

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

NAVIGATION AMENDMENT BILL 1979

EXPLANATORY NOTES ON CLAUSES

(Circulated by the Minister for Transport
the Hon. P.J. Nixon, M.P.)

GENERAL

This Bill consists of a series of amendments for a number of different purposes. Briefly, the sets of amendments relate to the following main subjects (the abbreviation shown alongside each subject appears at the top right-hand corner of the first page of the notes on each clause, for ease of identification):

International Conventions -

Limitation of Shipowners' Liability	(L of SL)
Prevention of Collisions	(Col.)
Safe Containers	(Cont.)
Safety of Life at Sea, 1974, and 1978 Protocol	(SOLAS)
Tonnage Measurement of ships	(TM)
Manning	(Man.)
Qualifications of Seafarers	(Quals)
Uniform Shipping Laws	(USL)
Ship Movement Reporting	(SMR)
Historic Shipwrecks	(HS)
Crimes at Sea	(C at S)
Miscellaneous	(Misc.)

The main thrust of the Bill in respect of each of these matters is set out below.

Limitation of Shipowners' Liability (L of SL)

A new Part VIII is being substituted (the existing Part VIII applies only to limitation of liability in respect of Government ships) which will give effect to the 1957 Convention on limitation of shipowners' liability and supersede provisions of the U.K. Merchant Shipping Acts as the law in Australia on this subject; except that, by virtue of a saving clause, valid State and Northern Territory laws that may be passed to apply the Convention provisions to intra-State vessels would apply in respect of those vessels to the exclusion of the Commonwealth law. Otherwise, the Part has been drawn to apply to as wide a range of vessels

GENERAL (contd)

as is constitutionally possible, and it will enable Australia to ratify the Convention. In effect, the Part, when in operation, will prevent both Australian and overseas shipowners from limiting their overall liability in respect of claims against them in Australian courts in respect of any one accident to the extremely low amounts provided for in the 1894 U.K. Act and will bring Australia broadly into line with the rest of the world.

Prevention of Collisions (Col.)

The Bill contains provisions for the giving full effect in Australia to the 1972 Convention on the International Regulations for Preventing Collisions at Sea and so will enable Australia to accede to the Convention, which prescribes new 'rules of the road' for ships on the high seas and in all connected waters navigable by sea-going vessels. There is a saving clause to enable any relevant State and Northern Territory laws to apply the Collision Regulations to ships within 3 miles of the coast to the exclusion of the Commonwealth law. At the present time, both the Commonwealth and the States have Regulations applying the 1972 Regulations but there are deficiencies in this legislation which prevent Australia becoming a party to the Convention. These deficiencies will be overcome by the provisions contained in the Bill.

Safe Containers (Cont.)

The International Convention for Safe Containers entered into force internationally on 6 September 1977 and has been acceded to by our major trading partners in container traffic. The Bill contains the necessary provisions to enable Australia to ratify the Convention and to require all containers used in international transport by sea to be in a safe condition. A saving clause will enable a State or the Northern Territory to apply the Convention to containers transported in the State or Territory.

Safety of Life at Sea, 1974, and 1978 Protocol (SOLAS)

The International Convention for the Safety of Life at Sea, 1974, is to consolidate and supersede the 1960 Convention of that name and the up-dating amendments made over the intervening years. It has itself been

GENERAL (contd)

up-dated in some respects, particularly insofar as tanker safety is concerned, by a Protocol adopted in February 1978. The Bill contains provisions necessary to enable Australia to ratify the Convention and Protocol and so to keep its safety requirements for ships and their equipment at least abreast of the latest international standards.

In this case also, a saving clause will enable any relevant State and Northern Territory laws to apply the provisions of the Convention to intra-State ships to the exclusion of this Commonwealth law.

Tonnage Measurement (TM)

The International Convention on Tonnage Measurement of Ships, 1969, is aimed at providing a universally acceptable system of ship tonnage measurement (by volume) in place of a number of different systems now in existence. The ratification requirements having been almost met, it seems likely that the 2-year period before the Convention comes into operation will commence soon. The Bill contains the necessary provisions to enable ratification by, and application in, Australia.

The main purposes of measuring ships to establish their tonnage are to facilitate the charging of dues, etc. and to enable size comparisons to be made.

Manning (Man.)

The Bill contains new manning provisions in place of the existing provisions which were designed for the shipping industry of half a century ago. These provisions will come into force in two stages. Initially, action will be taken to remove the outdated schedules and other inflexible provisions of the Act. This will pave the way for the second stage which is to enable the Minister to specify detailed requirements as to the minimum numbers and qualifications of officers and seamen to be carried to the extent that it appears necessary in the interests of safety or protection of the marine environment. These provisions call for the laying down in the regulations of parameters on which the minimum manning will be based and will not come into force before these have been fully developed and included in the regulations.

GENERAL (contd)Qualifications of Seafarers (Quals)

Here too the Bill repeals outmoded provisions and in their place provides broad enabling powers under which necessary standards of competence will be specified by regulation or order. Training, examination and certificates of competency are covered. There will be a new structure for such certificates which has been developed in conjunction with the industry and which is designed to meet present-day needs.

Uniform Shipping Laws (USL)

The Bill contains powers to enable legal effect to be given to sections of the Uniform Shipping Laws Code adopted by the Marine and Ports Council of Australia. The Code contains requirements for the survey and manning of commercial vessels designed to overcome the present serious lack of uniformity in the requirements of the various marine authorities within Australia.

Ship Movement Reporting (SMR)

A new Division is being added to meet the need for requirements for the reporting of the movements of ships around the Australian coast. A system of reporting has been operating on a voluntary basis for some time, but needs the legal backing provided by the Bill.

Historic Shipwrecks (HS)

The Historic Shipwrecks Act 1976 provides for the protection of shipwrecks of historic significance in Australian waters or in waters above the continental shelf of Australia. It empowers the Minister for Home Affairs to declare particular shipwrecks and related relics of historical significance to be 'historic shipwrecks', thus bringing them under the protective provisions of the legislation. This necessitates consequential amendments of Parts VII and VIIA of the Navigation Act.

Crimes at Sea (C at S)

These are consequential amendments that will be required when the Crimes at Sea Act 1979 comes into operation.

.../

GENERAL (contd)Miscellaneous (Misc.)

These amendments concern a heterogeneous group of matters where there is a particular need for amendment at this time and include certain penalty increases and drafting and machinery amendments, but they do not constitute a complete revision of the Navigation Act - a matter which is being considered in the light of the report of the Maritime Industry Commission of Inquiry. Each of the matters is, of course, dealt with in the notes of the clauses.

CLAUSE 1SHORT TITLE, ETC.

This is the normal formal clause providing for the citation of the amending Act and for the Navigation Act 1912 (which under the Acts Interpretation Act includes all amendments) to be referred to as the Principal Act.

CLAUSE 2COMMENCEMENT

Because of the need to make regulations and orders, deposit instruments of ratification of certain international Conventions, introduce new procedures, etc., concerning the wide range of matters being dealt with by this Bill, it will be necessary to bring various groups of sections into operation on different dates.

Sub-clause (1) provides for some sections and sub-sections to come into operation on the day on which the Act receives the Royal Assent, being those requiring no special prior action and those not requiring to be brought into operation on a special basis.

Under sub-clause (2) certain sections and sub-sections about tonnage measurement of ships, which are related to the Navigation Act 1972, are deemed to have come into operation immediately after the commencement of certain sections of that Act (on 1.12.76).

Under sub-clause (3) certain sections included in consequence of the Historic Shipwrecks Act 1976 are deemed to have come into operation on the day that Act came into operation (15.12.76) but 2 of those sections are not to apply in relation to a wreck in waters adjacent to the coast of a State until that Act has been made to apply in relation to those waters.

Under sub-clause (4) the provisions relating to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, are to come into operation on a date to be fixed by Proclamation. That date is not to be earlier than the date on which that Convention enters into force for Australia. Under Article IV.3 of the Convention (see Schedule 1 to the Bill) this will occur when Australia deposits the relevant instrument with IMCO.

Under sub-clause (5) the provisions relating to the International Convention on the limitation of liability of owners of sea-going ships are to come into operation on a date to be fixed by Proclamation. In accordance with Article II(2) of that Convention (see Schedule 2 to the Bill) the date is not to be earlier than 6 months after ratification by Australia.

CLAUSE 2 (contd)

Under sub-clause (6) the provisions relating to the International Convention for the Safety of Life at Sea, 1974, (and the 1978 Protocol) are to come into operation on a date or dates to be fixed by Proclamation. That date is not to be earlier than the date on which that Convention enters into force for Australia and is expected to be the date on which the Convention comes into force internationally in accordance with Article X of the Convention (see Schedule 3 to the Bill).

Under sub-clause (7) the provisions relating to the International Convention on Safe Containers are to come into operation on a date to be fixed by Proclamation. That date is not to be earlier than the date on which that Convention enters into force for Australia. Under Article VIII.2 of the Convention (see Schedule 4 to the Bill) this will occur 12 months after Australia deposits the relevant instrument with IMCO.

Under sub-clause (8) the provisions relating to the International Convention on Tonnage Measurement of Ships, 1969, are to come into operation on a date to be fixed by Proclamation. That date is not to be earlier than the date on which that Convention enters into force for Australia and is expected to be the date on which the Convention comes into force internationally in accordance with Article 17 of the Convention (see Schedule 5 to the Bill).

Under sub-clause (9) the amendments to be required in consequence of the Crimes at Sea Act, 1979, are to come into operation on the day that Act comes into operation or, if that Act comes into operation before the Navigation Amendment Act, 1979, receives the Royal Assent, the amendments are to be deemed to have come into operation on that earlier date.

Under sub-clause (10) the remaining provisions are to be brought into operation by Proclamation on such dates as it becomes appropriate to do so. Because many of the provisions are dependent on the making of appropriate regulations and, in some cases, orders, it appears a number of different proclamation dates will be necessary.

(SOLAS, Col., I of SL)

CLAUSE 3

(Section 2)

APPLICATION OF ACT

Section 2 of the Navigation Act excludes certain ships from the application of that Act.

This clause amends section 2 to allow for provisions in the Bill under which section 2 is expressed not to have effect in relation to certain Convention-implementation provisions, thus enabling those provisions to apply to all ships within the scope of the relevant Convention provisions.

The provisions concerned are:

- a provision of Part IV that gives effect to a provision of Chapter V of the Regulations of the Safety Convention other than Regulation 13 or 15 of that Chapter (section 187(2));
- a regulation or order that gives effect to a provision of Chapter V of the Regulations of the Safety Convention other than Regulations 13 or 15 of that Chapter
- regulations and orders that give effect to the Prevention of Collisions Convention (section 258(1A))
- the provisions of new Division 1, Part VIII, which give effect to the International Convention on the limitation of liability of owners of sea-going ships (section 332(1)).

It will be noted that all of these provisions are accompanied by saving clauses that preserve State legislation for intra-State ships.

CLAUSE 4

(SOLAS, Misc.,
Quals)

(Section 6)

INTERPRETATION

This clause inserts various new and amended definitions; the changes are grouped into sub-clauses so that each group can be brought into operation at the appropriate time.

Sub-clause (1) deals with definitions, or amendments of definitions, that can come into operation on the day of Royal Assent, as follows:

- (a) 'equipment'
This up-dates the definition of 'equipment' to cover all types of equipment referred to in the 1974 SOLAS Convention and 1978 Protocol.
- (b) 'Government ship'
This merely corrects outdated references that occur in the existing definition and makes no substantive change.
- (c) 'the Merchant Shipping Act'
This merely substitutes a more accurate and up-to-date definition in place of the existing one.
- (d) 'this Act'
This adds to the definition so that orders made under regulations made by virtue of the new regulation-making powers being inserted by the Bill will be covered by the term 'this Act', as well as all the regulations.
- (e) This sub-clause inserts a new sub-section (4) in section 6. The effect of this sub-section is that, where a ship or vessel is being operated by a person other than the owner, provisions in the Act that refer to the owner (except those where a contrary intention appears, e.g. collision loss and damage liability in Division 11 of Part IV, wreck removal in section 329 and salvage matters in Divisions 3 and 4 of Part VII), will apply equally to the operator. In many cases it is

CLAUSE 4 (contd)

more appropriate that the operator rather than the owner should be responsible. It will materially assist in prosecutions in certain circumstances for the company directly responsible for the operating of the ship to be made liable for breaches of the Act, e.g. where the actual owner is not within jurisdiction.

Sub-clause (2) inserts a revised definition of 'superintendent'. Under the present definition and section 13A, the Minister is not empowered to appoint a superintendent (or deputy superintendent) in relation to a port at which a Mercantile Marine Office has not been established - the superintendent at such a port is the principal officer of Customs at the port. However, as it is desirable that seamen's employment matters under the Navigation Act be dealt with, as far as practicable, by officers of the Department directly associated with such matters, the definition is being amended, along with an amendment of section 13A, so that the Minister can appoint a superintendent in relation to a port at which a Mercantile Marine Office has not been established.

Sub-clause (3) adds a definition of 'prescribed country'. That term is being substituted for 'Commonwealth country' in various places in the Act. The definition provides for countries to be prescribed in the regulations, thus giving greater flexibility in dealing with changes that occur than under the definition of 'Commonwealth country' which, however, is being retained for the purposes of the definition of 'British ship' in section 6(1).

Sub-clause (4) is for the purposes of the new qualifications provisions, and inserts a new sub-section (6) to ensure that a reference in the Act to the certificates of a master, officer or seaman will mean the certificates or other documents recognised under the Act that the master, officer or seaman is required to hold to be qualified for service in a particular capacity. It is inserted in the 'interpretation' provisions to avoid repetitious wording throughout the Act.

