



Western Australia

# **Western Australian Marine Act 1982**

**Reprint 3: The Act as at 27 July 2012**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Western Australian Marine Act 1982

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*Reprints Act 1984* as  
at 27 July 2012**

Western Australia

## **Western Australian Marine Act 1982**

**An Act to regulate navigation and shipping.**

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Western Australian Marine Act 1982*<sup>1</sup>.

### 2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation after the approval of Her Majesty thereto has been proclaimed in the State<sup>1</sup>.

### 3. Terms used

(1) In this Act, unless the contrary intention appears —

***agreement*** means the ship's articles or agreement with the crew;

***Australian coastal and middle-water operations*** in relation to the limits of a vessel's area of operations, means —

(a) ocean going operations in waters within a range of 600 nautical miles to seaward of the coast; or

(b) operations within such lesser limits as may be specified by the chief executive officer;

***Australian fishing vessel*** means a fishing vessel that is registered, or entitled to be registered, in Australia or in relation to which an instrument under section 4(2) of the *Fisheries Act 1952*<sup>2</sup> of the Commonwealth is in force;

***Australian ship*** has the same meaning as in the *Shipping Registration Act 1981* of the Commonwealth;

***boilers and machinery*** includes engines and everything connected therewith employed in propelling a ship, and every description of machinery used on a ship for the purposes of the ship or her cargo, and all other apparatus or things attached to or connected therewith or used with reference to any engine or under the care of the marine engineer or marine engine driver;

**casualty** includes the loss, abandonment, collision, grounding of, and any mishap, accident, and damage, whether by fire or otherwise, to a ship and any serious injury to a person on board a ship;

**chief executive officer** means the chief executive officer of the Department;

**commercial vessel** means a vessel which is not used solely for pleasure or recreation and the use of which is made, allowed or authorised in the course of any business or in connection with any commercial transaction and, subject to any specific provision to the contrary, includes any Government vessel other than one that belongs to an arm of the Defence Force;

**dangerous goods** has the same meaning as in the *Dangerous Goods Safety Act 2004*;

**Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**Disciplinary Appeal Tribunal** means the Western Australia Mercantile Marine Disciplinary Appeal Tribunal established by section 22;

**equipment** in relation to a ship, includes every thing or article belonging to or to be used in connection with, or necessary for the navigation and safety of, the ship and, in particular, includes boats, tackle, pumps, apparel, furniture, lifesaving appliances, spars, masts, rigging, sails, fog signals, lights, signals of distress, signalling lamps, pilot ladders, radio equipment, medicines, medical and surgical stores and appliances, fire prevention, detecting and extinguishing appliances, inert gas systems, echo-sounding devices, mechanical pilot hoists, buckets, compasses, charts, axes, lanterns and gear and apparatus for loading or unloading, or otherwise handling, cargo, and includes also such other things as may be prescribed;

**explosives** means a substance or article used or manufactured with the purpose of producing a practical effect by explosion or a pyrotechnic effect;

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***fishing vessel*** means a vessel used or intended to be used for catching fish, whales, seals, walrus, or other living resources of the sea or the seabed for trading or manufacturing purposes, but excludes any vessel engaged in harvesting or transportation of algae or aquatic plants;

***floating restaurant*** includes a floating bar, canteen, coffee shop, food store or kitchen;

***Government vessel*** means a ship —

- (a) that belongs to the Commonwealth or a State or Territory of the Commonwealth; or
- (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory of the Commonwealth; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of, the Commonwealth or a State or Territory of the Commonwealth, and includes a ship that belongs to an arm of the Defence Force, but does not include a ship that belongs to the Australian Shipping Commission or the Western Australian Coastal Shipping Commission;

***incompetent*** means unable, from any cause whatever, to perform efficiently the duty of the person in relation to which the word is used and ***incompetence*** has corresponding meaning;

***inshore operations*** in relation to the limits of a vessel's area of operations means —

- (a) operations within a limit of 15 nautical miles to seaward of the coast but not more than 30 nautical miles from a safe anchorage; or
- (b) operations within such lesser limits as may be specified by the chief executive officer;

***inspector*** means an inspector designated under section 117 for the purposes of this Act;

***Manning Committee*** means the Western Australia Marine Manning Committee established by section 15;

**master** means every person, except a pilot, having command or charge of a ship;

**misconduct** includes careless navigation, drunkenness, tyranny, any failure of duty or want of skill, or any improper conduct;

**Navigation Act** means the *Navigation Act 1912* of the Commonwealth as amended and in force for the time being;

**officer** in relation to a ship, means the master, mates, coxswain, marine engineers, and marine engine drivers of the ship;

**official** includes every person in the service of the State employed for any purpose or duty in the administration of this Act;

**offshore operations** in relation to the limits of a vessel's area of operations, means —

- (a) operations within a limit of 200 nautical miles to seaward of the coast; or
- (b) operations within such lesser limits as the chief executive officer may specify;

**owner** in relation to a vessel means any person exercising, or discharging or claiming the right or accepting the obligation to exercise or discharge, any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is the owner jointly with any other person or persons and the manager or secretary of any body corporate or company;

**partially smooth waters** means waters within such geographical limits as are prescribed for the purposes of this definition;

**passenger** means every person on board a vessel other than —

- (a) the master, members of the crew, other persons employed or engaged in any capacity on board the vessel in the business of that vessel, and special personnel; and
- (b) a child under one year of age;

**passenger vessel** means a vessel that carries, or is certified to carry, more than 12 passengers;

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*pleasure vessel* has the meaning stipulated in section 98;

*ply* means to navigate in or cause to pass over navigable waters;

*port* includes places from which vessels may depart or between which vessels may ply and is not restricted to places which are ports for the purposes of the *Shipping and Pilotage Act 1967*;

*repealed Act* means the Act repealed by section 135(1) and includes regulations made under that Act;

*restricted offshore operations* in relation to the limits of a vessel's area of operations means —

- (a) operations within a range of 30 nautical miles from the seaward limit of a designated smooth or partially smooth water area or of a safe anchorage; or
- (b) operations within such lesser limits as may be specified by the chief executive officer;

*safety manning* in relation to a vessel, means the number of certificated and uncertificated persons required to safely navigate that vessel;

*seaman* means a person employed or engaged in any capacity on board a trading ship on the business of the ship, other than the master, special personnel, a pilot, or a person temporarily employed on the ship in port;

*ship* or *vessel* means any kind of vessel used or capable of being used in navigation by water, however propelled or moved, and includes —

- (a) a barge, lighter, floating restaurant, or other floating vessel; and
- (b) an air-cushion vehicle, or other similar craft, used wholly primarily in navigation by water,

but does not include pontoons or floating jetties used only for the purposes of walkways or storage and similar platforms situated adjacent to river banks or any other shore in circumstances in which they are not being towed or moored away from the shore;



**smooth waters** means waters within the geographical limits prescribed for the purposes of this definition;

**special personnel** means all able bodied persons having some knowledge of safety procedures and the handling of safety equipment on board who are carried on board a vessel in connection with the special purpose of the vessel or because of the need to be on board because of special work being carried on in the vessel and does not include persons who are —

- (a) members of the crew engaged in navigation, engineering or maintenance of the vessel or attached to the vessel to provide services for other persons on board; or
- (b) directly or indirectly paying passengers;

**surveyor** means a surveyor designated under section 117 for the purposes of this Act;

**trading ship** means a ship that is used, or, being a ship in the course of construction, is intended to be used, for, or in connection with, any business or commercial activity and, without limiting the generality of the foregoing, includes a vessel that is used, or, being a vessel in the course of construction, is intended to be used, wholly or principally for —

- (a) the carriage of passengers or cargo for hire or reward; or
- (b) the provision of services to ships or shipping, whether for reward or otherwise,

but does not include a fishing vessel;

**wages** includes emoluments of any kind.

- (2) For the purposes of this section, a ship that has been launched, but has not been completed and delivered under the relevant building contract shall be deemed to be a ship in the course of construction.

*[Section 3 amended by No. 35 of 1990 s. 4 and 21; No. 47 of 1993 s. 33(1); No. 57 of 1997 s. 130(1); No. 7 of 2004 s. 70; No. 55 of 2004 s. 1309.]*

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**4. Act not to apply to naval ships etc.**

This Act does not apply to or in relation to a vessel belonging to the naval, military or air forces of the Commonwealth or of any other country, including a foreign country.

