



## MARINE

**No. 125 of 1977**

### ANALYSIS

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### AN ACT to amend the Marine Act 1976.

[14 December 1977]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Marine Act 1977*.

(2) The *Marine Act 1976\**, as subsequently amended, is in this Act referred to as the Principal Act.

Short title,  
citation, and  
commencement.

\*No. 18 of 1976. Subsequently amended by No. 37 of 1977.

(3) This Act shall not commence until Her Majesty's pleasure thereon has been publicly signified in this State, and, after the signification thereof, this Act shall commence on a date to be fixed by proclamation.

Interpretation.

**2** Section 4 of the Principal Act is amended by inserting in paragraph (b) of the definition of "detaining officer" in subsection (1), after the words "unsafe vessel", the words ", a vessel under section 117B,".

**3** Section 31 of the Principal Act is repealed and the following sections are substituted:—

Marine Board  
of Devonport.

" 31 The Marine Board of Devonport shall consist of 11 wardens, of whom—

- (a) five shall be elected by electors of the Devonport voting district;
- (b) two shall be elected by electors of the Latrobe voting district;
- (c) two shall be elected by electors of the Sheffield voting district; and
- (d) two shall be elected by electors of the Ulverstone voting district,

as those districts are defined in Schedule III.

Retirement of  
wardens,  
Marine Board  
of Devonport,  
and related  
provisions.

" 31A—(1) Nothing in section 31 affects the term of office of persons holding office as members of the Marine Board of Devonport at the commencement of the *Marine Act* 1977.

"(2) At each of the elections of wardens for the Marine Board of Devonport held in 1978 and 1979 the vacancies caused by the expiration of the terms of office of the 3 retiring wardens elected for the old Devonport voting district shall in each case be filled by—

- (a) a warden elected by the electors of the new Devonport voting district;

(b) a warden elected by the electors of the Latrobe voting district; and

(c) a warden elected by the electors of the Sheffield voting district.

“(3) At the election of wardens held for the Marine Board of Devonport in 1980 the vacancies caused by the expiration of the terms of office of the 3 retiring wardens elected for the old Devonport voting district shall be filled by 3 wardens elected by the electors of the new Devonport voting district.

“(4) A casual vacancy which occurs in the office of a warden elected by the electors of the old Devonport voting district that is required to be filled by election shall be so filled by election by the electors of the old Devonport voting district.

“(5) In this section—

‘old Devonport voting district’ means the municipalities of Devonport, Kentish, and Latrobe;

‘new Devonport voting district’ means the Devonport voting district referred to in section 31.

“(6) Of the candidates elected to the Marine Board of Devonport by the electors of the Ulverstone voting district at the election of wardens to be held in the year 1978, the first warden elected shall retire on the date of the election of wardens to be held in the year 1981 and the second warden elected shall retire on the date of the election of wardens to be held in the year 1980.

“(7) For the purpose of subsection (6) a reference to the first warden elected is a reference to the warden who, at the election to be held in 1978, receives the most primary votes and a reference to the second warden elected is a reference to the warden who at that election, receives the second highest number of primary votes.

“(8) If, at the election of wardens to be held in 1978, there is no poll, the first and second wardens elected shall be determined by lot conducted by the Returning Officer of the Marine Board of Devonport.”.

## Interpretation.

4 Section 111 of the Principal Act is amended by adding at the end of subsection (1) the following definitions:—

“ ‘load line certificate’ means a load line certificate issued pursuant to the regulations made under section 114 (2) (b);

“ ‘prescribed markings’ means, as the case requires, markings in lieu of deck lines or in lieu of load lines as are prescribed in regulations made for the purposes of section 111 (2);

“ ‘recognized certificate’ means a certificate recognized by the Authority pursuant to section 148.”.

5 After section 117 of the Principal Act the following sections are inserted in Division II of Part XIII:—

Vessels not  
to be  
overloaded.

“ 117A—(1) Except as permitted by or under the regulations, where a vessel that is engaged in navigation as provided in section 110 is overloaded, whether or not a load line certificate or a recognized certificate is in force in relation to the vessel, the owner and the master of the vessel are each guilty of an offence.

“(2) A person who is guilty of an offence against subsection (1) is liable to a penalty of \$2 000 and to an additional penalty of an amount calculated at the rate of such amount as is applicable to the relevant vessel in accordance with the following table in relation to its gross registered tonnage for each 25 millimetres or part thereof by which the vessel is overloaded.

