

**Authorised Version No. 003**  
**Marine (Domestic Commercial Vessel**  
**National Law Application) Act 2013**

**No. 36 of 2013**

Authorised Version incorporating amendments as at  
31 December 2017

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**Marine (Domestic Commercial Vessel  
National Law Application) Act 2013**

**No. 36 of 2013**

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**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

- (1) The purpose of this Act is to adopt in Victoria a national approach to the regulation of marine safety in relation to domestic commercial vessels (the domestic commercial vessel national law).
- (2) Accordingly, this Act—
  - (a) applies the Commonwealth domestic commercial vessel national law as a law of Victoria; and
  - (b) makes provision to enable the Commonwealth domestic commercial vessel national law and the applied law of Victoria to be administered on a uniform basis by the Commonwealth (and by Victorian officials as delegates of the Commonwealth) as if they constituted a single law of the Commonwealth.

**Note**

A number of aspects of the regulation of domestic commercial vessels are dealt with under the **Marine Safety Act 2010** and the **Marine (Drug, Alcohol and Pollution Control) Act 1988** and other Victorian Acts. These include matters relating to pilotage, harbour masters, the management of waterways and control of the

use of alcohol and other drugs by masters and crew of domestic commercial vessels.

## **2 Commencement**

This Act comes into operation on a day to be proclaimed.

## **3 Definitions**

(1) In this Act—

*applied provisions* means the Commonwealth domestic commercial vessel national law that applies as a law of Victoria because of section 4;

*Commonwealth administrative laws* means the following Commonwealth Acts, regulations or other legislative instruments—

- (a) the Administrative Appeals Tribunal Act 1975 (excluding Part IVA);
- (b) the Freedom of Information Act 1982;
- (c) the Ombudsman Act 1976;
- (d) the Privacy Act 1988;
- (e) the regulations and other legislative instruments in force under any of those Acts;

*Commonwealth domestic commercial vessel national law* means the following Commonwealth Acts, regulations or other legislative instruments—

- (a) the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012);

- (b) the regulations and other legislative instruments in force under that Law;
  - (c) any other provision of a Commonwealth Act (or of a regulation or other legislative instrument in force under a Commonwealth Act) that is of a savings or transitional nature consequent on the enactment or amendment of that Law.
- (2) Terms used in this Act and also in the Commonwealth domestic commercial vessel national law have the same meanings in this Act as they have in that law.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to—
  - (a) that Commonwealth Act, as amended and in force for the time being; and
  - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

## **Part 2—The applied provisions**

### **4 Application of Commonwealth laws as laws of Victoria**

- (1) The Commonwealth domestic commercial vessel national law, as in force from time to time, applies as a law of Victoria.
- (2) The Commonwealth domestic commercial vessel national law so applies as if it extended to matters in relation to which Victoria may make laws—
  - (a) whether or not the Commonwealth may make laws in relation to those matters; and
  - (b) even though the Commonwealth domestic commercial vessel national law provides that it applies only to specified matters with respect to which the Commonwealth may make laws.
- (3) Subsection (2) does not operate to exclude a law of Victoria relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law.
- (4) The regulations made under this Act may provide that the Commonwealth domestic commercial vessel national law applies under this section as if an amendment to that law—
  - (a) made by a law of the Commonwealth; and
  - (b) specified in the regulations made under this Act—had not taken effect.

### **5 Interpretation of Commonwealth domestic commercial vessel national law**

- (1) The Acts Interpretation Act 1901 of the Commonwealth applies as a law of Victoria in relation to the interpretation of the applied

provisions, and so applies as if the applied provisions were a Commonwealth Act or were regulations or other legislative instruments under a Commonwealth Act, as the case requires.

- (2) The **Interpretation of Legislation Act 1984** does not apply to the applied provisions.

## **Part 3—Functions and powers under applied provisions**

### **6 Functions and powers of National Regulator and other authorities and officers**

The National Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth.

### **7 Delegations by the National Regulator**

Any delegation by the National Regulator under the Commonwealth domestic commercial vessel national law, as that law applies to the Commonwealth, is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.



## **Part 4—Offences**

### **8 Object of this Part**

- (1) The object of this Part is to further the purpose of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) are—
  - (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) infringement notices in connection with offences; and
  - (h) liability to make reparation in connection with offences; and
  - (i) proceeds of crime; and
  - (j) spent convictions.
- (3) For the purposes of this Part, offences include contraventions for which a civil penalty may be imposed.

**9 Application of Commonwealth criminal laws to offences against applied provisions**

- (1) The relevant Commonwealth laws apply as laws of Victoria in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of Victoria.
- (2) For the purposes of a law of Victoria, an offence against the applied provisions—
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of Victoria.
- (3) Subsection (2) has effect for the purposes of a law of Victoria except as provided by the regulations made under this Act.
- (4) In this section—

*relevant Commonwealth law* means a law relating to a purpose set out in section 8(2).

**10 Functions and powers conferred on Commonwealth officers and authorities relating to offences**

- (1) A Commonwealth law applying because of section 9 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in

performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth domestic commercial vessel national law.

**11 No double jeopardy for offences against applied provisions**

If—

- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth domestic commercial vessel national law; and
- (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law—

the offender is not liable to be punished for the offence under the applied provisions.

## **Part 5—Administrative laws**

### **12 Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of Victoria to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of Victoria.
- (2) For the purposes of a law of Victoria, a matter arising in relation to the applied provisions—
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to laws of Victoria.
- (3) Subsection (2) has effect for the purposes of a law of Victoria except as provided by Part 7 and the regulations made under this Act.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the Administrative Appeals Tribunal Act 1975 of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

### **13 Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 12 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

## **Part 6—Fees and fines**

### **14 Fees payable to officers or employees of Victoria acting as delegates**

- (1) Regulations may be made under this Act for or with respect to fees payable to Victoria in relation to anything done under the Commonwealth domestic commercial vessel national law (as that law applies as a law of the Commonwealth), or under the applied provisions, by a delegate of the National Regulator, or an accredited person, who is an officer or employee of, or engaged by, Victoria or an agency of Victoria.
- (2) Without limiting subsection (1), until regulations are made under that subsection, the fees payable in the circumstances described in subsection (1) are the fees specified in the Schedule.

### **15 Infringement notice fines**

- (1) Any amount paid to Victoria by the National Regulator under section 10 of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth in relation to an infringement notice is payable into the Consolidated Fund.
- (2) Any amount payable by Victoria under section 10(2) of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth in relation to an infringement notice is payable out of the Consolidated Fund.

### **16 Fines, fees etc not otherwise payable to Victoria**

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.

- (2) Subsection (1) does not apply to any fees referred to in section 14.

## **Part 7—Application of Charter Act**

### **17 Charter of Human Rights and Responsibilities Act 2006**

- (1) Without limiting section 4 of the **Charter of Human Rights and Responsibilities Act 2006**, the following persons are public authorities for the purposes of that Act when exercising powers or functions delegated under the applied provisions or the Commonwealth domestic commercial vessel national law, or powers delegated under the Australian Maritime Safety Authority Act 1990 of the Commonwealth—
  - (a) the Director, Transport Safety within the meaning of section 3 of the **Transport Integration Act 2010**;
  - (b) a transport safety officer within the meaning of section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983** who is a public official within the meaning of the **Public Administration Act 2004**;
  - (c) a person employed under Part 3 of the **Public Administration Act 2004**.
- (2) Without limiting section 4 of the **Charter of Human Rights and Responsibilities Act 2006**, a public official within the meaning of the **Public Administration Act 2004** who is appointed as a marine safety inspector under the applied provisions or the Commonwealth domestic commercial vessel national law is a public authority for the purposes of the **Charter of Human Rights and Responsibilities Act 2006** when exercising functions and powers under the applied provisions or the Commonwealth domestic commercial vessel national law.



## **Part 8—Miscellaneous**

### **18 Things done for multiple purposes**

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth domestic commercial vessel national law.

### **19 Reference in Commonwealth law to a provision of another law**

For the purposes of sections 8 and 12, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

### **20 Authority to accept delegation of functions**

- (1) The following persons or classes of persons are authorised to be delegates for the purposes of the Marine Safety (Domestic Commercial Vessel) National Law—
  - (a) the Director, Transport Safety within the meaning of section 3 of the **Transport Integration Act 2010**, if authorised by the Minister;
  - (b) a transport safety officer within the meaning of section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, if the officer is—
    - (i) an officer of an agency of the State within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law; and
    - (ii) authorised by the Director, Transport Safety;

- (c) a person employed under Part 3 of the **Public Administration Act 2004** to enable the Director, Transport Safety to carry out his or her functions, if authorised by the Director, Transport Safety.
- (2) The Minister must not authorise the Director, Transport Safety to act as a delegate under subsection (1)(a) unless the Minister is satisfied that there are sufficient arrangements in place and resources available to enable the Director, Transport Safety to carry out the delegated functions.
- (3) An authorisation by the Director, Transport Safety under subsection (1)(b) or (c) may be made—
  - (a) in relation to a person or class of persons specified in the instrument; or
  - (b) in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument.

## **21 Victorian regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing forms (including the information to be included in forms); and
  - (b) fees for the purposes of section 14, including the following—
    - (i) the payment of fees either generally or under specified conditions or in specified circumstances;
    - (ii) late payment fees;
    - (iii) the reduction, waiver or refund, in whole or in part, of fees;

- (iv) the matters to be included in forms relating to fees; and
  - (c) generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act or the applied provisions.
- (2) A power conferred by this Act to make regulations may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
  - (b) so as to make, as respects the cases in relation which the power is exercised—
    - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or provisions for the same case or class of case for different purposes; or
    - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) The regulations may—
  - (a) be of general or limited application; and
  - (b) differ according to differences in time, place or circumstances; and
  - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and

- (d) provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (4) A reduction, waiver or refund, in whole or in part, of a fee, under a regulation under subsection (1)(b) may be expressed to apply either generally or specifically—
  - (a) in respect of certain matters or transactions or classes of matters or transactions;
  - (b) in respect of certain documents or classes of documents;
  - (c) when an event happens;
  - (d) in respect of certain persons or classes of persons;
  - (e) in respect of any combination of such matters, transactions, documents, events or persons—and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

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**Part 9—Transitional provisions**

*	*	*	*	*	<b>S. 22 repealed by No. 36/2013 s. 22(5).</b>
*	*	*	*	*	<b>Pt 10 (Heading and ss 23–80) repealed by No. 36/2013 s. 80.</b>
*	*	*	*	*	<b>Pt 11 (Heading and ss 81–99) repealed by No. 36/2013 s. 99.</b>

## Schedule

Section 14

### Schedule of fees

#### 1 Definitions

(1) In this Schedule—

*certificate of competency* has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law;

*certificate of survey* has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law;

*National Regulator* means the National Marine Safety Regulator within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law.

(2) In this Schedule, *Class* and *Class 1 vessel* have the same meanings respectively as they have in the Marine Safety Regulations 2012 as in force before the commencement of this Act as if a reference in those definitions to a commercially operated vessel were a reference to a domestic commercial vessel.

#### 2 Application fee for certificate of survey

The fee to be paid for an application for a certificate of survey is 1.54 fee units.

#### 3 Fee for survey of new domestic commercial vessel

(1) The fee to be paid for the survey of the design phase of a new domestic commercial vessel of a size specified in Column 2 of the following Table is the amount calculated by multiplying the length of the vessel in metres by the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.

Marine (Domestic Commercial Vessel National Law Application) Act 2013  
No. 36 of 2013  
Schedule

<b>Table</b>			
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>For all Class 1 vessels fee per metre of the length of vessel</i>	<i>For all other Classes of vessels fee per metre of the length of vessel</i>
1	For new vessels of or not exceeding 7.5 metres in length	3.14 fee units	3.14 fee units
2	For new vessels exceeding 7.5 metres in length and less than 20 metres in length	5.05 fee units	4.4 fee units
3	For new vessels of or exceeding 20 metres in length	6.64 fee units	5.65 fee units

- (2) The fee to be paid for the survey of the construction and commissioning phases of a new domestic commercial vessel of a size specified in Column 2 of the following Table is the amount calculated by multiplying the length of the vessel in metres by the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.

Marine (Domestic Commercial Vessel National Law Application) Act 2013  
No. 36 of 2013  
Schedule

<b>Table</b>			
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>For all Class 1 vessels fee per metre of the length of vessel</i>	<i>For all other Classes of vessels fee per metre of the length of vessel</i>
1	For new vessels of or not exceeding 7.5 metres in length	5.65 fee units	5.65 fee units
2	For new vessels exceeding 7.5 metres in length and less than 20 metres in length	5.05 fee units	4.4 fee units
3	For new vessels of or exceeding 20 metres in length	4.4 fee units	3.14 fee units

**4 Fee for booking a survey for existing domestic commercial vessel**

The fee to be paid at the time of booking a survey for an existing domestic commercial vessel is 8.4 fee units.

**5 Fee for survey of existing domestic commercial vessel**

The fee to be paid for the survey of an existing domestic commercial vessel of a size specified in Column 2 of the following Table is the amount specified for that class of vessel in Column 3 or 4 of the Table opposite that size of vessel.



Marine (Domestic Commercial Vessel National Law Application) Act 2013  
No. 36 of 2013  
Schedule

<b>Table</b>			
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Size of vessel</i>	<i>Class 1 vessels</i>	<i>All other Classes</i>
1	For vessels of or not exceeding 5 metres in length	8.85 fee units	5.85 fee units
2	For vessels exceeding 5 metres in length or of or not exceeding 10 metres in length	19 fee units	12.65 fee units
3	For vessels exceeding 10 metres in length or of or not exceeding 20 metres in length	25.3 fee units	16.9 fee units
4	For vessels exceeding 20 metres in length or of or not exceeding 35 metres in length	38 fee units	25.3 fee units
5	For vessels exceeding 35 metres in length	57 fee units	38 fee units

## **6 Fee for additional visit for an existing vessel survey**

The fee to be paid for each additional visit by a surveyor authorised by the National Regulator that is required for the purposes of an existing domestic commercial vessel survey is 8.4 fee units.

**7 Fee for considering application for variation of conditions of a safe construction certificate**

The fee to be paid for an application to vary the conditions of the safe construction certificate for a domestic commercial vessel or a fleet of domestic commercial vessels is 2·1 fee units.

**8 Fee for survey for alteration to service category of vessel**

- (1) The fee to be paid for each hour spent by a person authorised by the National Regulator conducting a survey of the design phase of an alteration to the service category of a domestic commercial vessel is 6·3 fee units.
- (2) The fee to be paid for each inspection of a domestic commercial vessel for the purposes of a survey of the construction and commissioning phases of an alteration to the service category of the vessel is 8·4 fee units.

**9 Fee for issue or renewal of safe construction certificate**

The fee to be paid for the issue or renewal of a safe construction certificate for a domestic commercial vessel is 4·6 fee units.

**10 Fee for issue of duplicate safe construction certificate**

The fee to be paid for the issue of a duplicate safe construction certificate for a domestic commercial vessel is 4·6 fee units.

**11 Application fee for issue, variation or renewal of certificate of competency**

The fee to be paid for an application for the issue, variation or renewal of a certificate of competency is 1·54 fee units.

**12 Fee for issue or renewal of certificates**

The fee to be paid for the issue or renewal of a certificate of competency is 4·6 fee units.

**13 Fee for variation of certificates**

The fee to be paid for the variation of a certificate of competency is 2·9 fee units.

**14 Fee for issue of duplicate certificate**

The fee to be paid for the issue of a duplicate certificate of competency is 4·6 fee units.

**15 Examination fees for certificates**

- (1) The fee to be paid by a person who sits a written examination conducted by or on behalf of the National Regulator for the issue, variation or renewal of a certificate of competency is 3·34 fee units.
  - (2) The fee to be paid by a person who sits an oral examination conducted by the National Regulator for the issue, variation or renewal of a certificate of competency is 6·7 fee units.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 8 May 2013*

*Legislative Council: 30 May 2013*

The long title for the Bill for this Act was "A Bill for an Act to adopt in Victoria a national approach to the regulation of marine safety in relation to domestic commercial vessels, to make consequential amendments to the **Marine Safety Act 2010**, to make consequential amendments to other Acts and for other purposes."

The **Marine (Domestic Commercial Vessel National Law Application) Act 2013** was assented to on 18 June 2013 and came into operation on 1 July 2013: Special Gazette (No. 226) 25 June 2013 page 1.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Marine (Domestic Commercial Vessel National Law Application) Act 2013** by Acts and subordinate instruments.

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### **Marine (Domestic Commercial Vessel National Law Application) Act 2013, No. 36/2013**

<i>Assent Date:</i>	18.6.13
<i>Commencement Date:</i>	Ss 22(5), 80, 99 on 1.7.13; Special Gazette (No. 226) 25.6.13 p. 1
<i>Note:</i>	S. 80 repealed Pt 10 (ss 23–80) on 1.7.14; s. 99 repealed Pt 11 (ss 81–99) on 1.7.14; s. 22(5) repealed s. 22 on 31.12.17
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Marine (Domestic Commercial Vessel National Law Application) Act 2013</b>

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### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

#### **4 Explanatory details**

No entries at date of publication.



## **ANNEXURES**

### **ANNEXURE 1**

#### **Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth**

#### **Note**

This Act will be amended by the Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012 of the Commonwealth and the Marine Safety (Domestic Commercial Vessel) National Law Amendments Act 2013 of the Commonwealth. See Annexure 2 and Annexure 3.

#### **Explanatory Memorandum**

##### **MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW BILL 2012**

##### **OUTLINE**

The Marine Safety (Domestic Commercial Vessel) National Law Bill (the Bill) is a component of the national transport reform package, which is intended to improve safety and reduce the regulatory burden and costs on the Australian rail, heavy vehicle and maritime industries. The maritime component of this reform package will be implemented through three key projects.

Firstly, national shipping reforms designed to ensure the long-term future of the Australian shipping industry through tax regulation and training. Secondly, the revision of the *Navigation Act 1912* (to be replaced by the Navigation Act 2012) will modernise the regulatory framework and provide much-needed confidence and certainty for industry.

This Bill represents the third and final component of the maritime reform package. As a key component of the National System for commercial vessel safety that will commence on 1 January 2013, this Bill introduces a new National Law for the regulation of domestic commercial vessel safety and establishes a National Marine Safety Regulator (the National Regulator). The policy basis for the National Law derives from the Council of Australian Governments (COAG) Inter-Governmental Agreement (IGA) on Commercial Vessel Safety Reforms, signed on 19 August 2011. The IGA also determined that the Australian Maritime Safety Authority (AMSA) will be the National Regulator.

There are currently eight different marine safety regulatory systems, involving the Commonwealth, the six States and the Northern Territory, that govern the operation of domestic commercial vessels in Australia. The overarching objective of the Bill is to provide for the consistent national regulation of the domestic commercial vessel industry across Australia.

This objective is to be achieved through a regulatory framework that:

- (a) promotes continuous improvement in marine safety;
- (b) promotes public confidence in the safety of marine operators;
- (c) ensures effective identification and management of safety risks; and
- (d) seeks to reduce regulatory burden without compromising safety.

Consistent with these objectives, the Bill:

- (a) establishes the National Regulator for the purposes of performing functions and exercising powers under this Bill;
- (b) establishes a system for the issue of national certificates in relation to:
  - i. vessel identification;
  - ii. vessel survey;

- iii. the commercial operation of vessels; and
- iv. seafarer competencies;
- (c) establishes offences where a vessel identification or a certificate is required and not held or not complied with;
- (d) establishes General Safety Obligations (GSOs) for individuals who have a role in the production and operation of commercial vessels, to ensure the safety of the vessel, their own safety and the safety of others, so far as is reasonable;
- (e) establishes a system within which to conduct compliance and enforcement activities; and
- (f) provides for the consistent application of nationally agreed standards across Australia.

The IGA provides that the Commonwealth will apply the National Law to the extent of the Commonwealth's constitutional reach, and each jurisdiction will apply the National Law to any 'gap' in the Commonwealth's constitutional reach. This approach achieves the consistency objective of the IGA.

Vessels which operate internationally, foreign vessels and vessels which maintain certification under the international convention for Safety of Life at Sea (SOLAS) will be regulated by the Commonwealth under the proposed *Navigation Act 2012* and are outside with scope of the Bill. This approach will continue to be applied when the revised Act is introduced. Defence vessels and recreational vessels are also outside the application of the Bill. However, interstate vessels that are currently regulated under the *Navigation Act 1912* will be covered under the National Law from its commencement.

State and Territory agencies will be responsible for the effective day-to-day operation of the National Law, under delegation from the National Regulator. The jurisdictions will retain responsibility for the regulation of waterways, the management of ports and associated issues, such as classifying waters, setting speed limits and the regulating alcohol consumption.

## **DEVELOPMENT OF THE BILL**

This Bill has been developed with the State and Territory jurisdictions to implement the decision of COAG on 19 August 2011 to create a single National Law to regulate the safety of all commercial vessel operations in Australian waters and to establish a single National Regulator for commercial vessel safety from 1 January 2013.

Extensive consultation has been undertaken on the development of the Bill with the States and Territories, including through the Standing Council on Transport and Infrastructure (SCOTI), the Transport and Infrastructure Senior Officials Committee (TISOC), the Maritime Agencies Forum, the National Marine Safety Committee, seven workshops with jurisdiction officials and numerous discussions and correspondence with State and Territory agency contacts.

Public consultation has also informed the development of the Bill, including consultation on the Regulatory Plan from June to October 2011 (outlining the proposed elements of the Bill), a detailed discussion paper in mid-December 2011 (providing an overview of the Bill) and the draft Bill itself (released in February 2012). Comments and feedback from 19 formal public submissions that were received on the draft Bill have been considered and incorporated into the Bill as appropriate. A report detailing the responses to these submissions (including the changes made to the Bill as a result) was also released in May 2012.

Government agencies have also been consulted on the development of the Bill, including the Department of Prime Minister and Cabinet, the Attorney General's Department, the Department of Education, Employment and Workplace Relations, SafeWork Australia, and the Australian Maritime Safety Authority.

The text of the Bill has been unanimously agreed by SCOTI at its meeting of 18 May 2012.

## **ABBREVIATIONS**

AAT	Administrative Appeals Tribunal
AMSA	Australian Maritime Safety Authority
COAG	Council of Australian Governments
Constitution	Constitution of the Commonwealth of Australia
Criminal Code	The Code established by the <i>Criminal Code Act 1995</i>
EEZ	Australia's Exclusive Economic Zone
EVU	Enforceable Voluntary Undertaking
GSO	General Safety Obligation
IGA	The Inter-Governmental Agreement for Commercial Vessel Safety Reform signed on 19 August 2011
Inspector	A Marine Safety Inspector appointed under Part 6 of the Bill
National Law	Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 of the Bill
National Regulator	The National Regulator established under Part 2 of the Bill
NMSC	National Marine Safety Committee
NSCV	National Standard for Commercial Vessels
OBPR	Office of Best Practice Regulation

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RIS	Regulation Impact Statement
SCOTI	Standing Council on Transport and Infrastructure
SOLAS	International Convention for the Safety of Life at Sea
The Bill/this Bill	Marine Safety (Domestic Commercial Vessel) National Law Bill 2012
The Act/this Act	Marine Safety (Domestic Commercial Vessel) National Law Act 2012
TISOC	Transport and Infrastructure Senior Officials Committee
USL Code	Uniform Shipping Laws Code
WHS Act	<i>Work Health and Safety Act 2011</i>

## **FINANCIAL IMPACT STATEMENT**

The COAG IGA underpinning the commercial vessel safety reform articulates the intentions of the jurisdictions in establishing the National Regulator arrangements. Jurisdictions have committed to achieving the objective of the reforms with minimum legal and administrative costs and no overall increase in regulatory burden as a result of commencement of the National System.

Full cost-recovery is a longer-term aspiration. States and Territories not fully recovering costs from industry will consider moving progressively to full cost recovery in the long-term. Any State or Territory-based subsidisation of operators will take into account implications for the National System.

At the commencement of the scheme, States and Territories will continue to adjust current cost recovery or fee charging arrangements at a rate of their own discretion. The Commonwealth has undertaken not to impose upon industry any new fees or charges for National System related purposes unless otherwise agreed by SCOTI. States and Territories have agreed to comply with Competitive Neutrality Policy and Principles outlined in the COAG Competition Principles Agreement in any instance when a fee for service is charged in competition with the private sector.

From the commencement of the National System, and until alternate arrangements have been agreed by SCOTI, all jurisdictions will contribute to the funding of the National Regulator. The first year of funding of AMSA's costs of the National System have been set at \$4 million (in June 2011 dollars). To facilitate the establishment of new service delivery arrangements, the Commonwealth will meet \$1 million of the National Regulator's costs for the first year of operation of the National System (2013). As arrangements are bedded down, jurisdictions will work to identify any efficiencies to be gained through the National System.

The funding contributions for AMSA's costs as the National Regulator for year one (2013) will be:

- a) National Marine Safety Committee (NMSC) funding  
(as per existing State and Territory contributions under the NMSC agreed funding formula) – \$2,000,000
- b) Commonwealth – \$1,000,000
- c) New South Wales – \$288,800
- d) Victoria – \$238,800
- e) Queensland – \$238,800
- f) Western Australia – \$113,800
- g) South Australia – \$77,700
- h) Tasmania – \$30,500
- i) Northern Territory – \$11,100
- j) Australian Capital Territory – \$0

The funding formula for AMSA's costs as the National Regulator (beyond 2013), until any alternate arrangements have been unanimously agreed by SCOTI, will be:

- a) Commonwealth – 10%
- b) New South Wales – 26%
- c) Victoria – 21.5%
- d) Queensland – 21.5%
- e) Western Australia – 10.25%
- f) South Australia – 7%
- g) Tasmania – 2.75%
- h) Northern Territory – 1%
- i) Australian Capital Territory – 0%

These funding arrangements will be reviewed by SCOTI in the first half of 2016, or a later date agreed by SCOTI.

## **REGULATORY IMPACT STATEMENT**

The commercial vessel safety national reform was first initiated in July 2009 when COAG decided to take a national approach to regulating the safety of all domestic commercial vessels in Australian waters by 2013. COAG's decision reflects recommendations made by the Australian Transport Council (ATC).



ATC's recommendations were informed by a Regulatory Impact Statement (RIS), which explored perceived problems with the current regulatory framework and considered alternate options for national reform of maritime safety regulation.

The RIS, which can be found at:

<http://www.infrastructure.gov.au/maritime/nmsr.aspx>

incorporated feedback provided in over 90 written submissions and 22 public meetings held around Australia.

### **Statement of Compatibility with Human Rights**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Human rights implications**

The Bill engages the following human rights:

##### *Right to privacy*

Part 6 of the National Law Bill contains provisions on enforcement powers that enable Marine Safety Inspectors (inspectors) appointed by the National Regulator (the Australian Maritime Safety Authority) to detain, board, inspect and search domestic commercial vessels; and gather information and seize things in relation to domestic commercial vessel safety regulation and compliance.

The National Law Bill has been drafted consistently with the principles stipulated in *The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) developed by the Criminal Justice Division of the Attorney-General's Department.

In addition, the National Law Bill provides for enforcement powers equivalent to those provided in current Commonwealth legislation including:

- *Work Health and Safety Act 2011*, Section 163 – Powers of entry;
- *Crimes Act 1913*, Section 3T – Searches without warrant in emergency situations;
- *Quarantine Act 1908*, Section 66AB – The monitoring of premises; and,
- *Customs Act 1901*, Section 185 – Power to board and search etc. ships and aircraft.

Section 8.6 of the Guide (Entry and Search Without a Warrant) states that “a search without a warrant will only be permitted where the inherent mobility of the conveyance means there may not be time, or it would be impractical, to obtain a warrant”.

Domestic commercial vessels are inherently mobile. The nature of the commercial activities undertaken by these vessels often means that they do not follow any predictable pattern or timetable. This means that monitoring and compliance activities need to be undertaken as and when an opportunity presents, frequently while the vessel is at sea. The vessels may also be operating in geographically remote areas, a great distance from port and with limited or no mobile telephone access. In these circumstances, obtaining a warrant is impractical and may limit the regulator’s capacity to undertake their safety regulatory role in a responsive manner. For this reason, the enforcement powers are appropriate and proportionate for the task.

The guide at 8.6 (exception for licensed premises) sets out that “a person who obtains a licence or registration for non-residential premises can be taken to accept entry to those premises by an inspector for the purpose of ensuring compliance with the licensing or registration conditions”. The Senate Scrutiny of Bills Committee has said that these powers can be conferred “where a person has accepted a commercial benefit subject to being monitored by this means”.

The safety regulation of domestic commercial vessel activity is not new and regulation has occurred under State and Territory legislation for some time. Owners and masters of domestic commercial vessels are aware that the safety requirements pertaining to domestic commercial vessels are subject to regulatory oversight, and by applying for the unique identifier and certificates that allow them to operate as a commercial vessel they are implicitly accepting that their compliance with the regulatory requirements will be monitored.

Generally, inspectors will be required to seek the express and informed consent of the relevant person or obtain a warrant prior to entering a premise. However, an inspector may enter a

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premise that is not a residential premise without consent or warrant in order to gain access to the domestic commercial vessel (see clause 96). An inspector may also board a domestic commercial vessel without warrant or consent to monitor compliance, or to issue an improvement, infringement or other notice.

Inspectors, when undertaking monitoring activities, routinely wear uniforms. However, an inspector must, in order to exercise their powers lawfully under clauses 96 and 97, also show his or her identity card if requested to do so. Similarly, a police officer who is appointed as an inspector, but who is not wearing a uniform, must show his or her police identification if requested to do so.

If, in the course of undertaking monitoring activities in relation to a domestic commercial vessel, an inspector believes that something is evidential material and that there is a serious or urgent need to exercise powers to preserve the evidential material, or it is otherwise impracticable to obtain a warrant, then clause 100 allows an inspector to take a sample of the material, secure the material for up to 72 hours or seize the material.

These powers are limited to use in relation to a vessel, which because of its inherent mobility, may make obtaining a warrant impractical (for example, if the vessel is in a remote area with no mobile telephone reception) or may require that action is taken immediately to ensure that evidential material is not lost or compromised. The 72 hour statutory time limit to secure a thing, balances the possibility that the safety operation may be a significant distance from the nearest port, whilst ensuring that a person's property is not inappropriately retained.

To ensure that the National Regulator can monitor the use of this power and the circumstances in which it is used, an inspector who exercises these powers will be required to report to the National Regulator on the exercise of the powers and the grounds for his or her belief that these powers needed to be exercised without warrant.

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Division 7 of Part 6 of the Bill further restricts how an inspector can deal with material seized from a domestic commercial vessel, which ensures that the handling of any evidential material is transparent for the person and the National Regulator.

Clause 152 enables certain specified people or groups of people who play a role in the administration of the National Law to disclose information, including personal information, to the National Regulator. This power is to ensure that people who have been delegated functions by the National Regulator, or who are accredited or approved to undertake activities on behalf of the National Regulator, are able to disclose information that may be relevant to the administration of the National Law.

### **Conclusion**

The Bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable and proportionate to the information sought and the safety benefits conveyed to the maritime industry.

**Minister for Infrastructure and Transport,  
the Hon Anthony Albanese MP**

## **OTHER MATTERS**

### **Key features of the COAG IGA**

On 19 August 2011, the signing of the COAG IGA provided for the establishment of a single national regulator and a single National Law covering domestic commercial vessel safety in Australia from 1 January 2013. The IGA formalises the agreement of all Australian governments to the operating arrangements under which the single National System will operate. Agreement on the provisions of the IGA is a result of extensive negotiation between the Commonwealth, States and Territories.

Consistent with the COAG IGA, the National Law is intended to replace current State and Territory laws governing the operational safety of domestic commercial vessels. It will ensure that nationally agreed standards - the National Standard for Commercial Vessels (NSCV) - are applied consistently around the country. The NSCV will be implemented through subordinate legislation made under the National Law.

As the National Regulator, AMSA will be responsible for the development and implementation of commercial vessel standards nationally covering vessel construction, operation and crew qualifications. However, under the National Law, AMSA will delegate certain functions to State and Territory maritime safety agencies, which will undertake day-to-day interaction with the domestic commercial vessel industry.

### **Scope of this Bill relative to the proposed *Navigation Act 2012***

The scope of the National Law will apply to any domestic commercial vessels capable of being used in navigation or designed to float in water, including barges, pontoons, floating restaurants and floating craft being towed, which are not within the scope of the proposed *Navigation Act 2012*.

Vessels within the scope of the proposed *Navigation Act 2012* will include:

- Foreign flagged vessels conducting activities (other than warships and vessels on “freedom of navigation voyages”) in Australia’s Exclusive Economic Zone (EEZ) (for example, a foreign flagged vessel conducting fishing activities inside the EEZ);
- Australian flagged vessels that cross the outer limit of the EEZ, operate entirely outside the EEZ, or which intend to do so; and
- Australian flagged vessels that apply for or maintain SOLAS Certification, regardless of where they operate.

These vessels will be regulated by the proposed Navigation Act 2012 and will not be subject to the National Law, except where a vessel that has SOLAS Certification actively ‘opts out’ of coverage under that legislation. In that case, the vessel would be regulated under the National Law and would lose any international certification issued by AMSA for international voyages.

### **National Standards**

The National Law is designed to apply the NSCV throughout Australia. The NSCV is a set of standards covering commercial vessel operation, construction and crew qualifications that have been developed by all State and Territory transport agencies and agreed by Transport Ministers.

The NSCV is an evolving document that will be amended and updated as the need arises, with any changes being subject to broad stakeholder consultation and, following the implementation of the National System, unanimous agreement by Transport Ministers. The NSCV will be implemented through subordinate legislation made under the National Law.

Nationally, jurisdictions have in the past agreed a Uniform Shipping Laws (USL) Code and the NSCV. However, neither of these instruments has been applied consistently because of the

varied legislative application in each jurisdiction. For the first time in over 40 years, a single set of standards (the NSCV) will be consistently applied to domestic commercial vessels through one piece of legislation.

### **Strict liability offences**

Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. They also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

The rationale is that people who owe general safety duties, such as employers, people in control of aspects of work and designers and manufacturers of work structures and products, should be expected to be aware of their duties and obligations to workers and the wider public.

For strict liability offences in this Bill, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The application of strict liability to certain offences has been carefully considered during the drafting of the Bill and most strict liability offences are subject to other qualifiers, such as reasonable practicability, due diligence or reasonable care. The Bill also makes reference in relevant clauses to section 6.1 of the *Criminal Code*, which provides further details on strict liability.



## **Penalties for offences**

The penalties for offences in the Bill are intended to reinforce the deterrent effect of the Bill and allow courts greater capacity to respond meaningfully and proportionally to the worst breaches by duty holders. Where death or serious injury results from a breach, the social and economic costs are likely to be far greater than even the maximum fines imposed by the Bill. Therefore, the overall objective of the penalties in the Bill is to increase compliance with the National Law and decrease the resort to prosecution to achieve that aim.

The penalties in the Bill generally reflect the community's view that any person who has a work-related duty of care, but does not observe it, should be liable to a criminal sanction for placing another person's safety at risk. This approach is adopted in the *Work Health and Safety Act 2011* and is in line with international practice.

The Bill provides for three categories of offences. The highest category of offences is for a breach of duties that is intentional and carries the highest maximum penalty under the Bill. Other categories of offences are for reckless and negligent breaches, which attract relatively lower penalties commensurate with the level of culpability of the defendant in the circumstances. Section 5 of the *Criminal Code Act 1995* defines the meaning of intentional, reckless and negligent, in the context of Commonwealth offence provisions. Penalties are applied to each category of offence in accordance with the *Criminal Code*. As outlined in section 4AA of the *Crimes Act 1914*, one 'penalty unit' equates to \$110.

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, such as the issuing of notices by a marine safety inspector. The maximum penalties provided in the Bill reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offence.

### **Evidential burden**

An evidential burden (or ‘burden of proof’) requires a person to provide evidence of an asserted fact in order to prove that fact to a court. In some instances, the Bill places an evidential burden on an individual to demonstrate a reasonable excuse as to why they have failed to meet a duty or obligation.

Several sub-clauses in this Bill shift the evidential burden by requiring the defendant to show a reasonable excuse. This is because the defendant is the only person in the circumstances with the relevant knowledge able to provide evidence of any reasonable excuse for refusing or failing to meet the relevant duty or obligation.

## NOTES ON CLAUSES

### Clause 1 – Short Title

This is a formal provision that specifies that the Act may be referred to as the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

### Clause 2 – Commencement

This clause provides for a commencement by proclamation. The title and the commencement provisions will become law on the day the Act receives Royal Assent. The balance of the provisions, both in the local application law and Schedule 1, will become law either on a specified day to be proclaimed or on the day after 12 months from which the Act receives Royal Assent.

The provision of a proclamation date intends to avoid the possibility that a specified date may pass before the Bill has passed through Parliament. This avoids the possible need to draft an amendment, while the 12 month deadline removes an open ended commencement date and provides certainty.

### Clause 3 – Definitions

Sub-clause 1 explains that the Bill is structured to separate local application provisions from the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1.

Owing to this separation within the Bill, a reference to a clause or sub-clause in the local application provisions relates only to a clause or sub-clause in the local application provisions, unless otherwise indicated. Likewise, a reference to a clause or sub-clause in Schedule 1 relates only to a clause or sub-clause in Schedule 1, unless otherwise indicated.

COAG's intention is that this Bill will be applied in each jurisdiction by a separate State or Territory Law ("the local application provisions"). Notwithstanding clause 5, the practical effect of which is to legislate to the extent of the

Commonwealth's constitutional reach, State and Territory laws are required to ensure that any potential gap in the Commonwealth's reach is addressed.

Sub-clause 2 provides definitions for words and phrases used in the local application provisions of this Bill. These definitions determine the meaning applied to these words or phrases wherever they appear in the local application provisions. Schedule 1 contains additional definitions for words and phrases used in Schedule 1.

Significant definitions, which are essential to defining the scope of the legislation and describing how it will be administered, include the following:

***'Commonwealth Minister'*** means the Minister of State administering this Act, which is the Minister of Infrastructure and Transport.

***'Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth'*** is defined to mean this Bill and the Schedule to it.

***'Participating Territory'*** is defined to mean the Australian Capital Territory, the Jervis Bay Territory, the Territory of Ashmore and Cartier Islands, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

Sub-clause 3 clarifies that the same words and phrases have the same meaning wherever they appear in the Bill. This is intended to avoid any conflict in the interpretation of words and phrases used in the local application provisions or Schedule 1 of this Bill.

#### **Clause 4 – Adoption of Marine Safety (Domestic Commercial Vessel) National Law**

This clause clarifies that Schedule 1 of the Bill, as well as any regulations or other legislative instruments made under the Bill, are a law of the Commonwealth and may be referred to as the *Marine Safety (Domestic Commercial Vessel) National Law 2012*. The reference to ‘legislative instruments’ is intended to include regulations and Marine Orders, but exclude exemptions under the Bill (see clause 143).