**5. Application to Crown**

This Act binds the Crown.

**6. Application to intra-state voyages etc.**

(1) Except where the context otherwise requires, this Act applies in relation to —

- (a) a trading ship proceeding on an intra-state voyage; and
- (b) an Australian fishing vessel, a hire and drive vessel, and a pleasure vessel, proceeding on —
  - (i) an intra-state voyage; or
  - (ii) that part of an inter-state voyage which began in the State where the vessel is not within the jurisdiction of another State or Territory of the Commonwealth;

and

- (c) a vessel connected with the State, being an Australian fishing vessel, a hire and drive vessel, or a pleasure vessel, proceeding on an inter-state voyage which began in the State; and
- (d) an Australian fishing vessel proceeding on an inter-state voyage, a hire and drive vessel, and a pleasure vessel, where the vessel is within —
  - (i) the territorial sea adjacent to the State; and
  - (ii) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
  - (iii) waters within the limits of the State,

and in relation to its owner, master and crew.

- (2) Except in so far as the application of this section is expressly excluded by a provision of this Act, this Act does not apply in relation to —
- (a) a trading ship proceeding on an overseas voyage or an inter-state voyage; or
  - (b) an Australian fishing vessel proceeding on an overseas voyage,
- or in relation to its owner, master or crew.
- (3) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purpose of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.
- (4) The expressions *inter-state voyage* and *overseas voyage* have the same meaning in this section as in section 6 of the Navigation Act.
- (5) For the purposes of this section an intra-state voyage is a voyage other than an overseas voyage or an inter-state voyage.
- (6) For the purposes of this section, a vessel is connected with the State which —
- (a) is registered or deemed to be registered in the State under the *Shipping Registration Act 1981* of the Commonwealth; or
  - (b) is owned by a body corporate established under the laws of the State or having its principal office or place of business in the State, or is in the possession of any such body corporate by virtue of a charter; or
  - (c) is owned by any person or body corporate whose chief office or place of business in respect of the management of such vessel is in the State, or is in the possession of any such person or body corporate by virtue of a charter; or
  - (d) is registered or licensed or required to be registered or licensed under a law of the State.

## **Part II — Survey, manning and operation of commercial vessels**

### **Division 1 — General**

#### **7. Operational areas and classification of vessels**

For the purposes of this Part, the Governor may make regulations —

- (a) prescribing operational areas which may be applied in relation to the limits of a vessel's area of operations;
- (b) for the classification of vessels.

[8. Deleted by No. 35 of 1990 s. 5.]

### **Division 2 — Examinations and certificates of competency**

#### **9. Issue of certificates of competency after examinations**

- (1) Subject to this Act, the chief executive officer shall cause examinations to be held of persons desirous of receiving certificates of competency as masters, mates, marine engineers, marine engine drivers, and coxswains, and may after examination or otherwise grant certificates of competency to masters, mates, marine engineers, marine engine drivers, and coxswains.
- (2) Subject to this Act, the chief executive officer may cancel or suspend any certificate issued or continued in force under this Act.

[Section 9 amended by No. 35 of 1990 s. 21.]

#### **10. Regulations in respect of examinations and certificates of competency**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Division and, in particular —

- (a) for the classification of certificates of competency; and

- (b) providing for the conduct of examinations of persons who are candidates for examination for certificates of competency as masters, mates, marine engineers, marine engine drivers, and coxswains, for exemptions from all or any of such examinations and for appeals in respect of failure in examinations; and
- (c) prescribing the qualifications required to be possessed by candidates for examinations under this Division; and
- (d) providing for the production of evidence of medical fitness by candidates for examinations under this Division and regulating the conduct of sight tests of such candidates; and
- (e) regulating the appointment of, and prescribing the qualifications to possessed by, persons conducting examinations under this Division; and
- (f) providing for the grant, endorsement, and revalidation of certificates of competency to and the surrender of certificates of competency by masters, mates, marine engineers, marine engine drivers, and coxswains and providing for applications to the State Administrative Tribunal for review of decisions about the grant, endorsement, and revalidation of those certificates of competency; and
- (g) enabling and regulating the suspension or cancellation of certificates of competency and making provisions for applications to the State Administrative Tribunal for review of such suspension or cancellation; and
- (h) providing for the grant of temporary permits and temporary dispensations from requirements under this Division; and
- (i) providing for the acceptance of overseas qualifications and the recognition of certificates of competency of the various Australian authorities.

*[Section 10 amended by No. 55 of 2004 s. 1310.]*

**11. Constituting the SAT**

- (1) When the State Administrative Tribunal is dealing with an application for a review of a decision about the certificate of competency of a master, mate, or coxswain, or a candidate for such a certificate, the member constituting the State Administrative Tribunal, or at least one of them if there is more than one, is to be a person who holds a certificate of competency as a master class I, or an equivalent or higher certificate.
- (2) When the State Administrative Tribunal is dealing with an application for a review of a decision about the certificate of competency of a marine engineer or marine engine driver, or a candidate for such a certificate, the member constituting the State Administrative Tribunal, or at least one of them if there is more than one, is to be a person who holds a certificate of competency as a marine engineer class I, or an equivalent or higher certificate.

*[Section 11 inserted by No. 55 of 2004 s. 1311.]*

**Division 3 — Safety manning**

**12. Regulations in respect of safety manning**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Division in respect of the safety manning of vessels and in particular —

- (a) prescribing safety manning requirements for commercial vessels and providing for the determination of safety manning requirements for certain commercial vessels by the Manning Committee; and
- (b) providing for the review of certain determinations of manning requirements by the Manning Committee; and
- (c) providing for exemptions and temporary dispensations from safety manning requirements under this Division.

**13. Penalty for acting when uncertificated or employing uncertificated person**

- (1) A person who —
- (a) acts in the capacity of master, mate, marine engineer, marine engine driver, or coxswain of a commercial vessel without being duly certificated, whether engaged to serve in that capacity or not; or
  - (b) employs any person who is not duly certificated in that capacity as master, mate, marine engineer, marine engine driver, or coxswain without ascertaining that he is duly certificated,
- commits an offence and is liable for each offence to a fine not exceeding \$2 000.
- (2) If the master of a commercial vessel employs any person to serve on board the vessel in the capacity of mate, marine engineer, marine engine driver, or coxswain without ascertaining that he is duly certificated to act in that capacity the master and owner of the vessel each commits an offence and each shall be liable to a fine not exceeding \$2 000.
- (3) A master, mate, marine engineer, marine engine driver, or coxswain shall be duly certificated for the purposes of this Division if —
- (a) he is the holder for the time being of a valid certificate of competency or of service under this Act of a grade appropriate to his station in the ship or of a higher grade; or
  - (b) he is the holder of any unexpired certificate of competency or of service granted to him by an authority recognized under regulations made under this Act of a grade appropriate to his station in the ship or of a higher grade; or
  - (c) he possesses qualifications and experience not inferior to the requirements prescribed in relation to his station in

that ship pursuant to a determination under this Act or the regulations,

but not otherwise.

**14. Penalty for beginning a voyage under-manned**

A person who being the owner or the master of a commercial vessel causes or permits that vessel to begin a voyage with a lesser complement of officers and other personnel than that required under the regulations, or a complement of officers and other personnel having inferior qualifications or less experience than that required under the regulations, commits an offence and is liable to a fine not exceeding \$2 000.

