master or mate of the ship, or to the owner of the ship or his agent, to be so conveyed :

Apprehension
of seaman.
N.S.W. 1898,
No. 47, s. 3.
M.S.A. 1894,
s. 238.

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his consent.

179. Every seaman who commits any offence mentioned in Column 1 hereunder shall be liable to a punishment not exceeding the punishment set against the offence in Column 2:—

Offences by
foreign seamen.
N.S.W. 1898,
No. 47, s. 4.

Column 1.—Offence.	Column 2.—Punishment.
For desertion.	A penalty of Twenty pounds.
For assaulting any officer.	Three months' imprisonment, or a penalty of Twenty pounds.
For wilful disobedience to any lawful command of an officer.	A penalty of Ten pounds.

180.—(1.) The Minister may order to be put forcibly or otherwise on board his ship at any time—

Return to ship.
Cf. ib., s. 133
(4).

- (a) any seaman sentenced under this Part of this Act, or
- (b) within twenty-four hours before the sailing of his ship, any seaman imprisoned on summary conviction for any offence (other than an offence under this Part of this Act) whose ship is about to leave Australia before the expiration of his sentence,

Amended by
No. 1, 1921,
s. 59.

and the master of the ship shall keep the seaman on board in custody until after the ship has left her final port of clearance in Australia :

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his consent.

(2.) Such order shall be a sufficient warrant to the gaoler of any prison to deliver the seaman into custody for the purpose aforesaid.

181.—(1.) Any justice, upon the complaint on oath of the master of any foreign ship that he has good cause for suspecting that any deserter from his ship is harbored or concealed on board any vessel or in any house or place, may issue a warrant directing some officer of police to search the vessel house or place and to apprehend the seaman.

Apprehension
of deserters.
N.S.W. 1898,
No. 47, s. 6.

(2.) The warrant shall be executed accordingly, and the deserter shall upon his apprehension be brought with all convenient speed before some justice to be dealt with according to law.

Harboring
deserters.
N.S.W. 1898,
s. 7.

182. No person shall knowingly harbor or employ any seaman who is illegally absent from duty.

Penalty: Twenty pounds for the first offence and Fifty pounds for a second or subsequent offence.

Proceedings at
instance of
Consul only.

Ib. s. 8.

183. No warrant shall be issued and no offence shall be punished under this Part of this Act unless either—

- (a) the action is taken at the instance of the consul of the country to which the ship belongs; or
- (b) the Governor-General has notified in the *Gazette* that the Government of that country has, in regard to seamen belonging to ships of that country, requested that this Part of this Act may be enforced.

Proof of
agreement.

Ib. s. 9.

184.—(1.) In any prosecution under this Part of this Act it shall not be necessary, for the purpose of proving the articles of agreement by which any seaman has engaged to serve on board any ship, to call any subscribing or attesting witness thereto.

(2.) A copy of any articles of agreement, certified to be true by the Consul of the country to which the ship belongs, shall be admissible in evidence in proof of the existence and contents thereof.

Expenses to
be paid by
Consul.

Ib. s. 10.

185. All expenses incidental to the apprehension, imprisonment, and removal of any seaman, pursuant to this Part of this Act, shall be paid by the Consul at whose instance the proceedings were instituted.

Expenses of
returning
seamen left
behind.

186. If any foreign seaman is left behind at any port in Australia from any ship, unless with the consent of the consul of the country to which the ship belongs, and also that of the superintendent, the master or the owner of the ship shall be liable for all expenses which may be incurred by the Commonwealth Government in returning the seaman to his native country.

PART IV.—SHIPS AND SHIPPING.

List of
Division
Headings
substituted,
No. 1, 1921,
s. 60;
amended by
No. 49, 1934,
s. 8; and by
No. 80, 1950,
s. 3 and First
Schedule.

- Division 1.—General, ss. 187–192A.
- Division 2.—Steam-ships, ss. 193–206A.
- Division 2A.—Sailing Ships, s. 206B.
- Division 2B.—Safety Convention Requirements, ss. 206C–206H.
- Division 3.—Unseaworthy Ships, ss. 207–214.
- Division 4.—Life-saving Appliances and Fire Protection, ss. 215–217.
- Division 5.—Deck and Load Lines, ss. 218–227.

- Division 6.—Signals of Distress, ss. 228–230.
 Division 6A.—Wireless Telegraphy on Ships, ss. 231, 231A.
 Division 7.—Adjustment of Compasses, ss. 232–234.
 Division 8.—Collision, Boat, and Fire Drills, s. 235.
 Division 9.—Anchors, Chain Cables, and Gear, ss. 236–247.
 Division 10.—Dangerous Goods, ss. 248–257.
 Division 11.—Lights, Signals, and Sailing Regulations, ss. 258–265A.
 Division 12.—Private Signals, ss. 266–267.
 Division 13.—Report of Accidents and of Dangers to Navigation, ss. 268–269A.

DIVISION I.—GENERAL.

187. This Part of this Act shall, except where otherwise expressed, apply to all ships, British or foreign.

Application.
 Amended by
 No. 49, 1934,
 s. 9.

187A.—(1.) In this Part of this Act, unless the contrary intention appears—

Definitions.
 Substituted by
 No. 49, 1934,
 s. 10.
 M.S.A. 1932,
 preamble.

“The Safety Convention” or “The Convention for the Safety of Life at Sea” means the International Convention for the Safety of Life at Sea signed in London on the thirty-first day of May One thousand nine hundred and twenty-nine (a copy of which is set forth in Schedule VI. to this Act), and includes any Convention, amending or superseding that Convention, to which the Commonwealth of Australia is a Party;

“The Load Line Convention” means the International Load Line Convention signed in London on the fifth day of July One thousand nine hundred and thirty (a copy of which is set forth in Schedule VII. to this Act), and includes any Convention, amending or superseding that Convention, to which the Commonwealth of Australia is a Party;

“Construction regulations” means such of the regulations made under this Act as prescribe the matters with respect to which a surveyor must be satisfied before he states in a declaration of survey that a passenger steamship is fit to ply on any particular voyage or class of voyages;

ib. s. 38.

“Country to which the Safety Convention applies”^(a) means—

ib. ss. 37 and 38.

(a) a country the Government of which has been declared by the Minister, by notification in the *Gazette*, to have ratified or acceded to the Safety Convention, and has not been so declared to have denounced that Convention; and

Amended by
 No. 80, 1950,
 s. 3 and First
 Schedule.

(b) a country to which it has been so declared that the Safety Convention has been applied under the

(a) For a list of countries declared by the Minister to have ratified or acceded to the Safety Convention see *Gazettes*, 1936, pp. 126 and 2076; 1939, p. 1232; 1949, p. 1251; 1950, p. 361.

provisions of Article 62 thereof, not being a country to which it has been so declared that that Convention has ceased to apply under the provisions of that Article;

M.S.A. 1932,
ss. 65 and
66.

"Country to which the Load Line Convention applies"^(a) means—

(a) a country the Government of which has been declared by the Minister, by notification in the *Gazette*, to have ratified or acceded to the Load Line Convention, and has not been so declared to have denounced that Convention; and

(b) a country to which it has been so declared that the Load Line Convention has been applied under the provisions of Article 21 thereof, not being a country to which it has been so declared that that Convention has ceased to apply under the provisions of that Article;

1b. s. 38.

"Declaration of survey" means a declaration made by a surveyor, in the prescribed form, with respect to the survey of a passenger vessel under this Act;

"International voyage", for the purposes of this Part (other than Division 5 thereof), means a voyage from a port in one country to a port in another country, at least one of those countries being a country to which the Safety Convention applies;

"International voyage", for the purposes of Division 5 of this Part, means a voyage from a port in one country to a port in another country, at least one of those countries being a country to which the Load Line Convention applies;

"Short international voyage" means an international voyage in the course of which a ship does not go more than two hundred miles from land;

"International coasting voyage" means an international voyage in the course of which a ship does not go more than twenty miles from land;

Cf. s. 38.

"Life-saving regulations" means regulations made under this Act with respect to the life-saving appliances to be carried by ships or classes of ships;

1b. s. 73;
Safety Conv.
Art. 2 (3).

"Passenger steamship" means a steamship which carries more than twelve passengers;

s. 38.

"Safety Convention ship" means a ship belonging to a country to which the Safety Convention applies, and the expression "Safety Convention passenger steamship" shall be construed accordingly;

(a) For a list of countries declared by the Minister to have ratified or acceded to the Load Line Convention see *Gazettes*, 1936, pp. 389 and 2076; 1939, p. 1231; 1950, pp. 361 and 1634; and Commonwealth Statutory Rules, 1936, p. 597.

"Special passenger trade" means a trade in relation to which the Minister has modified the construction regulations or the life-saving regulations; M.S.A. 1932, s. 38.

"Sub-division load line" means the load line indicating the depth to which a passenger steamship may be loaded having regard to the extent to which she is sub-divided and to the space for the time being allotted to passengers; s. 23 (a).

"Survey regulations" means the regulations made under section one hundred and ninety-one of this Act, prescribing the manner in which surveys of passenger steamships shall be made; Cf. s. 38.

"Wireless telegraphy regulations" means regulations made under section two hundred and thirty-one of this Act; Cf. s. 38.

(2.) Any reference in this Part of this Act to a ship constructed before or after any date shall be construed as a reference to a ship the keel of which was laid before or after that date, as the case may be. 1b, s. 73 (2). Safety Conv. Art. 4 (2).

(3.) In construing the word "voyage" as used in this section—

(a) no account shall be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstance which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and

(b) every colony, overseas territory, protectorate or territory under suzerainty, and every territory in respect of which a mandate has been accepted on behalf of the League of Nations, shall be deemed to be a separate country.

188.—(1.) The Governor-General, where he is satisfied that the laws and regulations of any country relating to any subject-matter dealt with in this Part of this Act, are as effective as the provisions of this Part of this Act relating thereto, may by proclamation direct that (subject to such conditions, limitations, and exceptions as are expressed in the proclamation) on proof of a ship of that country having complied with those laws and regulations, she shall not be required to comply with the provisions of this Part of this Act relating to that subject-matter; Power to exempt ships. Cf. M.S.A. 1894, s. 445. Cf. N.Z. 1909, s. 57.

Provided that this section shall not apply in the case of a foreign country in which it appears to the Governor-General that reciprocal advantages are not extended to British ships.

(2.) Notwithstanding anything contained in the last preceding sub-section the provisions of this section, and any proclamation issued thereunder, shall, after the expiration of three months from the commencement of this sub-section, cease to apply to Safety Convention ships plying on international voyages in respect of the exemption of those ships from— Power to exempt ships. M.S.A. 1932, ss. 21 (2), 67 (2). Added by No. 49, 1934, s. 11.

(a) in the case of passenger steamships—any provision of this

Act relating to the survey of ships, to life-saving appliances, to wireless telegraphy and to load lines; and
 (b) in the case of other ships—any provision of this Act relating to wireless telegraphy and to load lines.

All ships liable to survey and inspection.

189. All ships shall be liable to inspection and survey.

Appointment of surveyors.
 Cf. N.Z. 1908, s. 15.

190.—(1.) The Governor-General may appoint persons to be surveyors.

Amended by No. 1, 1921, s. 62.

(2.) Persons appointed to be surveyors shall be skilled in regard to—

- (a) wooden hulls and equipment;
- (b) metal hulls and equipment, and boilers; or
- (c) engines and machinery.

Regulations as to surveys, &c.
 Cf. M.S.A. 1932, s. 1 (1) and (3).
 M.S.A. 1894, s. 724 (3).

Substituted by No. 49, 1934, s. 12.

191.—(1.) The Governor-General may make regulations, not inconsistent with this Act, as to the construction of passenger steamships, the manner in which surveys and inspections of ships shall be made, the equipment to be carried by ships or classes of ships, the conditions under which certificates of survey and of equipment and safety certificates may be granted and the grant of such certificates.

Safety Conv. Art. 5 and regs. I. to VII.

(2.) Any regulations made under this section may be applied, in whole or in part or with such modifications as are prescribed, to ships registered in Australia or engaged in the coasting trade which do not ply on international voyages.

(3.) The regulations shall include such requirements as are considered necessary to implement the provisions relating to construction, machinery, equipment, sub-division load lines and surveys which are contained in Chapter II. of the Safety Convention and in the Regulations referred to therein (except in so far as those provisions are otherwise implemented by this Act):

M.S.A. 1932, s. 1 (1) proviso;
 Safety Conv. Art. 4.

Provided that with the consent in writing of the Minister—

(a) any passenger steamship constructed before the first day of July One thousand nine hundred and thirty-one (not being a steamship converted to passenger service on or after that date) shall be exempt from compliance with any such requirement, if the Minister is satisfied that such steps, if any, as are reasonable and practicable have been taken to make the steamship comply with that requirement;

Idid.

(b) any such requirement, in its application to passenger steamships plying on any international coasting voyage, may be modified, if, and to the extent to which, the Minister is satisfied that the risks incurred by passenger steamships plying on that voyage are such as to make it unreasonable or unnecessary to require steamships so plying to comply with that requirement:

(c) any such requirement, in its application to steamships for the time being engaged in any passenger trade in which they carry large numbers of unberthed passengers, may be modified, if the Minister is satisfied that compliance with that requirement by steamships so engaged is impracticable and to the extent that he is satisfied that modifications are required by the conditions of the trade; and

M.S.A. 1932,
s. 1 (1) proviso;
Safety Conv.
Art. 4.

(d) any such requirement of the construction regulations which implement the provisions of the Safety Convention contained in Regulations IX., X., XV. and XIX. thereof, in their application to any steamship plying on short international voyages, may be modified, if, and to the extent to which, the Minister is satisfied that the requirement is neither reasonable nor practicable in the case of that steamship.

Ib. s. 1 (1)
proviso.

(4.) The regulations made under this section—

Ib. s. 15 (3);
Safety Conv.
Art. 51.

- (a) may prescribe the form of the certificates issued under this Part;
- (b) may make such provision as is necessary to give effect to the provisions of Article 51 of the Safety Convention; and
- (c) may provide, as regards ships for which a certificate of survey and a safety certificate are both required, for the combining in one document of both those certificates.

191A.—(1.) Where under this Part the Governor-General is empowered to make such regulations as appear necessary for the purpose of implementing or giving effect to any of the provisions of the Safety Convention or Load Line Convention, the requirement shall, in the case of a provision the terms of which are such as to vest in the several Governments who are parties to the Convention a discretion as to whether any, and if so what, action should be taken thereunder, be construed as an authority to the Governor-General to make by regulation such provision (if any) with respect to the matter in question as the Governor-General in the exercise of that discretion thinks proper.

Regulations—
Discretion of
Governor-
General and
Minister.
Ib. s. 68.
Inserted by
No. 49, 1934,
s. 12.

(2.) Notwithstanding any regulation made under any provision of this Division for the purpose of giving effect to, or implementing, any provision of the Safety Convention or Load Line Convention which requires a particular fitting, appliance, or apparatus or type thereof, to be fitted or carried in a ship, or any particular provision to be made in a ship, the Minister may allow any other fitting, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if he is satisfied that that other fitting, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the Convention.

Power to
amend to
correspond with
amendments of
Safety or Load
Line
Convention.
M.S.A. 1932,
ss. 34, 63.

(3.) If any provision of the Safety Convention or of the Load Line Convention, in regard to which it is required by this Part that it shall be implemented or given effect by regulation under the Act, is amended in pursuance of Article 61 of the Safety Convention or of Article 20 of the Load Line Convention, as the case may be, the Governor-General may amend the regulation accordingly.

Signalling
lamps.
Ib. s. 27; Safety
Conv. Art. 46.
Inserted by
No. 49, 1934,
s. 12.

191B. Every ship registered in Australia, of over one hundred and fifty tons gross registered tonnage, when proceeding to sea on an international voyage shall be provided with a signalling lamp of a type approved by the Director.

Penalty, on owner or master: Twenty pounds.

Appeal.
M.S.A. 1894,
s. 275.
Amended by
No. 1, 1921,
s. 64.

192.—(1.) Any ship-owner aggrieved by a refusal to grant any certificate of survey or of equipment or safety certificate may appeal to a Court of Marine Inquiry.

(2.) The Court may, on the hearing of the appeal, order that any certificate of survey or equipment or safety certificate be granted or refused.

Foreign ships—
Detention or
proceedings in
respect of—
Notice to
Consul.
M.S.A. 1932,
s. 69.
Inserted by
No. 49, 1934,
s. 13.

192A. Where under this Part of this Act any foreign ship is detained, or proceedings are taken against the owner or master of a foreign ship, notice shall forthwith be served on the Consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

DIVISION 2.—STEAMSHIPS.

Survey of
steam-ships.
M.S.A. 1894,
s. 271.
Cf. N.Z. 1908,
s. 171.
Amended by
No. 49, 1934,
s. 14.

193. Subject to the provisions of this Part, every steam-ship shall be surveyed once at least in every twelve months by the prescribed surveyor.

Report of
survey.
M.S.A. 1894,
s. 272.

194.—(1.) A surveyor, after making a survey of a steam-ship, shall furnish a report thereof, in the prescribed form, to the Minister.

(2.) The Minister may, if the surveyor's report justifies him in doing so, issue to the owner of the steam-ship a certificate of survey in the prescribed form.

Certificate of
survey.
Ib. s. 274.

195.—(1.) A certificate of survey of a steam-ship shall be in duplicate, and one part shall be handed to the owner, master, or agent of the steam-ship, who shall give a receipt therefor on the other part.

(2.) The certificate of survey shall not remain in force for longer than the prescribed time from the date of its issue, or such shorter time as is specified in the certificate.

196. The owner, master, or agent of the steam-ship shall, forthwith on the delivery of the certificate of survey, cause it to be conspicuously exhibited in some part of the steam-ship so as to be easily visible to all persons on board, and to be kept so exhibited as long as it remains in force.

Penalty: Ten pounds.

197.—(1.) The master of a steam-ship shall not take her to sea, and the owner of a steam-ship shall not knowingly or unknowingly suffer or permit her to go to sea, unless the prescribed certificate of survey or of equipment, as the case may be, or a certificate which, under section two hundred and four of this Act, has the effect of exempting the ship from survey, has been granted in respect of the ship and is in force.

Penalty: One hundred pounds.

* * * * *

Posting up of certificate.
M.S.A. 1894,
s. 281.

Uncertificated steam-ships not to proceed to sea.
CL. *ibid.* s. 271.
Substituted by No. 1, 1921, s. 65 and amended by No. 49, 1934, s. 15.

197A.—(1.) A safety certificate granted in respect of a ship under this Act, or a valid Safety Convention certificate granted, in respect of a Safety Convention passenger steamship not registered in Australia, by or under the authority of the Government of the country to which the ship belongs, shall be accepted as having, for the purposes of this Act, the same force as a certificate of survey granted under this Act.

Sub-secs. (2.) and (3.) omitted by No. 49, 1934, s. 15.

Modifications ^T as to survey of passenger steamers holding Convention certificate.
M.S.A. 1932, s. 17.
Inserted by No. 49, 1934, s. 16.

(2.) Where a valid Safety Convention certificate is produced in respect of a Safety Convention passenger steamship not registered in Australia, the survey of the steamship shall be limited to ascertaining the number of passengers which the steamship is fit to carry, and it shall not be necessary for the declaration of survey to contain any further particulars than those relating to the number of passengers.

(3.) Where a surveyor furnishes a declaration of survey as provided for in the last preceding sub-section, a certificate of survey shall be issued under this Act containing only a statement of the number of passengers which the steamship is fit to carry, and a certificate so issued shall have effect as a certificate of survey issued under this Act.

(4.) Where the Minister is satisfied that, under the laws of any country, the number of passengers which a steamship is fit to carry is determined in substantially the same manner as in the case of a steamship registered in Australia, he may direct that on production, in respect of a Safety Convention passenger steamship registered in that country, of a valid Safety Convention certificate and also a certificate showing the number of passengers the steamship is fit to carry, the certificate last mentioned shall be accepted and shall have effect as a certificate of survey issued under this Act.

Cancellation
of certificates.

M.S.A. 1894,
s. 279.

Amended by
No. 1, 1921,
s. 66, and by
No. 49, 1934,
s. 17.

198. When the Minister has reason to believe—

- (a) that a surveyor's report of the survey of a steam-ship has been fraudulently or erroneously made or obtained; or
- (b) that a certificate of survey or of equipment of a steam-ship has been issued upon false or erroneous information; or
- (c) that, since the report, the hull, machinery or equipment of the steam-ship has been materially altered, or has been injured, or is otherwise insufficient,

he may cancel any certificate of survey or of equipment already issued and require a resurvey of the steam-ship.

Declaration of
Survey.

M.S.A. 1932,
s. 2.

Inserted by
No. 49, 1934,
s. 18.

198A. A declaration of survey in respect of a passenger steam-ship shall state, as regards construction, equipment and machinery respectively, the voyages or class of voyages on which, in the surveyor's judgment, the steam-ship is fit to ply, and if in the judgment of the surveyor a passenger steam-ship is fit to ply on international voyages while engaged in a special passenger trade only, his declaration of survey shall state that fact.

Powers of
surveyors.

Cf. M.S.A.
1894, s. 725.

Cf. N.Z. 1908,
s. 16.

199.—(1.) A surveyor or any person authorized by the Minister to inspect or survey a ship may, in the execution of his duties, go on board any ship at all reasonable times and inspect the same or any part thereof, including her boilers, machinery, and equipment, and the certificates of the master and officers of the ship, but shall not in such inspection unnecessarily detain or delay the ship from proceeding on her voyage.

Amended by
No. 1, 1921,
s. 67.

(2.) The Minister may, on the report of the surveyor or person inspecting the ship, if he considers it necessary so to do, require the ship to be taken into dock or to be so dealt with that an inspection may be made of her hull, boilers, machinery, or equipment.

(3.) No person shall obstruct or hinder any surveyor or authorized person from going on board any ship or shall otherwise impede him in the execution of his duties under this Act.

Penalty: One hundred pounds.

Invalid
certificates to
be given up.

Ib., s. 180.

Amended by
No. 1, 1921,
s. 68, and by
No. 49, 1934,
s. 19.

200. Any cancelled or expired certificate of survey or of equipment shall on demand be forthwith delivered up to the Minister by the owner or master of the ship to which it relates.

Penalty: Ten pounds.

Extension of
time for
resurvey.

Amended by
No. 49, 1934,
s. 20.

201. The Minister may, if he is satisfied that the immediate resurvey of a steam-ship would occasion unreasonable or unnecessary expense or inconvenience, and that no danger to the ship or her crew passengers or cargo will arise from the extension, extend the time for her next resurvey, and the currency of her certificate of survey, or

of equipment, as the case may be, for any period not exceeding one month:

Provided that no extension of the currency of the certificate shall be granted to enable the vessel to proceed to another port for the purpose of docking or repairs if proper facilities are available for such docking or repairs at any of the ports to which the vessel is usually trading.

* * * * *

S. 201A repealed
by No. 49, 1934,
s. 21.

202.—(1.) The owner or master of a steam-ship shall not receive or have on board thereof any number of passengers greater than that allowed by the certificate of the ship.

Overcrowding
steam-ships.

M.S.A. 1894,
s. 283.

(2.) The owner, master, or agent of a steam-ship shall not take payment of the passage-money of any persons intending to become passengers in excess of the number allowed by the certificate of the ship.

Amended by
No. 1, 1921,
s. 70 and by
No. 49, 1934,
s. 22.

Penalty: One hundred pounds, and also an additional penalty not exceeding Five shillings for every person on board above the number allowed by the certificate of the ship.

(3.) Any penalty under this section may be sued for and recovered by any person and retained by him for his own use.

(4.) For the purposes of this section "the certificate of the ship" means the safety certificate, certificate of survey or certificate of equipment (as the case may be) of the ship.

Added by
No. 49, 1934,
s. 22.

203.—(1.) The owner of any steam-ship may at any time apply for an alteration of the certificate of survey of the ship in regard to the number of passengers she may carry.

Alteration of
certificate of
survey.

(2.) The Minister may, on receipt of the application, and after further survey, permit the certificate of survey to be amended.