#### **Clause 5 – Constitutional reach of Act**

Sub-clause 1 describes the activities and matters to which the Bill applies. This includes vessels engaged in inter-State trade and commerce, vessels owned by constitutional corporations, vessels covered by the implementation of international agreements, vessels owned by the Commonwealth and vessels that are external to Australia.

Sub-clause 2 clarifies that any actions or activities undertaken in a person’s capacity as the owner, master or crew member of a vessel is considered to relate to the vessel.

Sub-clauses 3(a) and (b) explain the meaning of ‘external to Australia’.

#### **Clause 6 – Relationship with State and Territory laws**

Sub-clause 1 provides that the Bill overrides any State or Territory law relating to the same matters of marine safety for domestic commercial vessels provided in this Bill. However, this Bill is not intended to exclude any application or mirror legislation enacted in a State and Territory.

Sub-clause 2(a) clarifies that the Bill does not exclude any State or Territory law specifically stated as being not excluded by the regulations under this Bill.

Sub-clause 2(b) provides that the Bill does not cover all aspects of domestic commercial vessel regulation, allowing State and Territory laws to cover the particular aspects listed. The Bill is not intended to provide for the regulation of every aspect of commercial maritime activity and many activities will continue to be regulated by State and Territory law.

Sub-clause 3 clarifies that the Bill is not intended to exclude any State or Territory law relating to activities or matters that are outside the constitutional reach of the Bill, as outlined in clause 5.

Sub-clauses 4 and 5 clarify that this Bill is not intended to exclude or limit the concurrent operation of a law covered by sub-clause 2 that is able to co-exist with this Bill or that creates an offence that is also an offence under this Bill.

Sub-clause 6 clarifies that sub-clauses 4 and 5 apply even if the law contains a different penalty, fault element or defence in relation to the offence.

Sub-clause 7 clarifies that a person can only be found guilty of an offence under either this Bill or the law covered by sub-clause 2 or the common law.

Sub-clause 8 clarifies that a reference to a law under this clause includes any provision of that law.

**Clause 7 – Avoiding inconsistency, including operational inconsistency, arising between this Act and State and Territory workplace health and safety laws**

Section 109 of the Constitution provides that if a law of a State is inconsistent with a law of the Commonwealth, the Commonwealth law prevails and the State law, to the extent of the inconsistency, is invalid. Clause 7 is a ‘roll-back’ provision that accommodates State and Territory legislation dealing with workplace health and safety, which is not capable of operating concurrently with the National Law. It limits or qualifies the operation of the National Law so that inconsistency (including

operational inconsistency) with a State or Territory law of this nature is avoided.

Sub-clause 3 operates so that where an act is required or authorised by or under a relevant State or Territory law, that act is not prohibited or restricted by the imposition of a liability under the National Law.

Sub-clause 4 operates so that where an act is specifically prohibited by or under a relevant State or Territory law, the National law does not require that act to be done, or impose a liability for not doing that act.

Sub-clause 5 ensures that the National Law does not operate in circumstances where, if it did operate, an inconsistency, including an operational inconsistency, would arise.

#### **Clause 8 – Extraterritorial operation**

This clause sets out the geographical scope of the Bill. For the purposes of this Bill, ‘external to Australia’ has been defined to be beyond the limits of a State or Territory, (i.e. beyond the low water mark or historical closing lines), as defined in clause 5.

#### **Clause 9 – Charging of fees by States etc. not prevented**

This clause is intended to make clear that the States and Territories, or their agencies, officers and employees, are free to charge their own fee for any services provided under this Bill in their capacity as a delegate of the National Regulator. Consistent with the COAG IGA, nothing in the Bill prevents the States and the Territories from charging fees for the performance of functions delegated by the National Regulator.

**Clause 10 – National Regulator to pay amounts to States, etc.**

Sub-clause 1 requires the National Regulator to reimburse a State or Territory for the amount of funds received for infringement notices issued by or as a result of a recommendation of agencies, officers and employees of that respective State or Territory.

Sub-clause 2 requires the States and Territories to reimburse the National Regulator for the amount of any required refund of infringement notices issued by or as a result of a recommendation of agencies, officers and employees of that State or Territory when acting as National Regulator delegates.

**Clause 11 – Commonwealth consent to conferral of functions etc. on the National Regulator etc. by corresponding State-Territory laws**

Sub-clauses 1, 2 and 3 permit a State or Territory to impose duties or confer functions and powers on the National Regulator or another Commonwealth authority. The exception to this occurs if this would not be constitutional, exceeds the powers of the Commonwealth or is specified in the regulations under this Bill.

The National Law is intended to allow a corresponding State or Territory law to give functions or powers to, or impose duties on, the National Regulator to the extent of any constitutional gap. It is also intended to utilise those constitutional provisions that would enable the Commonwealth to regulate in this area.

The practical effect of this arrangement is for the Commonwealth to make a National Law within its constitutional reach and enable States and Territories to pass an application law, effectively making one law (the National Law) apply to the operation of all domestic commercial vessels in Australia. The purpose of this provision is, therefore, to put beyond doubt the National Regulator's powers, notwithstanding potential limitations of the constitutional reach of the Commonwealth.



Sub-clause 4 clarifies that this Bill does not exclude or limit any State or Territory law from imposing duties or conferring functions and powers if this is consistent with the requirements under Sub-clauses 1, 2 and 3 above and the State or Territory law is able to co-exist with this Bill.

#### **Clause 12 – Meaning of corresponding State-Territory law**

Sub-clause 1 provides a definition that determines the meaning applied to the phrase “corresponding State-Territory law” wherever it is used in this Bill.

Sub-clause 2 explains the conditions by which a declaration made under a “corresponding State-Territory law” may be revoked by the Commonwealth Minister. This legislative instrument would not be subject to disallowance or sun-setting because of subsections 44(1) and 54(1) of the *Legislative Instruments Act 2003*.

#### **Clause 13 – Meaning of imposes a duty**

This clause provides a definition of when a ‘corresponding State-Territory law’ “imposes a duty” on the National Regulator. It includes where a State or Territory law confers a function or power that gives rise to an obligation on the National Regulator to perform the function or exercise the power.

#### **Clause 14 – When duty imposed**

This clause describes when a duty is considered to be imposed on the National Regulator. It is intended to avoid any doubt about when such a duty is imposed.

#### **Clause 15 – Imposing duty under State or Territory law**

This clause clarifies that a duty is imposed by a State or Territory law on the National Regulator if, and only if, it is within the powers of the State or Territory and is consistent with the Constitution. Where these requirements are not met, the duty is considered to be at the discretion of the National Regulator.

### **Clause 16 – Review of decisions under corresponding State-Territory laws**

This clause allows for certain State and Territory decisions to be reviewed by the Administrative Appeals Tribunal (AAT). It describes what is determined to be a “reviewable State-Territory decision” for the purposes of this Bill. It also makes it clear that the *Administrative Appeals Tribunal Act 1975* applies for the purposes of this clause.

### **Clause 17 – References in instruments to the National Law**

This clause clarifies that, unless stated otherwise in this Bill, a reference to the Marine Safety (Domestic Commercial Vessel) National Law is that applied under clause 4 of the local application provisions of this Bill or provided in an application law of a State or Territory.

### **Clause 18 – Powers of magistrates**

This clause clarifies that magistrates exercising functions or powers under this Part perform these functions or exercise these powers in a personal capacity and not as a court or a member of a court. This reflects the doctrine of *persona designata*, which holds that Parliament may confer a non-judicial function on a justice of a court constituted under Chapter III of the Constitution if the function is conferred on the justice as an individual rather than a member of the court. Due to the separation of powers doctrine, functions or powers are conferred on a voluntary basis and need not be accepted by the magistrate. Subclause (3) clarifies that magistrates acting *persona designata* are still entitled to the judicial immunity afforded to them as if they were exercising functions or powers as a court or a member of a court.

## **Clause 19 – Regulations**

This clause provides powers to the Governor General to make regulations where these are required and permitted by the local application provisions of this Bill. Division 9 in Part 8 provides further details of the types of matters to be covered in the regulations under this Bill.

## **SCHEDULE 1 – MARINE SAFETY NATIONAL LAW**

### **Part 1 – Preliminary**

This part of the Bill sets out the key preliminary issues relevant to the National Law. It contains the short title of the Act, the objects of the National Law and the key definitions, including those that limit the scope of the National Law. The commencement provisions contained in clause 2 relate to the matters beyond the constitutional reach of the Commonwealth.

The National Law is intended to apply to domestic commercial vessels operating in all Australian States and the Northern Territory, Australian Capital Territory and Jervis Bay Territory. It is also intended to apply to domestic commercial vessels operating in Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands. It will not apply to the Australian Antarctic Territory, Norfolk Island or any other of Australia's external Territories.

The intention is that all domestic commercial vessels that travel beyond 200 nautical miles (i.e. beyond the EEZ) and that are currently regulated by relevant States and Territories will remain within the scope of the National System and covered by the NSCV. Although such vessels will be covered by the proposed *Navigation Act 2012*, they will be exempted from the application of that legislation on the condition that they comply with the National Law and relevant standards. This does not include vessels that undertake international voyages (i.e. to and from an international port) or foreign vessels. These vessels will be subject to the proposed *Navigation Act 2012* without exception.

The cumulative effect of the key definitions of ‘domestic commercial vessel’ and ‘vessel’ in this part is to capture government vessels (other than Defence Force vessels and Customs Vessels which travel beyond the EEZ) and vessels that are used in connection with a commercial or research activity.

However, vessels operated by primary or secondary schools and community groups are excluded from the National Law, unless they are operated for a purpose or use identified in the regulations (vessels operated by volunteer search and rescue organisations will, for example, be subject to the National Law).

Foreign-owned vessels, vessels that continue to be regulated by the proposed *Navigation Act 2012* or vessels that travel to and from Australia’s external territories to the mainland, are excluded from the application of the National Law.

The Bill defines a vessel owner more broadly than a legal owner. For the purposes of the National Law, it includes an entity with the overall general control and management of a vessel. A definition of owner is also provided in clause 6.

#### **Clause 1 – Short title**

This is a formal provision that specifies the short title of the Act as the Marine Safety (Domestic Commercial Vessel) National Law.

#### **Clause 2 – Commencement**

The Marine Safety (Domestic Commercial Vessel) National Law will commence as a law of the jurisdiction on the commencement date provided for by the Act (see also clause 2 of the local application provisions of this Bill).

### **Clause 3 – Objects of law**

This clause provides that the objects of this Bill are to:

- (a) form a part of a national scheme for the safe operation, design, construction and equipping of domestic commercial vessels in Australia;
- (b) implement Australia’s international obligations for domestic commercial vessel safety;
- (c) facilitate the development of a safety culture to prevent or reduce marine incidents in Australia;
- (d) provide a national framework for the development and application of consistent national standards relating to the operation, design, construction and equipping of domestic commercial vessels in Australia;
- (e) enhance the efficient and orderly operation of domestic commercial vessels in Australia; and
- (f) provide an effective enforcement framework to prevent or reduce marine incidents and ensure compliance with international obligations and national standards in Australia.

These objects give effect to the objectives outlined in the COAG IGA.

The terms “marine incident” and “Australia” are defined in clause 6. The term “domestic commercial vessel” is defined in clause 8. The term “vessel” is defined in clause 9.

### **Clause 4 – Law binds the Crown**

Sub-clause 1 provides that the Act will bind the Crown in each of its capacities.

Sub-clause 2 provides that the Crown may not be prosecuted for a criminal offence against this Bill or subordinate legislation, including regulations and Marine Orders.

### **Clause 5 – Extended geographical jurisdiction—category A**

This clause describes how the criminal offences established by this Bill will operate. In particular, it provides that the extended geographical jurisdiction provided in Category A of section 15.1 of the *Criminal Code* applies to criminal offences against this Bill.

The *Criminal Code* provides four categories of extended geographical jurisdiction for offences. Category A is considered the most appropriate for offences against the National Law because most activities under the National Law will occur within the EEZ and involve vessels with Australian nationality.

### **Clause 6 – Definitions**

This clause sets out a number of definitions for certain words and phrases used in the National Law. These definitions determine the meaning that is to be attributed to these words or phrases whenever they are used in the Bill or in the regulations, Marine Orders and exemptions made under the Bill.

Significant definitions, which are essential to define the scope of the National Law and describe how it will be administered, include the following:

***agency:***

- (a) of the Commonwealth, includes the following:
  - (i) an Agency within the meaning of the *Financial Management and Accountability Act 1997* of the Commonwealth;
  - (ii) a body corporate established for a public purpose by or under a law of the Commonwealth;and
- (b) of a State or a Territory, includes the following:
  - (i) a Department of State (however described) of the State or Territory;
  - (ii) a body corporate established for a public purpose by or under a law of the State or Territory.

***certificate*** means any of the following:

- (a) a certificate of operation;
- (b) a certificate of survey;
- (c) a certificate of competency.

***COAG*** means the Council of Australian Governments.

***COAG council*** means the council established by COAG that has responsibility for marine safety.

***Commonwealth Minister*** means the Minister of State of the Commonwealth administering this Law, which is the Minister for Transport and Infrastructure.

***crew*** of a vessel means individuals employed or engaged in any capacity on board the vessel on the business of the vessel, other than the master of the vessel or a pilot.

***Criminal Code*** means the *Criminal Code* of the Commonwealth.

***defence vessel*** means a warship or other vessel that:

- (a) is operated for naval or military purposes by the Australian Defence Force or the armed forces of a foreign country; and
- (b) bears external marks of nationality; and
- (c) is manned by seafarers under armed forces discipline (however described).

***domestic commercial vessel*** has the meaning provided in clause 7.

***foreign vessel*** has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

***hire and drive vessel*** means any vessel which is let for hire or reward or for any other consideration, including vessels provided in conjunction with holiday establishments or hotels for the use of guests or tenants.

***infringement notice*** means:

- (a) a notice that:
  - (i) is given under regulations made for the purposes of clause 138 to a person alleged to have committed an offence against this Law; and
  - (ii) states that if the person pays a specified amount within a specified period the person will not be liable to be prosecuted for the offence; or
- (b) a notice that:
  - (i) is given under regulations made for the purposes of sub-clause 162(3) to a person alleged to have contravened a provision described in that sub-clause; and
  - (ii) states that if the person pays a specified amount within a specified period the person will not be liable to proceedings for a civil penalty for the contravention.

***marine incident*** means any of the following:

- (a) a death of, or injury to, a person associated with the operation or navigation of a domestic commercial vessel;
- (b) the loss or presumed loss of a domestic commercial vessel;
- (c) a collision of a domestic commercial vessel with another vessel;
- (d) a collision by a domestic commercial vessel with an object;
- (e) the grounding, sinking, flooding or capsizing of a domestic commercial vessel;
- (f) a fire on board a domestic commercial vessel;
- (g) a loss of stability of a domestic commercial vessel that affects the safety of the vessel;
- (h) the structural failure of a domestic commercial vessel;
- (i) a close quarters situation;



- (j) an event that results in, or could have resulted in:
  - (i) the death of, or injury to, a person on board a domestic commercial vessel; or
  - (ii) the loss of a person from a domestic commercial vessel; or
  - (iii) a domestic commercial vessel becoming disabled and requiring assistance;
- (k) the fouling or damaging by a domestic commercial vessel of:
  - (i) any pipeline or submarine cable; or
  - (ii) any aid to navigation within the meaning of the *Navigation Act 2012* of the Commonwealth;
- (l) a prescribed incident involving a domestic commercial vessel.

***marine safety inspector*** means:

- (a) a person appointed as an inspector under clause 91; or
- (b) a member of the Australian Federal Police; or
- (c) a member of the police force (however described) of a State or a Territory.

***master*** of a vessel means the person who has command or charge of the vessel, but does not include a pilot.

***National Regulator*** has the meaning provided in clause 9.

***National Standard for Commercial Vessels*** means the National Standard for Commercial Vessels adopted by:

- (a) the COAG Council; or
- (b) if no such entity exists—the entity prescribed by the regulations for the purposes of this paragraph.

***operate*** a vessel means:

- (a) determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel, whether or not the vessel is underway; or
- (b) loading or unloading the vessel when it is moored or berthed.

**owner** of a vessel includes:

- (a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee; and
- (b) a person with overall general control and management of the vessel.

For this purpose, a person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.

**premises** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

**regulated Australian vessel** has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

**this Law** includes the regulations and any other legislative instrument made under this Law.

**Uniform Shipping Laws Code** means the Uniform Shipping Laws Code adopted by:

- (a) the COAG Council; or
- (b) if no such entity exists—the entity prescribed by the regulations for the purposes of this paragraph.

**unsafe vessel** means a vessel that is likely to endanger any person for any reason, including because of:

- (a) the condition or equipment of the vessel; or
- (b) the manner or place in which cargo or equipment on the vessel is stowed or secured; or
- (c) the nature of the cargo; or
- (d) the overloading of the vessel with people or cargo (including the submergence of the vessel's load line); or
- (e) the number of its crew or the qualifications of its crew or master.

**Vessel** has the meaning provided in clause 8.

### **Clause 7 – Definition of *domestic commercial vessel***

This clause sets out the definition for the term “domestic commercial vessel” in this Bill and relies on the definition of ‘vessel’ in clause 8. This definition determines the meaning that is to be attributed to this term whenever it is used in the Bill and in any regulations, Marine Orders and exemptions made under the Bill.

Sub-clause 1 provides the definition of a domestic commercial vessel.

Sub-clause 2 clarifies that a vessel used only partly for commercial, government or research activity may still be considered to be a domestic commercial vessel, depending on the circumstances of its use. An example of this is a vessel used for hire and drive purposes where the hirer is undertaking recreational activities. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 provides a definition of vessels that are not considered to be domestic commercial vessels. The definition of ‘domestic commercial vessel’ specifically excludes a vessel that:

- (a) is regulated under the proposed *Navigation Act 2012*;
- (b) is registered under the law of a foreign country;
- (c) is operated by the Australian Defence Force or the armed forces of a foreign country; and
- (d) is owned by a primary or secondary school or a community group described in the regulations under this Bill.

The aim of the definition is to capture any commercial activity, but not recreational activity. In addition, it is not intended to capture school or community group vessels where these are owned by the school or the group.

The regulations will provide a test to determine a community group. This test will include the Australian Tax Office 'non-profit' definition to determine whether the group was intended to be profitable and a requirement that the organisation be incorporated, or similar.

Sub-clause 4 clarifies that vessels that belong to primary or secondary schools and community groups may be a domestic commercial vessel if they are used for a purpose or activity described in the regulations under this Bill. This is intended to include situations where such recreational vessels are also partly used for commercial purposes, for example, vessels operated by volunteer search and/or rescue organisations, vessels used as a hire and drive or charter vessel by members of the public, vessels used in non-curricular or non-community group activities and vessels operated by dive clubs. The definition of a 'hire and drive vessel' is provided in clause 6.

Sub-clause 5 provides that, in addition to the above definitions, the regulations under this Bill may also specify whether particular vessels or types of vessels are domestic commercial vessels or not. The intention is that the designation of what is and is not a domestic commercial vessel would be refined through regulations under this Bill, but the intended scope is set out in this clause. While the power to prescribe additional things as a domestic commercial vessel in the regulations under the Bill is a significant power, any addition to this definition will be by unanimous agreement by all SCOTI Ministers.

Sub-clause 6 provides that the regulations under this Bill may refer to a decision of the National Regulator on whether a vessel is a vessel belonging to a community group.

Sub-clause 7 provides that a vessel under construction can be a domestic commercial vessel if its intended use after construction meets the definition at Sub-clause 1.

Sub-clause 8 clarifies that a vessel under construction includes a vessel that has been launched, but not yet completed and delivered under the relevant building contract.

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### **Clause 8 – Definition of *vessel***

This clause sets out the definition for the term “vessel” in this Bill. This definition determines the meaning that is to be attributed to this term and the definition of ‘domestic commercial vessel’ whenever it is used in the Bill and any regulations, Marine Orders and exemptions made under the Bill.

The Bill defines “vessel” as a craft for use in navigation by water, however propelled or moved, including air cushion vehicles, barges, lighters, submersibles, ‘wing-in-ground effect’ craft and ferries in chains. A ‘wing-in-ground effect’ craft has a commonly understood meaning within the industry both domestically and internationally. Additionally, the Bill makes it clear that an aircraft is not a ‘vessel’.

It is intended that regulations made under the Bill will specifically include and exclude some marine structures as vessels. An example of this is a moored structure used for tourism activities, such as those used in the Great Barrier Marine Park. These structures are intended to be included as a ‘vessel’. However, pens used for aquaculture will be specifically excluded.

Sub-clause 1 provides the definition of vessel.

Sub-clause 2 provides a definition of particular things that are not a vessel.

Sub-clause 3 provides that the regulations under this Bill may also specify whether or not a particular thing is a vessel.

### **Part 2 – The National Marine Safety Regulator**

This part of the Bill establishes the role of the National Regulator. It explains the key functions of the National Regulator and permits the National Regulator to delegate powers and functions under the National Law.

The National Regulator is responsible for the development and implementation of domestic commercial vessel construction, operation and crew qualification standards nationally. It is the implementation of national standards agreed by Transport Ministers that is central to the new National System for marine safety in Australia.

A key feature of the National System is that the delivery of regulatory services will be undertaken, under delegation, by jurisdictional staff under the authority of this Bill. This arrangement is outlined in more detail in the COAG IGA.

### **Clause 9 – The National Marine Safety Regulator**

This clause formally establishes the role of the National Marine Safety Regulator (the National Regulator) and appoints AMSA to that role. AMSA is established by the *Australian Maritime Safety Authority Act 1990* of the Commonwealth. Section 10 of that Act sets out the general powers of the Authority.

### **Clause 10 – Functions of the National Regulator**

This clause sets out the specific functions of the National Regulator, which include:

- developing and maintaining Marine Orders, national standards, guidelines and codes of practice;
- issuing unique identifiers and certificates;
- accrediting people for specific roles and functions;
- consulting with appropriate authorities in State and Territory jurisdictions;
- collecting, analysing and distributing information and data;
- providing advice to the Commonwealth Minister, the States and Territories and the public;
- undertaking investigative, monitoring and enforcement activities;
- developing or commissioning education programs and functions; and

- undertaking such other functions as provided in this Bill or conferred by any other law.

### **Clause 11 – Delegation**

The National Law allows the National Regulator to delegate certain powers and functions to an employee of a Commonwealth, State or Territory agency, with the consent of the relevant State and Territory. In practice, powers are intended to be delegated to the head of each marine safety agency in the States and Territories, who would then sub-delegate them to appropriate officers in their jurisdiction. This is a key and intended feature of the National System agreed by COAG and reflected in Schedule B to the IGA.

The delegation of functions, such as the assessment of applications, issuing of certificates and conduct of compliance monitoring and enforcement activities, to employees of State and Territory marine safety agencies is fundamental to the service model for the day-to-day operation of the National System. It is the employees of the State and Territory marine safety agencies who will deliver front-line services to the public, as well as undertake the investigatory and compliance roles in each jurisdiction, on behalf of the National Regulator.

When a delegate of the National Regulator performs a delegated function or exercises a delegated power, the activity is deemed to be the activity of the National Regulator. This is consistent with section 34AB(c) of the *Acts Interpretation Act 1901*.

Delegated agency employees will be subject to any directions of the National Regulator in exercising National Law powers and functions. This is to ensure national consistency and accountability is maintained in the delivery of the National System. The arrangement under which the National System operates is collegiate in nature, involving the co-operation of all jurisdictions. Aside from being used in relation to delegations, it is expected that the power of the National Regulator to issue directions would be a reserve power used in circumstances such as, for example, where a jurisdiction departs from the processes

and procedures that have been agreed by all other States and Territories.

The National Regulator will not be able to delegate a power or function to an employee of an agency of a State or Territory without the consent of the State or Territory.

The delegation of the National Regulator's powers and functions under the National Law will be implemented through an 'instrument of delegation' signed by the Chief Executive Officer (CEO) of AMSA. This will allow powers and functions to be delegated to any person from time to time holding, occupying, or performing the duties of a specified office or position (for example, to the position of CEO of a State agency). The occupant of that position may in turn sub-delegate to a specified position (for example, the Chief Surveyor of the agency). This approach to delegation and sub-delegation is consistent with section 34AA of the *Acts Interpretation Act 1901*.

The instrument of delegation will:

- Identify the delegates. It is envisaged that the instrument will specify the position of the CEO-equivalents in each marine safety agency, rather than name them personally. That way, any person from time to time holding, occupying, or performing the duties of the CEO-equivalent position will automatically have the delegated powers and functions.
- Identify the powers and functions of the National Regulator that are delegated. It is envisaged that these will include the power to:
  - assess applications for and issue of Certificates of Survey, competence and operations;
  - vary, suspend and revoke those certificates;
  - appoint marine safety inspectors; and
  - accredit persons.



- Provide the power to sub-delegate a National Regulator power or function to another officer or employee of the agency of which the delegate is an officer or employee. For example, the CEO equivalent will have discretion to decide the number and level of positions within their own agency, the occupants of which will have power to issue National Law certificates. As another example, the CEO equivalent will have the discretion not to sub-delegate the power to appoint marine safety inspectors, or limit the sub-delegation to a small number of very senior positions in the agency.
- Provide directions (i.e. conditions) that are imposed on the delegates, both generally as well as specifically to a power or function, which are required to be satisfied by the delegate when exercising the National Regulator's powers or functions. These directions will also include the direction that any sub-delegation must be made in accordance with the directions of the instrument of delegation and in a standard form.

The directions imposed on the delegations will support accountability and promote appropriate standards and consistency across the National System. It is envisaged that these will include requirements to:

- Send copies of signed instruments of sub-delegation to the National Regulator. In order to comply with its accountability obligations, the National Regulator will need to know what positions in each agency have been given the National Regulator's powers and functions.
- Use a 'standard form' instrument of sub-delegation, appointment of marine safety inspectors and accreditation of persons. Standard forms will be included in the instrument of delegation and will help to promote consistency.
- Set minimum qualifications, training and experience requirements for sub-delegates, inspectors and accredited persons tailored to the particular power and function. For example, the minimum qualifications for a delegate with

power to issue Certificates of Competency are likely to be different from those of an inspector. Setting minimum requirements will promote appropriate standards and consistency across the National System.

- Assist the National Regulator to comply with its own accountability obligations. For example, because decisions of delegates are deemed to be decisions of the National Regulator, the National Regulator will be required to respond to applications for external review of the delegate's decision. It will be able to do that only if the delegate assists by, for example, providing records relevant to the decision.

Training packages will also be developed to ensure that delegates undertake their duties to an acceptable standard when exercising powers and undertaking functions of the National Regulator. This will include a National Marine Safety Regulator's Delegate's Handbook, a National Marine Safety Regulator's Compliance and Enforcement Manual and a range of training materials.

Sub-clause 1 allows the National Regulator to delegate powers and functions under this Bill to an officer or employee of a Commonwealth or State and Territory agency.

This provision is fundamental to the day-to-day operation of the National System, which involves certain functions being performed by employees of the State and Territory marine safety agencies as delegates of the National Regulator. The delegation must be provided in writing.

Sub-clause 2 provides the National Regulator with the ability to direct a delegate in the performance of their functions and the exercise of their powers.

Sub-clause 3 provides the delegate with the ability to sub-delegate powers and functions to another officer or employee of the same Commonwealth or State and Territory agency. The sub-delegation must be provided in writing.

Sub-clause 4 provides the delegate with the ability to direct a sub-delegate in the performance of their functions and the exercise of their powers.

Sub-clause 5 provides that any direction by the National Regulator to a delegate must also be provided by the delegate to the sub-delegate.

Sub-clause 6 provides that sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply equally to both a delegation and sub-delegation.

Sub-clause 7 requires the National Regulator to seek the agreement of the relevant State or Territory before delegating a power or function to an officer or employee of an agency in that jurisdiction.

### **Part 3 – General Safety Duties Relating to Domestic Commercial Vessels**

This part of the Bill outlines the General Safety Obligations (GSOs) relating to domestic commercial vessels. The GSOs require that each person that is engaged with a domestic commercial vessel and its operations does all that is reasonably practical to ensure that reasonable care is taken for the safety of the vessel and people on board, as well as the safe design and operation of the vessel.

The GSOs are imposed on:

- owners of domestic commercial vessels;
- a person who designs, commissions, constructs, manufactures, supplies, maintains, repairs or modifies domestic commercial vessels;
- masters of domestic commercial vessels, or marine safety equipment that relates to such a vessel;
- crew of domestic commercial vessels;
- passengers on domestic commercial vessels; and
- certain other people.

The GSOs are an important feature of the National Law that will apply to all domestic commercial vessel operations. The purpose of the GSOs is to encourage the development, maintenance and continuous improvement of a safety culture by all parties in the domestic commercial vessel industry. This will assist in minimising the risk of incidents involving death, injury or damage.

The Bill contains a set of GSOs and corresponding offences that will apply from the commencement of the National Law until all States give effect to, as a State law, the provisions contained in Part 2 of the *Work Health and Safety Act 2011* (WHS Act). Once all States and Territories have given effect to those provisions, the GSOs and corresponding offences provided for in the Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Bill 2012: alignment with work health and safety offences, will apply. The objective of this arrangement is to align the National Law GSOs and offences with the WHS duties and offences, once the WHS law has been implemented nationally.

This part of the Bill also provides direction on determining what is ‘reasonably practical’ to ensure safety.

## **GSO PROVISIONS BEFORE ALL STATES GIVE EFFECT TO WHS ACT**

### **Division 1 – Duties of owners**

#### **Clause 12 – Duty of owners of domestic commercial vessels to ensure safety of vessels, marine safety equipment and operations**

This clause requires the owner of a domestic commercial vessel to ensure the safety of the vessel, including its equipment and operation. The conditions under which an owner will breach this requirement are also provided. Importantly, this clause provides that the owner of a domestic commercial vessel commits an offence if they prevent or restrain the master of the vessel from ensuring the safety of the vessel or people on the vessel.

### **Clause 13 – Offences relating to contraventions of section 12**

Sub-clauses 1, 2 and 3 provide that the owner of a domestic commercial vessel is guilty of an offence if the owner's action or inaction breaches sub-clause 12(1) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the owner is also guilty of an offence if the owner's action or inaction breaches sub-clause 12(1) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

### **Division 2 – Duties of designers, builders, suppliers etc.**

#### **Clause 14 – Duty relating to design, manufacture etc. of domestic commercial vessels**

This clause requires designers and manufacturers etc. of domestic commercial vessels to:

- ensure the vessel and its equipment are safe for their intended use through testing and examination; and
- provide adequate information about the safety and use of the vessel.

### **Clause 15 – Offences relating to contraventions of section 14**

Sub-clauses 1, 2 and 3 provide that the designer and manufacturer etc. of a domestic commercial vessel is guilty of an offence if their action or inaction breaches clause 14 and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the designer and manufacturer etc. is also guilty of an offence if their action or inaction breaches clause 14 but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against Sub-clause 4 is a strict liability offence.

### **Division 3 – Duties of Masters**

#### **Clause 16 – Duty of masters of domestic commercial vessels to ensure safety of vessels, marine safety equipment and operations**

This clause requires the master of a domestic commercial vessel to ensure the safety of the vessel, its equipment and operation. The exception to this requirement applies to the master of a hire and drive vessel used for recreational purposes. This operation is viewed as directly comparable to a recreational activity and is not intended to be captured under this obligation. The definition of a ‘hire and drive vessel’ is provided in clause 6.

#### **Clause 17 – Duty of masters of domestic commercial vessels to take reasonable care for safety of persons**

This clause requires the master of a domestic commercial vessel to ensure the safety of people affected by their action or inaction, as well as themselves. The exception to this requirement applies to the master of a hire and drive vessel used for recreational purposes. This operation is viewed as directly comparable to a recreational activity and is not intended to be captured under this obligation. The definition of a ‘hire and drive vessel’ is provided in clause 6.

**Clause 18 – Offences relating to contraventions of section 16 or 17**

Sub-clauses 1, 2 and 3 provide that the master of a domestic commercial vessel is guilty of an offence if the master's action or inaction breaches sub-clauses 16(1), 17(1) or 17(2) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the master is also guilty of an offence if the master's action or inaction breaches sub-clauses 16(1), 17(1) or 17(2) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

**GSO PROVISIONS AFTER ALL STATES GIVE EFFECT TO WHS ACT**

Once States have given effect to the Model Work Health and Safety legislation, the general safety obligations (GSOs) and corresponding offences will be amended to align with the duties and corresponding offences in the WHS Act. This consequential amendment has been provided for in Schedule 2 of the Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Bill 2012. The explanatory memorandum for this consequential amendments Bill provides further detail as to the operation of these provisions.

#### **Division 4 – Duties of crew**

##### **Clause 19 – Duty of crew of domestic commercial vessels to take reasonable care for safety of persons, etc.**

This clause requires a crew member of a domestic commercial vessel to:

- take reasonable care for their own safety and that of other people;
- comply with all reasonable and lawful directions from the master or supervisor;
- not interfere with or misuse safety features of the vessel; and
- not place other people at risk from undertaking their duties.

The conditions under which a crew member will breach these requirements are also provided.

##### **Clause 20 – Offences relating to contraventions of section 19**

Sub-clauses 1, 2 and 3 provide that the crew member of a domestic commercial vessel is guilty of an offence if the crew member's action or inaction breaches sub-clauses 19(1), 19(2) or 19(3) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the crew member is also guilty of an offence if the crew member's action or inaction breaches sub-clauses 19(1), 19(2) or 19(3) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.



## **Division 5 – Duties of passengers**

### **Clause 21 – Duty of passengers on domestic commercial vessels to take reasonable care for safety of persons, etc.**

This clause requires a passenger on board a domestic commercial vessel to

- take reasonable care for their own safety;
- comply with all reasonable and lawful directions from the master or crew member;
- not interfere with or misuse safety features of the vessel; and
- not unreasonably place other people at risk.

The conditions under which a passenger will breach these requirements are also provided.

### **Clause 22 – Offences relating to contraventions of section 21**

Sub-clauses 1, 2 and 3 provide that a passenger on board a domestic commercial vessel is guilty of an offence if the passenger's action or inaction breaches sub-clauses 21(1), 21(2) or 21(3) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the passenger is also guilty of an offence if the passenger's action or inaction breaches sub-clauses 21(1), 21(2) or 21(3) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

## **Division 6 – Other duties**

### **Clause 23 – Duty of persons relating to safety of persons on domestic commercial vessels, etc.**

Sub-clause 1 requires a person embarking, disembarking or on board a domestic commercial vessel to take reasonable care for their own safety.

Sub-clause 2 provides the conditions under which a person will breach the requirements of Sub-clause 1.

Sub-clause 3 requires a person to take reasonable care to ensure their actions or inactions do not adversely affect the safety of other people on board a domestic commercial vessel or engaged in action connected with such vessels.

Sub-clause 4 provides the conditions under which a person will breach the requirements of sub-clause 3.

### **Clause 24 – Offences relating to contraventions of section 23**

Sub-clauses 1, 2 and 3 provide that a person is guilty of an offence if their action or inaction breaches sub-clauses 23(1) or 23(3) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the person is also guilty of an offence if the person's action or inaction breaches sub-clauses 23(1) or 23(3) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

### **Clause 25 – Duty of persons in relation to domestic commercial vessels**

This clause requires a person to:

- not unreasonably cause, either by action or inaction, the loss, destruction or serious damage of a domestic commercial vessel; and
- take reasonable action to prevent the loss, destruction or serious damage of a domestic commercial vessel.

The conditions under which a person will breach these requirements are also provided.

### **Clause 26 – Offences relating to contraventions of section 25**

Sub-clauses 1, 2 and 3 provide that a person is guilty of an offence if their action or inaction breaches sub-clauses 25(1) or 25(2) and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the person is also guilty of an offence if the person's action or inaction breaches sub-clauses 25(1) or 25(2) but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

### **Division 7 – General Provisions**

#### **Clause 27 – Determining what is reasonably practical to ensure safety**

This clause provides direction on determining what is 'reasonably practicable' to ensure safety.

**Clause 28 – Functions and powers of marine safety inspectors not affected**

This clause is included as there may be circumstances where, for example, a marine safety inspector takes control of the vessel from the master.

**Clause 29 – Requirements imposed by this Part do not limit one another**

This clause clarifies that a requirement under this part does not limit any other requirement under this part. For example, clauses 23 and 25 may relate to passengers as well as masters and the crew of a domestic commercial vessel.

**Part 4 – Vessel Identifiers and Certificates for Vessels and Seafarers**

This part of the Bill sets out the rules and requirements governing the Vessel Identification, Certificates of Competency, and Certificates of Survey and Operation of domestic commercial vessels that will be issued by the National Regulator:

- Vessel Identification – provides the unique identification of a vessel that stays with the vessel over its life, even if it changes ownership or use.
- Certificate of Survey – provides evidence that the vessel has been surveyed (initially and/or periodically where required) against specified standards in the subordinate legislation. It will also outline the survey schedules for the vessel. In general, only larger vessels (those longer than 7.5 metres), those operating beyond sheltered waters or those engaged in passenger transport or other high risk operations, will require survey.

- Certificate of Operation – provides permission to operate the vessel and identifies any conditions attached to that permission. Importantly, the Certificate will identify areas of potential risk and what steps the master will take to minimise crew or passenger exposure to that risk. A certificate may be issued for the operation of single or multiple vessels, and will identify the vessel's or vessels' operating class(es) and operational area(s), any restrictions on the vessel's geographic area of operation, as well as crewing requirements.
- Certificates of Competency – provides evidence that a seafarer has met the requirements for their specified grade and permits them to serve on a vessel as a master, officer or crew member with deck and/or engineering responsibilities.

The National Law requires all vessels to have Vessel Identification. Uniquely identifying each vessel will allow the National Regulator to monitor vessels and review the history of their ownership and operation over time. It will also provide the basis of identifying ownership for compliance and enforcement purposes or to find the owner if a vessel is found adrift.

During the transition period following implementation of the National System (i.e. from 2013 to 2016), it is intended that existing State and Territory vessel identification schemes will be recognised as 'Vessel Identification', provided they are unique and are displayed on the vessel in accordance with the National Law. Official Numbers issued under the *Shipping Registration Act 1981* will also be recognised in this manner, but registration requirements under that legislation are separate to the National Law. Transport Ministers will consider a national scheme during the transition period.

The practical details of applying for a certificate, including approved application forms and the information and documentation required to accompany an application, are outlined in this part. Additional details may also be contained in subordinate legislation under the Bill.

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The National Law also leaves the States and the Northern Territory free to levy their own fee for issuing the Vessel Identification, Certificate of Operation, Certificate of Survey and Certificates of Competency on behalf of the National Regulator.