**15. Manning Committee**

- (1) For the purposes of determining the safety manning of trading ships in accordance with and under this Division there shall be a Manning Committee which shall be known as the Western Australia Marine Manning Committee.
- (2) The Manning Committee shall consist of —
  - (a) the chief executive officer, who shall be chairman; and
  - (b) the Manager, Shipping and Navigation Division of the Department; and
  - (c) the Manager, Survey Division of the Department; and
  - (d) a representative of the Seamen's Union of Australia, selected by the Minister from a panel of 3 names submitted to the Minister by that Union; and
  - (e) a representative of the Australian Institute of Marine and Power Engineers, selected by the Minister from a panel of 3 names submitted to the Minister by that Institute; and
  - (f) a representative of the Merchant Service Guild of Australia, selected by the Minister from a panel of 3 names submitted to the Minister by that Guild; and



- (g) any other persons not exceeding 2 in number who have been duly nominated in accordance with this Division by the owner, or the agent of the owner, of a ship in respect of which the Manning Committee is to make or review a determination.
- (3) The members of the Manning Committee referred to in subsection (2)(d), (e), and (f) shall each be appointed by the Governor.
- (4) The Governor shall appoint a person representative of the same interest and possessing the equivalent qualification to be the deputy of each member appointed by him who shall act in the place of the member if the member is unable to perform his duties as member or if it is otherwise expedient for the deputy to so act.
- (5) The chief executive officer may from time to time nominate in writing an officer of the Department to be his deputy and to act as chairman in his place if he is unable to perform his duties as chairman or it is otherwise expedient for the deputy to so act.
- (6) The Manager, Shipping and Navigation Division, of the Department may from time to time nominate in writing an officer of the Department who is a certificated master class I, or equivalent, to be his deputy and to act as a member in his place if he is unable to perform his duties as member or it is otherwise expedient for the deputy to so act.
- (7) The Manager, Survey Division, of the Department may from time to time nominate in writing an officer of the Department who is a certificated marine engineer class I, or equivalent, to be his deputy and to act as a member in his place if he is unable to perform his duties as member or it is otherwise expedient for the deputy to so act.
- (8) A reference in this Division to a member of the Manning Committee shall be construed as including a reference to a deputy member while acting in the place of a member.

- (9) A person who becomes a member of the Manning Committee by virtue of nomination by the owner, or the agent of the owner, of a ship in respect of which a determination is to be made or reviewed by the Manning Committee shall hold office only for such period as business in respect of that ship is being transacted, considered or otherwise dealt with by it.
- (10) The members of the Manning Committee appointed by the Governor shall hold office for such period and upon such terms and conditions as the Governor may determine.
- (11) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to the appointment of a member of the Manning Committee and a member of such Committee, as such, is not subject to that Part.
- (12) The members of the Manning Committee shall be entitled to such remuneration, allowances and expenses as may be determined by the Governor.

*[Section 15 amended by No. 47 of 1993 s. 33(2); No. 32 of 1994 s. 19.]*

**16. Nomination of members by owner or agent**

- (1) The chief executive officer shall, at least 14 days before the Manning Committee sits to make or review a determination in respect of a ship or at such time as may be agreed on by the chief executive officer and the owner, or the agent of the owner, of the ship, by notice in writing served personally or by post upon the owner, or the agent of the owner, of the ship, inform him of the place at which the sitting will be held and the day and time of its commencement and request him to nominate a person or persons to be a member or members of the Manning Committee.
- (2) The owner, or the agent of the owner, of the ship may, in a manner approved by the Minister, nominate a person or persons (not exceeding 2 in number) to be a member or members of the Manning Committee.

- (3) A person shall not be nominated under subsection (2) unless he is a certificated master or certificated marine engineer, or is, in the opinion of the Minister, otherwise qualified to participate in the deliberations and functions of the Manning Committee.
- (4) A nomination under subsection (2) shall be made not less than 7 days before the day on which the sitting is to commence or at such time as may be agreed upon by the chief executive officer and the owner, or the agent of the owner, of the ship.
- (5) If the owner, or the agent of the owner, of the ship fails to exercise, in accordance with this section, his right to nominate a person or persons to be a member or members of the Manning Committee, he forfeits that right.

*[Section 16 amended by No. 47 of 1993 s. 33(2).]*

#### **17. Decisions of Manning Committee**

- (1) Three members shall form a quorum of the Manning Committee but a quorum shall, unless the Minister otherwise directs, contain all members duly nominated by the owner, or the agent of the owner, of the ship in respect of which the Manning Committee is to make or review a determination.
- (2) Subject to section 18, a decision concurred in by a majority of the members of the Manning Committee, or if the members are equally divided, concurred in by the chairman shall be the decision of the Manning Committee.
- (3) A decision, act or proceeding of the Manning Committee shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such decision, act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

#### **18. Representatives' voting powers**

- (1) For the purpose of a determination or the review of a determination of manning requirements, the members of the

Manning Committee appointed under section 15(2)(d) and (e) shall be eligible only to record one vote between them and that vote shall be exercised as provided in subsections (2) and (3).

- (2) On any question in relation to marine engineers or marine engine drivers, the vote shall be exercised by the representative of the Australian Institute of Marine and Power Engineers, and in relation to any other matter the vote shall be exercised by the representative of the Seamen's Union of Australia.
- (3) Where the members referred to in subsection (1) are unable to agree as to which of them has in relation to any matter the right of exercising the representative's vote, that disagreement may be resolved by the chairman of the Manning Committee.

**19. Minister may vary determination**

- (1) Subject to subsection (3), the Minister may by instrument signed by him vary a determination of, or a review of a determination by, the Manning Committee and the determination or review as so varied by the Minister shall thereafter be deemed to be the determination or review, as the case may be, for the purposes of this Act and the regulations.
- (2) Subject to subsection (3), the Minister may by instrument signed by him vary a provision of the regulations as to manning requirements so far as that provision applies to a vessel specified in the instrument and in all respects relating to that vessel the regulations shall be read and construed as if the provision had been duly amended accordingly.
- (3) The Minister shall not under this section vary a determination, review or provision unless he has provided all persons having, in his opinion, a legitimate interest in the operation of the vessel with an opportunity of making representations in relation to his intention to vary the determination, review, or provision and has considered any such representations received by him.

**20. Manning Committee may obtain information**

- (1) For the purposes of this Division the Manning Committee may —
- (a) by summons under the hand of the chairman or a member require any person —
    - (i) to attend before it; and
    - (ii) to give oral or written answers to any questions relating to any matter before it; and
    - (iii) to produce any books, charts, maps, plans, papers or other records relating to any matter before it;and
  - (b) examine witnesses on oath or affirmation, which may be administered by the chairman or a member; and
  - (c) require any information given to be verified by a statutory declaration; and
  - (d) enter and inspect any vessel in respect of which a determination is to be made or reviewed and, for the purposes of such entry and inspection, enter any place or premises adjacent thereto.
- (2) If any person —
- (a) who has been duly served with a summons to attend before the Manning Committee, neglects or fails to attend in obedience to that summons; or
  - (b) wilfully insults the Manning Committee or any member of it; or
  - (c) misbehaves himself before the Manning Committee; or
  - (d) obstructs the Manning Committee or interrupts its proceedings; or
  - (e) being called or examined as a witness before the Manning Committee, refuses to be sworn or to affirm or without reasonable excuse to produce documents

specified in a summons served upon him, or any of them; or

- (f) being so called or examined refuses to answer any lawful question or prevaricates in his evidence,

he commits an offence and is liable to a fine not exceeding \$500.

#### **Division 4 — Mercantile marine**

#### **21. Regulations in respect of mercantile marine matters**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for the regulation of mercantile marine matters and in particular —

- (a) enabling the establishment and discontinuance of Mercantile Marine Offices or agencies and the appointment of Superintendents or agents; and
- (b) regulating the rating, promotion, reversion and disrating of seamen and the engagement, discipline, discharge, payment of wages, and conditions of employment of persons employed in any capacity on board vessels; and
- (c) providing for the determination of disciplinary offences under this Division and for appeals in respect of the determination of such offences; and
- (d) making provision with respect to facilities for the making of complaints by seamen; and
- (e) providing for the wages and effects of seamen who are left behind, lost with the vessel or die; and
- (f) providing for the practice and procedure of the Disciplinary Appeal Tribunal and for the costs of proceedings before that Tribunal.

#### **22. Disciplinary Appeal Tribunal**

- (1) For the purpose of determining appeals under this Division in respect of disciplinary offences committed or alleged to have

been committed by seamen, there shall be a Disciplinary Appeal Tribunal which shall be known as the Western Australia Mercantile Marine Disciplinary Appeal Tribunal.