204.—(1.) A steam-ship in respect of which—

(a) a certificate of survey granted by the Ministry of Transport of the United Kingdom, or

(aa) a safety certificate, or

(b) in the case of steam-ships not carrying more than twelve passengers a prescribed classification certificate granted by any corporation or association for the survey and registry of ships approved by the Governor-General,

Recognition
of other
certificates.

N.Z. 1908,
s. 185 (1).
Vict. No. 1165,
s. 154.
Cf. N.S.W. 1901,
No. 60, s. 33 (1).
Cf. M.S. (Conv.)
Act 1914, s. 21,
Conv. Art. 60.

has been issued, shall, whilst that certificate remains in force, but subject to the provisions of sub-section (3.) to (5.) of this section, be exempt from survey under this Act.

Amended by
No. 1, 1921,
s. 71 and by
No. 80, 1950,
s. 3 and First
Schedule.

Provided that any exemption granted by this sub-section to a steam-ship not carrying more than twelve passengers shall not operate to exempt the vessel from any prescribed requirement as to survey for a certificate of equipment under this Act.

Proviso added
by No. 49, 1934,
s. 23.

(2.) In cases where the Minister is satisfied, in regard to any British steam-ship not registered in Australia or any foreign steam-

ship, that the requirements of this Act have been substantially complied with, he may—

- (a) dispense with any further survey of the steam-ship; and
- (b) give a certificate which shall have the same effect as if given upon survey under this Act:

Provided that the Governor-General may direct that this sub-section shall not apply in cases where it appears to him that reciprocal treatment is not given to steam-ships registered in Australia.

Inspection of
ships exempt
from survey.
Vic. No. 1165,
s. 155.

(3.) Any person authorized in writing by the Minister may at any time inspect any British or foreign steam-ship, which is exempt from survey under this Act, or a survey of which has been dispensed with under this section, and shall report to the Minister the result of his inspection.

(4.) The Minister may, upon such report, cancel the exemption of the steam-ship, or suspend the operation of any certificate issued or given in respect of the steam-ship:

Proviso added by
No. 1, 1921,
s. 71.
Conv. Arts.
60. (1).

Provided that in the case of a ship, not registered in Australia, and in respect of which a safety certificate, granted by or under the authority of the Government of the country to which the ship belongs is still in force, the powers conferred by this sub-section may be exercised only when the Minister has reason to believe that the actual condition of the ship does not correspond, in substantial particulars, with the safety certificate, and that she cannot proceed to sea without danger to her passengers or crew.

(5.) Upon such cancellation or suspension the ship shall become liable to survey.

Non-application
to certain ships.
M.S. (Conv.)
Act 1914, s. 26.
Conv. Art. 4.
Inserted by
No. 1, 1921,
s. 72; amended
by No. 80, 1950,
s. 3 and First
Schedule.

204A. Notwithstanding anything contained in this Act, any ship, not being bound to a port in Australia, which has been compelled, by stress of weather or *force majeure*, to take refuge in such a port, shall not be subject to any requirements of this Division, or of Division 6A of this Part, or of the regulations under section two hundred and fifteen, if, in the ordinary course of her voyage, the ship would have been exempt from that requirement.

Weight on
safety-valve,
Vic. No. 1165,
s. 137.
Amended by
No. 49, 1934,
s. 24.

205. No person shall place on the safety-valve of any boiler of a ship an undue weight, or any weight greater than that fixed for that safety-valve by a surveyor.

Penalty: One hundred pounds.

Water-tight
partitions, fire-
proof bulkheads
and double
bottoms.
M.S. (Conv.)
Act 1914, ss. 9,
10 and 23 (1).
Conv. Arts.
17-25, 27.
Regs. XV.,
XVI., XIX.
N.Z. 1908, 170.
Substituted by
No. 1, 1921,
s. 73.

206.—(1.) Every steam-ship of such classes as are prescribed—

- (a) which is registered in Australia;
- (b) whether British or foreign, which is engaged in the coasting trade; and
- (c) whether British or foreign, carrying more than twelve passengers, which proceeds from a port in Australia to a port outside Australia, or which comes into a port in Australia from a port outside Australia,

shall, in the prescribed manner, be subdivided into water-tight com-

partments and fitted with fire-proof bulkheads and with a double bottom.

(2.) The master and owner of any such ship which goes to sea, or, in the case of a vessel carrying more than twelve passengers, which comes into a port in Australia from a port outside Australia, without compliance with this section shall be guilty of an offence.

Penalty: One hundred pounds.

(3.) The Governor-General may make regulations with respect to the closing and periodical trial and operation of water-tight doors, side scuttles, valves, and other like contrivances in any ship which is required by regulations made under this section to be subdivided into water-tight compartments.

206A. Every ship, of such classes as are prescribed, which—

(a) is registered in Australia or engaged in the coasting trade,
or

(b) carries more than twelve passengers from a port in Australia to a port outside Australia,

shall be provided with—

(i) such power for going astern as is sufficient to secure proper control of the ship when under way; and

(ii) an efficient auxiliary steering apparatus (not necessarily operated by mechanical power).

Penalty, on master or owner: One hundred pounds.

Backing power and steering apparatus.

M.S. (Conv.) Act 1914, s. 9, Conv. Art. 28; Regs. XXII., XXIII.

Inserted by No. 1, 1921, s. 73.

DIVISION 2A.—SAILING SHIPS.^(a)

206B. The provisions of Division 2 of this Part, relating to steamships, shall, so far as they are applicable, be deemed to apply also to sailing ships over fifty tons gross registered tonnage, registered in Australia or engaged in the coasting trade, and those provisions shall accordingly be read, for the purposes of this Division, as if such sailing ships were included in the word "steamships".

Application of Division 2 to sailing ships.

Inserted by No. 49, 1934, s. 25.

DIVISION 2B.—SAFETY CONVENTION REQUIREMENTS.^(a)

206C.—(1.) After the expiration of three months from the commencement of this section, a ship registered in Australia, and being a passenger steamship or a ship of sixteen hundred tons gross registered tonnage or upwards, shall not proceed to sea on an international voyage from a port in Australia unless there is in force in respect of the ship—

Australian ships on international voyages—Certificates required.

M.S.A. 1932, s. 14.

Inserted by No. 49, 1934, s. 25.

(a) if the ship is a passenger steamship, either—

(i) a general safety certificate; or

(ii) a short voyage safety certificate; or

(iii) a qualified safety certificate and passenger steamship exemption certificate;

being a certificate or certificates which by the terms

^(a) Divisions 2A and 2B inserted by the *Navigation (Maritime Conventions) Act 1934*, s. 25.

thereof is or are applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged;

(b) if the ship is not a passenger steamship, either—

- (i) such certificate or certificates as would be required in her case by the foregoing provisions of this section if she were a passenger steamship; or
- (ii) a wireless telegraphy certificate; or
- (iii) a wireless telegraphy exemption certificate which by the terms thereof is applicable to the voyage on which the ship is about to proceed.

(2.) If any ship to which this section applies proceeds, or attempts to proceed, to sea in contravention of this section—

- (a) in the case of a ship, being a passenger steamship, the master or owner of the ship shall, without prejudice to any other remedy or penalty under this Act, be liable for each offence to a penalty not exceeding ten pounds for every passenger carried on board the ship, and the master or owner of any tender by means of which passengers are taken on board the ship shall for each offence be liable to a like penalty for every passenger so taken on board; and
- (b) in the case of a ship not being a passenger steamship, the master or owner of the ship shall, for each offence, be liable to a penalty not exceeding one hundred pounds.

(3.) The master of every ship to which this section applies shall produce to the officer of Customs from whom is demanded a clearance for the ship for an international voyage, the certificate or certificates required by the foregoing provisions of this section to be in force when the ship proceeds to sea, and a clearance shall not be granted, and the ship may be detained, until that certificate or those certificates is or are so produced.

(4.) Where a passenger steamship exemption certificate or wireless telegraphy exemption certificate, issued in respect of any ship to which this section applies, specifies any conditions on which the certificate is issued and those conditions are contravened, the master or owner of the ship shall be guilty of an offence.

Penalty: One hundred pounds.

Non-Australian ships on international voyages—Certificate required.
M.S.A. 1932, s. 20.
Inserted by No. 49, 1934, s. 25.

206D. The master of every Safety Convention ship not registered in Australia (being a passenger steamship or a ship of sixteen hundred tons gross tonnage or upwards) shall produce to the officer of Customs from whom is demanded a clearance for the ship in respect of an international voyage from a port in Australia, a valid Safety Convention certificate, and a clearance shall not be granted, and the ship may be detained, until such a certificate is so produced.

206E.—(1.) A declaration of survey in respect of a Safety Convention passenger steamship shall state, as regards construction, equipment and machinery respectively, the voyages or class of voyages on which, in the judgment of the surveyor, the steamship is fit to ply.

Declaration of survey.
M.S.A. 1932,
s. 2.
Inserted by
No. 49, 1934,
s. 25.

(2.) If in the judgment of the surveyor a Safety Convention passenger steamship is fit to ply on international voyages while engaged in a special passenger trade only, his declaration of survey shall state that fact.

206F.—(1.) If any ship to which this section applies is altered in respect of her hull, equipment or machinery in a manner which affects her efficiency or seaworthiness, the owner or master of the ship shall, as soon as possible after the alteration is made, give notice thereof in the form and to the person prescribed.

Alterations of ships after certificate granted.
Ib. s. 3.
Inserted by
No. 49, 1934
s. 25.

Penalty: Fifty pounds.

(2.) If the Minister has reason to believe that, since the making of the last declaration of survey in respect of any ship—

- (a) any alteration as aforesaid has been made in the hull, equipment or machinery of the ship; or
- (b) the hull, equipment or machinery of the ship has sustained injury or is otherwise insufficient,

he may, without prejudice to action under any other power conferred by this Act, require the ship to be again surveyed to such extent as he thinks fit, and if such requirement is not met, may cancel the certificate granted in respect of the ship.

(3.) For the purposes of this section the expression "alteration" in relation to the hull, equipment or machinery of a ship includes the renewal of any part thereof.

(4.) This section applies to every ship, British or foreign (and whether a Safety Convention ship or not) to which any of the following certificates has been granted under this Act and is in force, namely, any safety certificate, certificate of survey or passenger steamship exemption certificate.

206G.—(1.) A safety certificate, wireless telegraphy certificate, or exemption certificate issued under this Part shall not be in force for more than one year from the date of its issue, nor after notice is given by the Minister to the owner, agent or master of the ship in respect of which it has been issued that he has cancelled the certificate.

Safety Convention certificates.
Ib. s. 15; Safety Conv. Art. 52.
Inserted by
No. 49, 1934
s. 25.

(2.) If a ship registered in Australia in respect of which any such certificate has been issued, is absent from Australia at the date when the certificate expires, the Minister, or any person authorized by him for the purpose, may, if it appears proper and reasonable so to do, grant such an extension of the certificate as will allow the ship to return to Australia, but no such extension shall have effect for a period exceeding five months from the said date.

(3.) Any certificate issued under this Part, including a safety certificate combined in one document with a certificate of survey, may be signed on behalf of the Minister by any person authorized by the Minister for the purpose, and a certificate purporting to be so signed shall be admissible in evidence in any proceedings under this Act.

Safety Convention certificate—Issue by one Administration at request and on behalf of another.

M.S.A. 1932, ss. 15 (6) and 16 (1); Safety Conv. Art. 50.

Inserted by No. 49, 1934, s. 25.

206H.—(1.) The Minister may request the Government of a country to which the Safety Convention applies to issue a general safety certificate, a short voyage safety certificate or a wireless telegraphy certificate in respect of a ship registered in Australia, and a certificate issued in pursuance of such a request, and containing a statement that it has been so issued, shall have effect for the purposes of this Act as if it had been issued under this Act.

(2.) The Minister may, at the request of the Government of a country to which the Safety Convention applies, issue a general safety certificate, a short voyage safety certificate or a wireless telegraphy certificate in respect of a ship of that country if he is satisfied in like manner as in the case of a ship registered in Australia that he can properly issue the certificate, and where a certificate has been issued at such a request it shall contain a statement that it has been so issued.

Regulations—Validity of certificates of overseas ships.

Ib., s. 16 (2); Safety Conv. Arts. 54 and 55.

(3.) For the purpose of determining the validity in Australia of certificates purporting to be issued in accordance with the Safety Convention in respect of Safety Convention ships not registered in Australia, the Governor-General shall make such regulations as appear to him to be necessary for the purpose of giving effect to Article 55 of the Safety Convention, and for the purposes of the provisions of this Part relating to Safety Convention ships not registered in Australia, the expression "a valid Safety Convention certificate" means a certificate or certificates complying with such of those regulations as are applicable in the circumstances.

Modification of certificates.

Ib. s. 16 (3); Safety Conv. Art. 56.

(4.) Where a valid Safety Convention certificate is produced in respect of a Safety Convention passenger steamship not registered in Australia, and there is attached to the certificate a memorandum which—

- (a) has been issued by or under the authority of the Government of the country to which the steamship belongs; and
- (b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to life-saving appliances,

the certificate shall have effect for the purpose of that voyage as if it were modified in accordance with the memorandum.

Definition of seaworthy.

M.S.A. 1894, s. 459.

M.S.A. 1897, s. 1.

DIVISION 3.—UNSEAWORTHY SHIPS.

207. A ship shall not be deemed seaworthy under this Act unless—

- (a) she is in a fit state as to condition of hull and equipment, boilers and machinery, stowage of ballast or cargo, number and qualifications of crew including officers, and in every other respect, to encounter the ordinary perils of the voyage then entered upon; and
- (b) she is not overloaded.

Provided that in the case of a Safety Convention passenger steamship, not registered in Australia, in respect of which a valid Safety Convention certificate is produced, the ship shall be deemed seaworthy, as regards the condition of her hull, equipment and machinery, unless it appears, on the report of a surveyor, that she cannot proceed to sea without danger to the passengers or crew owing to the fact that her actual condition does not correspond substantially with the particulars stated in the certificate.

Proviso added by No. 49, 1934, s. 26.
M.S.A. 1932, s. 18 (b).

208.—(1.) Every person who sends any ship to sea in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure the seaworthiness of the ship, be guilty of an indictable offence.

Sending unseaworthy ship to sea.
M.S.A. 1894, s. 457.
N.Z. 1908, s. 224.

(2.) Every master who knowingly takes a ship to sea in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall be guilty of an indictable offence.

(3.) A prosecution under this section shall not be instituted except by the consent of the Attorney-General.

(4.) Nothing in this section shall subject the owner or master of a ship to any liability, by reason of the ship being sent or taken to sea in an unseaworthy state, where, owing to special circumstances, the sending of the ship to sea in that state was reasonable and justifiable.

209. If a British ship is unseaworthy a seaman or apprentice belonging to her shall not be deemed to have committed a breach of his agreement by reason of his having refused to sail in her while she is unseaworthy; and any seaman or apprentice so refusing may claim his discharge unless the ship is made seaworthy within a reasonable time.

If ship unseaworthy seaman may claim discharge.

210.—(1.) The Minister may order any ship, which appears to him to be unseaworthy, to be provisionally detained.

Unseaworthy ships may be detained.

(2.) When any ship has been ordered to be provisionally detained—

Cf. M.S.A. 1894, ss. 459, 462.

- (a) A notification of the provisional detention of the ship shall be immediately served on the master, together with a statement of the grounds of her detention;

Procedure as to detention.

Amended by No. 1, 1921, s. 74.

- (b) The Minister may direct some competent person to survey the ship and report to him;

- (c) On receipt of the report, the Minister may either finally detain the ship, or order her release unconditionally or on such conditions as he deems fit;
- (d) Before the order for final detention is issued, the master of the ship shall be furnished with a copy of the report, and he may within seven days after receipt of the copy appeal to a Court of Marine Inquiry in manner prescribed;
- (e) The Minister may at any time refer the matter to the Court of Marine Inquiry;
- (f) A ship detained under this section shall not be released by reason of her British register having been closed since detention.

Foreign ships.

Cf. M.S.A. 1894,
s. 462.

(3.) Where an order is made for the provisional detention of a foreign ship, a copy of the order shall be served on the nearest consul of the country to which the ship belongs; and the consul may require that the person directed to survey the ship shall be accompanied by such person as he directs.

(4.) A Court of Marine Inquiry shall, upon any appeal or reference under this section, have power to order the final detention of the ship, or her release either conditionally or unconditionally.

(5.) When any order for the final detention of a ship has been made, she shall not be released until the Minister or the Court of Marine Inquiry is satisfied that her further detention is no longer necessary, and orders her release.

Compensation
for unnecessary
detention.

Ib., s. 460.

211.—(1.) If it appears that there was no reasonable and probable cause for the provisional detention of the ship, the Minister shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Costs against
owner.

Ib. s. 460 (2).

M.S.A. 1932,
s. 70.

Amended by
No. 49, 1934,
s. 27.

(2.) If a ship is finally detained under this Division or if it appears that a ship provisionally detained under this Division—

- (a) was at the time of the detention unseaworthy; or
- (b) was detained in pursuance of any provision of Part IV. of this Act which provides for the detention of a ship until a certain event occurs,

the owner of the ship shall be liable to pay to the Minister, or to such person as the Minister directs, the costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable by the Minister, or by any person authorized by him to sue for them, in any Court of summary jurisdiction.

Costs of Court.

(3.) For the purposes of this Division, the costs of and incidental to any proceeding before a Court of Marine Inquiry shall be deemed to be part of the costs of the detention and survey of the ship.

212. If the master of any ship legally detained under this Division takes the ship to sea before she is duly released, he shall be guilty of an indictable offence.

Taking detained ship to sea.
Cf. M.S.A. 1894, s. 457.

213.—(1.) Where a complaint is made to the Minister that a ship is unseaworthy, the Minister may, if he thinks fit, require the complainant to give security to his satisfaction for any costs and compensation which he may become liable to pay in consequence of the detention and survey of the ship.

Security for costs.
Ib. s. 461.

(2.) Provided that where the complaint is made by three or more of the seamen belonging to the ship, and is not in the opinion of the Minister frivolous or vexatious, such security shall not be required, and the Minister shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.

214. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Minister or the Commonwealth would be liable to pay compensation or costs to the owner of the ship, the complainant shall pay to the Minister all costs incurred and compensation paid by him on account of the detention and survey of the ship.

Costs of detention.
Ib. s. 461 (3).

DIVISION 4.—LIFE-SAVING APPLIANCES AND FIRE PROTECTION.

215.—(1.) The Governor-General may make regulations, not inconsistent with this Act, as to the life-saving and fire appliances to be provided and carried by ships and as to matters incidental thereto (including the prescribing of all matters which are necessary or convenient for giving effect to so much of the provisions of the Safety Convention as relates to life-saving appliances and fire protection) and in particular with respect to—

Heading amended by No. 1, 1921, s. 75.
Regulations as to life-saving and fire extinction, &c.
Cf. M.S.A. 1932, s. 5.
Safety Conv. Arts. 11-25.
Substituted by No. 49, 1934, s. 28.

- (a) the arranging of the ships into classes, having regard to the services in which they are employed, the nature and duration of the voyage and the number of persons carried;
- (b) the number and description of the boats, life-boats, life-rafts (and their equipment), buoyant apparatus, line-throwing appliances, life-jackets and life-buoys to be carried by ships, according to the class in which included;
- (c) the marking of boats, life-boats, life-rafts and buoyant apparatus as to dimensions and the number of persons authorized to be carried thereon;
- (d) the manning of boats and life-boats and the qualifications and certificates of life-boat men;
- (e) the provision to be made for mustering the passengers and crew and for embarking them in the boats and life-boats (including provision as to the lighting of, and as to the

Cf. M.S.A. 1894, s. 427.

Cf. also M.S. (L.T.A.) Act, 1928, s. 1.

M.S.A. 1932, s. 5.

means of ingress to, and egress from, different parts of the ship);

- (f) the practising of boat drills;
- (g) the assignment of specific duties to each member of the crew in the event of emergency; and
- (h) the methods to be adopted and the appliances to be carried for the prevention, detection and extinction of fire.

M.S.A. 1932,
s. 11 (4).

(2.) The Minister may, in respect to any passenger steamship constructed before the first day of July One thousand nine hundred and thirty-one, approve of compliance with the regulations in regard to life-saving appliances applicable on that date being accepted as compliance with the later regulations made under this section, if he is satisfied that such steps (if any) as are reasonable and practicable have been taken to make the steamship comply with those later regulations.

Of M.S.A.
1894, s. 430 (2)
and (3).

(3.) The penalty for a breach of any regulation made under this section, unless the subject of other proceedings under this Act or under other regulations made under this Act, shall be—

- (a) on the owner (if in fault): One hundred pounds; and
- (b) on the master (if in fault): Fifty pounds.

Exemption
from
regulations.
M.S.A. 1932,
s. 4.
Substituted by
No. 49, 1934,
s. 28.

216.—(1.) The Minister may, on such conditions as he thinks fit, exempt any steamship constructed before the first day of July One thousand nine hundred and thirty-one, from any provision of the regulations, if and to the extent that he is satisfied that compliance with that provision is either impracticable or unreasonable in the case of that steamer.

(2.) The Minister may, as respects passenger steamships plying on any international coasting voyage, modify any provision of the regulations, if and to the extent that he is satisfied that the risks incurred by steamships plying on that voyage are such as to make it unreasonable or unnecessary for such steamships to comply with that provision.

(3.) The Minister may, as respects passenger steamships engaged in any passenger trade in which they carry large numbers of unberthed passengers, if he is satisfied that it is impracticable for steamships so engaged to comply with the said requirements, modify the provisions of the regulations in such manner as appears to him to be necessary or expedient for the purpose of giving effect to the provisions of sub-paragraphs (a), (b) and (c) of paragraph 5 of Article 12 of the Safety Convention.

(4.) The Minister may, in respect to any passenger steamship plying on short international voyages, make such modifications of the regulations as appear to him to be authorized by the provisions of the Safety Convention contained in sub-paragraph (b) of paragraph 2 of Article 13, paragraph (4.) of Regulation XXXVI., paragraph (11.) of

Regulation XXXVII., paragraph (2.) of Regulation XXXVIII., and Regulation XXXIX.

(5.) For the purposes of the last four preceding sub-sections "the regulations" means the regulations made to give effect to the provisions of Chapter III. of the Safety Convention (relating to life-saving and fire appliances) and the regulations referred to therein.

(6.) A Safety Convention passenger steamship not registered in Australia, in respect of which a valid Safety Convention certificate is produced, shall be exempt from the provisions of the regulations in regard to life-saving and fire appliances made under the last preceding section.

M.S.A. 1932,
s. 18 (a).

(7.) In the case of a British ship (other than a Safety Convention ship) not registered in Australia and not engaged in the coasting trade, it shall be deemed compliance with regulations made under the last preceding section if she complies with the regulations of the Ministry of Transport of the United Kingdom on the same subject-matter.

Amended by
No. 89, 1950,
s. 3 and First
Schedule.

(8.) As regards ships other than those provided for in the preceding sub-sections of this section, and not being Safety Convention ships, the Minister may, if he thinks fit, exempt, from any regulation made under the last preceding section, any ship which he is satisfied complies substantially with the requirements of that regulation.

CF. M.S.A. 1906,
s. 4.

216A.—(1.) If, on any international voyage, a passenger steamship, registered in Australia, in respect of which a safety certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the life-saving appliances on the steamship provide, the Minister or any person authorized by him for the purpose, may, at the request of the master of the steamship, issue a memorandum stating the total number of persons carried on the steamship on that voyage, and the consequent modifications which may be made for the purpose of that voyage in the particulars with respect to life-saving appliances stated in the certificate, and that memorandum shall be annexed to the certificate.

Modification of
certificate in
respect of
life-saving
appliances.
M.S.A. 1932,
s. 12.
Inserted by
No. 49, 1934,
s. 38.

(2.) Every such memorandum shall be returned to the Minister at the end of the voyage to which it relates.

Penalty: Twenty pounds.

217.—(1.) No owner or master shall—

- (a) send, or take his ship to sea, or permit his ship to go to sea, unless she is furnished with life-saving and fire appliances as prescribed; or
- (b) permit, through neglect, the loss or damage of any life-saving or fire appliances carried by his ship; or
- (c) fail at the first opportunity to replace any life-saving or

Offences as to
appliances.
Ib., s. 108.
Amended by
No. 49, 1934,
s. 29.