### **Division 1 – Unique identifiers**

#### **Clause 30 – Person may apply for unique identifier**

Sub-clause 1 permits a person to submit an application to the National Regulator for the issue of a unique identifier for a domestic commercial vessel.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee and provision of any required documentation. It is noted that the regulations could require an application to be made in conjunction with an application for a certificate.

#### **Clause 31 – Issue of unique identifier**

Sub-clause 1 requires the National Regulator to issue a unique identifier for a domestic commercial vessel if certain conditions are met.

Sub-clause 2 requires the regulations under this Bill to provide criteria that must be met for the identification of a domestic commercial vessel.

Sub-clause 3 explains how the date of effect for a unique identifier is determined.

**Clause 32 – Offence—operating etc. a vessel without a unique identifier (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if the vessel is required to have a unique identifier, but the owner fails to meet this requirement and is not exempt from this requirement (see clause 143). A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 33 – Offence—operating etc. a vessel without a unique identifier (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the vessel is required to have a unique identifier, but the master fails to meet this requirement and is not exempt from this requirement (see clause 143). A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain recreational use requirements.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 34 – Offence—display etc. of a unique identifier (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if the vessel is required to have a unique identifier and the owner fails to meet the requirements for displaying a unique identifier on the vessel, as provided in the regulations under this Bill. A penalty provision is applied according to the *Criminal Code*.

The content of the offence is required to be located in the regulations as the concept of a unique identifier is new to commercial vessel regulation in Australia. Currently, there is significant variation between jurisdictions regarding vessel identification and how the identification of a vessel is displayed. A set of criteria in the regulations under this Bill needs to be developed in consultation with the jurisdictions to accommodate these variations for existing vessels and establish standards required for future vessels. Only after these regulations are developed and communicated to stakeholders will an offence for not displaying a unique identifier be established.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 35 – Offence—display etc. of unique identifier (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the vessel is required to have a unique identifier and the master fails to meet the requirements for displaying a unique identifier on the vessel, as provided in the regulations under this Bill. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain hire and drive vessel requirements. This is relevant to the hire and drive scenario where the recreational master who hires the vessel is not in a position to know if a unique identifier is in force. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.



**Clause 36 – Offence—removal or alteration of a unique identifier**

Sub-clause 1 provides that a person is guilty of an offence if they are required to have and display a unique identifier, but alter or remove the unique identifier when it is not permitted by the regulations under this Bill (regulations may permit marine safety inspectors to alter or remove the identifier). This clause is intended to also apply to incidents where a person displays a false or fraudulent identifier on a vessel. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Division 2 – Certificates of survey**

**Clause 37 – Person may apply for a certificate of survey**

Sub-clause 1 permits a person to submit an application to the National Regulator for the issue of a Certificate of Survey for a domestic commercial vessel.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

**Clause 38 – Issue of certificate of survey**

Sub-clause 1 requires the National Regulator to issue a Certificate of Survey for a domestic commercial vessel if certain conditions are met.

Sub-clause 2 requires the regulations under this Bill to provide criteria that must be met for the survey of a domestic commercial vessel.

Sub-clause 3 provides that a Certificate of Survey is subject to any conditions imposed by the regulations under this Bill and by the National Regulator.

Sub-clause 4 provides what the conditions imposed by the regulations under this Bill and by the National Regulator may include.

Sub-clause 5 explains when a Certificate of Survey comes into force.

Sub-clause 6 clarifies that a suspended Certificate of Survey is not in force.

**Clause 39 – Person may apply for variation, suspension or revocation of a certificate of survey**

Sub-clause 1 permits a person to submit an application to the National Regulator for the variation, suspension or revocation of a Certificate of Survey for a domestic commercial vessel.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

**Clause 40 – Variation of certificate of survey**

Sub-clauses 1 and 2 require the National Regulator to vary a Certificate of Survey for a domestic commercial vessel if the National Regulator is satisfied that certain criteria are met. Clause 39 permits a person to apply for a variation of a Certificate of Survey.

Sub-clause 3 permits the National Regulator to vary a Certificate of Survey for a domestic commercial vessel to impose, vary or revoke a condition on the certificate.

**Clause 41 – Suspension of certificate of survey**

Sub-clauses 1 and 2 require the National Regulator to suspend a Certificate of Survey for a domestic commercial vessel if the National Regulator is satisfied that certain criteria for suspension are met, as provided in this Bill or in the regulations

under this Bill. Clause 39 permits a person to apply for a suspension of a Certificate of Survey.

Sub-clause 3 explains when the suspension of a Certificate of Survey comes into force.

Sub-clause 4 explains that the suspension of a Certificate of Survey may remain in force until any requirement or condition is fulfilled, as specified in writing by the National Regulator. This provides the National Regulator with the flexibility to use the fulfilment of a requirement or condition, rather than a specified date or period, to end the suspension of a Certificate of Survey.

#### **Clause 42 – Revocation of certificate of survey**

This clause requires the National Regulator to revoke a Certificate of Survey for a domestic commercial vessel if the National Regulator is satisfied that the criteria for revocation on application are met, as provided in the regulations under this Bill. Clause 39 permits a person to apply for a revocation of a Certificate of Survey.

#### **Clause 43 – Offence—operating etc. a vessel without a certificate of survey (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if a vessel is being operated and a Certificate of Survey is required for the vessel, the vessel is not exempt from this requirement, but a Certificate of Survey is not in force. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under Sub-clause 1 is a strict liability offence.

**Clause 44 – Offence—operating etc. a vessel without a certificate of survey (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if a vessel is being operated and a Certificate of Survey is required for the vessel, the vessel is not exempt from this requirement, but a Certificate of Survey is not in force. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain recreational use requirements. This is relevant to the hire and drive scenario where the recreational master who hires the vessel is not in a position to know if a survey certificate is in force. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 45 – Offence—breach of a condition of a certificate of survey (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if they fail to meet any conditions of a Certificate of Survey. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 46 – Offence—breach of a condition of a certificate of survey (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if they fail to meet any conditions of a Certificate of Survey. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain hire and drive vessel requirements. This is relevant to the hire and drive scenario where the recreational master who hires the vessel is not in a position to know if a Certificate of Survey is in force. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

### **Division 3 – Certificates of operation**

#### **Clause 47 – Person may apply for a certificate of operation**

Sub-clause 1 permits a person to submit an application to the National Regulator for the issue of a Certificate of Operation for one or more domestic commercial vessels.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

Sub-clause 3 requires an application for more than one domestic commercial vessel under sub-clause 1 to separately identify each vessel.

#### **Clause 48 – Issue of certificate of operation**

Sub-clause 1 requires the National Regulator to issue a Certificate of Operation for one or more domestic commercial vessels if the National Regulator is satisfied that certain criteria are met.

Sub-clause 2 provides an exception to sub-clause 1 if the National Regulator is satisfied that the applicant is not a fit and proper person to hold the certificate. A definition of ‘fit and proper person’ is provided in clause 74.

Sub-clause 3 requires the regulations under this Bill to provide criteria that must be met for the safe operation of a domestic commercial vessel.

Sub-clause 4 provides that a Certificate of Operation is subject to any conditions imposed by the regulations under this Bill and by the National Regulator.

Sub-clause 5 provides what conditions may be imposed on a Certificate of Operation by the regulations under this Bill and by the National Regulator.

Sub-clause 6 explains when a Certificate of Operation comes into force.

Sub-clause 7 clarifies that a suspended Certificate of Operation is not in force.

**Clause 49 – Person may apply for variation, suspension or revocation of a certificate of operation**

Sub-clause 1 permits a person to submit an application to the National Regulator for the variation, suspension or revocation of a Certificate of Operation.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

**Clause 50 – Variation of certificate of operation**

Sub-clauses 1 and 2 require the National Regulator to vary a Certificate of Operation if the National Regulator is satisfied that the criteria for the variation are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 49 permits a person to apply for a variation of a Certificate of Operation.

Sub-clause 3 permits the National Regulator to vary a Certificate of Operation to impose, vary or revoke a condition on a Certificate of Operation.

#### **Clause 51 – Suspension of certificate of operation**

Sub-clauses 1 and 2 require the National Regulator to suspend a Certificate of Operation if the National Regulator is satisfied that the criteria for suspension are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 49 permits a person to apply for a suspension of a Certificate of Operation.

Sub-clause 3 explains when the suspension of a Certificate of Operation comes into force and the period it remains in force.

Sub-clause 4 explains that the suspension of a Certificate of Operation may remain in force until any requirement or condition is fulfilled, as specified in writing by the National Regulator. This provides the National Regulator with the flexibility to use the fulfilment of a requirement or condition, rather than a specified date or period, to end the suspension of a Certificate of Operation.

#### **Clause 52 – Revocation of certificate of operation**

Sub-clauses 1 and 2 require the National Regulator to revoke a Certificate of Operation if the National Regulator is satisfied that the criteria for revocation on application are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 49 permits a person to apply for a revocation of a Certificate of Operation.

Sub-clause 3 permits the National Regulator to revoke a Certificate of Operation if satisfied that the applicant is not a fit and proper person to hold the certificate. A definition of 'fit and proper person' is provided in Clause 74.

**Clause 53 – Offence—operating etc. a vessel without a certificate of operation (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if a vessel is being operated, a Certificate of Operation is required for the vessel, the vessel is not exempt from this requirement, but a Certificate of Operation is not in force. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 54 – Offence—operating etc. a vessel without a certificate of operation (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if a vessel is being operated, a Certificate of Operation is required for the vessel, the vessel is not exempt from this requirement, but a Certificate of Operation is not in force. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain hire and drive vessel requirements. This is relevant to the hire and drive scenario where the recreational master who hires the vessel is not in a position to know if a Certificate of Operation is in force. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.



**Clause 55 – Offence—breach of a condition of a certificate of operation (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if they breach a condition of a Certificate of Operation for the vessel. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 56 – Offence—breach of a condition of a certificate of operation (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if they breach a condition of a Certificate of Operation for the vessel. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the master and vessel meet certain hire and drive vessel requirements. This is relevant to the hire and drive scenario where the recreational master who hires the vessel is not in a position to know if a Certificate of Operation is in force. The definition of a ‘hire and drive vessel’ is provided in clause 6.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 57 – Obligation to notify National Regulator of certain matters**

Sub-clause 1 provides that the holder of a Certificate of Operation for a domestic commercial vessel is guilty of an offence if they dispose of the vessel without notifying the National Regulator of the disposal within a period specified in the regulations under this Bill. Disposal includes where the vessel is sold, modified, sunk or scrapped. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

#### **Division 4 – Certificates of competency**

##### **Clause 58 – Regulations may provide for certificate of competency**

This clause permits the regulations under this Bill to require a master or crew member to hold a Certificate of Competency that is of a particular kind and relevant to their duties and functions on board a domestic commercial vessel.

##### **Clause 59 – Individual may apply for a certificate of competency**

Sub-clause 1 permits a person to submit an application to the National Regulator for the issue of a Certificate of Competency.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

##### **Clause 60 – Issue of certificate of competency**

Sub-clause 1 requires the National Regulator to issue a Certificate of Competency to a person if certain conditions are met.

Sub-clause 2 provides an exception to the requirement under sub-clause 1 if the National Regulator is satisfied that the applicant is not a fit and proper person to hold the certificate. A definition of ‘fit and proper person’ is provided in clause 74.

Sub-clause 3 requires the regulations under this Bill to provide proficiencies and other requirements that must be met for a particular Certificate of Competency to be issued.

Sub-clause 4 provides that a Certificate of Competency is subject to any conditions imposed by the regulations under this Bill and by the National Regulator.

Sub-clause 5 provides what may be included as conditions imposed on a Certificate of Competency by the regulations under this Bill and by the National Regulator.

Sub-clause 6 explains when a Certificate of Competency comes into force.

Sub-clause 7 clarifies that a suspended Certificate of Competency is not in force.

**Clause 61 – Person may apply for variation, suspension or revocation of a certificate of competency**

Sub-clause 1 permits a person to submit an application to the National Regulator for the variation, suspension or revocation of a Certificate of Competency held by the person.

Sub-clause 2 requires an application under sub-clause 1 to meet the requirements in the regulations under this Bill, including payment of any required fee.

**Clause 62 – Variation of certificate of competency**

Sub-clauses 1 and 2 require the National Regulator to vary a Certificate of Competency if the National Regulator is satisfied that the criteria for variation are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 61 permits a person to apply for a variation of a Certificate of Competency.

Sub-clause 3 permits the National Regulator to vary a Certificate of Competency to impose, vary or revoke a condition on a Certificate of Operation.

### **Clause 63 – Suspension of certificate of competency**

Sub-clauses 1 and 2 require the National Regulator to suspend a Certificate of Competency if the National Regulator is satisfied that the criteria for suspension are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 61 permits a person to apply for a suspension of a Certificate of Competency.

Sub-clause 3 explains when the suspension of a Certificate of Competency comes into force and the period it remains in force.

Sub-clause 4 explains that the suspension of a Certificate of Competency may remain in force until any requirement or condition is fulfilled, as specified in writing by the National Regulator. This provides the National Regulator with the flexibility to use the fulfilment of a requirement or condition, rather than a specified date or period, to end the suspension of a Certificate of Competency.

### **Clause 64 – Revocation of certificate of competency**

Sub-clauses 1 and 2 require the National Regulator to revoke a Certificate of Competency if the National Regulator is satisfied that the criteria for revocation are met, as provided in the regulations under this Bill, either on the initiative of the applicant or the National Regulator. Clause 61 permits a person to apply for a revocation of a Certificate of Competency.

Sub-clause 3 permits the National Regulator to revoke a Certificate of Competency if satisfied that the certificate holder is not a fit and proper person to hold the certificate. A definition of 'fit and proper person' is provided in clause 74.

The regulations will reference qualification and competency requirements necessary to perform various duties and functions in accordance with Part D of the NSCV. This standard is being developed in consultation with the jurisdictions to accommodate variations between the jurisdictions and establish suitable future standards to ensure the required safety outcomes are met.

Once developed and communicated to stakeholders, this standard and any subsequent amendments will be readily available and known, providing certainty of the content of the offence.

**Clause 65 – Offence—owner causing etc. performance of duties or functions without a certificate of competency**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner causes or permits a person to perform duties or functions on the vessel when that person is required to hold a Certificate of Competency, is not exempt from holding a certificate of competency, but does not hold a Certificate of Competency. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

The regulations will reference qualification and competency requirements necessary to perform various duties and functions in accordance with Part D of the NSCV. This standard is being developed in consultation with the jurisdictions to accommodate variations between the jurisdictions and establish suitable future standards to ensure the required safety outcomes are met. Once developed and communicated to stakeholders, this standard and any subsequent amendments will be readily available and known, providing certainty of the content of the offence.

**Clause 66 – Offence—person performing duties or functions without a certificate of competency**

Sub-clause 1 provides that a person performing duties or functions on a domestic commercial vessel is guilty of an offence if they are required to hold a Certificate of Competency, they are not exempt from this requirement, but they do not hold a Certificate of Competency. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

The regulations will reference qualification and competency requirements necessary to perform various duties and functions in accordance with Part D of the NSCV. This standard is being developed in consultation with the jurisdictions to accommodate variations between the jurisdictions and establish suitable future standards to ensure the required safety outcomes are met. Once developed and communicated to stakeholders, this standard and any subsequent amendments will be readily available and known, providing certainty of the content of the offence.

**Clause 67 – Offence—master causing etc. performance of duties or functions without a certificate of competency**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the master causes or permits a person to perform duties or functions on the vessel, the person is required to hold a Certificate of Competency and the person is not exempt from this requirement, but the person does not hold a Certificate of Competency. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

The regulations will reference qualification and competency requirements necessary to perform various duties and functions in accordance with Part D of the NSCV. This standard is being developed in consultation with the jurisdictions to accommodate variations between the jurisdictions and establish suitable future standards to ensure the required safety outcomes are met. Once developed and communicated to stakeholders, this standard and any subsequent amendments will be readily available and known, providing certainty of the content of the offence.

**Clause 68 – Offence—owner causing etc. breach of a condition of a certificate of competency**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if they cause or permit a person to perform duties or functions on the vessel in breach of a condition of the Certificate of Competency held by that person. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 69 – Offence—breach of a condition of a certificate of competency by any person**

Sub-clause 1 provides that a person is guilty of an offence if they perform duties or functions on a domestic commercial vessel in breach of a condition of a Certificate of Competency held by that person. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 70 – Offence—master causing etc. breach of a condition of a certificate of competency**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if they cause or permit a person to perform duties or functions on the vessel in breach of a condition of the Certificate of Competency held by that person. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

## **Division 5 – General matters relating to unique identifiers and certificates**

### **Clause 71 – National Regulator may require information**

This clause permits the National Regulator to require an applicant to provide any relevant information necessary to make a decision on an application for a certificate or unique identifier. It also permits the National Regulator to decline to consider or further consider an application until that further information is provided.

### **Clause 72 – National Regulator must give a show cause notice before varying, suspending or revoking a certificate**

This clause requires the National Regulator to provide a certificate holder with natural justice before varying, revoking or suspending that certificate. However, it also permits the National Regulator to vary, revoke or suspend that certificate without providing notice to the certificate holder if the National Regulator is acting on the application of the certificate holder.

### **Clause 73 – National Regulator may recognise certificates**

Sub-clause 1 permits the National Regulator to recognise, in writing, a certificate or class of certificates issued for a person or vessel under a law of another jurisdiction if satisfied that certain conditions are met.

Sub-clause 2 provides that if a certificate is recognised by the National Regulator, it is in force for the period specified on the original certificate.

Sub-clauses 3 and 4 permit the National Regulator to specify conditions on the recognition of a certificate, which ceases to have effect if a condition is breached.

Sub-clause 5 permits the National Regulator to revoke the recognition of a certificate, as provided in the regulations under this Bill.



Sub-clause 6 clarifies that the written recognition under sub-clause 1 is not a legislative instrument, as defined under section 5 of the *Legislative Instruments Act 2003*. This clause is merely declaratory and provided to assist readers, rather than to exempt such written recognition from the *Legislative Instruments Act 2003*.

#### **Clause 74 – Fit and proper person**

This clause provides that the National Regulator may take into account various matters when assessing whether a person is a ‘fit and proper person’ for the purposes of holding or retaining a certificate. Such matters include convictions for an offence against this Bill and against laws of the Commonwealth, State or Territory which are relevant in deciding whether the person is able to satisfactorily perform their duties and functions that the granting of a certificate will authorise.

It also clarifies that this clause does not affect the operation of Part VIIC of the Commonwealth *Crimes Act 1914*, which includes provisions that, in certain circumstances, relieve people of the requirement to disclose spent convictions and require people aware of such convictions to disregard them.

The National Regulator may refuse to issue or revoke a Certificate of Operation or a Certificate of Competency if the National Regulator is satisfied that the person is not ‘fit and proper’ to hold the certificate. A number of jurisdictions have specifically requested the inclusion of a ‘fit and proper person’ test.

The practical effect of such a provision for Certificates of Competency, for example, is that the National Regulator may refuse to issue or revoke a certificate on the basis of any unspent convictions for offences against the National Law and against State and Territory laws on marine safety.

If a conviction for such an offence led the National Regulator to conclude there was a potential effect on the safety of marine operation caused by the continued participation of a person in the industry, this could be addressed through either the revocation of a certificate or by issuing conditions to minimise the risk. For example, if a person was repeatedly convicted for driving a motor vehicle under the influence of alcohol, this may lead to either a refusal to issue a seafarer certificate or a restriction that the person could only operate in the company of a person holding an unrestricted certificate.

Such decisions are reviewable (see generally clauses 139 – 142).

**Clause 75 – Regulations may provide for matters relating to certificates and unique identifiers**

This clause clarifies that the regulations under this Bill may provide for matters in relation to certificates and unique identifiers.

**Clause 76 – Regulations may provide for matters relating to applications for certificates and unique identifiers**

This clause provides that the regulations under this Bill may provide for the specific matters listed in the clause in relation to certificates and unique identifiers. It also clarifies that the regulations under this Bill may include a requirement for information provided in an application for a certificate and unique identifier to be verified by statutory declaration.

**Clause 77 – Regulations may make provision in relation to the issue, variation and revocation of certificates and unique identifiers**

Sub-clause 1 provides that the regulations under this Bill may provide for the specific matters listed in the clause in relation to the issue, variation and revocation of certificates and unique identifiers.

Sub-clause 2 provides that the required criteria to be satisfied to issue, vary or revoke certificates or issue unique identifiers may include criteria relating to compliance with the required standards set out in the regulations under this Bill (see clause 159).

Sub-clause 3 provides that the conditions to which certificates are subject may include conditions relating to compliance with the required standards set out in the regulations under this Bill (see clause 159).

**Clause 78 – Regulations may make provision in relation to renewal and transfer of certificates**

This clause provides that the regulations under this Bill may provide for the renewal and transfer of certificates, as well as a requirement to provide notification of events involving domestic commercial vessels, such as change of ownership or disposal of a vessel more broadly (see clause 57).

**Clause 79 – Regulations may require display of certificates**

This clause provides that the regulations under this Bill may impose a requirement to display a certificate or a unique identifier in a specified manner.

**Clause 80 – Regulations may provide for certificate of operation for persons**

This clause provides that the regulations under this Bill may provide for Certificates of Operation to be issued that permit the operation of domestic commercial vessels by the applicant and other people. Certificates of Operation may also be issued that permit the operation of one or more specified vessels identified by class.

**Clause 81 – Effect of certificate of operation for persons**

This clause clarifies that a Certificate of Operation is valid if it has been issued according to the appropriate regulations under this Bill and the holder of the certificate is acting in accordance with the requirements of the certificate.

**Clause 82 – Defeasibility**

This clause clarifies that an issued certificate can be revoked or varied under the Act or subsequent legislation. It also clarifies that no compensation is payable if the certificate is revoked or varied.

**Clause 83 – Certificates etc. to be made available**

This clause provides that the holder of a certificate or other document issued or required to be held under this law is guilty of an offence if they do not make the certificate or other required document available for examination when reasonably requested by the National Regulator or a marine safety inspector (as described in Part 6). A penalty provision is applied according to the *Criminal Code*.

**Clause 84 – National Regulator may require delivery of revoked certificates**

This clause permits the National Regulator to require a person to return a revoked certificate to the National Regulator, as described in the regulations under this Bill. This provision is intended to ensure accountability in certificate holdings and prevent the misrepresentation or fraudulent use of revoked certificates.

## **Part 5 – Assistance and Reporting Requirements**

This part of the Bill imposes a general obligation on the master of a domestic commercial vessel to provide assistance to vessels or people in distress when requested. It also enables the master of a vessel in distress to requisition other vessels to obtain this assistance.

The National Law makes it an offence not to provide such assistance, except in circumstances where it is unreasonable or unnecessary for the master of the assisting vessel to do so. An example of such a circumstance is where providing such assistance could seriously endanger the responding vessel, its passengers and crew. The master may be required to prove this, for example with pictorial or meteorological evidence.

This part of the Bill also imposes a general obligation on the master of a domestic commercial vessel to record any requests for assistance in the official log book of the vessel, and for the master and owner of a domestic commercial vessel to report marine incidents to the National Regulator. A definition of ‘marine incident’ for domestic commercial vessels is provided in clause 6.

The National Law makes it an offence not to record requests for assistance or report marine incidents. Where an incident is likely to result in a formal investigation, there is a general obligation for people on the vessel to preserve any relevant evidence to an extent that is reasonably practical.

These obligations and powers are consistent with the current provisions of the SOLAS Convention.

### **Clause 85 – Obligation to render assistance**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the master does not proceed as fast as practical to the assistance of people in distress and inform them that they are doing so. The requirement to provide

assistance applies to vessels in any waters. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if certain conditions are met. For each of the conditions listed in this sub-clause, the master is required to provide evidence to support their claim that the condition has been met in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

#### **Clause 86 – Obligation to render assistance if requisitioned**

Sub-clause 1 permits the master of a vessel in distress to requisition any domestic commercial vessel that they consider best able to provide assistance, but only if the master first consults with the masters of vessels that answer their distress call. The power to requisition a vessel applies to any vessel in any waters.

Sub-clause 2 provides that the master of a requisitioned domestic commercial vessel is guilty of an offence if the master does not proceed as fast as practical to the assistance of people in distress. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 3 provides that sub-clause 2 does not apply if certain conditions are met. For each of the conditions listed in this sub-clause, the master is required to provide evidence to support their claim that the condition has been met in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 2.

#### **Clause 87 – Obligation to record requests for assistance**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the master does not record the details of any assistance requested, provided or not provided in the official log book of the vessel, but only if a log book is required to be kept. A penalty provision is applied according to the *Criminal Code*.

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Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 88 – Reporting of marine incidents to National Regulator (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner or the master does not provide the details of certain marine incidents to the National Regulator as soon as reasonably practical after the incident. In determining what is reasonably practical, the circumstances of the incident and the time the owner became aware of the incident are relevant considerations. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner or the master does not provide a written report of a marine incident to the National Regulator within 72 hours after the owner becomes aware of the incident. The written report must be in the form approved by the National Regulator. A penalty provision is applied according to the *Criminal Code*.

**Clause 89 – Reporting of marine incidents to National Regulator (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the master or the owner does not provide the details of certain marine incidents to the National Regulator as soon as reasonably practical after the master becomes aware of the incident. In determining what is reasonably practical, the circumstances of the incident will be a relevant consideration. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner or the master does not provide a written report of a marine incident to the National Regulator within 72 hours after the master becomes aware of the incident. The written report must be in the form approved by the

National Regulator. A penalty provision is applied according to the *Criminal Code*.

### **Clause 90 – Evidence of marine incidents**

Sub-clause 1 provides that a person is guilty of an offence if that person fails to preserve, as far as reasonably practical, material relevant to an investigation of a marine incident involving a domestic commercial vessel. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner fails to preserve, as far as reasonably practical, material relevant to an investigation of a marine incident involving the vessel. A penalty provision is applied according to the *Criminal Code*.

The penalty in this provision has been set at a level that is comparable with that set for offences of this nature, for which prosecution would be frustrated if the conduct giving rise to an offence under this provision occurred. The intention is to provide no monetary advantage or incentive to a potential offender to hinder a marine safety inspector in order to prevent the inspector identifying other offences.

### **Part 6 – Powers of Marine Safety Inspectors**

This part of the Bill creates powers to appoint marine safety inspectors and sets out a comprehensive suite of monitoring and enforcement powers that they can exercise throughout Australia to ensure compliance with the National Law. These powers are necessary to ensure the safety of domestic commercial vessel operations and are similar to those currently held by State and Territory marine safety inspectors and compliance regimes in other industries.

The National Law also allows a range of people to be appointed as inspectors by the National Regulator, including members of the Federal or State and Territory police forces. However, most inspectors will be current employees of Commonwealth, State or



Territory marine agencies. This will provide the most appropriate regulatory response to ensure compliance with the National Law.

Inspectors are provided with entry, inspection and seizure powers, including the power to enter certain premises and board vessels with, and in some case without, warrant or consent. The power of entry and search without a warrant or consent is consistent with regulatory powers provided to officers of other comparable regimes, such as appointed officers under the *Fisheries Management Act 1991* and officers under the *Customs Act 1901*.

These powers are an important function of the National Regulator and the compliance and enforcement framework of the National Law, as agreed in the COAG IGA. They are also consistent with the exception provisions of the Commonwealth's criminal law policy regarding search and entry of conveyances, which recognises that obtaining a warrant prior to entry of a vessel may be impractical given the inherent mobility of a ship or may frustrate the maritime law operations because of the geographic and temporal problems associated with compliance and enforcement of maritime vessels.

Provisions in the proposed *Navigation Act 2012* (section 256, consistent with section 190AA *Navigation Act 1912*) in relation to entry, inspection and seizure powers are also similar to the circumstances of compliance and enforcement for National Law vessels. Although it is recognised that the similarity is lessened by the comparatively close jurisdictional control and access to domestic commercial vessels, the inherent mobility of a ship and potential for this to frustrate the operation of the law nonetheless remain and therefore support the powers provided in this Bill.

While the powers of inspectors under the National Law are different to (and in some cases less intrusive than) those powers that similar officers are familiar with under State and Territory legislation, the provisions of this Bill are consistent with Commonwealth policy and COAG agreement, and will allow inspectors to effectively implement a compliance and

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enforcement regime that achieves the same regulatory outcome as provided by current jurisdiction laws.

Inspectors will also be given the power to seize things where consent or a warrant has been obtained. However, inspectors will also have an appropriately restricted power to seize evidential material without a warrant, but only in serious or urgent circumstances, or where circumstances make the obtaining of a warrant impractical, in order to prevent concealment, loss or destruction of the evidential material. This is intended to cover a small number of circumstances where it may be impractical to obtain a warrant because the domestic commercial vessel is in an area where it is not possible to get telephone reception to obtain a warrant, or the hours of the safety operation are such that a magistrate is not available. There is also a safeguard requiring the inspector to report to the National Regulator as soon as practicable on any exercise of this power, along with the reasons for which the seeking of a warrant was impractical.

Suitable accountability measures in the exercise of these powers will be affected by conditions contained in the instrument of appointment of a marine safety inspector. This instrument will provide for both general directions to assist the national regulator in compliance with Commonwealth adjectival laws and specific directions in relation to the exercise of the marine safety inspectors powers.

An inspector may also be assisted by other people (e.g. other representatives of the National Regulator or its delegates) in exercising their powers or performing functions or duties, if that assistance is necessary and reasonable. Those assisting an inspector will be subject to the directions of the inspector and will have the same powers, functions and duties as the inspector.

If an inspector has reasonable grounds to believe that a person is breaching the National Law, or has breached the National Law and is likely to breach again, the inspector will be able to issue a written notice to the person (by way of a direction, prohibition or improvement notice) to address a marine safety risk.

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The National Law makes it an offence to fail to obey the direction or requirement of an inspector, or to hinder or obstruct an inspector in exercising their powers, without a reasonable excuse.

This part of the Bill also outlines the rights and responsibilities of occupiers of vessels and premises and imposes obligations on marine safety inspectors in the exercise of their powers under the National Law. Procedures are also outlined for properly obtaining and executing warrants for use by inspectors in exercising monitoring and enforcement powers, as well as for the seizure and detention of things considered by inspectors to be evidential material.

#### **Division 1 – Appointment of marine safety inspectors etc.**

##### **Clause 91 – Appointment of marine safety inspectors**

Sub-clause 1 permits the National Regulator to appoint, in writing, officers or employees of a Commonwealth, State or Territory agency as marine safety inspectors. This is to ensure the most appropriate regulatory response to secure compliance with and enforcement of the National Law.

Under the COAG IGA, it has been agreed that operational functions of the National Regulator will be primarily delivered by existing State and Territory marine safety administrations, including the undertaking of investigations and compliance and enforcement activities. As such, most inspectors will be employees of State and Territory agencies.

A definition of ‘agency’ is provided in clause 6 of the Bill. A number of jurisdictions currently rely heavily on State water police to undertake compliance monitoring and enforcement activities on their behalf. Accordingly, members of a State police force are automatically marine safety inspectors (see the definition of marine safety inspector in clause 6).

Sub-clause 2 provides that an inspector may exercise all of the powers of an inspector under this Bill, or such powers as are specified in the appointment instrument for the inspector. This provision ensures that inspectors are given only the powers necessary for their particular duties.

Sub-clause 3 provides that the National Regulator may only appoint a person as an inspector if satisfied the person has suitable qualifications or experience to properly exercise the powers of an inspector. It is intended that, if appropriate, the National Regulator will utilise existing State and Territory marine safety inspectors that have suitable qualifications or experience.

Sub-clause 4 requires the National Regulator to seek the agreement of the relevant State or Territory before appointing an officer or employee of a State or Territory agency as a marine safety inspector.

Sub-clause 5 provides that an inspector must comply with any direction of the National Regulator when exercising his or her powers and functions. The appointment of marine safety inspector will be made by an instrument of appointment. This instrument will provide for both general directions to assist the national regulator in compliance with Commonwealth adjectival laws and specific directions in relation to the exercise of the marine safety inspectors powers.

## **Clause 92 – Identity cards**

Sub-clause 1 provides that the National Regulator must issue identity cards to marine safety inspectors.

Sub-clause 2 provides that the form of the identity card is required to meet certain requirements, as provided in this sub-clause.

Sub-clause 3 provides that a person is guilty of an offence if they do not return their issued identity card to the National Regulator as soon as practical after ceasing to be an inspector.

Sub-clause 4 provides that an offence against sub-clause 3 is a strict liability offence. The strict liability nature of this offence will ensure that inspectors quickly return their identity cards to the National Regulator after they cease to be inspectors, so as to prevent the misuse of identity cards.

Sub-clause 5 protects inspectors by providing that the offence under sub-clause 3 does not apply if the identity card has been lost or destroyed. An inspector is required to provide evidence to support their claim that the identity card was lost or destroyed in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 3.

Sub-clause 6 provides that an inspector must carry their issued identity card at all times when exercising powers and performing functions and duties as an inspector.

**Clause 93 – False representation about being a marine safety inspector**

This clause provides that a person is guilty of an offence if they misrepresent themselves as a marine safety inspector. A penalty provision is applied according to the *Criminal Code*. The strict liability nature of this offence will ensure that public confidence in inspectors is maintained.

**Clause 94 – Obstructing or hindering a marine safety inspector**

This clause provides that a person is guilty of an offence if they hinder or obstruct a marine safety inspector while exercising their powers. A penalty provision is applied according to the *Criminal Code*.

The penalty in this provision has been set at a level that is comparable with that set for offences of this nature, for which prosecution would be frustrated if the conduct giving rise to an offence under this provision occurred. The intention is to provide no monetary advantage or incentive to a potential

offender to hinder a marine safety inspector in order to prevent the inspector identifying other offences.

The obstruction or hindering of a marine safety inspector is considered a serious offence and requires a significant penalty to deter such behaviour. This approach is consistent with the *Criminal Code Act 1995*, where the obstruction of a Commonwealth public official provides a penalty of 2 years imprisonment.

## **Division 2 – Entry, search, seizure, detention and information-gathering powers**

### **Subdivision A—Powers to facilitate boarding of domestic commercial vessels with or without consent or warrant**

#### **Clause 95 – Requirement to facilitate boarding a domestic commercial vessel**

Sub-clause 1 permits a marine safety inspector to require a person to take reasonable steps to facilitate the inspector's boarding of the vessel, as provided under clause 103 or clause 97. The purpose of this provision is to enable inspectors to easily board and inspect a vessel whenever necessary to ensure its compliance with the National Law. A similar provision can be found in subsection 184A(12) of the *Customs Act 1901*, which has a maximum penalty of two years imprisonment for non-compliance (see also subsection 84(1) of the *Fisheries Management Act 1991*).

Although the requirement in this sub-clause applies broadly to any person, a test of reasonability will limit who it is that is obliged to take reasonable steps and what they have to do to take such reasonable steps.

Sub-clauses 2 and 3 provide that the requirement in sub-clause 1 may be met by any reasonable means and that the requirement applies whether or not the person in charge of the vessel understands or is aware of the requirement.

Sub-clause 4 provides that a person is guilty of an offence if they fail to comply with the requirement in sub-clause 1. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 explains that sub-clause 4 does not apply if the person has a reasonable excuse. The person is required to provide evidence to support their claim that they have a reasonable excuse in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 4.

Sub-clause 6 clarifies that an offence under sub-clause 4 is a strict liability offence.

**Clause 96 – Entering certain premises for access to domestic commercial vessel**

Sub-clause 1 permits a marine safety inspector to enter any premises (other than residential premises) to gain access to a domestic commercial vessel for the purposes outlined in sub-clause 97(1). This clause provides inspectors with reasonable entry powers for the places they will need to go to enforce the National Law, such as commercial premises, but does not provide an automatic right of entry to personal residences (see also clause 103). It should also be noted that the definition of premises under this Bill includes a building, vessel, vehicle or aircraft (see clause 6).

Sub-clause 2 clarifies that sub-clause 1 does not permit an inspector to enter premises unless the inspector has shown their identity card, or police identification if the inspector is a uniformed police officer, if required by the occupier.

Sub-clauses 3 and 4 provide that an inspector is not required to comply with sub-clause 2 if the inspector has reasonable grounds for suspecting that doing so would endanger a person. In such cases, an inspector is required to show their identity card to the occupier if present, or any other person if the occupier is not present, as soon as practical after entering the premises.

**Subdivision B—Powers relating to domestic commercial vessels, exercisable without consent or warrant**

**Clause 97 – Boarding a domestic commercial vessel**

Sub-clause 1 permits a marine safety inspector to board a domestic commercial vessel for specified purposes.

Sub-clause 2 requires an inspector appointed under clause 91 to produce their identity card if requested by the master of a domestic commercial vessel.

Sub-clause 3 requires an inspector that is a member of the Australian Federal Police or a State or Territory police force and is not in uniform to produce their police identification if requested by the master of a domestic commercial vessel.

Sub-clause 4 requires an inspector to leave and not re-board the vessel if they fail to produce their identity card or police identification, or wear police uniform.

Sub-clauses 5 and 6 provides that an inspector is not required to comply with sub-clauses 2, 3 or 4 if the inspector has reasonable grounds for suspecting that doing so would endanger a person. In such cases, an inspector is required to show their identity card or police identification to the master of the vessel as soon as practical after boarding the vessel.

**Clause 98 – Requiring master of a vessel to answer questions about the nature of the vessel**

This is a critical provision for marine safety inspectors to enable them to determine which regulatory scheme is applicable to a vessel (i.e. whether it is a recreational or commercial vessel). This will enable the proper and valid exercise of applicable powers.



Sub-clause 1 permits a marine safety inspector to require the master of a domestic commercial vessel to answer any questions and provide any documents about the nature or operations of the vessel when requested.

Sub-clause 2 provides that the master of a vessel is guilty of an offence if the master is requested to meet the requirement under sub-clause 1 and fails to comply with the requirement. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 3 provides that sub-clause 2 does not apply if the master has a reasonable excuse. The master is required to provide evidence to support their claim that they have a reasonable excuse in the particular circumstances. A reasonable excuse would include the privilege against self-incrimination.

#### **Clause 99 – Monitoring domestic commercial vessels**

Sub-clause 1 provides a marine safety inspector with vessel monitoring powers, as provided under sub-clause 2. The inspector can exercise one or more of the vessel monitoring powers and is not required to be on the vessel being monitored to exercise those powers. This allows the inspector to exercise monitoring powers from a vessel alongside the domestic commercial vessel where, for example, conditions would make it unsafe to board.

The powers can be used by the inspector for both routine and targeted monitoring purposes, as currently occurs in State and Territory jurisdictions. The inspector does not need to reasonably suspect the presence of evidential material to exercise monitoring powers. If the inspector has such reasonable suspicions, they may also exercise additional powers at clauses 105 and 100.

Sub-clause 2 provides a list of the monitoring powers of inspectors, including the power to observe or search a vessel, examine or inspect things on the vessel and require people on board the vessel to provide certain details. These powers are important for the inspector to determine compliance with the

National Law and the identity of a person. Monitoring powers are provided at clause 104. The power to seize things on a vessel is provided at clause 100.

