



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

**No. 121, 2012**

## **Compilation No. 4**

<b>Compilation date:</b>	5 March 2016
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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* that shows the text of the law as amended and in force on 5 March 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to provide for a national law about marine safety for certain commercial vessels, and for related purposes

## 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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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.	1 July 2013 (see F2013L00607)
3. Schedule 1	At the same time as the provisions covered by table item 2.	1 July 2013
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:

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- (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;

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- (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**

## **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.

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**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) a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
  - (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) a warship or other vessel that:

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- (i) is operated for naval or military purposes by the Australian Defence Force or the armed forces of a foreign country; and
- (ii) is under the command of a member of the Australian Defence Force or of a member of the armed forces of the foreign country; and
- (iii) bears external marks of nationality; and
- (iv) is manned by seafarers under armed forces discipline; or
- (b) a Government vessel that is used only on government non-commercial service as a naval auxiliary.

***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.

**Government vessel** has the same meaning as in the *Navigation Act 2012*.

**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.

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**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

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- (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

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- (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.

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- (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;
- (ca) to survey vessels and deal with matters relating to the survey of vessels by accredited surveyors;
- (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;

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- 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 an officer or employee (the *sub-delegate*) of:
  - (a) if the delegate is an officer or employee of an agency of the Commonwealth—that agency; or
  - (b) if the delegate is an officer or employee of an agency of a State—an agency of that State; or
  - (c) if the delegate is an officer or employee of an agency of the Northern Territory—an agency of the Northern Territory.
- (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.

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(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:
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- (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.

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- (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.

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- (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

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- (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 may vary a certificate of survey on the National Regulator's initiative if the National Regulator is satisfied that:
  - (a) the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met; and

- (b) it is desirable to do so, having regard to the objects of this Law.
- (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 for the purpose of:
  - (a) protecting human life; or
  - (b) securing the safe navigation of vessels; or
  - (c) dealing with an emergency involving a serious threat to the environment.
- (2A) The National Regulator may suspend a certificate of survey on the National Regulator's initiative for a 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;

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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 may revoke a certificate of survey on the National Regulator's initiative if the National Regulator is satisfied that:
- (a) the criteria prescribed by the regulations in relation to revocation on the initiative of the National Regulator are met; and
  - (b) it is desirable to do so, having regard to the objects of this Law.

**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

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- (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.

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- (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 may vary a certificate of operation on the National Regulator's initiative if the National Regulator is satisfied that:
  - (a) the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met; and
  - (b) it is desirable to do so, having regard to the objects of this Law.
- (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 for the purpose of:
  - (a) protecting human life; or
  - (b) securing the safe navigation of vessels; or
  - (c) dealing with an emergency involving a serious threat to the environment.

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- (2A) The National Regulator may suspend a certificate of operation on the National Regulator's initiative for a 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 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 may revoke a certificate of operation on the National Regulator's initiative if the National Regulator is satisfied that:
- (a) the criteria prescribed by the regulations in relation to revocation on the initiative of the National Regulator are met; and
  - (b) it is desirable to do so, having regard to the objects of this Law.

- (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.

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- (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.

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**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 may vary a certificate of competency on the National Regulator's initiative if the National Regulator is satisfied that:
  - (a) the criteria prescribed by the regulations in relation to variation on the initiative of the National Regulator are met; and
  - (b) it is desirable to do so, having regard to the objects of this Law.
- (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 for the purpose of:
  - (a) protecting human life; or
  - (b) securing the safe navigation of vessels; or
  - (c) dealing with an emergency involving a serious threat to the environment.
- (2A) The National Regulator may suspend a certificate of competency on the National Regulator's initiative for a 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 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

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- (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 may revoke a certificate of competency on the National Regulator's initiative if the National Regulator is satisfied that:
  - (a) the criteria prescribed by the regulations in relation to revocation on the initiative of the National Regulator are met; and
  - (b) it is desirable to do so, having regard to the objects of this Law.
- (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(2A), 51(2A) or 63(2A):
  - (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.

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- (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

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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*.

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**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;

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- (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;

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- (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

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- (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.

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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

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(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) and (6).

