

SHIPPING AND SEAMEN AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Shipping and Seamen Act 1952.

Clause 1 relates to the Short Title.

Clause 2 repeals the definition of "hovercraft" in section 2 (1) of the principal Act. That definition is no longer required, as provisions relating to hovercraft will be included in separate legislation.

Clause 3 inserts in section 2 (1) of the principal Act a definition of "inshore fishing boat", which is defined as a fishing boat which is less than 50 feet register length and does not go to sea beyond the outer limits of the fishing zone of New Zealand. This in effect is 12 miles from the coast. The clause consequentially substitutes new definitions of "coastal fishing boat" and "deep-sea fishing boat".

The definition of "inshore fishing boat" is inserted for the purposes of section 19 (1) (hh) of the principal Act providing for the issue of certificates of competency as inshore fishing skipper and also for the purposes of *clauses 5 and 6 (2)* of this Bill relating to the power of the Minister to permit an alien to act as master of an inshore fishing boat and to the endorsement of certificates.

Clause 4 amends section 17 (7) of the principal Act, paragraph (b) of which makes it an offence for any person knowingly or negligently to employ any person as an officer on any ship unless he is the holder of a valid certificate of competency or service of a grade appropriate to his station in the ship or of a higher grade.

The effect of this amendment is to make the offence one of strict liability, that is, it will not be necessary for the prosecution to prove knowledge or negligence on the part of the defendant. However, it will be a defence if the defendant proves that he did not know and had no reasonable opportunity of ascertaining that the certificate was a forgery or that the person employed was not the person named in it.

Clause 5: Section 17A of the principal Act imposes restrictions on aliens acting as master or first or only mate of a New Zealand ship, or as master of a New Zealand fishing boat which is required to carry a certificated master, or as engineer of a New Zealand ship exceeding a certain horsepower. Under subsection (2), the Minister may permit an alien to act as master of any such fishing boat or as master of a coastal fishing boat.

This clause amends section 17A to authorise the Minister to permit an alien to act as engineer of any fishing boat to which the restrictions apply or as master of an inshore fishing boat.

Clause 6: Section 18 of the principal Act provides for the recognition, pursuant to an Order in Council, of certificates of competency or service granted in other Commonwealth countries. This clause authorises the Secretary for Marine, where he is satisfied that a certificate of competency in respect of a fishing boat granted in any other country (whether a Commonwealth country or not) is of the like standard as one granted in New Zealand, he may permit the holder to act as master or mate or, as the case may require, engineer of any specified New Zealand fishing boat.

Clause 7: Subclause (1) introduces a new certificate of competency, that of mate of deep-sea fishing boat.

Subclause (2) will enable a certificate of competency as inshore fishing skipper to be endorsed restricting the holder to specified fishing boats or specified limits within the fishing zone of New Zealand.

Clause 8 is a drafting amendment of section 148 of the principal Act, which provides for the making of regulations as to accommodation to be provided for seamen on New Zealand ships and certain other ships. By definition, the term "seaman" does not include a master, and this clause extends the meaning of "seaman" for the purposes of section 148 so as to include a master.

Regulations at present in force made under section 148 include provisions for the accommodation of the master, and this clause extends the new definition of "seaman" to those regulations.

Clause 9: This is a drafting amendment of section 164 of the principal Act (relating to offences against discipline), subsection (1) of which refers to "the penalties prescribed in the next succeeding subsection", and subsection (2) of which refers to offences against certain provisions of "the last preceding subsection".

By the 1959 Amendment Act, a new subsection (1A) was inserted in section 164 providing for a further offence and penalty, but the references referred to above were not consequentially amended. This clause makes the necessary amendments.

Clause 10 amends section 178 of the principal Act, which prescribes the matters that are to be entered in the official log book.

Subclause (1) amends paragraph (b), which at present provides that offences against discipline for which it is intended to prosecute or to enforce a forfeiture or fine are to be entered in the official log. The amendment provides that where in accordance with any provision in the agreement with the crew the master decides to withhold from a seaman his right to a free passage back to the port at which he was engaged or to forfeit any wages that would be due to him up to the time when he would arrive at that port, this must be entered in the official log.

Subclause (2) amends paragraph (d), which at present provides that the master must enter in the official log a statement of the conduct and ability of each of his crew or a statement that he declines to give an opinion on those particulars, but the master may not enter a statement that he declines to give such an opinion, whether as to conduct or ability, unless the seaman has committed an offence or has been censured by the master for misconduct and this fact has been entered in the official log.