Sub-clause 3 provides that the monitoring powers permit an inspector to require the person in charge of a vessel to stop the vessel, manoeuvre the vessel as directed or take the vessel to a specified place. Failure to comply with this requirement is an offence (see clause 102).

Sub-clauses 4 and 5 provide that the monitoring powers permit an inspector to operate electronic equipment, transfer any data found to a storage device (e.g. a disk) and remove the data from the vessel to ascertain whether it contains information relevant for monitoring purposes. Written permission from the occupier of the vessel is required to use any storage device found on the vessel for the removal of data from the vessel.

Sub-clause 6 provides that inspectors may only operate electronic equipment on the vessel if they reasonably believe that such operation will not damage the equipment.

**Clause 100 – Sampling, securing or seizing things found using vessel monitoring powers**

Sub-clauses 1, 2, 3 and 4 permit a marine safety inspector without a warrant to seize, secure or take a sample of a thing found on a domestic commercial vessel during the exercise of vessel monitoring powers if the inspector reasonably believes that the thing is evidential material and either a warrant cannot be practically obtained or the action is urgently required to prevent concealment, loss or destruction of the thing.

This provision is intended to be used where it is impractical to obtain a warrant, such as in remote locations with little or no mobile phone coverage that would make it impossible to obtain such a warrant in a reasonable timeframe. Other examples of Commonwealth provisions similar to this sub-clause include subsection 70A(6) of the *National Health Security Act 2007* and

subsection 68(6) of the *National Vocational Education Training Regulator Act 2010*.

Sub-clause 5 provides that an inspector can only seize equipment or a disk, tape or other storage device operated under section clause 99(4) if it is not practical to transfer the data or transcribe the evidential material into documentary form, or if it could constitute an offence against a Commonwealth, State or Territory law. Division 7 requires inspectors to deal with seized things in certain ways.

Sub-clause 6 ensures accountability and the responsible exercise of this power by requiring an inspector exercising powers under this clause to submit a report providing specified details to the National Regulator.

#### **Clause 101 – Detaining domestic commercial vessels**

Sub-clause 1 permits a marine safety inspector to detain a domestic commercial vessel, and require it to be brought to a place they considered appropriate, if the inspector reasonably suspects the vessel will or has breached the National Law, either within or outside Australia.

Sub-clause 2 requires the inspector to give written notice of the vessel's detention within 14 days to the holder of the Certificate of Operation for the vessel, if available, or otherwise the person in possession or control of the vessel before it was detained.

Sub-clause 3 permits the inspector to fix the written notice to a prominent part of the vessel if the notice cannot conveniently be given in person.

Sub-clause 4 provides requirements for the form and details of the written notice.

Sub-clause 5 provides that the regulations under this Bill can outline the process for the return of detained vessels. Division 7 refers to the costs of detention and disposal of vessels that cannot be returned.

Sub-clause 6 provides that a person is guilty of an offence if they operate, or permit or cause the operation of, a vessel not released from detention and without the consent of the inspector. A penalty provision is applied according to the *Criminal Code*.

**Clause 102 – Offence—not complying with requirement made under section Clause 99**

Sub-clause 1 provides that a person is guilty of an offence if the person fails to comply with the requirements in clauses 99(2)(h), 99(2)(i) and 99(3). A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the person has a reasonable excuse. The person is required to provide evidence to support their claim that they have a reasonable excuse in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

Sub-clause 3 provides that a person is guilty of an offence if the person fails to comply with the requirements in clause 99(2)(i) by providing false or misleading information. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 4 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Subdivision C—Powers relating to any premises, exercisable with consent or warrant**

**Clause 103 – Entering premises with consent or under warrant**

This clause permits a marine safety inspector to enter any premises for monitoring purposes if they have reasonable suspicion that there may be evidential material on the premises. However, sub-clause 3 clarifies that entry is only permitted under a warrant or if the occupier consents to entry and has been shown an identity card, police identification, or the inspector is in police uniform.

It is noted that this clause does not limit an inspector's power to enter premises under clause 96 or clause 97 (see clause 108). Clause 115 contains rules about obtaining consent and leaving premises if consent is withdrawn. Clauses 116 - 120 contain rules relevant to entry under a warrant.

#### **Clause 104 – Monitoring premises**

Sub-clause 1 provides a marine safety inspector with general monitoring powers in relation to premises for monitoring purposes, as provided under sub-clause 2. The inspector can exercise one or more of the vessel monitoring powers. These powers are necessary to ensure the safety of commercial vessel operations and compliance with the National Law. The powers are similar to those available to inspectors for monitoring domestic commercial vessels, as provided in clause 99, but are only exercisable with consent or under warrant.

Sub-clause 2 provides a list of the monitoring powers of inspectors. These powers are important for the inspector to determine compliance with the National Law.

Sub-clauses 3 and 4 provide that the general monitoring powers include the power to operate electronic equipment and the power to transfer any data found to a storage device, such as a disk, and remove the data from the premises to ascertain whether it contains information that is relevant for monitoring purposes. This will allow the inspector to determine if there is any evidential material on premises. Written permission from the occupier of the premises is required to use any storage device found on the premises for the removal of data from the premises.

Sub-clause 5 provides that inspectors may only operate electronic equipment on the premises if they reasonably believe that such operation will not damage the equipment.

Sub-clause 6 provides that the general monitoring powers include the power to secure a thing on premises for a period not exceeding 72 hours if certain conditions are met. This period recognises that it may be impractical (or impossible) to obtain a warrant or bring in an expert within a lesser period in some areas of the country (e.g. remote Queensland and Western Australia). A maximum time of 72 hours is considered practical and appropriate.

### **Clause 105 – Enforcement powers**

Sub-clause 1 provides a marine safety inspector with a range of enforcement powers, exercisable with consent or under warrant, in relation to premises if the inspector has reasonable suspicion that there may be evidential material on premises. The inspector can exercise one or more of the enforcement powers. These powers are necessary to ensure the safety of commercial vessel operations and compliance with the National Law. Division 7 requires inspectors to deal with seized things in certain ways.

Sub-clauses 2 and 3 provide that the enforcement powers include the power to operate electronic equipment to ascertain whether the equipment or any storage device found on the premises contains evidential material. The equipment and storage device can be seized if entry is obtained under an enforcement warrant. Otherwise, the inspector can use the equipment to transfer any data to a storage device for removal from the premises. Written permission from the occupier of the premises is required to use any storage device found on the premises for the removal of data from the premises.

Sub-clause 4 provides that inspectors may only operate electronic equipment on the premises if they reasonably believe that such operation will not damage the equipment.

Sub-clause 5 provides that an inspector can only seize equipment or a disk, tape or other storage device operated under Sub-clause 3(a) if it is not practical to transfer the data or transcribe the evidential material into documentary form, or if it could constitute an offence against a Commonwealth, State or

Territory law. Division 7 requires inspectors to deal with seized things in certain ways.

Sub-clause 6 provides that the enforcement powers include the power to seize a thing on premises only if certain conditions are met, as outlined in this sub-clause.

**Clause 106 – Requiring persons on premises entered under warrant to answer questions and produce documents**

Sub-clause 1 permits a marine safety inspector with a warrant to require anyone on or in the premises to answer questions and produce books, records or documents. The effect of this sub-clause is that an inspector who has entered the premises under a warrant, may compel the occupier to answer questions about, or produce documents relating to, the operation of the National Law.

Sub-clause 2 provides that a person is guilty of an offence if the person fails to comply with the requirement under sub-clause 1. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 3 provides that sub-clause 2 does not apply if the person has a reasonable excuse. The person is required to provide evidence to support their claim that they have a reasonable excuse in the particular circumstances. An example of a reasonable excuse is the privilege against self-incrimination.

**Clause 107 – Using force in executing a warrant**

This clause permits a marine safety inspector to use force against people and things to execute a warrant if this is necessary and reasonable in the circumstances. Only the inspector can use force against a person, while persons assisting the inspector may only use force against things. It is envisaged that the use of force against a thing would include, but not be limited to, the moving of furniture or other objects to allow access to evidentiary material. Actions under this provision would also be subject to investigation by the Commonwealth Ombudsman.

This clause is similar to existing Commonwealth legislative provisions. Section 70 of the *National Vocational Education and Training Regulation Act 2010* allows the use of force against things by authorised officers and persons assisting when executing a warrant under that Act. Section 203J of the *Customs Act 1901* and section 85B of the *Fisheries Management Act 1991* also allows the necessary and reasonable use of force against people and things when executing warrants.

#### **Clause 108 – Relationship with Subdivision B**

This clause clarifies that Subdivision B and C can operate concurrently, so that the exercise of powers provided in Subdivision C does not limit the ability to also exercise powers in Subdivision B. This is important to ensure that a marine safety inspector is able to exercise both monitoring and enforcement powers where necessary. It is also clarified that Subdivision B does not prevent Subdivision C from applying to premises that are domestic commercial vessels.

#### **Division 3 – Other powers**

##### **Clause 109 – Giving directions**

Sub-clause 1 permits a marine safety inspector to give directions to a person requiring the person to take reasonable steps to comply with the National Law within a specified time if an inspector reasonably believes the person is not complying with the National Law. However, an inspector may only give directions if it is reasonably necessary to protect the health and safety of people or the environment, or else it is in the public interest to do so. This would enable an inspector, for example, to direct that equipment on a commercial vessel be operated so that it can be properly inspected in circumstances if the inspector suspects there is a breach of the National Law in relation to the equipment. Section 146 of the *Gene Technology Act 2000* has a similar power.



Sub-clause 2 requires an inspector to give directions in writing, unless there is an urgent need to comply with the National Law to protect the health and safety of people or the environment.

Sub-clause 3 provides that a person is guilty of an offence if the person does not take the steps specified in a direction within the specified time. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 4 provides that an offence under sub-clause 3 is a strict liability offence.

Sub-clauses 5 and 6 permit the inspector to arrange for the specified steps in a direction to be undertaken if the person does not take the steps in the specified time. The person will be liable to pay any costs incurred by the National Regulator for such arrangements and the amount may be recovered as a debt. Section 146 of the *Gene Technology Act 2000* has a similar cost recovery arrangement.

Sub-clause 7 requires the specified time in a direction to be reasonable in the circumstances.

### **Clause 110 – Issuing improvement notices**

Sub-clause 1 permits a marine safety inspector to issue an improvement notice, in writing, to a person if the inspector believes the person is breaching or has breached a provision of the National Law and is likely to breach again. The power to issue improvement notices has for many years been a fundamental tool used by inspectors to achieve compliance with safety laws. For example, a similar power to issue improvement notices can be found in section 98 of the Commonwealth *Occupational Health and Safety (Maritime Industry) Act 1993*.

Sub-clauses 2 and 3 require the notice to specify the alleged breach of the National Law, the reasons for that belief and the time period for action to be taken to prevent any further breach. The period specified in the notice must also be reasonable.

Sub-clauses 4 and 5 permit the notice to specify action that the person is to take, or not to take, during the period specified in the notice. The inspector is also permitted to extend the specified period in writing.

Sub-clause 6 requires a person to ensure that the notice is complied with to the extent of their control.

Sub-clause 7 provides that a person is guilty of an offence if the person fails to comply with a requirement under a notice. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 8 clarifies that an offence under sub-clause 7 is a strict liability offence.

#### **Clause 111 – Issuing prohibition notices**

Sub-clauses 1 and 2 permit a marine safety inspector to issue a prohibition notice to the responsible person in relation to a domestic commercial vessel if the inspector reasonably believes an activity is occurring, or may occur, in relation to the vessel that involves or will involve a serious risk to the health and safety of a person or to the environment. The ‘responsible person’ is defined to be the master of the vessel, but provides for other people to be the responsible person if the inspector cannot locate the master. A similar power relating to prohibition notices is in section 93 of the Commonwealth *Occupational Health and Safety (Maritime Industry) Act 1993*.

Sub-clause 3 requires that the prohibition notice must set out the activity that the inspector believes is a serious risk to health, safety or the environment and a direction to ensure the activity is not engaged in or not engaged in a ‘specified manner’. For example, a notice could specify that a person not operate an unsafe vessel.

Sub-clause 4 explains what a ‘specified manner’ may relate to.

Sub-clauses 5 and 6 provide that a notice may specify the action to be taken and ceases to have effect when an inspector notifies the responsible person that adequate action has been taken to remove the risk to health, safety or the environment.

Sub-clauses 7 and 8 permit the inspector to exercise any of the vessel monitoring powers and general monitoring powers to determine if an action is adequate to remove the risk to health, safety or the environment. The inspector is required to inform the responsible person if the action taken is not adequate.

Sub-clause 9 provides that a person is guilty of an offence if the person engages in conduct that results in a breach of a notice. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 10 clarifies that an offence under sub-clause 9 is a strict liability offence.

#### **Clause 112 – Copies of notices to be displayed and distributed**

Sub-clause 1 requires a marine safety inspector to provide a copy of an improvement notice or prohibition notice to the master of a vessel and the Certificate of Operation holder, or other people if the holder cannot be located. It also requires the recipient of a notice to display the notice as directed by the inspector or otherwise in a prominent place on or near the vessel.

Sub-clause 2 provides that a person is guilty of an offence if the person breaches the requirements for the display of a notice. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 3 clarifies that an offence under sub-clause 2 is a strict liability offence.

### **Clause 113 – Notices not to be tampered with or removed**

Sub-clause 1 provides that a person is guilty of an offence if the person tampers with an improvement notice or prohibition notice while it is displayed or removes such a notice before it has ceased to have effect. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the person has a reasonable excuse. The person is required to provide evidence to support their claim that they have a reasonable excuse in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

Sub-clause 3 clarifies that an offence under sub-clause 1 is a strict liability offence.

### **Division 4 – Persons assisting marine safety inspectors**

#### **Clause 114 – Persons assisting marine safety inspectors**

Sub-clause 1 permits a marine safety inspector to be assisted, if necessary and reasonable, by other people when exercising their powers or performing functions or duties under Part 6. These people are called ‘persons assisting’ the inspector.

Persons assisting are intended to include other representatives of the National Regulator or its delegates (e.g. employees of a State of Territory marine safety agency). Police officers would not be included in this category because they are automatically marine safety inspectors, as defined under clause 6. The rules and conditions imposed by the National Regulator on marine safety inspectors will also apply to any persons assisting an inspector.

Sub-clause 2 permits persons assisting to enter premises and exercise monitoring or enforcement powers in accordance with directions given to them by an inspector.

Sub-clause 3 permits persons assisting to use necessary and reasonable force to execute a warrant in relation to things, but not persons.

Sub-clauses 4 and 5 provide that powers exercised and functions or duties performed by persons assisting are taken to have been exercised by the inspector.

### **Division 5 – Obligations and incidental powers of marine safety inspectors**

#### **Clause 115 – Consent**

This clause requires a marine safety inspector to inform the occupier of premises that they may refuse to consent to the inspector entering the premises for monitoring purposes. The inspector must inform the occupier before obtaining that consent and the consent has no effect unless it is voluntary. It may also be given for only a limited time and may be withdrawn at any time. The inspector and any persons assisting must leave the premises if consent no longer has effect.

#### **Clause 116 – Announcement before entry under warrant**

Sub-clause 1 requires a marine safety inspector to announce that they are authorised to enter the premises before entering premises under a warrant. They are also required to show their identity card and allow any person at the premises an opportunity to allow entry. If the inspector is a uniformed police officer, the inspector need only show police identification.

Sub-clause 2 provides that an inspector is not required to comply with sub-clause 1 if they reasonably believe that immediate entry is required to ensure the safety of a person or to ensure the effective execution of the warrant.

Sub-clause 3 requires an inspector that does not comply with sub-clause 1 to show their identity card or police identification to the occupier of the premises as soon as practical after entering the premises.

**Clause 117 – Marine safety inspector to be in possession of warrant**

This clause requires a marine safety inspector to possess a warrant, or a copy of it, when executing a warrant in relation to premises.

**Clause 118 – Details of warrant etc. to be given to occupier**

This clause requires a marine safety inspector executing a warrant to, as soon as practical, provide a copy of the warrant to the occupier of the premises. They must also inform the occupier of their rights and responsibilities under Division 6.

**Clause 119 – Completing execution of warrant after temporary cessation**

Sub-clauses 1 and 2 permit a marine safety inspector and any persons assisting to complete the execution of a warrant if it is still in force and they are away from the premises for no more than a certain period of time, depending on the circumstances. This clause applies if the execution of a warrant is temporarily ceased and the inspector leaves the premises. This provides some limited flexibility in the execution of warrants. This may be required in circumstances where an emergency situation arises that prevents the execution of the warrant, or where additional equipment, people or some other act is necessary to execute the warrant, but is not immediately available and causes a temporary cessation in the execution of the warrant.

Sub-clauses 3 and 4 permit an inspector or any persons assisting to apply to a magistrate for an extension of the allowable period of absence from the premises under certain circumstances. The inspector or persons assisting are required, if practical, to notify the occupier of the premises of an intention to apply for an extension before making the application.

Sub-clause 5 permits a magistrate to extend the allowable period of absence from the premises if certain conditions are met. A magistrate may only extend the period if satisfied that exceptional circumstances justify the extension and it would not result in the period ending after the warrant ceases to be in force. Similar legislative powers can be found in section 203L of the *Customs Act 1901*.

**Clause 120 – Completing execution of warrant stopped by court order**

This clause permits a marine safety inspector and any persons assisting to complete the execution of a warrant that has been stopped by a court order if the order is revoked or reversed on appeal and the warrant is still in force.

**Clause 121 – Expert assistance to operate electronic equipment**

Sub-clauses 1 and 2 permit a marine safety inspector to secure, by any means, electronic equipment at premises to which a warrant applies. The inspector must reasonably believe there is information relevant to monitoring purposes or that may provide evidential material, that requires expert assistance to access on the premises, and that the information may be destroyed, altered or interfered with if not secured.

Sub-clause 3 requires the inspector to give notice to the occupier of the premises of any intention to secure the equipment and that it may be secured for up to 72 hours. This period recognises that it may be impractical (or impossible) to obtain a warrant or bring in an expert within a lesser period in some areas of the country (e.g. remote Queensland and Western Australia). A maximum time of 72 hours is considered practical and appropriate.

### **Clause 122 – Compensation for damage to electronic equipment**

Sub-clauses 1 and 2 require the National Regulator to provide agreed and reasonable compensation to the owner of electronic equipment for damage or corruption to that equipment. The damage or corruption must result from insufficient care exercised by the operator of the equipment or in the selection of the operator of the equipment.

Sub-clause 3 permits the owner of the electronic equipment to seek compensation determined by a court if agreement cannot be reached with the National Regulator on reasonable compensation.

Sub-clause 4 provides that the determination of reasonable compensation will include regard for any appropriate warnings or guidance from the owner about operating the electronic equipment.

Sub-clause 5 clarifies that damage under sub-clause 1 includes erasing data or adding other data.

### **Clause 123 – Extending period for which something is secured**

This clause permits a marine safety inspector to apply to a magistrate to secure a thing for more than 72 hours if they reasonably believe this is needed. The inspector is required to give notice of an intention to apply for an extension to the occupier of the premises, who it entitled to be heard in relation to that application. Clause 134 (monitoring powers) applies to the issue of an extension, with any necessary modifications. The 72 hour period may be extended more than once.

This period recognises that it may be impractical (or impossible) to obtain a warrant or bring in an expert within a lesser period in some areas of the country (e.g. remote Queensland and Western Australia). A maximum time of 72 hours is considered practical and appropriate.



**Clause 124 – Offence–interfering with securing a thing**

This clause provides that a person is guilty of an offence if they interfere with the securing of a thing or a thing that has been secured by a marine safety inspector before the end of the period for which the thing is secured. A penalty provision is applied according to the *Criminal Code*.

The penalty in this provision has been set at a level that is comparable with that set for offences of this nature, for which prosecution would be frustrated if the conduct giving rise to an offence under this provision occurred. The intention is to provide no monetary advantage or incentive to a potential offender to hinder a marine safety inspector in order to prevent the inspector identifying other offences.

**Division 6 – Occupier’s rights and responsibilities**

**Clause 125 – Occupier entitled to observe execution of warrant**

This clause provides that the occupier of premises is entitled to observe the execution of a warrant in relation to the premises if they are present. This entitlement ceases if the occupier impedes the execution of the warrant. The execution of the warrant may occur in more than one place at the premises.

**Clause 126 – Occupier to provide marine safety inspector with facilities and assistance**

This clause requires the occupier of premises to provide all reasonable facilities and assistance to a marine safety inspector and any persons assisting in the effective exercise of their power. A person is guilty of an offence if the person fails to comply with this requirement. A penalty provision is applied according to the *Criminal Code*. It is also clarified that an offence under sub-clause 2 is an offence of strict liability.

## **Division 7 – General provisions relating to seizure and detention**

### **Clause 127 – Copies of seized things to be provided**

This clause requires a marine safety inspector to provide, on the request of the occupier of premises, a copy of any seized document or information that can be readily copied as soon as practical after the seizure. An inspector is not required to comply with this requirement if the seized document or information could constitute an offence against a Commonwealth, State or Territory law.

### **Clause 128 – Receipts for seized things**

This clause requires a marine safety inspector to provide a receipt for any seized things. A receipt may cover multiple seized things.

### **Clause 129 – Return of seized things**

Sub-clause 1 requires a marine safety inspector to take reasonable steps to return any seized thing when the reason for seizure no longer exists, the thing is not to be used in evidence or 60 days have passed since the thing was seized.

Sub-clauses 2 and 3 provide exceptions to the requirements under sub-clause 1.

Sub-clause 4 requires that any seized thing is returned to the person from whom it was seized, or to the owner of the thing if the person is not entitled to the thing.

### **Clause 130 – Magistrate may permit a thing to be retained**

Sub-clause 1 permits a marine safety inspector to apply to a magistrate for an order permitting them to retain a seized thing for a further period if court proceedings in which the thing is evidence have not commenced. An application must be made within 60 days from the seizure.

Sub-clause 2 permits a magistrate to order a seized thing continue to be retained for a specified period if satisfied that retention is necessary for investigation or prosecution of an offence. The specified period must not exceed three years.

Sub-clause 3 requires an inspector to take reasonable steps to identify people with an interest in the retention of the thing and notify each person, if practical, of the proposed application to retain the thing for a further period.

#### **Clause 131 – Costs of detention**

Sub-clause 1 provides that the National Regulator is liable to provide reasonable compensation to the owner of a detained domestic commercial vessel for costs, damages or losses resulting from the detention if there was no reasonable or probable cause for detention.

Sub-clause 2 provides that the owner of a detained domestic commercial is liable to provide reasonable compensation to the National Regulator for costs incurred in the detention of the vessel if that detention was reasonable in the circumstances.

Sub-clause 3 permits the National Regulator or the vessel owner to seek compensation determined by a court if agreement cannot be reached on reasonable compensation.

#### **Clause 132 – Disposal of seized things and detained vessels**

This clause permits the National Regulator to dispose of seized things or detained vessels as they see fit. This applies only if the owner of the thing or vessel cannot be located after reasonable efforts, the owner refuses to take possession once contacted or has not taken possession within three months since the person was contacted.

### **Clause 133 – Compensation for acquisition of property**

This clause provides that the National Regulator is liable to provide reasonable compensation to a person if property is acquired from them on unfair terms under clause 132. The person is also permitted to seek compensation from the National Regulator as determined by a court if agreement cannot be reached on reasonable compensation.

### **Division 8 – Warrants**

#### **Clause 134 – Monitoring warrants**

Sub-clause 1 permits a marine safety inspector to apply to a magistrate for a warrant for monitoring purposes in relation to premises. The definition of premises under this Bill includes a building, vessel, vehicle or aircraft (see clause 6).

Sub-clause 2 provides that a magistrate may issue a warrant if satisfied that it is reasonably necessary that an inspector should have access to the premises for monitoring purposes.

Sub-clause 3 prevents a magistrate from issuing a warrant unless sufficient information is provided to the magistrate on the grounds for the issue of a warrant.

Sub-clause 4 provides the form and details required in a warrant.

#### **Clause 135 – Enforcement warrants**

Sub-clause 1 permits a marine safety inspector to apply to a magistrate for a warrant in relation to premises. The definition of premises under this Bill includes a building, vessel, vehicle or aircraft (see clause 6).

Sub-clause 2 provides that a magistrate may issue a warrant if satisfied that there is reasonable of evidential material on the premises at the time or within the next 72 hours.

Sub-clause 3 prevents a magistrate from issuing a warrant unless sufficient information is provided to the magistrate on the grounds for the issue of a warrant.

Sub-clause 4 provides the form and details required in a warrant.

**Clause 136 – Enforcement warrants by telephone, fax etc.**

Sub-clause 1 permits a marine safety inspector to apply to a magistrate for an enforcement warrant in relation to premises by telephone, fax or other electronic means if it is urgent or if the inspector reasonably believes that an application in person would prevent the effective execution of the warrant.

Sub-clause 2 permits a magistrate to require, if practical, communication by voice for an application for a warrant.

Sub-clause 3 requires an application for a warrant to include all information in relation to premises that provides the grounds for seeking the warrant. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Sub-clause 4 provides for a magistrate to complete and sign a warrant issued under clause 135 if, after considering the information required, the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Sub-clause 5 requires the magistrate signing a warrant to inform the inspector by telephone, fax or other electronic means, of the terms of the warrant and the day and time it was signed.

Sub-clause 6 requires the inspector, after being informed by the magistrate, to complete a form of warrant in the same terms as that approved and signed by the magistrate, including the name of the magistrate and the day and time it was signed.

Sub-clause 7 requires the inspector to send the magistrate the form of warrant completed by the inspector and the required information no later than the day after the day of execution or the day the warrant ceased to be in force, whichever is earlier.

Sub-clause 8 requires the magistrate to attach the inspector's warrant to the warrant signed by the magistrate.

Sub-clause 9 provides that a properly completed inspector's warrant holds the same powers as the warrant signed by the magistrate.

Sub-clause 10 requires a court to assume, unless proven otherwise, that an inspector's warrant was not properly executed if the warrant signed by the magistrate is not produced in evidence and the proper execution of a warrant is material to a case.

**Clause 137 – Offence relating to warrants by telephone, fax etc.**

This clause provides that a marine safety inspector is guilty of an offence if they knowingly provide false or misleading information in an application for a warrant, presents or executes a document that falsely purports to be a warrant, or presents a warrant to a magistrate in a form different to that purported to have been executed. A penalty provision is applied according to the *Criminal Code*.

**Part 7—Infringement notices**

**Clause 138 – Infringement notices**

This clause provides for the regulations under this Bill to allow an alleged offender to pay a penalty as an alternative to prosecution. The penalty will be one-fifth of the maximum fine imposed by a court for the offence. This provision is intended to allow for effective enforcement of the National Law without imposing an unnecessary burden on the court system.

## **Part 8—General matters**

This part of the Bill addresses a range of miscellaneous matters important to the efficient and proper functioning of the National Law. These include provisions for a review of decisions made under the National Law and subordinate legislation, exemptions issued under the National Law, the application of the National Law to certain legal entities, the charging of fees for services and activities, providing immunity from suit for those administering the National Law, and the matters that may be provided for in the regulations and other legislative instruments under the National Law.

### **Division 1—Review of decisions**

#### **Clause 139 – Reviewable decisions**

This clause provides a list of the decisions by the National Regulator that are considered reviewable decisions under this Bill. In summary, these include a decision under relevant clauses of this Bill to:

- vary, suspend or revoke a certificate;
- impose a condition on a certificate or an exemption;
- refuse to issue, vary, suspend, revoke or recognise a certificate;
- refuse to issue a unique identifier or grant an exemption;
- specify a condition, give a direction or detain a vessel; and
- issue a provisional improvement notice or a prohibition notice.

#### **Clause 140 – Internal review of reviewable decisions**

The consultation undertaken in the development of this Bill highlights that internal review of reviewable decisions is seen by industry as an important provision that allows for decisions to be reviewed without the need for more formal review by the AAT. The provision of internal review mechanisms is also consistent

with best practice guidance on the subject from the Administrative Review Council.

Sub-clause 1 requires the National Regulator to give written notice to a person regarding a reviewable decision about them. The notice must provide the decision, the reasons for the decision and the right to have the decision reviewed under this clause. These requirements are consistent with the general obligation to provide natural justice in administrative processes.

Sub-clause 2 permits a person to apply to the National Regulator for the review of a decision made about them.

Sub-clause 3 requires an application for the review of a decision to be in the form and contain the details provided in this sub-clause.

Sub-clause 4 requires the National Regulator to review the decision when an application for a review of the decision is received. The review must be undertaken by a person with delegated powers, who was not involved in making the decision and that is more senior to the decision maker.

Sub-clause 5 permits the person undertaking a review of a decision to retain, vary or revoke the decision. The person is also permitted to make their own decision if the original decision is revoked.

Sub-clause 6 provides that a failure to comply with sub-clause 1 does not affect the validity of the decision.

#### **Clause 141 – Applications for AAT review**

This clause permits a person to apply to the AAT for review of a decision under sub-clause 140(5). The *Administrative Appeals Tribunal Act 1975* of the Commonwealth provides for the manner of applying for review.



## **Clause 142 – Review of decisions made under the regulations**

This clause permits the regulations under this Bill to provide for the internal review of decisions made by the National Regulator in accordance with the regulations under this Bill. It also permits applications to the AAT for a review of decisions by the National Regulator in accordance with the regulations under this Bill. The *Administrative Appeals Tribunal Act 1975* of the Commonwealth provides for the manner of applying for review.

## **Division 2—Exemptions**

### **Clause 143 – Power of exemption**

The power for the National Regulator to provide exemptions under this Bill, along with the transitional and grandfathering arrangements provided in clause 165, are important to support the smooth transfer of domestic commercial vessel safety arrangements from current State and Territory schemes to the new National Law.

Sub-clause 1 permits the National Regulator to exempt specified vessels and people, or classes of vessels and people, from this Bill or specified provisions of this Bill.

Sub-clauses 2, 3, 4, 5 and 6 provide that an exemption may be confined to specific periods or operations, may be granted on application or at the National Regulator's initiative, and may be subject to specified conditions. The National Regulator can only provide an exemption or impose conditions on an exemption if satisfied that doing so will not jeopardise the safety of a vessel or a person on board a vessel.

Sub-clause 7 clarifies that exemptions are not legislative instruments. This clause is merely declaratory and provided to assist readers, rather than to exempt such exemptions from the *Legislative Instruments Act 2003*.

**Clause 144 – Offence of breaching a condition of exemption (owner)**

Sub-clause 1 provides that the owner of a domestic commercial vessel is guilty of an offence if the owner breaches, or causes or permits another person to breach, a condition on an exemption.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 145 – Offence of breaching a condition of exemption (master)**

Sub-clause 1 provides that the master of a domestic commercial vessel is guilty of an offence if the master breaches, or causes or permits another person to breach, a condition on an exemption.

Sub-clause 2 clarifies that an offence under sub-clause 1 is a strict liability offence.

**Clause 146 – Offence of breaching a condition of exemption (all persons)**

Sub-clause 1 provides that a person is guilty of an offence if the person breaches a condition on an exemption.

Sub-clause 2 clarifies that an offence under Sub-clause 1 is a strict liability offence.

**Division 3—Application of National Law to certain bodies**

**Clause 147 – Treatment of partnerships**

Sub-clause 1 provides that this Bill applies to partnerships as if they were a person, but with the modifications outlined in this clause.

Sub-clause 2 provides that an obligation imposed on a partnership by this Bill is imposed on each partner, but can be discharged by any partner.

Sub-clause 3 provides that an offence by a partnership under this Bill is an offence by each partner.

Sub-clause 4 provides that a partner does not commit an offence if they were not aware of the circumstance that created the offence or if they took all reasonable steps to correct the offence as soon as possible after becoming aware of the circumstances. The partner is required to provide evidence to support their claim that they were not aware or that they took all reasonable steps as soon as possible in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

Sub-clause 5 clarifies that a change in the composition of the partnership does not allow the partnership to avoid the application of this clause.

#### **Clause 148 – Treatment of unincorporated associations**

Sub-clause 1 provides that this Bill applies to an unincorporated association as if it were a person, but with the modifications outlined in this clause.

Sub-clause 2 provides that an obligation imposed on an unincorporated association by this Bill is imposed on each member of the association's management committee, but can be discharged by any partner.

Sub-clause 3 provides that an offence by an unincorporated association under this Bill is an offence by each member of the association's management committee.

Sub-clause 4 provides that a member of the association's management committee does not commit an offence if they were not aware of the circumstance that created the offence or takes all reasonable steps to correct the offence as soon as possible after becoming aware of the circumstances. The member is required to provide evidence to support their claim that they were not aware or took all reasonable steps as soon as possible in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

### **Clause 149 – Treatment of trusts with multiple trustees**

Sub-clause 1 provides that this Bill applies to a trust of two or more people as if it were a person, but with the modifications outlined in this clause.

Sub-clause 2 provides that an obligation imposed on a trust by this Bill is imposed on each trustee, but can be discharged by any trustee.

Sub-clause 3 provides that an offence by a trust under this Bill is an offence by each trustee.

Sub-clause 4 provides that a trustee does not commit an offence if they were not aware of the circumstance that created the offence or takes all reasonable steps to correct the offence as soon as possible after becoming aware of the circumstances. The trustee is required to provide evidence to support their claim that they were not aware or that they took all reasonable steps as soon as possible in the particular circumstances. Otherwise, they will be guilty of an offence under sub-clause 1.

### **Division 4—Fees**

#### **Clause 150 – Charging of fees by the National Regulator**

This clause permits the National Regulator to charge fees provided by the regulations under this Bill. The fees will be payable to the National Regulator, related to goods and services provided by the National Regulator, and must be commensurate with the cost of providing the good or service. The National Regulator is able to recover any unpaid fees in court.

However, it is not envisaged that the National Regulator will collect fees and charges from industry in practice - these will in most, if not all, cases be levied by State and Territory administrations to cover their costs of implementing and performing functions of the National System. The IGA sets out in Part 6 the financial arrangements that are intended to operate under the Reform. This provision would allow the National

Regulator itself to levy fees, in the event that Transport Ministers in reviewing the arrangements recommended to COAG to modify the cost recovery arrangements outlined in the IGA, or if the National Regulator itself had to provide services, for example, in the Australian Capital Territory.

Fees chargeable by the National Regulator would have to be detailed in the Regulations under this Bill and would therefore be subject to agreement by SCOTI.

The National Law also makes clear that the States and Territories are free to charge their own fees for the performance of functions delegated by the National Regulator.

#### **Clause 151 – Charging of fees by accredited persons**

Sub-clause 1 permits an accredited person to charge a fee for goods and services provided under this Bill if they are not employed by the Commonwealth, a State or Territory or their agencies. An accredited person so employed is also permitted to charge a fee for goods and services provided under this Bill if these are provided outside their employed capacity.

As explained at clause 6, the definition of an ‘accredited person’ relies on the regulations under this Bill to further define what it includes (see also clause 160).

Sub-clauses 2, 3 and 4 provide that the fees are payable to the accredited person, must be related to goods and services provided by the accredited person, and must be reasonably related to the cost of providing the good or service. The accredited person is able to recover any unpaid fees in court.

#### **Division 5—Disclosure of information**

##### **Clause 152 – Disclosure of information by certain persons to the National Regulator**

This clause permits certain persons (i.e. National Regulator delegates and appointed marine safety inspectors) to disclose relevant information (including personal information where relevant) to the National Regulator to ensure the proper

functioning of the National Law. For example, this is important to allow officers of State and Territory agencies to provide information about people, evidential material and seized things to the National Regulator for the prosecution of alleged offenders. A definition of ‘personal information’ is provided in clause 6, which is identical to the definition in the Commonwealth *Privacy Act 1988*.

## **Division 6—Immunity from suit**

### **Clause 153 – Immunity from suit**

The immunity provisions in this Bill apply to acts or omissions in the exercise of powers conferred or directions given under the National Law. It provides protection from legal proceedings initiated by those adversely affected by the National Law, including those wrongly adversely affected by actions or inaction undertaken in good faith and within the scope of the powers and functions of the National Law.

The immunity provisions are intended to apply to people in an employer-employee relationship (e.g. traditional employees), but not those in an engager-contractor relationship (e.g. private surveyors). This is because traditional employees are subject to the control and direction of the employer in performing tasks, while hired contractors have individual control over how the task is performed. Whether the immunity provision applies to a person in any particular case will depend on whether they are a party to a ‘contract of service’ or a ‘contract for service’. There are many well established legal tests for determining this at common law.

Marine safety inspectors, in particular, have a crucial role to play in the promotion of marine safety and in eliminating or minimising serious risks to marine safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances.

As a result, it is important that they and others engaged in the administration of the Bill are not deterred from exercising their skill and judgment due to fear of personal legal liability.

Sub-clause 1 provides immunity from criminal or civil prosecution for any action or inaction by the National Regulator, marine safety inspectors and others engaged in the administration of the National Law when exercising powers under this Bill.

Sub-clause 2 provides immunity from criminal or civil prosecution for any action or inaction by a person when complying with a direction under this Bill.

Sub-clause 3 provides an exception to sub-clause 2 if there is any inconsistency with an international agreement to which Australia is a party.

Sub-clause 4 provides that sub-clause 2 does not apply in proceedings in relation to the acquisition of property from a person otherwise on just terms.

Sub-clauses 3 and 4 are consistent with section 17A of the *Protection of the Sea (Powers of Intervention) Act 1981*.

**Division 7—Matters relating to evidence and proceedings, etc.**

**Clause 154 – National Regulator may require certain information**

Sub-clause 1 explains that this clause applies to any alleged offence of a master or owner of a domestic commercial vessel against the National Law.

Sub-clause 2 permits the National Regulator to obtain, by a notice given within 30 days of the alleged offence, the name and contact details of the master or the owner at the time of the alleged offence, depending on who is alleged to have committed the offence.

Sub-clause 3 requires the notice in sub-clause 2 to specify the offence and the effect of clause 155.

### **Clause 155 – Offence not to give information**

Sub-clause 1 provides that a person is guilty of an offence if they are required to provide information to the National Regulator in a notice under sub-clause 154(2) and does not provide the information within 28 days after the notice is given. A penalty provision is applied in accordance with the *Criminal Code*.

Sub-clause 2 provides that sub-clause 1 does not apply if the National Regulator is satisfied that the vessel was stolen or wrongfully taken at the time of the offence.

Sub-clause 3 clarifies that the offence in sub-clause 1 is a strict liability offence.

### **Clause 156 – Evidentiary certificates**

Evidentiary certificates will only to be used in relation to technical, objective issues, with the intent to reduce the time and expense incurred by the court and the relevant parties in establishing facts that are not in dispute. They will not be available in situations where there could be some argument about a particular fact and would not be able to serve as *prima facie* evidence of intent, negligence, recklessness, dishonesty or malice.