Gross registered tonnage	Amount
	\$
Not exceeding 100 tons .....	200
Exceeding 100 tons but not exceeding 500 tons .....	400
Exceeding 500 tons but not exceeding 1 000 tons .....	500
Exceeding 1 000 tons but not exceeding 2 000 tons .....	600
Exceeding 2 000 tons but not exceeding 3 000 tons .....	700
Exceeding 3 000 tons but not exceeding 4 000 tons .....	800
Exceeding 4 000 tons but not exceeding 5 000 tons .....	900
Exceeding 5 000 tons .....	1 000

“(3) A vessel shall be deemed to be overloaded for the purposes of this section if, in the opinion of the Authority, the appropriate load lines or prescribed markings marked on or affixed to the vessel are not visible.

“(4) The Authority may certify in a load line certificate that, having regard to the relevant provisions of section 183, it is satisfied that, on a date specified in the load line certificate, the gross registered tonnage of the vessel to which that certificate relates was such number of tons as is specified in the certificate and in proceedings for an offence against subsection (1) in respect of that vessel, the load line certificate is evidence that the gross registered tonnage of the vessel was the number of tons so specified on the date so specified.

“(5) It is a defence in proceedings for an offence against subsection (1) in respect of a vessel if it is proved that the circumstances giving rise to the offence were due only to a deviation or delay of the vessel caused solely by stress of weather or other circumstances that neither the owner nor the master of the vessel could have prevented or forestalled.

“ 117B—(1) Where—

Detention of  
vessels  
incorrectly  
marked.

- (a) a load line certificate or recognized certificate that relates, in whole or in part, to load lines, or prescribed markings is in force in respect of a vessel; and
- (b) a surveyor is not satisfied that a deck line, load line, or a prescribed marking is in the position specified for that line or other mark in the certificate, or where he is satisfied that such a line or other marking is not correctly marked on or affixed to the vessel as required by the certificate,

the vessel may be detained by a detaining officer.

“(2) The manner of detaining a vessel for the purposes of subsection (1) is by the service of a detention order by the detaining officer concerned on the master or person in charge of the vessel.

“(3) A detention order continues in force until the detaining officer by whom it is served is satisfied that the deck line, load line, or prescribed marking in respect of which the order is made is in the position specified for that line or marking in the relevant load line certificate or recognized certificate or, as the case requires, is correctly marked on or affixed to the vessel as required by that certificate.

“(4) The master or person in charge of a vessel that is subject to a detention order under this section shall on the direction of the detaining officer, cause the vessel to be taken to any place specified by the detaining officer, cause it to be docked or slipped,

and the necessary deck line, load line, or prescribed marking to be marked on or affixed to the vessel in the position required by its load line certificate or recognized certificate.

“(5) A person—

(a) who resists the detention of a vessel pursuant to a detention order under this section or who obstructs a detaining officer making such a detention; or

(b) who contravenes or fails to comply with a direction given to him by a detaining officer pursuant to subsection (4), is guilty of an offence.

Penalty: \$400.”.

Collision regulations.

**6** Section 135 of the Principal Act is amended by adding at the end the following subsection:—

“(3) The collision regulations may provide that, in proceedings taken against a person for an offence committed or alleged to have been committed in contravention of the provisions of those regulations, an averment by the complainant contained in the complaint is *prima facie* evidence of the matter averred.”.

Governor to regulate limits of trade.

**7** Section 143 of the Principal Act is amended by omitting the words “or coast trade” and substituting the words “or part of any port or the limits of any coast trade”.

**8** After section 195 of the Principal Act the following section is inserted:—

Protection from liabilities.

“195A—(1) No act or thing done or omitted to be done by a warden, member of the Authority, officer or employee of a board, or officer or employee of the Authority in the exercise or purported exercise in good faith of any power, function, authority, or duty under this Act subjects the warden, member, officer, or employee to any civil liability in respect of that act or thing.

“(2) For the purposes of subsection (1), ‘officer or employee of the Authority’ includes a person whose services are made use of by the Authority pursuant to section 9 (2).”.

By-laws.

**9** Section 198 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

“(1A) Any by-laws made by a board under this section in relation to the prevention of collisions in waters within the board’s jurisdiction may provide that, in proceedings taken against a person

for an offence committed or alleged to have been committed in contravention of the provisions of those by-laws, an averment by the complainant contained in the complaint is *prima facie* evidence of the matter averred.”.

**10** Section 200 of the Principal Act is amended by inserting after subsection (3) the following subsection:— Regulations.

“(3A) The regulations made under this Act may adopt, either wholly or in part, and either specifically or by reference to any of the standard rules, codes, or specifications of the bodies known as the Standards Association of Australia, the British Standards Association, the Association of Australian Port and Marine Authorities, or of any other like body specified in the regulations.”.

**11** Schedule III to the Principal Act is amended by omitting the words “*Devonport*—The municipalities of Devonport, Latrobe, and Kentish.” and substituting the following words:— Amendment of Schedule III.

“*Devonport*—The municipality of Devonport.

“*Sheffield*—The municipality of Kentish.

“*Latrobe*—The municipality of Latrobe.”.