

WESTERN AUSTRALIAN
MARINE (No. 2).

No. 109 of 1973.

AN ACT to amend the Western Australian Marine
Act, 1948-1972.

[Assented to 17th January, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Western Australian Marine Act Amendment Act (No. 2)*, 1973.

Short title.
and citation.

(2) In this Act the Western Australian Marine Act, 1948-1972, is referred to as the principal Act.

Reprinted as
approved for
reprint 13th
June, 1968,
and amended
by Acts Nos.
30 of 1968
and
1 of 1972.

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(3) The principal Act as amended by this Act may be cited as the Western Australian Marine Act, 1948-1973.

Commence-
ment.

2. Section 5, section 6 and section 7 of this Act shall come into operation on a date to be fixed by proclamation after the Queen's approval thereto has been proclaimed in the State.

Section 30
repealed.

3. Section 30 of the principal Act is repealed.

Section 44
amended.

4. Section 44 of the principal Act is amended, as to subsection (2), by deleting the passage commencing with the word "incur", in line four of that subsection, and ending with the word "dollar", in line five, and substituting a new passage as follows—

"be liable to a penalty—

(a) for a first offence, of not less than one hundred dollars or more than one thousand dollars; and

(b) for a second or subsequent offence, of not less than five hundred dollars or more than one thousand dollars,

and shall incur a further penalty of ten dollars"

5. Section 21 of the principal Act is amended— Section 21
amended.

(a) by adding after subsection (4) a new subsection as follows—

(4a) This section shall not apply to ships in respect of which a determination of the Manning Committee is in force under section 21C of this Act. ;

(b) as to subsection (5),—

- (i) by deleting the subsection designation “(5)” and substituting the designation “21A. (1)”;
- (ii) by deleting the passage “dollars;” in line fifteen and substituting the passage “dollars.”; and
- (iii) by deleting the words “And if” in line sixteen and substituting the passage “(2) If”;

(c) as to subsection (6),—

- (i) by deleting the subsection designation “(6)” and substituting the designation “(3)”;
- (ii) by deleting the word “not” in line two;
- (iii) by deleting the words “section unless” in line three and substituting a new passage as follows—

Subdivision of this Act if—

(a) ;

- (iv) by deleting the passage “grade: Provided that” in lines seven and eight and substituting a new passage as follows—

grade;

(b) he is ;

- (v) by deleting all the words after the word "Act" in line twelve and substituting a new passage as follows—

of a grade appropriate to his station in the ship, or of a higher grade; or

- (c) he possesses qualifications and experience not inferior to the requirements prescribed in relation to his station in that ship pursuant to a determination of the Manning Committee,

but not otherwise. ;

- (d) as to subsection (7), by deleting the subsection designation "(7)" and substituting the designation "21B. (1)"; and

- (e) as to subsection (8),—

(i) by deleting the subsection designation "(8)" and substituting the subsection designation "(2)"; and

(ii) by deleting the passage "subsection (7)" in line three and substituting the passage "subsection (1)".

Sections 21C
to 21K added.

6. The principal Act is amended by adding after the proposed section 21B new sections as follows—

Manning
Committee.

21C. (1) There shall be a Committee to be known as the "Western Australian Marine Act Manning Committee", which shall be referred to in this Act as "the Manning Committee".

(2) The Manning Committee shall, as soon as practicable after a request in respect of a coast-trade ship or a harbour and river ship has been referred or made to it under this

Subdivision of this Act, determine with what minimum complement of officers, engineers and seamen the ship should be manned, and what should be their respective minimum qualifications and experience to ensure the safe navigation of the ship and the safe use of the equipment and machinery of the ship in matters incidental to the navigation thereof or, where such determination has previously been made under this section, shall review the determination and vary it as it thinks fit.

(3) For the purposes of a determination or the review of a determination under subsection (2) of this section, the Manning Committee shall take into account the nature and condition of the ship and of its equipment and machinery and the conditions under which it is being or is to be navigated and any other relevant factors.

(4) The determination of the Manning Committee may be varied at any time by the Minister, and the determination as so varied shall for the purpose of this Subdivision of this Act be deemed to be the determination of the Manning Committee.

(5) The Minister shall cause a copy of a determination of the Manning Committee, or where a determination has been varied under this section, a copy of the determination as varied, to be published in the *Gazette*.