Sub-clause 1 permits the National Regulator to issue a document certifying that a unique identifier or other specified certificate, or instrument of accreditation however described, was in force or issued on a particular day for a domestic commercial vessel, or that a specified person held a Certificate of Competency or another specified certificate on a specified day, or that a specified certificate was or was not subject to a condition on a specified day.



Sub-clause 2 clarifies that a certificate under sub-clause 1 can be used as evidence in the proceedings of an offence under the National Law.

**Clause 157 – Burden of proving certain matters lies on defendant**

This clause provides that, in the absence of evidence to the contrary, the prosecution is not required to prove certain specified facts about an alleged offence under the National Law.

**Division 8—Adverse publicity orders**

**Clause 158 – Adverse publicity orders**

Adverse publicity orders are part of the suite of compliance and enforcement tools available to the National Regulator. They involve the publication of an offender's conviction and other relevant facts (such as the consequences of the offence), to either a specific group of people or to the general public. Adverse publicity can be effective in ensuring compliance with the National Law because corporations generally view their reputation as a valuable asset. This approach to enforcement and compliance has been adopted in several Australian jurisdictions and is a feature of *Work Health & Safety Act 2010* (Section 236), the *Competition and Consumer Act 2010* (Section 86D) and the Victorian *Marine Safety Bill 2010* (Section 173).

Sub-clause 1 explains the application of this division.

Sub-clause 2 permits a court to make an adverse publicity order requiring those guilty of an offence against the National Law to publicise or notify people of the offence, the penalty imposed and other details specified in the order. The offender may also be required to provide the National Regulator with evidence of their compliance with the order.

Sub-clause 3 permits a court to make the order in addition to any penalty for the offence, either on its own initiative or on application by the prosecutor.

Sub-clause 4 permits the National Regulator to publicise or notify people of the offence, the penalty imposed and other details specified in the order if an offender fails to provide evidence required in sub-clause 2.

Sub-clause 5 permits the National Regulator to apply to a court for authorisation to take action under sub-clause 4 if the National Regulator is not satisfied with the evidence provided in sub-clause 2.

Sub-clause 6 permits the National Regulator to recover an amount for any reasonable expenses incurred in undertaking action under sub-clauses 4 or 5.

## **Division 9—Regulations and other legislative instruments**

### **Clause 159 – Regulations**

Sub-clause 1 permits the Governor General to make regulations on certain matters.

Sub-clauses 2 and 3 permit the regulations under this Bill to provide for certain standards and requirements in relation to this Bill. The nationally consistent application of standards is a critical feature and objective of the National Law.

Sub-clause 4 permits the regulations under this Bill to provide for a scheme for and in relation to Voluntary Enforceable Undertakings (EVU). An EVU is part of the suite of compliance and enforcement tools available to the National Regulator. While an EVU is an alternative to administrative or criminal action by the National Regulator, in some circumstances certain enforcement actions can be combined with EVUs.

EVUs are remedial in nature and are intended to reduce risks to safety by having the holder of a National Law certificate or other authorisation voluntarily modify their practices, behaviour, attitude or skills to ensure they comply with the effect and intent of the National Law and adhere to a culture of marine safety.

Sub-clause 5 permits the regulations under this Bill to provide for the National Regulator to require a person to hold certificates or other documents that may be required to comply with international conventions. Further, the sub-clause provides that regulations under the Bill can provide for the issue, variation, suspension or revocation of these certificates or other documents.

Sub-clause 6 requires that, before the Governor General makes a regulation that changes the scope of the definition of a domestic commercial vessel under sub-clause 7(4) and 7(5), the Commonwealth Minister must be satisfied that the COAG Council has been consulted on the proposed regulation and has unanimously agreed to the making of the proposed regulation. COAG Council is defined in clause 6.

**Clause 160 – Regulations may prescribe matters relating to accreditation and approval**

The regulations under the National Law will allow the National Regulator to provide accreditation of private individuals for certain purposes, such as conducting vessel survey or training. These provisions will be consistent with current arrangements in some jurisdictions.

Sub-clause 1 permits the regulations under this Bill to provide for matters relating to accreditation and approval, including the accreditation of people to perform roles described by the regulations, as well as the approval of training organisations.

Sub-clause 2 provides examples of the matters that may be provided for in the regulations under this Bill.

Sub-clause 3 requires that, before the Governor-General makes a regulation for the purposes of sub-clause 1(a) providing for the accreditation of persons to perform the role of a surveyor of vessels, the Commonwealth Minister must be satisfied that the COAG Council has been consulted in relation to the proposed regulation and has agreed to the making of the proposed regulation. COAG Council is defined in clause 6.

**Clause 161 – Offence of contravening a condition of accreditation**

Sub-clauses 1, 2 and 3 provide that an accredited person is guilty of an offence if their action or inaction breaches a relevant condition provided by the regulations under this Bill, is a risk to the safety of a person or a domestic commercial vessel and was intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*. The level of the penalty depends on whether the action or inaction of the owner was intentional, reckless or negligent.

Sub-clause 4 provides that the person is also guilty of an offence if the person's action or inaction breaches a relevant condition provided by the regulations under this Bill but is not proven to be intentional, reckless or negligent. A penalty provision is applied according to the *Criminal Code*.

Sub-clause 5 clarifies that an offence against sub-clause 4 is a strict liability offence.

**Clause 162 – Regulations may prescribe penalties etc.**

This clause provides that the regulations under this Bill may provide for penalties of not more than 50 penalty units under the *Criminal Code* for offences against the regulations. The regulations may also provide for civil penalties of not more than 500 penalty units for a body corporate or 100 penalty units in any other case. The regulations may provide for the payment of a penalty as an alternative to a civil penalty. Any penalty is capped at not more than one-tenth of the maximum penalty that could be imposed by a court for the offence.

**Clause 163 – Legislative instruments other than regulations**

Sub-clause 1 permits the National Regulator to make a Marine Order in relation to any matter that is permitted or required to be made under the regulations under this Bill, except for certain matters. The provisions of sub-clauses 7(4) and 7(5) (definition of *domestic commercial vessel*), 8(3a) (definition of *vessel*),

150(1) (fees) and 160(1)(a) (accreditation) may only be dealt with in the regulations.

The National Regulator is able to make Marine Orders on most matters about which regulations are made. However, certain elements of the provisions relating to fees and certain aspects of the definitions of ‘vessel’ and ‘domestic commercial vessel’ will only be dealt with by regulation. This is because these matters affect the coverage of the scheme, rather than scheme details, and therefore should be dealt with by regulation rather than Marine Orders.

It is intended that Marine Orders will be the means for making vessel construction and operation standards, together with near-coastal seafarer standards. Therefore, Marine Orders may require compliance with a nationally endorsed standard, such as the NSCV or the USL Code. The NSCV and the USL Code are sets of standards that have been agreed by Transport Ministers to apply to the operation of domestic commercial vessels. It is intended that Marine Orders will be used to prescribe technical matters, such as:

- procedural matters relating to applications for certificates;
- criteria applicable to making decisions about certificates;
- the application of the NSCV and other national standards;
- procedural matters for review of decisions;
- returning detained vessels;
- prescribing matters for EVUs;
- prescribing matters relating to the accreditation of persons; and
- prescribing the infringement notice scheme.

Marine Orders are a form of government regulation that allows laws to keep pace with rapid technical amendments and technological change in marine safety. Marine Orders are also an efficient means of implementing Australia’s international maritime obligations in Australian law.

Marine Orders are made by the Chief Executive Officer of AMSA. However, being legislative instruments for the purposes of the *Legislative Instruments Act 2003*, Marine Orders are subject to review or scrutiny by the Senate Standing Committee on Regulations and Ordinances, as well as disallowance by Parliament. Marine Orders have been successfully used for some time in relation to the *Navigation Act 1912*.

Marine Orders under the National Law will be developed by AMSA in accordance with the Australian Government's *Best Practice Regulation Handbook*. AMSA will consult with industry and the Office of Best Practice Regulation (OBPR) throughout the development process, including on the need for a RIS if the Marine Order will have a significant regulatory impact on Australian businesses.

Marine Orders will be registered on the Federal Register of Legislative Instruments maintained by the Attorney-General's Department. Registration must occur in order for the Marine Order to take effect.

Sub-clauses 2 and 3 provide that a Marine Order is invalid if it is inconsistent with this Bill, but only to the extent of any inconsistency. This means that only that part of the Marine Order that is inconsistent with this Bill will be invalid, while all other parts of the Marine Order that are consistent with the Bill will continue to be valid. This approach does not extend to any inconsistency between Marine Orders.

#### **Clause 164 – Incorporation of material, etc.**

This clause permits Marine Orders and the regulations under this Bill to provide for any matters by applying, adopting or incorporating elements of any legislation in force at the time, including the NSCV and the USL Code. This is an important provision as it will enable the national application of those technical standards adopted by Transport Ministers.

### **Clause 165 – Regulations may deal with transitional matters**

This clause permits the regulations under this Bill to provide for transitional and grandfathering arrangements. Such regulations will have effect regardless of any provision of this Bill and may specify modifications to the effect of such provisions. The regulations may permit a specified identifier, document, licence, certificate or exemption issued before or after the commencement of this Bill by a State or Territory to be recognised under this Law, including with requirements and modifications. The regulations may also allow certain provisions to take effect from a date before the regulations are registered under that Act, with no retrospective action to be taken against offences in this case. The power to provide exemptions under this Bill is also important in supporting transitional arrangements (see clause 143).

The National Law will include provisions for regulations to implement proposed transitional arrangements. These will allow a smooth transition from individual jurisdictional regulators to the National Regulator. For example, this is the mechanism that will recognise a current state vessel registration as a Vessel Identification and a Certificate of Operation, or a current survey certificate as a Certificate of Survey and a Certificate of Operation for at least the initial period of the reform. In addition, this will also be the mechanism to recognise existing State and Territory certificates of competency as National Certificates of Competency, or as equivalent to the National Certificates of Competency. These transitional arrangements have been developed with industry during lengthy consultation on the proposed Regulatory Plan and ongoing consultations on the crew certification plan and other marine standards.

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## **Marine Safety (Domestic Commercial Vessel) National Law Act 2012**

**No. 121, 2012**

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### **An Act to provide for a national law about marine safety for certain commercial vessels, and for related purposes**

*[Assented to 12 September 2012]*

The Parliament of Australia enacts:

#### **1 Short title**

This Act may be cited as the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

#### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.



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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 September 2012
2. Sections 3 to 19	A single day to be fixed by Proclamation.  However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1	At the same time as the provisions covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Definitions

- (1) For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to this Act.
- (2) In the local application provisions of this Act:
- Commonwealth Minister*** means the Minister of State administering this Act.
- constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

*corresponding State-Territory law*: see section 12.

*imposes a duty*: see section 13.

*international agreement* means a treaty or agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

*Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth* means the provisions applying as a law of the Commonwealth because of section 4.

*participating Territory* means the following:

- (a) the Australian Capital Territory;
- (b) the Jervis Bay Territory;
- (c) the Territory of Ashmore and Cartier Islands;
- (d) the Territory of Christmas Island;
- (e) the Territory of Cocos (Keeling) Islands.

*this jurisdiction* means the Commonwealth.

- (3) Terms used in the local application provisions of this Act and also in the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to this Act have the same meanings in those provisions as they have in that Law.

#### **4 Adoption of Marine Safety (Domestic Commercial Vessel) National Law**

The Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to this Act, and regulations and other legislative instruments made under that Law:

- (a) apply as a law of this jurisdiction; and
- (b) as so applying, may be referred to as the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

## **5 Constitutional reach of Act**

- (1) This Act applies to activities of, or matters that relate to, the following:
  - (a) a vessel engaged in trade and commerce:
    - (i) among the States; or
    - (ii) between a State and a Territory; or
    - (iii) between 2 Territories;
  - (b) a vessel that is external to Australia;
  - (c) a vessel of which the owner, or any of the owners, is a constitutional corporation;
  - (d) a vessel, so far as the application of this Act to activities of, or in relation to, the vessel is reasonably appropriate and adapted to giving effect to Australia's obligations under an international agreement;
  - (e) a vessel of which the owner, or any of the owners, is the Commonwealth or a Commonwealth authority;
  - (f) a vessel that is within a participating Territory;
  - (g) navigation or shipping, to the extent that the navigation or shipping relates to trade and commerce:
    - (i) among the States; or
    - (ii) between a State and a Territory; or
    - (iii) between 2 Territories;
  - (h) any matter that may be made the subject of the jurisdiction of the High Court under paragraph 76(iii) of the Constitution;
  - (i) things that are incidental to activities or matters referred to in any of the above paragraphs.
- (2) For the purposes of subsection (1), an activity of, or a matter in relation to, a vessel includes, but is not limited to, an activity done by a person, or in relation to a person, in the capacity of owner, master or crew of the vessel.

(3) For the purposes of subsection (1), *external to Australia* means:

- (a) beyond the baseline from which the breadth of the territorial sea is measured under section 7 of the *Seas and Submerged Lands Act 1973*; or
- (b) any waters on the landward side of the territorial sea that are not within the limits of a State or internal Territory.

Note 1: For the *baseline* see Australia's territorial sea baseline (AGPS) 1988: generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

Note 2: A reference to *Australia* in any other provision of this Act includes a reference to the coastal sea of Australia: see section 15B of the Acts Interpretation Act 1901.

## 6 Relationship with State and Territory laws

- (1) This Act is intended to apply to the exclusion of a law of a State or Territory that relates to marine safety so far as it would otherwise apply in relation to domestic commercial vessels.
- (2) However, subsection (1) does not apply to a law of a State or Territory so far as:
  - (a) the law is prescribed by the regulations as a law to which that subsection does not apply; or
  - (b) the law deals with any of the following matters:
    - (i) management of ports, harbours and moorings;
    - (ii) environmental management, including pollution, impact assessments and sanctuaries;
    - (iii) pilotage;
    - (iv) management of dangerous goods;
    - (v) designation of waters, including designation of waters by reference to the vessels that are or are not permitted to operate in those waters;
    - (vi) regulation or prohibition of the operation of specified vessels or classes of vessels in specified areas;
    - (vii) harbour masters;

- (viii) speed limits, navigation aids, traffic management plans, rules for prevention of collisions, no wash zones, the management of events on waterways, wrecks, salvage, passing dredges, towing objects, bar crossings and local knowledge requirements;
  - (ix) removing obstructions (including abandoned, sinking and derelict vessels) from navigable waters;
  - (x) the actions of persons under the influence of alcohol or other drugs;
  - (xi) false distress signals and calls;
  - (xii) management of passengers;
  - (xiii) repairs, cutting or welding occurring on board vessels;
  - (xiv) requirements for vessels conducting particular dangerous operations or operations that may cause offence, including hauling garbage;
  - (xv) prices charged for the provision of commercial services;
  - (xvi) fisheries management;
  - (xvii) storage, preparation, service and disposal of food and beverages on vessels;
  - (xviii) marine radio;
  - (xix) monitoring of marine communication services;
  - (xx) gas and electrical safety;
  - (xxi) workplace health and safety;
  - (xxii) emergency management and response;
  - (xxiii) any other matters prescribed by the regulations.
- (3) To avoid doubt, this Act is not intended to apply to the exclusion of a law of a State or Territory that relates to activities or matters to which this Act does not apply under subsection 5(1).
- (4) This Act is not intended to exclude or limit the operation of a law that is covered by subsection (2) and is capable of operating concurrently with this Act.

- (5) This Act is not intended to exclude or limit the concurrent operation of a law of a State or Territory that is covered by subsection (2) and that makes an act or omission that is an offence against a provision of this Act an offence against the law of the State or Territory.
- (6) Subsections (4) and (5) apply even if the law of the State or Territory does any one or more of the following:
  - (a) provides for a penalty for the offence that differs from the penalty provided for in this Act;
  - (b) provides for a fault element in relation to the offence that differs from the fault elements in relation to the offence against this Act;
  - (c) provides for a defence in relation to the offence that differs from the defences in relation to the offence against this Act.
- (7) If:
  - (a) an act or omission of a person is both an offence against the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth and an offence against the law of a State or Territory or the common law; and
  - (b) the person is convicted of either of those offences;the person is not liable to be convicted of the other of those offences.
- (8) To avoid doubt, a reference in this section to a law of a State or Territory includes a reference to a provision of such a law.

## **7 Avoiding inconsistency, including operational inconsistency, arising between this Act and State and Territory workplace health and safety laws**

- (1) This section has effect despite anything else in the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.
- (2) This section does not apply to a provision of a law of a State or Territory that is capable of concurrent operation with the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

- (3) A provision of the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth does not:
  - (a) prohibit the doing of an act; or
  - (b) impose a liability (whether civil or criminal) for doing an act;if the doing of that act is specifically authorised or required by or under a provision of a law of a State or Territory that deals with workplace health and safety.
- (4) A provision of the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth does not:
  - (a) require the doing of an act; or
  - (b) impose a liability (whether civil or criminal) for not doing an act;if the doing of that act is specifically prohibited by or under a provision of a law of a State or Territory that deals with workplace health and safety.
- (5) A provision of the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth does not operate to the extent necessary to ensure that no inconsistency (including operational inconsistency) arises between:
  - (a) the provision of the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth; and
  - (b) a provision of a law of a State or Territory that deals with workplace health and safety that would, but for this subsection, be inconsistent with the provision of the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

## **8 Extraterritorial operation**

This Act applies within and outside Australia.

## **9 Charging of fees by States etc. not prevented**

This Act does not prevent a State or the Northern Territory, or an agency of a State or the Northern Territory, charging a fee in relation to a thing done under the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth by a delegate of the National Regulator, or an accredited person, who is an officer or employee of that State, the Northern Territory or that agency.

## **10 National Regulator to pay amounts to States, etc.**

- (1) If:
- (a) an amount payable under an infringement notice is paid to the National Regulator; and
  - (b) the infringement notice was issued by a marine safety inspector who is an officer or employee of an agency of a State or the Northern Territory, or by the National Regulator on the recommendation of such a marine safety inspector;
- the National Regulator must pay to that State or Territory an amount equal to that amount.
- (2) A payment of an amount to a State or Territory under subsection (1) is subject to the condition that, if the National Regulator becomes liable to refund the whole or part of that amount, the State or Territory must pay to the National Regulator an amount equal to the amount that the National Regulator is liable to refund.

## **11 Commonwealth consent to conferral of functions etc. on the National Regulator etc. by corresponding State-Territory laws**

- (1) A corresponding State-Territory law may confer functions or powers, or impose duties, on the National Regulator or other officer or authority of the Commonwealth.
- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a corresponding State-Territory law to the extent to which:



- (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the National Regulator or other officer or authority; or
  - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) Subsection (1) does not extend to a function, power or duty of a kind specified in regulations made for the purposes of this subsection.
- (4) This Act is not intended to exclude or limit the operation of a corresponding State-Territory law that confers any functions or powers, or imposes any duties, on the National Regulator or other officer or authority to the extent to which that law:
  - (a) is consistent with subsections (1) to (3); and
  - (b) is capable of operating concurrently with this Act.

## **12 Meaning of *corresponding State-Territory law***

- (1) For the purposes of this Act, ***corresponding State-Territory law*** means a law of a State or the Northern Territory that is declared by the Commonwealth Minister, by legislative instrument, to correspond to this Act, including such a law as amended from time to time.
- (2) The Commonwealth Minister may revoke a declaration under subsection (1) in relation to a law of a State or the Northern Territory only if:
  - (a) the Minister is requested by the State or Territory concerned to revoke the declaration; or
  - (b) the State or Territory law has been amended otherwise than as unanimously agreed by the members of the COAG Council under the Intergovernmental Agreement for Commercial Vessel Safety Reform; or
  - (c) proposed amendments of the State or Territory law have been unanimously agreed by the members of the COAG Council under the Intergovernmental Agreement for Commercial Vessel Safety Reform, and the State or Territory law has not been

amended in accordance with that agreement within a reasonable period after the agreement.

### **13 Meaning of *imposes a duty***

For the purposes of this Act, a corresponding State-Territory law *imposes a duty* on the National Regulator or other officer or authority if:

- (a) the corresponding State-Territory law confers a function or power on the National Regulator or other officer or authority; and
- (b) the circumstances in which the function or power is conferred give rise to an obligation on the National Regulator or other officer or authority to perform the function or to exercise the power.

### **14 When duty imposed**

#### *Application*

- (1) This section applies if a corresponding State-Territory law purports to impose a duty on the National Regulator or other officer or authority of the Commonwealth.

#### *State or Territory legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
  - (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
  - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 11 to the imposition of the duty by that law).

*Commonwealth legislative power sufficient to support  
duty but State or Territory legislative powers are not*

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by force of the law of a State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
  - (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth.
- (6) To avoid doubt, neither this Act (nor any other law of the Commonwealth) imposes a duty on the National Regulator or other officer or authority of the Commonwealth to the extent to which imposing such a duty would:
  - (a) contravene any constitutional doctrine restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth; or
  - (b) otherwise exceed the legislative power of the Commonwealth.
- (7) This section does not limit section 11.

## **15 Imposing duty under State or Territory law**

- (1) This section:
  - (a) applies only for the purposes of the application of the provisions of this Act or another law of the Commonwealth (with or without modification) as a law of a State or the Northern Territory by a provision of a corresponding State-Territory law; and
  - (b) does not apply for those purposes if the corresponding State-Territory law otherwise provides.
- (2) If the corresponding State-Territory law purports to impose a duty on the National Regulator or other officer or authority of the Commonwealth to do a particular thing, the duty is taken to be imposed by the corresponding State-Territory law to the extent to which imposing the duty:
  - (a) is within the legislative powers of the State or Territory concerned; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the National Regulator.
- (3) To avoid doubt, the corresponding State-Territory law does not impose the duty on the National Regulator or other officer or authority of the Commonwealth to the extent to which imposing the duty would:
  - (a) contravene any constitutional doctrine restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth; or
  - (b) otherwise exceed the legislative powers of the State or Territory concerned.
- (4) If imposing on the National Regulator or other officer or authority of the Commonwealth the duty to do that thing would:
  - (a) contravene any constitutional doctrine restricting the duties that may be imposed on the National Regulator or other officer or authority of the Commonwealth; or

(b) otherwise exceed the legislative powers of both the State or Territory and the Commonwealth;  
the corresponding State-Territory law is taken instead to confer on the National Regulator or other officer or authority of the Commonwealth a power to do that thing at the discretion of the National Regulator or other officer or authority of the Commonwealth.

## **16 Review of decisions under corresponding State-Territory laws**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of reviewable State-Territory decisions.
- (2) A decision made by the National Regulator in the performance of a function or the exercise of a power conferred by a corresponding State-Territory law is a ***reviewable State-Territory decision*** for the purposes of this section if:
  - (a) the law under which the decision was made provides for review by the Administrative Appeals Tribunal; and
  - (b) the decision is declared by the regulations to be a reviewable State-Territory decision for the purposes of this section.
- (3) For the purposes of this section, the *Administrative Appeals Tribunal Act 1975* has effect as if a corresponding State-Territory law were an enactment.

## **17 References in instruments to the National Law**

- (1) A reference in any Act or instrument to the Marine Safety (Domestic Commercial Vessel) National Law is a reference to:
  - (a) the Marine Safety (Domestic Commercial Vessel) National Law as applied under section 4; and
  - (b) a corresponding State-Territory law.
- (2) Subsection (1) has effect except so far as the contrary intention appears in the Act or instrument or the context of the reference otherwise requires.

## **18 Powers of magistrates**

- (1) A power conferred on a magistrate by the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.
- (2) The magistrate need not accept the power conferred.
- (3) A magistrate exercising a power conferred by the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth has the same protection and immunity as if he or she were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## **19 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by the local application provisions of this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the local application provisions of this Act.

## **Schedule 1—Marine Safety (Domestic Commercial Vessel) National Law**

Note: See section 4.

### **Part 1—Preliminary**

#### **1 Short title**

This Law may be cited as the Marine Safety (Domestic Commercial Vessel) National Law.

#### **2 Commencement**

This Law commences as a law of this jurisdiction as provided by the Act of this jurisdiction that applies this Law as a law of this jurisdiction.

#### **3 Objects of Law**

The objects of this Law are as follows:

- (a) to form a part of a cooperative scheme between the Commonwealth, the States and the Northern Territory that provides a single national framework for ensuring the safe operation, design, construction and equipping of domestic commercial vessels;
- (b) to implement Australia's international obligations in relation to the safety of domestic commercial vessels;
- (c) to facilitate the development of a safety culture that will prevent, or mitigate the effects of, marine incidents;
- (d) to provide a framework for the development and application of consistent national standards relating to the operation, design, construction and equipping of domestic commercial vessels;

- (e) to enhance the efficient and orderly operation of domestic commercial vessels;
- (f) to provide an effective enforcement framework.

#### **4 Law binds the Crown**

- (1) This Law binds the Crown in each of its capacities.
- (2) This Law does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

#### **5 Extended geographical jurisdiction—category A**

Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Law.

#### **6 Definitions**

In this Law:

***accredited person*** means a person who is accredited in accordance with regulations made for the purposes of section 160.

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution of the Commonwealth.

***agency***:

- (a) of the Commonwealth, includes the following:
  - (i) an Agency within the meaning of the *Financial Management and Accountability Act 1997* of the Commonwealth;
  - (ii) a body corporate established for a public purpose by or under a law of the Commonwealth; and
- (b) of a State or a Territory, includes the following:
  - (i) a Department of State (however described) of the State or Territory;
  - (ii) a body corporate established for a public purpose by or under a law of the State or Territory.



***approved training organisation*** means a training organisation that is approved in accordance with regulations made for the purposes of section 160.

***certificate*** means any of the following:

- (a) a certificate of operation;
- (b) a certificate of survey;
- (c) a certificate of competency.

***certificate of competency*** means a certificate issued under section 60.

***certificate of operation*** means a certificate issued under section 48.

***certificate of survey*** means a certificate issued under section 38.

***close quarters situation*** means a situation in which vessels pass each other, or a vessel passes another vessel, a person or an object, in such proximity that a reasonable person would conclude that in all the circumstances there was a risk of an imminent collision.

***COAG*** means the Council of Australian Governments.

***COAG Council*** means the council established by COAG that has responsibility for marine safety.

***Commonwealth Minister*** means the Minister of State of the Commonwealth administering this Law.

***company*** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

Note: Under the Income Tax Assessment Act 1997 of the Commonwealth, company includes an unincorporated association or body of persons.

***crew*** of a vessel means individuals employed or engaged in any capacity on board the vessel on the business of the vessel, other than the master of the vessel or a pilot.

***Criminal Code*** means the *Criminal Code* of the Commonwealth.

***defence vessel*** means a warship or other vessel that:

- (a) is operated for naval or military purposes by the Australian Defence Force or the armed forces of a foreign country; and
- (b) bears external marks of nationality; and
- (c) is manned by seafarers under armed forces discipline (however described).

***domestic commercial vessel***: see section 7.

***enforcement powers***: see section 105.

***enforcement warrant*** means:

- (a) a warrant issued under section 135; or
- (b) a warrant signed by a magistrate under section 136.

***entity*** means any of the following:

- (a) an individual;
- (b) a company;
- (c) a trust;
- (d) a partnership;
- (e) a corporation sole;
- (f) a body politic.

***evidential material*** means:

- (a) a thing with respect to which an offence against this Law has been committed or is suspected, on reasonable grounds, of having been committed; or
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of an offence against this Law; or
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing an offence against this Law.

***foreign vessel*** has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

***general monitoring powers***: see section 104.

***hire and drive vessel*** means any vessel which is let for hire or reward or for any other consideration, including vessels provided in conjunction with holiday establishments or hotels for the use of guests or tenants.

***hirer*** of a hire and drive vessel means:

- (a) a person who hires the vessel; or
- (b) a person, other than the owner of the vessel or a person acting on the owner's behalf, who operates the vessel while it is under hire.

***improvement notice*** means an improvement notice issued under section 110.

***infringement notice*** means:

- (a) a notice that:
  - (i) is given under regulations made for the purposes of section 138 to a person alleged to have committed an offence against this Law; and
  - (ii) states that if the person pays a specified amount within a specified period the person will not be liable to be prosecuted for the offence; or
- (b) a notice that:
  - (i) is given under regulations made for the purposes of section 162(3) to a person alleged to have contravened a provision described in that subsection; and
  - (ii) states that if the person pays a specified amount within a specified period the person will not be liable to proceedings for a civil penalty for the contravention.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution of the Commonwealth.

***marine incident*** means any of the following:

- (a) a death of, or injury to, a person associated with the operation or navigation of a domestic commercial vessel;

- (b) the loss or presumed loss of a domestic commercial vessel;
- (c) a collision of a domestic commercial vessel with another vessel;
- (d) a collision by a domestic commercial vessel with an object;
- (e) the grounding, sinking, flooding or capsizing of a domestic commercial vessel;
- (f) a fire on board a domestic commercial vessel;
- (g) a loss of stability of a domestic commercial vessel that affects the safety of the vessel;
- (h) the structural failure of a domestic commercial vessel;
- (i) a close quarters situation;
- (j) an event that results in, or could have resulted in:
  - (i) the death of, or injury to, a person on board a domestic commercial vessel; or
  - (ii) the loss of a person from a domestic commercial vessel; or
  - (iii) a domestic commercial vessel becoming disabled and requiring assistance;
- (k) the fouling or damaging by a domestic commercial vessel of:
  - (i) any pipeline or submarine cable; or
  - (ii) any aid to navigation within the meaning of the *Navigation Act 2012* of the Commonwealth;
- (l) a prescribed incident involving a domestic commercial vessel.

***marine safety equipment*** means equipment designed or used to prevent a marine incident, or mitigate the consequences of a marine incident, and includes, but is not limited to, the following things carried or installed on a domestic commercial vessel:

- (a) personal flotation devices;
- (b) telecommunications systems;
- (c) flares and other devices that can be used to attract attention to the vessel or indicate the vessel's position;

- (d) position identification systems;
- (e) anchors and other devices that may be used to maintain the vessel's position or stability;
- (f) oars and other alternative means of propulsion;
- (g) fire extinguishers;
- (h) lights;
- (i) thermal protective aids;
- (j) such other equipment as is prescribed by the regulations.

***marine safety inspector*** means:

- (a) a person appointed as an inspector under section 91; or
- (b) a member of the Australian Federal Police; or
- (c) a member of the police force (however described) of a State or a Territory.

***master*** of a vessel means the person who has command or charge of the vessel, but does not include a pilot.

***monitoring purposes*** means one or more of the following:

- (a) finding out whether this Law is being, or has been, complied with;
- (b) assessing the correctness of information provided under this Law;
- (c) investigating a marine incident.

***monitoring warrant*** means a warrant issued under section 134.

***National Marine Safety Regulator***: see section 9.

***National Regulator***: see section 9.

***National Standard for Commercial Vessels*** means the National Standard for Commercial Vessels adopted by:

- (a) the COAG Council; or
- (b) if no such entity exists—the entity prescribed by the regulations for the purposes of this paragraph.

**occupier**, in relation to premises, includes:

- (a) a person who apparently represents the occupier of the premises; and
- (b) if the premises are a vessel—the master of the vessel.

**offence against this Law** includes an offence against the *Crimes Act 1914* of the Commonwealth or the *Criminal Code* that relates to this Law.

**operate** a vessel means:

- (a) determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel, whether or not the vessel is underway; or
- (b) load or unload the vessel when it is moored or berthed.

**owner** of a vessel includes:

- (a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee; and
- (b) a person with overall general control and management of the vessel.

For this purpose, a person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.

**partnership** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

**personal information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**person assisting** a marine safety inspector: see section 114.

***pilot*** means a person who does not belong to, but has the conduct of, a vessel.

***premises*** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

***prohibition notice*** means a prohibition notice issued under section 111.

***regulated Australian vessel*** has the same meaning as in the *Navigation Act 2012* of the Commonwealth.

***reviewable decision***: see section 139.

***this Law*** includes the regulations and any other legislative instrument made under this Law.

***trust*** means a person in the capacity of trustee or, as the case requires, a trust estate.

***trustee*** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

***Uniform Shipping Laws Code*** means the Uniform Shipping Laws Code adopted by:

- (a) the COAG Council; or
- (b) if no such entity exists—the entity prescribed by the regulations for the purposes of this paragraph.

***unique identifier***, in relation to a vessel, means a unique identifier issued under section 31.

***unsafe vessel*** means a vessel that is likely to endanger any person for any reason, including because of:

- (a) the condition or equipment of the vessel; or
- (b) the manner or place in which cargo or equipment on the vessel is stowed or secured; or
- (c) the nature of the cargo; or

- (d) the overloading of the vessel with people or cargo (including the submergence of the vessel's load line); or
- (e) the number of its crew or the qualifications of its crew or master.

**vessel:** see section 8.

**vessel monitoring powers:** see section 99.

**warrant** means a monitoring warrant or an enforcement warrant.

## **7 Definition of *domestic commercial vessel***

- (1) In this Law:

***domestic commercial vessel*** means a vessel that is for use in connection with a commercial, governmental or research activity.

- (2) The use of a vessel in connection with an activity that is not a commercial, governmental or research activity at the same time as the vessel is used in connection with a commercial, governmental or research activity does not prevent the vessel from being a domestic commercial vessel.
- (3) Despite subsection (1), a vessel is not a ***domestic commercial vessel*** if the vessel:
- (a) is a regulated Australian vessel; or
  - (b) is a foreign vessel; or
  - (c) is a defence vessel; or
  - (d) is owned by:
    - (i) a primary or secondary school; or
    - (ii) a community group of a kind prescribed by the regulations.

Note: Generally an Australian vessel will be a regulated Australian vessel if it voyages outside Australia's exclusive economic zone at any time. Regulated Australian vessels are dealt with by the Navigation Act 2012 of the Commonwealth rather than this Law.



- (4) Despite subsection (3)(d), a vessel covered by that subsection is a domestic commercial vessel at any time when it is being used for:
  - (a) a purpose prescribed by the regulations; or
  - (b) an activity prescribed by the regulations.
- (5) Despite subsections (1) and (2), the regulations may provide as follows:
  - (a) that a specified thing, or a thing included in a specified class, is a domestic commercial vessel;
  - (b) that a specified thing, or a thing included in a specified class, is not a domestic commercial vessel.
- (6) Regulations made for the purposes of subsection (3)(d)(ii) may prescribe a kind by reference to a decision of the National Regulator.
- (7) A vessel in the course of construction is a ***domestic commercial vessel*** if the vessel is, after completion, for use as a domestic commercial vessel.
- (8) For the purposes of subsection (7), a vessel that has been launched, but has not been completed and delivered under the relevant building contract, is taken to be a vessel in the course of construction.

## 8 Definition of *vessel*

- (1) In this Law:

***vessel*** means a craft for use, or that is capable of being used, in navigation by water, however propelled or moved, and includes an air-cushion vehicle, a barge, a lighter, a submersible, a ferry in chains and a wing-in-ground effect craft.
- (2) Despite subsection (1), none of the following is a ***vessel***:
  - (a) an aircraft;
  - (b) a thing that is a facility for the purposes of Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth.

- (3) Despite subsections (1) and (2), the regulations may provide as follows:
- (a) that a specified thing, or a thing included in a specified class, is a vessel;
  - (b) that a specified thing, or a thing included in a specified class, is not a vessel.

## **Part 2—The National Marine Safety Regulator**

### **9 The National Marine Safety Regulator**

The Australian Maritime Safety Authority is the *National Marine Safety Regulator* (referred to in this Act as the *National Regulator*).

Note: The Australian Maritime Safety Authority is established by the Australian Maritime Safety Authority Act 1990 of the Commonwealth. Section 10 of that Act sets out the general powers of the Authority.

### **10 Functions of the National Regulator**

The National Regulator has the following functions:

- (a) to make and maintain Marine Orders made under section 163;
- (b) to develop and maintain national standards, guidelines and codes of practice relating to marine safety;
- (c) to issue unique identifiers and certificates for the purposes of this Law and perform other functions in relation to such identifiers and certificates;
- (d) to accredit persons and approve training organisations for the purposes of this Law;
- (e) to undertake investigation, monitoring and enforcement activities under or for the purposes of this Law;
- (f) to consult appropriate authorities of the States and Territories, and other persons, associations and organisations, on matters related to the activities of the National Regulator;
- (g) to collect and distribute information, and provide advice, to:
  - (i) the Commonwealth Minister; and
  - (ii) the States and Territories; and

- (iii) the public;  
on matters related to the activities of the National Regulator and the operation of this Law;
- (h) to develop or commission education programs relating to marine safety;
- (i) to collect, analyse and disseminate data relating to marine safety;
- (j) such other functions as are conferred on the National Regulator by this Law or any other law (including a law of the Commonwealth, a State or the Northern Territory);
- (k) to perform functions incidental to any of the previously described functions.

## 11 Delegation

- (1) The National Regulator may, by writing, delegate one or more of the National Regulator's powers or functions under this Law to one or more of the following:
  - (a) an officer or employee of an agency of the Commonwealth;
  - (b) an officer or employee of an agency of a State or the Northern Territory.
- (2) A delegate of the National Regulator is subject to the National Regulator's directions in the exercise of delegated powers and the performance of delegated functions.
- (3) A person (the *delegate*) to whom a power or function is delegated under subsection (1) may, by writing, sub-delegate that power or function to another officer or employee (the *sub-delegate*) of the agency of which the delegate is an officer or employee.
- (4) A sub-delegate is subject to the directions of the delegate in the exercise of delegated powers and the performance of delegated functions.

- (5) If the delegate is subject to a direction by the National Regulator in relation to the performance of the function or the exercise of the power sub-delegated under subsection (3), the delegate must give a corresponding direction to the sub-delegate.
- (6) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* of the Commonwealth apply to a sub-delegation in the same way as they apply to a delegation.
- (7) The National Regulator must not delegate a power or function under subsection (1) to an officer or employee of an agency of a State or the Northern Territory without the agreement of the State or the Northern Territory, as the case requires.

## **Part 3—General safety duties relating to domestic commercial vessels**

### **Division 1—Duties of owners**

#### **12 Duty of owners of domestic commercial vessels to ensure safety of vessels, marine safety equipment and operations**

- (1) An owner of a domestic commercial vessel must, so far as reasonably practicable, ensure the safety of:
  - (a) the vessel; and
  - (b) marine safety equipment that relates to the vessel; and
  - (c) the operation of the vessel.
- (2) Without limiting subsection (1), an owner of a domestic commercial vessel contravenes that subsection if:
  - (a) the owner does not provide or maintain the vessel so that the vessel is, so far as reasonably practicable, safe; or
  - (b) the owner does not implement and maintain a safety management system that ensures that the vessel and the operations of the vessel are, so far as reasonably practicable, safe; or
  - (c) the owner does not provide, so far as reasonably practicable, such information, instruction, training or supervision to people on board the vessel as is necessary to ensure their safety.
- (3) Without limiting subsection (1), an owner of a domestic commercial vessel contravenes that subsection if:
  - (a) the owner operates the vessel, or causes or allows the vessel to be operated; and
  - (b) the vessel is an unsafe vessel.
- (4) Without limiting subsection (1), an owner of a domestic commercial vessel contravenes that subsection if the owner prevents or restricts the master of the vessel from making or implementing a decision that, in the

professional opinion of the master, is necessary for the safety of a person or the vessel.