(Misc.)

CLAUSE 5

(Section 6F)

IRELAND

This clause omits the out-of-date provision that in effect made Ireland a Commonwealth country for the purposes of the Act. It will become effective on the same date as the new definition of 'prescribed country' is brought into effect.

(L of SL, SOLAS)

CLAUSE 6

(New section 8)

INTRA-STATE VESSELS

The purpose of this clause is to define 'intra-State vessel' for the purpose of saving clauses appearing in new sub-sections 187(3) (clause 31), 191(4) (clause 37) and 332(3) (clause 65).

These saving clauses, which reflect Commonwealth/State agreement, enable State and Northern Territory law to give effect to Convention provisions in respect of intra-State vessels, that is, vessels proceeding on voyages other than inter-State or overseas voyages.

The Conventions in question are the International Convention for the Safety of Life at Sea, 1974 and the International Convention relating to the limitation of the liability of owners of seagoing ships, 1957.

Sub-section (3) of the new section 8 deals with the case of a vessel that is not proceeding on a voyage and in effect enables it to be classified according to its most recent voyage.

(Misc.)

CLAUSE 7

(Section 13A)

SUPERINTENDENTS

Complementing the insertion being made in section 6(1) of the Principal Act to include a revised definition of 'Superintendent', this clause remakes section 13A so that the Minister can appoint a superintendent in relation to a port at which a Mercantile Marine Office has not been established.

(Man.)

10097

CLAUSE 8

(New Division 2A)

THE MANNING OF SHIPS

This clause inserts new provisions for the manning of ships in place of the old detailed and inflexible provisions that were designed for the shipping industry of half a century ago. The new provisions have been the subject of lengthy consultation with the industry and the State Marine Authorities.

The new section 14 will enable the Minister to specify, by order, detailed requirements as to the numbers and qualifications of masters, officers and seamen to be carried in specified ships or classes of ships, in respect of different voyages, the carriage of different cargoes, and the performance of different operations, and according to whether the ship is in port or at sea. This will allow the obsolete schedules and other inflexible sections of the Act to be repealed almost immediately and then after a prescribed date the Minister is to exercise his powers only to the extent that it appears to him necessary or expedient in the interests of safety or the protection of the marine environment. The criteria to be applied in determining the minimum manning are to be set out in the regulations and pending the determination of these requirements no date of operation for the minimum safety manning provisions will be proclaimed.

The Minister may exempt a ship or ships from the application of a manning order, subject to conditions, and such exemption may be confined to a particular period or to one or more particular voyages or operations. This will provide flexibility in allowing vessels to sail without their full crews in certain circumstances.

Failure to comply with an order or the conditions of an exemption renders the master and owner liable to a fine of not over \$1,000.

A ship not carrying a master, officers and seamen as required by an order or the conditions of an exemption may be detained, or specified operations may, by notice, be restricted. Failure to comply with such a notice renders the master and owner liable to a fine of not over \$5,000.

CLAUSE 8 (contd)

Sub-clause (2) makes interim modifications of the new section 14 in case this clause comes into operation before the new provisions in respect of the qualifications of masters, officers and seamen.

In addition, clause 109 preserves manning prescribed under the present provisions of the Act until such time as orders are made under the new section 14.

(Man.).

CLAUSE 9REPEAL OF SECTIONS 14, 14A

This clause repeals sections 14 and 14A, which deal with the complements of ships' officers and the authority to take ships to sea where the ordinary complement of officers is not obtained.

This repeal will be brought into operation when the new manning provisions are brought into operation.

A transitional provision appears in clause 109 which preserves manning prescribed under the present provisions of the Act until such time as orders are made under the new section 14.

(Quals)

CLAUSE 10

(New Division 3)

QUALIFICATIONS OF MASTERS, OFFICERS AND SEAMEN

The Bill repeals and replaces the old outmoded provisions of Division 3 that deal with matters relating to certificates of competency permits to serve, certificates of service and examinations for certificates.

The new section 15 provides broad enabling powers under which standards of competence to be attained and other conditions to be satisfied for a person to become 'qualified' for the purposes of the Act will be specified by regulation or by order under the regulations. The things to be so prescribed are set out in proposed sub-section 15(2), and include detailed requirements in respect of instruction, training and the conduct of examinations, the issue of certificates of competency and the recognition of certificates issued by other countries. Under section 25 of the Administrative Appeals Tribunal Act 1975 the regulations will also provide for the review by an appropriately-constituted Administrative Appeals Tribunal of administrative decisions made under those regulations and orders.

Under these provisions there will be a new structure of certificates of competency designed to meet modern shipping needs and derived from a uniform Code prepared by the Department of Transport in conjunction with the State Marine Authorities and in consultation with the maritime industry. The Code is based on international requirements developed through the Inter-Governmental Maritime Consultative Organization (IMCO) which in 1978 were embodied in an international Convention, and are designed to gain maximum advantage from the new Australian Maritime College. Certificates issued under the new provisions will be acceptable to the various Australian Marine Authorities.

The new section 16 replaces present section 25 and makes the necessary provisions to prohibit unqualified masters, officers or seamen from accepting employment to serve on a ship, to prohibit persons from falsely representing themselves as being qualified, and to prohibit persons from taking on unqualified masters, officers or seamen. A penalty of \$1,000 is provided.

CLAUSE 10 (contd)

The new section 17 requires a person serving in a ship as a qualified master, officer or seaman, or who has entered or is entering an agreement to so serve, to produce his certificates to the proper authority on demand. There is a penalty of \$500 for failure to do so without reasonable excuse. This section replaces present section 58(1), which is being repealed.

The new section 18 authorises a proper authority at a port to refuse to approve the engagement of a master, officer or seaman if he is not satisfied that the person is qualified as required. This section replaces present sections 40 and 58(2).

The new section 19 sets out the classes of ships to which (together with their owners, masters and crews) the new Division 3 applies.

Sub-clause (2) is a transitional provision in respect of the repeal of section 6F ('Ireland').

(Quals)

CLAUSE 11REPEAL OF DIVISION 6 OF PART II(RATING OF SEAMEN)

This clause repeals Division 6 of Part II, which consists of sections 39-42 dealing with the rating of seamen.

The provisions in that Division will be replaced under the Bill by requirements to be laid down under the new qualifications provisions of section 15 and by new sections 18, 48A and 48B.

A transitional clause is included to allow for certain other provisions coming into force before the repeal of this Division.

(Man.)

CLAUSE 12HEADING TO DIVISION 7 OF PART II

The present heading of present Division 7 of Part II is 'The Crew'. In consequence of the new manning provisions being inserted by the Bill, the sections in Division 7 are being repealed except for section 45 which concerns crew work in port.

A new Division heading 'Crew Work in Port' is therefore being substituted for the present heading.

(Man.)

CLAUSE 13REPEAL OF SECTIONS 43, 44

Present sections 43 and 44 deal with crews for ships and authority to take a ship to sea where the crew ordinarily carried cannot be obtained.

Clause 13 repeals these sections which will no longer be required when the new manning provisions being inserted in the Act as new section 14 are brought into force.

Clause 109 of the Bill contains a transitional saving provision to preserve mannings prescribed under section 43 until orders are made under the new section 14.

(Man.)

CLAUSE 14

(New sections 48A, 48B)

MINIMUM AGE FOR EMPLOYMENT AT SEA
POWER TO REFUSE TO PERMIT ENGAGEMENT OF SEAMAN

Present section 40A deals with minimum age for employment at sea. As Division 6 in which that section is situated is being repealed, it is necessary to insert a new section 48A to take its place. The new section provides for the minimum ages to be prescribed for particular capacities.

Present section 41 requires the production by a seaman of a discharge from his last ship, or a permit to sign articles, before he can be permitted to engage in any capacity. That section is also in Division 6 and so this clause also inserts a new section 48B to take its place under which a proper authority may refuse to permit a seaman to enter into an agreement if he fails to produce a discharge from his last ship. However sufficient discretion remains to enable cases of genuinely lost documents etc to be covered.

(Man.)

CLAUSE 15REPEAL OF SECTION 58

Present section 58 requires a master, when signing the agreement covering his crew, to produce to the proper authority the certificates of competency that the master and officers are required to hold.

This clause repeals section 58, as more appropriate provisions (sections 17 and 18) are being inserted as part of the new qualifications provisions. (See clause 10).

(L of SL)

CLAUSE 16

(New section 59B)

SHIPOWNER NOT ENTITLED TO LIMIT LIABILITY
IN RESPECT OF CLAIMS BY CREW, ETC

Sub-paragraph 4(b) of Article 1 of the International Convention relating to the limitation of the liability of owners of sea-going ships, which is being given effect to under this Bill, provides that a shipowner shall not be entitled to limit liability in accordance with the Convention in respect of crew members etc if the country's law governing the crew member's contract of service prevent him from doing so - or provides higher limits.

It has been decided that under Commonwealth law the shipowner should not be entitled to limit his liability in relation to matters covered by the Convention in respect of crew members, and this new section 59B provides accordingly. This will apply only to crews of ships to which Part II of the Act applies.

The exclusion is extended to cover claims by the heirs, personal representatives and dependants of persons concerned.

(Misc.)

CLAUSE 17

(Section 60A)

CERTIFICATE OF CLEARANCE

This clause amends section 60A in order to avoid unnecessary delays to shipping, by adding a provision that makes it a defence to a prosecution for taking a ship to sea without a superintendent's certificate of clearance in certain circumstances. This follows from reduced time spent in port by some modern vessels and is primarily to cater for ships arriving after office hours and departing early the next day - particularly where no Mercantile Marine Office transactions are involved.

(Misc.)

CLAUSE 18

(Section 61)

DISCHARGES IN AUSTRALIA

Section 61 provides for discharges from ships registered in Australia or engaged in the coasting trade to be in the prescribed form, but for discharges from other ships to be in a form approved by the Minister.

It is desirable for the section to provide for any discharge to be in either the prescribed form or a form approved by the Minister (by instrument in writing), and this clause makes the necessary amendments.

(Quals)

CLAUSE 19

(Section 66)

RETURN OF SEAMAN'S CERTIFICATES

This clause repeals and replaces section 66. The main change is the removal of sub-section (2) which defines 'certificate' and becomes redundant because of the insertion of a definition provision in new section 6(6) under clause 4(4) as part of the new qualifications provisions.

The penalty of \$100 has been omitted, leaving the new general penalty of \$200 under the Bill to apply.

(Misc.)

CLAUSE 20

(Section 67)

REPORT OF SEAMAN'S CHARACTER

This clause amends section 67 to provide for the superintendent, if the seaman desires, to give the seaman a copy of the report of his conduct, character and qualifications instead of endorsing a copy of it on his discharge as at present.

The existing provision providing for the report to be endorsed on the seaman's discharge is contrary to I.L.O. Convention No. 22 (Seamen's Articles of Agreement) which Australia has ratified.

(Misc.)

CLAUSE 21

(Section 70)

ALLOTMENT OF SEAMAN'S WAGES

This clause provides flexibility for the form of allotment of a seaman's wages so as to fit in with modern pay accounting techniques. Hitherto a standard form of allotment has had to be used.

(Misc.)

CLAUSE 22

(Section 75)

PAYMENT OF WAGES ON DISCHARGE

This clause remakes section 75, mainly so that in future it will only be necessary for a seaman, on discharge, to be paid his wages in the presence of or through the superintendent (or proper authority) where the seaman so requests.

Instead of the present penalty of \$100 under section 75(2), the new general penalty, with its maximum of \$200, will apply.

(Misc.)

CLAUSE 23

(Section 76)

ACCOUNT OF WAGES ON DISCHARGE

Sub-section 76(1) is replaced by a new provision to the effect that the account of a seaman's wages to be made by the master of his ship at the time of his discharge can be made in a form approved by the Minister as well as in a form fixed by the regulations. This provides the flexibility needed to fit in with modern accounting techniques - e.g. a computer print-out would be a suitable record of wages due.

Sub-section (5) is a new provision empowering the Minister to direct that the requirements of sub-section (3) for entries to be made in a wages deductions book (usually for purchases on board) do not apply in respect of specified ships. Such directions will be issued where modern techniques are used which make deductions books obsolete so far as the particular ships are concerned - for example the accounting may be done by machine in some circumstances.

(Misc.)

CLAUSE 24

(Section 80)

SETTLEMENT OF WAGES

This clause repeals paragraph (a) of section 80, which requires, between a master or owner of a ship and a seaman being paid off, a mutual release of claims in respect of the seaman's service. A revised paragraph is inserted under which the form of release may be as approved in writing by the Minister in all cases, instead of, in most cases, having to be as prescribed, thus permitting appropriate flexibility.

(Misc.)

CLAUSE 25

(Section 105)

COURT MAY DIRECT FORFEITURE OF WAGES OF DESERTING SEAMAN

This clause amends section 105 to meet a criticism of the International Labour Organisation's Committee of Experts.

Sub-sections 105(1) and (2) contain power for a court, in certain circumstances, to order a deserting seaman to be conveyed on board his ship for the purpose of proceeding on the voyage.

The Committee of Experts consider this to be contrary to the requirements of the I.L.O. Convention on Forced Labour, which has been ratified by Australia.

The amendment therefore omits sub-sections (1) and (2) and makes a minor amendment to sub-section (3).

(Misc.)

