

# Supplement to Government Gazette

PERTH: FRIDAY, FEBRUARY 17.

No. 11472—C.S.O.

## THE NAVIGATION ACT, 1904.

<sup>254</sup>  
1905

### PROCLAMATION

WESTERN AUSTRALIA, }  
TO WIT. } By His Excellency Admiral Sir FREDERICK  
GEORGE DENHAM BEDFORD, Knight Grand  
Cross of the Most Honourable Order of the  
Bath, Governor in and over the State of  
Western Australia and its Dependencies,  
etc., etc., etc.

FRED. G. D. BEDFORD,  
Governor.  
[L.S.]

WHEREAS by "The Navigation Act, 1904," there is conferred upon such Local Courts as may be proclaimed by the Governor for the purpose, jurisdiction to hear and determine inquiries, appeals, and references under the said Act: AND it is provided that a Local Court exercising such jurisdiction shall be a court of record and shall be called a Court of Marine Inquiry: NOW THEREFORE I, the said Governor, with the advice of the Executive Council, do hereby proclaim the Local Courts holden at Albany, Broome, Bunbury, Carnarvon, Cossack, Fremantle, and Geraldton, respectively, as Courts of Marine Inquiry to exercise such jurisdiction under the said Act as aforesaid, and appoint the Magistrates of the said Local Courts to sit as Magistrates of Courts of Marine Inquiry for the purpose of hearing and determining appeals under Section seventy-one of the Act.

Given under my hand and the Public Seal of the said State, at Perth, this 17th day of February, 1905.

By His Excellency's Command,

GEORGE TAYLOR,  
Colonial Secretary.

GOD SAVE THE KING !!!

No. 11473.—C.S.O.

## THE NAVIGATION ACT, 1904.

<sup>254</sup>  
1905

Colonial Secretary's Office,  
Perth, 17th February, 1905.

HIS Excellency the Governor, with the advice of the Executive Council, has been pleased to make the following Rules of Courts of Marine Inquiry under the provisions of "The Navigation Act, 1904."

F. D. NORTH,  
Under Secretary.

### RULES OF COURTS OF MARINE INQUIRY.

Short title and commencement.

1. These rules may be cited as the "Court of Marine Inquiry Rules, 1905." They shall come into operation on the date of their publication in the *Government Gazette*, and shall, so far as practicable, and unless otherwise expressly provided, apply to all matters arising in any pending inquiry, appeal, or reference, and also to all inquiries, appeals, references, or re-hearings instituted on or after that date.

#### PART I.

##### INTERPRETATION.

2. "Court" means a Court of Marine Inquiry.  
"Clerk" means the officer performing for the time being the duties of the Clerk of a Court of Marine Inquiry.  
"Chief Harbour Master" includes any person authorised to perform his duties under the Act.

#### PART II.

##### APPOINTMENT OF COURT AND NOTICE TO PARTIES.

Clerk to inform Magistrate when notice of appeal filed.

3. Immediately upon the filing of a notice of appeal or reference, the Clerk shall communicate the fact to the Magistrate of the Court, who shall appoint a time and place for the hearing of the appeal or reference.

Notice to parties.

4. As soon as the Clerk has ascertained when an appeal or reference will be heard, he shall send notice thereof to the Chief Harbour Master, and to the appellant, or, in the case of a reference, to the owner or master, in the form No. 2 in the Appendix.

Chief Harbour Master to give notice to complainant.

5. If the appeal or reference is in respect of the detention of a ship after a survey made on the complaint of any person, hereinafter called the complainant, the Chief Harbour Master shall send to him notice of the time and place appointed for the hearing.

Notice of inquiry.

6. When the time and place for holding an inquiry have been fixed by the Court, the Clerk shall cause a notice, to be called a notice of inquiry, to be served upon the Chief Harbour Master, and the owner, master, and officers of the ship, as well as upon any person whom the Court may direct to be served with such notice. The notice shall be in the form No. 5 of the Appendix, with such variations as circumstances may require.

### PART III.

#### ASSESSORS.

##### Qualifications of Assessors.

1. Persons placed on the List of Assessors, who assist in a Court of Marine Inquiry, under "The Navigation Act, 1904," shall be classified according to their qualifications as follows:—

##### Qualifications—Classes.

###### Class I.—Mercantile Marine Masters.

- (a.) Five years' service as a master in the merchant service, of which two years must have been service in command of a sailing ship with a certificate of competency.
- (b.) Five years' service as a master in the merchant service, of which two years must have been service in command of a steamship with a certificate of competency.