- fire appliances lost from his ship, or to repair any damaged life-saving or fire appliances on his ship; or
 (d) fail to keep all life-saving and fire appliances carried by his ship fit and ready for use at all times.

Penalty: One hundred pounds.

Cf. Customs Act.

Added by No. 49, 1934, s. 29.

(2.) In any proceedings under this section against an owner or master for having sent or taken his ship to sea, or permitted his ship to go to sea, without being provided with life-saving and fire appliances as prescribed, the averment of the prosecution, contained in the information, as to a deficiency in the appliances carried by the ship, shall be deemed to be proved in the absence of proof to the contrary.

S. 217A inserted by No. 1, 1921, s. 76, and repealed by No. 49, 1934, s. 30.

* * * * *

Sub-heading inserted by No. 49, 1934, s. 31.

DIVISION 5.—DECK AND LOAD LINES.

Preliminary.

Exemptions. M.S.A. 1932, s. 40.

Substituted by No. 49, 1934, s. 31.

218.—(1.) The following ships are exempt from this division, namely—

- (a) limited coast-trade sailing ships under fifty tons net register;
- (b) ships exempted under sub-section (2.) of this section subject to compliance with such conditions as the Minister may think fit;
- (c) ships solely engaged in fishing; and
- (d) pleasure yachts.

(2.) The Minister may, on such conditions as he thinks fit, exempt from this Division—

- (a) any ship plying between near neighbouring ports in Australia if he is satisfied that the sheltered nature and conditions of the voyages between those ports make it unreasonable or impracticable to apply the provisions of this Division to ships so plying; and
- (b) any class of steamships under eighty tons net register, engaged solely in the coasting trade, so long as they do not carry cargo.

Classification of ships for load line purposes.

Ib. s. 41.

Inserted by No. 49, 1934, s. 31.

218A.—(1.) In this Division, ships which are not exempt under the provisions of the last preceding section, are referred to as "load line ships".

(2.) For the purposes of this Division load line ships are divided into two classes as follows:—

- (a) international load line ships, that is to say, ships of one hundred and fifty tons gross registered tonnage or upwards which carry passengers or cargo; and

(b) local load line ships, that is to say—

- (i) ships of one hundred and fifty tons gross registered tonnage or upwards which do not carry cargo or passengers; and
- (ii) ships of less than one hundred and fifty tons gross registered tonnage.

(3.) International load line ships belonging to countries to which the Load Line Convention applies are hereinafter referred to as "Load Line Convention ships".

Marking and Submersion of Load Lines.

Sub-heading
inserted by
No. 49, 1934,
s. 31.

219.—(1.) The Governor-General may make regulations, not inconsistent with this Act, for the purpose of giving effect to the provisions of Articles 6 to 10 inclusive of the Load Line Convention and Annex I. and Annex II. thereto (which regulations are in this Act referred to as "the load line regulations").

Load line
regulations.
M.S.A. 1932,
s. 42.
Substituted by
No. 49, 1934
s. 31.

(2.) Any regulations made under the last preceding sub-section may be applied, in whole or in part or with such modifications as are prescribed, to load line ships registered in Australia or engaged in the coasting trade which do not engage in international voyages.

(3.) Such of the regulations as are made—

- (a) when applied to ships engaged on international voyages, to give effect to Part II. of Annex I. to the Load-Line Convention; or
- (b) when applied to other ships, to give the force of law to the requirements set out in that Part,

are in this Act referred to as "the conditions of assignment".

219A.—(1.) A load line ship registered in Australia, being a ship constructed after the thirtieth day of June One thousand nine hundred and thirty-two, shall not proceed to sea unless—

Marking of
deck and
load lines.
1b. s. 43.

- (a) the ship has been surveyed in accordance with the load line regulations; and
- (b) the ship complies with the conditions of assignment; and
- (c) the ship is marked on each side with a mark (hereinafter referred to as a "deck-line") indicating the position of the uppermost complete deck as defined by the load line regulations, and with marks (hereinafter referred to as "load lines") indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line regulations; and
- (d) the deck-line and load lines are of the description required by the load line regulations, the deck-line is in the position required by those regulations, and the load lines are of the number required by such of those regulations as are applicable to the ship; and

Inserted by
No. 49, 1934,
s. 31.

Amended by
No. 80, 1950,
s. 3 and First
Schedule.

(e) the load lines are in the position required by such of the load line regulations as are applicable to the ship.

(2.) A load line ship, registered in Australia, being a ship constructed before the first day of July One thousand nine hundred and thirty-two, shall not proceed to sea unless—

(a) the ship has been surveyed and marked in accordance with paragraphs (a), (c) and (d) of sub-section (1.) of this section; and

(b) the ship complies with the conditions of assignment, in principle and also in detail, so far as, in the opinion of the Minister, is reasonable and practicable having regard to the efficiency of the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters provided by the arrangements, fittings and appliances existing on the ship at the time when she is first surveyed under this section; and

(c) the load lines are either in the position required by paragraph (e) of sub-section (1.) of this section, or in the position required by the tables used by the Ministry of Transport of the United Kingdom on the thirty-first day of December One thousand nine hundred and six, for fixing the position of load lines, subject to such modifications of those tables and of the application thereof, approved by the Ministry of Transport under section four hundred and thirty-eight of the *Merchant Shipping Act* 1894, as were in force immediately before the fifth day of July One thousand nine hundred and thirty.

(3.) If any ship to which this section applies proceeds or attempts to proceed to sea in contravention of this section, the master or owner thereof shall be guilty of an offence.

Penalty: One hundred pounds.

(4.) If any ship to which this section applies attempts to proceed to sea without being surveyed and marked as required by this section, she may be detained until she has been so surveyed and marked.

(5.) Any ship to which this section applies, which does not comply with the conditions of assignment to the extent required in her case by this section, shall be deemed to be an unseaworthy ship for the purposes of section two hundred and ten of this Act.

Submersion of
load lines.
M.S.A. 1932,
s. 44.
Inserted by
No. 49, 1934,
s. 31.

219B.—(1.) A load line ship registered in Australia shall not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship is for the time being entitled under the load line regulations to be loaded.

(2.) A load line ship registered in Australia shall not, while in a port in Australia, be so loaded that when, in the course of the voyage

about to be entered upon, she would in ordinary circumstances enter an area in which under the load line regulations a lesser maximum depth of loading is permissible, she would then, when having no list, submerge in salt water the load line indicating or purporting to indicate that lesser maximum depth of loading.

(3.) If any such ship is loaded in contravention of this section, the owner or master of the ship shall for each offence be liable to a fine not exceeding One hundred pounds, and to such additional fine, not exceeding the amount specified in the next succeeding sub-section, as the court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was, or would have been, increased by reason of the submersion.

(4.) The additional fine which may be imposed under the last preceding sub-section shall not exceed One hundred pounds for every inch or fraction of an inch by which the appropriate load line on each side of the ship was submerged, or would have been submerged if the ship had been in salt water and had had no list.

(5.) In any proceedings against an owner or master in respect of a contravention of this section, it shall be a good defence to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(6.) Without prejudice to any proceedings under the foregoing provisions of this section, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

219C. If—

- (a) the owner or master of a load line ship registered in Australia, which has been marked in accordance with the foregoing provisions of this Division, fails without reasonable cause to keep the ship so marked; or
- (b) any person conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate any mark placed on any such ship in accordance with the foregoing provisions of this Division, except with the authority of a person entitled under the load line regulations to authorize the alteration of the mark, or except for the purpose of escaping capture by an enemy,

he shall be guilty of an offence.

Penalty: One hundred pounds.

Certificates.

220.—(1.) Where a load line ship registered in Australia has been surveyed and marked in accordance with the foregoing provisions of this Division and complies with the conditions of assignment to the extent required in her case by those provisions, there shall be issued to the owner of the ship, on his application, and on payment of the prescribed fee—

Offences as to marks.
M.S.A. 1932,
s. 45.

Inserted by
No. 49, 1934,
s. 31.

Sub-heading
inserted by
No. 49, 1934,
s. 31.

Issue of load
line certificates
and effect
thereof.

ib. s. 47; Load
Line Conv.
Arts. 11-13.

Substituted by
No. 49, 1934,
s. 31.

- (a) in the case of an international load line ship, a load line certificate (in this Division referred to as "a Load Line Convention certificate"); and
- (b) in the case of a local load line ship, a load line certificate (in this Division referred to as "an Australian load line certificate").

(2.) Every such certificate shall be issued either by the Minister or by a person thereto authorized in writing by him, and shall be issued in such form and manner as may be prescribed by the load line regulations.

(3.) Any such certificate purporting to be signed by the Minister, or by an authorized person, shall be admissible in evidence.

(4.) The load line regulations shall make such provision with respect to Load Line Convention certificates as appears to be necessary, having regard to the provisions of Rules IV. and LXVIII. of the Load Line Convention, for the purpose of giving effect to the provisions of Article 13 of that Convention.

(5.) The Minister may request the Government of a country to which the Load Line Convention applies to issue a Load Line Convention certificate in respect of a Load Line Convention ship registered in Australia, and a certificate issued in pursuance of such a request, and containing a statement that it has been so issued, shall have effect, for the purpose of this Division, as if it had been issued by the Minister.

(6.) Where a load line certificate issued in pursuance of this section and for the time being in force, is produced in respect of a ship, the ship shall, for the purpose of the foregoing provisions of this Division, be deemed to have been surveyed as required by those provisions, and, if the deck-line and load lines on the ship are of the number and description required by the load line regulations, and the position of the deck-line and load lines corresponds with the position specified in the certificate, the ship shall be deemed to be marked as required by those provisions.

Duration,
renewal and
cancellation of
certificates.

M.S.A. 1932,
s. 48.

Load Line
Conv.
Art. 14.

Inserted by
No. 49, 1934,
s. 31.

220A.—(1.) Every load line certificate issued by or under the authority of the Minister shall, unless it is renewed in accordance with the provisions of sub-section (2.) of this section, expire at the end of such period, not exceeding five years from the date of its issue, as is specified therein.

(2.) Any load line certificate issued under this Act may, after a survey on each occasion not less effective than the survey required by the load line regulations before the issue of the certificate, be renewed from time to time by the Minister, or by any person authorized by the Minister to issue a load line certificate, for such period (not exceeding five years on any occasion) as the Minister or person thereto authorized by him thinks fit.

(3.) The Minister may cancel any load line certificate issued under this Act, in force in respect of a ship, if he has reason to believe that—

- (a) material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; or
- (b) the fittings and appliances for the protection of openings, the guard rails, the freeing ports or the means of access to the crew's quarters have not been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4.) The owner of every ship in respect of which a load line certificate has been issued under this Act shall, so long as the certificate remains in force, cause the ship to be surveyed in the prescribed manner once at least in each year after the issue of the certificate, for the purpose of seeing whether the certificate should remain in force, having regard to the last preceding sub-section, and if the ship is not so surveyed the Minister shall cancel the certificate:

Provided that the Minister may, in any particular case, if he thinks fit, extend the period specified in this sub-section.

(5.) Where any load line certificate issued under this Act has expired or been cancelled, the owner or master of the ship to which the certificate relates shall, on demand by the Minister, forthwith deliver up the certificate to him or as he directs.

Penalty: Ten pounds.

(6.) If the owner or master of the ship fails or refuses to deliver up, on demand by the Minister, any expired or cancelled load line certificate relating to the ship, the ship may be detained until the demand has been complied with.

221.—(1.) An international load line ship, registered in Australia, shall not proceed to sea unless there is in force, in respect of the ship, a Load Line Convention certificate.

Ships not to proceed to sea without certificate.

M.S.A. 1932, s. 49.

(2.) A local load line ship, registered in Australia, shall not proceed to sea unless there is in force, in respect of the ship, an Australian load line certificate.

Substituted by No. 49, 1934, s. 31.

(3.) The master of every load line ship registered in Australia shall produce to the officer of Customs from whom a clearance or transire is demanded, the certificate which is required by this section to be in force when the ship proceeds to sea, and a clearance or transire shall not be granted, and the ship may be detained, until that certificate is so produced.

(4.) The master of any ship which proceeds, or attempts to proceed, to sea in contravention of this section shall be guilty of an offence.

Penalty: One hundred pounds.

Publication of
load line
certificate.

M.S.A. 1932,
s. 50 (1).

Inserted by
No. 49, 1934,
s. 31.

221A. When a load line certificate has been issued under this Act in respect of a load line ship registered in Australia—

- (a) the owner of the ship, on receipt of the certificate, shall forthwith cause it to be framed and posted upon some conspicuous place on board the ship, and to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use; and
- (b) the master of the ship, before making any other entry in the official log-book, shall enter therein the particulars as to the position of the deck-line and load lines specified in the certificate.

Penalty: Twenty pounds.

Publication of
particulars as
to depth of
loading.

Ib. s. 50 (2).

Substituted by
No. 49, 1934,
s. 31.

222.—(1.) Before any load line ship registered in Australia leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master thereof shall—

- (a) enter in the official log-book such particulars relating to the depth to which the ship is, for the time being, loaded as are prescribed; and
- (b) cause a notice, in the prescribed form and containing such of the said particulars as are prescribed, to be posted up in some conspicuous place on board the ship, and to be kept so posted up and legible until the ship arrives at some other dock, wharf, harbour or place.

Penalty: Twenty pounds.

(2.) The regulations may exempt from all or any of the provisions of sub-section (1.) of this section any specified classes of ships, engaged exclusively in the coasting trade.

Sub-heading
inserted by
No. 49, 1934,
s. 31.

Load line
certificates of
Convention
ships not
registered in
Australia.

Ib. s. 52.

Inserted by
No. 49, 1934,
s. 31.

Special Provisions as to Load Line Convention Ships not registered in Australia.

222A.—(1.) The Minister may, at the request of the Government of a country to which the Load Line Convention applies, issue a Load Line Convention certificate in respect of an international load line ship of that country, if he is satisfied, in like manner as in the case of a ship registered in Australia, that he can properly issue the certificate, and, where a certificate is issued at such a request, it shall contain a statement that it has been so issued.

(2.) For the purpose of determining the validity in Australia of certificates purporting to have been issued in accordance with the Load Line Convention in respect of Load Line Convention ships not registered in Australia, the Governor-General may make such regulations as appear to him to be necessary for the purpose of giving effect to Article 17 of the Load Line Convention, and for the purposes of the provisions of this Part of this Act relating to Load Line Convention ships not registered in Australia the expression "a valid Load Line Convention certificate" means a certificate complying with such of those regulations as are applicable in the circumstances.

223.—(1.) A surveyor may go on board any Load Line Convention ship not registered in Australia, when within any port in Australia, for the purpose of demanding the production of any load line certificate for the time being in force in respect of the ship.

Inspection and control of Convention ships not registered in Australia.

M.S.A. 1932, s. 53.

Substituted by No. 49, 1934, s. 31.

(2.) If a valid load line certificate is produced to the surveyor on any such demand, the surveyor's powers of inspecting the ship with respect to load line shall be limited to seeing—

- (a) that the ship is not loaded beyond the limits allowed by the certificate;
- (b) that the position of the load lines on the ship corresponds with the position specified in the certificate;
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; and
- (d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued;

and for the purposes of such inspection the surveyor shall have all the powers of a surveyor under this Act.

(3.) If it is found on any such inspection that the ship is loaded beyond the limits allowed by the certificate, the ship may be detained and proceedings may be taken against the master or owner thereof under the provisions of this Division relating to the submersion of load lines on ships not registered in Australia.

(4.) If it is found on any such inspection that the load lines on the ship are not in the position specified in the certificate, the ship may be detained until the matter has been rectified to the satisfaction of the surveyor.

(5.) If it is found on any such inspection that the ship has been so materially altered in respect of the matters referred to in paragraphs (c) and (d) of sub-section (2.) of this section, that the ship is manifestly unfit to proceed to sea without danger to human life, the ship shall be deemed to be unseaworthy for the purposes of section two hundred and ten of this Act:

Provided that where the ship has been detained under that section, the Minister shall order the ship to be released as soon as he is satisfied that she is fit to proceed to sea without danger to human life.

(6.) If a valid Load Line Convention certificate is not produced to the surveyor on demand as provided in this section, the surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Division have been complied with, as if the ship were a ship registered in Australia.

(7.) For the purposes of this section a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as would submerge in salt water, if the ship had no list, the appropriate

load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded.

Certificates of Convention ships to be produced to Customs.

M.S.A. 1932, s. 54.

Inserted by No. 49, 1934, s. 31.

223A. The master of every Load Line Convention ship not registered in Australia shall produce to the officer of Customs from whom a clearance or transire for the ship from any port in Australia is demanded—

(a) in a case where clearance is demanded in respect of an international voyage—a valid Load Line Convention certificate; and

(b) in a case where clearance or transire is demanded in respect of any other voyage—either a valid Load Line Convention certificate or an Australian load line certificate for the time being in force in respect of the ship;

and a clearance or transire shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

Modification of provisions of Act for exemption of ships not registered in Australia.

Ib, s. 55.

224. Section one hundred and eighty-eight of this Act and any proclamation issued under that section shall cease to apply to Load Line Convention ships plying on international voyages, in respect of the exemption of those ships from any of the provisions of this Division.

Substituted by No. 49, 1934, s. 31.

Sub-heading inserted by No. 49, 1934, s. 31.

Survey, marking and conditions of assignment in case of ships not registered in Australia.

Ib, s. 56.

Inserted by No. 49, 1934, s. 31.

General Provisions as to Ships not registered in Australia.

224A.—(1.) The provisions of section two hundred and nineteen A of this Act shall subject to the provisions of sub-sections (2.) and (3.) of this section apply to load line ships not registered in Australia, proceeding or attempting to proceed to sea from ports in Australia, in like manner as they apply to load line ships registered in Australia.

(2.) Section two hundred and nineteen A of this Act shall not apply to a Load Line Convention ship not registered in Australia, if a valid Load Line Convention certificate is produced in respect of the ship.

(3.) Subject to the provisions of the last preceding sub-section, a foreign ship which does not comply with the conditions of assignment, to the extent required in her case by section two hundred and nineteen A, shall be deemed to be unseaworthy for the purpose of section two hundred and ten of this Act.

Submersion of load line on ships not registered in Australia.

Ib, s. 57.

Substituted by No. 49, 1934, s. 31.

225. The provisions of section two hundred and nineteen B of this Act shall apply to load line ships not registered in Australia, while they are within any port in Australia, in like manner as they apply to load line ships registered in Australia, subject to the following modifications, namely:—

(a) a Load Line Convention ship shall not be detained, and

proceedings shall not be taken against the owner or master thereof, by virtue of that section, except after an inspection by a surveyor as provided in this Division; and

(b) the expression "the appropriate load line", in relation to any ship not registered in Australia, shall mean—

- (i) in the case of a Load Line Convention ship in respect of which there is produced on inspection by a surveyor a valid Load Line Convention certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded; and
- (ii) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is, for the time being, entitled under the load line regulations to be loaded, or, if no load line on the ship corresponds with the load line indicating such maximum depth, the lowest load line thereon.

225A. A surveyor may, for the purpose of seeing that the provisions of this Division have been complied with, inspect any load line ship not registered in Australia (not being a Load Line Convention ship) while within any port in Australia, and for the purpose of any such inspection shall have all the powers of a surveyor under this Act.

Inspection of ships not registered in Australia.
M.S.A. 1932, ss. 46 and 58.
Inserted by No. 49, 1934, s. 31.

226.—(1.) The provisions of sections two hundred and twenty and two hundred and twenty A of this Act, relating to the issue, effect, duration, renewal and cancellation of Australian load line certificates, shall apply to load line ships not registered in Australia in like manner as they apply to load line ships registered in Australia, subject to the following modifications, namely:—

Load line certificates of ships not registered in Australia.
Ib. s. 59.
Substituted by No. 49, 1934, s. 31.

- (a) any such certificate may be issued in respect of an international load line ship in like manner as in respect of a local load line ship, but so that any such certificate issued in respect of a Load Line Convention ship shall only be valid so long as the ship is not plying on international voyages, and shall be endorsed with a statement to that effect, and shall be cancelled by the Minister if he has reason to believe that the ship is so plying; and
- (b) the survey required for the purpose of seeing whether the certificate should remain in force shall take place when required by the Minister.

(2.) Where he is satisfied—

(a) either—

- (i) that, by the law in force in any part of His

Majesty's dominions outside Australia provision has been made for the fixing, marking and certifying of load lines on British ships (or any class or description of British ships) registered in that part of His Majesty's dominions; or

- (ii) that such provision has been made by the law in force in any foreign country with respect to ships (or any class or description of ships) of that country, and has also been so made (or it has been agreed that provision shall be so made) for recognizing Australian load line certificates as having the same effect in ports of that country as certificates issued under the said provision; and
- (b) that the provision for the fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Division and is equally effective;

the Governor-General may, by Order, direct that load line certificates issued in pursuance of that provision in respect of British ships (or that class or description of British ships) registered in that part of His Majesty's dominions, or in respect of ships (or that class or description of ships) of that foreign country, as the case may be, shall have the same effect, for the purpose of this Division, as Australian load line certificates:

Provided that no Order made under this sub-section shall apply to Load Line Convention ships plying on international voyages.

(3.) Sub-paragraph (i) of paragraph (a) of the last preceding sub-section shall apply with respect to any foreign country in which, for the time being, His Majesty has jurisdiction, as if that country were a part of His Majesty's dominions.

Certificates of ships not registered in Australia—Production to Customs.

M.S.A. 1932, s. 69.

Inserted by No. 49, 1934, s. 31.

226A. The master of every load line ship (other than a ship registered in Australia or a Load Line Convention ship not registered in Australia) shall produce to the officer of Customs, from whom a clearance or transire for the ship from any port in Australia is demanded, either an Australian load line certificate or a certificate having effect under this Act as such a certificate, being a certificate for the time being in force in respect of the ship, and a clearance or transire shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

Loading of Timber.

227.—(1.) The Governor-General may make regulations, not inconsistent with this Act, as to the conditions on which timber may be carried in any uncovered space on the deck of any load line ship (which regulations are hereinafter referred to as "the timber cargo regulations").

(2.) The timber cargo regulations shall contain such provision as

Sub-heading inserted by No. 49, 1934, s. 31.

Carriage of timber deck cargo.

Ib. s. 61; Load Line Conv. Art. 6.

Substituted by No. 49, 1934, s. 31.

appears to be necessary for the purpose of giving effect to paragraph 2 of Article 6 of the Load Line Convention, and, subject to such provision, may prescribe generally the conditions on which timber may be carried on the deck of any load line ship either on all voyages or on any particular class of voyages, and either at all seasons or at any particular season, and in particular may prescribe the manner and position in which the timber is to be stowed and the provision which is to be made on the ship for the safety of the crew.

(3.) Subject to sub-section (4.) of this section, if any provision of the timber cargo regulations is contravened in the case of any load line ship registered in Australia the master of the ship shall be guilty of an offence.

Penalty: Five hundred pounds.

(4.) It shall be a good defence, in any proceedings against a master in respect of a contravention of the timber cargo regulations, to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(5.) For securing the observance of the timber cargo regulations, a surveyor may inspect any load line ship carrying timber cargo in any uncovered space on her deck, and for that purpose shall have all the powers of a surveyor under this Act.

(6.) The provisions of this section and the timber cargo regulations shall apply to load line ships, not registered in Australia, while they are within any port in Australia, in like manner as they apply to load line ships registered in Australia.

DIVISION 6.—SIGNALS OF DISTRESS.

228. The master of a ship shall not take her to sea and the owner of a ship shall not permit her to go to sea unless she is duly furnished with the prescribed means of making signals of distress.

Ships to be furnished with distress signals.
Amended by No. 49, 1934, s. 32.

Penalty: One hundred pounds.