- (2) The Disciplinary Appeal Tribunal shall consist of —
- (a) the chief executive officer, or an official of the Department nominated by him either generally or for a particular appeal, who shall be chairman; and
  - (b) 2 persons nominated by the owner of the ship of which the seamen is or was a member of the crew; and
  - (c) 2 persons nominated by the seaman who is the appellant.
- (3) On the hearing of an appeal the Disciplinary Appeal Tribunal shall act according to equity and good conscience and the substantial merits of the case without regard to technicalities and, subject to the requirements of justice, shall not be bound by rules of evidence and may inform itself of any matter in such manner as it thinks fit.
- (4) The Disciplinary Appeal Tribunal may allow the appeal or dismiss it, in whole or in part, and every authority and party affected shall give effect to the decision of the Tribunal.

*[Section 22 amended by No. 35 of 1990 s. 21.]*

### **Division 5 — Surveys and certificates of survey**

#### **23. Application of this Division**

This Division shall apply to all commercial vessels to which this Act applies.

#### **24. Power to appoint survey authorities**

The Governor may appoint a body or society as an authority for the survey of vessels, the issue of certificates of survey, and the performance of related and ancillary functions on behalf of the Department under and in accordance with this Act.

**25. Regulations in respect of surveys and certificates of survey**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed in respect of the survey of vessels and certificates in relation to such surveys and in particular —

- (a) prescribing requirements as to initial surveys, periodic surveys and occasional surveys and inspections of vessels; and
- (b) providing for the issue of certificates of survey and the revalidation, renewal, extension, suspension, and cancellation of such certificates; and
- (c) regulating the acceptance of certificates of survey issued by authorities appointed under this Act or issued elsewhere than in the State, and the dispensation from survey requirements where such a certificate is acceptable; and
- (d) regulating the towage of vessels on a seagoing voyage and providing for the issue of towage permits.

**26. Offence for ship to ply without certificate of survey**

- (1) Subject to subsection (2), no ship shall be underway or ply unless a valid certificate of survey, appropriate to the circumstances, has been issued and is in force under the regulations in respect of the ship.
- (2) The chief executive officer may issue a permit for a ship to be underway or ply and the permit shall state the period of time or the voyage for which it shall have effect and the limits (if any) within which the ship is to operate.
- (3) Subject to section 28(3), if a ship is underway or plies contrary to this section or contrary to the terms of a certificate of survey issued under the regulations or a permit issued under subsection (2), the owner and the master of the ship shall each be guilty of an offence.

Penalty: \$2 000.



- (4) It shall not be a defence to a prosecution under this section to show want of knowledge on the part of the person prosecuted.

*[Section 26 amended by No. 35 of 1990 s. 21; No. 57 of 1997 s. 130(2).]*

**27. Penalty for failure to exhibit certificate in ship**

The owner or master of a ship which is subject to survey under this Division shall not begin a voyage or cause or permit the ship to begin a voyage or otherwise operate the ship unless evidence of compliance with the appropriate survey requirements under this Division is displayed on board in the manner provided under the regulations.

Penalty: \$500.

**28. Overloading**

- (1) Subject to subsections (2) and (3), if a ship carries a greater number of persons than the number specified in the certificate of survey issued in respect of that ship, the owner and the master shall each be guilty of an offence and liable upon conviction to a penalty —
- (a) for a first offence \$2 000; and
  - (b) for a subsequent offence, \$3 000, and
- whether a first or subsequent offence shall incur a further penalty of \$20 in respect of every person carried in excess of the number permitted by the certificate of survey.
- (2) A ship may, for the purpose of saving life, carry a greater number of persons than the number specified in the certificate of survey issued in respect of that ship.
- (3) If it is to be determined for the purposes of subsection (1) or section 26(3) whether the number of persons on board a ship exceeds the number permitted by the certificate of survey, no account shall be taken of —
- (a) an inspector; or
  - (b) a fisheries officer; or

(c) a police officer,

or any other person who has boarded the ship in order to exercise or perform a power, function, or duty conferred or imposed on the person under any written law.

*[Section 28 amended by No. 57 of 1997 s. 130(3).]*

### **Division 6 — Construction**

#### **29. Regulations in respect of the construction of vessels**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for the regulation of construction requirements for vessels built to the survey of the Department under this Act and in particular —

- (a) prescribing construction requirements to be satisfied by vessels; and
- (b) prescribing construction requirements with respect to the structural strength watertight sub-division, structural fire protection, and design loadings of vessels; and
- (c) prescribing construction requirements with respect to the carriage of passengers, accommodation for passengers and guard rails and bulwarks of vessels; and
- (d) prescribing construction requirements with respect to vessels constructed or partially constructed of aluminium, copper-nickel alloy, ferro-cement, glass reinforced plastic, steel, and timber; and
- (e) enabling designers or builders of vessels to elect to use the rules published by a body or society approved by the chief executive officer for the survey of vessels instead of the rules prescribed under this section; and
- (f) enabling construction requirements for a vessel of unusual form or mode of operation to be determined to meet the particular case and otherwise than in accordance with regulations of general application.

*[Section 29 amended by No. 35 of 1990 s. 21.]*

### **Division 7 — Crew accommodation**

**30. Regulations in respect of crew accommodation in vessels**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for the purpose of regulating the provision of crew accommodation in vessels and in particular —

- (a) prescribing the location, means of access, structure, and arrangement of crew accommodation to be provided in vessels; and
- (b) regulating the ventilation, heating, lighting, and sanitation accommodation to be provided in vessels; and
- (c) prescribing requirements with respect to free movement areas, sleeping rooms, mess rooms, and galleys in vessels; and
- (d) permitting, in relation to particular vessels, variation of the prescribed requirements.

### **Division 8 — Load lines**

**31. Power to appoint authorities to assign freeboards etc.**

The Governor may appoint a body or society as an authority for the survey or registry of shipping to assign freeboards and issue load line certificates and perform related and ancillary functions on behalf of the Department under and in accordance with this Act.

**32. Regulations in respect of freeboards, load lines etc.**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed with respect to the calculation and assignment of freeboards, the marking of load lines and associated marks, and the issue of certificates and in particular —

- (a) providing for initial and periodic surveys and inspections of vessels for the purpose of and in relation

to the calculation and assignment of freeboards and the issue, extension and cancellation of load line certificates; and

- (b) regulating the calculation and assignment of freeboards to vessels and the conditions upon which freeboards may be assigned, including the prescription of standards relating to strength and stability; and
- (c) regulating the marking on vessels of load lines and associated marks; and
- (d) providing for the issue, extension, and cancellation of load line certificates and load line exemption certificates; and
- (e) prescribing the circumstances when a vessel shall for the purposes of this Division and the regulations be deemed to be overloaded and the extent to which it shall be deemed to be overloaded; and
- (f) where a load line certificate is in force in respect of a vessel, providing for the detention of the vessel until a surveyor is satisfied that any deck line or load line marked on the vessel is in the position specified in the certificate.

**33. Penalty for not keeping vessel marked**

Where a vessel has been marked with deck lines and load lines under and in accordance with the regulations made under this Division, the owner and the master shall, except for reasonable cause, keep, the vessel so marked as to comply with the requirements of those regulations.

Penalty: \$2 000.

**34. Penalty for removal or alteration of load lines**

A person who, except for reasonable cause, conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate any deck

line or load line which has been marked on a vessel under the regulations is guilty of an offence.

Penalty: \$2 000.

**35. Penalty for taking uncertified vessel to sea**

The master or owner of a vessel to which this Division applies shall not take the vessel to sea or permit the vessel to be taken to sea on any voyage from a port in the State unless there is in force under the regulations in respect of the vessel a load line certificate or a load line exemption certificate.

Penalty: \$2 000.

**36. Penalty for overloading**

- (1) If, except as permitted by or under this Division, a vessel that is overloaded goes to sea from or arrives at any port in the State or is on any voyage to which this Part applies, the master and the owner are each guilty of an offence punishable upon conviction by a fine not exceeding \$2 000 and by an additional fine not exceeding an amount calculated at the rate of such amount as is applicable to the ship in accordance with the table at the foot of this subsection (having regard to the gross registered tonnage of the ship if the ship is a passenger ship or the deadweight tonnage of the ship if the ship is a cargo ship) for each 25 mm or part thereof by which the ship is overloaded.