CLAUSE 26

(Section 121)

COOKS

Section 121 lays down entitlement for rating as a cook, and is being repealed along with the entitlements for rating as various classes of seaman, etc by the repeal of Division 6. Such matters will be dealt with in future by regulations and orders made under new section 15.

Sub-clause (2) is a transitional provision in respect of the introduction of the term 'prescribed country'.

(Misc.)

CLAUSE 27

(Section 136)

REGULATIONS RELATING TO ACCOMMODATION

Paragraph 136(1)(k) of the Act enables regulations about crew accommodation to be modified in their application to a ship the keel of which was laid before the coming into operation of the regulations, or the ship to be exempted.

However, under modern ship construction methods the laying of a keel is not necessarily a definitely identifiable step in the building of a ship.

The clause therefore amends paragraph (k) to refer to a ship that has reached a stage of construction specified in the regulations as well as to the laying of the keel.

Sub-section (2) of section 136 is omitted because the power it provides to prescribe differently for different classes of ships and persons for the purposes of section 136 will now be provided, for the purposes of the whole Act, by new section 425(3).

(Misc.)

CLAUSE 28

(Section 138)

CREW ACCOMMODATION COMMITTEE

This clause amends the provisions relating to fees, allowances and expenses for the Chairman and members of the Committee as necessitated by the provisions of the Remuneration Tribunals Act.

(Misc.)

CLAUSE 29

(Section 138A)

SHIPS NOT TO GO TO SEA WITHOUT REQUIRED ACCOMMODATION

This clause makes a machinery amendment to section 138A to ensure that the accommodation to be provided includes the requirements under the regulations or orders as well as those under the Act itself. Failure to provide such requirements is then clearly subject to the penalty.

(Misc.)

CLAUSE 30

(Section 156)

RIGHT OF MINISTER TO DISPOSE OF EFFECTS OF
DECEASED SEAMEN

The clause makes 3 changes of substance to section 156.

Under paragraph (a) the old \$500 maximum value of a deceased seaman's property that the Minister can deal with himself, as provided for in the section at present, is being increased to \$2,000, which is an appropriate figure allowing for the change in money value and the amounts seamen often have owing to them as wages. The effect of this change will be to allow in a lot more cases for the next of kin to be paid the amount owing to the seaman immediately on his death, without having to take out probate or letters of administration.

Paragraph (b) makes an amendment to take account of agreements between Australia and other countries regarding the disposal of deceased seamen's property.

Paragraph (c) inserts a new sub-section (3) to ensure that such moneys that must remain with the Minister for the time being can be invested by him as prescribed, for the benefit of the ultimate recipients.

(SOLAS)

CLAUSE 31

(Section 187)

APPLICATION OF PART IV

Section 187 of the Principal Act provides that Part IV applies to all ships, British and foreign. However, that provision is subject to section 2 of the Act which excludes many ships trading intra-State.

In giving effect to Chapter V of the Safety Convention it is necessary to set aside section 2 because the provisions of that Chapter apply to all ships on all voyages. This setting-aside is effected by the new sub-section 187(2) inserted by this clause. Regulations 13 and 15 of Chapter V contain broad obligations concerning manning and search and rescue arrangements and are excluded because they are already sufficiently implemented under existing legislation.

The new sub-section 187(3) is one of the saving clauses previously noted in connection with clauses 3 and 6 and enables State and Northern Territory law to apply the Convention provisions to intra-State vessels in place of provisions of the Commonwealth Act. Clause 37 makes similar provision in respect of regulations and orders made under the Act.

(Misc., Col., SOLAS, Cont.)

CLAUSE 32INTERPRETATION FOR PART IV

This clause makes a number of amendments of section 187A, which defines numerous terms used in Part IV (Ships and Shipping), mainly for the purposes of 3 of the international Conventions given effect to by the Bill.

Sub-clause (1) substitutes a revised definition of 'the Load Line Convention' (the International Convention on Load Lines, 1966) to incorporate corrections to the text of the Convention that have been formally issued by IMCO. Schedule 6 to the Bill contains the amendments to be made to the text of the Convention as set out in Schedule 4 (re-numbered from VII) to the Principal Act. The sub-clause also omits section 187A(2), which is a reference to the keel-laying stage of construction of a ship, which is not required because no use of it occurs in Part IV.

Sub-clause (2) inserts a definition of 'the Prevention of Collisions Convention' (the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as corrected by a formal instrument), the text of which appears as Schedule 3 in Schedule 1 to the Bill.

Sub-clause (3) inserts, in place of the present definition of 'the Safety Convention' meaning the 1960 SOLAS Convention, definitions of 'the Safety Convention' meaning the International Convention for the Safety of Life at Sea, 1974 and of 'the Protocol of 1978 relating to the Safety Convention', the texts of which, respectively, appear as Schedules 1 and 2 in Schedule 3 to the Bill.

The sub-clause also omits 'or territory' from the definition of 'country to which the Safety Convention applies', and substitutes 'entitled to fly the flag of' for 'registered in' in the definition of 'Safety Convention ship', both amendments taking account of changes between the 1960 and 1974 Conventions.

CLAUSE 32 (contd)

Further, the sub-clause omits sub-section 187A(3) and inserts new sub-sections 187A(2) and (3) which update the existing provisions to give correct effect to provisions of the 1974 Convention. It also adds a new sub-section 187A(5), in accordance with the 1974 Convention, providing that for the purposes of Part IV an unregistered ship entitled to fly the flag of a country is to be deemed to be registered in that country.

Sub-clause (4) inserts a definition of 'the Container Convention' (the International Convention for Safe Containers, as corrected by a formal instrument), the text of which appears as Schedule 5 in Schedule 4 to the Bill.

(SOLAS)

CLAUSE 33

(Section 187B)

DECLARATION OF COUNTRIES TO WHICH SAFETY
CONVENTION APPLIES

This clause omits 'or territory' wherever occurring in section 187B in accordance with the absence of references to territories in the 1974 SOLAS Convention.

(Misc., SOLAS)

CLAUSE 34

(New Sections 187D, 187E)

CERTIFICATE BY MINISTER AS TO AMENDMENTS OF
CONVENTIONS

This clause repeals existing section 187D, which provides for the Minister to certify as to what amendments (other than those not accepted by Australia) have been made to the 1960 Safety Convention and the Load Line Convention and substitutes 2 new sections for the same purposes - 187D in respect of the Load Line Convention and 187E in respect of the 1974 Safety Convention and the 1978 Protocol.

Certificates issued under those sections are to be, for all purposes, prima facie evidence that the amendments are as certified.

(SOLAS)

CLAUSE 35

(Section 188)

EXEMPTIONS FROM PROVISIONS OF SAFETY CONVENTION

This clause adds 3 sub-sections to section 188, which at present makes provision for exemption from safety requirements for a single international voyage.

The first empowers the Minister to exercise specific exemption rights conferred by the Convention. These rights concern ships which embody features of a novel kind, such as a jet-foil or other kind of craft that may be in the experimental stage.

The second provides that such exemptions may be granted subject to specified safety requirements being complied with.

The third provides a maximum penalty of \$1000 on the master and owner where such safety requirements are not complied with.

(Quals)

CLAUSE 36

(Section 190AA)

POWERS OF INSPECTION OF SURVEYORS

This clause makes a consequential amendment of section 190AA to fit in with the requirements and terminology of the new provisions being inserted in respect of the qualifications of masters, officers and seamen.

(SOLAS)

CLAUSE 37

(Section 191)

This clause complements clause 31 in that it sets aside section 2 of the Principal Act and provides a saving clause for State and Northern Territory laws giving effect to the Safety Convention. Whereas clause 31 refers to provisions of the Act giving effect to the Convention, this clause deals with regulations and orders to that effect.

(Col.)

CLAUSE 38

(Section 191A)

REGULATIONS GIVING EFFECT TO CONVENTIONS -
DISCRETION OF GOVERNOR-GENERAL AND MINISTER

Under present section 191A the Governor-General, in extension of his regulation-making powers for Convention purposes, is authorised to make regulations in exercise of any discretion as to action to be taken given by the terms of the Safety and Load Line Conventions to Governments who are parties to the Conventions.

This clause extends that authority to cover the 'Prevention of Collisions Convention' and the 'Container Convention'.

(SOLAS)

CLAUSE 39

(Section 195)

DURATION AND EXTENSION OF CERTIFICATES

Present section 195(1) provides for a certificate of survey, a passenger certificate or a certificate of equipment to remain in force for a prescribed period or a period specified in the certificate, and section 195(2) empowers the Minister to extend such certificates for up to one month, at his discretion. These are domestic Australian certificates as distinct from SOLAS certificates.

This clause inserts sections 195(1A) and (1B) which empower the Minister, at his discretion, to extend a certificate of a kind mentioned in section 195(1) for up to 5 months to enable a ship the certificate of which is expiring when the ship is not in an Australian port to go to a specified port for survey. But the extension expires when the ship arrives at that port.

This is in line with the type of extensions allowable to ships that have SOLAS Convention certificates.

(SOLAS)

CLAUSE 40

(New section 195A)

CANCELLATION OF CERTIFICATES IF SHIP CEASES
TO BE REGISTERED IN AUSTRALIA

This clause inserts a new section 195A to provide that a certificate of survey, a passenger certificate or a certificate of equipment ceases to have effect if the ship concerned ceases to be registered in Australia. This applies the same principle to local certificates as Chapter I, Regulation 14(g)(ii) of the 1974 Safety Convention as substituted by the 1978 Protocol applies to Convention certificates (see also new section 206PA).

(SOLAS)

CLAUSE 41

(Section 206P)

EXTENSION OF CERTIFICATES

Chapter I, Regulation 14(b) of the 1974 Safety Convention, as substituted by the 1978 Protocol, prohibits any extension of the 5-year period of validity of a cargo ship safety construction certificate.

This clause amends section 206P to give effect to that change in Convention requirements.

(SOLAS)

CLAUSE 42

(New Section 206PA)

CANCELLATION OF CERTIFICATES IF SHIP
CEASES TO BE REGISTERED IN AUSTRALIA

This clause inserts a new section 206PA to provide that a safety certificate ceases to have effect if the ship concerned ceases to be registered in Australia. This is to give effect to Chapter I, Regulation 14(g)(ii) of the 1974 Safety Convention as substituted by the 1978 Protocol.

(Misc.)

CLAUSE 43

(Section 206V)

CERTIFICATES REQUIRED FOR NON-SAFETY
CONVENTION SHIPS NOT REGISTERED IN AUSTRALIA

This clause extends the application of existing section 206V to allow the Minister, if he considers it safe to do so, to exempt classes of ships, subject to conditions, as well as individual ships, from compliance with the provisions of section 206V(1). This is necessary in order to deal with groups of ships from non-Convention countries that trade to Australia - e.g. Taiwanese ships.

Failure to comply with a condition of an exemption renders the master and owner both liable to a fine of not more than \$1,000.

(SOLAS)

CLAUSE 44

(Section 218)

INTERPRETATION - PART IV, DIVISION 5

Section 218(2) provides that for the purposes of Division 5 of Part IV of the Act an unregistered ship flying the flag of a country shall be deemed to be registered in that country.

This clause omits that provision because new section 187A(5) provides, in respect of the whole of Part IV, that an unregistered ship entitled to fly the flag of a country shall be deemed to be registered in that country.

(Misc.)

CLAUSE 45

(Section 227B)

SHIPS NOT TO BE OVERLOADED

The clause makes various amendments of section 227B for metric conversion purposes. Gross tonnage is measurement by volume and remains in international use, and so is retained, but deadweight tonnage should now be used where weight is concerned.

(SOLAS)

CLAUSE 46HEADING TO DIVISION 8 OF PART IV

The next clause inserts in Division 8 of Part IV a new section about machinery and equipment checks and tests.

This clause therefore gives Division 8 a new heading which will completely cover its subject matter.

(SOLAS)

CLAUSE 47

(New section 236)

MACHINERY AND EQUIPMENT CHECKS AND TESTS

This clause inserts a new section 236 requiring checks and tests of ships' machinery and equipment as prescribed in the regulations and appropriate entries in the ship's official log book, with a penalty \$500 for failure to comply.

This gives effect to Chapter V, Regulation 19-2 of the 1974 Safety Convention as substituted by the 1978 Protocol, which requires checks, tests and drills in respect of ships' steering gear as an added safety precaution.

(Cont.)

CLAUSE 48

(New Division 9)

(New section 237)

INTERPRETATION - PART IV, NEW DIVISION 9-(CONTAINERS)

This clause makes provision for the giving of effect to the International Convention for Safe Containers. (The Bill also gives specific approval to its ratification by Australia).

New section 237 makes the necessary definition of 'container' for the purposes of new Division 9, giving it the same meaning as in the Convention, which is as follows:

'Container' means an article of transport equipment:

- (a) of a permanent character and accordingly strong enough to be suitable for repeated use;
- (b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;
- (c) designed to be secured and /or readily handled, having corner fittings for these purposes;
- (d) of a size such that the area enclosed by the four outer bottom corners is either:
 - (i) at least 14 sq. m. (150 sq. ft.) or
 - (ii) at least 7 sq. m. (75 sq. ft.) if it is fitted with top corner fittings;

the term 'container' includes neither vehicles nor packaging; however, containers when carried on chassis are included.

CLAUSE 48 (contd)

(New section 238)

DECLARATION OF COUNTRIES TO WHICH THE
CONTAINER CONVENTION APPLIES

New section 238 is the section needed to provide for the declaration by the Minister of countries becoming parties to, or denouncing, the Container Convention. Notice of such declaration published in the Gazette is, for all purposes, prima facie evidence of the matters declared.