229.—(1.) The Governor-General may make regulations prescribing the signals which shall, for the purposes of this Act, be signals of distress and urgency respectively, the circumstances in which any signal of distress or urgency may be used, the circumstances in which it shall be revoked, the speed at which any message sent by wireless telegraphy in connexion with any such signal shall be transmitted and generally making such provision as appears to the Governor-General to be necessary for the purpose of giving effect to Articles 42 and 43 of the Safety Convention and to Article 44 thereof so far as it relates to signals of distress and urgency.

Signals of distress and urgency.
M.S.A. 1932, s. 25 (1) and (2).

Substituted by No. 49, 1934, s. 33.

(2.) If the master of a ship, or any other person, uses or displays, or causes or permits any person under his authority to use or display—

- (a) any signal declared under sub-section (1.) of this section to be a signal of distress or urgency except in the circumstances and for the purposes prescribed; or
- (b) any private signal, whether registered or not, which is liable to be mistaken for any such signal of distress or urgency,

he shall be guilty of an offence.

Penalty: Fifty pounds.

Compensation for loss occasioned by improper use of signals.

M.S.A. 1932, s. 25 (3); Safety Conv. Art. 42.

Substituted by No. 49, 1934, s. 33.

230. If any person uses a signal of distress or urgency in contravention of the provisions of the last preceding section he shall, in addition to any penalty incurred under that section, be liable to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal having been supposed to be a signal of distress or urgency, and that compensation may, without prejudice to any other remedy, be recoverable in the same manner as salvage is recoverable under Part VII. of this Act.

Heading inserted by No. 1, 1921, s. 81.

Wireless Telegraphy Apparatus.

M.S. (Wireless Telegraphy) Act 1919.

Substituted by No. 1, 1921, s. 82.

Sub-sec. (1.), substituted by No. 30, 1935, s. 4.

Inserted by No. 30, 1935, s. 4.

DIVISION 6A.—WIRELESS TELEGRAPHY ON SHIPS.

231.—(1.) Except as provided by or under this Act, and subject to the next succeeding sub-section, every foreign-going or Australian-trade ship and every sea-going ship registered in Australia or engaged in the coasting trade shall be provided with such wireless telegraph installation and maintain such wireless service as is prescribed in respect of the class in which the ship is included.

Penalty, on owner or master: Five hundred pounds.

(1A.) In the case of any cargo ship of less than seven hundred and fifty tons gross registered tonnage, the wireless telegraph installation shall include an efficient wireless telegraph transmitting apparatus, of a type approved by the Minister, capable, when put in operation at any time when the ship is in distress and requires assistance from other vessels, or from the shore, of automatically transmitting on the frequency of five hundred kilocycles (six hundred metres) the prescribed signals of distress.

Penalty, on owner or master: Five hundred pounds.

(1B.) Every ship required by this section to be provided with a wireless telegraph installation shall carry, as part of her crew, a person or persons qualified to operate the wireless telegraph installation, as follows:—

- (a) in the case of any cargo ship of less than seven hundred and fifty tons gross registered tonnage, an operator or a wireless signaller; and
- (b) in the case of any other ship, one or more persons to the number prescribed and having such qualifications as are prescribed:

Provided that, in the case of any ship referred to in paragraph (b) of this sub-section, at least one operator shall be carried.

Penalty, on owner or master: Five hundred pounds.

Inserted by No. 30, 1935, s. 4.

(1c.) In this section—

Inserted by
No. 30, 1935,
s. 4.

“cargo ship” means a ship not carrying more than twelve passengers;

“operator” means a person who holds—

- (a) a valid First Class or Second Class Commercial Operator's Certificate of Proficiency issued by the Postmaster-General under regulations made under the *Wireless Telegraphy Act 1905-1919*; or
- (b) in the case of a British ship, a valid certificate issued by an authority empowered in that behalf by or under the laws of the United Kingdom or a British possession, and recognized by the Postmaster-General as equivalent to either of the certificates referred to in the last preceding paragraph; or
- (c) in the case of a foreign ship, a valid certificate of proficiency in wireless telegraphy issued by an authority empowered in that behalf by or under the laws of the country in which the ship is registered, and recognized by the Postmaster-General as equivalent to either of the certificates referred to in paragraph (a) of this definition;

“wireless signaller” means a person who holds a valid Third Class Operator's Certificate of Proficiency issued by the Postmaster-General under regulations made, or to be made, under the *Wireless Telegraphy Act 1905-1919*.

(1d.) The provisions of this Division shall not apply to British ships registered in the United Kingdom, not being ships engaged in the coasting trade.

Inserted by
No. 30, 1935,
s. 4.

(2.) The Minister may exempt from any or all of the requirements imposed by or under the provisions of this Division, either unconditionally or subject to such conditions as he thinks fit to impose, any ships or classes of ships on which, having regard to the nature of the voyages on which the ships are engaged, or other circumstances of the case, he is of opinion that compliance with any such requirement or requirements is unnecessary or unreasonable.

Amended by
No. 30, 1935,
s. 4.

Provided that in no case shall an exemption be granted in respect of a ship engaged on an international voyage except as provided for in Article 27 or Article 28 of the Safety Convention and the Annex to the last-mentioned Article.

Cf. M.S.A.
1932, s. 7 (3).
Proviso added by
No. 49, 1934,
s. 34.

(2A.) Before exempting any ship from any of the requirements imposed by or under this section the Minister shall refer the matter to a Committee of three persons appointed under sub-section (3.) of section four hundred and twenty-four of this Act and consisting of the Director or Deputy Director (who shall be Chairman), one

Inserted by
No. 30, 1935,
s. 4.

representative of the owner of the ship, and one representative of the maritime organizations to which members of the crew belong.

(3.) The Governor-General may make regulations, not inconsistent with this Act or the *Wireless Telegraphy Act* 1905-1915, prescribing any matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act with regard to wireless telegraph installations and services on ships, and in particular in regard to—

- (a) the nature of the wireless telegraph installation to be provided;
- (b) the services to be maintained;
- (ba) the use and maintenance of the wireless telegraph installation;
- (c) the number, grade and qualifications of the members of the crew qualified to operate the wireless telegraph installation;
- (d) the entries to be made by the master in the official log-book relating to the operation of the wireless telegraph installation and the maintenance of the wireless telegraph service.

Inserted by
No. 30, 1935,
s. 4.

Substituted by
No. 30, 1935,
s. 4.

Cf. M.S.A.
1932, s. 7 (1).
Added by
No. 49, 1934,
s. 34.

Inserted by
No. 49, 1934,
s. 34.

(3A.) The regulations shall include such requirements as appear to be necessary to implement the provisions of Chapter IV. of the Safety Convention (except in so far as those provisions are otherwise implemented by this Act).

Inserted by
No. 49, 1934,
s. 34.

(3B.) The regulations may provide for the exemption from any or all of the requirements of this Division of ships or classes of ships to which the requirements of Chapter IV. of the Safety Convention, relating to wireless telegraphy, do not apply, or which, under that Convention, may properly be exempted from those requirements, and in particular for the exemption of—

- (a) river and bay ships;
- (b) ships trading between ports not more than twenty-five nautical miles apart;
- (c) ships (not carrying passengers) on a voyage to a port for the purpose of undergoing at that port necessary repairs or periodical overhaul and on the return voyage from that port;
- (d) ships, while in tow of other ships provided with a wireless telegraph installation as required by or under this section; and
- (e) sailing ships.

Substituted by
No. 30, 1935,
s. 4.

Added by
No. 30, 1935,
s. 4.

Added by
No. 30, 1935,
s. 4.

Added by No. 30,
1935, s. 4.

Wireless
direction finder,
Ib. s. 6 (2).
Safety
Conv. Art. 47.

Inserted by
No. 49, 1934,
s. 34.

(3C.) On and after a date to be proclaimed, ^(a) being not later than two years after the commencement of this sub-section, the wireless telegraph installation to be provided on passenger steamers of five thousand tons gross tonnage or upwards, engaging on an international

(a) The date proclaimed was 1st December, 1936. See *Gazette*, 1936, p. 989.

voyage, shall include a wireless direction finding apparatus as required by Article 47 and paragraph 17 of Article 31 of the Safety Convention.

(3D.) The Minister may appoint any duly qualified officer of the Postmaster-General's Department to be a wireless telegraphy surveyor for the purposes of this Act.

(3E.) The survey under this Act for—

- (a) a safety certificate,
- (b) a certificate of survey, or
- (c) a certificate of equipment,

of a ship required by this section to be provided with a wireless telegraph installation shall include a survey by a wireless telegraphy surveyor.

(3F.) A Safety Convention ship not registered in Australia, in respect of which is produced a valid Safety Convention certificate showing that the ship is wholly exempt from the provisions of the Safety Convention relating to wireless telegraphy, shall be exempt from the provisions of this section.

(3G.) Notwithstanding anything contained in the last preceding sub-section—

- (a) a wireless telegraphy surveyor may inspect the ship for the purpose of seeing that the wireless telegraph installation and the number of certificated members of the crew qualified to operate the wireless telegraph installation carried on the ship correspond substantially with the particulars stated in the certificate of the ship; and
- (b) if it appears to him that the installation or the number of members of the crew qualified to operate the wireless telegraph installation does not correspond substantially with those particulars, and that in consequence the ship cannot proceed to sea without danger to the passengers and crew, he shall give notice in writing to the master pointing out the deficiency and stating what in his opinion is requisite to remedy the deficiency, and thereupon the Deputy Director may detain the ship until the deficiency has been made good:

Provided that in the case of a foreign ship, notice of the detention of the ship shall be given to the nearest consul of the country to which the ship belongs.

(4.) A surveyor, or any person authorized by the Minister, may, in the execution of his duties, go on board any ship at all reasonable times and inspect the wireless telegraph installation and the certificates of the members of the crew qualified to operate the wireless telegraph installation required under this Act.

(5.) If the surveyor, or other person inspecting, reports to the Deputy Director that the ship is not properly provided with a wire-

M.S.A. 1932,
s. 8.

Inserted by
No. 49, 1934,
s. 34.

Surveys by
wireless
telegraphy
surveyors.

Ib. s. 9.

Inserted by
No. 49, 1934,
s. 34.

Ib. s. 19 (1).

Inserted by
No. 49, 1934,
s. 34.

Inserted by
No. 49, 1934,
s. 34.

Amended by
No. 30, 1935,
s. 4.

Amended by
No. 30, 1935,
s. 4.

Amended by
No. 30, 1935,
s. 4.

Amended by
No. 30, 1935,
s. 4.

less telegraph installation and certificated members of the crew qualified to operate the wireless telegraph installation in conformity with this Act, the Deputy Director shall give, to the master or owner, notice in writing pointing out the deficiency, and indicating what is requisite to remedy that deficiency, and thereupon the ship shall be detained until the deficiency has been made good.

(6.) The master of a ship, required by this Act to be provided with a wireless telegraph installation, shall not take her to sea, and the owner of the ship shall not permit her to go to sea, unless the requirements of the Act have been complied with.

Penalty: Five hundred pounds.

Wireless
telegraphy
certificates.
M.S.A. 1932,
s. 13.
Inserted by
No. 49, 1934,
s. 35.

231A.—(1.) If the Minister is satisfied that a ship registered in Australia (other than a passenger steamship or a ship for which a certificate of survey or a safety certificate is required) complies with the requirements of the Safety Convention relating to wireless telegraphy, he may issue to the owner of the ship a wireless telegraphy certificate, in the prescribed form, stating that the ship complies with those requirements.

Exemption
certificates.

(2.) Where any ship is exempted from any of the requirements of the Safety Convention relating to wireless telegraphy, or where a ship to which the Safety Convention does not apply is exempted from any requirements of this Division, the Minister, on application by the owner of the ship, may issue an exemption certificate in the prescribed form, stating that the ship is so exempted and specifying the voyages and conditions (if any) on which the ship is so exempted.

DIVISION 7.—ADJUSTMENT OF COMPASSES.

Compasses to
be adjusted.
M.S.A. 1894,
s. 432.
Amended by
No. 80, 1950,
s. 3 and First
Schedule.

232.—(1.) The compasses of every sea-going ship must, except as prescribed, be properly adjusted as prescribed by an adjuster of compasses licensed in the prescribed manner.

(2.) The last preceding sub-section shall not apply to a British ship, not registered in Australia, in respect of which a compass certificate has been issued by the Ministry of Transport of the United Kingdom and still in force.

Provided that any person thereto authorized by the Minister may inspect the compasses of the ship, and shall report to the Minister the result of his inspection; and the Minister may, upon such report, direct that the compasses of the ship shall be adjusted in pursuance of the last preceding sub-section.

Amended by
No. 49, 1934,
s. 36.

(3.) Deviation tables shall be transmitted and compass-error register-books shall be kept as prescribed.

Penalty, on master or owner: One hundred pounds.

Taking ship to
sea with
unadjusted
compasses.

233. The master of a ship shall not take her to sea, and the owner of a ship shall not permit her to go to sea, unless the compasses on the ship have been adjusted as prescribed.

Penalty: Two hundred and fifty pounds.

234. Any ship, the compasses of which have not been adjusted as prescribed, shall be deemed unseaworthy.

Ship unseaworthy if compasses not adjusted.

DIVISION 8.—COLLISION, BOAT, AND FIRE DRILLS.

235.—(1.) The master of every ship registered in Australia or engaged in the coasting trade shall—

Heading amended by No. 1, 1921, s. 83.

Boat Drill.

Cf. N.Z. 1912, s. 15.

Cf. M.S. (Conv.) Act 1914, s. 12.

(a) muster and exercise his crew in collision, boat, and fire drills, in such manner, and at such intervals, as are prescribed;

(b) enter full particulars of each drill in his official log-book; and

Amended by No. 1, 1921, s. 84.

(c) on any occasion on which a drill is not practised as prescribed, enter in the official log book a statement of the reasons why such was not done.

Inserted by No. 49, 1934, s. 37.

M.S.A. 1932, s. 5 (5).

Penalty: Fifty pounds.

(2.) Every seaman and apprentice shall, subject to the next succeeding sub-section, take part, in accordance with the requirements of the master, in any muster or drill as required by the regulations under this section.

M.S. (Conv.) Act 1914, s. 12 (3).

Added by No. 1, 1921, s. 84.

Penalty: Five pounds.

(3.) A seaman or apprentice shall not be required to take part in a muster or drill within twenty-four hours before the termination of his engagement.

Added by No. 1, 1921, s. 84.

DIVISION 9.—ANCHORS, CHAIN CABLES, AND GEAR.

236. For the purposes of this Division "gear" means gear, as prescribed, used on ships in connexion with the loading and unloading of cargo, including bunker coal.

Definition of gear.

Substituted by No. 1, 1921, s. 85.

237.—(1.) All anchors exceeding in weight one hundred and sixty-eight pounds, and all chain cables and gear for use on any British ship (whether so used on the ship or not), shall be tested, proved and marked in the manner prescribed.

Anchors, chain cable and gear to be tested before use.

Cf. Anchors and Chain Cables Act (62 and 63 Vic., c. 23).

(2.) Any owner or master of any British ship who uses or permits to be used, on the ship, any anchor exceeding in weight one hundred and sixty-eight pounds, or chain cable, or gear, which has not been tested, proved and marked in accordance with this Act, shall be guilty of an indictable offence.

Substituted by No. 1, 1921, s. 85.

(3.) Any person who uses, on any British ship, any gear which is unsafe so as to endanger human life or limb, shall be guilty of an indictable offence.

Using unsafe gear.

237A.—(1.) Any person who sells or contracts to sell, or purchases or contracts to purchase, for use on any British ship, any anchor exceeding in weight one hundred and sixty-eight pounds, or chain cable, or gear, which has not been tested, proved and marked in accordance with this Act, shall be guilty of an indictable offence.

Sale, purchase, or use of untested anchor cable or gear.

Cf. ib., s. 1.

Inserted by No. 1, 1921, s. 85.

(2.) Every contract for the sale of any such anchor, cable, or gear shall, in the absence of an express stipulation to the contrary (proof whereof shall lie on the seller), be deemed to imply a warranty that the anchor, cable, or gear has been, or before delivery will be, tested, proved, and marked in accordance with this Act.

Licences to
test.
62 & 63
Vic., c. 23, s. 5.

238. The Minister may grant a licence, subject to the prescribed conditions, to any person for the testing proving and marking of anchors and chain cables and gear for working cargo, and may revoke or suspend any licence so granted.

Offences by
licensed
testers.
Ib. s. 13.
Substituted by
No. 1, 1921,
s. 86.

239.—(1.) No licensed tester of anchors, chain cables and gear shall—

- (a) stamp any anchor or chain cable, or other chain or cable, or gear, with the distinctive mark denoting that an anchor, chain cable or gear has been proved in accordance with this Act, or with any mark resembling that distinctive mark or otherwise likely to lead persons to suppose that the anchor, chain cable, or chain or cable or gear has been proved in accordance with this Act, unless it has been proved at his establishment in accordance with this Act; or
- (b) deliver to any person a certificate of proof in respect of any anchor, chain cable or gear which has not been proved by him at his establishment in accordance with this Act; or
- (c) make any false statement in a certificate of proof of any anchor, chain cable or gear.

(2.) Any person contravening this section shall be guilty of an indictable offence.

Offences by
other than
licensed
testers.
Ib. s. 14.
Substituted by
No. 1, 1921,
s. 86.

240.—(1.) No person other than a licensed tester of anchors and chain cables and gear shall—

- (a) place on any anchor or chain cable, or other chain or cable, or gear, any distinctive mark denoting that an anchor, chain cable or gear has been proved in accordance with this Act, or any mark resembling that distinctive mark or otherwise likely to lead persons to suppose that the anchor, chain cable, chain or cable, or gear has been proved in accordance with this Act; or
- (b) deliver to any person any certificate, or other document of a like character relating to the proof or testing of any anchor or chain cable, or other chain or cable or gear, which resembles a certificate of proof delivered by a licensed tester of anchors, chain cables and gear or is otherwise likely to lead persons to suppose that the anchor, chain cable, chain or cable or gear has been proved in accordance with this Act.

(2.) Any person contravening this section shall be guilty of an indictable offence.

241.—(1.) Any person delivering a certificate or other document of a like character, relating to the proof or testing of any anchor, chain cable, or other chain or cable, or any gear, shall, unless it is an anchor, chain cable or gear which has been proved in accordance with this Act, or a chain or cable (not being a chain cable) which has been proved at a testing establishment, in respect of which a licence granted under this Act was in force at the time of proof, place in some conspicuous part of the certificate or document, in such a manner as to be clearly legible, the words “privately tested.”

Private testing
62 & 63 Vic.,
c. 23, s. 15.
Substituted by
No. 1, 1921,
s. 86.

(2.) A person shall not place on any anchor or chain cable, or other chain or cable, or any gear, any marks, or deliver in relation thereto any certificate or other document of a similar character, which would be likely to lead persons to suppose that the anchor, chain cable, or other chain or cable, or gear has been tested, unless it has been actually so tested.

Penalty for
misleading as
to testing.

(3.) Any person contravening this section shall be guilty of an indictable offence.

242. Whoever, knowing that any anchor or chain cable, or other chain or cable or gear, has been stamped or marked in contravention of this Act, sells it to any other person, or delivers it for use by any other person, shall be guilty of an indictable offence.

Misdemeanour
to sell falsely
marked anchor
or chain.
Ib. s. 16.
Amended by
No. 1, 1921,
s. 87.

243. Nothing in this Division of this Act shall affect any contracts made for the supply of any chain cables, anchors or gear for the use of the King's Navy or the Navy of the Commonwealth or of any British Possession.

Act not to
apply to
cables, anchors
or gear for
the Navy.
Ib. s. 18.
Substituted by
No. 1, 1921,
s. 88.

244. The expressions “anchor” and “chain cable” include any shackle attached to or intended to be used in connexion with the anchor or chain cable.

Definition.
Ib. s. 19.

245. All anchors and chain cables which have been tested proved and marked in accordance with the law of the United Kingdom shall be deemed to have been tested proved and marked in accordance with this Act.

Anchors and
chain cables
tested in the
United
Kingdom.

* * * * *

S. 246 repealed
by No. 1, 1921,
s. 89.

247. The regulations shall provide that ships of such class or classes as may be prescribed registered in Australia or engaged in the coasting trade shall be provided with an independent chain connexion to the rudder body ready for immediate adjustment in case of emergency.

Independent
chain
connexion to
rudder body.

DIVISION 10.—DANGEROUS GOODS.

Definition of dangerous goods.

248. In this Division "dangerous goods" means goods which have been declared by proclamation to be dangerous.

Shipping of dangerous goods.

M.S.A. 1894, s. 446.

Amended by No. 1, 1921, s. 90.

249. No person shall send by, and no person, not being the master or owner of the ship, shall carry in any ship any dangerous goods, unless—

- (a) the description of the goods, and the name and address of the sender and consignee, are distinctly marked on the outside of the package containing them; and
- (b) notice in writing (in addition to ordinary shipping documents) of the description of the goods has been given to the owner or master of the ship, at or before the time of carrying or sending the goods to be shipped.

Penalty: One hundred pounds.

Powers of owner or master as to dangerous goods.

Ib. s. 448.

250. The owner or master of any ship may—

- (a) refuse to carry any dangerous goods;
- (b) open and inspect any package suspected of containing dangerous goods; and
- (c) throw overboard any dangerous goods shipped without his knowledge,

and shall not be subject to any liability of any kind for so doing.

Right to decline to sail in ships carrying dangerous goods.

251. Any seaman or apprentice may decline to go to sea in a British ship carrying dangerous goods, and any seaman or apprentice who so declines, shall, if he so requests, be granted a discharge from the ship:

Provided that this section shall not apply where the carriage of the dangerous goods is in accordance with the regulations or express stipulations in the agreement.

Forfeiture of dangerous goods.

Ib. s. 449.

252. Any dangerous goods carried or shipped in contravention of this Act may be ordered by any Court having Admiralty jurisdiction to be forfeited to the King, and they shall be forfeited accordingly, notwithstanding that no offence has been committed by the owner of the goods, and that he has had no notice of the proceedings or is not before the Court, or that there is no evidence of ownership of the goods.

False description.

Ib. s. 447.

253. No person shall knowingly—

- (a) send by or carry in any ship any dangerous goods under a false description, or
- (b) falsely describe the sender of any dangerous goods.

Penalty: Five hundred pounds.

253A.—(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed in regard to the carriage of dangerous goods in ships, and in particular in relation to—

Regulations as to dangerous goods.
M.S.A. 1932, s. 28; Safety Conv. Art. 24.

(a) the classes of ships in which dangerous goods may be carried;

Inserted by No. 49, 1934, s. 38.

(b) the quantities of dangerous goods that may be carried from any port in Australia in such ships;

(c) the precautions to be observed in connexion with the loading and unloading of dangerous goods at any port in Australia; and

(d) the conditions as to packing and stowage of dangerous goods, and the ventilation of holds containing dangerous goods, loaded at any port in Australia.

(2.) No person shall send by, or carry in, any ship any dangerous goods which do not, or the packing, stowage or carriage of which does not, comply with such conditions as are prescribed.

Carriage of dangerous goods.

Penalty: Three hundred pounds.

254.—(1.) If, in the opinion of the Minister, the carriage of any particular cargo or goods in any ship would endanger her safety or interfere with the comfort of her passengers or crew, he may notify the master or owner accordingly, and the carriage in the ship of the cargo or goods specified in the notice shall be prohibited, and, after receiving such notice, the master shall not take the ship to sea and the owner shall not permit the ship to go to sea with the prohibited cargo or goods therein or thereon.

Minister may prohibit carriage of any cargo.
N.S.W. 1901, No. 60, s. 111.

Penalty: One hundred pounds.

(2.) The ship may be detained by any officer of Customs, or person authorized by the Minister, until the prohibited cargo or goods have been removed from the ship.

255. Before any dangerous goods are shipped in any ship, the shipper thereof shall give notice of intention to ship the goods in the manner and to the person prescribed.

Notice of intention to ship.

Penalty: One hundred pounds.

256. The number of live stock which may be conveyed in ships, and the conditions under which they may be carried, shall be as prescribed, and no owner or master shall—

Live stock.
Ib. s. 111.

(a) suffer or permit any number of live stock in excess of the prescribed number to be carried in his ship; or

(b) suffer or permit in or on his ship any contravention of the prescribed conditions relating to the carriage of live stock.