**Table**

|  | <b>Amount<br/>\$</b> |
|--|----------------------|
| <b>1. Gross Registered Tonnage (passenger ships)</b>         |                      |
| Not exceeding 1 000 tons .....                               | 500                  |
| Exceeding 1 000 tons but not exceeding<br>5 000 tons .....   | 1 000                |
| Exceeding 5 000 tons but not exceeding<br>10 000 tons .....  | 2 000                |
| Exceeding 10 000 tons but not exceeding<br>20 000 tons ..... | 4 000                |

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**Division 8** Load lines

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|  | <b>Amount</b> |
|--|---------------|
|  | <b>\$</b>     |
| Exceeding 20 000 tons but not exceeding<br>40 000 tons .....     | 6 000         |
| Exceeding 40 000 tons .....                                      | 8 000         |
| <b>2. Deadweight Tonnage (cargo ships)</b>                       |               |
| Not exceeding 1 000 tonnes .....                                 | 500           |
| Exceeding 1 000 tonnes but not exceeding<br>5 000 tonnes .....   | 1 000         |
| Exceeding 5 000 tonnes but not exceeding<br>10 000 tonnes .....  | 2 000         |
| Exceeding 10 000 tonnes but not exceeding<br>20 000 tonnes ..... | 4 000         |
| Exceeding 20 000 tonnes but not exceeding<br>40 000 tonnes ..... | 6 000         |
| Exceeding 40 000 tonnes .....                                    | 8 000         |

- (2) It is a defence in a prosecution for an offence against subsection (1) for the person charged to prove that the circumstances giving rise to the offence were due only to a deviation or delay of the vessel caused solely by stress of weather or other circumstances which neither the owner nor the master of the vessel could have prevented or forestalled.
- (3) For the purposes of this Division —
- (a) where a vessel is so loaded at any time that, if the vessel were floating without a list in still salt water of a specific gravity of 1.025, the load line marked on either side of the vessel that is the appropriate load line at that time would be submerged, the vessel shall be deemed to be overloaded and to be overloaded to the extent to which that load line would be so submerged; and
  - (b) where a vessel is at any time engaged on or is about to engage on a voyage during which, in the ordinary course, a load line marked on either side of the vessel (not being a load line that is the appropriate load line at that time) would, at some later time during the voyage,

become the appropriate load line and the vessel is so loaded at that first-mentioned time that if the vessel were floating without a list in still salt water of a specific gravity of 1.025 and there were unloaded from the vessel the fuel and other material that would, in the ordinary course, be consumed or discharged before that later time, that load line would be submerged, the vessel shall be deemed to be overloaded and to be overloaded to the extent to which that load line would be so submerged; and

- (c) the load line marked on a vessel that is the appropriate load line at any time shall be determined in accordance with the regulations.

### **Division 9 — Stability**

#### **37. Regulations in respect of stability**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to stability requirements of vessels subject to the survey of the Department under this Act and in particular —

- (a) providing for the conduct of inclining experiments and dispensations from such experiments; and
- (b) regulating the position and marking of draught marks; and
- (c) prescribing the information and the manner of presentation of such information which is to be presented to masters of vessels; and
- (d) prescribing stability criteria for vessels.

### **Division 10 — Engineering**

#### **38. Regulations in respect of engineering**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to

engineering requirements applicable to vessels and in particular —

- (a) regulating the boilers and machinery and electrical equipment to be provided in vessels; and
- (b) making provisions in respect of liquefied gas installations in vessels; and
- (c) setting out requirements applicable to the refrigeration of cargo in vessels; and
- (d) providing safeguards for the protection of persons on vessels.

### **Division 11 — Life saving appliances**

#### **39. Regulations in respect of life saving appliances**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to the saving of life at sea and the provision of life saving appliances for vessels and in particular —

- (a) prescribing scales of equipment to be provided in each class of vessel; and
- (b) prescribing the types of life saving appliances to be provided and standards to which life saving appliances must conform; and
- (c) providing for and regulating the marking, stowage, and survey of life saving appliances.

#### **40. Offences as to life saving appliances**

The owner or master of a ship shall not —

- (a) send or take the ship on a voyage, or permit the ship to begin a voyage unless the ship is furnished with life saving appliances in accordance with the regulations; or
- (b) permit, through neglect, the loss of or damage to any life saving appliance carried in the ship; or



- (c) fail at the first opportunity to replace any life saving appliance lost from the ship, or to repair or replace any damaged life saving appliance on the ship; or
- (d) fail to keep all life saving appliances carried by the ship fit and ready for use at all times.

Penalty: \$2 000.

### **Division 12 — Fire appliances**

#### **41. Regulations in respect of fire appliances**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to measures for the prevention, detection and extinction of fire on ships and in particular —

- (a) prescribing scales of fire fighting equipment to be provided in each class of vessel, including provisions for patrol alarm and communication systems, fire detection systems and fixed fire extinguishing installations; and
- (b) providing for the maintenance, survey, testing, and stowage of fire appliances; and
- (c) prescribing the types of fire fighting equipment to be provided in ships and the standards to which such equipment must conform.

#### **42. Offences as to fire appliances**

The owner or master of a ship shall not —

- (a) send or take the ship on a voyage, or permit the ship to begin a voyage unless the ship is furnished with fire appliances in accordance with the regulations; or
- (b) permit, through neglect, the loss of or damage to any fire appliance carried in the ship; or
- (c) fail at the first opportunity to replace any fire appliance lost from the ship, or to repair or replace any damaged fire appliance on the ship; or

- (d) fail to keep all fire appliances carried by the ship fit and ready for use at all times.

Penalty: \$2 000.

### **Division 13 — Radio equipment**

#### **43. Regulations in respect of radio equipment**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to the provision, maintenance, and operation of radio equipment on ships and in particular —

- (a) prescribing the types and standards of radiotelephony and radiotelegraphy installations required to be installed in ships; and
- (b) prescribing qualifications for persons operating radiotelephony and radiotelegraphy installations and regulating the operation of such installations; and
- (c) regulating the survey and inspection of radiotelephony and radiotelegraphy installations; and
- (d) providing for the maintenance and testing of radiotelephony and radiotelegraphy installations and the carrying on ships of spare parts and related equipment; and
- (e) providing for the keeping of radio watches and the maintaining of silence periods in respect of radiotelephony installations; and
- (f) providing for the maintenance of radio logbooks.

#### **44. Offences in respect of radio equipment**

The master or owner of a ship shall not cause or permit the ship to begin a voyage unless —

- (a) the ship is equipped with radio equipment in accordance with the regulations; and

- (b) there is on board the ship a person who has the prescribed qualifications for operating that equipment.

Penalty: \$2 000.

#### **Division 14 — Miscellaneous equipment**

**45. Term used: miscellaneous equipment**

In this Division, *miscellaneous equipment* includes any item of equipment that may be required for safety of navigation or the safety of crew, passengers or any other person on board a ship in port or on a voyage but excludes any item of equipment that is required to be provided under any other Division of this Part.

**46. Regulations in respect of miscellaneous equipment**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to the provision of miscellaneous equipment on ships and in particular —

- (a) prescribing scales of equipment to be provided in each class of vessel; and
- (b) prescribing the types of miscellaneous equipment to be provided and standards to which such equipment must conform; and
- (c) prescribing qualifications for and providing for the licensing of compass adjusters.

**47. Offences in respect of official logbooks and vessel record books**

- (1) A person shall not —
  - (a) wilfully destroy an official logbook or vessel record book or an entry in an official logbook or vessel record book; or
  - (b) wilfully render illegible an entry in an official logbook or vessel record book; or

- (c) wilfully make a false or fraudulent entry in or an omission from an official logbook or vessel record book; or
- (d) sign an entry in an official logbook or vessel record book knowing the entry to be false or fraudulent.

Penalty: \$2 000.

- (2) In this section —

*official logbook* means an official logbook kept under the regulations; and

*vessel record book* means a vessel record book kept under the regulations.

#### **48. Offences in respect of miscellaneous equipment**

The owner or master of a ship shall not —

- (a) send or take the ship on a voyage or permit the ship to begin a voyage unless the ship is furnished with such miscellaneous equipment as is required in respect of that ship under the regulations; or
- (b) fail to keep in good order and repair all items of miscellaneous equipment required to be carried by the ship under the regulations.

Penalty: \$1 000.