CLAUSE 48 (contd)

(New section 239)

CERTIFICATE BY MINISTER AS TO AMENDMENTS
OF CONTAINER CONVENTION

New section 239 makes the necessary provision for the Minister to certify as to what amendments (other than those not accepted by Australia) have been made to the Container Convention and (other than those objected to by Australia) to the annexes to that Convention. Such a certificate is to be, for all purposes, prima facie evidence that the amendments are as certified.

CLAUSE 48 (contd)

(New section 240)

REGULATIONS TO GIVE EFFECT TO THE CONTAINER CONVENTION

New section 240 provides the necessary power for the making of regulations and orders to give effect to the Container Convention, which will enable appropriate controls to be maintained over all Convention-type containers used in international transport.

Sub-section (1) provides the necessary regulation-making power.

Sub-section (2) provides for the regulations made for the purposes of sub-section (1) to empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations under the section, thus enabling detailed technical requirements to be implemented and varied by the quick and more appropriate order-making process.

Sub-section (3) is a saving clause inserted at the request of the States to enable State or Northern Territory legislation to apply the Convention in lieu of the Commonwealth regulations made under sub-section (1).

Sub-section (4) applies to the orders the provisions of section 426, which applies the provisions of the Acts Interpretation Act in relation to the Gazettal, commencement, tabling, disallowance and repeal of regulations, and sets out their position under the Statutory Rules Publication Act.

CLAUSE 48 (contd)

(New section 241)

SAFETY REQUIREMENTS AND TESTS NOT REQUIRED OR
PERMITTED BY CONTAINER CONVENTION NOT TO BE IMPOSED
ON CONTAINERS TO WHICH CONVENTION APPLIES

Sub-section (1) of new section 241 provides that no Commonwealth law already in force is to be taken as imposing structural safety requirements or tests not required or permitted by the Container Convention on containers to which that Convention applies.

Sub-section (2) prohibits structural safety requirements or tests not required or permitted by the Convention being imposed on containers to which the Convention applies by or under a law of a State or Territory.

This is in accordance with a provision of the Convention which however makes an exception in the case of certain types of containers and these are referred to in sub-section (3).

(Misc., Col.)

CLAUSE 49

(Section 258)

COLLISIONS, LIGHTS AND SIGNALS

Section 258(6) deals with the emolument of assessors assisting Courts hearing proceedings for offences against the Navigation (Collision) Regulations.

Sub-clause (1) changes 'travelling expenses' to 'allowances', to fit in with the provisions of the Remuneration Tribunals Act.

Sub-clause (2) makes amendments for the purposes of the Prevention of Collisions Convention. New section 258(1A) provides the necessary special power to make regulations to give effect to the provisions of the Convention, and as the Convention applies to all vessels it is necessary to exclude the application of section 2 of the Principal Act.

The Commonwealth and the States have agreed that whilst the Commonwealth should legislate to apply the Convention fully, the legislation should include a saving clause to enable the States and the Northern Territory to give effect to the Convention inside the 3-mile limit. The saving clause is contained in new sub-section 258(1B).

In addition to machinery amendments the old maximum penalty for an offence against the Navigation (Collision) Regulations is being increased from \$200 to \$2000 in recognition of the seriousness of such offences and the change in money values.

(Col.)

CLAUSE 50

(New section 258AA)

CERTIFICATE BY MINISTER AS TO AMENDMENTS OF
PREVENTION OF COLLISIONS CONVENTION

New section 258AA makes the necessary provision for the Minister to certify as to what amendments (other than those objected to by Australia) have been made to that Convention. Such a certificate is to be, for all purposes, prima facie evidence that the amendments are as certified.

(SOLAS)

CLAUSE 51

(Section 268)

ACCIDENTS, ETC, TO BE REPORTED

This clause substitutes for present section 268(b) a new paragraph which meets the requirements of Chapter I, Regulation 11(c) of the 1974 Safety Convention as inserted by the 1978 Protocol by requiring significant defects to be reported as well as damage. It also adds definitions of 'fixed equipment' and 'safety equipment' that are needed for the purposes of the new section 268(b).

(SMR)

CLAUSE 52

(New Division 14 of Part IV)

REPORTS OF MOVEMENTS OF SHIPS

This clause adds a new Division 14 at the end of Part IV to meet the important safety need for requirements for the reporting of the movements of ships around the Australian coast.

In essence, the requirements are that every ship must before leaving a port in Australia lodge a sailing plan and, at intervals not exceeding 24 hours, make a positive "all's well" signal. If this signal is not received, search procedures will be implemented. Provision by a ship of details of position, course, speed, etc. gives a basis for search planning.

The scheme is functioning on a voluntary basis and virtually all Australian merchant ships are now participating in it, but proper legal backing is needed.

(See further pages for notes on each new section).

CLAUSE 52 (contd)

(New section 269B)

DEFINITIONS

This section contains various definitions for the purposes of the new Division 14, as follows:

'Australia'

By including in its meaning an external Territory in the prescribed area, it is possible to apply Division 14 to ships calling at these Territories as if they were calling at a port in Australia.

'foreign ship'

This definition gives an appropriate meaning to the term for the practical purposes of the ship movement reporting system.

'port of call'

Inclusion of the port of destination in its meaning makes it clear that all ports at which a ship calls are subject to the provisions of the Division.

'prescribed area'

This area, to be detailed in the regulations, will be the area for which Australia has indicated that it will accept search and rescue responsibility. It is also the area within which the provisions of the Division will apply.

'prescribed officer'

The regulations may, under new section 269E, prescribe an officer in the Department of Transport as the 'prescribed officer' for the purposes of the Division. The term 'prescribed officer' means the person filling that office and includes a person appointed under new section 269M to receive sailing plans, notifications and reports on behalf of the prescribed officer.

CLAUSE 52 (contd)

(New section 269B contd)

DEFINITIONS (contd)'sailing plan'

This is a definition of a vital component of the reporting system, and is self-explanatory.

'time of day'

Australia spreads across 5 time zones and it would be confusing for zone times to be used in reporting. As ships in general operate on Greenwich Mean Time, the use of such time is both suitable and convenient.

.../

CLAUSE 52 (contd)

(New section 269C)

OBJECTS OF DIVISION

Some of the power for new Division 14 derives from the provisions of Regulation 15 of Chapter V of the 1974 Safety Convention (Search and Rescue) and new section 269C makes it clear that the objects of the Division include the making of provision to enable Australia to carry out its duties under the Convention to ensure that any necessary arrangements are made for coast watching and marine rescue round the Australian coast.

.../

CLAUSE 52 (contd)

(New section 269D)

EXTENSION TO TERRITORIES

New section 269D extends the application of the Division to an external territory in the area of sea prescribed under new section 269E.

The Division will apply to ships to which the Act applies, although the possibility of extending the application of the ship reporting system to a wider range of vessels will be investigated in conjunction with State Governments.

.../

CLAUSE 52 (contd)

(New section 269E)

PRESCRIPTION

The area of sea referred to in new paragraph 269E(a) is to be the area in which Australia would, or could be asked to, co-ordinate a search and rescue operation. As details of the area could need to be changed from time to time it is preferable that it be prescribed in the regulations, which will give the delineating longitudes and latitudes and will include a schedule showing the area concerned.

.../

CLAUSE 52 (contd)

(New section 269F)

SAILING PLAN

New section 269F deals with the sailing plan, which forms the basis of the movement reporting scheme being introduced. Its effect will be as follows:

- The master of an Australian ship leaving an Australian port will be required to lodge a sailing plan giving details of the intended movements of the ship until it arrives at its next port of call, or, where it is going to a port outside Australia, until it leaves the prescribed area.
- Where an Australian ship leaving an Australian port will be at sea for a period not less than 24 hours, its master must also give the time by which the first and, if applicable, the successive position reports will be furnished.
- A sailing plan will be able to be lodged (by telephone, telegram or radio) with the Department of Transport, Canberra, at no cost to the ship, or with a person specifically appointed to receive such information (e.g. local Harbour Master).
- The sailing plan will be used to plot the position of the ship during the next 24 hours and this plot will be updated from the subsequent position report.
- The master of a foreign ship leaving an Australian port for another port in Australia must comply also. However, where it is leaving for a port outside Australia the master must lodge a sailing plan but does not have to comply with the other provisions of the Division. In such cases it is necessary for him to indicate on the sailing plan whether or not he intends to comply with the requirements voluntarily. Even if he does, however, there is no provision for enforcement.

.../

CLAUSE 52 (contd)

(New section 269F)

SAILING PLAN (contd)

Such voluntary compliance is to be encouraged to gain maximum benefit from the scheme. It will be emphasised that non-compliance after agreeing to comply could become extremely costly as follow-up action following intensive communications checks could culminate in air search action.

.../

CLAUSE 52 (contd)

(New section 269G)

CANCELLATION OF SAILING PLAN

New section 269G is essential to the accuracy of the ship reporting system.

A master can give notification of his intended departure up to 24 hours before his actual departure, and sub-section (1) provides for him, at any time before his actual departure, to give notification of cancellation of the plan.

Sub-section (2) provides that where a master sails more than 2 hours before the departure time specified in his plan, and does not notify cancellation of it before sailing, the plan shall be deemed not to have been furnished.

Sub-section (3) provides that where, 2 hours after the departure time specified in his plan, a master has not sailed, and has not notified cancellation of the plan, he must give notification immediately.

Sub-section (4) provides that a plan cancelled under the section is to be deemed not to have been furnished, thus re-activating the requirement to lodge a plan.

CLAUSE 52 (contd)

(New section 269H)

POSITION REPORT

New section 269H requires the master of a ship, other than a foreign ship going to a port outside Australia, who has lodged a sailing plan, to make a position report daily at the time nominated in the plan.

Further, if, through weather or other delays, his ship becomes more than 2 hours sailing from the position that would be indicated by the plan, the master is to furnish a new position report. The sailing plan will then be up-dated, and he must report again within 24 hours.

There is power for regulations to be made requiring extra material to be included in position reports.

The master of a foreign ship proceeding to a port outside Australia may lodge position reports voluntarily if he has indicated in his sailing plan that he wishes to do so.

CLAUSE 52 (contd)

(New section 269J)

ARRIVAL REPORT AND REPORT OF LEAVING PRESCRIBED AREA

New section 269J in effect requires masters of all ships to lodge a report, not more than 2 hours before estimated time of arrival, stating that it was estimated that the ship would arrive at that time, or else to lodge an arrival report within 2 hours of arrival.

The master of an Australian ship leaving the prescribed area is to be required, at the time of leaving or as soon as possible thereafter, to report that his ship has left the prescribed area. This latitude is necessary as the radio watch-keeping hours may not coincide with the time of leaving.

However, such a report must not be lodged more than 2 hours before the ship leaves the prescribed area.

The master of a foreign ship may voluntarily lodge a report that he is departing from the prescribed area if he has indicated on his sailing plan that he intends to participate in the reporting system.

CLAUSE 52 (contd)

(New section 269K)

AUSTRALIAN SHIPS ENTERING THE PRESCRIBED AREA

New section 269K makes all Australian ships entering the prescribed Australian search and rescue area from overseas subject to the provisions of the new Division as if they were leaving an Australian port.

All Australian ships bound for an Australian port shall, on entering the area, furnish a sailing plan and, if their journey to an Australian port takes more than 24 hours, lodge position reports and an arrival report.

This also applies to Australian ships that are crossing the prescribed area but are not to call at an Australian port.

The master of a foreign ship that enters the prescribed area from overseas may voluntarily furnish a sailing plan. If he does, the Division applies as if the ship were leaving a port in Australia.

CLAUSE 52 (contd)

(New section 269L)

EXEMPTION

New section 269L provides power for the Minister to exempt a ship or ships from the ship movement reporting provisions, either absolutely or subject to conditions.

It is expected that exemptions will be granted to ships normally engaged on short voyages of less than 24 hours, subject to stringent conditions.

CLAUSE 52 (contd)

(New section 269M)

APPOINTMENT OF AGENTS

New section 269M provides for the appointment of persons to receive sailing plans, notifications and reports on behalf of the prescribed officer. Harbour masters would be appropriate persons to receive such items for onward transmission to the Department of Transport, Canberra.

Such appointments may be made by specifying persons by reference to occupancy of a position or the performance of certain duties.

CLAUSE 52 (contd)

(New section 269N)

OFFENCES

New section 269N provides a maximum penalty of a \$2,000 fine for offences against the provisions of the new Division. Failure by a master of a ship to comply with, or his contravention of, a provision of new Division 14 or a condition to which an exemption issued under section 269L in respect of the ship was subject, however, results in both the master and the owner being guilty of an offence and each being liable to such a fine.

Impossibility of compliance, or of avoidance of contravention, is made a defence to a charge under the section.

(Man.)

CLAUSE 53

(Section 270)

REGULATIONS AS TO PASSENGER TRADE

This clause omits from section 270 the power to make regulations in regard to 'the number of crew', as such matters are to be dealt with completely under the new manning provisions being inserted by the Bill.

(Misc.)

CLAUSE 54

(New Part VA - sections 283-283B)

SPECIAL PURPOSE SHIPS AND SPECIAL PERSONNEL

New Part VA provides for situations where there are persons on a ship who are neither 'crew' nor 'passengers' - for example, scientists, drivers of commercial vehicles, animal drovers or wives of crew. At present where there are more than 12 such persons (who are not crew of the ship) on board, the vessel should probably be regarded as a passenger vessel. This would be unduly expensive and restrictive in many circumstances as the people concerned are able bodied, trained in respect of service at sea and in many ways similar to crews. On the other hand, if nothing more than cargo vessels' requirements are applied to vessels on which considerable numbers of special personnel are carried, some aspects of safety may be lacking.