Penalty: One hundred pounds.

Carriage of
grain or coal.

Cf. N.S.W.
1901, No. 60,
ss. 452-456;
1906, s. 11.

Amended by
No. 1, 1921,
s. 91.

257.—(1.) No ballast or cargo, being grain rice paddy pulse seed nuts or nut kernels or any mixture or combination thereof or coal, shall be shipped or carried in any ship unless secured from shifting in the prescribed manner, and, in the case of coal, unless adequate provision is made for ventilation.

(2.) The owner and master of a ship, and any agent of the owner charged with the loading of the ship, shall take all reasonable measures for enforcing the observance of this section.

Penalty: Three hundred pounds.

Heading
amended by
No. 1, 1921,
s. 92.

Rules for
collisions,
lights, and
signals.

Ib. s. 418.

Amended by
No. 1, 1921,
s. 93 and by
No. 49, 1934,
s. 39.

Penalties.

Ib. s. 419.

Amended by
No. 1, 1921,
s. 93.

DIVISION 11.—LIGHTS, SIGNALS, AND SAILING REGULATIONS.

258.—(1.) The Governor-General may make regulations for the prevention of collisions^(a) and for prescribing what lights are to be carried and exhibited, and what fog signals are to be carried and used by ships.

(2.) No owner or master of a ship shall—

(a) in any way contravene the regulations for the prevention of collisions; or

(b) exhibit any lights or use any fog signals other than those prescribed by the regulations.

Penalty: One hundred pounds.

(3.) The imposition of a penalty under this section shall not relieve any person from any civil liability for any damage occasioned by any default.

(4.) If any contravention of the regulations is caused by the wilful default of the master or owner of the ship, he shall be guilty of an indictable offence.

(5.) In any proceedings against a master of a ship for a breach of the regulations for the prevention of collisions, the Court shall hear the case with the assistance of one or more assessors of nautical experience drawn from the list of assessors appointed under Part IX. of this Act.

(6.) Every assessor shall be paid, for his services, such fees and travelling expenses as are prescribed to be paid to assessors in attendance on a Court of Marine Inquiry.

Added by
No. 49, 1934,
s. 39.

Added by
No. 49, 1934,
s. 39.

Careful
navigation near
ice.

M.S. (Conv.)
Act 1914, s. 3.
Conv. Art. 10.

Inserted by
No. 1, 1921,
s. 94.

258A. The master of a ship registered in Australia, when ice is reported on or near his course, shall at night either proceed at a

(a) *H.* was convicted at the Central Police Court, Sydney, for a breach of regulations for the prevention of collisions at sea made under the *Navigation Act 1901* of New South Wales. The breach was also an offence against the *Navigation (Collision) Regulations*, made under this Act, which were similar in substance to the State Regulations but which, *inter alia*, provided a different penalty. Held by the High Court (Knox, C.J., Isaacs, Gavan Duffy and Starke, J.J.; Higgins, J., dissenting) that the State Regulations were inconsistent with this Act and that the conviction was therefore bad. *Hume v. Palmer*, (1926) 38 C.L.R. 441; 33 A.L.J.R. 66. Held by the High Court that by virtue of s. 735 of the *Merchant Shipping Act 1894* (Imperial) the *Navigation (Collision) Regulations* made under this Act were not rendered void by the *Colonial Laws Validity Act 1865* (Imperial) because of repugnancy to regulations made under the *Merchant Shipping Act 1894*. *Ibid.* This decision was later discussed and applied by the Supreme Court of New South Wales in determining a similar question concerning section 117 of the *Navigation Act 1901* (N.S.W.). *Butler and Another v. the Ship Millumumal*, (1930) 30 S.R. (N.S.W.) 182; 47 W.N. (N.S.W.) 66.

moderate speed or change his course so as to keep amply clear of the ice reported and of the area of danger.

Penalty: One hundred pounds.

258B.—(1.) No person on any ship registered in Australia or engaged in the coasting trade shall, when the ship is going ahead, give a helm or steering order containing the word "starboard" or "right", or any equivalent of "starboard" or "right", unless he intends that the head of the ship shall move to the right, or give a helm or steering order containing the word "port" or "left", or any equivalent of "port" or "left", unless he intends that the head of the ship shall move to the left.

Method of giving helm orders.

M.S.A. 1932, s. 29; Safety Conv. Art. 41.

Inserted by No. 49, 1934, s. 40.

Penalty: One hundred pounds.

(2.) This section shall apply to all ships registered in Australia (in whatever trade engaged) and to all ships (wherever registered) engaged in the coasting trade while within Commonwealth jurisdiction, whether upon the high seas or in waters used by ships engaged in trade or commerce with other countries or among the States.

Penalty: Twenty pounds.

259.—(1.) Where, by fault of two or more vessels, damage or loss is caused to one or more vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault: (a)

Rule as to division of loss.

1 & 2, Geo. V., c. 57, s. 1.

Provided that, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(2.) Nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed.

(3.) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law or as affecting the right of any person to limit his liability in manner provided by law.

(4.) For the purposes of this section, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

260.—(1.) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

Damages for personal injuries.

1b, s. 2.

(a) As to apportioning the degree of fault see *R. v. Owners of S.S. Argyllshire*, 1922 St. R. Qd. 186; 1922 Q.W.N. 31 and *Sydney Ferries Ltd. v. The Ship Tahiti*, (1930) 30 S.R. (N.S.W.) 369; 47 W.N. (N.S.W.) 130.

(2.) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of
contribution.
1 & 2 Geo. V.,
c. 57, s. 3.

261.—(1.) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which she was in fault, he may recover by way of contribution the amount of the excess from the owners of the other vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2.) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by sub-section (1.) of this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Jurisdiction in
cases of loss of
life or personal
injury.
Ib. s. 5.

262. Any enactment which confers on any Court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*.^(a)

Abolition of
statutory
presumption
of fault.
Ib. s. 4.

263. Notwithstanding anything contained in sub-section (4.) of section four hundred and nineteen of the Merchant Shipping Act, in case of a collision a vessel shall not be deemed to be in fault solely by reason of the fact that the vessel has infringed any of the regulations for the prevention of collisions at sea.^(b)

Master to
render
assistance.
M.S.A. 1894,
s. 422.

264.—(1.) In every case of collision between two vessels it shall be the duty of the person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any)—

- (a) to render to the other vessel, her master, crew, and passengers (if any) such assistance as is practicable and necessary in order to save them from danger caused by the collision; and

(a) As to the application of this section to admiralty jurisdiction conferred by the *Colonial Courts of Admiralty Act 1890* see per the High Court (Dixon, J.), *Nagring v. The "Regis"* (formerly *the Ship Rodney*), (1939) 61 C.L.R. 688; 45 A.L.R. 168; 13 A.L.J. 81.

(b) See footnote (a) to s. 258 (1), *supra*.

(b) to stay by the other vessel until he has ascertained that she has no need of further assistance; and

(c) to give to the master or person in charge of the other vessel the name of his own vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

Added by
No. 1, 1921,
s. 95.

(2.) If the master of any vessel fails without reasonable cause to comply with this section, he shall be guilty of an indictable offence.

(3.) Notwithstanding anything contained in sub-section (2.) of section four hundred and twenty-two of the Merchant Shipping Act, in case of a collision between two vessels, the collision shall not be deemed to have been caused by the wrongful act, neglect, or default of the master or person in charge of the vessel, who failed to comply with the provisions of that section, solely by reason of the fact that he has not complied with the provisions of that section.

Abolition of
statutory
presumption
of fault,
1 & 2 Geo. V.,
c. 57, s. 4.

265.—(1.) The master of a ship registered in Australia, on receiving on his ship a signal of distress by wireless telegraphy from any other ship, shall proceed with all speed to the assistance of the persons in distress, unless he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he is released under the provisions of sub-section (3.) or sub-section (4.) of this section.

Wireless
distress call—
Obligation to
render
assistance.
M.S.A. 1932,
s. 26; Safety
Conv. Art. 45.
Substituted by
No. 49, 1934,
s. 41.

(2.) The master of any ship in distress may, after consultation so far as possible with the masters of the ships which answer his signal of distress, requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master of any ship registered in Australia, which is so requisitioned, to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

(3.) A master shall be released from the obligation imposed by sub-section (1.) of this section as soon as he is informed by the master of the ship requisitioned, or where more ships than one are requisitioned, all the masters of the ships requisitioned, that he is or they are complying with the requisition.

(4.) A master shall be released from the obligation imposed by sub-section (1.) of this section and, if his ship has been requisitioned, from the obligation imposed by sub-section (2.) of this section, if he receives information that assistance is no longer required.

(5.) If the master of a ship registered in Australia fails to comply with the foregoing provisions of this section, he shall be guilty of an indictable offence.

(6.) If the master of a ship registered in Australia, on receiving on his ship a signal of distress by wireless telegraphy from another ship, is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary, to go to the assistance of the persons in distress, he shall forthwith send a message by wireless telegraphy

informing the master of that other ship accordingly, and enter in the official log-book his reasons for not going to the assistance of those persons.

Penalty, for an offence against this sub-section: One hundred pounds.

(7.) Nothing in this section shall affect the provisions of section three hundred and seventeen A of this Act, and compliance by the master of a ship with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

Liability of
charterers, &c.
*Maritime
Conventions Act*
1911, 1 & 2
Geo. V.,
c. 57, s. 9 (4).
Inserted by
No. 1, 1921,
s. 96.

265A. This Division shall apply to any persons (other than the owners) responsible for the fault of a vessel as though the expression "owners" included those persons; and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Division shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

DIVISION 12.—PRIVATE SIGNALS.

Owner may
register private
signals.
M.S.A. 1894,
s. 733.

266.—(1.) If a ship-owner desires to use any signals for the purpose of a private code, he may register them with the Minister, who shall give public notice of such registration.

(2.) The Minister may refuse to register any signal which in his opinion cannot easily be distinguished from other signals.

Sub-sec. 3.
omitted by
No. 1, 1921,
s. 97.

* * * * *

(4.) The Minister may if he think fit cancel the registration of any such signal at any time.

Offences as to
private signals.

267. No person shall—

- (a) use any signal so registered, except by the authority of the person in whose name it is registered; or
- (b) use any signal the registration of which has been cancelled by the Minister.

Penalty: Fifty pounds.

Heading
amended by
No. 1, 1921,
s. 98.

DIVISION 13.—REPORT OF ACCIDENTS AND OF DANGERS TO NAVIGATION.

Accidents to
be reported.
N.S.W. 1901,
No. 60, s. 50.
M.S.A. 1894,
s. 425.

268. The owner or master of any ship which, during her voyage to any port in Australia, or when within the limits of Australia or the territorial waters thereof—

- (a) has sustained or caused any accident occasioning loss of life or any serious injury to any person; or
- (b) has received any damage likely to render her unseaworthy or her boilers or machinery inefficient; or

- (c) has been in any position of great peril either from the action of some other ship or from danger of wreck or collision; or
- (d) has been stranded or wrecked; or
- (e) having left any port in Australia has put back to that port; or
- (f) has fouled or done any damage to any light-ship, buoy, beacon, or sea mark,

shall report the same within twenty-four hours after the happening of the event, or after her next arrival at any port in Australia, to the person and in the form prescribed.

Penalty: Fifty pounds.

269. If the owner or agent of any ship registered in Australia, or of any British ship whose last known port of departure is in Australia, has reason, owing to any circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as conveniently may be, send to the Minister notice in writing of the loss and of the probable occasion thereof.

Owner to notify loss.
N.S.W. 1901,
No. 60, s. 51.
M.S.A. 1894,
s. 426.

Penalty: Fifty pounds.

269A.—(1.) If the master of a ship registered in Australia or engaged in the coasting trade meets with, or is informed of, any dangerous ice or dangerous derelict or any other imminent and serious danger to navigation on or near his course, he shall—

Report of dangers to navigation.
M.S.A. 1932,
s. 24.
Safety Conv.
Art. 34.

- (a) if the ship is fitted with a wireless telegraph installation, send out the prescribed safety signal, followed by a message conveying the required information, or, if the ship is not so fitted, communicate the information, by any other means of communication at his disposal, to ships in the vicinity; and
- (b) make a report to shore, as soon as possible, to the person and in the manner prescribed.

Inserted by
No. 1, 1921,
s. 99.
Sub-sec. (1.)
amended by
No. 49, 1934,
s. 42.

Penalty: Fifty pounds.

(2.) Every person in charge of a wireless telegraph station which is within the jurisdiction of the Commonwealth (including a station in a territory under the authority of the Commonwealth), or which is established or installed under licence granted under the *Wireless Telegraphy Act* 1905-1919, shall, on receiving the prescribed safety signal, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the Minister, shall transmit the information in the manner directed by him.

Amended by
No. 49, 1934,
s. 42.

(3.) Compliance with the provisions of sub-section (2.) of this section shall be deemed to be a condition of every licence granted under the *Wireless Telegraphy Act* 1905-1919.

(4.) Nothing in this section shall be understood as interfering with the transmission of any signal of distress by wireless telegraphy.

Amended by
No. 49, 1934,
s. 42.

(5.) The transmission, in pursuance of this section, of messages respecting ice, derelicts or other dangers to navigation shall be free of cost to the ships concerned.

Added by
No. 49, 1934,
s. 42.

(6.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for the carrying out or giving effect to the provisions of this section and of Articles 34 and 44 (so far as the last-mentioned refers to safety messages) of the Safety Convention and of Regulation XLVI. of the Regulations annexed thereto, relating to the report of dangers to navigation.

PART V.—PASSENGERS.

Regulations as
to passenger
trade.

Amended by
No. 1, 1921,
s. 100.

270. The Regulations may, in regard to ships registered in Australia or engaged in the coasting trade, prescribe any matters or things necessary or convenient for regulating the carriage of passengers generally, and in particular in regard to—

- (a) equipment;
- (b) conveyance of stock;
- (c) number of passengers to be carried and their accommodation;
- (d) provisions, water, medical and surgical stores, and medical inspection;
- (e) medical staff and attendants;
- (f) sanitary matters;
- (g) discipline;
- (h) sale of spirits;
- (i) passenger lists;
- (j) cargo to be carried and the method of stowing cargo;
- (k) the number of crew.

Hospital
accommoda-
tion.

271.—(1.) Every—

- (a) Foreign-going ship trading regularly with the Commonwealth; or
- (b) Australian-trade ship on a voyage between consecutive ports which exceeds a prescribed distance

and having one hundred persons or more on board, shall be provided with hospital accommodation of such a character, and so placed and arranged as to afford proper means of isolation for cases of communicable disease which may arise during the voyage, and for any persons attending to such cases.

(2.) The accommodation shall include the necessary lavatory and sanitary accommodation and such other accommodation as is prescribed.

(3.) The hospital shall, wherever practicable, be placed on the top deck aft or on the boat deck as far aft as practicable.

(4.) The master or owner of a vessel who fails to comply with this section and who suffers his vessel to enter any port or place in Australia shall be guilty of an offence. Amended by No. 1, 1921, s. 101.

Penalty (on master or owner): One hundred pounds.

272. If—

(a) any ship carrying passengers is wrecked, or is disabled and unable to proceed on her voyage within a reasonable time, whilst on her voyage from one port to another in Australia; or Provision for passengers wrecked. Cf. M.S.A. 1894, s. 331.

(b) any ship carrying passengers coming from any port outside Australia is wrecked on the coast of Australia,

the owner or master shall cause the passengers to be taken on to their destination, and shall defray their maintenance until so taken on:

Provided that, if any passenger is tendered and accepts the return of the passage money paid by him, such liability shall cease.

273. A policy of assurance effected in respect of any passage, or of any passage or compensation money by any person by this Part of this Act made liable, in the events aforesaid, to provide such passage or to pay such money, or in respect of any other risk under this Part of this Act, shall not be invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance. Assurances in connexion with passages. Ib. s. 335.

274.—(1.) In the absence of any agreement to the contrary, the owner of a ship shall be the person ultimately responsible, as between himself and the other persons by this Part of this Act made liable, in respect of any default in complying with any requirement thereof. Responsibility of owner to other persons. Ib. s. 359.

(2.) If any person so made liable pays any money by this Part of this Act made payable to or on behalf of a passenger, or is mulct in a penalty for an offence arising out of a failure on the part of the owner to comply with the requirements of this Part of this Act, he shall be entitled, in the absence of any agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs. Amended by No. 1, 1921, s. 102.

275. Except where otherwise expressly provided, or unless from unavoidable necessity, no passenger shall, without his consent, be landed from any ship at any port other than that at which he has contracted to land. Passenger landed elsewhere than at destination. Cf. ib. s. 330.

Penalty (on master or owner): Fifty pounds.

276. Nothing in this Part of this Act shall take away or abridge any right of action which may accrue to a passenger in any ship, or to any other person, in respect of the breach or non-performance of any contract made between or on behalf of the passenger or other person and the master, charterer, or owner of the ship, or his agent. Right of action by passenger. Ib. s. 340.

Penalty for
using fraud.
Cf. M.S.A. 1894,
s. 353.

277. No person shall by fraud, or false representation or pretence, induce any person to engage a passage in any ship.

Penalty: Twenty pounds.

Injuring ship
or machinery.
Ib. s. 287.

278.—(1.) No passenger or other person on board any ship shall wilfully do anything to obstruct or injure any part of the machinery or equipment of the ship, or to obstruct or molest the master or crew in the execution of their duty.

(2.) The master or other officer of any ship, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence against this section, and whose name and address are unknown to the master or officer, and convey the offender with all convenient despatch before a Court of summary jurisdiction to be dealt with according to law.

(3.) If any person commits an offence against sub-section (1.) of this section, he shall, on demand by any person in the employ of the owner of the ship, give his true name and address.

Penalty: Twenty pounds.

Power to
exclude
disorderly or
diseased
person.

Cf. ib. s. 288.

Amended by
No. 1, 1921,
s. 103.

279.—(1.) The master of any ship may refuse to receive on board thereof any person who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board; and, if any such person is on board, the master may after tendering to the person the amount of his fare (if he has paid it) less a proper deduction in respect of the distance (if any) he has been conveyed from the port of embarkation, put him ashore at any one of the principal ports in Australia (as defined in the regulations).

(2.) The master of any ship may refuse to receive on board thereof any person who appears to be suffering from any disease likely to endanger the health or safety of those on board.

Taking passage
for lunatic, or
sending lunatic
on board.

280.—(1.) No person shall engage or pay for a passage, on any ship, for a lunatic, or bring or send a lunatic on board ship as a passenger, without informing the owner, master, or agent of the ship that the person is a lunatic.

Penalty: Fifty pounds.

(2.) For the purposes of this section, "lunatic" includes any person of unsound mind, and any person who, to the knowledge of the person charged with a contravention of this section, is liable to become a lunatic or person of unsound mind.

Offences on
ships by
disorderly
persons.

Ib. s. 287.
N.Z. 1908,
s. 168.

Amended by
No. 1, 1921,
s. 104.

281. No person shall—

(a) enter a ship after being refused admission thereto by the owner, or any person in his employ, on account of his being drunk, or disorderly, or on account of his suffering from disease, or for other proper reason, and after the

amount of his fare (if he has paid it) has been tendered to him, or

- (*h*) fail to quit a ship upon being ordered by the master in pursuance of section two hundred and seventy-nine of this Act to do so, and upon tender of his fare, or part thereof, as provided in that section, or

Substituted by
No. 1, 1921,
s. 104.

- (*c*) molest any passenger on a ship.

Penalty: Five pounds.

282.—(1.) No person shall—

- (*a*) enter a ship after having been refused admission thereto by the owner, or any person in his employ, on account of the ship being full, and after the amount of his fare (if he has paid it) has been tendered to him; or

Offences by
passengers.
M.S.A. 1894,
s. 287.
N.Z. 1908,
s. 168.

- (*h*) fail to quit a ship forthwith, after he has been ordered to do so by master or any officer, on account of the ship being full, before she has left the place at which he went on board and after having the amount of his fare (if he has paid it) returned or tendered to him; or

- (*c*) travel in a ship without first paying his fare, and with intent to avoid payment thereof; or

- (*d*) having paid his fare for a certain distance, knowingly proceed in the ship beyond that distance without first paying the additional fare for the additional distance, and with intent to avoid payment thereof; or

- (*e*) knowingly and wilfully fail to quit the ship at the place to which he has paid his fare; or

- (*f*) fail, when requested by an officer of the ship to do so, either to pay his fare or exhibit his ticket or receipt, if any, showing the payment of his fare; or

- (*g*) not being a passenger or a member of the crew, fail to quit any ship when requested by any officer thereof.

Penalty: Five pounds.

(2.) The penalty under this section shall not prejudice the recovery of any fare payable by the offender.

283.—(1.) The master of every ship, whether British or foreign, carrying any passenger from any place in Australia to any place out of Australia or from any place out of Australia to any place in Australia, shall furnish, to such person and in such manner as is prescribed, a true return in the prescribed form and giving the prescribed particulars in regard to each passenger.

Returns by
masters.
CF. M.S.A. 1906,
s. 76.

Penalty: Twenty pounds.

(2.) A passenger shall not refuse to furnish the master of the ship with the information required by him to make the return, or make to the master any false statement in connexion with the return.

Penalty: Twenty pounds.

PART VI.—THE COASTING TRADE.

Application
of Part.

284. This Part of this Act shall, except where otherwise expressed, apply to all ships (whether British or foreign).

Commence-
ment of
Part.

285. This Part of this Act shall come into operation on a date to be fixed by proclamation, but shall not come into operation on the date fixed for the commencement of this Act unless the proclamation fixing that date expressly declares that this Part is to come into operation on that date.^(a)

Permits to
unlicensed
ships.
Substituted by
No. 1, 1921,
s. 105.

286.—(1.) Where it can be shown to the satisfaction of the Minister, in regard to the coasting trade with any port or between any ports in the Commonwealth or in the Territories under the authority of the Commonwealth—

(a) that no licensed ship is available for the service; or

(b) that the service as carried out by a licensed ship or ships is inadequate to the needs of such port or ports,

and the Minister is satisfied that it is desirable in the public interest that unlicensed ships be allowed to engage in that trade, he may grant permits to unlicensed British ships to do so, either unconditionally or subject to such conditions as he thinks fit to impose.

(2.) The carriage, by the ship named in any such permit, of passengers or cargo to or from any port, or between any ports, specified in the permit shall not be deemed engaging in the coasting trade.

(3.) A permit issued under this section may be for a single voyage only, or may be a continuing permit.

(4.) A continuing permit may be cancelled by the Minister upon not less than six months' notice to the master, owner or agent of the ship of his intention to cancel it.

(5.) The Minister shall, within fourteen days of the granting of any permit under this section, or the notice of intention to cancel any such permit, notify in the *Gazette* the issue of the permit, or the giving of the notice, as the case may be, with particulars thereof.

Added by
No. 8, 1926,
s. 3.

(6.) Where it is shown to the satisfaction of the Governor-General that the tourist traffic between any ports in the Commonwealth or in the Territories under the authority of the Commonwealth is being injured or retarded, and the Governor-General is satisfied that it is desirable that unlicensed ships be allowed to engage in the trade, he may, by notice published in the *Gazette*, grant permission to unlicensed British ships of such size and speed as are specified in the notice to engage in the carriage of passengers between those ports subject to such conditions (if any) and for such period as are set out in the notice.

^(a) The Part was proclaimed to commence on 1st July, 1921. See *Gazette*, 1921, p. 489.

(7.) The carriage of passengers between those ports, by a British ship of the description specified in any such notice and under the conditions (if any), and during the period, set out in the notice, shall not be deemed engaging in the coasting trade.

Added by
No. 8, 1928,
s. 3.

287.—(1.) A ship shall not engage in the coasting trade which is receiving, or which under any arrangement is to receive, or which in the immediately preceding twelve months has been receiving, directly or indirectly, any subsidy or bonus from any Government other than that of a part of the British Dominions.

Ships in receipt
of foreign
subsidies.

Penalty (on master, owner, or agent): Five hundred pounds.

(2.) Any payment for services *bonâ fide* rendered in the carriage of mails, passengers, or goods, at rates based solely on the actual commercial value of these services, shall not be taken to be a subsidy within the meaning of this section.