### **13 Offences relating to contraventions of section 12**

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 2 years or 1,800 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 200 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

## **Division 2—Duties of designers, builders, suppliers etc.**

### **14 Duty relating to design, manufacture etc. of domestic commercial vessels**

A person who designs, commissions, constructs, manufactures, supplies, maintains, repairs or modifies a domestic commercial vessel, or marine safety equipment that relates to such a vessel, must:

- (a) ensure, so far as reasonably practicable, that the vessel or equipment is safe if used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified, as the case may be; and
- (b) either:
  - (i) carry out, or arrange the carrying out of, such testing and examination as may be necessary for compliance with paragraph (a); or
  - (ii) ensure that such testing and examination has been carried out; and
- (c) take such action as is necessary to ensure that there will be available, in connection with the use of the vessel or equipment, adequate information about:
  - (i) the use for which the vessel or equipment was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified, as the case may be; and
  - (ii) the results of any testing or examination referred to in paragraph (b); and
  - (iii) any conditions necessary to ensure the vessel or equipment is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, maintained, repaired or modified, as the case may be.



## **15 Offences relating to contraventions of section 14**

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14; and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 2 years or 1,800 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14; and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 200 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14; and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14.

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **Division 3—Duties of masters**

#### **16 Duty of masters of domestic commercial vessels to ensure safety of vessels, marine safety equipment and operations**

- (1) The master of a domestic commercial vessel must, so far as reasonably practicable, ensure the safety of:
  - (a) the vessel; and
  - (b) marine safety equipment that relates to the vessel; and
  - (c) the operation of the vessel.
- (2) Without limiting subsection (1), the master of a domestic commercial vessel contravenes that subsection if the master does not, so far as reasonably practicable, implement and comply with the safety management system for the vessel and the operations of the vessel.
- (3) Without limiting subsection (1), the master of a domestic commercial vessel contravenes that subsection if:
  - (a) the master operates the vessel, or causes or allows the vessel to be operated; and
  - (b) the vessel is an unsafe vessel.
- (4) Without limiting subsection (1), the master of a domestic commercial vessel contravenes that subsection if, when carrying out duties as master or doing anything in relation to the vessel, the master interferes with or misuses anything provided on the vessel in the interests of the safety of the vessel.
- (5) Subsection (1) does not apply if:
  - (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.

**17 Duty of masters of domestic commercial vessels to take reasonable care for safety of persons**

- (1) The master of a domestic commercial vessel must, when carrying out duties as master of the vessel:
  - (a) take reasonable care for his or her own safety; and
  - (b) take reasonable care for the safety of persons who may be affected by his or her acts or omissions.
- (2) The master of a domestic commercial vessel must not unreasonably place the safety of another person at risk when carrying out duties as master of the vessel.
- (3) Subsections (1) and (2) do not apply if:
  - (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.

**18 Offences relating to contraventions of section 16 or 17**

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 2 years or 1,800 penalty units, or both.

- (2) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 200 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 4—Duties of crew**

### **19 Duty of crew of domestic commercial vessels to take reasonable care for safety of persons, etc.**

- (1) A member of the crew of a domestic commercial vessel, when carrying out duties as a member of the crew, must:
  - (a) take reasonable care for his or her own safety; and
  - (b) take reasonable care for the safety of persons who may be affected by his or her acts or omissions; and
  - (c) comply with any reasonable and lawful directions of the master of the vessel or a supervisor.
- (2) A member of the crew of a domestic commercial vessel must not interfere with or misuse anything provided on the vessel in the interests of the safety of the vessel.
- (3) A member of the crew of a domestic commercial vessel must not unreasonably place the safety of another person at risk when carrying out duties as a member of the crew.
- (4) Without limiting subsection (1), a member of the crew of a domestic commercial vessel contravenes that subsection if the member of the crew prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of a person or the vessel.

### **20 Offences relating to contraventions of section 19**

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3); and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 2 years or 1,800 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3); and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 200 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3); and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 5—Duties of passengers**

### **21 Duty of passengers on domestic commercial vessels to take reasonable care for safety of persons, etc.**

- (1) A passenger on board a domestic commercial vessel must:
  - (a) take reasonable care for his or her safety; and
  - (b) comply with any reasonable and lawful directions of the master or a member of the crew of the vessel, if the passenger has been advised that non-compliance may constitute an offence.
- (2) A passenger on board a domestic commercial vessel must not interfere with or misuse anything provided on the vessel in the interests of the safety of the vessel.
- (3) A passenger on board a domestic commercial vessel must not unreasonably place at risk the safety of another person.
- (4) Without limiting subsection (1), a passenger on board a domestic commercial vessel contravenes that subsection if the passenger prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of a person or the vessel.

### **22 Offences relating to contraventions of section 21**

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 21(1), (2) or (3); and
  - (c) the person intends the act or omission to be a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: Imprisonment for 12 months or 200 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 21(1), (2) or (3); and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 160 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 21(1), (2) or (3); and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person or the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 21(1), (2) or (3).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.



## **Division 6—Other duties**

### **23 Duty of persons relating to safety of persons on domestic commercial vessels, etc.**

- (1) A person embarking on, on board or disembarking from a domestic commercial vessel must take reasonable care for his or her own safety.
- (2) Without limiting subsection (1), a person contravenes that subsection if the person prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of the person.
- (3) A person must take reasonable care that his or her acts and omissions do not adversely affect the safety of another person if that other person:
  - (a) is on board a domestic commercial vessel; or
  - (b) is taking an action connected with a domestic commercial vessel.
- (4) Without limiting subsection (3), a person contravenes that subsection if the person prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of another person referred to in that subsection.

### **24 Offences relating to contraventions of section 23**

- (1) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 23(1) or (3); and
  - (c) the person intends the act or omission to be a risk to the safety of a person.

Penalty: Imprisonment for 12 months or 200 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 23(1) or (3); and
  - (c) the person is reckless as to whether the act or omission is a risk to the safety of a person.

Penalty: 160 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 23(1) or (3); and
  - (c) the person is negligent as to whether the act or omission is a risk to the safety of a person.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 23(1) or (3).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **25 Duty of persons in relation to domestic commercial vessels**

- (1) A person must not unreasonably cause, or do an act or omit to do an act that may cause, the loss or destruction of, or serious damage to, a domestic commercial vessel.
- (2) A person must take such actions as are reasonably practicable to prevent the loss or destruction of, or serious damage to, a domestic commercial vessel.
- (3) Without limiting subsection (1), a person contravenes that subsection if the person prevents or restricts the master of the vessel from making or implementing a decision that, in the professional opinion of the master, is necessary for the safety of the vessel.

## **26 Offences relating to contraventions of section 25**

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 25(1) or (2); and
  - (c) the person intends the act or omission to cause the loss or destruction of, or serious damage to, the domestic commercial vessel concerned.

Penalty: Imprisonment for 12 months or 200 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 25(1) or (2); and
  - (c) the person is reckless as to whether the act or omission will cause the loss or destruction of, or serious damage to, the domestic commercial vessel concerned.

Penalty: 160 penalty units.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 25(1) or (2); and
  - (c) the person is negligent as to whether the act or omission will cause the loss or destruction of, or serious damage to, the domestic commercial vessel concerned.

Penalty: 120 penalty units.

- (4) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 25(1) or (2).

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 7—General provisions**

### **27 Determining what is reasonably practicable to ensure safety**

In this Law, *reasonably practicable*, in relation to a duty imposed upon a person to ensure safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring safety, taking into account and weighing up all relevant matters, including:

- (a) the likelihood of the hazard or risk concerned eventuating; and
- (b) the degree of harm that might result from the hazard or risk concerned eventuating; and
- (c) what the person concerned knows, or ought reasonably to know, about:
  - (i) the hazard or the risk concerned; and
  - (ii) ways of eliminating or minimising the hazard or risk concerned; and
- (d) the availability and suitability of ways to eliminate or minimise the hazard or risk concerned; and
- (e) after assessing the extent of the hazard or risk concerned and the available ways of eliminating or minimising the hazard or risk concerned, the cost associated with available ways of eliminating or minimising the hazard or risk concerned, including whether the cost is grossly disproportionate to the hazard or risk concerned.

### **28 Functions and powers of marine safety inspectors not affected**

To avoid doubt, subsections 21(4), 23(2) and (4) and 25(3) do not affect the performance of a function or the exercise of a power under this Law by a marine safety inspector.

**29 Requirements imposed by this Part do not limit one  
another**

The requirements imposed by this Part do not limit one  
another.

## **Part 4—Vessel identifiers and certificates for vessels and seafarers**

### **Division 1—Unique identifiers**

#### **30 Person may apply for unique identifier**

- (1) A person may apply to the National Regulator for a unique identifier for a domestic commercial vessel.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

Note: Regulations could provide for the application to be made in conjunction with an application for a certificate (for example, a certificate of operation).

#### **31 Issue of unique identifier**

- (1) The National Regulator must, by written instrument, issue a unique identifier for a domestic commercial vessel if:
  - (a) an application for the unique identifier has been made under section 30; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the unique identifier.
- (2) Without limiting the criteria that may be prescribed, the regulations are to include criteria relating to the identification of the vessel.
- (3) A unique identifier comes into force on the day specified in the written instrument or, if no day is so specified, on the day on which it is issued.

**32 Offence—operating etc. a vessel without a unique identifier (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the owner:
    - (i) operates the vessel, or causes or permits the vessel to be operated; or
    - (ii) causes or permits the vessel to be in navigable waters; and
  - (b) a unique identifier is not in force for the vessel; and
  - (c) the vessel is not exempt from the requirement to have a unique identifier (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**33 Offence—operating etc. a vessel without a unique identifier (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the master:
    - (i) operates the vessel, or causes or permits the vessel to be operated; or
    - (ii) causes or permits the vessel to be in navigable waters; and
  - (b) a unique identifier is not in force for the vessel; and
  - (c) the vessel is not exempt from the requirement to have a unique identifier (see section 143).

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **34 Offence—display etc. of a unique identifier (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the owner:
    - (i) operates the vessel, or causes or permits the vessel to be operated; or
    - (ii) causes or permits the vessel to be in navigable waters; and
  - (b) a unique identifier is not displayed on the vessel in accordance with the regulations.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **35 Offence—display etc. of unique identifier (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the master:
    - (i) operates the vessel, or causes or permits the vessel to be operated; or
    - (ii) causes or permits the vessel to be in navigable waters; and
  - (b) a unique identifier is not displayed on the vessel in accordance with the regulations.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.



- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **36 Offence—removal or alteration of a unique identifier**

- (1) A person commits an offence if:
- (a) the person removes or alters a unique identifier that is displayed on a domestic commercial vessel; and
  - (b) the removal or alteration is not permitted by the regulations.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 2—Certificates of survey**

### **37 Person may apply for a certificate of survey**

- (1) A person may apply to the National Regulator for a certificate of survey for a domestic commercial vessel.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

### **38 Issue of certificate of survey**

- (1) The National Regulator must issue a certificate of survey for a domestic commercial vessel if:
  - (a) an application for the certificate has been made under section 37; and
  - (b) the National Regulator is satisfied that the vessel has been surveyed in accordance with the regulations; and
  - (c) the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.
- (2) Without limiting the criteria that may be prescribed, the regulations are to include criteria relating to:
  - (a) the technical specifications that the vessel must satisfy; and
  - (b) the standards prescribed as mentioned in section 159 that the vessel must satisfy.
- (3) A certificate of survey is subject to:
  - (a) the conditions (if any) prescribed by the regulations; and
  - (b) the conditions (if any) imposed by the National Regulator.
- (4) Conditions prescribed by the regulations or imposed by the National Regulator may include, but are not limited to, conditions relating to:

- (a) the frequency with which a vessel must be surveyed; and
  - (b) compliance with standards prescribed as mentioned in section 159.
- (5) A certificate of survey:
  - (a) comes into force on the day specified in the certificate, or, if no day is so specified, on the day on which it is issued; and
  - (b) subject to subsection (6), remains in force until the day specified in the certificate, unless it is revoked earlier.
- (6) A certificate of survey is not in force at any time when it is suspended.

### **39 Person may apply for variation, suspension or revocation of a certificate of survey**

- (1) A person may apply to the National Regulator for a variation, suspension or revocation of a certificate of survey for a domestic commercial vessel.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

### **40 Variation of certificate of survey**

- (1) The National Regulator must vary a certificate of survey if:
  - (a) an application for variation of the certificate has been made under section 39; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the variation are met.
- (2) The National Regulator must vary a certificate of survey on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met.

- (3) Without limiting subsections (1) and (2), the National Regulator may vary a certificate of survey to impose a condition on the certificate or to vary or revoke such a condition.

#### **41 Suspension of certificate of survey**

- (1) The National Regulator must suspend a certificate of survey if:
  - (a) an application for suspension of the certificate has been made under section 39; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the suspension are met.
- (2) The National Regulator must suspend a certificate of survey on the National Regulator's initiative if the National Regulator is satisfied that the suspension is necessary:
  - (a) for the purpose of:
    - (i) protecting human life; or
    - (ii) securing the safe navigation of vessels; or
    - (iii) dealing with an emergency involving a serious threat to the environment; or
  - (b) for another purpose prescribed by the regulations.
- (3) A suspension:
  - (a) comes into force on the day specified by the National Regulator in writing or, if no day is so specified, on the day the holder of the certificate is notified in writing of the suspension; and
  - (b) remains in force until:
    - (i) the end of the period specified in writing by the National Regulator, which must not exceed the prescribed period; or
    - (ii) if no period is specified—the end of the prescribed period;unless it is revoked earlier.
- (4) A period referred to in subsection (3)(b)(i) may be specified by reference to the fulfilment of a requirement or condition specified by the Regulator.

## **42 Revocation of certificate of survey**

- (1) The National Regulator must revoke a certificate of survey if:
  - (a) an application for revocation of the certificate has been made under section 39; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to revocation on application are met.
- (2) The National Regulator must revoke a certificate of survey on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed by the regulations in relation to revocation on the initiative of the National Regulator are met.

## **43 Offence—operating etc. a vessel without a certificate of survey (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
  - (a) the owner operates the vessel, or causes or permits the vessel to be operated; and
  - (b) a certificate of survey is not in force for the vessel; and
  - (c) the vessel is not exempt from survey (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **44 Offence—operating etc. a vessel without a certificate of survey (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
  - (a) the master operates the vessel, or causes or permits the vessel to be operated; and
  - (b) a certificate of survey is not in force for the vessel; and

- (c) the vessel is not exempt from survey (see section 143).

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.
- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **45 Offence—breach of a condition of a certificate of survey (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
  - (a) the owner operates the vessel, or causes or permits the vessel to be operated; and
  - (b) the operation of the vessel is in breach of a condition of the certificate of survey of the vessel.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **46 Offence—breach of a condition of a certificate of survey (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
  - (a) the master operates the vessel, or causes or permits the vessel to be operated; and
  - (b) the operation of the vessel is in breach of a condition of the certificate of survey of the vessel.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.
- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 3—Certificates of operation**

### **47 Person may apply for a certificate of operation**

- (1) A person may apply to the National Regulator for a certificate of operation for one or more domestic commercial vessels.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).
- (3) If the application is for more than one domestic commercial vessel, each vessel must be separately identified in the application.

### **48 Issue of certificate of operation**

- (1) The National Regulator must issue a certificate of operation for one or more domestic commercial vessels if:
  - (a) an application for the certificate has been made under section 47; and
  - (b) the National Regulator is satisfied that the applicant has demonstrated appropriate competence and capacity in relation to the safe operation of the vessel; and
  - (c) the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.
- (2) Despite subsection (1), the National Regulator may refuse to issue a certificate of operation for one or more domestic commercial vessels if the National Regulator is satisfied that the applicant is not a fit and proper person to hold the certificate.
- (3) Without limiting the criteria that may be prescribed, the regulations are to include criteria relating to the safe operation of vessels.



- (4) A certificate of operation is subject to:
  - (a) the conditions (if any) prescribed by the regulations; and
  - (b) the conditions (if any) imposed by the National Regulator.
- (5) Conditions prescribed by the regulations or imposed by the National Regulator on a certificate of operation may include, but are not limited to, conditions relating to the following for each vessel to which the certificate relates:
  - (a) the number of crew required to be on board while the relevant vessel or vessels are being operated;
  - (b) qualifications of the master and crew;
  - (c) the number of people that may be on board;
  - (d) the condition of specified physical parts of the relevant vessel or vessels;
  - (e) safety management systems;
  - (f) limitations on use by reference to geographical and meteorological factors and time of day;
  - (g) operating hours;
  - (h) compliance with standards prescribed as mentioned in section 159.
- (6) A certificate of operation:
  - (a) comes into force on the day specified in the certificate, or, if no day is so specified, on the day on which it is issued; and
  - (b) subject to subsection (7), remains in force until the day specified in the certificate, unless it is revoked earlier.
- (7) A certificate of operation is not in force at any time when it is suspended.

#### **49 Person may apply for variation, suspension or revocation of a certificate of operation**

- (1) A person may apply to the National Regulator for a variation, suspension or revocation of a certificate of operation.

- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

## **50 Variation of certificate of operation**

- (1) The National Regulator must vary a certificate of operation if:
  - (a) an application for variation of the certificate has been made under section 49; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the variation are met.
- (2) The National Regulator must vary a certificate of operation on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met.
- (3) Without limiting subsections (1) and (2), the National Regulator may vary a certificate of operation to impose a condition on the certificate or to vary or revoke such a condition.

## **51 Suspension of certificate of operation**

- (1) The National Regulator must suspend a certificate of operation if:
  - (a) an application for suspension of the certificate has been made under section 49; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the suspension are met.
- (2) The National Regulator must suspend a certificate of operation on the National Regulator's initiative if the National Regulator is satisfied that the suspension is necessary:

- (a) for the purpose of:
    - (i) protecting human life; or
    - (ii) securing the safe navigation of vessels; or
    - (iii) dealing with an emergency involving a serious threat to the environment; or
  - (b) for another purpose prescribed by the regulations.
- (3) A suspension:
- (a) comes into force on the day specified by the National Regulator in writing or, if no day is so specified, on the day the holder of the certificate is notified in writing of the suspension; and
  - (b) remains in force until:
    - (i) the end of the period specified in writing by the National Regulator, which must not exceed the prescribed period; or
    - (ii) if no period is specified—the end of the prescribed period;unless it is revoked earlier.
- (4) A period referred to in subparagraph (3)(b)(i) may be described by reference to the fulfilment of a requirement or condition specified by the Regulator.

## **52 Revocation of certificate of operation**

- (1) The National Regulator must revoke a certificate of operation if:
  - (a) an application for revocation of the certificate has been made under section 49; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to revocation on application are met.
- (2) The National Regulator must revoke a certificate of operation on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed by the regulations in relation to revocation on the initiative of the National Regulator are met.

- (3) Without limiting subsections (1) and (2), the National Regulator may revoke a certificate of operation if the National Regulator is satisfied that the holder of the certificate is not a fit and proper person to hold the certificate.

**53 Offence—operating etc. a vessel without a certificate of operation (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the owner operates the vessel, or causes or permits the vessel to be operated by another person; and
  - (b) the operation of the vessel is not authorised by a certificate of operation in force for the vessel; and
  - (c) the vessel is not exempt from the requirement to have a certificate of operation (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**54 Offence—operating etc. a vessel without a certificate of operation (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the master operates the vessel, or causes or permits the vessel to be operated by another person; and
  - (b) the operation of the vessel is not authorised by a certificate of operation in force for the vessel; and
  - (c) the vessel is not exempt from the requirement to have a certificate of operation (see section 143).

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **55 Offence—breach of a condition of a certificate of operation (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the owner operates the vessel, or causes or permits the vessel to be operated; and
  - (b) the operation of the vessel is in breach of a condition of the certificate of operation for the vessel.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **56 Offence—breach of a condition of a certificate of operation (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the master operates the vessel, or causes or permits the vessel to be operated; and
  - (b) the operation of the vessel is in breach of a condition of the certificate of operation for the vessel.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the vessel is a hire and drive vessel being used wholly for recreational purposes; and
  - (b) the master of the vessel is a hirer of the vessel.
- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**57 Obligation to notify National Regulator of certain matters**

- (1) The holder of a certificate of operation for a domestic commercial vessel commits an offence if:
- (a) the vessel is sold, modified, sunk or scrapped; and
  - (b) the holder does not notify the National Regulator within the prescribed period of the sale, modification, sinking or scrapping of the vessel.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 4—Certificates of competency**

### **58 Regulations may provide for certificate of competency**

- (1) The regulations may make provision in relation to certificates of competency.
- (2) The regulations may require that an individual hold a certificate of competency of a particular kind in order to undertake particular duties, or perform particular functions, in the person's capacity as the master or a member of the crew of a domestic commercial vessel.
- (3) The regulations may provide for different classes of certificates of competency.

### **59 Individual may apply for a certificate of competency**

- (1) An individual may apply to the National Regulator for a certificate of competency.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

### **60 Issue of certificate of competency**

- (1) The National Regulator must issue a certificate of competency to a person if:
  - (a) the person has made an application for the certificate under section 59; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.
- (2) Despite subsection (1), the National Regulator may refuse to issue a certificate of competency to a person if the National Regulator is satisfied that the applicant is not a fit and proper person to hold the certificate.

- (3) Without limiting the criteria that may be prescribed, the regulations:
  - (a) are to include criteria required to be satisfied for a particular certificate of competency to be issued to a person; and
  - (b) may include criteria relating to tests, including medical tests, and assessments of experience and competence.
- (4) A certificate of competency is subject to:
  - (a) the conditions (if any) prescribed by the regulations; and
  - (b) the conditions (if any) imposed by the National Regulator.
- (5) Conditions prescribed by the regulations or imposed by the National Regulator may include, but are not limited to:
  - (a) conditions relating to tests, including medical tests, and assessments of experience and competence, that the holder of the certificate must take in order to retain the certificate; and
  - (b) limitations relating to the types or classes of domestic commercial vessels that the holder of the certificate is authorised to operate; and
  - (c) the places and kinds of waters in which, and periods during which, the holder of the certificate is authorised to operate domestic commercial vessels.
- (6) A certificate of competency:
  - (a) comes into force on the day specified in the certificate or, if no day is specified, the day on which it is issued; and
  - (b) subject to subsection (7), remains in force until the day specified in the certificate, unless it is revoked earlier.
- (7) A certificate of competency is not in force at any time when it is suspended.



## **61 Person may apply for variation, suspension or revocation of a certificate of competency**

- (1) A person may apply to the National Regulator for a variation, suspension or revocation of a certificate of competency held by the person.
- (2) The application must be in accordance with the regulations and must be accompanied by the fee prescribed by the regulations (if any).

## **62 Variation of certificate of competency**

- (1) The National Regulator must vary a certificate of competency if:
  - (a) an application for variation of the certificate has been made under section 61; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the variation are met.
- (2) The National Regulator must vary a certificate of competency on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met.
- (3) Without limiting subsections (1) and (2), the National Regulator may vary a certificate of competency to impose a condition on the certificate or to vary or revoke such a condition.

## **63 Suspension of certificate of competency**

- (1) The National Regulator must suspend a certificate of competency if:
  - (a) an application for suspension of the certificate has been made under section 61; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to the suspension are met.

- (2) The National Regulator must suspend a certificate of competency on the National Regulator's initiative if the National Regulator is satisfied that the suspension is necessary:
  - (a) for the purpose of:
    - (i) protecting human life; or
    - (ii) securing the safe navigation of vessels; or
    - (iii) dealing with an emergency involving a serious threat to the environment; or
  - (b) for another purpose prescribed by the regulations.
- (3) A suspension:
  - (a) comes into force on the day specified by the National Regulator in writing or, if no day is so specified, on the day the holder of the certificate is notified in writing of the suspension; and
  - (b) remains in force until:
    - (i) the end of the period specified in writing by the National Regulator, which must not exceed the prescribed period; or
    - (ii) if no period is specified—the end of the prescribed period;unless it is revoked earlier.
- (4) A period referred to in subparagraph (3)(b)(i) may be described by reference to the fulfilment of a requirement or condition specified by the Regulator.

## **64 Revocation of certificate of competency**

- (1) The National Regulator must revoke a certificate of competency if:
  - (a) an application for revocation of the certificate has been made under section 61; and
  - (b) the National Regulator is satisfied that the criteria prescribed by the regulations in relation to revocation on application are met.
- (2) The National Regulator must revoke a certificate of competency on the National Regulator's initiative if the National Regulator is satisfied that the criteria prescribed

by the regulations in relation to revocation on the initiative of the National Regulator are met.

- (3) Without limiting subsections (1) and (2), the National Regulator may revoke a certificate of competency if the National Regulator is satisfied that the holder of the certificate is not a fit and proper person to hold the certificate.

**65 Offence—owner causing etc. performance of duties or functions without a certificate of competency**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the owner causes or permits another person to perform duties or functions in relation to the vessel; and
  - (b) the regulations require the other person to hold a certificate of competency of a particular kind in order to perform those duties or functions; and
  - (c) the other person does not hold a certificate of competency of that kind; and
  - (d) the other person is not exempt from the requirement to hold a certificate of competency of that kind (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**66 Offence—person performing duties or functions without a certificate of competency**

- (1) A person commits an offence if:
- (a) the person performs duties or functions in relation to a domestic commercial vessel; and
  - (b) the regulations require the person to hold a certificate of competency of a particular kind in order to perform those duties or functions; and

- (c) the person does not hold a certificate of competency of that kind; and
- (d) the person is not exempt from the requirement to hold a certificate of competency of that kind (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **67 Offence—master causing etc. performance of duties or functions without a certificate of competency**

- (1) The master of a domestic commercial vessel commits an offence if:
  - (a) the master causes or permits another person to perform duties or functions in relation to the vessel; and
  - (b) the regulations require the other person to hold a certificate of competency of a particular kind in order to perform those duties or functions; and
  - (c) the other person does not hold a certificate of competency of that kind; and
  - (d) the other person is not exempt from the requirement to hold a certificate of competency of that kind (see section 143).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **68 Offence—owner causing etc. breach of a condition of a certificate of competency**

- (1) The owner of a domestic commercial vessel commits an offence if:
  - (a) the owner causes or permits another person to perform duties or functions in relation to the vessel; and

- (b) the performance of the duties or functions is in breach of a condition of a certificate of competency held by the other person.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **69 Offence—breach of a condition of a certificate of competency by any person**

- (1) A person commits an offence if:
  - (a) the person performs duties or functions in relation to a domestic commercial vessel; and
  - (b) the performance of the duties or functions is in breach of a condition of a certificate of competency held by the person.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **70 Offence—master causing etc. breach of a condition of a certificate of competency**

- (1) The master of a domestic commercial vessel commits an offence if:
  - (a) the master causes or permits another person to perform duties or functions in relation to the vessel; and
  - (b) the performance of the duties or functions is in breach of a condition of a certificate of competency held by the other person.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 5—General matters relating to unique identifiers and certificates**

### **71 National Regulator may require information**

- (1) The National Regulator may require a person to give further information in relation to an application by the person for a certificate or a unique identifier.
- (2) The National Regulator may require information to be given under this section at any time before the National Regulator decides the application, whether before or after the National Regulator has begun to consider the application.
- (3) If the National Regulator requires information to be given under this section in relation to an application, the National Regulator may decline to consider or further consider the application until the information is provided.

### **72 National Regulator must give a show cause notice before varying, suspending or revoking a certificate**

- (1) The National Regulator must, before varying or revoking a certificate:
  - (a) give the holder of the certificate notice in writing inviting the holder to show cause, within a reasonable period specified in the notice, why the variation should not be made or the certificate should not be revoked; and
  - (b) consider any representations the holder makes to the National Regulator within that period.
- (2) The National Regulator must, before suspending a certificate in accordance with section 41(2)(b), 51(2)(b) or 63(2)(b):
  - (a) give the holder of the certificate notice in writing inviting the holder to show cause, within a reasonable period specified in the notice, why the certificate should not be suspended; and
  - (b) consider any representations the holder makes to the National Regulator within that period.

- (3) The National Regulator is not required to give a notice under subsection (1) or (2) before varying, suspending or revoking a certificate on application made by the holder of the certificate.

### **73 National Regulator may recognise certificates**

- (1) The National Regulator may, by written instrument, recognise a certificate, or a class of certificates, issued for a vessel or a person under a law of the Commonwealth, a State or a Territory, or a law of a foreign country, if the National Regulator is satisfied:
  - (a) that the certificate is the equivalent of, or that it is otherwise appropriate to recognise the certificate as the equivalent of, a prescribed certificate; or
  - (b) that the class of certificates is the equivalent of, or that it is otherwise appropriate to recognise the class of certificates as the equivalent of, a prescribed class of certificates.
- (2) At a time when a certificate in force for a vessel or a person is recognised under this section, the prescribed certificate is taken to be in force for the vessel or the person.
- (3) The National Regulator may specify conditions to which the recognition of the certificate is subject.
- (4) A recognition of a certificate ceases to have effect if a condition to which its recognition is subject is contravened.
- (5) The National Regulator may revoke a recognition of a certificate in the circumstances prescribed by the regulations.
- (6) An instrument made under subsection (1) is not a legislative instrument.

#### **74 Fit and proper person**

- (1) In determining whether a person is a fit and proper person for the purposes of deciding whether to issue or revoke a certificate, the National Regulator may have regard only to:
  - (a) any conviction of the person for an offence against this Law; and
  - (b) any conviction of the person for an offence against a law of the Commonwealth, a State or a Territory that is relevant for the purposes of deciding whether the person is suitable to hold the certificate; and
  - (c) any other matter prescribed by the regulations.
- (2) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* of the Commonwealth (which includes provisions that, in certain circumstances, relieve persons of the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

#### **75 Regulations may provide for matters relating to certificates and unique identifiers**

The regulations may provide for matters in relation to certificates and unique identifiers.

#### **76 Regulations may provide for matters relating to applications for certificates and unique identifiers**

- (1) Without limiting section 75, the regulations may prescribe the following matters in relation to applications for certificates and unique identifiers:
  - (a) the persons who may make applications;
  - (b) approval of forms for the making of applications;
  - (c) the manner of making applications;
  - (d) information required to be included in applications;
  - (e) documents that must accompany applications;
  - (f) fees connected with applications;
  - (g) withdrawal of applications.



- (2) The regulations may require information included in applications to be verified by statutory declaration.

**77 Regulations may make provision in relation to the issue, variation and revocation of certificates and unique identifiers**

- (1) Without limiting section 75, the regulations may make provision for and in relation to the following:
- (a) criteria that must be satisfied in order for the National Regulator to issue certificates or unique identifiers, or to vary or revoke certificates;
  - (b) the time limits within which applications are to be determined;
  - (c) the information to be included in certificates;
  - (d) the person in whose name certificates are to be issued;
  - (e) conditions to which certificates are subject;
  - (f) conditions that the National Regulator may impose upon certificates;
  - (g) the time at which certificates, variations of certificates, suspensions of certificates and revocations of certificates come into force;
  - (h) the time at which certificates or suspensions cease to be in force;
  - (i) the methods of replacing certificates;
  - (j) registers of certificates and unique identifiers;
  - (k) the criteria to be met for variation of certificates:
    - (i) on application; or
    - (ii) on the initiative of the National Regulator;
  - (l) procedures relating to notification of proposed decisions by the National Regulator.
- (2) The criteria that may be prescribed for the purposes of subsection (1)(a) include, but are not limited to, criteria relating to compliance with standards prescribed as mentioned in section 159.

- (3) The conditions that may be prescribed for the purposes of subsections (1)(e) and (f) include, but are not limited to, conditions relating to compliance with standards prescribed as mentioned in section 159.

#### **78 Regulations may make provision in relation to renewal and transfer of certificates**

Without limiting section 75, the regulations may make provision for and in relation to the following:

- (a) the renewal of certificates;
- (b) the transfer of certificates;
- (c) requiring notification to be given of events involving domestic commercial vessels that have unique identifiers, including, but not limited to, change of ownership.

#### **79 Regulations may require display of certificates**

The regulations may require that a person display a certificate or a unique identifier in the prescribed manner.

#### **80 Regulations may provide for certificate of operation for persons**

- (1) The regulations may provide for certificates of operation to be issued to a person permitting the operation of domestic commercial vessels by the person and other persons.
- (2) Regulations made for the purposes of subsection (1) may provide for certificates of operation to be held in relation to one or more specified vessels (which may be specified by reference to a class and need not be separately specified).

#### **81 Effect of certificate of operation for persons**

A certificate of operation is taken to be in force for a vessel, and to be subject to any conditions imposed under the regulations, to the extent that:

- (a) a certificate of operation has been issued under regulations made for the purposes of section 80; and
- (b) the certificate of operation permits the operation by a person of:
  - (i) the vessel; or
  - (ii) vessels of a class that includes the vessel; and
- (c) the vessel is operated by the person.

## **82 Defeasibility**

A certificate under this Law is issued on the basis that:

- (a) the certificate may be revoked or varied under this Law; and
- (b) the certificate may be revoked or varied (however described) by or under later legislation; and
- (c) no compensation is payable if the certificate is revoked or varied as mentioned in either of the above paragraphs.

## **83 Certificates etc. to be made available**

- (1) A person commits an offence if:
  - (a) the person is the holder of a certificate or other document:
    - (i) required to be held under this Law; or
    - (ii) issued under this Law; and
  - (b) a copy of the certificate or other document is not made available at all reasonable times for examination on request by either of the following:
    - (i) the National Regulator;
    - (ii) a marine safety inspector.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**84 National Regulator may require delivery of revoked certificates**

If a certificate is revoked, the National Regulator may require the certificate to be delivered to the National Regulator in accordance with the regulations.

## **Part 5—Assistance and reporting requirements**

### **85 Obligation to render assistance**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the vessel is in any waters; and
  - (b) the master has reason to believe that one or more persons are in distress on a vessel or in any waters; and
  - (c) the master does not both:
    - (i) cause his or her vessel to proceed as fast as practicable to the assistance of the person or persons; and
    - (ii) inform the person or persons that the master is doing so.

Penalty: Imprisonment for 4 years.

- (2) Subsection (1) does not apply if:
- (a) the master of the domestic commercial vessel is unable to comply with subsection (1)(c); or
  - (b) in the special circumstances of the case, it is unreasonable or unnecessary for the master of the domestic commercial vessel to do so; or
  - (c) the master of the domestic commercial vessel is informed by the person or persons in distress, or by the master of another vessel that has reached the person or persons, that assistance is no longer necessary; or
  - (d) the master of the domestic commercial vessel is informed that another vessel has been requisitioned and is complying with the requisition.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see section 13.3(3) of the *Criminal Code*).

## **86 Obligation to render assistance if requisitioned**

- (1) The master of a vessel that is in distress in any waters may, after consulting so far as possible with the masters of vessels that answer his or her call for assistance, requisition any domestic commercial vessel that the master considers best able to render assistance.
- (2) The master of a domestic commercial vessel commits an offence if:
  - (a) the vessel is requisitioned by the master of another vessel that is in distress in any waters, in accordance with subsection (1); and
  - (b) the master does not cause his or her vessel to proceed as fast as practicable to the assistance of the other vessel.

Penalty: Imprisonment for 10 years.

- (3) Subsection (2) does not apply if:
  - (a) the master of the domestic commercial vessel is unable to comply with subsection (2)(b); or
  - (b) in the special circumstances of the case, it is unreasonable or unnecessary for the master to do so; or
  - (c) the master of the domestic commercial vessel is informed by the master of the vessel in distress, or by the master of another vessel that has reached the vessel in distress, that assistance is no longer necessary; or
  - (d) the master of the domestic commercial vessel is informed that another vessel has been requisitioned and is complying with the requisition.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see section 13.3(3) of the *Criminal Code*).

## **87 Obligation to record requests for assistance**

- (1) The master of a domestic commercial vessel commits an offence if the master:
- (a) is required to keep an official logbook for the vessel; and
  - (b) receives information that a person or persons are in distress on a vessel or in any waters; and
  - (c) does not record in the official logbook:
    - (i) that he or she proceeded to the assistance of the person or persons; or
    - (ii) if he or she did not so proceed—his or her reasons for not so proceeding.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **88 Reporting of marine incidents to National Regulator (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) the vessel is involved in a marine incident that involves:
    - (i) the death of a person; or
    - (ii) serious injury to a person; or
    - (iii) the loss of a vessel; or
    - (iv) the loss of a person from the vessel; or
    - (v) significant damage to a vessel; and
  - (b) neither the owner nor the master of the vessel reports the incident to the National Regulator as soon as reasonably practicable, having regard to the circumstances, after the owner becomes aware of the incident.

Penalty: 60 penalty units.

- (2) The owner of a domestic commercial vessel commits an offence if:
- (a) the vessel is involved in a marine incident; and
  - (b) neither the owner nor the master of the vessel gives a written report of the incident, in the form approved by the National Regulator, to the National Regulator within 72 hours after the owner becomes aware of the incident.

Penalty: 60 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **89 Reporting of marine incidents to National Regulator (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) the vessel is involved in a marine incident that involves:
    - (i) the death of a person; or
    - (ii) serious injury to a person; or
    - (iii) the loss of a vessel; or
    - (iv) the loss of a person from a vessel; or
    - (v) significant damage to a vessel; and
  - (b) neither the master nor the owner of the vessel reports the incident to the National Regulator as soon as reasonably practicable after the master becomes aware of the incident, having regard to the circumstances.

Penalty: 60 penalty units.

- (2) The master of a domestic commercial vessel commits an offence if:
- (a) the vessel is involved in a marine incident; and
  - (b) neither the master nor the owner of the vessel gives a written report of the incident, in the form approved by the National Regulator, to the National



Regulator within 72 hours after the master becomes aware of the incident.

Penalty: 60 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **90 Evidence of marine incidents**

### *Preservation of evidence by persons on board vessel*

- (1) A person commits an offence if:
- (a) a domestic commercial vessel is involved in a marine incident; and
  - (b) the person does not, so far as reasonably practicable, preserve any material that may be relevant to an investigation of the marine incident.

Penalty: 500 penalty units.

### *Vessel owner's duty to ensure preservation of evidence*

- (2) The owner of a domestic commercial vessel commits an offence if:
- (a) the vessel is involved in a marine incident; and
  - (b) the owner does not take all reasonable steps to ensure the preservation of any material that may be relevant to an investigation of the marine incident.

Penalty: 500 penalty units.