21D. (1) A person who—

- (a) being the owner, or the agent of the owner, of a coast-trade ship or a harbour and river ship in respect of which a determination has not been made under this Subdivision of this Act, fails to request that the Manning Committee make a determination in respect of that ship; or

Offences
against
Manning
Committee
determina-
tions, etc.

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- (b) causes any coast-trade ship or harbour and river ship that was not, at the date of the coming into operation of the Western Australian Marine Act Amendment Act (No. 2), 1973, trading or plying within Western Australian waters to go to sea or be navigated within Western Australian waters before a determination has been made in respect of that ship by the Manning Committee; or
- (c) causes a coast-trade ship or harbour and river ship in respect of which a determination has been made and published under this Subdivision of this Act to go to sea or to be navigated within Western Australian waters with a lesser complement of officers, engineers and seamen than that prescribed in the determination, or a complement of officers, engineers and seamen having inferior qualifications or less experience than as prescribed in the determination,

is guilty of an offence and liable to a penalty of two hundred dollars.

(2) This section shall not apply to or in relation to any lighter, barge or hulk possessing no independent motive power or means of propelling itself unless the lighter, barge or hulk is of fifteen tons gross tonnage or more and the owner, the agent of the owner or master thereof intends that the lighter, barge or hulk should go to sea.

(3) This section shall not apply to or in relation to any vessel licensed or required to be licensed by or under the Fisheries Act, 1905, which has an overall length of less than 35 metres.

Application
for deter-
mination
or review.

21E. (1) An application for a determination in respect of a ship or for the review of a determination shall be made in writing and addressed to the Manager of the Department,

and, if satisfied that the request is not frivolous or vexatious, the Manager shall on receipt of the application refer it to the Manning Committee.

(2) An application—

- (a) for a determination, shall be made by the owner or the agent of the owner of the ship; and
- (b) for the review of a determination, may be made by the owner, the agent of the owner, the master, or any other person who in the opinion of the Manager of the Department has a proper interest in the navigation of the ship.

(3) The Manager of the Department may, at any time, in writing request the Manning Committee to make a determination in respect of any coast-trade ship or harbour and river ship, or to review any determination previously made.

21F. (1) For the purposes of this Subdivision of this Act the Manning Committee may—

Power to obtain information.

- (a) by summons under the hand of the chairman or a member require any person—
 - (i) to attend before it;
 - (ii) to give oral or written answers to any questions relating to any matter before it; and
 - (iii) to produce any books, charts, maps, plans, papers or other records relating to any matter before it;
- (b) examine witnesses on oath or affirmation, which may be administered by the chairman or a member;

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- (c) require any information given to be verified by a statutory declaration; and
- (d) enter and inspect any vessel in respect of which a determination is to be made or reviewed and, for the purposes of such entry and inspection, enter any place or premises adjacent thereto.

(2) If any person—

- (a) who has been duly served with a summons to attend before the Manning Committee, neglects or fails to attend in obedience to that summons;
- (b) wilfully insults the Manning Committee or any member of it;
- (c) misbehaves himself before the Manning Committee;
- (d) obstructs the Manning Committee or interrupts its proceedings;
- (e) being called or examined as a witness before the Manning Committee, refuses to be sworn or to affirm or to produce documents specified in a summons served upon him, or any of them; or
- (f) being so called or examined refuses to answer any lawful questions or prevaricates in his evidence,

he is guilty of an offence and liable to a penalty of two hundred dollars.

Constitution
of the
Manning
Committee.

21G. (1) The Manning Committee shall consist of—

- (a) the person holding or acting in the office of Manager of the Department, or an officer of the Department nominated in writing by him, who shall be chairman;

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- (b) the person holding or acting in the office of Nautical Adviser to the Department, or an officer of the Department who is a certified master nominated in writing by him;
- (c) the person holding or acting in the office of Senior Engineer and Ship Surveyor to the Department, or an officer of the Department who is a certified engineer nominated in writing by him;
- (d) a representative of the Seamen's Union of Australia, selected by the Minister from a panel of three names submitted to the Minister by that Union;
- (e) a representative of the Australian Institute of Marine and Power Engineers, selected by the Minister from a panel of names submitted to the Minister by that Institute;
- (f) a representative of the Merchant Service Guild of Australia, selected by the Minister from a panel of three names submitted to the Minister by that Guild,

each of whom shall be appointed by the Governor, and

- (g) any other persons not exceeding two in number who have been duly nominated in accordance with this Subdivision of this Act by the owner, or the agent of the owner, of a ship in respect of which the Manning Committee is to make or review a determination.