###### Class II.—Mercantile Marine Engineers.

Five years' service as an engineer in the merchant service, and at the time of appointment holding a first-class certificate of competency as an engineer.

##### Appointment of Assessors.

2. Subject to these Rules, Assessors for investigations into shipping casualties shall be appointed from the List of Assessors by the Colonial Secretary, and, so far as in his opinion circumstances permit, shall be taken in order of rotation from each class or sub-class above mentioned.

3. If any investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master, mate, or engineer, there shall be appointed from the list of assessors not less than two assessors from Class I. and Class II., or from either of those classes.

4. Subject to any special appointment or appointments which the Colonial Secretary may think it expedient to make in any case where special circumstances appear to him to require a departure from these Rules (the requirements of the last preceding Rule being always complied with), assessors shall be appointed as follows:—

- (1.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of a certificate of a master or mate, but not of an engineer, at least two assessors shall be appointed from Class I.
- (2.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a sailing ship one at least of the assessors shall be appointed from subsection (a.) of Class I.; and where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a steamship, one at least of the assessors shall be appointed from subsection (b.) of Class I.
- (3.) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of an engineer, one at least of the assessors shall be appointed from Class II.

5. The Chief Harbour Master shall inform the Colonial Secretary when assessors are required, and shall state from which of the aforesaid classes assessors ought, in his opinion to be appointed; but the Chief Harbour Master shall not request the appointment of any individual assessor.

6. An appointment made by the Colonial Secretary of any assessor or assessors for an investigation shall not be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

#### PART IV.

##### PARTIES.

###### *Inquiries.*

###### Parties to inquiries.

7. The Chief Harbour Master, and any certificated officer upon whom a notice of inquiry has been served, shall be deemed to be parties to the proceedings; and, unless the Court shall otherwise order, the Chief Harbour Master shall be the party having the conduct of the case.

###### Who may appear.

8. Any other person upon whom a notice of inquiry has been served, and any person who shows that he has an interest in the inquiry, shall have a right to appear, and any other person may, by leave of the Court, appear; and any person who appears under this rule shall thereupon become a party to the proceedings.

###### *Appeals or references.*

###### Parties to appeals or references.

9. The Chief Harbour Master and the appellant, or, in the case of a reference, the owner or master, shall be parties to the proceedings.

###### Court may make any person a party.

10. Any other person, on entering an appearance, may by permission of the Court, be made a party to the proceedings.

#### PART V.

##### NOTICE OF APPEAL.

###### Notice of appeal to be given.

11. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to the Court, in respect of the detention of a ship alleged to be unsafe, he shall file at the office of the Clerk of the Court nearest to the place in which the ship is, a notice in the form No. 1 in the Appendix.

#### PART VI.

##### EVIDENCE.

###### Notice to produce.

12. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

###### Notice to admit.

13. Either party may give to the other party a notice in writing to admit any document (saving all just exceptions); and in the case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any documents shall be allowed unless such notice be given, except where the omission to give notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

###### Subpoenas.

14. Subpoenas shall be according to one of the forms (Forms Nos. 6 and 7) in the Appendix, and may be issued to any party without leave of the Court; and the Court may direct the Clerk to subpoena any person to attend for the purpose of being examined.

###### Report of survey to be produced.

15. On the hearing of an appeal or reference in respect of the detention of a ship, the Chief Harbour Master shall produce as evidence all the reports of the survey of the ship.

#### PART VII.

##### PROCEEDINGS IN COURT.

###### Method of taking down evidence.

16. The evidence shall be taken down by a shorthand-writer or type-writer, or in such other way as the Court may direct.

##### *Inquiries.*

###### Proceedings on non-appearance of any party.

17. At the time and place appointed for holding an inquiry the Court may proceed with the inquiry, whether the parties upon whom a notice of inquiry has been served, or any of them, are present or not.

###### Chief Harbour Master to begin.

18. The proceedings on the inquiry shall commence by the Chief Harbour Master opening his case and then proceeding with the examination of his witnesses. Each witness, after being examined on behalf of the Chief Harbour Master, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined by the Chief Harbour Master.