The Inter-Governmental Maritime Consultative Organization (IMCO) has been considering questions relating to such ships and personnel for some time and is expected to arrive at special provisions applying to ships carrying special personnel, including a Code of Safety for Special Purpose Ships. In the meantime it is necessary for some preliminary action to be taken in Australia, and this clause so provides.

See further pages for notes on each new section.

.../

CLAUSE 54 (contd)

(New section 283)

SPECIAL PURPOSE SHIPS AND SPECIAL PERSONNEL - DEFINITIONS

New section 283 defines 'special purpose ship' and 'special personnel' for the purposes of the new Part VA.

'special purpose ship'

To enable ships or classes of ships to be formally declared to be 'special purpose', as the need arises, provision is made in the definition for specification by regulation.

'special personnel'

The definition makes it clear that special personnel are not crew and provides for classes of persons to be prescribed in addition to those already covered by the wording. (See also new section 283B, which ensures they are not to be regarded as passengers, except where a contrary intention appears).

.../

CLAUSE 54 (contd)

(New section 283A)

SPECIAL PURPOSE SHIPS AND SPECIAL PERSONNEL - POWER TO
MAKE REGULATIONS

Sub-section 283A(1) makes provision for regulations to be made for special purpose ships and special personnel with respect to any matter dealt with in the Act or in regulations made under other sections of the Act.

Sub-section 283A(2) makes it clear that a provision of the Act or regulations may or may not be applied or applied with specified modifications to such ships and personnel.

.../

CLAUSE 54 (contd)

(New section 283B)

SPECIAL PERSONNEL NOT PASSENGERS

This clause, taken together with the definition of 'special personnel' in new section 283, ensures that such personnel are not regarded as crew or passengers (except where a contrary intention appears) for the purposes of the Act.

(Misc.)

CLAUSE 55

(Section 287)

SHIPS IN RECEIPT OF SUBSIDIES

Section 287(1) provides that a ship shall not engage in the coasting trade that is receiving, or is under any arrangement to receive, or that in the previous 12 months has been receiving, any subsidy or bonus 'from any Government other than that of a Commonwealth country'.

This clause substitutes 'the Government of a country other than Australia' for 'any Government other than that of a Commonwealth country', as this has become the more appropriate wording.

(Misc.)

CLAUSE 56

(Section 289)

PAYMENT OF AUSTRALIAN RATES OF WAGES

Section 289(3) empowers the Minister to take security from the owner, master or agent of a British ship in respect of the payment of wages due to its seamen where it is making a voyage from Australia that is terminating in a Commonwealth country. Section 289(4) gives exemption from other provisions where such security is taken.

This clause omits those provisions, which are no longer of any practical significance.

(HS)

CLAUSE 57

(Section 294)

DEFINITION OF 'HISTORIC WRECK'

Amendments of Part VII (Wrecks and Salvage) of the Navigation Act are necessary in consequence of the Historic Shipwrecks Act 1976. This clause inserts an appropriate definition of 'Historic wreck' for the purposes of those amendments.

(HS)

CLAUSE 58

(New section 295A)

CERTAIN PROVISIONS NOT APPLICABLE TO HISTORIC WRECKS

The Historic Shipwrecks Act provides for the protection of wrecks of historic significance. It does not prohibit salvage operations in respect of a wreck until the wreck is declared historic, when strict controls come into effect - it merely requires the finder to give notice of his discovery. The finder may acquire salvage rights under the Navigation Act, the UK Merchant Shipping Acts, or at common law before the wreck is declared historic.

Sub-clause (1) therefore inserts a new section 295A which will allow sections 302-312 inclusive, section 314 and Divisions 3 and 4 of Part VII of the Navigation Act to operate in the normal way except that they will not apply to a wreck from when it is declared historic and while it remains so declared. Briefly, the provisions concerned deal with matters as follows:

- 302 Finding or taking possession of wreck
- 303 Penalty for retaining possession of wreck
- 304 Notice to be posted in Customs-house
- 305 Claim of owner to wreck; wreck from foreign ship
- 306 Sale of wreck by receiver of wreck
- 307 Expenses connected with wreck
- 308 Right of Commonwealth to unclaimed wreck
- 309 Sale of unclaimed wreck by receiver
- 310 Discharge of receiver from liability
- 311 Disputes as to title to wreck
- 312 Taking wreck out of Australia (offence)
- 314 Offences as to wreck

Division 3 - Salvage

Division 4 - Procedure in salvage.

CLAUSE 58 (contd)

As salvage rights or liabilities under the Navigation Act acquired before a wreck is declared historic are to be preserved, sub-clause (2) makes express provision for this purpose. It will be open to a person any of whose proprietary rights are affected by the operation of the Historic Shipwrecks Act to claim under the compensation provisions of that Act.

Section 8 of the Acts Interpretation Act provides that where an Act repeals in whole or in part a former Act, then unless the contrary intention appears the repeal does not affect various things such as the previous operation of any provisions so repealed, rights acquired, liabilities incurred etc. under them; or any legal proceeding etc. in respect of such matters. It further provides that any such legal proceeding etc. may be instituted, continued or enforced as if the repeal had not occurred.

Sub-clause (2), whilst applying section 8 of the Acts Interpretation Act as if the provisions of the Navigation Act referred to in sub-clause (1) had been repealed, also specifically ensures that those provisions are not precluded from applying again to a wreck that ceases to be historic.

(Misc.)

CLAUSE 59

(Section 319)

COURTS IN WHICH DISPUTES TO BE DETERMINED

Section 319 provides for any court to which a salvage dispute is referred to call in a person as assessor, who is to be paid such sum as the Minister directs.

It is appropriate and convenient that payments to such assessors be the same as those applying to assessors assisting Courts of Marine Inquiry, and the clause makes an amendment accordingly. Payments to assessors assisting Courts of Marine Inquiry are provided for by section 362.

CLAUSE 60

(Section 321)

APPOINTMENT OF VALUER

Section 321 provides for use of the services of a valuer in a case where a dispute as to salvage has arisen. This clause provides for a valuer to be paid, instead of such fee as the Minister directs, remuneration as determined by the Remuneration Tribunal and allowances as prescribed, subject to the Remuneration Tribunals Act.

CLAUSE 61

(Section 329)

REMOVAL OF WRECKS ON OR NEAR COAST

Section 329 gives the Minister certain powers in relation to 'any ship' that is wrecked, stranded, sunk or abandoned, on or near the coast of Australia.

This clause adds a new sub-section 329(3) in consequence of the Historic Shipwrecks Act so that the powers of the Minister under section 329 in relation to wreck removal will continue to have effect where a wreck is declared historic, with the restriction that the Minister is not to use any of those powers unless he considers it necessary to do so for the purpose of saving human life, navigational safety or of dealing with a serious environmental threat.

(Misc.)

CLAUSE 62

(Section 329G)

OFFENCES - POLLUTION OF THE SEA BY OIL

This clause makes the necessary amendments for metric purposes to section 329G(3), under which 'tons' in the definition of 'the prescribed amount' is replaced with 'tonnes'.

(Misc.)

CLAUSE 63

(Section 329K)

PREVENTION ETC. OF POLLUTION CAUSED BY ESCAPE OF OIL

This clause makes the necessary amendments for metric purposes to sub-sections 329K(7) and (8), and also amendments of tonnage references.

Sub-section (7) is being amended (a) by re-defining 'adjusted register tonnage' to delete the references to net tonnage and substituting register tonnage and (b) by re-defining 'tonnage factor' to substitute a reference to tonnes of oil of a specific gravity of 0.9 for the reference to tons of oil which was then defined in sub-section (8). ('tonnage', and 'tons' where appearing in the second line, must remain unchanged, as they relate to cubic capacity).

Sub-section (8) is as a result superfluous and is being omitted.

The basis for computation of liabilities under the section will not be affected.

(HS)

CLAUSE 64

(Section 329L)

OPERATION OF PART VIIA - HISTORIC SHIPWRECKS ACT

This clause ensures that the Historic Shipwrecks Act will not affect the operation of Part VIIA of the Navigation Act, which concerns the prevention, etc., of pollution by oil of the Australian coast, coastal waters and reefs. This is necessary so that the Minister will not be prevented from using his emergency powers in respect of any wrecked ships declared historic that constitutes an oil pollution threat.

(L of SL)

CLAUSE 65

(New Part VIII - sections 330-338)

LIMITATION AND EXCLUSION OF SHIPOWNERS' LIABILITY

The existing law in Australia which permits a shipowner to limit his total liability in certain prescribed circumstances in respect of all personal and property claims against him arising out of a particular occasion is still that contained in the United Kingdom Merchant Shipping Acts - principally the Act of 1894. The existing Part VIII of the Act extends the limitation of liability provisions of the U.K. Merchant Shipping Acts to Australian and State Governments in respect of ships owned or chartered by them.

This clause in sub-clause (1) repeals the existing Part VIII, and substitutes a new Part VIII which makes provision on the widest basis possible for limitation of shipowners' liability in Australia. The new Part VIII will enable Australia to ratify the International Convention relating to the limitation of the liability of owners of sea-going ships (Brussels, 1957), which came into force internationally in 1968. Among other things this amendment will have the practical effect of increasing the limits from the present very low amounts to 1957 Convention levels. There is a saving clause in respect of State or Northern Territory law.

The Part is divided between 'Division 1 - Limitation of Liability' and 'Division 2 - Exclusion of Liability'.

This clause also includes a transitional provision in sub-clause (2) to allow for the possibility of this clause coming into effect before clause 80 (which gives effect to the new tonnage/measurement scheme). In sub-clause (3) it also allows for the possibility of sub-clause 4(3) coming into effect before this clause.

Each new section is explained in the succeeding pages.

CLAUSE 65 (contd)

(New section 330)

DIVISION 1 - LIMITATION OF LIABILITYINTERPRETATION

New section 330 makes the necessary definitions for the purposes of Division 1, which are largely self-explanatory.

Section 330(2) is a machinery provision only.

CLAUSE 65 (contd)

(New section 331)

EXTENSION TO EXTERNAL TERRITORIES

New section 331 extends the provisions of Division 1 ('Limitation of Liability') to the external Territories of Australia.

CLAUSE 65 (contd)

(New section 332)

APPLICATION OF PART VIII, DIVISION 1

New section 332(1) provides that section 2 of the Act does not have effect in relation to the provisions of Division 1. This will allow the Commonwealth law to apply the Convention fully pending the application of any State or Territory laws (see section 332(3)).

New section 332(2) ensures that the Division applies to vessels belonging to the defence forces of Australia but not to those of other countries. This is consistent with the provisions of existing Part VIII, it being unnecessary to extend the provisions to the vessels of the defence forces of another country as action could not be instituted in Australian courts against the owners of such vessels and thus there can be no claims to which limitation could be applied.

New section 332(3) deals with relevant State and Northern Territory laws and reflects an agreement between the Commonwealth and the States that whilst the Commonwealth should legislate to apply the Convention fully, the legislation should include a saving clause expressly preserving a law of a State or the Northern Territory that applies the Convention to intra-State ships. New section 332(3) constitutes the necessary saving clause for this purpose.

New section 332(4) provides that the provisions of the new Part VIII do not affect the provisions of a Commonwealth, State or Northern Territory law that gives effect to an international agreement to which Australia is a party which excludes the right of a shipowner to limit his liability under the 1957 Convention.

New section 332(5) explains that 'the provisions of this Division' covers the Convention provisions being given the force of law under this clause together with any regulations made for Convention purposes.

.../

CLAUSE 65 (contd)

(New section 333)

CONVENTION TO HAVE FORCE OF LAW

New section 333 gives effect to the Limitation of Shipowners' Liability Convention by simply stating that the provisions of the Convention, other than article 1(1)(c), have the force of law as part of the law of the Commonwealth.

The Protocol of Signature to the Convention permits of only three reservations being made at the time of signature, accession, etc - one of these is the right to exclude the application of article 1 paragraph (1)(c). In effect that paragraph allows the shipowner to limit his liability in respect of wreck removal and damage to harbour works, etc. The Bill provides for Australia to exclude the application of that provision when acceding to the Convention, and as a result any shipowners who seek limitation under our law will have unlimited liability in respect of damage their vessels cause to harbour works, and for wreck removal. Other countries that have entered this reservation include U.K., France, Norway, Netherlands, Germany, Spain, etc. (The U.K. however under domestic law have provided for an owner to limit liability in respect of damage to harbour works).

Giving effect to the Convention by giving it the force of law is one of the reservations referred to in the Protocol of Signature to the Convention. The text of the Protocol is set out at the end of the text of the Convention in Schedule 2 to the Bill.

.../

CLAUSE 65 (contd)

(New Section 334)

CERTAIN SHIPS TO BE TREATED AS SEA-GOING SHIPS

Whilst the Convention itself provides a limitation scheme only in respect of owners of sea-going ships, article 8 of the Convention gives a Contracting State the right to decide what other classes of ship should be treated in the same manner as sea-going ships for the purposes of the Convention.

Section 334 has been drafted so as to extend the Convention to such non-sea-going ships as considered appropriate, including ships in the course of construction.

There will be a small group of non-sea-going vessels - e.g. those operating on inland waterways and possibly some harbour craft - whose owners will not be covered by this legislation; however, because of the numbers and type of craft involved, this would not be significant. It will be appropriate for the States and the Northern Territory to legislate to extend the Convention provisions to such ships.