288.^(a)—(1.) No ship shall engage in the coasting trade unless licensed to do so.

Licensing of
ships to engage
in coasting
trade.

Penalty (on master, owner, or agent): Five hundred pounds.

Cf. U.S.A.,
R.S., 4311.
Cf. Canada,
1906, ss. 953,
960.

(2.) Licences to ships to engage in the coasting trade shall be for such period, not exceeding three years, as is prescribed, and may be granted as prescribed.

(3.) Every licence shall be issued subject to compliance on the part of the ship, her master, owner, and agent, during such time as she is engaged in the coasting trade, with the following conditions:—

Amended by
No. 1, 1921,
s. 106.

- (a) That the seamen employed on the ship shall be paid wages in accordance with this Part of this Act; and
- (b) That, in the case of a foreign ship, she shall be provided with the same number of officers and seamen, and with the same accommodation for them, as would be required if she were a British ship registered in Australia or engaged in the coasting trade;
- (c) That where a library is provided for the use of passengers, every seaman and apprentice shall—where no library for their special use is provided—be entitled to obtain books therefrom under the same conditions as may regulate the issue of such books to the passengers.

Penalty (on owner): Ten pounds.

(4.) Any breach of the above conditions shall be a contravention of this Act.

(5.) Before granting any licence, the Minister may require security to be given to his satisfaction by the master, owner, charterer or agent for compliance with the conditions of the licence and the requirements of this Part of this Act.

Amended by
No. 1, 1921,
s. 106.

(a) See footnote (a) to s. 7, *supra*.

(6.) In addition to, or in lieu of, any penalty otherwise provided, the Governor-General may cancel any licence if he is satisfied that a breach of any of the above conditions has been committed.

(7.) No licence shall be cancelled unless an opportunity has been given to the master, owner, or agent of the ship to show cause against cancellation.

Payment of
Australian
rates of wages.
Cf. N.Z. 1908,
s. 75 (1.).

289.—(1.) Every seaman employed on a ship engaged in any part of the coasting trade shall, subject to any lawful deductions, be entitled to and shall be paid, for the period during which the ship is so engaged, wages at the current rates ruling in Australia for seamen employed in that part of the coasting trade, and may sue for and recover those wages.

(2.) In the case of ships trading to places beyond Australia, the wages to which a seaman is entitled under this section shall be paid before the departure of the ship from Australia, and the master shall produce to the satisfaction of the Collector at the last port of departure in Australia evidence of their payment.

Added by
No. 1, 1921,
s. 107.

(3.) Where a British ship, trading to places beyond Australia, is engaged upon a voyage to terminate in any part of the British Dominions, the Minister may require and take security, to his satisfaction, from the owner, master, or agent of the ship that the seamen employed on the ship during the period of her engagement in the coasting trade will be paid, on their discharge, the wages to which they are or may become entitled under this Part of this Act, and that there will be produced, within a specified time after the completion of the voyage, to the person or authority named in the security, satisfactory evidence that such payment has been made.

Added by
No. 1, 1921,
s. 107.

(4.) Where security in accordance with the last-preceding subsection is taken by the Minister in respect of any ship, the ship and her master shall be exempt from the requirements of sub-section (2.) of this section.

Indorsement of
rate of wages
on agreement.

290.—(1.) If the seamen employed on any British ship were not engaged in Australia, the master shall, before the ship engages in the coasting trade, make and sign, before a superintendent, an indorsement or memorandum on the agreement specifying the wages to be paid to the seamen whilst the ship engages in the coasting trade, and that indorsement or memorandum, when countersigned by a superintendent, shall have effect as an agreement between the master and those seamen.

(2.) Where under the original agreement a seaman is entitled to be paid at a higher rate of wages than the rate ruling in Australia for seamen in a corresponding rating, nothing in this section shall affect his right to such higher rate during the engagement of the ship in the coasting trade.

291.—(1.) No provision in any agreement, whether made in or out of Australia, shall be taken to limit or prejudice the rights of any seaman under this Part of this Act. Seamen's rights not affected by agreement.

(2.) Where, by reason of a seaman's being entitled to a higher rate of wages while the ship on which he serves is engaged in the coasting trade—

(a) any deduction is made from his wages earned out of Australia; or

(b) he is paid a lesser rate of wages outside Australia than is usual in voyages of a similar nature,

it shall be deemed that the seaman is not paid wages in accordance with this Part of this Act while the ship is so engaged in the coasting trade.

292. An award of the Commonwealth Court of Conciliation and Arbitration which is binding on or applicable to seamen employed in the coasting trade, or a certificate of a Registrar or Deputy Registrar of that Court, certifying what are the rates of wages ruling in Australia for seamen employed in any part of the coasting trade, shall be *prima facie* evidence of those rates of wages. Evidence of rates of wages.

293. ^(a) The master, owners, and agents of any ship engaging in the coasting trade, shall be jointly and severally responsible for compliance with this Part of this Act by or in respect of the ship, and shall be liable to any pecuniary penalty provided by this Act for any breach or contravention of this Part of this Act, by or in respect of the ship, and where no penalty is provided shall be liable in respect of any such breach or contravention to a penalty of not more than One hundred pounds, and the ship in respect of which the offence is committed may be disqualified by the Governor-General from engaging in the coasting trade. Responsibility of master, owner, and agent for compliance with Act.

293A.—(1.) The Governor-General may, if at any time he consider it expedient in the public interest to do so, by Proclamation suspend, for such time as is specified in the Proclamation, the operation of any of the foregoing provisions of this Part, as regards any ship or class of ships, and either unconditionally or subject to such conditions (if any) as he thinks fit to impose. Power to suspend provisions as to coasting trade. Added by No. 8, 1925, s. 3.

(2.) A Proclamation issued in pursuance of the preceding subsection may provide for suspension for the period specified in the Proclamation, or may provide for suspension until the issue of a Proclamation revoking the prior Proclamation.

PART VII.—WRECKS AND SALVAGE.

Division 1.—Interpretation, ss. 294–295.

Division 2.—Wreck, ss. 296–314.

Division 3.—Salvage, ss. 315–317A.

Amended by No. 1, 1921, s. 108.

(a) See footnote (a) to s. 7, *supra*.

Division 4.—Procedure in Salvage, ss. 318-327.

Division 5.—Jurisdiction in Salvage, s. 328.

Division 6.—Removal of Wreck, s. 329.

DIVISION 1.—INTERPRETATION.

Interpretation.
Cf. M.S.A. 1894,
s. 510.

294. In this Part of this Act, unless the context otherwise requires—

“Wreck” includes jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water, and any articles or goods of whatever kind which belonged to or came from any ship wrecked, stranded, or in distress, or any portion of the hull machinery or equipment of any such ship:

“Salvage” includes all expenses properly incurred by the salvor in the performance of salvage services:

“Receiver” means a receiver of wreck duly appointed by the Minister as such in any assigned district.

Powers of
Customs
reserved.
Cf. *ib.* s. 534.

295.—The operation of this Part of this Act shall in no way derogate from or interfere with the powers of the Customs conferred by any Act.

DIVISION 2.—WRECK.

Ships in Distress.

Receiver where
ship in distress.
Ib. s. 511.

296.—(1.) Where any ship is wrecked, stranded, or in distress at any place on or near the coasts of Australia or any tidal water within Australia, the receiver for the district shall proceed thither, and upon arrival shall take the command of all persons present, and give such directions to each person as he thinks fit for the preservation of the ship, and of the lives of the persons belonging to the ship (in this Part of this Act referred to as shipwrecked persons), and of the wreck:

Provided that the receiver shall not interfere between the master and the crew of the ship in reference to the management thereof, unless requested to do so by the master.

(2.) No person shall wilfully disobey the directions of the receiver.

Penalty: Fifty pounds.

Powers of
receiver to
require
assistance.
Ib. s. 512.

297.—(1.) The receiver may, with a view to the preservation of shipwrecked persons or of the wreck—

- (a) require such persons as he thinks necessary to assist him;
- (b) require the master of any ship near at hand to give such aid with his men or ship as is in his power;
- (c) require the use of any vehicle or draught animal that is near at hand.

(2.) No person shall refuse without reasonable cause to comply with any such requisition.

Penalty: One hundred pounds.

298.—(1.) Whenever a ship is wrecked, stranded, or in distress, all persons may, for the purpose of rendering assistance to the ship, or of saving the lives of the shipwrecked persons, or of saving the wreck, unless there is some public road equally convenient, freely pass and repass, either with or without vehicles or draught animals, over any lands, but doing as little damage as possible, and may also, on the like condition, deposit any wreck on any lands.

Power to pass over private land to assist at wreck.
M.S.A. 1894, s. 513.

(2.) Any damage occasioned by the exercise of the rights given by this section shall be a charge on the wreck in respect of or by which the damage is occasioned, and the amount of compensation payable for such damage shall be determined and be recoverable in the same manner as if it were salvage.

Compensation for damage.

(3.) No person shall—

- (a) impede any person in the exercise of the rights given by this section;
- (b) impede the deposit of any wreck on the land; or
- (c) prevent any wreck from remaining so deposited until it can be removed to a safe place.

Offences in regard to salvaged goods.

Penalty: One hundred pounds.

299.—(1.) Whenever a ship is wrecked, stranded, or in distress and any person plunders, creates disorder, or obstructs the preservation of the ship, or of the shipwrecked persons or of the wreck, the receiver may cause that person to be apprehended.

Power of receiver to suppress plunder and disorder by force.
Ib. s. 514.

(2.) The receiver may use force for the suppression of any such plundering, disorder, or obstruction, and may command all persons present to assist him in so doing.

(3.) If any person is killed, maimed, or hurt, by reason of his resisting the receiver or any person acting under his orders in the execution of his duty, neither of the latter shall be liable to any punishment or to pay any damages by reason of the person being so killed, maimed, or hurt.

300.—(1.) Where a receiver is not present, the following persons in succession (each in the absence of the other, in the order in which they are named) namely, any collector, officer of police, justice, or commissioned officer in the naval or military service of the King or the Commonwealth, may do anything authorized to be done by the receiver.

Exercise of powers when receiver absent.
Ib. s. 516.

(2.) Any person so acting for a receiver shall with respect to any wreck be considered as the agent of the receiver, and shall place the wreck in his custody, but shall not be deprived, by reason of his so acting, of any right to salvage to which he would otherwise be entitled.

Examination
on oath as to
wrecks.
M.S.A. 1894,
s. 517.

301.—(1.) Where any ship is or has been wrecked, stranded, or in distress within the limits of Australia, a receiver, or in the absence of the receiver a collector or a justice, shall examine on oath any person who is able to give any account thereof as to the following matters (that is to say):—

- (a) The name and description of the ship;
- (b) The name of the master and of the owners;
- (c) The names of the owners of the cargo;
- (d) The ports from and to which the ship was bound;
- (e) The occasion of the wrecking, stranding, or distress of the ship;
- (f) The services rendered; and
- (g) Such other matters or circumstances relating to the ship, or to the cargo on board, as the person holding the examination thinks necessary.

(2.) The person holding the examination shall take the evidence down in writing, and shall send one copy thereof to the Minister and another to the State Collector of Customs, who shall place it in some conspicuous place for inspection.

(3.) The person holding the examination shall, for the purposes thereof, have all the powers of the Minister under this Act.

Dealing with Wreck.

Finding or
taking
possession
of wreck.

Cf. *ib.*, s. 518;
1906, s. 72.

302. Where any person—

- (a) finds or takes possession of any wreck within the limits of Australia, or
- (b) having found or taken into possession any wreck outside Australia, subsequently brings it within the limits of Australia,

he shall give notice to the receiver, stating that he has found or taken possession of the wreck, and describing the marks by which it may be recognised.

Penalty: One hundred pounds.

Penalty for
retaining
possession of
wreck.

M.S.A. 1894,
s. 519.

303.—(1.) No person, other than the owner thereof, shall keep possession of any wreck, or fail on demand to deliver it to the receiver or to any person authorized by him to demand it.

Penalty: One hundred pounds.

(2.) The receiver, or any person authorized by him, may take any such wreck by force from any person refusing to deliver it.

Notice to be
posted in
Customs-house.
Id. s. 520.

304. Where a receiver takes possession of any wreck, he shall within forty-eight hours cause to be posted in the nearest Customs-house a description thereof, and of any distinguishing marks.

305.—(1.) The owner of any wreck in the possession of the receiver, upon establishing his claim thereto to the satisfaction of the receiver within one year from the time at which the wreck came into his possession, shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

Claim of owner
to wreck.
M.S.A. 1894,
s. 521.

(2.) Where any wreck from a foreign ship, which has been wrecked on or near the coasts of Australia, is found on or near those coasts, or is brought into any port in Australia, the consul of the country to which the ship or in the case of cargo to which the owner thereof belongs, shall, in the absence of the owner and of any agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the goods.

Wreck from
foreign ship.

306.—(1.) A receiver may at any time sell any wreck in his custody, if in his opinion it is—

Sale of wreck
by receiver.
Cf. *ib.*, s. 522.

- (a) under the value of Five pounds; or
- (b) of such condition or nature that it should not be kept; or
- (c) not of sufficient value to pay for keeping.

(2.) The proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold.

307. In regard to expenses connected with any wreck, the following provisions shall apply:—

Expenses
connected with
wreck.
Ib. s. 567.

- (a) All expenses properly incurred by any receiver in the execution of his duty shall be recoverable in a summary manner from the owner of the ship or wreck in respect of which any services were performed;
- (b) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses, have the same rights and remedies in respect thereof as a salvor has in respect of salvage;
- (c) If any dispute arises in regard to any such expenses, it shall be determined by the Minister, whose decision shall be final;
- (d) All moneys received by any receiver in respect of his services as such shall be paid into the Consolidated Revenue Fund.

Unclaimed Wreck.

308. The Commonwealth shall be entitled to all unclaimed wreck found in Australia.

Right of
Commonwealth.
Ib. s. 523.

309. Where no owner establishes a claim to any wreck, found in or brought into Australia and in the possession of a receiver, within one year after it came into his possession, the receiver shall sell it and shall pay the proceeds of the sale (after deducting therefrom the

Sale of
unclaimed
wreck by
receiver.
Ib. s. 525.

expenses of the sale and any other expenses incurred by him, and paying thereout to the salvors such amount of salvage as the Minister directs or as is prescribed) to the Consolidated Revenue Fund.

Discharge of
receiver from
liability.
Cf. M.S.A.
1894, s. 527.

310. Upon compliance with the provisions of this Part of this Act the receiver shall be discharged from all liability, but such discharge shall not prejudice or affect any question which may be raised by third parties concerning the right or title to any wreck.

Disputes as to
title to wreck.
Ib. s. 526.

311.—(1.) Where a dispute arises as to the title to any wreck, it may be determined in the same manner as if it were a dispute as to salvage.

(2.) If any party to the dispute is unwilling to have it so determined, he may proceed, in any Court of competent jurisdiction, to establish his title.

Offences in respect of Wreck.

Taking wreck
out of
Australia.
Ib. s. 535.
N.Z. 1908,
s. 266.

312. Every person who takes into any place out of Australia any ship stranded, derelict, or otherwise in distress, or any wreck found on or near the coasts of Australia, and there sells it, shall be guilty of an indictable offence.

Boarding ship
in distress
without
authority.
M.S.A. 1894,
s. 536 (1.).
N.Z. 1908,
s. 267.

313.—(1.) No person shall, without the leave of the master or the authority of this or any Act, board any ship which is wrecked, stranded, or in distress.

Penalty: Fifty pounds.

(2.) The master of the ship may repel by force any person acting in contravention of this section.

Offences as to
wreck.
M.S.A. 1894,
s. 536.
Cf. N.Z. 1908,
s. 268.

314. No person shall—

- (a) impede the saving of any ship stranded or in distress, or of any wreck;
- (b) secrete any wreck, or deface or obliterate any marks thereon; or
- (c) wrongfully remove any wreck.

Penalty: One hundred pounds, in addition to any other punishment to which the offender is liable by law.

DIVISION 3.—SALVAGE.

Liability of
owner for
salvage.
M.S.A. 1894,
s. 544.

315.—(1.) Where services are rendered within Australian waters in saving life from any ship, or elsewhere in saving life from any British ship, there shall be payable to the salvor, by the owner of the ship, cargo, or equipment saved, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

Priority of
salvage in
respect to life.

(2.) Salvage in respect of the preservation of life, when payable by the owners of the ship, shall be payable in priority to all other claims for salvage.

316. When it is made to appear to the Governor-General that the Government of any foreign country is willing that salvage should be awarded by any Courts in Australia for services rendered in saving life from ships belonging to that country when the ship is beyond the limits of British jurisdiction, he may by order direct that the provisions of this Part of this Act with reference to salvage of life shall, subject to any conditions and qualifications, apply, and those provisions shall accordingly apply to those services as if they were rendered in saving life from ships within British jurisdiction.

Salvage for saving life beyond limits of British jurisdiction.
M.S.A. 1894, s. 545.

317. Where any ship is wrecked stranded or in distress at any place on or near the coasts of Australia or any tidal water within Australia, and services are rendered by any person in assisting that ship or saving any wreck, there shall be payable to the salvor, by the owner of the ship or wreck, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

Persons assisting entitled to salvage.
Ib. s. 546.

317A.—(1.) The master of a ship shall, so far as he can do so without serious danger to his ship, her crew and passengers (if any), render assistance to any person, even if such person be a subject of a foreign State at war with the King, who is found at sea in danger of being lost.

Assistance to persons in danger at sea.
Maritime Conventions Act, 1911, s. 6.
N.Z. 1912, s. 7.

(2.) The master of a vessel who fails to comply with the provisions of this section shall be guilty of an indictable offence.

Inserted by
No. 1, 1921,
s. 109.

(3.) Compliance by the master of a vessel with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

DIVISION 4.—PROCEDURE IN SALVAGE.

318.—(1.) All disputes as to the amount of salvage, whether of life or property, arising between the salvor and the owners of any ship or wreck, shall, if not settled otherwise, be determined summarily in the following cases, namely:—

Summary determination of disputes as to salvage.
M.S.A. 1894, s. 547.

- (a) In any case where the parties to the dispute consent;
- (b) In any case where the value of the property saved does not exceed One thousand pounds;
- (c) Where the amount claimed does not exceed Three hundred pounds.

(2.) Subject as aforesaid, disputes as to the salvage may be determined by the Supreme Court of a State, but if the claimant does not recover in any such Court more than Three hundred pounds, he shall only be entitled to recover such costs as the Court allows, such costs not to exceed reasonable costs on the scale usually allowed in any inferior Court in which the case might have been brought, unless the Court certifies that the case is a fit one to be tried otherwise than summarily.

In the Supreme Court.

(3.) Disputes relating to salvage to be determined summarily may

be so determined by a County Court, District Court, or Local Court of a State.

(4.) Disputes relating to salvage may be determined on the application of the salvor or of the owner of the property saved, or of their respective agents.

Court in which disputes to be determined.

M.S.A., 1894, s. 548.

319.—(1.) Disputes as to salvage which are to be determined summarily shall—

- (a) where the dispute relates to the salvage of wreck—be referred to a Court having jurisdiction at or near the place where the wreck is found;
- (b) where the dispute relates to salvage in the case of services rendered to any ship, or to the cargo or equipment thereof, or in saving life therefrom—be referred to a Court having jurisdiction at or near the place where the ship is lying or at or near the port in Australia into which the ship is first brought, after the occurrence by reason whereof the claim of salvage arises.

Power to call in assessors.

Amended by No. 1, 1921, s. 110.

(2.) Any Court to which a dispute as to salvage is referred for summary determination may, for the purpose of determining the dispute, call in to its assistance any skilled person as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor such sum as the Minister directs.

Appeal to Supreme Court.

Cf. *ib.*, s. 549.

320.—(1.) Where a dispute relating to salvage has been determined summarily in manner provided by this Act, any party aggrieved by the decision may, if the sum in dispute exceeds One hundred pounds, appeal therefrom to the Supreme Court of the State.

(2.) The appellant shall, within thirty days of the decision of the Court which has determined the matter summarily, take such proceedings as according to the practice of the Supreme Court of the State are necessary for the institution of an appeal.

Appointment of valuer.

ib. s. 551.

321.—(1.) Where any dispute as to salvage arises, the receiver of the district may, on the application of either party, appoint a valuer to value the property in respect of which the claim is made. The receiver shall give copies of the valuation to both parties.

(2.) A copy of the valuation, purporting to be signed by the valuer, and to be certified as a true copy by the receiver, shall be admissible in evidence in any proceeding.

(3.) There shall be paid to the valuer such fee as the Minister directs.

Detention of ship or wreck till salvage paid.

ib. s. 552.

322.—(1.) Where salvage is due to any person under this Act, the receiver shall—

- (a) if the salvage is due in respect of services rendered in assisting any ship, or in saving life therefrom, or in

saving the cargo or equipment thereof—detain the ship and cargo or equipment; and

- (b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed—detain the wreck.

(2.) The receiver shall detain the ship and the cargo, or the wreck (hereinafter referred to as "detained property") until payment is made for salvage, or process is issued for the arrest or detention thereof by some competent Court.

(3.) A receiver may release any detained property if security is given to his satisfaction.

(4.) Any security given for salvage in pursuance of this section may be enforced by any Federal or State Court of competent jurisdiction in the same manner as if it had been given in that Court.

323.—(1.) The receiver may sell any detained property if the persons liable to pay the salvage, in respect of which the property is detained, are aware of the detention, in the following cases, namely:—

Sale of detained property by receiver.
Cf. M.S.A.
1894, s. 553.

- (a) Where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due; or
- (b) Where the amount is disputed, but no appeal lies from the first Court to which the dispute is referred, and payment is not made within twenty days after the decision of the first Court; or
- (c) Where the amount is disputed and an appeal lies from the decision of the first Court to some other Court, and within thirty days of the decision of the first Court neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal.

Amended by
No. 1, 1921,
s. 111.

(2.) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees, and salvage, and the balance shall be paid to any persons legally entitled to receive it.

324.—(1.) Where services for which salvage is claimed are rendered either by the master or by any of the crew of a ship, and the salvor voluntarily agrees to abandon his lien upon the wreck alleged to be salvaged, then, upon the master entering into a written agreement, attested by two witnesses, to abide the decision of some Federal or State Court, and thereby giving security in that behalf to an amount agreed on by the parties to the agreement, that agreement shall bind the ship, cargo, and freight, and the owners thereof, and their heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the ship, cargo, and freight respectively to the extent of the security given.

Abandonment of lien for salvage by agreement.
Ib. s. 554.

(2.) On any such agreement being made, the salvor and the master shall make statements giving as far as possible the prescribed particulars.

(3.) The salvor shall forthwith transmit the statements made to the Court in which the agreement is to be adjudicated upon.

Apportionment
of salvage by
receiver.
Cf. M.S.A.
1894, s. 555.

325.—(1.) Where the aggregate amount of salvage payable in any case has been finally determined under this Act, and does not exceed Two hundred pounds, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the receiver for liberty to pay it to him.

(2.) The receiver may, if he thinks fit, receive the amount, and shall grant to the person paying it a certificate of the amount paid and of the services in respect of which it is paid, and that certificate shall be a full discharge and indemnity to the person by whom the money is paid, and to his ship, cargo, equipment, and effects, against the claims of all persons in respect of the services mentioned in the certificate.

(3.) The receiver shall distribute any amount received by him under this section among the persons entitled to it on such evidence and in such proportions as he thinks fit, and may retain the share of any person who is absent.

(4.) Any such distribution shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Apportionment
of salvage by
Courts.
1b. s. 556.

326. Where the aggregate amount of salvage payable in any case has been finally ascertained, and exceeds Two hundred pounds, then if any delay or dispute arises as to the apportionment thereof, any Court of competent jurisdiction may cause the amount to be apportioned amongst the persons entitled thereto in such manner as it thinks just.

Apportionment
of salvage
amongst
owners, &c.,
of foreign
ships.
1 & 2 Geo. V.,
c. 57, s. 7.

327. Where any dispute arises as to the apportionment of any amount of salvage amongst the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

DIVISION 5.—JURISDICTION IN SALVAGE.

