

ACTS

PASSED BY

THE PARLIAMENT

OF THE

COMMONWEALTH OF AUSTRALIA

DURING THE YEAR

1943.

NAVIGATION.

No. 1 of 1943.

An Act to amend Part IX. of the *Navigation Act 1912-1935* relating to Courts of Marine Inquiry.

[Reserved for His Majesty's pleasure, 12th June, 1942.]

[Royal Assent proclaimed, 10th February, 1943.]

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.—(1.) This Act may be cited as the *Navigation Act 1942*.

Short title
and citation.

(2.) The *Navigation Act 1912-1935** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Navigation Act 1912-1942*.

2. This Act shall commence on a date to be fixed by Proclamation after the King's approval thereto has been proclaimed in the Commonwealth.

Commencement.

3. Section three hundred and sixty of the Principal Act is amended by adding at the end thereof the following sub-section :—

Appointment
of assessors.

“(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,

* Act No. 4, 1913, as amended by No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; and No. 30, 1935.

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 :

Provided that in no case shall any person belonging to the ship to which the person complaining or complained against belongs be so appointed."

Powers of Court.

4. Section three hundred and sixty-four of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words "causing loss of life on or from ships, and as to charges of incompetency or misconduct on the part of masters or officers" and inserting in their stead the words "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";
- (b) by inserting in paragraph (e) of sub-section (1.), after the word "misconduct", the words "or failure of duty";
- (c) by inserting in paragraph (a) of sub-section (2.), after the word "dominions", the words "outside Australia"; and
- (d) by inserting at the end of sub-section (2.) the following word and paragraph :—
 - " ; 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—
 - (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."

Rehearing.

5. Section three hundred and sixty-six of the Principal Act is amended by adding at the end thereof the following sub-section :—

"(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."

6. Section three hundred and seventy-two of the Principal Act is repealed and the following section inserted in its stead :—

“ 372. A Court of Marine Inquiry holding any inquiry within its jurisdiction under this Act may—

Power to
cancel or
suspend
certificate.

- (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.”.

7. Section three hundred and seventy-three of the Principal Act is repealed and the following section inserted in its stead :—

“ 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.”.

Notice to
person
charged.

8. Section three hundred and seventy-four of the Principal Act is amended by inserting, after the word “ directs.”, the following sub-sections :—

Delivery up of
certificate.

“(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.

“(3.) Any master, mate or engineer who fails to deliver his 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.”.

9. After section three hundred and seventy-five of the Principal Act the following sections are inserted :—

“ 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.

“(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.

Appeals
against
cancellation
or suspension
of certificate.

“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.

“(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.”.

10. After section three hundred and seventy-seven of the Principal Act, the following section is inserted in Part IX. :—

Preliminary
investigation
by Deputy
Director or
other person.

“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.”.