CLAUSE 65 (contd)

(New section 335)

APPLICATION TO DETERMINE LIABILITY

New section 335 confers jurisdiction in limitation actions and other proceedings within the scope of the Convention on the State or Territory Supreme Courts.

Sections 335(2) and 335(3) have the effect of facilitating transfer of proceedings between Courts.

CLAUSE 65 (contd)

(New section 336)

REGULATIONS, ETC

New section 336 provides the power for the making of regulations for carrying out or giving effect to the Convention.

The section specifically provides power to prescribe in respect of tonnage ascertainment for limitation purposes, conversion of Convention francs into Australian currency, and matters left by the Convention to national law.

Section 336(2) makes it clear that matters not provided for in regulations under section 336(1) may be the subject of rules of courts.

CLAUSE 65 (contd)

(New section 337)

EVIDENCE OF CERTAIN MATTERS

New section 337 makes provision for ratifications, accessions, declarations, denunciations, etc that have occurred in relation to the Limitation of Liability Convention to be established by declaration by the Minister in a notice published in the Gazette.

Such notice is to be prima facie evidence in any proceedings.

CLAUSE 65 (contd)

(New section 338)

DIVISION 2 - EXCLUSION OF LIABILITYSHIPOWNER NOT TO BE LIABLE IN CERTAIN CASES OF LOSS OF, OR DAMAGE TO, GOODS

The relevant provisions of the U.K. Merchant Shipping Act being repealed under this Bill in so far as their application in Australia is concerned include section 502, which provides that a shipowner is not liable to make good any loss or damage to goods, merchandise, or other articles, happening without his fault or privity, in cases of loss or damage by fire on board or where precious metals or stones, whose owners have not declared their value, are lost by theft, etc. These provisions are confined to goods and merchandise and do not apply to personal injury.

The shipowners claim that those provisions give them slightly greater protection than comparable provisions in the Sea-Carriage of Goods Act. The laws of the U.K., U.S.A. and a number of other countries make similar provisions. Therefore, in order to retain the Australian shipowners' position relative to their overseas counterparts, it is desirable for similar provisions to section 502 to be put in the new Part VIII of the Navigation Act.

The new section 338 inserted by this clause is in almost identical terms to those of section 502 of the Merchant Shipping Act.

(Quals)

CLAUSE 66

(Section 355A)

REPEAL OF SECTION 355A

Section 355A defines 'certificate' and 'certificate of competency' for the purposes of Part IX of the Act (Courts of Marine Inquiry). It is rendered obsolete by the new qualifications provisions being inserted by the Bill and so is being repealed. A new definition of 'certificates' for the purposes of the Act as a whole is being inserted as new section 6(6).

(Quals)

CLAUSE 67

(Section 360)

APPOINTMENT OF ASSESSORS

Section 360 makes provision for the appointment of assessors to assist Courts of Marine Inquiry.

This clause omits words containing a reference to the cancellation or suspension of the certificate of an engineer, as the reference becomes inappropriate with the inclusion of the new provisions for the qualifications of masters, officers and seamen and the repeal of section 372 etc. of the Principal Act. (See clause 72).

(Quals)

CLAUSE 68

(Section 361)

REPEAL OF SECTION 361

Section 361 provides that where an inquiry by a Court of Marine Inquiry involves any question as to the cancellation or suspension of the certificate of a master, mate or engineer, the Court is to be assisted by appropriately qualified assessors. As the new qualifications provisions being inserted by the Bill (new section 15) provide power to make regulations or orders in respect of the suspension and cancellation of certificates of masters, officers and seamen which will provide for appeal bodies other than a Court of Marine Inquiry (see clauses 70 and 72), section 361 will no longer be required and so is being repealed.

(Misc.)

CLAUSE 69

(Section 362)

REMUNERATION AND ALLOWANCES OF ASSESSORS

Section 362 at present provides that an assessor assisting a Court of Marine Inquiry shall be paid such fees and travelling expenses as the Minister determines. Because of the Remuneration Tribunals Act this clause substitutes a section that provides for an assessor to be paid remuneration as determined by the Remuneration Tribunal and allowances as prescribed, subject to the Remuneration Tribunals Act.

(Quals)

CLAUSE 70

Section 364)

POWERS OF COURT OF MARINE INQUIRY

This clause amends section 364 (which lays down the powers of Courts of Marine Inquiry by omitting a provision empowering Courts of Marine Inquiry to inquire into cases where a certificated master or officer appears to be incompetent because of medical unfitness, as the qualifications provisions of the new section 15 enable health conditions to be dealt with under the regulations specifying conditions to be satisfied for qualifications purposes; decisions will be subject to Administrative Appeal Tribunal review.

The above amendment is being made largely because a Court of Marine Inquiry is a cumbersome, time-consuming and expensive method of establishing facts which can be more appropriately determined in other tribunals. Courts of Marine Inquiry, in conformity with recent practices, are being restricted to inquiring into the more serious casualties.

(Misc.)

CLAUSE 71

(Section 370)

WITNESSES

Section 370(4) enables a witness to be examined before a Court of Marine Inquiry to make an affirmation instead of taking an oath.

This clause makes a similar adjustment to the wording used for that purpose to that made in a number of other Acts.

(Quals)

CLAUSE 72

(Sections 372 to 375B)

REPEAL OF SECTIONS 372 - 375B

Sections 372-375B deal with the following matters:

- 372 - power of Court of Marine Inquiry (CMI) to cancel or amend certificate
- 373 - CMI not to cancel or suspend certificate unless copy of report of case furnished to certificate holder before commencement of inquiry
- 374 - holder of cancelled or suspended certificate to surrender it
- 375 - surrender of certificate during inquiry may be required by CMI
- 375A - grant of certificate by Minister after cancellation or suspension by CMI
- 375B - appeals against cancellation or suspension of certificate.

This clause repeals these sections, as to the extent necessary these matters will be dealt with by regulations and orders under the qualifications provisions being inserted as new section 15. (See also notes on clause 70).

This clause also includes a transitional clause to allow for the possibility of clause 4(3) coming into operation before this clause.

(C at S, Misc.)

CLAUSE 73

(Sections 381, 382)

REPEAL OF SECTIONS 381 AND 382

Sections 381 and 382 deal with the following matters:

- 381 - jurisdiction with respect to offences on board ship
- 382 - offences by Australian seamen abroad.

This clause repeals those sections because such matters will be covered when the Crimes at Sea Act 1979 comes into operation.

If the insertion under this Bill of a definition of 'prescribed country' comes into operation before the Crimes at Sea Act, the clause also in effect replaces the reference in section 382 to a 'Commonwealth country' with a reference to a 'prescribed country'.

(Misc.)

CLAUSE 74

(Section 383)

POWER TO DETAIN FOREIGN SHIP THAT HAS
CAUSED DAMAGE

Section 383(1)(b) contains the words 'in any port of Australia or within three miles of the coast thereof'.

This clause substitutes 'in Australia' for those words, thus eliminating the non-metric unit 'mile' and using a more appropriate and flexible form of words, having regard to possible developments with respect to the width of territorial seas.

(Quals)

CLAUSE 75

(Section 389A)

OFFENCES IN CONNECTION WITH CERTIFICATES

Section 389A(6) defines 'certificate' for the special purposes of that section.

This clause substitutes a new section 389A(6) to take account of the changes being made in the Act in respect of qualifications by the insertion of the new section 15.

(Misc.)

CLAUSE 76

(Section 392)

INDICTABLE OFFENCES - PENALTY

The old maximum monetary penalty for which a person convicted of an indictable offence under the Act is liable is, by section 392, \$400.

This clause raises it to \$5,000 to take into account the decrease in money value and put it at an appropriate level, and is one of a group of amendments for such purposes.

The clause also omits existing section 392(2) because this matter is now covered by the Judiciary Act.

(Misc.)

CLAUSE 77

(Section 393)

GENERAL PENALTY

The old maximum general penalty applicable under section 393 to a person who is convicted of contravening or failing to comply with a provision of the Act, in respect of which no specific penalty is specified, is at present \$40.

This clause raises it to \$200 to take into account the decrease in money value and put it at an appropriate level, and is one of a group of amendments for such purposes.

(Misc.)

CLAUSE 78

(New section 397)

OFFENCES AGAINST CERTAIN PROVISIONS OF ACT AND REGULATIONS

Section 19B of the Crimes Act provides for the conditional release, without proceeding to conviction, of offenders charged before a court of summary jurisdiction with an offence against a Commonwealth law.

It is not appropriate that that section should apply to certain kinds of offences against the Navigation Act, in particular those relating to safety matters. New section 397 therefore specifies provisions of the Act that create, or contravention of or failure to comply with result in, the kinds of offences concerned, and also enables regulations to be made specifying other offences of similar kinds in respect of which section 19B will not apply.

(Misc.)

CLAUSE 79

(Section 401)

PROOF OF CERTIFICATES AND OTHER DOCUMENTS

Section 401 makes provision in respect of the proof of the issue and signature of all certificates issued in pursuance of the Act, admissibility in evidence of signed office copies and proof of transmission.

This clause inserts 'or other documents' after 'certificate' throughout the section as documents other than certificates need to be so covered.

(TM)

CLAUSE 80

(New Part XA)

TONNAGE MEASUREMENT OF SHIPS

This clause inserts a new Part XA to give effect to the International Convention on Tonnage Measurement of Ships, 1969, which is intended to provide a universally-acceptable system of tonnage measurement of ships in place of a number of systems now in use.

The Convention requires (a) a certain number of countries to become parties to it, and (b) the tonnage of the ships of contracting countries to reach a certain figure, for it to come into force 2 years after both those requirements have been met. Requirement (a) has been achieved, whilst (b) could be achieved at any time. However, unaltered existing ships will not be required to be measured under it for 12 years after it comes into force.

Notes on each new section are given on the pages that follow.

CLAUSE 80 (contd)

(New section 405B)

INTERPRETATION

New section 405B provides the definitions needed for the purposes of the new Part.

'Survey authority' has the same meaning as under Part IV (section 187A(1)) - that is, a prescribed corporation or association for the survey and registry of shipping, commonly referred to as a 'classification society'.

The text of the Convention appears in Schedule 5 to the Bill.

Sub-section (2) excludes deviation because of bad weather or other unavoidable circumstances from the determination of whether a voyage is an international voyage.

Under sub-section (3), for the purposes of new Part XA, an unregistered ship flying the flag of a country is to be deemed to be registered in that country.

Under sub-section (4), a ship under construction or just constructed that is un-registered and is not flying the flag of a country, but is intended to be registered in a particular country, is to be deemed to be registered in that country for the purposes of Part XA.

CLAUSE 80 (contd)

(New section 405C)

DECLARATION OF COUNTRIES TO WHICH
TONNAGE MEASUREMENT CONVENTION APPLIES

New section 405C provides for the declaration by the Minister of countries or territories as parties to the Tonnage Measurement Convention for the purposes of new Part XA.

CLAUSE 80 (contd)
(New section 405D)

CERTIFICATE BY MINISTER AS TO AMENDMENTS OF CONVENTION

New section 405D makes the necessary provision for the Minister to certify as to what amendments (other than those not accepted by Australia) have been made to the Tonnage Measurement Convention. Such a certificate is to be, for all purposes, prima facie evidence that the amendments are as certified.

CLAUSE 80 (contd)

(New section 405E)

TONNAGE MEASUREMENT REGULATIONS

New sub-section 405E(1) provides the necessary power for the making of regulations to give effect to the Tonnage Measurement Convention and, for any purpose specified in the regulations, to make other provision for the ascertainment of ships' tonnage not inconsistent with the Convention.

Under sub-section (2) the regulations can be applied to vessels not engaged on international voyages or to which the Convention does not otherwise apply, with or without modifications.

Sub-section (3) empowers the Governor-General to make by regulation, at his discretion, a provision with respect to a Convention provision that gives a contracting government a discretion as to the action it takes.

Sub-section (4) provides for the regulations made for the purposes of sub-section (1) to empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations under the section, thus enabling detailed technical requirements to be implemented and varied by the quick and more appropriate order-making process.

Sub-section (5) applies to such orders the provisions of section 426, which applies the provisions of the Acts Interpretation Act in relation to the Gazettal, commencement, tabling, disallowance and repeal of regulations, and sets out their position under the Statutory Rules Publication Act.

CLAUSE 80 (contd)

(New section 405F)

ISSUE OF TONNAGE MEASUREMENT CERTIFICATES

New section 405F empowers the Minister or an authorised survey authority to issue, where a ship has been appropriately measured, an International Tonnage Certificate (1969) (if applicable), and/or such other tonnage measurement certificates (which will if appropriate include Suez Canal and/or Panama Canal Certificates) as the regulations require to be issued.

Unless the owner otherwise requests, the Convention does not, for a period of 12 years, apply to existing ships that continue to hold tonnage certificates issued under the present Regulations unless the ships are substantially modified.

It is necessary to make provision for such ships and this is covered by paragraph 405F(b).

The Tonnage Measurement Convention does not apply to ships of war and ships less than 24 metres long, but under this section an appropriate certificate can be issued in respect of a ship of any size.

CLAUSE 80 (contd)

(New section 405G)

EXTENSION AND CANCELLATION OF CERTIFICATES

New section 405G enables provision to be made in the regulations for the cancellation and continuance in force of a Tonnage Measurement Convention certificate as provided for in the Convention and for the cessation of effect, extension or cancellation of an Australian tonnage measurement certificate.