### **Division 15 — Emergency procedures and safety of navigation**

#### **49. Regulations in respect of emergency procedures and safety of navigation**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed in respect of emergency procedures and the safety of navigation and in particular —

- (a) providing for the allocation of crew, special personnel, and passengers to emergency stations; and

- (b) providing for the practice of emergency procedures by crew and special personnel and for survival craft drills, fire drills, collision drills, and rocket drills; and
- (c) prescribing emergency signals and providing for notices of emergency procedures to be given to crew, special personnel, and passengers; and
- (d) prescribing entries to be made in official logbooks and vessel record books and providing for lists of crew, special personnel, and passengers to be maintained; and
- (e) regulating the use of automatic pilots; and
- (f) regulating the operation and testing of steering gear and drills in relation to such gear; and
- (g) prescribing duties of masters and other persons when a vessel encounters danger on a voyage and prescribing the information to be provided in messages as to such danger; and
- (h) prescribing obligations and procedures as to vessels or aircraft in distress.

**50. Obligation to render assistance**

- (1) If the master of a ship on a voyage receives information from any source that a vessel or aircraft is in distress, the master shall, unless he is unable to do so or in the special circumstances of the case considers it unreasonable or unnecessary to do so, cause his ship to proceed with all practicable speed to the assistance of the persons in distress and, if possible, shall inform those persons that he is doing so.
- (2) Where the master of a ship receives information that a vessel or aircraft is in distress at sea, he shall make, or cause to be made —
  - (a) a record of that information; and

- (b) if he does not proceed to the assistance of the persons in distress, a record of his reasons for not so proceeding, and a record required to be made under this subsection shall be made in the official logbook (if such a book is kept).  
Penalty: \$1 000.
- (3) The master of a ship in distress may, after consultation so far as may be possible with the masters of the ships which answer his call for assistance, requisition such one or more of those ships that he considers best able to render assistance and the master or masters of the ship or ships so requisitioned shall comply with the requisition by proceeding with all practicable speed to the assistance of the persons in distress.
- (4) If the master of a ship is informed by the persons in distress or by the master of another ship that has reached those persons that assistance is no longer necessary, he is released from any obligation imposed on him by subsection (1) or subsection (3) in respect of those persons.
- (5) If the master of a ship is informed that one or more vessels other than his vessel have been requisitioned and the requisition is being complied with, he is released from any obligation imposed on him by subsection (1).
- (6) The master of a ship who fails to comply with subsection (1) or subsection (3) is guilty of an offence and is liable to a fine not exceeding \$2 000 or to imprisonment for a term not exceeding 2 years.
- (7) Compliance by the master of a ship with this section does not affect his right, or that of any other person, to salvage.

[51. Deleted by No. 35 of 1990 s. 10.]

**52. Duties of masters, mates, marine engineers etc.**

- (1) Whenever a commercial vessel is approaching, berthing at, or leaving a jetty, the certificated master of the vessel shall —
- (a) assume personal command of the bridge or wheelhouse and responsibility for the navigation of the vessel; and

- (b) ensure that, unless the engines of the vessel are being operated from the bridge or wheelhouse of the vessel, a certificated marine engineer or certificated marine engine driver of the vessel assumes personal charge of the engine room controls of the vessel.

Penalty: \$1 000.

- (2) Whenever a commercial vessel is under way (but not approaching, berthing at, or leaving a jetty), the certificated master of the vessel shall —
  - (a) except in cases of necessity, be stationed on the bridge or in the wheelhouse of the vessel or ensure that a certificated mate is so stationed; and
  - (b) ensure that, if the vessel is not fitted with engine controls on the bridge or in the wheelhouse, a certificated marine engineer or certificated marine engine driver, if not then in personal charge of the engine room controls of the vessel and except in cases of necessity or where the chief executive officer has directed otherwise, is stationed in the engine room.

Penalty: \$1 000.

*[Section 52 amended by No. 35 of 1990 s. 21.]*

### **Division 16 — Hire and drive vessels**

#### **53. Terms used**

In this Division, unless the contrary intention appears —

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

***hirer*** means a person who hires a hire and drive vessel or uses a hire and drive vessel while the vessel is under hire; and

*owner* in respect of a hire and drive vessel, includes a part owner and a person who for the time being has the possession of the vessel, but does not include a person who is a hirer or a person who has a conditional or unconditional right to take possession of the vessel under a hire-purchase agreement, bill of sale, or other similar instrument but has not yet exercised that right.

**54. Regulations in respect of hire and drive vessels**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed in respect of the ownership, registration, and operation of hire and drive vessels and in particular —

- (a) providing for the licensing of owners of hire and drive vessels and for the issue of licences subject to conditions; and
- (b) providing for the registration and inspection of hire and drive vessels; and
- (c) prescribing the duties of owners and hirers of hire and drive vessels; and
- (d) prescribing requirements for hire and drive vessels including requirements as to maintenance and the provision of equipment; and
- (e) providing for the safe navigation of hire and drive vessels and restricting the age of persons who may drive hire and drive vessels; and
- (f) prohibiting or restricting the navigation of hire and drive vessels in specified areas.

**55. Penalty for unlawful hiring out of vessel**

The owner of a hire and drive vessel shall not hire out or allow the vessel to be hired out unless —

- (a) he is licensed under the regulations as the owner of the hire and drive vessel and any conditions attached to his licence are complied with; and



(b) the vessel is registered under the regulations as a hire and drive vessel.

Penalty: \$2 000.

**56. Penalty for fraudulently procuring use or hire**

A person who procures the use or hire of a hire and drive vessel by fraud or misrepresentation is guilty of an offence.

Penalty: \$500.

### **Part III — Miscellaneous marine powers and duties**

#### **57. General powers to stop and search vessels**

- (1) For the purposes of this Act and in addition to any particular powers conferred by or under this Act, an inspector may order a vessel to be stopped and may go on board, inspect and search a vessel and may detain the vessel for so long as is necessary for the purposes of inspection and search.
- (2) An official of the Department, a person engaged to act on behalf of the Department, an authorised person, an inspector and a surveyor appointed under this Act may —
  - (a) at all reasonable times go on board any vessel to which any of the provisions of this Act extend, for the purpose of examining the hull, boilers and machinery, and making any report thereon required for the purposes of this Act; and
  - (b) inspect any boats, equipment, or materials on board or belonging to any such vessel; and
  - (c) go on board and inspect any such vessel for the purpose of inquiring into or reporting upon the nature and causes of any casualty which the vessel has sustained or caused, or is alleged to have sustained or caused; and
  - (d) require the production of and inspect any licence, permit, certificate or other document issued, or required to be issued, in connection with the ownership, use, or navigation of the vessel; and
  - (e) inspect the vessel and any machinery, equipment, or article —
    - (i) that is required by or under this Act to be carried in or on board the vessel; or
    - (ii) the condition of which could affect the seaworthiness of the vessel.

**58. Power to inspect logs and muster crew**

- (1) Where there is reason to suspect that this Act or the regulations are not complied with, an inspector or authorised person may —
- (a) require the owner, master, or any person on board a commercial vessel to produce any official logbook, ship's logbook, engineroom logbook and other documents relating to any member of the crew of the vessel, in their respective possession or control; and
  - (b) require the master of a commercial vessel to produce a list of all persons on board his ship; and
  - (c) take copies of such logbooks and documents or of any part thereof; and
  - (d) muster the crew of any such ship; and
  - (e) summon the master to appear and give any explanation concerning such ship or her crew and such logs and documents.

- (2) A person who —
- (a) upon requisition made under subsection (1) refuses or neglects to produce or to permit inspection and copying of any logbook or other document; or
  - (b) impedes any mustering of the crew; or
  - (c) refuses or neglects to give any explanation which he is required to give under subsection (1); or
  - (d) knowingly misleads or deceives any person authorised by subsection (1) to require an explanation,

is guilty of an offence.

Penalty: \$1 000.

**58A. Compensation in respect of false distress signals**

The master of a ship who uses or displays, or causes or permits any person to use or display, any of the signals of distress, except where the ship is in distress, is liable to pay compensation and costs incidental thereto, recoverable in any court of competent jurisdiction, for any labour undertaken, risk

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incurred, or loss sustained in consequence of the signal having been regarded as a genuine signal of distress.