###### Order in which parties to be heard.

19. When the examination of the witnesses produced by the Chief Harbour Master has been concluded, each party to the investigation shall be entitled to produce witnesses, or re-call any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard, and their witnesses examined, cross-examined, and re-examined in such order as the Court shall direct. The Chief Harbour Master may also produce and examine further witnesses, who may be cross-examined by the parties and re-examined by the Chief Harbour Master.

###### Parties may address the Court.

20. When the whole of the evidence has been concluded, any of the parties who desire so to do may address the Court upon the evidence, and the Chief Harbour Master may address the Court in reply upon the whole case.

###### *Appeals or references.*

###### Chief Harbour Master to begin.

21. At the hearing, the Chief Harbour Master shall open his case and then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make.

###### Complainant to follow.

22. The complainant, if he has appeared, shall then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make.

###### Appellant to follow complainant.

23. The appellant, or, in the case of a reference, the master or owner shall then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make.

###### Chief Harbour Master and complainant may call evidence in reply.

24. After the appellant or, in the case of a reference, the master or owner has examined all his witnesses, the Chief Harbour Master and the complainant may, on cause shown to the satisfaction of the Court, call further witnesses in reply.

###### Order in which parties to address.

25. After all the witnesses have been examined, the Court shall first hear the appellant or, in the case of a reference, the master or owner, then the complainant (if any), and afterwards the Chief Harbour Master.

###### Order for release or detention.

26. As soon as possible after the Court has come to its decision, the Court shall issue an order for the release or detention (either finally or on condition) of the vessel, in the Form No. 3 in the Appendix.

###### *Adjournment.*

###### Court may adjourn hearing.

27. The Court may adjourn the hearing of the inquiry, appeal, or reference from time to time and from place to place; and, where an adjournment is asked for by a party or by the Chief Harbour Master, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition to granting the adjournment.

#### PART VIII.

##### RE-HEARING BY ORDER OF THE GOVERNOR.

###### Magistrate to fix time and place for re-hearing.

28. Where the Governor directs a re-hearing of any case, the Magistrate shall fix a time and place for the re-hearing, and the Clerk shall give such reasonable notice to the parties affected by the order for re-hearing as the circumstances of the case may permit.

###### Parties may be added.

29. The Court may, if it thinks fit, order any other person, other than the parties served with the notice of re-hearing, to be added as a party or parties to the proceedings for the purpose of the re-hearing, on such terms with respect to costs and otherwise as the Court may think fit. Any party to the proceedings may object to the appearance, on the re-hearing, of any other party as unnecessary.

Copy of evidence on hearing to be admitted on re-hearing.

30. The evidence taken at the hearing shall be proved before the Court at the re-hearing by a copy of the notes of the shorthand-writer, or other person authorised by the Court to take down the evidence. For the purpose of this rule, copies of the notes of the evidence, as well as a copy of the decision given by the Court, shall be supplied to any party to the proceedings, on request; on payment of the usual charge for copying.

Copy of decision and notes of evidence to be sent to Governor.

31. On the conclusion of the re-hearing the Court shall send to the Governor a copy of the decision, together with notes of any further evidence which may have been given.

PART IX.

COSTS.

Court may order any party to pay costs.

32. The Court may, in its discretion, order the costs and expenses of the inquiry, appeal, reference, or re-hearing, or any part thereof, to be paid by any party. An order for payment of costs shall be in the Form No. 9 in the Appendix, with such variations as circumstances may require.

Taxation of costs.

33. Where the costs are not assessed by the Court, they shall be taxed by the Clerk on one of the scales provided by the Local Court Rules, so far as same may be applicable; and the Court shall direct on what scale the taxation shall take place.

PART X.

GENERAL PROVISIONS.

Court to report to Governor.

34. At the conclusion of the inquiry, or of the hearing of the appeal or reference, the Court shall draw up its decision or report, which shall be in one of the forms (Forms Nos. 4 and 8) in the Appendix, with such variations as circumstances may require; and shall send the report, or a copy of the decision, together with notes of the evidence given, to the Governor.

Master or officer may obtain copy of decision.

35. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Clerk shall, on application by any party to the proceedings, give him a copy of the decision of the Court.

Computation of time.

36. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, or holiday, in which case the time shall be reckoned exclusive of that day also.

Service of process.