- (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:

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- (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

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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.

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- (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

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- (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

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- (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:
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- (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.

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- (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

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- (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.

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- (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:

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- (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 National Regulator 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**

- (1) 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) or (2);
    - (iii) section 60(1) or (2);
  - (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) or (2A);
    - (ii) section 51(2) or (2A);

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- (iii) section 63(2) or (2A);
  - (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) or (3);
    - (iii) section 64(2) or (3);
  - (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);
  - (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.
- (2) The following decisions of a marine safety inspector are **reviewable decisions**:
- (a) to detain a vessel under section 101(1);
  - (b) to issue an improvement notice under section 110(1);
  - (c) to issue a prohibition notice under section 111(2).

**140 Internal review of reviewable decisions**

- (1) As soon as practicable after a reviewable decision is made in relation to a person, a written notice must be given 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's 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:

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- (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.

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- (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

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- (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.

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- (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.
- (5A) The regulations may make provision for and in relation to the conduct of the survey of vessels.
- (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:
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- (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 National Regulator 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).

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- (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 *Legislation 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) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* of the Commonwealth does not apply to regulations made under this section.
- (6) If:
- (a) regulations are expressed to commence from a day before the day the regulations are registered under the *Legislation 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.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Marine Safety (Domestic Commercial Vessel) National Law Act 2012	121, 2012	12 Sept 2012	s 3–19: 1 July 2013 (s 2(1) item 2 and F2013L00607) Sch 1: 1 July 2013 (s 2(1) item 3) Remainder: 12 Sep 2012 (s 2(1) item 1)	
Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012	122, 2012	12 Sept 2012	Sch 2: <u>awaiting commencement</u> (s 2(1) item 3)	<u>Sch 2 (item 13)</u>
Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2013	9, 2013	14 Mar 2013	Sch 1: 1 July 2013 (s 2(1) item 2) Remainder: 14 May 2013 (s 2(1) item 1)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (item 1) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b> Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Marine Safety (Domestic Commercial Vessel) National Law Amendment Act 2014	118, 2014	20 Nov 2014	20 Nov 2014 (s 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 359–361): 5 Mar 2016 (s 2(1) item 2)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Schedule 1</b>	
<b>Part 1</b>	
s 5A .....	ad <u>No 122, 2012</u>
s 6 .....	am <u>No 122, 2012</u> ; am No 62, 2014; No 118, 2014
s 6A .....	ad <u>No 122, 2012</u>
s 8A .....	ad <u>No 122, 2012</u>
<b>Part 2</b>	
s 10 .....	am No 118, 2014
s 11 .....	am No 118, 2014
<b>Part 3</b>	
<b>Division 1</b>	
s 13 .....	rs <u>No 122, 2012</u>
<b>Division 2</b>	
s 15 .....	rs <u>No 122, 2012</u>
<b>Division 3</b>	
s 18 .....	rs <u>No 122, 2012</u>
<b>Division 4</b>	
s 20 .....	rs <u>No 122, 2012</u>
<b>Part 4</b>	
<b>Division 2</b>	
s 40 .....	am No 118, 2014
s 41 .....	am No 118, 2014
s 42 .....	am No 118, 2014
<b>Division 3</b>	
s 50 .....	am No 118, 2014
s 51 .....	am No 118, 2014
s 52 .....	am No 118, 2014
<b>Division 4</b>	

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 62 .....	am No 118, 2014
s 63 .....	am No 118, 2014
s 64 .....	am No 118, 2014
<b>Division 5</b>	
s 72 .....	am No 118, 2014
<b>Part 6</b>	
<b>Division 2</b>	
<b>Subdivision C</b>	
s 104 .....	am No 118, 2014
<b>Part 7</b>	
s 138 .....	am No 9, 2013
<b>Part 8</b>	
<b>Division 1</b>	
s 139 .....	am No 118, 2014
s 140 .....	am No 118, 2014
<b>Division 9</b>	
s 159 .....	am No 118, 2014
s 161 .....	rs <u>No 122, 2012</u>
s 162 .....	am No 9, 2013
s 164 .....	am No 126, 2015
s 165 .....	am No 126, 2015