(2) A person who becomes a member of the Manning Committee by virtue of nomination by the owner, or the agent of the owner, of a ship in respect of which a determination is to be made or reviewed by the Manning Committee shall hold office only whilst business in respect of that ship is being transacted, considered or otherwise dealt with by it.

(3) The Governor shall appoint a person representative of the same interest and possessing the like qualification to be the deputy of each member appointed by him who shall act in the place of the member if the member is unable to perform his duties or if it is otherwise expedient so to do, and a person so appointed to be a deputy of the chairman shall be deemed to be the chairman whilst so acting.

(4) A reference in this Subdivision of this Act to a member of the Manning Committee shall be construed as including a reference to a deputy member whilst acting in the place of a member.

(5) The Public Service Act, 1904, does not apply to or in relation to the appointment of a member of the Manning Committee and a member shall not, as such, be subject to the provisions of that Act.

(6) Subject to subsection (2) of this section, the members of the Manning Committee shall hold office for such period and upon such terms and conditions as the Governor may determine.

(7) The members of the Manning Committee shall be entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Nomination
of members
by owner or
agent.

21H. (1) The Manager of the Department shall, at least fourteen days before the Manning Committee sits to make or review a determination in respect of a ship or at such time as may

be agreed upon by the Manager and the owner, or the agent of the owner, of the ship, by notice in writing served personally or by post upon the owner, or the agent of the owner, of the ship, inform him of the place at which the sitting will be held and the day and time of its commencement and request him to nominate a person or persons to be a member or members of the Manning Committee.

(2) The owner, or the agent of the owner, of the ship may, in a manner approved by the Minister nominate a person or persons (not exceeding two in number) to be a member or members of the Manning Committee.

(3) A person shall not be nominated under subsection (2) of this section unless he is a certificated master or certificated engineer, or is, in the opinion of the Minister, otherwise qualified to participate in the deliberations and functions of the Manning Committee.

(4) A nomination under subsection (2) of this section shall be made not less than seven days before the day on which the sitting is to commence or at such time as may be agreed upon by the Manager and the owner or the agent of the owner, of the ship.

(5) If the owner, or the agent of the owner, of the ship fails to exercise, in accordance with this section, his right to nominate a person or persons to be a member or members of the Manning Committee, he forfeits that right.

21J. (1) Three members shall form a quorum of the Manning Committee but a quorum shall, unless the Minister otherwise directs, contain all members duly nominated by the owner, or the agent of the owner, of the ship in respect of which the Manning Committee is to make or review a determination. Quorum, etc.

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(2) Subject to the provisions of section 21K, a decision concurred in by a majority of the members of the Manning Committee, or if the members are equally divided, concurred in by the chairman and one other member shall be the decision of the Manning Committee.

(3) A decision, act or proceeding of the Manning Committee shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such decision, act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed. .

Represent-
ative's
voting
powers.

21K. (1) For the purpose of a determination or the review of a determination, the members of the Manning Committee appointed under paragraph (d) and paragraph (e) of subsection (1) of section 21G shall be eligible only to record one vote between them, which shall be exercised in the manner provided by this section.

(2) On any question in relation to engineers, the vote shall be exercised by the representative of the Australian Institute of Marine and Power Engineers, and in relation to any other matter the vote shall be exercised by the representative of the Seamen's Union of Australia.

(3) Where the members referred to in subsection (1) of this section are unable to agree as to which of them has in relation to any matter the right of exercising the representative's vote, that right may be determined by the chairman of the Manning Committee.

Headings
amended.

7. The principal Act is amended—

(a) as to section 3,—

- (i) by deleting the words "EXAMINATIONS AND CERTIFICATES" in lines five and six and substituting the words "QUALIFICATIONS AND MANNING REQUIREMENTS"; and
 - (ii) by deleting the passage "s. 21—Certificated officers on ships." in lines eleven and twelve and substituting the passage "ss. 21—21K—Manning requirements.";
- (b) as to the heading of Part III, by deleting the words "EXAMINATIONS AND CERTIFICATES" and substituting the words "QUALIFICATIONS AND MANNING REQUIREMENTS"; and
- (c) as to the heading of Subdivision (ii) of Part III, by deleting the passage "Certificated Officers on Ships." and substituting the passage "Manning requirements."
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