Supreme
Courts
to have
jurisdiction.
M.S.A. 1894,
s. 565.

328. Subject to this Act, the Supreme Court of every State, and every Court in a State having Admiralty jurisdiction, shall have jurisdiction to decide upon all claims whatsoever relating to salvage, wherever the services in respect of which salvage is claimed were performed, and wherever the wreck forming the subject of the claim is found.

DIVISION 6.—REMOVAL OF WRECK.

329.^(a)—(1.) If any ship is wrecked, stranded, sunk, or abandoned on or near the coast of Australia, the Minister shall have, in regard thereto, the following powers:—

Removal of wrecks on or near coast.

Cf. N.Z. 1908, s. 263.

M.S.A. 1894, s. 530.

- (a) To require the owner thereof, by notice in writing, to remove the wreck within a time specified in the notice, or give security for such removal to his satisfaction;
- (b) In the event of the owner not complying with such notice, to remove or destroy the wreck in any manner he sees fit;
- (c) To sell any wreck recovered under his orders, and out of the proceeds of the sale to retain a sum to cover the expenses incurred in the recovery and sale of the wreck, paying the surplus (if any) to the owner;
- (d) To recover from the owner any expenses incurred by him in connexion with such removal or destruction.

(2.) For the purposes of this section "owner" means the owner immediately prior to the time of the loss or abandonment of the ship.

Definition of "owner."

PART VIII.—PILOTS AND PILOTAGE.

330.—(1.) The Governor-General may proclaim the ports at which the employment of a pilot shall be compulsory.

Compulsory pilotage.

Cf. ib. s. 603.

(2.) At any such port the pilotage shall be performed by a pilot in the Public Service of the Commonwealth:

Provided that where, in the opinion of the Minister, the pilotage work at any such port is insufficient to reasonably occupy the time of one pilot, pilotage shall be performed by a competent person appointed by the Governor-General, under exemption from the provisions of the *Commonwealth Public Service Act* 1902-1918,^(a) to execute the duties of pilot.

Proviso added by No. 1, 1921, s. 112.

331. Any charge under the *Commonwealth Public Service Act* 1902^(b) or any Act amending it against a pilot in the Public Service of the Commonwealth, or any question of the unfitness or incapacity of any such pilot to discharge the duties of his office efficiently, may be referred to a Court of Marine Inquiry instead of to a Board of Inquiry appointed under that Act, and in that case the Court of Marine Inquiry shall for the purposes of that Act be deemed to be a Board of Inquiry.

Power to refer charges and questions of unfitness to Court of Marine Inquiry.

332.—(1.) The Minister may, subject to the regulations, license persons (in this Act called "licensed pilots") to conduct ships from one port to another port in Australia, or to act as pilots for any port at which pilotage is not compulsory.

Licensed pilots.
N.Z. 1908, s. 190.

(a) Held by the High Court that section 13 of the *Marine Act* 1928 of Victoria (which provides for the removal, at the instance of a State authority, of a ship sunk within a Victorian port) is not, in the absence of action by the Commonwealth under this section, inconsistent with this section so as to deprive the State officer of his powers under section 13 of the *Marine Act* 1928. *State of Victoria and others v. Commonwealth of Australia and others*, (1937) 58 C.L.R. 618; 44 A.L.J.R. 97; 11 A.L.J. 344.

(b) See now the *Public Service Act* 1922-1950, *infra*.

(2.) A licensed pilot shall not (except as authorized by his licence) act as a pilot for any port at which pilotage is compulsory.

Penalty: One hundred pounds.

Regulations as to licensed pilots.

333. The regulations may make provision for—

- (a) determining the qualifications of persons desirous of obtaining licences as licensed pilots;
- (b) fixing the conditions under which licences to licensed pilots may be issued and held, and the form thereof;
- (c) the general discipline of licensed pilots;
- (d) the fees chargeable by licensed pilots.

State licences to licensed pilots.

334.—(1.) All uncanceled and unexpired licences, issued under any State Act, authorizing any persons to conduct ships from one port to another port in Australia, or to act as pilots for any port at which pilotage is not compulsory under this Act, shall continue as if issued under this Act, but shall, subject to this Act, be valid only for the purposes for which, and to the extent to which, they would have been valid in accordance with the provisions of the State Act under which they were issued; and for those purposes and to that extent the holder of any such licence shall be deemed to be a licensed pilot; but no such licence shall entitle the holder to act as pilot at a port at which pilotage is compulsory under this Act.

(2.) Any such licence may be dealt with as if issued under this Act.

(3.) The holder of any such licence may, subject to the regulations, surrender it for a corresponding licence under this Act.

Pilotage dues.
Cf. 2 and 3
Geo. V., c. 31,
s. 11.
Amended by
No. 1, 1921,
s. 113.

When dues to be paid.

335.—(1.) There shall be paid upon every ship (not exempt from pilotage dues) entering, leaving or navigating within any port proclaimed as a port at which the employment of a pilot is compulsory, pilotage dues according to the prescribed rates.

(2.) Pilotage dues shall be paid to the Collector, and shall become due and payable at the prescribed times, whether a pilot is actually employed or not.

Persons liable for pilotage.
M.S.A. 1894,
s. 591.

336.—(1.) The following persons shall be liable to pay pilotage dues for any ship on account of which such dues are payable, namely:—

- (a) the owner or master;
- (b) such consignees or agents as have paid or made themselves liable to pay any other charge on account of the ship in any port at which the pilotage dues become due.

(2.) All pilotage dues may be recovered in a Court of summary jurisdiction.

(3.) Any consignee or agent hereby made liable for the payment of pilotage dues may, out of any moneys received by him on account

of the ship or belonging to the owner thereof, retain the amount of all pilotage dues paid by him.

337. The master or owner of any ship, or the person liable for the pilotage dues on any ship, shall on demand by the proper officer immediately pay those dues.

Penalty: Fifty pounds.

338. In the event of a pilot being without his consent or from unavoidable necessity carried beyond pilotage waters, or being placed in quarantine with the ship, the master or owner shall be liable to pay to the collector the sum of Twenty shillings for every day until such time as the pilot can return to his station, and also all the reasonable expenses of the pilot.

339. If a pilot attends to pilot any ship at the request of the master, and the sailing of the ship is deferred, the master shall pay to the collector the sum of Twenty shillings for that day and for each subsequent day upon which the pilot attends and the ship does not sail.

340.—(1.) The following ships shall be exempt from pilotage dues unless a pilot is actually employed:—

- (a) British ships the masters of which hold valid pilotage exemption certificates; and
- (b) Mission ships.

(2.) The regulations may exempt from compulsory pilotage and, where a pilot is not employed, from the liability to pay pilotage dues, the following classes of ships, up to such limit of gross tonnage in each case as is prescribed:—

- (a) Ships, other than passenger ships, engaged exclusively in the coasting trade;
- (b) River and bay ships; and
- (c) Pleasure yachts, fishing vessels, and other vessels, as prescribed, not carrying passengers or goods for hire.

341. Certificates having the effect of exempting ships (the masters of which hold pilotage exemption certificates) from compulsory pilotage may be issued in the manner and under the conditions prescribed, and on payment of the prescribed fees.

Such certificates shall be called "pilotage exemption certificates" and shall—

- (a) be granted to British subjects only; and
- (b) have effect only in regard to ships registered in Australia, and to such other classes of British ships as are prescribed;

but nothing in this section shall affect the renewal of a pilotage exemption certificate granted before the commencement of this Part to a person who is not a British subject.

Payment of
dues on
demand.

Carrying pilot
to sea.
M.S.A. 1894,
s. 594.

Attendance of
pilot on board.
Amended by
No. 1, 1921,
s. 114.

Exemption
from pilotage.
N.S.W. 1901,
No. 60, s. 63
(2.) (a).
Cf. 2 and 3
Geo. V., c. 31,
ss. 11, 12.

Added by
No. 1, 1921,
s. 115.

Exemption
certificates.
M.S.A. 1894,
s. 604.
N.S.W. 1901,
No. 60, s. 68.

Amended by
No. 1, 1921,
s. 116.

Persons who
may obtain
certificate,
N.S.W. 1901,
No. 60,
s. 67 (4).

342. Any British subject holding a master's certificate may, subject to the regulations, obtain a pilotage exemption certificate, notwithstanding that he has not at the time the command of a ship.

Renewal of
certificates.
M.S.A. 1894,
s. 599 (4).

343. A pilotage exemption certificate shall not be in force for more than one year, but may be renewed from year to year by indorsement or otherwise as the Minister directs.

Suspension or
cancellation of
certificate.
Ib. s. 601.

344. The Minister may suspend for such time as he sees fit, or may cancel, any pilotage exemption certificate, if it appears to him that the holder thereof is incompetent to pilot his ship, or has been guilty of misconduct.

Flag to be
hoisted on
exempt ship.
Ib. s. 613 (2).

345. The master of every ship exempt from pilotage shall, so soon as he has come within three leagues of any proclaimed port, hoist and keep hoisted the prescribed flag or signal indicating that the ship is exempt from pilotage.

Penalty: Ten pounds.

Display of
pilot signal.
Ib. s. 624 (2).

346. The master of any ship requiring the services of a pilot shall—

(a) display the prescribed signal:

(b) by all practicable means, consistent with the safety of the ship, facilitate the pilot getting on board.

Penalty: Twenty-five pounds.

Wrongful
display of
pilot signal.
Ib. s. 615 (3).

347. No person shall display the prescribed signal referred to in the previous section except for the purpose of summoning a pilot.

Penalty: Twenty pounds.

Master to take
in pilot.

348.—(1.) The master of any ship requiring the services of a pilot for a port which has been proclaimed as a port at which the employment of a pilot is compulsory shall receive on board the first pilot offering himself, and shall on demand by that pilot give the charge of piloting the ship to that pilot.

(2.) The master of any such ship shall not quit his station or anchorage within any port proclaimed as above without first receiving a pilot on board.

Penalty: Twenty pounds.

(3.) The penalty under this section shall be in addition to the amount due for pilotage.

Master to bring
to where
directed.
Amended by
No. 1, 1921,
s. 117.

349. The master of every ship which is being piloted within any port proclaimed as a port at which the employment of a pilot is compulsory, shall bring to at such place as the pilot directs.

Penalty: Twenty pounds.

350.—(1.) No pilot shall be personally liable in pecuniary damages for any damage or loss occasioned by his neglect or want of skill. Immunity of pilots and of Commonwealth.

(2.) The Commonwealth shall not be liable for any damage or loss occasioned by the neglect or want of skill of any pilot.

351.—(1.) The duty of a pilot shall be to pilot the ship subject to the authority of the master, but the master shall not be relieved, by reason of the ship being under pilotage, from responsibility for the conduct and navigation of the ship. Liability of master or owner of vessel under pilotage. Cf., 2 and 3, Geo. 5, c. 31, s. 15.

(2.) Notwithstanding anything contained in any Act or State Act, the owner or master of a vessel navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory. Substituted by No. 49, 1934, s. 43.

(3.) For the purposes of this section "pilot" includes any pilot employed or licensed by any State Government, Marine Board or other State authority to pilot ships in any port or district in which the employment of a pilot is compulsory. Added by No. 49, 1934, s. 43.

352.—(1.) An unauthorized person may pilot a ship—

- (a) when the master has used all reasonable means to obtain an authorized pilot, but no authorized pilot is available; Unauthorized persons acting as pilots. Cf. M.S.A. 1894, s. 596.
- or
- (b) when the ship is in such circumstances as to make it necessary for her safety that she should be brought into port at once. Amended by No. 1, 1921, s. 118.

(2.) In any such case, so soon as an authorized pilot presents himself, the master shall cause the piloting of the ship to be at once given up to him. Amended by No. 1, 1921, s. 118.

Penalty: Fifty pounds.

(3.) Except as allowed by this section, no unauthorized person shall act as pilot. Id. s. 598.

Penalty: One hundred pounds.

353.—If a pilot, when piloting a ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, either—

- (a) does any act tending to the immediate loss destruction or serious damage of the ship, or tending immediately to endanger the life or limb of any person on board the ship; or Offences by pilot. Cf. ib., s. 607. Cf. 2 and 3, Geo. V., c. 31, s. 46.
- (b) fails to do any act necessary and proper for preserving the ship from loss destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or limb, Amended by No. 1, 1921, s. 119.

he shall be guilty of an indictable offence.

Obtaining
charge of ship
by wilful mis-
representation.

M.S.A., 1894,
s. 608.

Amended by
No. 1, 1921,
s. 120.

354. No person shall, by wilful misrepresentation of the circumstances upon which the safety of a ship may depend, obtain the piloting of that ship.

Penalty: One hundred pounds, in addition to any liability for damages.

Property of
pilots to vest in
Commonwealth.

355.—(1.) Upon the proclamation of any port as a port at which the employment of a pilot shall be compulsory, all steam-ships, boats, buildings, plant, and property belonging to the licensed pilots for that port, and used by them exclusively in their business as pilots, shall become the property of the Commonwealth.

(2.) The Commonwealth shall pay to the persons entitled thereto, as compensation for any property acquired under this section, the value thereof as agreed upon between those persons and the Minister, or, in default of agreement, as settled by arbitration.

(3.) Any dispute or difference which may arise between the pilots and the Minister, as to what property passes under this section, shall be settled by arbitration.

(4.) Any arbitration under this section shall be according to the laws relating to arbitration in force in the State in which the property is situated.

(5.) The reasonable costs of any arbitration under this section shall be paid by the Commonwealth out of moneys to be provided by the Parliament.

PART IX.—COURTS OF MARINE INQUIRY.

Establishment
of Courts of
Marine Inquiry.
N.S.W. 1899,
No. 32, s. 6.

356—(1.) The Governor-General may, by proclamation, establish Courts of Marine Inquiry at such places as he thinks fit.

(2.) Courts of Marine Inquiry so established shall be Courts of Record and shall have jurisdiction to hear and determine appeals charges complaints inquiries and references under this Act.^(a)

(3.) The Governor-General may, by proclamation, revoke the establishment of any Court of Marine Inquiry.

Appointment
of officers.
Cf. ib. s. 8.

357. The Governor-General may appoint officers of Courts of Marine Inquiry, and such officers shall have such powers and perform such duties as are prescribed.

Constitution of
Courts of
Marine Inquiry.

358. A Court of Marine Inquiry shall be constituted by one or more District or County Court Judges or Police or Stipendiary or Special Magistrates of the Commonwealth or part of the Commonwealth or of a State or part of a State, or by one or more Judges or Magistrates specially authorized by the Governor-General to sit as members of a Court of Marine Inquiry.

(a) As to whether Courts of Marine Inquiry are judicial tribunals and subject to the judicial provisions of the Constitution see *R. v. Turner; ex parte Marine Board of Hobart. Tasmania v. Commonwealth*, (1927) 39 C.L.R. 411; 1 A.L.J. 59; 33 A.L.R. 174.

359. Every Court of Marine Inquiry shall be assisted by not less than two assessors appointed under this Act, who shall advise the Court but shall not adjudicate on the matter before the Court.

Assessors.
N.S.W. 1899,
No. 32, s. 7.

360.—(1.) The Governor-General may appoint persons of nautical, engineering, or special skill to be assessors to assist Courts of Marine Inquiry.

Appointment
of assessors.
Ib. s. 16 (1).

(2.) In cases where a Court of Marine Inquiry has been requested to make an inquiry under this Act, and for any reason a sufficiency of assessors duly appointed by the Governor-General is not available, the Court may appoint as its assessors, for the purpose of the inquiry, one or more persons who are, or have been, masters of British ships or, where the inquiry involves, or is likely to involve, any question as to the cancellation or suspension of the certificate of an engineer, who are, or have been, chief engineers of British ships, but so that, in every case, there shall be not less than two assessors to assist the Court:

Added by
No. 1, 1943,
s. 3.

Provided that in no case shall any person belonging to the ship to which the person complaining or complained against belongs be so appointed.

361. Where an inquiry involves 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 appointed by the Governor-General as having nautical, engineering, or special experience in the matter to be inquired into.

Assessors with
special
knowledge.
Ib. s. 16 (2).

362. Every assessor shall, for every day or portion of a day during which he is engaged in, or in attendance on, a Court of Marine Inquiry, and for travelling expenses, be paid such sum as is prescribed.

Payment of
assessors.
Ib. s. 17.

363.—(1.) The Regulations may prescribe the practice and procedure, and the powers and duties of officers, of Courts of Marine Inquiry, and regulate the appointment and summoning of assessors.

Practice,
procedure and
powers.
Ib. s. 9.

(2.) Subject to the Regulations, a Court of Marine Inquiry may in any particular case give such directions as to the practice or procedure to be followed as it thinks proper.

364.—(1.) A Court of Marine Inquiry shall have jurisdiction to make inquiries as to all casualties affecting ships, or entailing loss of life on or from ships, and as to charges of incompetency or misconduct, or of failure of duty in regard to any collision or in any matter relating to the navigation, management or working of a ship, on the part of masters, mates or engineers of ships, in the following cases, namely:—

Powers of
court.
Cf. ib. s. 10.
See M.S.A.
1894, s. 478.
Amended by
No. 1, 1943,
s. 4.

(a) Where a shipwreck or casualty occurs to a ship on or near the coast of Australia, or in the course of a voyage to a port within Australia; ^(a)

(a) See footnote (a) to s. 2 (1) (b), *supra*.

- (b) where a shipwreck or casualty occurs in any part of the world to a British ship registered in Australia;
- (c) where some of the crew of a ship, which has been wrecked or to which a casualty has occurred, who are competent witnesses to the facts, are found in Australia;
- (d) where the incompetency or misconduct has occurred on board a British ship on or near the coasts of Australia, or on board a British ship in the course of a voyage to a port within Australia;
- (e) where the incompetency or misconduct or failure of duty has occurred on board a British ship registered in Australia;
- (f) where the master, mate, or engineer of a British ship who is charged with incompetency or misconduct is found in Australia;
- (g) where any ship is lost or supposed to have been lost, and any evidence is obtainable in Australia as to the circumstances under which she went to sea or was last heard of; and

Amended by
No. 1, 1943,
s. 4.

- (h) where it appears to the Minister, on a report made in consequence of a medical examination made under this Act, that a master, mate, or engineer holding a certificate of competency issued or recognised under this Act is incompetent by reason of his unfitness to perform the duties ordinarily required of a person employed in a position corresponding to that certificate.

Added by
No. 1, 1921,
s. 121.

(2.) 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 the King's dominions outside Australia; 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; or
- (d) in respect of a shipwreck or casualty occurring to a ship registered in any part of the King's dominions outside Australia unless—

Limitation as
to subject of
inquiry.

Amended by
No. 1, 1943,
s. 4.

Added by
No. 1, 1943,
s. 4.

- (i) at the request or with the consent of the government of that part;
- (ii) the shipwreck or casualty occurs on or near the coast of Australia; or
- (iii) the ship is wholly engaged in the coasting trade.

(3.) A Court of Marine Inquiry shall, so far as relates to the summoning of parties, and compelling the attendance of witnesses, have such powers as are prescribed.

(4.) No person who has been lawfully summoned to attend a Court of Marine Inquiry to give evidence or produce documents, and who has been tendered reasonable expenses, shall, without just excuse—

Refusal to give evidence, &c.

- (a) fail to appear in obedience to the summons; or
- (b) refuse to be sworn as a witness; or
- (c) fail to answer any question which he is lawfully required by the Court to answer; or
- (d) fail to produce any documents which he is lawfully required by the Court to produce.

Penalty: Fifty pounds.

365. A Court of Marine Inquiry shall, when requested by the Minister so to do, make any inquiry which it has jurisdiction to make.

When court can hold inquiry.
N.S.W. 1899,
No. 32, s. 11.

366.—(1.) The Minister may, where any such inquiry as aforesaid has been made, order the inquiry to be re-opened and reheard by a Court of Marine Inquiry, either generally or as to any part thereof, and shall do so—

Amended by
No. 1, 1921,
s. 122.

Rehearing.
Ib. s. 12.

M.S.A. 1894,
s. 475.

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

(2.) Nothing in sub-section (1.) of this section shall be construed as authorizing the re-opening or rehearing of an inquiry as to any shipwreck or casualty which has been the subject of investigation and inquiry, and which has been reported on, by a competent Court or tribunal in any part of the King's dominions outside Australia.

Added by
No. 1, 1943,
s. 5.

367.—(1.) The senior member of the Court present shall preside at each sitting of a Court of Marine Inquiry.

Senior member of Court to preside.

(2.) Every inquiry under this Act shall, without prejudice to the power of the Court to order witnesses out of Court, be held, and every decision of the Court shall be delivered, in open Court. In the event of an equality of votes, the presiding member shall have a casting as well as a deliberative vote.

N.S.W. 1899,
No. 32, s. 13.

(3.) The presiding member shall in every case forward to the Minister 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 forward his written reasons for so dissenting.

Section 368
repealed by
No. 1, 1921,
s. 123.

* * * * *

Opportunity
of defence.
M.S.A. 1894,
s. 466 (11).

369. Every inquiry shall be so conducted that, if a charge is made against any person, that person shall have full opportunity of making a defence.^(a)

Powers of
Court.
Ib. s. 466 (10).

370. Subject to the Regulations, a Court of Marine Inquiry shall have all the powers of a Court of summary jurisdiction in the State in which it sits.

Power to
award costs.
Ib. s. 466 (8).
Amended by
No. 1, 1921,
s. 124.

371. A Court of Marine Inquiry may make such order as it thinks fit respecting the costs of any proceedings, and any costs awarded against any party to the proceedings may be recovered, by the party in whose favour the order is made, in any Court of competent jurisdiction.

Power to
cancel or
suspend
certificate.
Substituted by
No. 1, 1943,
s. 6.

372. A Court of Marine Inquiry holding any inquiry within its jurisdiction under this Act may—

- (a) cancel or suspend the certificate of competency of any master or ship's officer which was granted in Australia; or
- (b) cancel or suspend, insofar as concerns its validity in Australia, the certificate of competency of any master or ship's officer which was granted in any part of the King's dominions outside Australia,

if it finds that the master or officer is incompetent or that he has been found guilty of misconduct or that he has failed in his duty in regard to any collision or in any matter relating to the navigation, management or working of a ship.^(a)

Notice to
person
charged.
Substituted by
No. 1, 1943,
s. 7.

373. A Court of Marine Inquiry shall not cancel or suspend a certificate unless a copy of the report or statement of the case on which the inquiry has been ordered has been furnished to the holder of the certificate before the commencement of the inquiry.

Delivery up
of certificate.
N.S.W. 1899,
No. 32, s. 14.
M.S.A. 1894,
s. 473.

374.—(1.) A master, mate, or engineer whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his certificate to the Court on demand, or if not so demanded, to the Minister or as the Minister directs.

Inserted by
No. 1, 1943,
s. 8.

(2.) Where a competent Court or tribunal in any part of the King's dominions outside Australia, after investigation or inquiry into any shipwreck or casualty, orders the cancellation or suspension of any certificate granted in Australia, the Minister, by notice in writing served upon the master, mate or engineer, may demand that the master, mate or engineer deliver his certificate to the Minister or as the Minister directs.

Inserted by
No. 1, 1943,
s. 8.

(3.) Any master, mate or engineer who fails to deliver his

^(a) Held by the Supreme Court of N.S.W. (Halse Rogers, J.) that s. 372 empowers a Court of Marine Inquiry to deal immediately with the Master's Certificate if deemed necessary, without another formal hearing at which the Master is called upon to show cause, but subject to the safeguards for the Master provided by the Regulations and s. 369 of the Act. *Robbie v. Director of Navigation*, 44 S.R. (N.S.W.) 407.

certificate in accordance with sub-section (1.) of this section or, when the Minister so demands, in accordance with sub-section (2.) of this section, shall be guilty of an offence.

Penalty: One hundred pounds.

375. A Court of Marine Inquiry may at any time during the progress of the inquiry order any master or officer, affected by the inquiry, to forthwith deliver up his certificate, and in default of his compliance may commit him to prison until he complies with the order.

Power to commit if certificate not delivered up.