Except for a 3-month continuance in force that may be given as provided for by Article 10(3) of the Convention, a Tonnage Measurement Convention certificate ceases to have effect if the ship ceases to be registered in Australia.

The section also provides, in respect of Tonnage Measurement Convention certificates and Australian tonnage measurement certificates, that a certificate ceases to have effect when the Minister gives notification of cancellation, and that the Minister may require surrender of a certificate and the ship may be detained until surrender occurs.

CLAUSE 80 (contd)

(New section 405H)

TONNAGE MEASUREMENT CONVENTION COUNTRY MAY
REQUEST MINISTER TO ISSUE CERTIFICATE

New section 405H provides for the issue of International Tonnage Certificates (1969) at the request of other Convention countries after the tonnage of the ship has been measured under the provisions of the Convention. Such a certificate is to contain a statement that it was so issued.

Similar provisions exist in the Act in respect of the issue of certificates in accordance with the provisions of the Safety and Load Lines Conventions.

CLAUSE 80 (contd)

(New section 405J)

MINISTER MAY REQUEST TONNAGE MEASUREMENT
CONVENTION COUNTRY TO ISSUE CERTIFICATE

New section 405J empowers the Minister to request other Tonnage Measurement Convention countries to issue International Tonnage Certificates (1969) to Australian-registered ships and ships intended to be registered in Australia and provides for it to have effect as if issued by the Minister.

Similar provisions exist in the Act in respect of the issue of certificates in accordance with the provisions of the Safety and Load Lines Conventions.

CLAUSE 80 (contd)

(New section 405K)

POWER OF INSPECTION OF SURVEYORS

This clause provides specific power for surveyors appointed under the Navigation Act to board a Tonnage Measurement Convention ship at an Australian port and require the production of its International Tonnage Certificate, and to inspect the ship for verification purposes.

A surveyor exercising these powers is not to unnecessarily detain or delay a ship.

A person is not to obstruct or hinder a surveyor exercising those powers and, unless he has reasonable excuse, failure to comply with a requirement made by a surveyor under the section attracts a penalty of \$500.

CLAUSE 80 (contd)

(New section 405L)

APPEAL FROM REFUSAL TO ISSUE CERTIFICATE, ETC.

New section 405L provides for appeal to a Court of Marine Inquiry against a refusal to issue a certificate under Part XA or if dissatisfied with a certificate so issued.

On hearing such an appeal, a Court may make such order as it thinks fit.

This section provides appeal provisions similar to those that exist under the Act in respect of certificates issued under Part IV, such as certificates of survey and load line certificates, but the general question of appeal provisions under the Act will be revised when the Act is next amended.

CLAUSE 80 (contd)

(New Section 405M)

REGISTER TONNAGE OF NON-CONVENTION SHIPS

New sub-section 405M(1) provides that the register tonnage as per certificate of registry of a non-Convention ship registered in a prescribed country is to be its register tonnage for the purposes of the Act. This will enable such tonnages to be adopted for Act purposes where the method of calculation is known to be acceptable - e.g. where such a ship has a British tonnage certificate.

New sub-section 405M(2) provides that the register tonnage of a non-Convention ship not registered in a prescribed country is to be determined by Ministerial direction, thus enabling the question of the tonnage of such ships for the purposes of the Act to be appropriately determined soon after arrival in Australia.

CLAUSE 80 (contd)

(New Section 405N)

TONNAGE OF NON-CONVENTION SHIPS TO BE
MEASURED IN CERTAIN CASES

New section 405N requires an unregistered non-Convention ship that enters an Australian port, and a non-Convention ship in respect of which a dispute arises as to its tonnage, to be measured under the regulations to be made under section 405E to give effect to the Tonnage Measurement Convention. By virtue of clause 111 of the Bill, until those regulations are made the applicable regulations will be the Navigation (Tonnage Measurement) Regulations made under section 407A and in force when that clause comes into operation.

CLAUSE 80 (contd)

(New section 405P)

ASSIGNMENT OF OTHER TONNAGES TO
NON-CONVENTION SHIPS

New-section 405E provides the necessary power for the making of regulations and orders for the purposes of the Tonnage Measurement Convention and all other necessary purposes. It will supersede present sub-sections 407A(1) and (2).

Some time ago the Inter-Governmental Maritime Consultative Organization (IMCO) made Recommendations on the treatment for tonnage purposes of certain open spaces in ships with 2 or more decks. Ships to which these Recommendations are being applied have, in general, 2 sets of alternative tonnage figures, with the higher or lower set applicable at a particular time being determined by a special 'tonnage mark' on the ship's side.

The lower of the 2 sets of alternative tonnage figures are the 'modified' tonnages, and are to be 'assigned' instead of the tonnages that otherwise would be 'ascertained'.

For purposes of safety it is desirable that where more stringent provisions apply above certain tonnage limits and ships have been given the dual tonnages, the higher of the 2 tonnages should be regarded as the tonnage of the ship for the application of safety provisions.

Provision is made under the next clause for such purposes while section 407A continues in force, but as the Tonnage Measurement Convention did not adopt those Recommendations provision needs to be inserted for those purposes so far as non-Convention ships are concerned once section 405E effectively supersedes sub-sections 407A(1) and (2).

.../

CLAUSE 80 (contd)

New section 405P makes the necessary provision. Whilst sub-section (1) allows ships with only the lower ('modified') tonnages assigned to them to have the benefit of those tonnages for the purposes of the Act, sub-section (2) provides in effect that where ships have both sets of tonnages the lower set is to be disregarded for, in effect, the safety purposes of the Act, without prejudice to the effect of those lower tonnages for the purposes of any other law. Sub-section (2) achieves its effect because the 'ascertained' tonnages to which it refers are necessarily higher than the 'assigned' (or 'modified') alternative tonnages also referred to.

(TM, Misc.)

CLAUSE 81

(Section 407A)

AMENDMENTS IN RELATION TO TONNAGE

Sub-sections 407A(1) and (2) provide the present power for the making of regulations for the tonnage measurement of ships. This power is to be superseded by the new regulation-making power of section 405E being inserted by this Bill to provide for the making of regulations and orders for the purposes of the Tonnage Measurement Convention and all other necessary purposes.

Sub-clause 89(1)(a) therefore provides for the omission of sub-sections 407A(1) and (2).

Some time ago the Inter-Governmental Maritime Consultative Organization (IMCO) made Recommendations on the treatment for tonnage purposes of certain open spaces in ships with 2 or more decks. Ships to which these Recommendations are being applied have, in general, 2 sets of alternative tonnage figures, with the higher or lower set applicable at a particular time being determined by a special 'tonnage mark' on the ship's side.

The lower of the 2 sets of alternative tonnage figures are the 'modified' tonnages. These are tonnages 'assigned' by virtue of section 407A(2)(f) instead of the tonnages that otherwise would be 'ascertained'.

These recommendations are given effect to in the Navigation (Tonnage Measurement) Regulations. For purposes of safety it is desirable that where more stringent provisions apply above certain tonnage limits and ships have been given the dual tonnages, the higher of the 2 tonnages should be regarded as the tonnage of the ship for the application of safety provisions.

CLAUSE 81 (contd)

Amendments of section 407A for these purposes are needed while sub-sections (1) and (2) continue in force, and sub-clause 81(2) effects this by inserting 2 temporary sub-sections.

Whilst sub-section (2A) allows ships with only the lower ('modified') tonnages assigned to them to have the benefit of those tonnages for the purposes of the Act, sub-section (2B) provides in effect that where ships have both sets of tonnages the lower set is to be disregarded for, in effect, the safety purposes of the Act without prejudice to the effect of those lower tonnages for the purposes of any other law. Sub-section (2B) achieves its effect because the 'ascertained' tonnages to which it refers are necessarily higher than the 'assigned' (or 'modified') alternative tonnages also referred to.

New section 405P provides for the continuation of these provisions after sub-sections 407A(1) and (2) cease to be in force, so far as non-Convention ships are concerned.

Sub-section 407A(3) amended provisions of the U.K. Merchant Shipping Act, in so far as they were part of the law of Australia, to allow for the operation of new Australian tonnage measurement law, and provided that (as Australian ships would continue for the time being to be registered under that Act) the tonnage measurement regulations made under section 407A were to replace those under the Merchant Shipping Act for the purposes of the registration of ships coming under the Navigation Act.

Sub-clause 81(1)(b) therefore provides also for consequential amendment of sub-section 407A(3) when new section 405E (regulation-making power) comes into operation.

(TM, Misc.)

CLAUSE 82

(Section 407B)

REPEAL OF SECTION 407B (TONNAGE MEASUREMENT)

Section 407B makes provision in respect of the tonnage of ships of countries other than Commonwealth countries. The section will no longer be required when the tonnage measurement provisions of new Part XA are brought into operation, and the clause therefore repeals it.

As, however, the amendments being made by the Bill in respect of 'Commonwealth country' could come into operation before new Part XA (Tonnage Measurement of Ships) it is necessary to provide for change of the references to 'Commonwealth country' to references to 'prescribed country'.

(TM)

CLAUSE 83

(Section 408)

REPEAL OF SECTION 408 (TONNAGE)

Section 408 provides that for every ship registered at any port in a Commonwealth country the amount of net tonnage specified in the certificate of registry is to be the tonnage of the ship unless otherwise specified. The section will no longer be required when the tonnage measurement provisions of new Part XA come into operation, and the clause therefore repeals it.

However, other amendments being made by this Bill in respect of non-Convention aspects of tonnage measurement provide for a change from the term 'net tonnage' to the term 'register tonnage'. It is therefore necessary that such a change be made in section 408 until its repeal becomes effective, and the clause does this also.

(TM)

CLAUSE 84

(Section 409)

REPEAL OF SECTION 409 (TONNAGE MEASUREMENT)

Section 409 provides that where the tonnage of a ship entering any Australian port has not been registered, or any dispute arises as to the tonnage thereof, the ship is to be measured as prescribed by the regulations made under section 407A.

The clause repeals that section, as it will no longer be required when the tonnage measurement provisions of new Part XA come into operation - new section 405N will serve the same purpose.

(Misc.)

CLAUSE 85

(Section 410)

COPY OF ACT TO BE KEPT ON CERTAIN SHIPS

Section 410(1) of the Navigation Act requires that a copy of that Act be kept on board ships registered in Australia and other ships of specified classes.

Section 410(2) provides that for that purpose 'this Act' does not include regulations other than collision regulations and any others that are prescribed for the purpose.

This clause amends section 410(2) to make it clear that, except as otherwise required by regulation, 'this Act' does not include regulations made under the Act or orders made in pursuance of the regulations.

(Misc.)

CLAUSE 86

(Section 414)

DETENTION OF SHIPS

This clause increases the penalty on a master for the offence of a ship under detention going to sea from \$200 to \$5,000. This is one of a group of amendments increasing some old penalties to take account of the decrease in money value and the significance of the offence. It should be noted that not all penalties have been updated by the Bill - only some significant ones such as the one dealt with by this clause and those affected by the increase in the general penalty - the others will be revised when the Act is next amended.

(Quals)

CLAUSE 87

(Section 420)

REPEAL OF SECTION 420 (CANCELLATION OF CERTIFICATES)

Section 420 provides for the cancellation or suspension of certificates of competency of masters, mates and engineers and related matters.

This clause repeals the section, as such matters will be provided for under the new provisions in respect of qualifications of masters, officers and seamen in new section 15.

An appropriate transitional clause is included to allow for the possibility of clause 4(3) coming into effect before sub-clause (1) of this clause.

(Misc.)

CLAUSE 88

(Section 422)

POWER TO SUSPEND PROVISIONS INCONSISTENT WITH TREATY

Section 422 gives the Governor-General power to suspend the operation of any provision of the Act if satisfied, in regard to ships of any country, that enforcement would be inconsistent with Australia's obligations under a treaty made between that country and the United Kingdom.

This clause extends 'treaty' to include the wider term 'international agreement' and substitutes 'Australia' for 'the United Kingdom' as the reference to the United Kingdom is outmoded and no longer appropriate.

(Misc.)

CLAUSE 89

(Section 424)

MARINE COUNCIL AND COMMITTEES OF ADVICE

The amendments made by sub-clause (1) are adjustments of provisions in respect of remuneration and allowances for Chairmen and members of the abovementioned bodies, necessitated by the operation of the Remuneration Tribunals Act.

Sub-clause (2) is an amendment to remove the reference to sections of the Act that will be repealed by this Bill.

(Misc., USL)

CLAUSE 90

(Section 425)

REGULATIONS

This clause makes 3 groups of amendments of the regulation-making powers of section 425.

The amendments covered by paragraph (a) omit and replace paragraph (f), which at present enables regulations to be made for the remuneration of Medical Inspectors of Seamen and which is no longer required, being covered by the Remuneration Tribunals Act.

New paragraph (f) provides a power to make regulations empowering the Minister to make orders with respect to various safety and health aspects in respect of ships, their cargoes and persons on board ships. It is of critical importance to the introduction and continuing effectiveness of detailed safety standards that technical requirements can be implemented and varied by a quick order-making process in the light of ship casualty or failure investigations or rapid technical developments. It is also most desirable to be able to amend the voluminous scales of medicines and medical stores in the same way to keep pace with medical development.

New paragraph (fa) provides a specific power to make regulations empowering the Minister to make orders with respect to the carriage of dangerous goods in ships.

The amendments covered by paragraph (b) up-date the existing section 425(h). The penalty limit of \$200 for offences against regulations is increased to \$500 to take account of present money values, along with some other penalty increases. At the same time, the power is extended to clearly enable penalty provisions in regulations to deal with a contravention of, or failure to comply with, a provision of the regulations or a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations.