37. Service of any notice, subpoena, summons, or other process, shall be deemed good service if made personally on the person to be served, or if made at his last known place of abode or business, or if made on board any ship or 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 such ship or vessel; and in the case of an owner of a ship if made on board such ship in manner aforesaid, or at any address he may give for service.

Proof of service.

38. The service of any notice, subpoena, summons, or other process or document may be proved by the oath or affidavit of the person by whom it was served.

Local Courts Acts and Rules to apply.

39. The provisions of the Local Courts Act of 1904, and any Act amending the same, and of the Local Court Rules made thereunder, shall apply to inquiries, appeals, references, and re-hearings, so far as the same may be applicable, save and except in so far as they may conflict with these Rules.

Fees.

40. No fees shall be demanded of any person for filing any document, or for issuing any process of the Court, other than process to enforce an order for the payment of money.

Clerk.

41. For every Court there shall be a Clerk, who shall sign and issue all process of the Court, and have the custody of all records, minutes, and proceedings of the Court.

Clerk of Local Court to act as Clerk.

42. The officer of the Local Court performing for the time being the duties of Clerk of that Court shall act as Clerk of the Court of Marine Inquiry.

Minute-book.

43. The Clerk shall keep a minute-book, according to the form No. 10 in the Appendix, in which he shall enter a minute of the decision or report of the Court as to every inquiry, appeal, reference, or re-hearing.

Seal.

44. For each Court there shall be a seal bearing an impression of the Royal Arms, and having inscribed thereon the words "Court of Marine Inquiry," with the name of the town where the Court is held.

All process to be sealed.

45. The Clerk shall seal with the seal of the Court all process of the Court issued by him.

APPENDIX.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Court shall be of opinion that the deviation was material:—

1.

Navigation Act, 1904.

NOTICE OF APPEAL.

In the matter of the ship "

To the Clerk of the Court of Marine Inquiry at  
holden at

Take notice that I (name and address) the master (or managing owner or owner of shares) of the ship " of the port of do appeal from the report of the surveyor appointed by the Chief Harbour Master to survey the said ship (or as the case may be).

The address at which all notices and documents may be served on me is

Dated this day of , 19 .

(To be signed by the Appellant).

2.

Navigation Act, 1904.

NOTICE OF SITTING OF COURT.

The Court of Marine Inquiry at

In the matter of an appeal by from the report of the surveyor appointed by the Chief Harbour Master to survey the ship " (or as the case may be).

To A. B., the master (or managing owner or owner of shares) of the ship " the appellant (or the Chief Harbour Master).

Take notice that the Court of Marine Inquiry will meet at on the day of , 19 at o'clock in the noon to hear the (appeal) in the above matter.

Dated this day of , 19  
Clerk of the Court.

3.

Navigation Act, 1904.

ORDER OF COURT FOR RELEASE OR DETENTION OF SHIP.

The Court of Marine Inquiry at

In the matter of an appeal by from the report of the surveyor appointed by the Chief Harbour Master to survey the ship " (or as the case may be).

The Court (or I, ) (with the concurrence of ) orders (or do order) the said ship to be released (or detained) (finally or conditionally upon ).

Given under my hand this day of , 19 .  
Presiding Magistrate.

We (or I) concur in the above report.  
Assessor.  
Assessor.

4.

Navigation Act, 1904.

REPORT OF MAGISTRATE OF COURT OF MARINE INQUIRY.

The Court of Marine Inquiry at

In the matter of an appeal by from the report of the surveyor appointed by the Chief Harbour Master to survey the ship " (or as the case may be).

I, do report that (this Court) having heard this appeal (I) did with the concurrence of order the said ship to be released (or detained) (finally or conditionally upon ).

The Court (or I) did also order that the costs of this appeal be paid by to the Chief Harbour Master (or that all parties shall pay their own costs, or as the case may be).

Dated this day of , 19  
Magistrate.

We (or I) concur in the above report.  
Assessor.  
Assessor.

I dissent from the above report, for the following reasons, viz. :—

Assessor.

5.  
Navigation Act, 1904.  
NOTICE OF INQUIRY.

The Court of Marine Inquiry at  
To the Chief Harbour Master (or to Master or (or as the  
case may be) of (or belonging to) the ship “ ”).

I hereby give you notice that the Court of Marine Inquiry will, on  
the day of 19, at the hour of  
o'clock in the noon, at the Court-house, situate  
at , make inquiry into the circumstances attending the  
shipwreck of the “ ” (or as to the charge of incompetency  
on the part of (or as the case may be).