## **Part 6—Powers of marine safety inspectors**

### **Division 1—Appointment of marine safety inspectors etc.**

#### **91 Appointment of marine safety inspectors**

- (1) The National Regulator may, in writing, appoint either of the following as a marine safety inspector:
  - (a) an officer or employee of an agency of the Commonwealth;
  - (b) an officer or employee of an agency of a State or Territory.
- (2) A marine safety inspector may exercise all of the powers of a marine safety inspector under this Law, or such of those powers as are specified in the inspector's instrument of appointment.
- (3) The National Regulator must not appoint a person as a marine safety inspector unless the National Regulator is satisfied that the person has suitable qualifications or experience to properly exercise the powers of an inspector.
- (4) The National Regulator must not appoint an officer or employee of an agency of a State or Territory as a marine safety inspector without the agreement of the State or Territory.
- (5) In exercising his or her powers or performing his or her functions as a marine safety inspector, the inspector must comply with any direction of the National Regulator.

#### **92 Identity cards**

- (1) The National Regulator must issue an identity card to a marine safety inspector appointed under section 91.
- (2) The identity card must:
  - (a) be in the form approved by the National Regulator;and

- (b) contain a recent photograph of the marine safety inspector; and
  - (c) state the powers that the inspector may exercise.
- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be a marine safety inspector; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the National Regulator.

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see section 13.3(3) of the *Criminal Code*).

- (6) A marine safety inspector appointed under section 91 must carry his or her identity card at all times when exercising powers and performing functions and duties as an inspector.

### **93 False representation about being a marine safety inspector**

- (1) A person must not make a representation that the person is a marine safety inspector if the person is not a marine safety inspector.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**94 Obstructing or hindering a marine safety inspector**

A person must not obstruct or hinder a marine safety inspector in the exercise of his or her powers under this Law.

Penalty: 500 penalty units.

## **Division 2—Entry, search, seizure, detention and information-gathering powers**

### **Subdivision A—Powers to facilitate boarding with or without consent or warrant**

#### **95 Requirement to facilitate boarding**

- (1) A marine safety inspector may require a person to take reasonable steps to facilitate the boarding of a vessel under this Part.
- (2) A requirement under subsection (1) may be made by any reasonable means.
- (3) The requirement is made whether or not the person in charge of the vessel understands or is aware of the requirement.

#### *Offence—non-compliance with requirement*

- (4) A person commits an offence if:
  - (a) a requirement is made of the person under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 60 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see section 13.3(3) of the *Criminal Code*).

- (6) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **96 Entering certain premises for access to domestic commercial vessel**

- (1) A marine safety inspector may enter any premises that are a structure, building or place, and are not used as a residence, to gain access to a domestic commercial vessel for a purpose referred to in section 97(1).
- (2) Subsection (1) does not authorise a marine safety inspector to enter premises unless:
  - (a) if the inspector has been appointed under section 91—the inspector has shown his or her identity card if required by the occupier; or
  - (b) if the inspector is a member of the Australian Federal Police or of the police force (however described) of a State or a Territory—the inspector is in uniform, or has shown his or her police identification if required by the occupier.
- (3) A marine safety inspector is not required to comply with subsection (2) if he or she believes on reasonable grounds that to do so would endanger a person.
- (4) If:
  - (a) a marine safety inspector does not comply with subsection (2) because of subsection (3); and
  - (b) the occupier of the premises is present at the premises;the inspector must show his or her identity card to the occupier or other person, as soon as practicable after entering the premises.

## **Subdivision B—Powers relating to vessels, exercisable without consent or warrant**

### **97 Boarding a vessel**

- (1) A marine safety inspector may board a vessel for any of the following purposes:
  - (a) to ask questions under section 98;
  - (b) monitoring purposes;

- (c) to issue an improvement notice or prohibition notice to a person;
  - (d) if the regulations referred to in section 138 provide for a marine safety inspector to issue infringement notices, or notices relating to the issue of infringement notices—to issue such a notice;
  - (e) to give a person a notice under section 101;
  - (f) to give a direction under section 109.
- (2) If:
- (a) the inspector has been appointed under section 91; and
  - (b) the master of the vessel requests the inspector to produce identification;
- the inspector must produce his or her identity card.
- (3) If:
- (a) the inspector is a member of the Australian Federal Police or of the police force (however described) of a State or a Territory and is not in uniform; and
  - (b) the master of the vessel requests the inspector to produce identification;
- the inspector must produce his or her police identification.
- (4) If the marine safety inspector fails to produce the identity card or police identification, the inspector must:
- (a) leave the vessel; and
  - (b) not re-board the vessel without producing the identity card or police identification or wearing police uniform.
- (5) A marine safety inspector is not required to comply with subsection (2), (3) or (4) if he or she believes on reasonable grounds that to do so would endanger a person.
- (6) If a marine safety inspector does not comply with subsection (2) or (3) because of subsection (5), the inspector must, as soon as practicable after the request was made, show his or her identity card or police identification to the master.

## **98 Requiring master of a vessel to answer questions about the nature of the vessel**

- (1) A marine safety inspector may require the master of a vessel to:
  - (a) answer questions put by the inspector about the nature or operations of the vessel; and
  - (b) produce any books, records or documents about the nature or operations of the vessel requested by the inspector.
- (2) A person commits an offence if:
  - (a) a requirement is made of the person under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.
- (3) Subsection (2) does not apply if the person has a reasonable excuse.

## **99 Monitoring domestic commercial vessels**

- (1) A marine safety inspector may exercise one or more of the powers (the *vessel monitoring powers*) mentioned in subsection (2) in relation to a domestic commercial vessel for monitoring purposes, whether or not the inspector is on board the vessel (and whether or not the inspector has reasonable grounds for suspecting that there may be evidential material on the vessel).

Note 1: For example, a marine safety inspector could require a person on board a domestic commercial vessel to show him or her the safety equipment on board the vessel, even if the inspector was in another vessel.

Note 2: If the inspector has reasonable grounds for suspecting that there may be evidential material on the vessel, section 105 gives the inspector extra powers relating to that material if he or she boards the vessel with the occupier's consent or under an enforcement warrant. Also, section 100 gives the inspector some powers relating to evidential material found on the vessel by the exercise of the vessel monitoring powers.



- (2) The *vessel monitoring powers* are as follows:
- (a) the power to search the vessel and any thing on the vessel;
  - (b) the power to examine or observe any activity conducted on the vessel;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the vessel;
  - (d) the power to make any still or moving image or any recording of the vessel or any thing on the vessel;
  - (e) the power to inspect any document on the vessel;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the vessel such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the vessel;
  - (h) the power to require a person on the vessel to show, or demonstrate the operation of, machinery or equipment on the vessel;
  - (i) the power to require a person on the vessel to give a marine safety inspector one or more of the following:
    - (i) the person's name;
    - (ii) the person's residential address;
    - (iii) the person's date of birth;
    - (iv) evidence of the person's identity;
  - (j) the powers set out in subsections (3), (4) and (5).

Note: Failure to comply with a requirement is an offence: see section 102.

- (3) The *vessel monitoring powers* include the power to require (by any reasonable means) the master of the vessel to do one or more of the following:
- (a) stop or manoeuvre the vessel;
  - (b) adopt a specified course or speed;
  - (c) maintain a specified course or speed;
  - (d) take the vessel to a specified place.

Note: Failure to comply with a requirement is an offence: see section 102.

- (4) The *vessel monitoring powers* include the power, when on the vessel, to operate electronic equipment on the vessel to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the vessel; and
    - (ii) can be used with the equipment or is associated with it;
- contains information (*data*) that is relevant for monitoring purposes.
- (5) The *vessel monitoring powers* include the following powers exercisable when on or leaving the vessel in relation to data found in the exercise of the power under subsections (1), (2) and (4):
- (a) the power to operate electronic equipment on the vessel to put the data in documentary form and remove the documents so produced from the vessel;
  - (b) the power to operate electronic equipment on the vessel to transfer the data to a disk, tape or other storage device that:
    - (i) is brought onto the vessel for the exercise of the power; or
    - (ii) is on the vessel and the use of which for that purpose has been agreed in writing by the occupier of the vessel;
- and remove the disk, tape or other storage device from the vessel.
- (6) A marine safety inspector may operate electronic equipment as mentioned in subsection (4) or (5) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

## **100 Sampling, securing or seizing things found using vessel monitoring powers**

- (1) This section applies if:
- (a) a thing is found during the exercise of vessel monitoring powers in relation to a domestic commercial vessel; and
  - (b) a marine safety inspector believes on reasonable grounds that:
    - (i) the thing is evidential material; and
    - (ii) any of the powers under this section needs to be exercised without a warrant, either because of serious and urgent circumstances or because it is not practicable to obtain a warrant, in order to prevent concealment, loss or destruction of the evidential material.

Note: For example, it may be necessary to seize evidential material after a marine incident in order to prevent destruction of evidential material relevant to the marine incident.

- (2) The marine safety inspector may take a sample of the thing and remove the sample from the domestic commercial vessel.
- (3) The marine safety inspector may secure the thing for up to 72 hours.

Note: That period may be extended: see section 123.

- (4) The marine safety inspector may seize the thing.
- (5) However, if the thing is equipment, or a disk, tape or other storage device, that has been operated under section 99(4), the marine safety inspector may seize the thing only if:
- (a) it is not practicable to put all the evidential material the thing contains in documentary form as mentioned in section 99(5)(a) or to transfer all that evidential material as mentioned in section 99(5)(b); or

- (b) possession of the equipment or the disk, tape or other storage device by the occupier of the vessel could constitute an offence against a law of the Commonwealth, a State or a Territory.

Note: Division 7 requires marine safety inspectors to deal with seized things in certain ways.

- (6) If the marine safety inspector exercises a power under this section on the basis that he or she believes on reasonable grounds the power needs to be exercised without a warrant because it is not practicable to obtain a warrant, he or she must give the National Regulator a report describing:
  - (a) the exercise of the power; and
  - (b) the grounds for his or her belief.

## **101 Detaining domestic commercial vessels**

- (1) A marine safety inspector may detain a domestic commercial vessel and bring it, or cause it to be brought, to a port, or to another place that he or she considers appropriate, if the inspector reasonably suspects that the vessel is, will be or has been involved in a contravention, either in or outside Australia, of this Law.
- (2) If a marine safety inspector detains a domestic commercial vessel under subsection (1), the inspector must give written notice, within 14 days, to:
  - (a) the person who holds the certificate of operation for the vessel; or
  - (b) if no such person is able to be located—the person who had possession or control of the vessel immediately before it was detained.
- (3) If the marine safety inspector cannot conveniently give the notice in person, the inspector may give the notice by fixing the notice to a prominent part of the vessel.
- (4) The notice must:
  - (a) identify the vessel; and
  - (b) state that the vessel has been detained; and

- (c) specify the reason for this; and
  - (d) specify contact details of a marine safety inspector who can provide further information; and
  - (e) include information about the return of the vessel.
- (5) The regulations may make provision for and in relation to the return of detained vessels, including:
- (a) the steps that must be taken to return detained vessels; and
  - (b) the persons to whom detained vessels are to be returned.

Note: Division 7 deals with costs of detention and disposal of vessels that cannot be returned.

- (6) A person commits an offence if:
- (a) the person operates a vessel, or causes or permits the operation of a vessel, that has been detained under subsection (1); and
  - (b) the vessel has not been released from detention; and
  - (c) a marine safety inspector has not consented to the operation of the vessel by the person.

Penalty: 120 penalty units.

## **102 Offence—not complying with requirement made under section 99**

- (1) A person commits an offence if:
- (a) a requirement is made of the person:
    - (i) under section 99(2)(h) (to show, or demonstrate the operation of, machinery or equipment on a domestic commercial vessel); or
    - (ii) under section 99(2)(i) (to give a marine safety inspector the person's name, the person's residential address, the person's date of birth or evidence of the person's identity); or
    - (iii) under section 99(3) (to stop or manoeuvre a vessel, adopt or maintain a specified course or speed or take a vessel to a specified place); and

(b) the person fails to comply with the requirement.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see section 13.3(3) of the *Criminal Code*).

(3) A person commits an offence if:

- (a) a requirement is made of the person under section 99(2)(i) to give a marine safety inspector the person's name, the person's residential address, the person's date of birth or evidence of the person's identity; and
- (b) the person gives a name, address, date or evidence of the person's identity; and
- (c) the name, address, date or evidence is false or misleading in a material particular.

Penalty: 60 penalty units.

(4) An offence against subsection (1) or (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Subdivision C—Powers relating to any premises, exercisable with consent or warrant**

### **103 Entering premises with consent or under warrant**

- (1) A marine safety inspector may enter any premises for monitoring purposes.
- (2) A marine safety inspector may enter any premises if he or she has reasonable grounds for suspecting that there may be evidential material on the premises.

- (3) Despite subsections (1) and (2), a marine safety inspector is not authorised to enter the premises unless:
- (a) the occupier of the premises has consented to the entry, and:
    - (i) if the inspector has been appointed under section 91—the inspector has shown his or her identity card if required by the occupier; or
    - (ii) if the inspector is a member of the Australian Federal Police or of the police force (however described) of a State or a Territory—the inspector is in uniform, or has shown his or her police identification if required by the occupier; or
  - (b) the entry is made under a warrant.

Note 1: This does not limit a marine safety inspector's power to enter premises under section 96 or 97: see section 108.

Note 2: Section 115 contains rules about obtaining consent and leaving premises if consent is withdrawn.

Note 3: Sections 116, 117, 118, 119 and 120 contain rules relevant to entry under a warrant.

## 104 Monitoring premises

- (1) A marine safety inspector may exercise one or more of the powers (the ***general monitoring powers***) mentioned in subsection (2) in relation to premises for monitoring purposes (whether or not the inspector has reasonable grounds for suspecting that there may be evidential material on the premises).

Note: If the inspector has reasonable grounds for suspecting that there may be evidential material on the premises, section 105 gives the inspector extra powers relating to that material if he or she enters the premises with the occupier's consent or under an enforcement warrant.

- (2) The ***general monitoring powers*** are as follows:
- (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine or observe any activity conducted on the premises;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;

- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
  - (e) the power to inspect any document on the premises;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  - (h) the powers set out in subsections (3), (4), (6) and (7).
- (3) The ***general monitoring powers*** include the power to operate electronic equipment on the premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;
- contains information (***data***) that is relevant for monitoring purposes.
- (4) The ***general monitoring powers*** include the following powers exercisable when on or leaving premises in relation to data found in the exercise of the power under subsections (1), (2) and (3):
- (a) the power to operate electronic equipment on the premises to put the data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or



(ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

- (5) A marine safety inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (6) The ***general monitoring powers*** include the power to secure a thing on premises for up to 72 hours if:
- (a) the thing is found during the exercise of general monitoring powers on the premises; and
  - (b) a marine safety inspector believes on reasonable grounds that:
    - (i) the thing affords evidence of the commission of an offence against this Law; and
    - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (iii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

Note: The period for which the thing is secured may be extended: see section 123.

## 105 Enforcement powers

- (1) If a marine safety inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may exercise the following powers (the ***enforcement powers***) in relation to the premises:
- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;

- (b) if entry to the premises is under an enforcement warrant:
  - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
  - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
- (c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (f) the power to require a person on the premises to demonstrate the operation of machinery or equipment on the premises;
- (g) the powers set out in subsections (2), (3) and (6).

Note: Division 7 requires marine safety inspectors to deal with seized things in certain ways.

- (2) The ***enforcement powers*** include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;contains evidential material referred to in subsection (1)(a) or (b).
- (3) The ***enforcement powers*** include the following powers exercisable when on or leaving premises in relation to evidential material described in subsection (2) found in the exercise of the power under that subsection:

- (a) if entry to the premises is under an enforcement warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed, in writing, by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) A marine safety inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (5) A marine safety inspector may seize equipment or a disk, tape or other storage device as mentioned in subsection (3)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in subsection (3)(b) or to transfer the evidential material as mentioned in subsection (3)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth, a State or a Territory.

(6) If:

- (a) entry to the premises is under an enforcement warrant; and
- (b) the marine safety inspector, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the inspector believes on reasonable grounds to be other evidential material; and
- (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

then the *enforcement powers* include seizing the thing.

#### **106 Requiring persons on premises entered under warrant to answer questions and produce documents**

- (1) A marine safety inspector who is on or in premises that he or she has entered under a warrant may require anyone on or in the premises to:
  - (a) answer any questions put by the inspector; and
  - (b) produce any books, records or documents requested by the inspector.
- (2) A person commits an offence if:
  - (a) a requirement is made of the person under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see section 13.3(3) of the *Criminal Code*).

#### **107 Using force in executing a warrant**

In executing a warrant, a marine safety inspector may use such force against persons and things as is necessary and reasonable in the circumstances.

### **108 Relationship with Subdivision B**

- (1) This Subdivision does not limit Subdivision B.
- (2) Subdivision B does not prevent this Subdivision from applying to premises that are domestic commercial vessels.

## **Division 3—Other powers**

### **109 Giving directions**

- (1) If a marine safety inspector believes on reasonable grounds that:
- (a) a person is contravening a provision of this Law in respect of a thing; or
  - (b) at least one of the following applies:
    - (i) it is necessary to exercise powers under this section in order to protect the safety of people or to protect the environment;
    - (ii) it is desirable in the public interest for the inspector to exercise powers under this section;

the inspector may give the person a direction requiring the person, within the time specified in the direction, to take such steps in relation to the thing as are reasonable in the circumstances.

Note: For example, a marine safety inspector could give a direction that a person not operate an unsafe vessel.

- (2) The direction must be given in writing, unless the marine safety inspector believes there is an urgent need to protect the safety of people or to protect the environment.
- (3) A person commits an offence if he or she does not take the steps specified in a direction under subsection (1) within the time specified in the direction.

Penalty: 60 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) If the person does not take the steps specified in the direction within the time specified in the direction, the inspector may arrange for those steps to be taken.

- (6) If the National Regulator incurs costs because of arrangements made by the inspector under subsection (5), the person is liable to pay to the National Regulator an amount equal to the costs, and the amount may be recovered by the National Regulator as a debt due to the National Regulator in a court of competent jurisdiction.
- (7) A time specified in a direction under subsection (1) must be reasonable having regard to the circumstances.

### **110 Issuing improvement notices**

- (1) If a marine safety inspector believes on reasonable grounds that a person:
  - (a) is contravening a provision of this Law; or
  - (b) has contravened a provision of this Law and is likely to contravene that provision again;the inspector may issue an improvement notice, in writing, to the person.
- (2) The notice must:
  - (a) specify the contravention of this Law that the marine safety inspector believes is occurring or is likely to occur; and
  - (b) set out the reasons for that belief; and
  - (c) specify a period within which the person is to take the action necessary to prevent any further contravention, or to prevent the likely contravention, as the case may be.
- (3) The period specified in the notice must be reasonable.
- (4) The notice may specify action that the person is to take, or is not to take, during the period specified in the notice.
- (5) Before the end of the specified period, the marine safety inspector may extend that period in writing.
- (6) The person must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

- (7) A person subject to a requirement under subsection (6) commits an offence if an act or omission of the person breaches the requirement.

Penalty: 60 penalty units.

- (8) An offence against subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 111 Issuing prohibition notices

- (1) This section applies if a marine safety inspector believes on reasonable grounds that:
- (a) an activity is occurring in relation to a domestic commercial vessel that involves or will involve a risk to the safety of a person or a serious risk to the environment; or
  - (b) an activity may occur in relation to a domestic commercial vessel that, if it occurs, will involve a risk to the safety of a person or a serious risk to the environment.
- (2) The marine safety inspector may issue a prohibition notice to the responsible person in relation to the domestic commercial vessel. For this purpose, the **responsible person** is:
- (a) the master of the vessel; or
  - (b) if the inspector cannot locate the master:
    - (i) the person who holds the certificate of operation for the vessel; or
    - (ii) if the inspector cannot locate that person—the person who has possession or control of the vessel.
- (3) The notice must:
- (a) specify the activity the marine safety inspector believes involves or will involve the risk to safety or the environment, and set out the reasons for that belief; and



(b) either:

- (i) direct the responsible person to ensure that the activity is not engaged in; or
- (ii) direct the responsible person to ensure that the activity is not engaged in in a specified manner.

Note: For example, a notice could specify that a person not operate an unsafe vessel.

(4) A specified manner may relate to any one or more of the following:

- (a) any vessel, or part of a vessel, in relation to which the activity is not to be engaged in;
- (b) any thing that is not to be used in connection with the activity;
- (c) any procedure that is not to be followed in connection with the activity.

(5) The notice ceases to have effect when a marine safety inspector notifies the responsible person that the inspector is satisfied that the responsible person has taken adequate action to remove the risk to safety or the environment.

(6) The notice may specify action that may be taken to satisfy a marine safety inspector that adequate action has been taken to remove the risk to safety or the environment.

(7) If a marine safety inspector is satisfied that action taken by the responsible person to remove the risk to safety or the environment is not adequate, the inspector must inform the person accordingly.

(8) In making a decision under subsection (7), a marine safety inspector may exercise any of the vessel monitoring powers and general monitoring powers that the inspector considers necessary for the purposes of making the decision.

- (9) A person issued with a notice under subsection (2) commits an offence if an act or omission of the person breaches the notice.

Penalty: 60 penalty units.

- (10) An offence against subsection (9) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 112 Copies of notices to be displayed and distributed

- (1) If a person (the *recipient*) is given an improvement notice under section 110(1) or a prohibition notice under section 111(2) in relation to a vessel:

- (a) the recipient must cause a copy of the notice to be displayed:
  - (i) in a place directed by the marine safety inspector who issued the notice; or
  - (ii) if the marine safety inspector does not give a direction—in a prominent place on or near the vessel; and
- (b) the marine safety inspector who issued the notice must give a copy of the notice to:
  - (i) the master of the vessel; and
  - (ii) the person who holds the certificate of operation for the vessel or, if no such person is able to be located, the person who had possession or control of the vessel immediately before the notice was issued.

- (2) A person required by subsection (1)(a) to display a notice commits an offence if an act or omission of the person contravenes the requirement.

Penalty: 60 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **113 Notices not to be tampered with or removed**

- (1) A person must not:
- (a) tamper with a notice while it is displayed under section 112; or
  - (b) remove a notice that has been displayed before the notice has ceased to have effect.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see section 13.3(3) of the *Criminal Code*).

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 4—Persons assisting marine safety inspectors**

### **114 Persons assisting marine safety inspectors**

- (1) A marine safety inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a *person assisting* the inspector.
- (2) A person assisting the marine safety inspector:
  - (a) may enter the premises; and
  - (b) may exercise powers and perform functions and duties under this Part; and
  - (c) must do so in accordance with a direction given by the inspector to the person assisting.
- (3) In executing a warrant, a person assisting the marine safety inspector may use such force against things as is necessary and reasonable in the circumstances.
- (4) A power exercised by a person assisting the marine safety inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (5) A function or duty performed by a person assisting the marine safety inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.

## **Division 5—Obligations and incidental powers of marine safety inspectors**

### **115 Consent**

- (1) A marine safety inspector must, before obtaining the consent of an occupier of premises for the purposes of section 103(3)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If a marine safety inspector entered premises under section 103 because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

### **116 Announcement before entry under warrant**

- (1) A marine safety inspector must, before entering premises under a warrant:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) if the inspector was appointed under section 91—show his or her identity card to the occupier of the premises if the occupier is present at the premises; and
  - (c) if the inspector is a member of the Australian Federal Police or of the police force (however described) of a State or a Territory and is not in uniform—show his or her police identification to the occupier of the premises if the occupier is present at the premises; and

- (d) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, a marine safety inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) a marine safety inspector does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises is present at the premises;the inspector must, as soon as practicable after entering the premises, show his or her identity card or police identification to the occupier.

#### **117 Marine safety inspector to be in possession of warrant**

If a warrant is being executed in relation to premises, a marine safety inspector executing the warrant must be in possession of the warrant or a copy of the warrant.

#### **118 Details of warrant etc. to be given to occupier**

- If:
- (a) a warrant is being executed in relation to premises; and
  - (b) the occupier of the premises is present at the premises;
- a marine safety inspector executing the warrant must, as soon as practicable:
- (c) make a copy of the warrant available to the occupier (which need not include the signature of the magistrate who issued it); and
  - (d) inform the occupier of the rights and responsibilities of the occupier under Division 6.

### **119 Completing execution of warrant after temporary cessation**

- (1) This section applies if a marine safety inspector, and all persons assisting, who are executing a warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The marine safety inspector, and persons assisting, may complete the execution of the warrant if:
  - (a) the warrant is still in force; and
  - (b) the inspector and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency—for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.
- (3) A marine safety inspector, or person assisting, may apply to a magistrate for an extension of the 12-hour period mentioned in subsection (2)(b)(ii) if:
  - (a) there is an emergency; and
  - (b) the inspector or person assisting believes on reasonable grounds that the inspector and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the marine safety inspector or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.
- (5) A magistrate may extend the period during which the marine safety inspector and persons assisting may be away from the premises if:
  - (a) an application is made under subsection (3); and
  - (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and

- (c) the extension would not result in the period ending after the warrant ceases to be in force.

## **120 Completing execution of warrant stopped by court order**

A marine safety inspector, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

## **121 Expert assistance to operate electronic equipment**

- (1) This section applies to premises to which a warrant relates.
- (2) If a marine safety inspector believes on reasonable grounds that:
  - (a) there is on the premises information (*data*) relevant to the monitoring purposes or determining whether there is evidential material on the premises; and
  - (b) the data may be accessible by operating electronic equipment on the premises; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) if he or she does not take action under this subsection, the data may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment for up to 72 hours, whether by locking it up, placing a guard or other means.

- (3) The marine safety inspector must give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 72 hours.

Note: That period may be extended: see section 123.



## **122 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The National Regulator must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the National Regulator and the owner or user agree on.
- (3) However, if the owner or user and the National Regulator fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) For the purposes of subsection (1):

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

### **123 Extending period for which something is secured**

- (1) If a marine safety inspector believes on reasonable grounds that a thing needs to be secured under section 100(3), 104(6) or 121(2) for more than 72 hours, he or she may apply to a magistrate for an extension of that period.
- (2) The marine safety inspector must give notice to the occupier of the premises on which the thing is secured of the inspector's intention to apply for an extension. The occupier is entitled to be heard in relation to that application.
- (3) The provisions of this Part relating to the issue of warrants apply, with such modifications as are necessary, to the issue of an extension.
- (4) The 72-hour period may be extended more than once.

### **124 Offence—interfering with securing of thing**

A person commits an offence if:

- (a) a marine safety inspector is securing, or has secured, a thing under section 100(3), 104(6) or 121(2); and
- (b) the person interferes with the securing of the thing, or the secured thing; and
- (c) the period for which the thing is secured has not ended.

Penalty: 500 penalty units.

## **Division 6—Occupier’s rights and responsibilities**

### **125 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a warrant is being executed in relation to premises;  
and
  - (b) the occupier of the premises is present at the premises;the occupier is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **126 Occupier to provide marine safety inspector with facilities and assistance**

- (1) The occupier of premises to which a warrant relates must provide:
  - (a) a marine safety inspector executing the warrant;  
and
  - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person subject to subsection (1) commits an offence if the person fails to comply with that subsection.  
  
Penalty: 30 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 7—General provisions relating to seizure and detention**

### **127 Copies of seized things to be provided**

- (1) This section applies if a marine safety inspector seizes one or more of the following from the premises under this Part:
  - (a) a document, film, computer file or other thing that can be readily copied;
  - (b) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises may request the marine safety inspector to give a copy of the thing or the information to the occupier.
- (3) The marine safety inspector must comply with the request as soon as practicable after the seizure.
- (4) However, the marine safety inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier could constitute an offence against a law of the Commonwealth, a State or a Territory.

### **128 Receipts for seized things**

- (1) If a thing is seized under this Part, a marine safety inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

### **129 Return of seized things**

- (1) The marine safety inspector must take reasonable steps to return a thing seized under this Part when the earliest of the following happens:
  - (a) the reason for the thing's seizure no longer exists;
  - (b) it is decided that the thing is not to be used in evidence;

(c) the period of 60 days after the thing's seizure ends.

Note: See subsections (2) and (3) for exceptions to this rule.

*Exceptions*

- (2) Subsection (1):
- (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth; or
    - (ii) is the subject of a dispute as to ownership.
- (3) The marine safety inspector is not required to take reasonable steps to return a thing because of subsection (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 130; or
  - (c) the Commonwealth, the National Regulator or a marine safety inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth, a State or a Territory) to retain, destroy, dispose of or otherwise deal with the thing.

*Return of thing*

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

**130 Magistrate may permit a thing to be retained**

- (1) A marine safety inspector may apply to a magistrate for an order permitting the retention of the thing for a further period if:
- (a) before the end of 60 days after the seizure; or

- (b) before the end of a period previously specified in an order of a magistrate under this section;  
proceedings in respect of which the thing may afford evidence have not been instituted.
- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
  - (a) for the purposes of an investigation in respect of an offence against this Law; or
  - (b) to enable evidence of an offence against this Law to be secured for the purposes of a prosecution;the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).
- (3) Before making the application, the marine safety inspector must:
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

### **131 Costs of detention**

- (1) The National Regulator is liable to pay to the owner of a domestic commercial vessel a reasonable amount of compensation:
  - (a) for the costs of, and incidental to, the detention of the vessel; and
  - (b) for any loss or damage incurred by the owner as a result of the detention of the vessel;if there was no reasonable or probable cause for the detention of the vessel.
- (2) If:
  - (a) a domestic commercial vessel is detained under this Division; and
  - (b) the National Regulator incurs costs in connection with the detention of the vessel; and

(c) the detention was reasonable in the circumstances; the owner of the vessel is liable to pay to the National Regulator compensation of a reasonable amount in respect of the detention of the vessel.

- (3) If the National Regulator and the owner of the vessel do not agree on the amount of compensation payable under subsection (1) or (2), the National Regulator or the owner may institute proceedings in a court of competent jurisdiction for the recovery of such reasonable amount of compensation as the court determines.

### **132 Disposal of seized things and detained vessels**

- (1) The National Regulator may dispose of a thing seized, or a vessel detained, under this Part if:
- (a) the National Regulator has:
    - (i) in the case of a seized thing—taken reasonable steps to return the thing to a person; or
    - (ii) in the case of a detained vessel—taken the steps required by the regulations to return the vessel to a person; and
  - (b) one of the following applies:
    - (i) the National Regulator has been unable to locate the person, despite making reasonable efforts;
    - (ii) the person has refused to take possession of the thing or vessel;
    - (iii) the National Regulator has contacted the person about the return of the thing or vessel, and the person has not refused to take possession of the thing or vessel, but has not taken possession of the thing or vessel within 3 months of the contact.
- (2) The National Regulator may dispose of the thing or vessel in such manner as the National Regulator thinks appropriate.

### **133 Compensation for acquisition of property**

- (1) If the operation of section 132 would result in an acquisition of property from a person otherwise than on just terms, the National Regulator is liable to pay a reasonable amount of compensation to the person.
- (2) If the National Regulator and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the National Regulator of such reasonable amount of compensation as the court determines.



## **Division 8—Warrants**

### **134 Monitoring warrants**

- (1) A marine safety inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more marine safety inspectors should have access to the premises for monitoring purposes.
- (3) However, the magistrate must not issue the warrant unless the marine safety inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise one or more marine safety inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in sections 103, 104, 106 and 107, and Division 5, in relation to the premises; and
  - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

### **135 Enforcement warrants**

- (1) A marine safety inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the warrant unless the marine safety inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) specify the offence or offences to which the warrant relates; and
  - (d) specify the kind of evidential material that is to be searched for under the warrant; and
  - (e) name one or more marine safety inspectors; and
  - (f) authorise the inspector or inspectors so named:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in sections 103, 105, 106 and 107, Division 5 and section 130 in relation to the premises; and
  - (g) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (h) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

### **136 Enforcement warrants by telephone, fax etc.**

- (1) A marine safety inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 135 in relation to premises:
  - (a) in an urgent case; or
  - (b) if the inspector believes, on reasonable grounds, that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) An application under this section must include all information (of the kind mentioned in section 135(2)) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.
- (4) If the magistrate is satisfied:
  - (a) after considering the information; and
  - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 135 if the application had been made under that section.
- (5) If the magistrate completes and signs the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
  - (a) the terms of the warrant; and
  - (b) the day on which, and the time at which, the warrant was signed.
- (6) The marine safety inspector must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form:
  - (a) the name of the magistrate; and

- (b) the day on which, and the time at which, the warrant was signed.
- (7) The marine safety inspector must also, not later than the day after the earlier of the following days:
  - (a) the day on which the warrant ceased to be in force;
  - (b) the day of execution of the warrant;send to the magistrate:
  - (c) the form of warrant completed by the inspector; and
  - (d) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.
- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

### **137 Offence relating to warrants by telephone, fax etc.**

A marine safety inspector commits an offence if:

- (a) the inspector states in a document that purports to be a form of warrant under section 136 the name of a magistrate, unless that magistrate signed the warrant; or
- (b) the inspector states on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or

- (c) the inspector purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:
  - (i) has not been approved by a magistrate under that section; or
  - (ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) the inspector gives to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

## **Part 7—Infringement notices**

### **138 Infringement notices**

- (1) The regulations may make provision for and in relation to enabling a person who is alleged to have committed an offence against this Law to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

## **Part 8—General matters**

### **Division 1—Review of decisions**

#### **139 Reviewable decisions**

The following decisions by the National Regulator are *reviewable decisions*:

- (a) to refuse to issue a certificate under the following:
  - (i) section 38(1);
  - (ii) section 48(1);
  - (iii) section 60(1);
- (b) to refuse to issue a unique identifier under section 31(1);
- (c) to impose a condition on a certificate under the following:
  - (i) section 38(3)(b);
  - (ii) section 48(4)(b);
  - (iii) section 60(3)(b);
- (d) to refuse to vary a certificate under the following:
  - (i) section 40(1);
  - (ii) section 50(1);
  - (iii) section 62(1);
- (e) to vary a certificate under the following:
  - (i) section 40(2);
  - (ii) section 50(2);
  - (iii) section 62(2);
- (f) to refuse to suspend a certificate under the following:
  - (i) section 41(1);
  - (ii) section 51(1);
  - (iii) section 63(1);
- (g) to suspend a certificate under the following:
  - (i) section 41(2);
  - (ii) section 51(2);
  - (iii) section 63(2);

- (h) to refuse to revoke a certificate under the following:
  - (i) section 42(1);
  - (ii) section 52(1);
  - (iii) section 64(1);
- (i) to revoke a certificate under the following:
  - (i) section 42(2);
  - (ii) section 52(2);
  - (iii) section 64(2);
- (j) to refuse to recognise a certificate under section 73(1);
- (k) to specify a condition under section 73(3);
- (l) to give a direction under section 109(1);
- (m) to issue a provisional improvement notice under section 110(1);
- (n) to issue prohibition notice under section 111(1);
- (o) to detain a vessel under section 101(1);
- (p) to refuse to grant an exemption under section 143, other than an exemption granted on the initiative of the National Regulator;
- (q) to impose a condition on an exemption under section 143, other than an exemption granted on the initiative of the National Regulator.

#### **140 Internal review of reviewable decisions**

- (1) The National Regulator must, as soon as practicable after a reviewable decision is made in relation to a person, give a written notice to the person containing:
  - (a) the terms of the decision; and
  - (b) the reasons for the decision; and
  - (c) a statement setting out particulars of the person's right to have the decision reviewed under this section.
- (2) A person to whom a reviewable decision referred to in subsection (1) relates may apply to the National Regulator for review of the decision.



- (3) An application for review must:
  - (a) be in the form approved by the National Regulator;  
and
  - (b) contain the information required by the regulations;  
and
  - (c) be made within 30 days after the day on which the written notice of the decision was given to the applicant, or within such period (if any) as the National Regulator, either before or after the end of the 30-day period, allows.
- (4) The National Regulator must, on receiving an application under subsection (3) for review of a reviewable decision, cause the decision to be reviewed by a person to whom the National Regulator power under this section is delegated, being a person who:
  - (a) was not involved in making the decision; and
  - (b) occupies a position that is senior to that occupied by any person involved in making the decision.
- (5) A person who reviews a reviewable decision under this section may:
  - (a) make a decision affirming, varying or revoking the reviewable decision; and
  - (b) if the person revokes the decision—make such other decision as the person thinks appropriate.
- (6) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

## **141 Applications for AAT review**

Applications may be made to the Administrative Appeals Tribunal for review of a decision under section 140(5).

Note: The *Administrative Appeals Tribunal Act 1975* of the Commonwealth provides for the manner of applying for review, etc.

## **142 Review of decisions made under the regulations**

The regulations may provide for:

- (a) internal review of decisions made under the regulations; and
- (b) the making of applications to the Administrative Appeals Tribunal for review of decisions under the regulations.

## **Division 2—Exemptions**

### **143 Power of exemption**

- (1) The National Regulator may exempt from the application of this Law, or specified provisions of this Law:
  - (a) a specified vessel or class of vessels; or
  - (b) a specified person or class of persons.
- (2) The exemption may be confined to one or both of the following:
  - (a) one or more specified periods;
  - (b) one or more specified operations.
- (3) For the purposes of an exemption for one or more specified periods, of a vessel that is specified or is in a specified class, the periods may be specified as periods for which a specified use is being made of the vessel.
- (4) An exemption may be granted:
  - (a) on application in accordance with the regulations by a person; or
  - (b) on the initiative of the National Regulator.
- (5) An exemption is subject to such conditions (if any) as are specified in the instrument of exemption.
- (6) The National Regulator must not grant an exemption, or impose conditions under subsection (5), unless the National Regulator is satisfied that the exemption concerned, taken together with the conditions to which it is subject, will not jeopardise the safety of a vessel or a person on board a vessel.
- (7) An exemption granted under subsection (1) is not a legislative instrument.

#### **144 Offence of breaching a condition of exemption (owner)**

- (1) The owner of a domestic commercial vessel commits an offence if:
- (a) an exemption under section 143 in relation to the vessel is subject to a condition; and
  - (b) the owner breaches, or causes or permits another person to breach, the condition.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **145 Offence of breaching a condition of exemption (master)**

- (1) The master of a domestic commercial vessel commits an offence if:
- (a) an exemption under section 143 in relation to the vessel is subject to a condition; and
  - (b) the master breaches, or causes or permits another person to breach, the condition.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### **146 Offence of breaching a condition of exemption (all persons)**

- (1) A person commits an offence if:
- (a) an exemption under section 143 in relation to the person is subject to a condition; and
  - (b) the person breaches the condition.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 3—Application of National Law to certain bodies**

### **147 Treatment of partnerships**

- (1) This Law applies to a partnership as if it were a person, but with the changes set out in this section.
  - (2) An obligation that would otherwise be imposed on the partnership by this Law is imposed on each partner instead, but may be discharged by any of the partners.
  - (3) An offence against this Law that would otherwise be committed by the partnership is taken to have been committed by each partner.
  - (4) A partner does not commit an offence because of subsection (3) if the partner:
    - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
    - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.
- Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see section 13.3(3) of the *Criminal Code*).
- (5) For the purposes of this Law, a change in the composition of a partnership does not affect the continuity of the partnership.