The effect of this *subclause (2)* is that the master may make an entry in the official log that he declines to give an opinion as to the *ability* of a seaman without the necessity of the seaman having committed an offence or been censured for misconduct. As at present, the master may not make an entry in the log book that he declines to give an opinion as to the *conduct* of a seaman unless the seaman has committed an offence or been censured for misconduct and this fact has been entered in the official log.

Clause 11: Subclause (1) enables fees to be charged for attendance and inspection by Surveyors during the construction of ships the plans and specifications of which are required by section 196 of the principal Act to be submitted to the Minister for approval before building is commenced.

Subclause (2) enables fees to be charged for the examination of plans and specifications submitted on a voluntary basis and for attendance and inspection by Surveyors during the course of construction.

Clause 12 amends section 218 of the principal Act, which at present requires certificates issued under Part IV to be transmitted to the appropriate Superintendent of Mercantile Marine or Collector of Customs. Notice that this has been done is to be given to the owner of the ship or his agent, and the certificate is to be delivered to him by the Superintendent or Collector on payment of the appropriate fees. If those fees are not paid within a reasonable time, the owner or agent commits an offence.

The amendment now provides that a certificate may be sent direct to the owner or his agent. On completion of the survey necessary for a certificate, a statement is to be sent to the owner or his agent as to the fees payable, and those fees must be paid within 30 days. If not so paid, the owner or agent commits an offence.

Clause 13 amends section 224 of the principal Act relating to the duration of certificates issued under Part IV. At present, a cargo ship safety construction certificate will be in force for a period not exceeding 1 year from the date of its issue, the actual duration being stated in the certificate.

The effect of this amendment will be that a cargo ship safety construction certificate will be in force for the period stated in it, which may not exceed 5 years from the date of its issue.

Clause 14 amends section 246B of the principal Act, relating to the control of foreign-going pleasure yachts. Subsection (8A) (which was inserted by section 14 of the Shipping and Seamen Amendment Act 1969 and is to come into force on a date fixed by Order in Council, not yet fixed) provides that the master of a pleasure yacht may not go to sea from any port in New Zealand on any voyage during which the yacht will be more than 50 miles from the coast of New Zealand without first obtaining a clearance under the Customs Act 1966.

The effect of this clause will be that a clearance will be required only if the yacht is departing for a port beyond New Zealand.

Clause 15 amends section 297 of the principal Act, which requires certain accidents to be reported to a Superintendent of Mercantile Marine. The effect of this amendment will be that any fire on board must be reported.

Clause 16 amends section 323 of the principal Act, which defines the cases in which a shipping casualty is deemed to occur. The provisions of Part VIII relating to shipping inquiries and investigations apply in cases where a shipping casualty, as defined in section 323, has occurred, and included in that definition are cases where a ship has been "materially damaged".

The effect of *subclause (1)* of this clause will be to include in that definition also any fire on board.

The amendment to section 333 made by *subclause (2)* is consequential on the amendments in *subclause (1)*.

Hon. Mr McCready

SHIPPING AND SEAMEN AMENDMENT

ANALYSIS

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2. Definition of "hovercraft" repealed	11. Fees in respect of ships built in New Zealand
3. Meaning of "inshore fishing boat"	12. Transmission of certificates
4. Ships to have certificated officers	13. Duration of cargo ship safety construction certificates
5. Restriction on employment of aliens	14. Control of foreign-going pleasure yachts
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A BILL INTITULED

An Act to amend the Shipping and Seamen Act 1952

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Shipping and Seamen Amendment Act 1970, and shall be read together with and deemed part of the Shipping and Seamen Act 1952* (hereinafter referred to as the principal Act).

*Reprinted 1965, Vol. 3, p. 1631

Amendments: 1966, No. 84; 1967, No. 119; 1968, No. 55; 1969, Nos. 4, 25

2. Definition of “hovercraft” repealed—Section 2 of the principal Act is hereby amended by repealing the definition of the term “hovercraft” in subsection (1) (which definition was inserted by section 9 (1) of the Shipping and Seamen Amendment Act 1968).

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3. Meaning of “inshore fishing boat”—(1) Section 2 of the principal Act is hereby further amended by inserting in subsection (1), after the definition of the term “in bulk” (as inserted by section 15 (3) of the Shipping and Seamen Amendment Act 1965), the following definition:

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“‘Inshore fishing boat’ means a New Zealand fishing boat of less than 50 feet register length which does not in the course of any voyage or excursion go to sea beyond the outer limits of the fishing zone of New Zealand (as defined in section 8 of the Territorial Sea and Fishing Zone Act 1965):”

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(2) Section 2 of the principal Act is hereby further amended by repealing the definitions of the terms “coastal fishing boat” and “deep-sea fishing boat” in subsection (1) (which definitions were inserted by section 2 (1) of the Shipping and Seamen Amendment Act 1964), and substituting the following definitions:

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“‘Coastal fishing boat’ means a New Zealand fishing boat which—

“(a) Being 50 feet or more register length, does not in the course of any voyage or excursion go to sea more than 75 miles from the coasts of the North Island or the South Island (including Stewart Island) or the Chatham Islands; or

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“(b) Being less than 50 feet register length, in the course of any voyage or excursion goes to sea beyond the outer limits of the fishing zone of New Zealand (as defined in section 8 of the Territorial Sea and Fishing Zone Act 1965) but does not go more than 75 miles from the coasts of the North Island or the South Island (including Stewart Island) or the Chatham Islands:

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“‘Deep-sea fishing boat’ means a New Zealand fishing boat which is not a coastal fishing boat or an inshore fishing boat:”

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4. Ships to have certificated officers—Section 17 of the principal Act is hereby amended by repealing paragraph (b) of subsection (7), and substituting the following paragraph:

5 “(b) Whether knowingly or negligently or not, employs any such person as aforesaid in any such capacity as aforesaid:

10 “Provided that it shall be a defence in proceedings for an offence against this paragraph (b) if the defendant proves that the person employed produced to him the appropriate certificate but the defendant did not know and had no reasonable opportunity of ascertaining that the certificate or any material part of it was a forgery or that the person employed was not the person named therein as the holder.”

5. Restriction on employment of aliens—Section 17A of the principal Act (as inserted by section 3 of the Shipping and Seamen Amendment Act 1964) is hereby amended—

20 (a) By inserting in paragraph (a) of subsection (2), after the words “fishing boat”, the words “or as engineer of any fishing boat to which paragraph (b) of subsection (1) of this section applies”:

25 (b) By inserting in paragraph (b) of subsection (2), after the words “skipper of coastal fishing boat”, the words “or as inshore fishing skipper”:

(c) By adding to paragraph (b) of subsection (2) the words “or, as the case may be, of an inshore fishing boat”.

6. Certificates granted out of New Zealand—Section 18 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

30 “(2) Where the Secretary is satisfied that a certificate of competency in respect of a fishing boat granted in any country (whether a Commonwealth country or not) other than New Zealand is of a like standard and has been granted under like conditions of service and examination as a certificate of competency in respect of a fishing boat granted under this Act, the Secretary may, subject to such conditions and for such period as he thinks fit, permit the holder of that certificate to

35 act as master or mate or, as the case may require, engineer of any specified New Zealand fishing boat.”

7. Certificates of competency—(1) Section 19 of the principal Act is hereby amended by inserting in subsection (1) (as substituted by section 4 (1) of the Shipping and Seamen Amendment Act 1964), after paragraph (g), the following paragraph:

“(gg) Mate of deep-sea fishing boat.”

(2) Section 19 of the principal Act is hereby further amended by adding to subsection (1A) (as substituted by section 4 (1) of the Shipping and Seamen Amendment Act 1964) the following paragraph:

“(g) Certificates of competency as inshore fishing skipper endorsed with the names of one or more specified fishing boats and the plying limits within the fishing zone of New Zealand for which the certificates are valid.”

8. Regulations as to accommodation of seamen—Section 148 of the principal Act is hereby amended by adding the following subsection:

“(5) In this section and in sections 149 and 150 of this Act and in any regulations made under this section, whether before or after the commencement of this subsection, the terms ‘crew’ and ‘seamen’ include and shall be deemed always to have included a master.”

9. Offences against discipline—Section 164 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words “the next succeeding subsection”, and substituting the words “subsection (2) of this section”:

(b) By omitting from paragraph (a) of subsection (2), and also from paragraphs (b), (c), (d), (e), (f), and (g), the words “the last preceding subsection”, and substituting in each case the words “subsection (1) of this section”.

10. Matters to be entered in log—(1) Section 178 of the principal Act is hereby amended by inserting in paragraph (b), after the words “forfeiture or fine”, the words “or for which, pursuant to the provisions of the agreement with the crew, it is intended not to provide him with a free passage back to the port at which he was engaged or not to pay him wages up to the time he would arrive at that port”.

(2) Section 178 of the principal Act is hereby further amended by inserting in the proviso to paragraph (d) (as substituted by section 31 of the Shipping and Seamen Amendment Act 1959), after the words "such an opinion", the words
5 "on the conduct of a seaman".

11. Fees in respect of ships built in New Zealand—(1) Section 196 of the principal Act is hereby amended by inserting in paragraph (c) of subsection (1), after the words "under this section", the words "and for the attendance of and
10 inspection by Surveyors during the construction of a ship".