I have further to give you notice to produce to the Court (your  
master's certificate, the log books of the vessel, and) any (other) docu-  
ments relevant to this case which may be in your possession.

Dated this day of 19 .

Clerk of the Court.

## 6.

Navigation Act, 1904.  
SUBPENA TO WITNESS TO GIVE EVIDENCE.

The Court of Marine Inquiry  
In the matter of an inquiry as to the shipwreck of the “ ”  
(or as the case may be).

You are hereby commanded to attend at the Court-house, at  
, on the day of 19, at  
the hour of in the noon, to give evidence in  
the above case (on behalf of ), and thence from day  
to day until the said case shall be disposed of. †  
And at your peril fail not.

Dated this day of 19 .

Clerk of the Court.

To

## 7.

Navigation Act, 1904.  
SUBPENA TO WITNESS TO PRODUCE DOCUMENTS.

The Court of Marine Inquiry at  
In the matter of an inquiry as to the shipwreck of the “ ”  
(or as the case may be).

You are hereby commanded to attend at the Court-house, at  
, on the day of 19, at the  
hour of in the noon, to give evidence in the above case (on  
behalf of ), and you are also to bring with you and produce  
at the time and place aforesaid the several documents hereunder speci-  
fied (and all other books, papers, writings, and other documents relating  
to the above case, which may be in your custody, possession, or  
power).

And at your peril fail not.

Dated this day of 19 .

Clerk of the Court.

To

List of documents required to be produced :—

## 8.

Navigation Act, 1904.  
DECISION OF THE COURT.

The Court of Marine Inquiry at  
In the matter of a formal inquiry held at before (name of  
Magistrate) assisted by (names of assessors) into the circumstances  
attending the shipwreck of the “ ” (or as the case may be).

The Court having carefully inquired into the circumstances attending  
the above-mentioned (shipping casualty), finds that the (here state the  
decision of the Court).

Dated this day of 19 .

Magistrate.

## 9.

Navigation Act, 1904.  
ORDER ON A PARTY FOR PAYMENT OF COSTS.

The Court of Marine Inquiry at  
In the matter of a formal inquiry held at , before (name of  
Magistrate) assisted by (names of assessors) into the circumstances  
attending the shipwreck of the “ ” (or as the case may be).

The Court orders (or I do order) that A. B. do pay to the Chief Harbour  
Master (or as the case may be) the sum of pounds on account of the  
expenses of this (inquiry).

Given under my hand t day of 19 .

Magistrate.

## 10.

Navigation Act, 1904.  
MINUTE BOOK.

Minute of Proceedings in the Court of Marine Inquiry at

No. of case.	Name of ship.	Names of parties.	Nature of inquiry, appeal, or reference.	Judgment or decision of the Court.	Names of members of the Court and assessors.	Date of judgment or decision.
						19

No. 11474.—C.S.O.

THE NAVIGATION ACT, 1904.

ASSESSORS FOR COURTS OF MARINE  
INQUIRY.

Colonial Secretary's Office,  
Perth, 17th February, 1905.

APPLICATIONS by persons possessing the qualifications  
mentioned below are invited to fill the positions of  
Assessors (for a period of twelve months) to assist the  
Courts of Marine Inquiry, constituted under “The Naviga-  
tion Act, 1904,” in investigations into shipping casualties  
and other matters under the said Act.

Two classes of assessors are required, viz.:—

CLASS I.—MERCANTILE MARINE.

Masters.

The qualifications required for assessors of this class are  
as follow :—

- Five years' service as a master in the Merchant Service, of which two years must have been service in command of a sailing ship, with a certificate of competency.
- Five years' service as a master in the Merchant Service, of which two years must have been served in command of a steamship, with a certificate of competency.

CLASS II.—MERCANTILE MARINE.

Engineers.

The qualifications required for assessors for this class are  
as follow :—

- Five years' service as an engineer in the Merchant Service, and at the time of appointment holding a first-class certificate of competency as an engineer.

Applications must reach the undersigned not later than  
the 28th day of February, 1905, and must be accompanied  
by proof of required service.

Any further information can be obtained by inquiring at  
the office of the Chief Harbour Master, Fremantle.

By Order of the Honourable the Colonial Secretary,

F. D. NORTH,

Under Secretary.