### **148 Treatment of unincorporated associations**

- (1) This Law applies to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the association by this Law is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.

- (3) An offence against this Law that would otherwise be committed by the association is taken to have been committed by each member of the association's committee of management.
- (4) A member of the association's committee of management does not commit an offence because of subsection (3) if the member:
  - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
  - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see section 13.3(3) of the *Criminal Code*).

#### **149 Treatment of trusts with multiple trustees**

- (1) If a trust has 2 or more trustees, this Law applies to the trust as if it were a person, but with the changes set out in this section.

Note: A trust may be an owner of a vessel (see the definitions of *entity* and *owner* in section 6).
- (2) An obligation that would otherwise be imposed on the trust by this Law is imposed on each trustee instead, but may be discharged by any of the trustees.
- (3) An offence against this Law that would otherwise be committed by the trust is taken to have been committed by each trustee.
- (4) A trustee does not commit an offence because of subsection (3) if the trustee:
  - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or

- (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see section 13.3(3) of the *Criminal Code*).

## **Division 4—Fees**

### **150 Charging of fees by the National Regulator**

- (1) The National Regulator may charge such fees as are prescribed by the regulations for things done by the National Regulator under this Law.
- (2) The fee is payable to the National Regulator.
- (3) The fee must not be such as to amount to taxation.
- (4) If the fee is unpaid, it is a debt due to the National Regulator and is recoverable in a court of competent jurisdiction.

### **151 Charging of fees by accredited persons**

- (1) An accredited person who:
  - (a) is not an officer or employee of the Commonwealth, a State or the Northern Territory, or of an agency of the Commonwealth, a State or the Northern Territory; or
  - (b) is such an officer or employee, but does a thing under this Law other than in that capacity;may charge another person the fee agreed between the accredited person and the other person for a thing done by the accredited person under this Law.
- (2) The fee is payable to the accredited person.
- (3) The fee must not be such as to amount to taxation.
- (4) If the fee is unpaid, it is a debt due to the accredited person and is recoverable in a court of competent jurisdiction.



## **Division 5—Disclosure of information**

### **152 Disclosure of information by certain persons to the National Regulator**

Any of the following may disclose to the National Regulator information (including personal information) that may be relevant to the administration of this Law:

- (a) a delegate or sub-delegate of the National Regulator;
- (b) a maritime safety inspector;
- (c) an accredited person;
- (d) an approved training organisation.

Note: Section 11 of the *Australian Maritime Safety Authority Act 1990* of the Commonwealth authorises the National Regulator to disclose information (including personal information).

## **Division 6—Immunity from suit**

### **153 Immunity from suit**

- (1) Criminal or civil proceedings do not lie against:
  - (a) the National Regulator; or
  - (b) a member of the staff of the National Regulator; or
  - (c) a delegate or sub-delegate of the National Regulator; or
  - (d) an agency of which such a delegate or sub-delegate is an employee; or
  - (e) an employee or contractor of such an agency; or
  - (f) a marine safety inspector;because of an act done or omitted to be done in the exercise of any power conferred on the National Regulator or a marine safety inspector by or under this Law.
- (2) Criminal or civil proceedings do not lie against a person because of an act done, or omitted to be done, in compliance with a direction given under this Act.
- (3) Subsection (2) does not apply to the extent to which it is inconsistent with an international agreement to which Australia is a party.
- (4) To avoid doubt, subsection (2) does not apply to proceedings under section 133.

## **Division 7—Matters relating to evidence and proceedings, etc.**

### **154 National Regulator may require certain information**

- (1) This section applies if an offence against this Law (the *relevant offence*) in relation to a domestic commercial vessel is alleged to have been committed by:
  - (a) the master of the vessel; or
  - (b) the owner of the vessel.
- (2) The National Regulator may, within 30 days after the conduct constituting the relevant offence, give a written notice:
  - (a) if the relevant offence is alleged to have been committed by the master of the vessel—to the owner of the vessel, requiring the owner to inform the National Regulator of the name and address of the person who was the master of the vessel at the time of the conduct constituting the relevant offence; or
  - (b) if the relevant offence is alleged to have been committed by the owner of the vessel—to the master of the vessel, requiring the master to inform the National Regulator of the name and address of the person who was the owner of the vessel at the time of the conduct constituting the relevant offence.
- (3) The notice must:
  - (a) specify the relevant offence; and
  - (b) state the effect of section 155.

### **155 Offence not to give information**

- (1) A person commits an offence if:
  - (a) the person is given a notice under section 154(2); and

- (b) the person does not, within 28 days of the giving of the notice, give the information specified in the notice to the National Regulator.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the person satisfies the National Regulator that, at the time of the conduct constituting the relevant offence, the vessel had been stolen or wrongfully taken.
- (3) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 156 Evidentiary certificates

- (1) The National Regulator may issue a written certificate stating:
  - (a) that a unique identifier was issued, on a specified day, in relation to a domestic commercial vessel; or
  - (b) that a specified certificate in relation to a domestic commercial vessel was issued, suspended or revoked on a specified day; or
  - (c) that a specified person was issued, on a specified day, with a specified certificate in relation to a domestic commercial vessel; or
  - (d) that a specified person was, on a specified day, issued with a certificate of competency; or
  - (e) that a specified certificate of competency was suspended or revoked on a specified day; or
  - (f) the conditions to which a specified certificate is, or is not, subject; or
  - (g) that a specified person was issued with an instrument (however described) of accreditation; or
  - (h) that a specified instrument (however described) of accreditation was suspended or revoked on a specified day.
- (2) In any proceedings for an offence under this Law, a certificate under this section is prima facie evidence of the matters in the certificate.

### **157 Burden of proving certain matters lies on defendant**

In proceedings for an offence against this Law, the prosecution is not required to prove, in the absence of evidence to the contrary, the following:

- (a) that the defendant was the owner or master of a specified domestic commercial vessel at the time of the conduct constituting the alleged offence;
- (b) that a specified vessel is a domestic commercial vessel;
- (c) that a specified vessel of a specified person is subject to this Law;
- (d) that a specified vessel is not exempt from a provision of this Law;
- (e) that a message or signal was received by the master of a domestic commercial vessel, if:
  - (i) the message was transmitted under this Law by a prescribed person; and
  - (ii) the vessel was located so as to be able to receive the message or signal;
- (f) that a specified vessel is a particular length or tonnage;
- (g) the time of sunrise and sunset in a particular location on any day, as published by the Commonwealth Bureau of Meteorology established under section 5 of the *Meteorology Act 1955*.

## **Division 8—Adverse publicity orders**

### **158 Adverse publicity orders**

- (1) This section applies if a court finds a person (the *offender*) guilty of an offence against this Law, whether or not the court convicts the offender of the offence.
- (2) The court may make an order (the *adverse publicity order*) requiring the offender:
  - (a) to take either or both of the following actions within the period specified in the order:
    - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
    - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
  - (b) to give the National Regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (3) The court may make the adverse publicity order:
  - (a) either on its own initiative or on the application of the person prosecuting the offence; and
  - (b) in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (4) If the offender fails to give evidence to the National Regulator in accordance with subsection (2)(b), the National Regulator may take the action or actions specified in the order.
- (5) However, if:
  - (a) the offender gives evidence to the National Regulator in accordance with subsection (2)(b); and

(b) despite that evidence, the National Regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order;

the National Regulator may apply to a court for an order authorising the National Regulator, or a person authorised in writing by the National Regulator, to take the action or actions.

- (6) If the National Regulator takes one or more actions under subsection (4) or an order under subsection (5), the National Regulator is entitled to recover from the offender, by action in a court, an amount in relation to the reasonable expenses of taking the actions as a debt due to the National Regulator.

## **Division 9—Regulations and other legislative instruments**

### **159 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Law to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (2) The regulations may prescribe standards for the purposes of this Law including, but not limited to, standards in relation to the following:
  - (a) the survey of domestic commercial vessels;
  - (b) the construction of domestic commercial vessels;
  - (c) machinery and equipment connected with domestic commercial vessels;
  - (d) maintenance of domestic commercial vessels;
  - (e) operation of domestic commercial vessels;
  - (f) crewing of domestic commercial vessels;
  - (g) qualifications of crew and masters of domestic commercial vessels;
  - (h) safety of domestic commercial vessels;
  - (i) communications relating to domestic commercial vessels.
- (3) The regulations may prescribe requirements relating to the following:
  - (a) the keeping of records relating to the operation of domestic commercial vessels;
  - (b) auditing the operation of domestic commercial vessels;
  - (c) the marking of domestic commercial vessels;
  - (d) advertising the uses of domestic commercial vessels, including prohibiting advertising of uses not permitted by a certificate for the vessel.
- (4) The regulations may prescribe a scheme for and in relation to voluntary enforceable undertakings.



- (5) The regulations may make provision for and in relation to:
  - (a) requiring persons to hold certificates (within the ordinary meaning of that expression) or other documents for the purposes of giving effect to an international convention or instrument that is in force for Australia; and
  - (b) the issuing, varying, revoking and suspending of such certificates or other documents.
- (6) Before the Governor-General makes regulations for the purposes of section 7(4) or (5), the Commonwealth Minister must be satisfied that:
  - (a) the COAG Council has been consulted in relation to the proposed regulations; and
  - (b) the COAG Council has unanimously agreed to the making of the proposed regulations.

#### **160 Regulations may prescribe matters relating to accreditation and approval**

- (1) The regulations may prescribe matters relating to accreditation and approval, including, but not limited to:
  - (a) the accreditation of persons to perform roles prescribed by regulations made for the purposes of this paragraph; and
  - (b) the approval of training organisations.
- (2) Examples of matters that the regulations may deal with are:
  - (a) the standards that are to be met by persons who seek to be accredited or approved; and
  - (b) who is responsible for determining whether a person meets the standards; and
  - (c) how accreditation is to be recognised (for example, by establishment of a register or other method); and
  - (d) the standards and other obligations that persons must continue to meet to remain accredited or approved; and
  - (e) who is responsible for monitoring compliance with ongoing requirements in the regulations; and

- (f) the consequences of accredited persons and approved training organisations failing to comply with the provisions of this Law; and
  - (g) the obligations of accredited persons and approved training organisations in relation to the monitoring of their compliance; and
  - (h) how and by whom an accredited person may have his or her accreditation (or recognition of that accreditation) varied, suspended or revoked; and
  - (i) how and by whom an approved training organisation may have its approval varied, suspended or revoked; and
  - (j) review of decisions to refuse, vary, suspend or revoke accreditation (or recognition of accreditation) or approval; and
  - (k) the process for handling complaints involving accredited persons or approved training organisations; and
  - (l) who may deliver recognised training to accredited persons or approved training organisations; and
  - (m) auditing accredited persons or approved training organisations.
- (3) Before the Governor-General makes the first regulations for the purposes of subsection (1)(a) providing for the accreditation of persons to perform the role of a surveyor of vessels, the Commonwealth Minister must be satisfied that:
- (a) the COAG Council has been consulted in relation to the proposed regulations; and
  - (b) the COAG Council has agreed to the making of the proposed regulations.

## **161 Offence of contravening a condition of accreditation**

- (1) An accredited person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and

- (c) the act or omission is a risk to the safety of a person or a domestic commercial vessel; and
- (d) the person intends the act or omission to be a risk to the safety of a person or a domestic commercial vessel.

Penalty: Imprisonment for 12 months or 200 penalty units, or both.

(2) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
- (c) the act or omission is a risk to the safety of a person or a domestic commercial vessel; and
- (d) the person is reckless as to whether the act or omission is a risk to the safety of a person or a domestic commercial vessel.

Penalty: 160 penalty units.

(3) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
- (c) the act or omission is a risk to the safety of a person or a domestic commercial vessel; and
- (d) the person is negligent as to whether the act or omission is a risk to the safety of a person or a domestic commercial vessel.

Penalty: 120 penalty units.

(4) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph.

Penalty: 60 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **162 Regulations may prescribe penalties etc.**

- (1) The regulations may prescribe penalties not more than 50 penalty units for offences against the regulations.
- (2) The regulations may prescribe civil penalties for contraventions of the regulations, not more than:
  - (a) for a body corporate—500 penalty units; or
  - (b) in any other case—100 penalty units.
- (3) The regulations may provide for a person who is alleged to have contravened a provision of the regulations for whose contravention a civil penalty is prescribed to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty.
- (4) The penalty must not exceed one-tenth of the maximum penalty that a court could have ordered the person to pay if the court was satisfied that the person had contravened that provision.

## **163 Legislative instruments other than regulations**

- (1) The National Regulator may, by legislative instrument, make a Marine Order with respect to any matter for which provision must or may be made by the regulations, other than regulations made for the purposes of the following provisions:
  - (a) sections 7(4) and (5) (definition of *domestic commercial vessel*);
  - (b) section 8(3)(a) (definition of *vessel*);
  - (c) section 150(1) (fees);
  - (d) section 160(1)(a) (accreditation).
- (2) If a Marine Order is inconsistent with this Law, the Marine Order is, to the extent of the inconsistency, of no effect.

- (3) A reference to this Law in subsection (2) does not include a reference to a Marine Order.

#### **164 Incorporation of material, etc.**

Despite section 14 of the *Legislative Instruments Act 2003* of the Commonwealth, the regulations and Marine Orders may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time, including but not limited to:

- (a) the National Standard for Commercial Vessels; and
- (b) the Uniform Shipping Laws Code.

#### **165 Regulations may deal with transitional matters**

- (1) The regulations may prescribe matters of a transitional nature (including matters of an application or saving nature):
  - (a) arising out of the enactment of this Law; or
  - (b) relating to the transition from the application of provisions of laws of the States and the Territories to the application of provisions of this Law.
- (2) The regulations have effect despite anything else in this Law.
- (3) The regulations may provide that certain provisions of this Law are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (4) The regulations may provide that a specified identifier, document, licence, certificate or exemption (however described) issued, whether before or after the commencement of this Act, under a law of a State or the Northern Territory is taken to be a specified identifier, document, licence, certificate or exemption issued under this Law, subject to such requirements and modifications as are prescribed.

(5) Despite section 12(2) of the *Legislative Instruments Act 2003* of the Commonwealth, regulations made under this section may be expressed to take effect from a date before the regulations are registered under that Act.

(6) If:

- (a) regulations are expressed to take effect from a date before the date the regulations are registered under the *Legislative Instruments Act 2003* of the Commonwealth; and
- (b) a person did an act or omitted to do an act before the regulations are registered; and
- (c) apart from the retrospective effect of the regulations, the act or omission would not have contravened this Law;

then a court must not convict the person of an offence in relation to the act or omission on the grounds that it contravened this Law.

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[*Minister's second reading speech made in—  
House of Representatives on 24 May 2012  
Senate on 20 June 2012*]

## **ANNEXURE 2**

### **Amendments to be made to the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth**

### **Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012 of the Commonwealth**

## **Explanatory Memorandum**

### **MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW (CONSEQUENTIAL AMENDMENTS) BILL 2012**

#### **OUTLINE**

The Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Bill (the Bill) provides for consequential amendments to the *Australian Maritime Safety Authority Act 1990* (AMSA Act) and the Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (the National Law) .

Schedule 1 of the Bill amends the AMSA Act to include definitions defined in the National Law and to reflect the agreement reached in the Council of Australian Government's (COAG) Intergovernmental Agreement (IGA) on Commercial Vessel Safety Reform. Under the IGA, the Commonwealth will ensure that the AMSA Board membership includes at least one member with knowledge of, or experience relevant to, non-SOLAS-Convention commercial vessel operation and/or construction. The IGA also determined that the Australian Maritime Safety Authority (AMSA) would be the National Regulator.

Schedule 2 of the Bill repeals the existing offences and penalties for the general safety duties in the National Law and replaces them with provisions that mirror the provisions of Part 2 of the *Work Health and Safety Act 2011* (WHS Act).

Schedule 2 will take effect when all States and Territories give effect to, as a State or Territory law, the provisions contained in Part 2 of the WHS Act. The objective of this arrangement is to align the National Law general safety obligations and offences with the WHS duties and offences, once the WHS Act has been enacted nationally.



## ABBREVIATIONS

AMSA	Australian Maritime Safety Authority
AMSA Act	<i>Australian Maritime Safety Authority Act 1990</i>
COAG	Council of Australian Governments
Constitution	Constitution of the Commonwealth of Australia
Criminal Code	The Code established by the <i>Criminal Code Act 1995</i>
GSO	General Safety Obligation
IGA	The Inter-Governmental Agreement for Commercial Vessel Safety Reform signed by COAG First Ministers on 19 August 2011
National Law	Schedule 1 of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i>
National Regulator	The National Regulator established under the National Law
The Bill/this Bill	Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Bill 2012
The Act/this Act	<i>Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012</i>
WHS Act	<i>Work Health and Safety Act 2011</i>
WRMC	Workplace Relations Ministers Council

## **FINANCIAL IMPACT STATEMENT**

This Bill forms part of the legislative package for the Marine Safety (Domestic Commercial Vessel) National Law Bill 2012 (the National Law Bill). The financial impact of the National Law has been discussed fully in the Explanatory Memorandum for the National Law Bill.

Remuneration for the additional AMSA Board member will be determined by the Remuneration Tribunal. Remuneration costs will be absorbed by AMSA.

## **Statement of Compatibility with Human Rights**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill**

The Bill contains two schedules and should be considered in conjunction with the National Law Bill.

Schedule 1 amends the *Australian Maritime Safety Authority Act 1990* (the AMSA Act) to increase the membership of the Australian Maritime Safety Authority (AMSA) board by one member who has knowledge of, or experience relevant to, the construction or operation of domestic commercial vessels. The proposed amendments implement the agreement reached in the COAG IGA on Commercial Vessel Safety Reform, which underpins the reform.

Schedule 2 amends General Safety Obligations in the National Law Bill to align the duties with those contained in the *Work Health and Safety Act 2011* (the Model WHS laws). As not all jurisdictions have enacted the Model WHS legislation, it is proposed that the amendments under Schedule 2 will commence when all jurisdictions have enacted the Model WHS laws.

### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure and Transport,  
the Hon Anthony Albanese MP**

## **OTHER MATTERS**

### **Strict liability offences**

Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. They also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

The rationale is that people who owe general safety duties, such as employers, people in control of aspects of work and designers and manufacturers of work structures and products, should be expected to be aware of their duties and obligations to workers and the wider public.

For strict liability offences in this Bill, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

### **Penalties for offences**

The penalties for offences involving a breach of these GSOs mirror those in the WHS Act. The penalties for offences in the Bill are intended to reinforce the deterrent effect of the Bill and allow courts greater capacity to respond meaningfully and proportionally to the worst breaches by duty holders. Where death or serious injury results from a breach, the social and economic costs are likely to be far greater than even the maximum fines imposed by the Bill. Therefore, the overall objective of the penalties in the Bill is to increase compliance with the National Law and decrease the resort to prosecution to achieve that aim.

The levels of penalties are higher than those recommended by Commonwealth offence framing policy. However, they reflect recommendations of a national review into occupational health and safety, and were agreed upon by the Workplace Relations Ministers Council (WRMC). In making these recommendations the National OHS review noted that, in the case where death or serious injury results in a breach, the social and economic costs are likely to be far greater than even the maximum fines imposed by the Bill.

The penalties in the Bill also generally reflect the community's view that any person who has a work-related duty of care, but does not observe it, should be liable to a criminal sanction for placing another person's safety at risk.

The Bill provides for three categories of offences. The highest category of offences is for a breach of duties that is intentional and carries the highest maximum penalty under the Bill. Other categories of offences are for reckless and negligent breaches, which attract relatively lower penalties commensurate with the level of culpability of the defendant in the circumstances. Section 5 of the *Criminal Code Act 1995* defines the meaning of intentional, reckless and negligent, in the context of Commonwealth offence provisions. Penalties are applied to each category of offence in accordance with the *Criminal Code*.

Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action, such as the issuing of notices by a marine safety inspector. The maximum penalties provided in the Bill reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offence.

## NOTES ON CLAUSES

### Clause 1 – Short Title

This is a formal provision that specifies that the Act may be referred to as the *Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012*.

### Clause 2 – Commencement

This clause sets out when each provision in this Act commences, or is taken to have commenced.

Clauses 1 to 3 commence on the day on which the Bill receives Royal Assent.

The provisions relating to Schedule 1, which amends the AMSA Act, commence immediately after the commencement of the National Law.

The provisions relating to Schedule 2, which aligns the offences and penalties for the General Safety Obligations (GSOs) with the model provisions contained in the *Work Health and Safety Act 2011*, will commence on a single day fixed by proclamation, but not before the first day that a law of a State or Territory that substantially corresponds to Part 2 of *Work Health and Safety Act 2011* is in force as a law of that State or Territory.

If a proclamation date is not made within 6 months of a law of a State or Territory that substantially corresponds to Part 2 of the *Work Health and Safety Act 2011* coming into force as a law of that State or Territory, the provisions relating to Schedule 2 of this Bill will commence on the first day after this 6 month period. If the provisions commence in this way the Minister must announce by a notice in the *Gazette* the day the provisions commenced.

**Clause 3 – Schedule(s)**

This clause makes it clear that each Act that is specified in one of the schedules to this Bill is amended or repealed in accordance with the relevant provisions.

**Schedule 1 – *Australian Maritime Safety Authority Act 1990* (AMSA Act)**

The policy basis for the National Law derives from the COAG IGA, which determined that AMSA will be the National Regulator.

The following amendments to the AMSA Act are required to give effect to the terms agreed at the IGA.

**Item 1 - Subsection 3(1)**

This clause introduces the defined term “domestic commercial vessel” into the AMSA Act.

**Item 1 - Paragraph 13(1)(e)**

This amendment increases the number of AMSA Board members from 4 to 5. This change is required to implement the agreement reached in the IGA that the AMSA Board includes a member with knowledge of, or experience in, the operation or construction of non-SOLAS-Convention commercial vessels.

**Item 2 - After subsection 13(4)**

This amendment reflects the IGA agreement regarding the composition of the AMSA Board. This will ensure the AMSA Board includes a member with knowledge of, or experience in, the operation or construction of Domestic Commercial Vessels.

**Item 1 - Subsection 22(6)**

This amendment is an adjustment that results from the increase size of the AMSA Board that is required to accommodate the agreed composition for the National Regulator's Board. The number of Board members required to constitute a quorum has increased from 4 to 5 members.

**Schedule 2 – *Marine Safety (Domestic Commercial Vessels) National Law Act 2012 (National Law)***

**Breaches of General Safety Duties**

The following consequential amendments to the National Law are required to repeal the existing offences and penalties provisions for the general safety duties contained in the National Law and replaces them with provisions that mirror the provisions contained in Part 2 of the WHS Act.

**Item 1 - Section 5**

The amendment provisions mirror those contained in the WHS Act and depart from the penalty unit regime provided for in the National Law.

The insertion of Clause 5A reflects that penalties for a breach of safety duties in the WHS Act are expressed in dollar amounts and not penalty units. This approach is based on recommendations of the national review into occupational health and safety and agreed by the WRMC, which identified disparity in the monetary value of penalty units among the jurisdictions and opted for penalties to be expressed in dollar terms to avoid any confusion.

**Definitions**

The following items are required to insert definitions into the National Law that are required as a result of the consequential amendments. These give effect to the alignment of the general safety obligations to those provided for in the WHS Act.



**Item 2** – this inserts the term “*conduct*” into the National Law.

**Item 3** – this inserts the definition of “*officer*”.

**Item 4** – this inserts the definition of “*volunteer association*”.

**Item 5** – this inserts the term “*worker*” into the National Law.

**Item 6** – this inserts the definition of “*conduct a business or undertaking*”.

**Item 7** – this inserts the definition of “*worker*”.

### **Offences and penalty provisions**

The following items address the alignment of the offence framework to that contained in the WHS Act in relation to breaches of general safety duties under the National Law.

The WHS Act provides for three categories of offences against health and safety duties.

Category 1 offences are for a breach that involves reckless conduct and carries the highest penalty, including imprisonment of up to 5 years. These offences involve reckless conduct that exposes an individual to a risk of death, serious injury or illness without a reasonable excuse.

Category 2 offences are for a breach that involves intentional conduct, but is not reckless conduct that exposes an individual to a risk of death, serious injury or illness without a reasonable excuse.

Category 3 offences do not require that a breach exposes an individual to a risk of death, serious injury or illness without a reasonable excuse, only that the act or omission that contravened the general safety duty occurred.

The level of penalties imposed for each of these categories of offences is dependent on whether the person is an individual, a body corporate, or an officer or person conducting a business or undertaking.

#### **Item 8 – Section 13**

This amendment aligns the offence provision provided for in section 13 of the National Law with the WHS Act.

Sub-clause 1 provides for a Category 1 offence, requiring recklessness and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 2 makes it clear that the prosecution bears the evidential burden of proving that a person did not have a reasonable excuse for the action or inaction that led to the breach of the general safety duty.

Sub-clause 3 provides for a Category 2 offence, requiring intent and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 4 clarifies that the physical element of whether an individual was or was not exposed to a risk of death or serious injury or illness is one of strict liability.

Sub-clause 5 provides for a Category 3 offence.

#### **Item 9 – Section 15**

This amendment aligns the offence provision provided for in section 15 of the National Law with the WHS Act.

Sub-clause 1 provides for a Category 1 offence, requiring recklessness and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 2 makes it clear that the prosecution bears the evidential burden of proving that a person did not have a reasonable excuse for the action or inaction that led to the breach of the general safety duty.

Sub-clause 3 provides for a Category 2 offence, requiring intent and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 4 clarifies that the physical element of whether an individual was or was not exposed to a risk of death or serious injury or illness is one of strict liability.

Sub-clause 5 provides for a Category 3 offence.

#### **Item 10 – Section 18**

This amendment aligns the offence provision provided for in section 18 of the National Law with the WHS Act.

Sub-clause 1 provides for a Category 1 offence, requiring recklessness and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 2 makes it clear that the prosecution bears the evidential burden of proving that a person did not have a reasonable excuse for the action or inaction that led to the breach of the general safety duty.

Sub-clause 3 provides for a Category 2 offence, requiring intent and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 4 clarifies that the physical element of whether an individual was or was not exposed to a risk of death or serious injury or illness is one of strict liability.

Sub-clause 5 provides for a Category 3 offence.

### **Item 11 – Section 20**

This amendment aligns the offence provision provided for in section 20 of the National Law with the WHS Act.

Sub-clause 1 provides for a Category 1 offence, requiring recklessness and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 2 makes it clear that the prosecution bears the evidential burden of proving that a person did not have a reasonable excuse for the action or inaction that led to the breach of the general safety duty.

Sub-clause 3 provides for a Category 2 offence, requiring intent and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 4 clarifies that the physical element of whether an individual was or was not exposed to a risk of death or serious injury or illness is one of strict liability.

Sub-clause 5 provides for a Category 3 offence.

### **Item 12 – Section 161**

This amendment aligns the offence provision provided for in section 161 of the National Law with the WHS Act.

Sub-clause 1 provides for a Category 1 offence, requiring recklessness and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 2 makes it clear that the prosecution bears the evidential burden of proving that a person did not have a reasonable excuse for the action or inaction that led to the breach of the general safety duty.

Sub-clause 3 provides for a Category 2 offence, requiring intent and exposing an individual to a risk of death, serious injury or illness without a reasonable excuse.

Sub-clause 4 clarifies that the physical element of whether an individual was or was not exposed to a risk of death or serious injury or illness is one of strict liability.

Sub-clause 5 provides for a Category 3 offence.

### **Item 13 – Application of amendments made by Schedule 2**

This amendment makes it clear that the amendments provided for in Schedule 2 of the Bill only apply to actions or inactions that occur on or after the commencement of the Schedule.

## **Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012**

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## **Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012**

**No. 122, 2012**

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**An Act to make amendments that relate to the enactment of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* and that align that Act with work health and safety laws, and for related purposes**

[Assented to 12 September 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Marine (Domestic Commercial Vessel National Law Application) Act 2013  
No. 36 of 2013  
Annexure 2

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 September 2012
2. Schedule 1	Immediately after the commencement of section 3 of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> .	
3. Schedule 2	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the first day there are in force in each State laws of the State that the Minister is satisfied correspond substantially to Part 2 of the <i>Work Health and Safety Act 2011</i>.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on that first day, they commence on the day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day the provision(s) commenced. The notice is not a legislative instrument.</p>	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.



### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Consequential amendments**

### ***Australian Maritime Safety Authority Act 1990***

#### **1 Subsection 3(1)**

Insert:

*domestic commercial vessel* has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.

Note: For *Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth*, see paragraph 4(b) of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012.

#### **2 Paragraph 13(1)(e)**

Omit “4”, substitute “5”.

#### **3 After subsection 13(4)**

Insert:

(4A) The Minister must use his or her best endeavours to ensure that at least one of the members referred to in paragraph (1)(e) is a person who the Minister is satisfied has knowledge of, or experience relevant to, the construction or operation of domestic commercial vessels.

#### **4 Subsection 22(6)**

Omit “4”, substitute “5”.

## **Schedule 2—Breaches of general safety duties**

### ***Marine Safety (Domestic Commercial Vessel) National Law Act 2012***

#### **1 After section 5 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

##### **5A Value of penalties**

Section 4AB of the *Crimes Act 1914* of the Commonwealth does not apply to a penalty expressed in this Law wholly or partly by reference to a number of dollars.

#### **2 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*conduct* a business or undertaking: see section 6A.

#### **3 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

*officer* means:

- (a) an officer within the meaning of section 9 of the *Corporations Act 2001* other than a partner in a partnership; or
- (b) a person (except a Minister of the Commonwealth, a State or a Territory) who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Commonwealth, a State or a Territory; or

- (c) a person (except an elected member of a local government authority) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of:
  - (i) a body corporate that is established for a public purpose by or under a law of the Commonwealth, a State or a Territory and that is not prescribed by the regulations as a body to which this subparagraph does not apply; or
  - (ii) a body corporate that is, or is taken to be, incorporated under the *Corporations Act 2001* of the Commonwealth, that is controlled by the Commonwealth, a State or a Territory and that is not prescribed by the regulations as a body to which this subparagraph does not apply; or
  - (iii) a body corporate prescribed by the regulations as a body to which this subparagraph applies.

#### **4 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

***volunteer association*** means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers in the group, employs any person to carry out work for the group.

#### **5 Section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

***worker***: see section 8A.

## **6 After section 6 of the Marine Safety (Domestic Commercial Vessel) National Law**

Insert:

### **6A Definition of *conduct* a business or undertaking**

- (1) For the purposes of this Law, a person *conducts* a business or undertaking:
  - (a) whether the person conducts the business or undertaking alone or with others; and
  - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (3) An elected member of a local government authority does not in that capacity conduct a business or undertaking.
- (4) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Law or any provision of this Law.
- (5) A volunteer association does not conduct a business or undertaking for the purposes of this Law.

## **7 At the end of Part 1 of the Marine Safety (Domestic Commercial Vessel) National Law**

Add:

### **8A Definition of *worker***

- (1) A person is a *worker* for the purposes of this Law if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:
  - (a) an employee; or
  - (b) a contractor or subcontractor; or
  - (c) an employee of a contractor or subcontractor; or

- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
  - (e) an outworker; or
  - (f) an apprentice or trainee; or
  - (g) a student gaining work experience; or
  - (h) a volunteer; or
  - (i) a person of a class prescribed by the regulations.
- (2) The person conducting the business or undertaking is also a **worker** for the purposes of this Law if the person is an individual who carries out work in that business or undertaking.
- (3) Each of the following persons is also a **worker** for the purposes of this Law:
- (a) a member (however described) of a police force of the Commonwealth, a State or a Territory;
  - (b) a member of the Australian Defence Force;
  - (c) a person who holds or is acting in an office established by a law of the Commonwealth, a State or a Territory;
  - (d) a person who constitutes, or is acting as the person constituting, a public authority;
  - (e) a person who is, or is acting as, a member or deputy member of a public authority;
  - (f) a person who is, or is acting as, a member or a deputy member of a body that:
    - (i) is established by or under a law of the Commonwealth, a State or a Territory establishing a public authority; and
    - (ii) is established for a purpose associated with the performance of the functions of the public authority;
  - (g) a person of a class specified in an instrument under subsection (4).
- (4) The National Regulator may by legislative instrument specify a class of persons for the purposes of subsection (3)(g) only if persons of that class engage in activities or perform acts:

- (a) at the request or direction of the Commonwealth, a State, a Territory or a public authority; or
- (b) for the benefit of the Commonwealth, a State, a Territory or a public authority; or
- (c) under a law of the Commonwealth, a State or a Territory.

## **8 Section 13 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **13 Offences relating to contraventions of section 12**

- (1) A person commits an offence if:
  - (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.

- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
- (c) if the offence is committed by a body corporate—\$1,500,000.

- (4) Strict liability applies to paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 12(1).

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.



## **9 Section 15 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **15 Offences relating to contraventions of section 14**

- (1) A person commits an offence if:
- (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes section 14; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 14; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
- (c) if the offence is committed by a body corporate—\$1,500,000.

(4) Strict liability applies to paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes section 14.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

## **10 Section 18 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **18 Offences relating to contraventions of section 16 or 17**

(1) A person commits an offence if:

- (a) the person does an act, or omits to do an act, without reasonable excuse; and
- (b) the act or omission contravenes section 16(1) or 17(1) or (2); and

- (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
- (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
- (3) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 16(1) or 17(1) or (2); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
- (c) if the offence is committed by a body corporate—\$1,500,000.

- (4) Strict liability applies to paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes section 16(1) or 17(1) or (2).

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

## **11 Section 20 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **20 Offences relating to contraventions of section 19**

- (1) A person commits an offence if:

- (a) the person does an act, or omits to do an act, without reasonable excuse; and
- (b) the act or omission contravenes section 19(1), (2) or (3); and
- (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
- (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or

- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.
- (3) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3); and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000.
- (4) Strict liability applies to paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) A person commits an offence if:
  - (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes section 19(1), (2) or (3).

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or

- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000.

## **12 Section 161 of the Marine Safety (Domestic Commercial Vessel) National Law**

Repeal the section, substitute:

### **161 Offences relating to contraventions of conditions by accredited persons**

- (1) An accredited person commits an offence if:
  - (a) the person does an act, or omits to do an act, without reasonable excuse; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness; and
  - (d) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$300,000 or 5 years imprisonment, or both; or
  - (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$600,000 or 5 years imprisonment, or both; or
  - (c) if the offence is committed by a body corporate—\$3,000,000.
- (2) The prosecution bears the burden of proving that the person did not have a reasonable excuse for the act or omission.

- (3) An accredited person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph; and
  - (c) the act or omission exposes an individual to a risk of death or serious injury or illness.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$150,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$300,000; or
- (c) if the offence is committed by a body corporate—\$1,500,000.

- (4) Strict liability applies to paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) An accredited person commits an offence if:
- (a) the person does an act or omits to do an act; and
  - (b) the act or omission contravenes a condition prescribed by the regulations for the purposes of this paragraph.

Penalty:

- (a) if the offence is committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—\$50,000; or
- (b) if the offence is committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—\$100,000; or
- (c) if the offence is committed by a body corporate—\$500,000.

### **13 Application of amendments made by this Schedule**

The amendments of Part 3 of the Marine Safety (Domestic Commercial Vessel) National Law made by this Schedule apply in relation to acts and omissions occurring on or after the commencement of this Schedule.

*[Minister's second reading speech made in—  
House of Representatives on 24 May 2012  
Senate on 20 June 2012]*



## **ANNEXURE 3**

### **Amendments to be made to the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 of the Commonwealth**

### **Marine Safety (Domestic Commercial Vessel) National Law Amendments Act 2013 of the Commonwealth**

## **Explanatory Memorandum**

### **MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW AMENDMENTS BILL 2013**

#### **OUTLINE**

The purpose of the Bill is to amend the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* to ensure that the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator (the National Regulator) is able to reimburse to the states and Northern Territory amounts collected for infringement notices.

#### **FINANCIAL IMPACT STATEMENT**

The proposed amendments do not place any additional financial burden on the domestic commercial vessel industry.

#### **REGULATION IMPACT STATEMENT**

The proposed amendments do not place any additional regulatory burden on the domestic commercial vessel industry.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights  
(Parliamentary Scrutiny) Act 2011*

### **Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill/Legislative Instrument**

The purpose of the Bill is to amend the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the Act) to ensure that the Australian Maritime Safety Authority (AMSA) as the National Marine Safety Regulator (the National Regulator) is able to reimburse to the states and Northern Territory amounts collected for infringement notices.

### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure and Transport,  
the Honourable Anthony Albanese, MP**

## NOTES ON CLAUSES

### Clause 1: Short Title

This is a formal provision that specifies that the Act may be referred to as the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013* (the Act).

### Clause 2: Commencement

This clause sets out when provisions in the Act will commence. Sections 1 to 3 and anything else in the Act not elsewhere covered by this table will commence on Royal Assent. Schedule 1 will commence on the later of Royal Assent, and immediately after section 3 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

The intention of the commencement is for the proposed amendments in the Bill to commence at the same time as the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law Act) to ensure that the infringement notice framework operates in the way it was originally intended.

### Clause 3: Schedule(s)

This clause provides that the National Law Act is amended as specified and set out in Schedule 1 to the Act.

## SCHEDULE 1 – TECHNICAL AMENDMENTS

### Item 1 -

Subsection 138(1) of Schedule 1 of the National Law Act will be amended to substitute the reference to the “Commonwealth” with “National Regulator”. The proposed amendment will allow for regulations to be made under section 138 of the National Law Act to enable an alleged offender to pay a penalty to the National Regulator as an alternative to prosecution.

**Item 2 -**

Subsection 162(3) of Schedule 1 of the National Law Act will be amended to substitute the reference to the “Commonwealth” with “National Regulator”. The proposed amendment will allow for regulations to be made under section 162 of the National Law to enable a person who is alleged to have contravened a provision of the regulations to pay a civil penalty to the National Regulation as an alternative to proceedings for a civil penalty.

# Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013

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## **Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2012**

**No. 9, 2013**

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### **An Act to amend the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, and for related purposes**

[Assented to 14 March 2013]

The Parliament of Australia enacts:

#### **1 Short title**

This Act may be cited as the *Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013*.

#### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Marine (Domestic Commercial Vessel National Law Application) Act 2013  
No. 36 of 2013  
Annexure 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 March 2013
2. Schedule 1	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> .	1 July 2013 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Technical amendments**

### ***Marine Safety (Domestic Commercial Vessel) National Law Act 2012***

#### **1 Subsection 138(1) of Schedule 1**

Omit “Commonwealth”, substitute “National Regulator”.

#### **2 Subsection 162(3) of Schedule 1**

Omit “Commonwealth”, substitute “National Regulator”.

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*[Minister’s second reading speech made in—  
House of Representatives on 6 February 2013  
Senate on 28 February 2013]*