(2) Section 196 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

"(1A) Where plans and specifications of a ship (not being
15 a ship to which subsection (1) of this section applies) are submitted to the Department, there shall be payable for the examination of those plans and specifications and for any attendance of and inspection by Surveyors during the construction of the ship such fees as the Minister from time to
20 time directs."

12. Transmission of certificates—(1) Section 218 of the principal Act is hereby amended—

(a) By adding to subsection (1) the words "or to be transmitted to the owner or his agent addressed to him
25 at the address specified in his application for the certificate":

(b) By adding to subsection (3) the words "or, as the case may be, that it was transmitted to the owner or his agent addressed to him at the address specified
30 in his application for the certificate".

(2) Section 218 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) On completion of any survey carried out under this
35 Part of this Act, the Secretary shall cause to be sent to the owner or his agent a statement, addressed to him at the address specified in the application for the certificate, of the proper fees and other sums (if any) mentioned in this Act as payable in that behalf. If the owner or his agent, as the case
40 may be, fails to pay those fees and other sums to the Secretary within 30 days after the date on which that statement is sent to him, he commits an offence against this Act."

13. Duration of cargo ship safety construction certificates—

(1) Section 224 of the principal Act is hereby amended—

(a) By omitting from subsection (1) (as substituted by section 44 of the Shipping and Seamen Amendment Act 1959 and amended by section 8 (4) (d) of the Shipping and Seamen Amendment Act 1965) the words “a cargo ship safety construction certificate”:

(b) By adding to subsection (1) (as so substituted) the words “A cargo ship safety construction certificate shall be in force for a period not exceeding 5 years from the date of its issue.”

(2) Section 8 of the Shipping and Seamen Amendment Act 1965 is hereby consequentially amended by repealing paragraph (d) of subsection (4).

14. Control of foreign-going pleasure yachts—(1) Section 246B of the principal Act (as inserted by section 50 (1) of the Shipping and Seamen Amendment Act 1959) is hereby amended by omitting from subparagraph (iii) of paragraph (a) of subsection (2) the word “or” and substituting the word “and”, and by adding to that paragraph the following subparagraph:

“(iv) The master has obtained a certificate of clearance under the Customs Act 1966; or”.

(2) Section 246B of the principal Act (as so inserted) is hereby further amended by inserting in subsection (7), after the words “subparagraph (iii)”, the words “and subparagraph (iv)”.

(3) Section 246B of the principal Act (as so inserted) is hereby further amended by repealing subsections (8A) and (8B) (as inserted by section 14 of the Shipping and Seamen Amendment Act 1969), and substituting the following subsection:

“(8A) Section 14 of the Summary Proceedings Act 1957 and section 481 of this Act shall not apply with respect to an offence against subsection (8) of this section, being an offence committed in respect of a voyage to a port beyond New Zealand.”

(4) Section 14 of the Shipping and Seamen Amendment Act 1969 is hereby consequentially repealed.

15. Accidents to be reported to Superintendent—(1) Section 297 of the principal Act (as amended by section 58 (1) of the Shipping and Seamen Amendment Act 1959 and section 19 of the Shipping and Seamen Amendment Act 5 1969) is hereby further amended—

- (a) By omitting from subsection (1) the words “or has been lost or abandoned or stranded”, and substituting the words “or has been lost or abandoned or stranded or has had a fire on board”:
- 10 (b) By omitting from subsection (1) the words “or loss or abandonment or stranding” wherever they occur, and substituting in each case the words “or loss or abandonment or stranding or fire”:
- 15 (c) By omitting from subsection (2) the words “or has been lost or abandoned or stranded”, and substituting the words “or has been lost or abandoned or stranded or has had a fire on board”:
- (d) By omitting from subsection (2) the words “or loss or abandonment or stranding” wherever they occur, and substituting in each case the words “or loss or abandonment or stranding or fire”:
- 20 (e) By inserting in paragraph (c) of subsection (3), after the words “to have occurred”, the words “or which has had a fire on board”.
- 25 (2) Section 19 of the Shipping and Seamen Amendment Act 1969 is hereby consequentially amended by repealing paragraphs (a) to (d).

16. Cases where shipping casualty deemed to occur—

- (1) Section 323 of the principal Act is hereby amended—
 - 30 (a) By adding to paragraph (a) the words “or has had a fire on board”:
 - (b) By omitting from paragraph (c) the words “or casualty”, and substituting the words “casualty, or fire”:
 - 35 (c) By omitting from paragraph (d) the words “or casualty”, and substituting the words “casualty, or fire”.
- (2) Section 333 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (1), after the words 40 “loss of life”, the words “or the fire on board”.