*[Section 58A inserted by No. 35 of 1990 s. 11.]*

**58B. Offence to take unsafe ship to sea**

- (1) A person shall not send or take a vessel to sea if the vessel is an unsafe ship.

Penalty: \$5 000.

- (2) It is a defence in a prosecution for an offence against subsection (1) to show —

- (a) that the person charged used all reasonable means to ensure that the vessel was not an unsafe ship; or
- (b) that the sending or taking of the vessel to sea was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

- (3) The fact that an unsafe ship has been detained under section 61 is not a bar to proceedings under this section.

- (4) A vessel is an unsafe ship for the purposes of this section if by reason of —

- (a) the defective condition of a part of the vessel; or
- (b) the overloading or improper loading of the vessel; or
- (c) the undermanning of the vessel,

the vessel is unfit to proceed on its proposed voyage without risk of injury or danger to human life.

- (5) No proceedings for an offence against subsection (1) shall be brought without the consent of the chief executive officer.

*[Section 58B inserted by No. 35 of 1990 s. 11.]*

**59. Safe navigation**

- (1) No person shall navigate a vessel in a dangerous, negligent or reckless manner.

Penalty: \$1 000.

- (2) No person shall navigate or attempt to navigate a vessel while under the influence of alcohol or drugs to such an extent as to be incapable of having proper control of the vessel.  
Penalty: \$1 000.
- (3) No person being towed by a vessel shall act in a dangerous, negligent or reckless manner.  
Penalty: \$1 000.
- (4) A person who is navigating a vessel or being towed by a vessel shall act with proper care, attention, and consideration for the safety, enjoyment and property of other persons.  
Penalty: \$500.

**60. Penalty for unlawfully assuming control**

Subject to this Act, a person shall not, without the consent of the owner or person in charge of a vessel, navigate or otherwise assume control of the vessel or interfere with the vessel, its equipment, or moorings.

Penalty: \$1 000.

**61. Power to detain unsafe ships**

- (1) Whenever a ship is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipment, boilers or machinery, or by reason of undermanning, or by reason of overloading or improper loading, unfit to ply without serious danger to human life, having regard to the nature of the service for which she is intended, the ship may be provisionally detained for the purpose of being surveyed or for ascertaining the sufficiency of her crew and either finally detained or released as follows —
  - (a) the chief executive officer, if he has reason to believe, on complaint or otherwise, that a ship is unsafe may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed; and

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- (b) when a ship has been provisionally detained, there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the chief executive officer may if he thinks fit appoint some competent official of the Department or, with the consent of the Minister, any other competent person, to survey the ship and report thereon to the chief executive officer; and
- (c) the chief executive officer on receiving the report may either order the ship to be released or, if in his opinion the ship is unsafe, may order her to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alteration or the unloading or reloading of cargo, or the manning of the ship, as the chief executive officer thinks necessary for the protection of human life, and the chief executive officer may from time to time vary or add to any such order; and
- (d) before the order for final detention is made, a copy of the report shall be served upon the master of the ship, and within 7 days after the service the owner or master of the ship may appeal to the Court of Marine Inquiry; and
- (e) where a ship has been provisionally detained, the owner or master of the ship at any time before the person appointed under this section to survey the ship makes the survey, may require that he shall be accompanied by such qualified person as the owner or master may select, and, in that case if the surveyor and the said person agree, the chief executive officer shall cause the ship to be detained or released accordingly, but if they differ, the chief executive officer may act as if the requisition had not been made, and the owner or master shall have the like appeal touching the report of the surveyor as is before provided by this section; and

- (f) where a ship has been provisionally detained, the chief executive officer may at any time if he thinks it expedient refer the matter to the Court of Marine Inquiry; and
  - (g) the chief executive officer may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released either upon or without any conditions.
- (2) The chief executive officer may appoint officials of the Department to be detaining officials.
  - (3) A detaining official shall have the same power as the chief executive officer has under subsection (1) to order the provisional detention of a ship for the purpose of being surveyed and to appoint a person or persons to survey the ship.
  - (4) If a detaining officer is of the opinion that a ship detained by him under this section is not unsafe, he shall order the ship to be released.
  - (5) A detaining official shall report forthwith to the chief executive officer the terms of any order made by him for the detention or release of a ship.
  - (6) An order for the detention of a ship, whether a provisional or a final order, shall be served as soon as possible on the master of the ship.
  - (7) A detaining official and a person appointed to survey a ship under this section shall for that purpose have the same powers as are conferred by section 102 on a person referred to in that section.

*[Section 61 amended by No 35 of 1990 s. 21.]*

## **62. Enforcing detention of ship**

- (1) Where under this Act a ship is authorised or ordered to be detained, any official of the Department may detain the ship.

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- (2) If a ship after detention or after service on the master of a notice of or order for detention, begins a voyage before it is released by competent authority, the master of the ship and also the owner and any person who causes or orders the ship to begin a voyage, if the owner or person is privy to the offence, is guilty of an offence.

Penalty: \$2 000.

- (3) If a ship which begins a voyage in contravention of subsection (2) takes on that voyage an official authorised to detain the ship who is on board in the execution of his duty, the owner and the master of the ship shall each be guilty of an offence and liable to a fine not exceeding \$2 000 and also to pay all the expenses of and consequential on the official being taken on that voyage until the official returns or until such time as would enable him after leaving the ship to return to the port from which he is taken, including the expenses of the Department consequential on the absence of the official from his ordinary duties.

- (4) A court convicting a person of an offence under subsection (3) may fix the amount of expenses to be paid and that amount may be recovered as if it were a fine imposed by the court, but otherwise the expenses may be sued for and recovered in a court of competent jurisdiction.

*[Section 62 amended by No. 92 of 1994 s. 42.]*

**63. Power to order vessel to return to port**

- (1) An authorised person may, where he considers it necessary for the due enforcement of this Act, with the assistance of such persons as he may require, board any vessel and may —
- (a) inspect the vessel and any machinery, equipment, or article —
    - (i) that is required by or under this Act to be carried in or on board the vessel; or



- (ii) the condition of which could affect the seaworthiness of the vessel;
  - and
  - (b) require the production of, and inspect any licence, permit, certificate, or other document issued or required to be issued in connection with the ownership, use, safety manning requirements, or navigation of the vessel.
- (2) Where an authorised person is satisfied in relation to any vessel —
- (a) that by reason of the condition of the vessel or any part of the vessel or of any machinery, equipment, or article in or on board the vessel, or by reason of the loading of the vessel, the vessel is unseaworthy; or
  - (b) that there is not in force in relation to the vessel a licence, permit, or certificate required under this Act or a valid exemption or dispensation; or
  - (c) that the provisions of this Act relating to safety manning, the machinery, equipment, or articles required to be carried in or on board the vessel have not been complied with; or
  - (d) that the vessel is in an unsafe position or locality,
- he may order the person in charge of, or apparently in charge of, the vessel to take the vessel to the nearest port or any other place that the authorised person may direct and the person so ordered shall forthwith comply with the order.
- Penalty: \$1 000.
- (3) Where a person fails to comply with an order given to him under subsection (2), the authorised person may take such action as he considers necessary to remove the vessel to the place designated by his order.

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- (4) Where an authorised person gives an order under subsection (2) in relation to a vessel, he may also order that the vessel shall not be navigated again unless and until —
- (a) such measures as are specified in the order have been taken to render the vessel seaworthy; or
  - (b) a licence, permit, or certificate as required in relation to the vessel under this Act has been obtained in relation to the vessel; or
  - (c) the requirements under this Act relating to the safety manning, machinery, equipment, or articles required to be carried in or on board the vessel have been complied with,
- as the case may require.
- (5) A master or other person shall not navigate or attempt to navigate a vessel in contravention of an order given under subsection (4).  
Penalty: \$1 000.
- (6) Nothing in subsection (4) or (5) prevents a vessel from being navigated for the purpose of taking it to a port or other place in compliance with an order given under subsection (2).