375A.—(1.) Where a local certificate has been cancelled or suspended by a Court of Marine Inquiry, the Minister, after full investigation of all the circumstances, may, if he thinks the justice of the case requires it—

Grant of certificate when local certificate cancelled or suspended.

- (a) in the case of a cancelled certificate, re-issue and return the certificate;
- (b) in the case of a suspended certificate, shorten the time for which it is suspended and return or re-issue it; or
- (c) grant a certificate of a lower grade in place of the certificate which has been cancelled or suspended.

Inserted by No. 1, 1943, s. 9.

(2.) In this section "local certificate" means a certificate of competency as master, mate, engineer or marine engine-driver of a ship, granted under this or any State Act, and valid within the Commonwealth or a State only.

375B.—(1.) Where a Court of Marine Inquiry has cancelled or suspended the certificate of a master or ship's officer and the inquiry out of which the cancellation or suspension arose has not been reheard in pursuance of section three hundred and sixty-six of this Act, the master or officer may, within one month, appeal to the Supreme Court of the State in which the inquiry was held, and the Supreme Court shall have jurisdiction to entertain the appeal and to confirm, revoke or vary the cancellation or suspension.

Appeals against cancellation or suspension of certificate.

Inserted by No. 1, 1943, s. 9.

(2.) In hearing any appeal lodged in pursuance of this section, a Supreme Court shall have the assistance of not less than two assessors appointed by the Governor-General under section three hundred and sixty of this Act.^(a)

376. A Court of Marine Inquiry shall, when required to do so by the Minister, inquire into any charge of incompetency or failure of duty or drunkenness made against any licensed pilot or any person holding a pilotage exemption certificate, and shall in its report to the Minister recommend to the Minister what punishment, if any,

Inquiry into charges against licensed pilots and exempt masters.

(a) Held by the Supreme Court of New South Wales (Maxwell, J.) that an appeal from the Court of Marine Inquiry pursuant to this section is an appeal in the strict sense.

Held further that the Supreme Court has no jurisdiction to make any order as to costs in respect of proceedings on appeal from a Court of Marine Inquiry. *Firth v. Director of Navigation*, 1950 S.R. (N.S.W.) 119; 67 W.N. (N.S.W.) 4 and 76.

shall be inflicted on the pilot or person for any offence of which the Court finds him guilty.

Court to sit as
Court of
Survey.

CE. N.S.W.
1899, No. 32,
s. 15.

Amended by
No. 1, 1921,
s. 125.

377.—(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 unseaworthy, or any other matter prescribed.

(2.) The Court shall, in relation to the hearing and determination of the appeal or reference, have all the powers of the Minister.

(3.) 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 by the Court or under its direction.

Preliminary
investigation
by Deputy
Director or
other person.

Inserted by
No. 1, 1943,
s. 10.

377A.—(1.) A Deputy Director, or other person appointed for the purpose by the Minister, may make a preliminary investigation respecting any casualty affecting a ship or entailing loss of life on or from a ship and for the purpose of any such preliminary investigation may—

- (a) go on board any ship at any time and inspect the hull, boilers and machinery, equipment, or any articles on board or connected with the ship;
- (b) summon any persons before him and require them to answer questions;
- (c) administer oaths; and
- (d) require the production of documents by any person.

(2.) No person who has been lawfully summoned to appear before the Deputy Director or other person in pursuance of the last preceding sub-section shall, without lawful excuse—

- (a) fail to appear in obedience to the summons;
- (b) refuse to be sworn;
- (c) fail to answer any question which he is lawfully required by the Deputy Director or other person to answer; or
- (d) fail to produce any documents which he is lawfully required by the Deputy Director or other person to produce.

Penalty: Fifty pounds.

PART X.—LEGAL PROCEEDINGS.

Jurisdiction.

Place where
deemed
to have been
committed.

M.S.A. 1894,
s. 684.

378. 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 it actually was committed or arose;
or
- (b) in any place in which the offender or person complained against is.

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

Presumption of jurisdiction.
N.S.W. 1901.
No. 60, s. 161.

380.—(1.) Where any district within which any Court has jurisdiction is situate on the sea coast, or abuts on or projects into any navigable water, the Court shall have jurisdiction over any vessel being on or lying or passing off that coast, or being in or near that navigable water, and over all persons thereon or belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the Court.

Jurisdiction over ships lying off coast.
M.S.A. 1894,
s. 685.

(2.) The jurisdiction in this section shall be in addition to, and not in derogation of, any jurisdiction or power of a Court of summary jurisdiction.

381. Where any person—

- (a) being a British subject, is charged with having committed an offence on board a British ship on the high seas or in a foreign port or harbor, or on board a foreign ship to which he does not belong; or
- (b) not being a British subject, is charged with having committed an offence on board a British ship on the high seas,

Jurisdiction of offences on board ship.
Ib. s. 686.

and that person is found within the jurisdiction of any Court in Australia which would have had cognisance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that Court shall have jurisdiction to try the offence as if it had been so committed.

382. Any offence against property or person committed in or at any place either ashore or afloat, out of the King's dominions, by a master, seaman, or apprentice who at the time when the offence is committed is, or within three months previously has been, employed in any British ship, shall be deemed to be an offence of the same nature, and be liable to the same punishment, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same Court and in the same place, as if the offence had been committed within Australia.

Offences committed by British seamen abroad.
Ib. s. 687.

383.—(1.) Whenever—

- (a) any foreign ship has, in any part of the world, caused injury to any property belonging to either the King, the Commonwealth, or any State, or any of His Majesty's subjects; and
- (b) at any time thereafter that ship is found in any port of Australia or within three miles of the coast thereof,

Power to detain foreign ship that has occasioned damage.
Ib. s. 688.
Para. (a) substituted by No. 1, 1921, s. 126.

a Justice of the High Court or a Judge of the Supreme Court of a

State may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or crew of the ship, issue an order directed to any officer of Customs or other official named in the order, requiring him to detain the ship until such time as the owner, master, or consignee thereof has—

- (i.) made satisfaction in respect of the injury, or
- (ii.) given security, to be approved by the Judge or Court, to abide the event of any legal proceeding that may be instituted in respect of the injury, and to pay all costs or damages that may be awarded thereon,

and the official to whom the order is directed shall detain the ship accordingly.

(2.) Where it appears that, before an application can be made under this section, the ship will depart from Australia, the official may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to him, and he shall not be liable for any costs or damages in respect of the detention unless it is proved to have been made without reasonable grounds.

(3.) In any legal proceeding in relation to any such injury, the person giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the Judge or Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

Action against
official.
N.S.W. 1898,
No. 46, s. 111.

384.—(1.) No action shall lie against any official for anything done under the provisions of this Act, unless direct proof of corruption or malice be given.

(2.) Any such action must be commenced within three months from the date of the act forming the subject of such action.

(3.) If the plaintiff in any such action discontinues, or is non-suited, or if judgment is given for the defendant, the latter shall have treble costs.

Removal of
master by
Court.
M.S.A. 1894,
s. 472.

385.—(1.) The High Court, or any Court having Admiralty jurisdiction, may remove the master of any ship within the jurisdiction of that Court if it thinks it necessary to do so.

(2.) The removal by the Court may be made upon the application of any owner of the ship or his agent, or of the authorized agent of the ship, or of any certificated mate of the ship, or of one-third or more of the crew of the ship.

(3.) The Court may appoint a new master instead of the one removed, but where the owner or agent of the ship is within the jurisdiction of the Court, such an appointment shall not be made without the consent of that owner or agent.

(4.) The Court may also make such order, and require such security in respect of the costs of the matter, as the Court thinks fit.

Offences.

386. No person shall—

General offences.

- (a) make in any document, produced to any person authorized to receive it under this Act, any statement which is untrue in any particular, or produce or deliver to any such person any document containing any such statement;
- (b) mislead any person on whom any duty is imposed by this Act in any particular likely to affect the discharge thereof;
- (c) refuse to answer any questions lawfully put to him, or to produce documents lawfully demanded of him;
- (d) refuse to give all reasonable assistance to any person who is carrying out any duty or power imposed on him by this Act;
- (e) give any bribe, recompense, or reward to, or make any collusive agreement with, any official performing any duty under this Act, to induce him in any way to neglect his duty, or by threats, demands, or promises, attempt to influence any such official in the discharge of his duty.

Penalty: One hundred pounds.

Penalty.

387. Whoever resists or wilfully obstructs, assaults, molests, or endeavours to intimidate any person performing any duty imposed on him, or exercising any right or power conferred on him, by this Act, shall be guilty of an indictable offence.

Obstructing an official.

388.—(1.) No person (other than an official or a person duly authorized by the Minister) shall without reasonable excuse or the permission of the master go on board or remain alongside or hover near any ship in any port during the night.

Being on board a ship unlawfully.
N.S.W. 1898,
No. 46, s. 102.

Penalty: Twenty-five pounds.

(2.) The master or an officer of Customs or police may apprehend and keep in safe custody any person so offending who shall be brought before a justice on the following morning.

389. Whoever—

- (a) forges the seal of the Minister, or any document issued under this Act, or any official copy thereof, or the signature of any official performing any duty under this Act;
- or

Offences as to documents.

Cf. M.S.A.
1894, ss. 104,
722.

Substituted by
No. 1, 1921,
s. 127.

- (b) utters or puts off, knowing it to be forged, any forged document purporting to be a document issued in pursuance of this Act; or
- (c) knowingly makes any false declaration, false statement, false representation, or gives any false evidence on oath in connexion with any application or proceeding under this Act; or
- (d) fraudulently lends to any person not entitled thereto, or allows to be used by any such person, any certificate issued or recognised under this Act,

shall be guilty of an indictable offence.

Insubordina-
tion.
N.S.W. 1898,
No. 46, s. 101.

390. Upon complaint on oath by the master of a ship in port that any person, belonging to or employed on or being about or upon the ship—

- (a) is insubordinate; or
- (b) refuses to work; or
- (c) is inciting any other person to commit an offence against this Act,

any Police, Stipendiary, or Special Magistrate of the Commonwealth, or of a State, may cause such person to be apprehended by any police officer and brought before him.

Aiding and
abetting
offences.

391. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to the commission of any offence against this Act, shall be deemed to have committed the offence and shall be punished accordingly.

Prosecution and Penalties.

Punishment
for indictable
offences.

392. Any person convicted of an indictable offence under this Act shall (except where some other punishment is expressly provided)—

- (a) be liable to imprisonment for any term not exceeding four years; or
- (b) be liable to a penalty not exceeding Two hundred pounds; or
- (c) be liable both to imprisonment and to a pecuniary penalty within the above limits.

General
penalty.

393. Any person who is guilty of any contravention or evasion of this Act for which no other penalty is provided shall be liable to a penalty of not more than Ten pounds.

Offences
punishable
summarily.

394. All offences against this Act, other than offences expressed to be indictable, shall be punishable on summary conviction.

395. Subject to the *Judiciary Act* 1903-1907, or any Act amending it, an appeal shall lie from any conviction, judgment, sentence, or order of a court of summary jurisdiction in any State exercising jurisdiction in relation to any offence under this Act to the Court, and in the manner provided by the law of that State for appeals from the like convictions, judgments, sentences, or orders of courts of summary jurisdiction in that State.

Appeals from court of summary jurisdiction.
N.S.W. 1898, No. 46, s. 107.
M.S.A. 1891, s. 682.

396.—(1.) No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered.

Limitation of actions.
1 & 2 Geo. V., c. 57.

(2.) No action shall be maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.

(3.) Any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court extend any period mentioned in this section to such an extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(4.) For the purposes of this section, the expression "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

397. Subject to any special provisions of this Act, no order for payment of money shall be made in any summary proceeding, unless that proceeding is commenced—

Limitation of time for summary proceedings.
M.S.A. 1894, s. 683.

(a) within six months after the cause of complaint arises; or

(b) if both or either of the parties to the proceeding happen during that time to be out of Australia—within six months, after they both first happen to arrive, or to be at one time, within Australia.

Amended by No. 1, 1921, s. 128.

Payment to
owner of
forfeited
wages.

398. In cases where a forfeiture of wages is directed by any Court, the Court may direct that the whole or a portion of the forfeiture shall be paid to the master or owner of the ship as a recoup for loss occasioned by the misconduct of the offender.

Distress and
sale of ships,
M.S.A. 1894,
s. 693.

399. In all cases in which any Court directs payment of any sum of money by any party, being the master or owner of a ship, and that party does not pay it in accordance with the order, the Court making the order may, in addition to any other of its powers, direct the amount or the portion thereof remaining unpaid to be levied by distress and sale of the whole or any portion of the ship and her equipment, and they shall be sold accordingly.

Evidence and Service.

Production of
depositions.
Ib. s. 691.

400.—(1.) Whenever in the course of any legal proceeding the testimony of any witness is required in relation thereto, then upon due proof that the witness cannot be found in Australia, any deposition that the witness has previously made on oath in relation to the same subject-matter before any Judge or magistrate in the King's dominions, or any British consul elsewhere, shall be admissible in evidence, provided that—

- (a) if the deposition was made in Australia, it shall not be admissible in any proceeding instituted in Australia;
- (b) if the proceeding is criminal, the deposition shall not be admissible unless it was made in the presence of the person accused.

(2.) A deposition so made shall be authenticated by the signature of the Judge, magistrate, or consul before whom it is made, and the Judge or magistrate shall certify, if the fact is so, that the accused was present at the taking thereof.

(3.) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding a certificate under this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

(4.) Nothing in this section shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act, or State Act.

Proof of
signature to
documents.

401.—(1.) All certificates purporting to be issued in pursuance of this Act by any official, and to be signed by him, shall be taken to have been so issued and signed unless the contrary is proved.

(2.) Every document purporting to be an office copy of any such certificate, and to be signed in the manner required, shall be admissible in evidence, and shall be deemed to be a true copy of the original.

(3.) In proving the transmission of any such certificate to any person required by this Act to possess such a certificate, it shall be sufficient to prove that it—

- (a) was duly received by some officer in the public service, and was by him delivered to or left at the place of abode or business of such person; or
- (b) was forwarded to him by registered letter.

402. Any document required by this Act to be executed in the presence of, or to be attested by, a witness, may be proved by the evidence of any person who is able to bear witness to the facts without calling any attesting witness.

Evidence as to execution.
M.S.A. 1894,
s. 694.
N.S.W. 1898,
No. 46, s. 118.

403.—(1.) Where a document is by this Act declared to be admissible in evidence, it shall, on production from the proper custody, be admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or in pursuance of any duty under this Act.

Admissibility of documents in evidence.
M.S.A. 1894,
s. 695.

(2.) A copy of, or extract from, any such document shall also be admissible in evidence if—

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was intrusted;

and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

404. Service of any summons or process in any legal proceeding under this Act shall be deemed good service if made—

Service of summons.
Ib. s. 696.

- (a) personally on the person to be served; or
- (b) at his last known place of abode or business; or
- (c) on board any vessel to which he belongs, and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of the vessel.

405. Where any order, notice, statement, or document is required for the purpose of any provision of this Act to be served on the master of a ship, it shall be served, where there is no master and the ship is within the limits of Australia, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in Australia, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Service of notice where there is no master.
Ib. s. 696 (c).

PART XI.—MISCELLANEOUS.

Australian flag.
Cf. N.Z. 1908,
s. 3.

Cf. M.S.A.
1894, s. 73 (1).
Gazette, 15 Aug.
1903; 19 Dec.,
1908.

406. The red ensign usually worn by British merchant ships defaced as follows, namely:—

In the centre of the lower canton next the staff, and pointing direct to the centre of the St. George's Cross in the Union Jack in the upper canton next the staff, a white seven-pointed star, indicating the six Federated States of Australia and the Territories of the Commonwealth, and in the fly five smaller white stars, representing the Southern Cross.

is hereby declared to be the proper colours for all merchant ships registered in Australia, except in the case of any ship for the time being allowed to wear any other national colours in pursuance of a warrant from the King or from the Admiralty.

Application of
penalties and
moneys.

M.S.A. 1894,
ss. 699 (2), 716.

407. Unless the contrary intention appears in this Act, all penalties, forfeitures, fees, or moneys recovered or received under this Act shall be paid to the Consolidated Revenue Fund.

Tonnage
register.

N.S.W. 1901,
No. 60, s. 164.

408. As to every ship registered at any port in the British dominions, the amount of net tonnage specified in the certificate of registry shall be the tonnage of the ship unless otherwise specified.

Measurement of
tonnage where
not registered.

Ib. s. 165.

Amended by
No. 1, 1921,
s. 129.

409. In case the tonnage of any ship entering any port within Australia has not been registered, or any dispute arises as to the tonnage thereof, the ship shall be measured in the manner prescribed by the Merchant Shipping Act.

Master to keep
copy of this
Act.

Ib. s. 172.

410. The master of every ship to which this Act applies shall provide himself 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 ship.

Penalty: Five pounds.

Charts.

Inserted by
No. 1, 1921,
s. 130.

410A.—(1.) The master of a ship registered in Australia, or of a ship (British or foreign) licensed to engage in the coasting trade, shall not take her to sea, and the owner of the ship shall not permit her to go to sea, unless she is supplied with charts, of a suitable scale and properly corrected down to the time of sailing, necessary for use on the particular voyage about to be undertaken.

Penalty, on the master or owner: Fifty pounds.

Cf. N.Z.
1908, s. 33.

(2.) Every officer employed in connexion with the navigation of a ship to which this section applies shall have free access to the charts belonging to the ship in use during the voyage.

Penalty, on master: Twenty pounds.

411. This Act shall apply to any unregistered British ship which ought to have been registered under any Imperial Act, as if the ship had been registered in Australia.

Unregistered ships.
M.S.A. 1894,
s. 266.

412. Any person authorized by the Minister, with such assistants as he requires, may search any vessel in any port whenever he has ground for believing the search to be necessary for the due performance of his duty under this Act.

Power to search vessels.

413.—(1.) The Minister, or any person authorized by him, may—

Powers of Minister.

- (a) go on board any ship at any time and inspect the hull, boilers and machinery, equipment (including the apparatus for wireless communication, if any), or any article on board or connected with the ship;
- (b) enter and inspect any premises;
- (c) summon persons before him and require them to answer questions;
- (d) require and enforce the production of documents by any person;
- (e) administer oaths;
- (f) muster the crew and passengers of any ship; and
- (g) require and take securities for compliance with this Act.

Ib. s. 729.

Amended by
No. 1, 1921
s. 131.

(2.) No person who, in pursuance of this section, is summoned to appear and answer questions or to produce documents or to appear on muster shall, without just cause, fail to so appear or to answer questions or to produce the documents he is lawfully required to produce, or to appear on muster.

Substituted by
No. 1, 1921,
s. 131.

Penalty: Twenty-five pounds.

414.—(1.) Where under this Act a ship is to be or may be detained, any official or Customs officer may detain the ship.

Detention of ship.

Ib. s. 692 (1).

(2.) If the ship after detention, or after service of any notice or order of detention upon the master, goes to sea before the ship is released by competent authority, the master shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

415.—(1.) No official performing any duty under this Act shall be taken to sea without his consent.

Taking official to sea.

Penalty: One hundred pounds.

(2.) The owner or master of any ship in which any official is taken to sea illegally shall, in addition to any penalty for an offence against this section, be liable to pay all expenses incidental to the official's return to duty.

416. Where under this Act any ship is to be detained or may be detained, or where the requirements of this Act with regard to the ship or her officers, crew, or equipment have not been complied with,

Refusal of clearance.
Ib. s. 692 (3).

all officers of Customs may refuse to grant outward clearance to that ship or to grant her any transire or any document in the nature thereof.

Forms.

Cf. M.S.A.
1894, s. 720.

417.—(1.) Subject to this Act, the Minister may prepare and sanction forms for any document required under this Act.

(2.) The Minister shall cause such forms to be sealed with his seal or marked with some other distinguishing mark, and before finally issuing any document or making any alteration in a form shall cause public notice thereof to be given.

(3.) The Minister shall cause such forms as he directs to be supplied at all Customs-houses and mercantile marine offices in Australia, and he may, as prescribed, licence persons to print and sell those forms.

(4.) Every document required under this Act shall be made in the prescribed form (if any), or as near thereto as circumstances permit, and unless so made shall not be admissible in evidence in any civil proceeding on the part of the owner or master of any ship.

(5.) Every such document, if made in a form purporting to be the proper form, and to be sealed or marked in accordance with this section, shall be deemed to be in the form required by this Act, unless the contrary is proved.

Penalty for
using forms not
approved.
Ib. s. 722
(2) (b).

418. No person shall without reasonable cause use, print, or sell, any form purporting to have been approved by the Minister which as a matter of fact has not been so approved.

Penalty: Ten pounds.

Security,
form of.

Cf. *Customs Act*
1901, s. 43.

Inserted by
No. 1, 1921,
s. 132; amended
by No. 80, 1950,
s. 3 and First
Schedule.

Cf. *ib.*, s. 47.

418A.—(1.) Where any security is required or authorized to be given under this Act, such security may be by bond, guarantee, or cash deposit, or all or any of such methods, but so that in each case the security shall be approved by the Director or a Deputy Director.

(2.) The form of security in Schedule V. to this Act shall suffice for all the purposes of a bond or guarantee under this Act, and, without sealing, shall bind its subscribers as if sealed, and, unless otherwise provided therein, jointly and severally and for the full amount.

Seal of Minister.

Substituted by
No. 1, 1921,
s. 133 and
amended by
No. 49, 1934,
s. 44.

419. The seal of the Minister for the purposes of this Act shall be a seal having a device of the Commonwealth Coat of Arms, with the word "Australia", surrounded by a buckled garter bearing the words "Marine Administration—Minister", the whole being surmounted by a crown.

Power of
Minister to
cancel
certificates of
convicted
persons.

M.S.A. 1894,
s. 469.

420. The Minister may at any time suspend or cancel the certificate of any master mate or engineer convicted of any indictable offence and in regard to the certificate of a master mate or engineer issued under this Act, or any State Act or Regulations, may suspend or cancel it on his conviction for any offence.

421.—(1.) The owner of every ship registered in Australia or engaged in the coasting trade (not being a fishing boat) shall in each year make a return to the Minister at the prescribed time showing the aggregate gross earnings during the preceding year of all ships so registered or engaged in the coasting trade of which he is owner, in the prescribed form:

Returns as to earnings of ships.

Provided that the returns required to be furnished in regard to ships not registered in Australia shall relate only to the earnings of those ships whilst engaged in the coasting trade.

(2.) The Minister shall not publish or disclose in any way any return made under this section, or any summary of such returns other than figures only showing the percentage variations from year to year in the aggregate gross earnings returned, distinguishing, if he shall think fit, the coasting trade:

Provided that nothing in this section shall prevent the Minister from using the returns to assist him in preparing periodical estimates of the extent to which the relation between imports and exports of Australia as a whole is affected by the freight earnings of shipping which reaches this country.

(3.) No person not employed in connexion with the returns shall be permitted to see any individual return, and any person so employed who knowingly makes any disclosures of any matter which the Minister is prohibited from disclosing under this section shall be guilty of an indictable offence.

Amended by No. 80, 1950, s. 3 and First Schedule.

(4.) No owner shall fail to make the return required under this section or make any false statement therein.

Penalty: Twenty pounds.

422. Where the Governor-General is satisfied that the enforcement of any provision of this Act, in regard to ships of any country, would be inconsistent with the obligations of the Commonwealth under a treaty made between that country and the United Kingdom, he may by Proclamation suspend the operation of that provision with regard to ships of that country so far as is necessary to enable the obligations of the Commonwealth under the treaty to be fulfilled.

Power to suspend provisions inconsistent with treaty, N.Z. 1909, s. 58.

422A.—(1.) Where the Governor-General is satisfied, as regards any ship or class of ships—

Dispensing power of Governor-General.

- (a) that any specified requirement of this Act has been substantially complied with;
- (b) that compliance with any specified requirement of this Act is, in the circumstances of the case, unnecessary; or
- (c) that the action taken or provision made as regards the subject-matter of the requirement is as effective as, or more effective than, actual compliance with the requirement,

Inserted by No. 8, 1925, s. 4.

he may by order direct that compliance on the part of that ship or that class of ships with that requirement may be dispensed with.