CLAUSE 90 (contd)

New section 425(ha) inserts power to prescribe the manner in which notices, orders, directions, instructions or other documents under the Act may be given, served or notified.

The amendments covered by paragraph (c) are as follows:

- New sections 425(2), (3), (4), (5) and (6) are of a legal drafting nature to ensure the validity of the regulations and orders and the appropriate scope of the orders.
- New section 425(7) concerns the Uniform Shipping Laws Code adopted by the Marine and Ports Council of Australia, which contains requirements for the survey and manning of commercial vessels to be uniformly adopted in order to overcome the present serious lack of uniformity between the requirements imposed by the various States and the Commonwealth. Section 49A of the Acts Interpretation Act enables matters to be prescribed by reference to other instruments. New section 425(7) provides that, by virtue of that section 49A, the regulations or orders may apply, adopt or incorporate all or any of the provisions of that Code, and enables the regulations to provide for conditional or unconditional exemption by the Minister of ships or classes of ships from all or any of the provisions of the Code.
- New section 425(8) applies to orders the provisions of new section 426 (which applies the provisions of the Acts Interpretation Act in relation to the Gazettal, commencement, tabling, disallowance and repeal of regulations, and sets out the position of the orders under the Statutory Rules Publication Act) to orders made under new paragraphs 425(1) (f) and (fa) as referred to on page 1 of the notes of this clause.

(Misc., USL)

CLAUSE 91

(New sections 426, 427)

SECTION 426 - NOTIFICATION OF ORDERS IN GAZETTE, ETC.SECTION 427 - CERTIFICATE BY MINISTER AS TO UNIFORM SHIPPING LAWS CODE

This clause inserts 2 new sections.

Section 426 makes provisions where the order-making provision expressly refers to sections 426 (see new sections 14(12), 15(4), 240(4), 405E(5) and 425(8)) for application to orders of the provisions of the Acts Interpretation Act in relation to the Gazette, commencement, tabling, disallowance and repeal of regulations, and sets out the position of the orders under the Statutory Rules Publication Act.

Section 427 provides for the certification by the Minister of the provisions of the Uniform Shipping Laws Code referred to in clause 90, such a certificate being prima facie evidence of the matters so certified.

(Man.)

CLAUSE 92

(Schedules IA and IIA)

REPEAL OF SCHEDULES IA AND IIA

This clause repeals Schedule I (renumbered IA) (Scales of Deck and Engineer Officers and Greasers), together with an amendment made by the Navigation Act 1958 and not yet in force, and Schedule II (renumbered IB) (Scale of Crew) as these become redundant with the introduction of the qualifications provisions of new section 15. Under that section the Minister may determine by order the number of qualified officers (including a master) and qualified seamen to be carried on ships.

(SOLAS)

CLAUSE 93

(New Schedules 1 and 2)

SCHEDULES 1 AND 2 (SAFETY CONVENTION AND PROTOCOL)

Under clause 100 and Schedule 8, Schedule VI to the Principal Act (Articles and Regulations of the International Convention for the Safety of Life at Sea, 1960) is renumbered 'Schedule 1'.

Clause 93 omits that Schedule and substitutes new Schedules 1 and 2, being the texts of the International Convention for the Safety of Life at Sea, 1974, and the Protocol of 1978 relating to that Convention. That change will be brought into operation when the provisions giving effect to the new Convention as amended by the Protocol are brought into effect.

The new texts are set out in Schedule 3 to the Bill.

Other clauses provide for the giving of effect to the provisions of the Convention as amended by the protocol.

(Col.)

CLAUSE 94

(New Schedule 3)

SCHEDULE 3 (PREVENTION OF COLLISIONS CONVENTION)

Under clause 100 and Schedule 8, Schedule VII to the Principal Act is renumbered 'Schedule 4'.

Clause 94 inserts before that Schedule 4 a new Schedule 3, being the text of the Convention on the International Regulations for Prevention of Collisions at Sea, 1972.

That text is set out in Schedule 1 to the Bill.

Other clauses provide for the Convention to be given effect to by the Bill.

(Cont.)

CLAUSE 95

(New Schedule 5)

SCHEDULE 5 (CONTAINER CONVENTION)

Under clause 100 and Schedule 8, Schedule VII to the Principal Act is renumbered 'Schedule 4'.

Clause 95 inserts after that Schedule 4 a new Schedule 5, being the text of the International Convention for Safe Containers.

That text is set out in Schedule 4 to the Bill.

Other clauses provide for the giving of effect to the provisions of the Convention.

(L of SL)

10235

CLAUSE 96

(New Schedule 6)

SCHEDULE 6 (LIMITATION OF SHIPOWNERS' LIABILITY CONVENTION)

Under clause 100 and Schedule 8, Schedule VIII to the Principal Act is renumbered 'Schedule 7'.

Clause 96 inserts before that Schedule 7 a new Schedule 6, being the text of the International Convention relating to the limitation of the liability of owners of sea-going ships.

That text is set out in Schedule 2 to the Bill.

Other clauses provide for the Convention to have the force of law in Australia and for related requirements, and consequential amendments.

(TM)

CLAUSE 97

(New Schedule 8)

SCHEDULE 8 (TONNAGE MEASUREMENT CONVENTION)

Under clause 100 and Schedule 8, Schedule VIII to the Principal Act is renumbered 'Schedule 7'.

Clause 97 inserts after that Schedule 7 a new Schedule 8, being the text of the International Convention on Tonnage Measurement of Ships, 1969.

That text is set out in Schedule 5 to the Bill.

Other clauses provide for the giving of effect to the provisions of the Convention.

(Misc.)

CLAUSE 98

(Schedule VII)

CORRECTIONS OF LOAD LINE CONVENTION

Under clause 100 and Schedule 8, Schedule VII to the Principal Act (Articles of, and Annexes to, the International Convention on Load Lines, 1966) is renumbered 'Schedule 4'.

This clause provides for the setting out, in Schedule 6 to the Bill, of a set of amendments to Schedule 4 to the Principal Act in respect of the text of that Convention.

(Misc.)

CLAUSE 99AMENDMENTS OF PRINCIPAL ACT IN RELATION TO TONNAGE

The clause effects, through Schedule 7 to the Bill, various minor amendments in relation to tonnage references that are complementary to the tonnage measurement provisions inserted by the Navigation Act 1972.

These amendments are to be deemed to have come into operation immediately after the commencement of the relevant sections of the 1972 Act, which occurred on 1 December, 1976.

Schedules I and II (Scales of Officers and Crew) are being amended in respect of whatever period they remain in force after clause 99 comes into operation, until repealed when the clauses on manning are brought into operation.

(Misc.)

CLAUSE 100FORMAL AND OTHER MINOR AMENDMENTS OF PRINCIPAL ACT

This clause effects, through Schedule 8, a large number of minor amendments of a formal or machinery nature.

Paragraph 1 of the Schedule changes section numbers expressed in words to the same number expressed in figures, in accordance with current drafting practice.

Paragraph 2 omits 'of this Act' and similar phrases that appear after references to sections etc. by number, again in accordance with current drafting practice.

Paragraphs 4 and 5 amend the references to 'she' and 'her' in respect of a ship to 'it' and 'its'.

Paragraph 5 makes a variety of substitutions and insertions some of which are of a formal nature whilst others are to complement amendments being made by sundry clauses of the Bill - e.g. omissions of 'of this Act' in sections where because of the drafting complications it was not possible to deal with the particular amendment in paragraph 2, and the renumbering of the Schedules for the purposes of Arabic usage and clauses 92-98.

(Misc.)

CLAUSE 101AMENDMENTS OF PRINCIPAL ACT IN RELATION TO PRESCRIBED
COUNTRY

This clause makes a number of amendments, set out in Schedule 9, effecting changes from the defined term 'Commonwealth country' to the newly-defined term 'prescribed country'.

(Misc.)

10241

CLAUSE 102AMENDMENTS CONSEQUENTIAL ON INCREASE IN GENERAL PENALTY
FOR OFFENCES

The present general penalty covering offences under the Act for which no penalty is specified is being increased from \$40 to \$200 under this Bill.

This clause therefore omits, through Schedule 10, numerous specific penalties of less than \$200, in most cases leaving the new \$200 general penalty to apply.

CLAUSE 103DEFINITION OF 'MERCHANT SHIPPING ACT'

This clause provides a definition of 'Merchant Shipping Act' for the purposes of Part III (Miscellaneous) of the Bill, which inter alia relate to the repeal of the operation in Australia of Part VIII of the Merchant Shipping Act dealing with limitation of shipowners' liability.

CLAUSE 104LIMITATION OF SHIPOWNERS' LIABILITY

This clause specifically provides for the Parliament to approve the ratification by Australia of the Convention relating to the limitation of the liability of owners of sea-going ships. This approval is subject to the exclusion, in pursuance of the reservation referred to in sub-paragraph 2(a) of the Protocol of Signature, of the application of sub-paragraph (1)(c) of Article 1. (The text of the Protocol of Signature appears at the end of the text of the Convention set out in Schedule 2 to the Bill).

The clause also repeals Part VIII of the Merchant Shipping Act which is the Part of that Act that contains the present law in force in Australia in relation to the exclusion and limitation of a shipowner's liability.

The clause also provides a transitional provision to cover claims in respect of occurrences happening before the Convention comes into force for Australia.

CLAUSE 105RATIFICATION OF CONTAINER CONVENTION

This clause specifically provides for the Parliament to approve the ratification by Australia of the International Convention for Safe Containers, the provisions of which are being given effect to under the Bill.

CLAUSE 106

(Merchant Shipping Act)

REPEAL OF CERTAIN PROVISIONS OF MERCHANT SHIPPING ACT

This clause repeals certain provisions of the UK Merchant Shipping Act that may have effect in Australia.

Sections 221 to 224 of the Merchant Shipping Act deal with the following matters:

- 221 - Desertion and absence without leave
- 222 - Conveyance of deserter on board ship
- 223 - Provisions as to arrest and imprisonment applying out of the United Kingdom
- 224 - Power of court to order offender to be taken on board ship

Another clause of this Bill omits provisions of the Navigation Act which the Committee of Experts of the International Labour Organisation has criticised as being contrary to ILO Convention No. 105 on Forced Labour, to which Australia is a party. The provisions being repealed are sub-sections 105(1) and (2). Although sections 221-224 of the Merchant Shipping Act were previously replaced in their application as Australian law by the above sub-sections, it appears possible that with the repeal of those sub-sections, sections 221-224 may again become part of the law of Australia. It is therefore advisable to repeal them on the widest possible basis.

CLAUSE 107SAVING OF REGULATIONS

This clause, which will come into operation when the Bill receives the Royal Assent, saves existing regulations made under a provision amended, repealed or re-enacted by the Bill, except for the Navigation (Tonnage Measurement) Regulations which are specially dealt with by clause 111.

(Misc.)

CLAUSE 108TRANSITIONAL PROVISIONS IN RELATION TO PRESCRIBED
COUNTRIES

This clause makes appropriate provisions to cover the changes from use of the term 'Commonwealth country' to use of the term 'prescribed country' being introduced by the Bill, thus ensuring, where appropriate, continuity of recognition for the purposes of the Act.

CLAUSE 109TRANSITIONAL PROVISIONS IN RELATION TO COMPLEMENT
OF SHIPS

Sub-clause (1) of this clause makes appropriate provisions to cover the transition from present manning provisions of the Act, together with regulations and orders issued thereunder, to the new provisions being inserted by this Bill and the regulations and orders to be issued thereunder.

Sub-clause (2) provides for the references to duly certificated masters and officers and to other classes of crew in provisions being continued in force by sub-section (1) to have effect as if they were references to qualified masters, officers and seamen, which are the relevant terms being used in the new provisions being inserted by the Bill.

CLAUSE 110TRANSITIONAL PROVISIONS IN RELATION TO THE SAFETY CONVENTION

Sub-clause (1) of this clause provides for SOLAS Convention safety certificates issued under the Navigation Act to continue in force as if issued under the Act as being amended by this Bill.

Sub-clause (2) provides for a country that is a 'country to which the Safety Convention applies' for the purposes of the Act at present, but which with the bringing into force of the amendments of the Act to apply the provisions of the 1974 Safety Convention instead of the 1960 Safety Convention will not be such a country (i.e. has not become a party to the 1974 Convention), to be subject to the present requirements of the Act and regulations in Safety Convention matters instead of the new 1974 Safety Convention (and 1978 Protocol) requirements being inserted by this Bill.

Sub-clause (3) provides for declaration, by notice in the Gazette, of countries to be 1974 Safety Convention countries but not countries to which the amending 1978 Protocol applies, as some countries could be in such a position.

Sub-clause (4) enables the Minister to provide by notice in the Gazette that the new Safety Convention provisions being inserted in the Act, and the regulations and orders under the Act as so amended, apply to ships registered in a country referred to in sub-clause (3), with specified modifications.

(TM)

CLAUSE 111TRANSITIONAL PROVISIONS IN RELATION TO TONNAGE
MEASUREMENT

This clause provides that the present Navigation (Tonnage Measurement) Regulations (made under section 407A) will continue in force, subject to any amendment or repeal, as if made under the provisions of new section 405E which provides the power for making regulations for the purposes of the International Convention on Tonnage Measurement of Ships, 1969.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

NAVIGATION AMENDMENT BILL 1980

TABLE OF PROVISIONS

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4. Repeal of section 2A and substitution of new section—
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8. Repeal of section 8 and substitution of new sections—
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