**64. Duties in case of collision, casualty etc.**

- (1) In every case of collision between 2 vessels, the master of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any) —
- (a) stay by the other vessel until he has ascertained that she has no need of further assistance and render to the other vessel, her master, crew and passengers (if any) such assistance as may be practicable and necessary in order to save them from any danger caused by the collision; and
  - (b) give to the master of the other vessel the name of his own vessel and of her port of registry or of the port or

place to which she belongs and also the names of the ports or places from which she comes and to which she is bound.

- (2) A master of a vessel who without reasonable excuse fails to comply with subsection (1) is guilty of an offence.

Penalty: \$1 000.

- (3) In every case of a collision, accident or other casualty involving a pleasure vessel, the person in charge of the pleasure vessel, in addition to any duties imposed on him by subsection (1), shall —

- (a) if and so far as he can do so without danger to the pleasure vessel, its crew and its passengers (if any) stand by and render to any other persons or vessels involved in that collision, accident or other casualty such assistance as may be practicable and as may be necessary to save them from any danger resulting from that collision, accident or other casualty; and
- (b) give his name and address and the identification particulars of the pleasure vessel —
  - (i) to any person injured as a result of; and
  - (ii) to the owner or person in charge of any other vessel involved in,

that collision, accident or other casualty immediately after that collision, accident or other casualty; and

- (c) if that collision, accident or other casualty results in the death of or injury to any person or any vessel involved in that collision, accident or other casualty is lost or sustains damage rendering it unseaworthy or incapable of being safely navigated, report in writing to the Department within 7 days of the occurrence of that collision, accident or other casualty full particulars of the circumstances of that collision, accident or other casualty.

Penalty: \$1 000.

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- (4) If a commercial vessel —
- (a) sustains a casualty;
  - (b) sustains damage affecting her seaworthiness or efficiency, either in the hull or in any part of the boilers and machinery;
  - (c) causes the loss of or damage to any other vessel, or

where by reason of a casualty happening to or on board a commercial vessel loss of life or serious injury to any person ensues, the master or owner of the vessel shall immediately after the happening of any of those events send to the chief executive officer by the fastest means of communication available to him a report containing full particulars of the event and of the probable cause of the event, stating the name and official number (if any) of the vessel, the port to which she belongs, the names of the master, mates and owner and the numbers and other particulars of their certificates (if any) and, if practicable, the present position of the vessel.

Penalty: \$1 000.

- (5) Where the master or owner of a vessel is required by subsection (4) to send a report to the chief executive officer immediately after the happening of an event of a kind described in that subsection, the master or owner of the vessel shall, if possible within 24 hours after the happening of the event or if it is not so possible within 24 hours then as soon as it is possible, send to the chief executive officer by letter a report signed by the master or owner and containing all of those particulars and confirming the report sent in accordance with subsection (4).

Penalty: \$500.

*[Section 64 amended by No. 35 of 1990 s. 21; No. 8 of 2009 s. 137(2).]*

**65. Mooring licences**

- (1) The Minister may grant a licence to any person conferring on that person the right to use, exclusively or in common with

another person or other persons, the waters specified in the licence for the purpose of mooring vessels.

- (2) A licence may be granted under this section upon such terms and subject to such conditions as the Minister thinks fit.

**66. Closure of navigable waters**

- (1) Where the chief executive officer is satisfied that for reasons of safety or by reason of an emergency it is expedient that any waters should be closed to navigation or closed to navigation by vessels of a particular type or class, the chief executive officer may direct an authorised person by order to close those waters to navigation accordingly and effect shall be given to such an order in accordance with its terms.
- (2) An order made by an authorised person under subsection (1) —
- (a) may be served on the person in charge of a vessel; and
  - (b) shall be published for general information in such part of the State as is likely to be affected by the order as soon as practicable and in such manner as the chief executive officer considers likely to be appropriate having regard to the circumstances and what may be practicable; and
  - (c) may be varied, renewed or cancelled by subsequent order so made; and
  - (d) has effect and the force of law in relation to the waters therein specified on and from the time of the making of the order, or such other subsequent time as is specified in the order, and may be made so as to apply only to the period specified in the notice or without specifying any such period; and
  - (e) may be made so as to be unconditional and so as to apply to any vessel, or so as to provide, whether subject to conditions or unconditionally, that specified persons or vessels may be exempted; and
  - (f) may confer a discretionary authority on any person therein specified.

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- (3) A person who —
- (a) obstructs any person acting in accordance with a power, authority or discretion conferred under this section; or
  - (b) being the person in charge of a vessel, knowingly navigates that vessel in contravention of an order made and published under this section,

is guilty of an offence.

Penalty: \$500.

- (4) The variation or cancellation of an order made under this section does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that variation or cancellation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding any other enactment.

- (5) In this section —

**authorised person** means a member of the Police Force, an inspector or a person authorised for the purposes of this section by the chief executive officer either generally or in a particular case;

**person in charge of a vessel** includes the person who is the driver, master, owner, possessor, skipper, or user of the vessel or the person causing, permitting, or suffering the vessel to be navigated; and

**waters** means —

- (a) the territorial sea adjacent to the State; and
- (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
- (c) waters within the limits of the State.

*[Section 66 amended by No. 35 of 1990 s. 13 and 21; No. 78 of 1995 s. 137.]*

**67. Limiting speed of vessels**

- (1) The chief executive officer may by notice published in the *Gazette* limit the speed at which vessels may be navigated in any waters specified in the notice.
- (2) A notice published under subsection (1) may —
  - (a) specify waters within —
    - (i) the territorial sea adjacent to the State; and
    - (ii) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
    - (iii) waters within the limits of the State;and
  - (b) apply to vessels generally or to a particular vessel or class of vessels; and
  - (c) be of general application or may apply only in relation to the time, place and circumstances specified in the notice; and
  - (d) be varied or cancelled by a further notice published in the *Gazette*.
- (3) A person who causes, permits or suffers a vessel to be navigated contrary to a notice published under this section commits an offence.

Penalty: \$500.

*[Section 67 amended by No. 35 of 1990 s. 21.]*

**68. Speed measuring equipment**

- (1) The Minister may, by notice published in the *Gazette*, approve of types of apparatus for ascertaining the speed at which a vessel is moving and may, by notice so published, revoke any such approval.

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- (2) In any proceeding for an offence against this or any other Act or regulations made thereunder evidence may be given of the use of speed measuring equipment by an inspector in relation to a vessel and of the speed at which that vessel was moving as ascertained by the use of that equipment, and that evidence is *prima facie* evidence of the speed at which that vessel was moving at the time of the use of that equipment in relation to that vessel.
- (3) In any proceeding of the kind mentioned in subsection (2), evidence by an inspector that apparatus used by him was speed measuring equipment within the meaning of this section is *prima facie* evidence of that fact.
- (4) Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act or regulations made thereunder.
- (5) In this section —  
*speed measuring equipment* means apparatus of a type approved by the Minister under subsection (1).

**69. Offences relating to hatches**

A person who —

- (a) sends or takes, or attempts to send or take, any ship from a port in the State; or
- (b) departs from or arrives at any port in the State in charge of any ship,

with the hatches of the ship not being properly battened down and secured, or in such a position and condition that they can be battened down and secured without delay, is guilty of an offence.

Penalty: \$1 000.



**70. Offence of being on board a ship unlawfully**

- (1) No person (other than an official or a person duly authorised by the chief executive officer) shall without reasonable excuse or the permission of the master go on board or remain alongside any ship in any port during the night.

Penalty: \$500.

- (2) The master or a member of the Police Force may apprehend and detain any person found to be offending against subsection (1) and a person so detained shall be brought before a court as soon as is practicable.

*[Section 70 amended by No. 35 of 1990 s. 21.]*

**71. Removal of vessels constituting hazards or obstructions**

- (1) Whenever a vessel which is in navigable waters and, in the opinion of an inspector, constitutes or is likely to constitute a hazard or obstruction to other vessels using those waters, whether as a result of being abandoned, derelict, stranded, sunk, unfit for sea service, wrecked or otherwise, the chief executive officer may, by notice in writing served on the owner of that vessel or, if the identity or whereabouts, or both, of the owner of that vessel cannot be ascertained after the making of reasonable inquiries, published once in a newspaper circulating through out the State, declare that vessel to be a navigational hazard and require that vessel to be removed with such period, being not less than 7 days after the date of service or publication of that notice, as is specified in that notice from all navigable waters or to a place specified in that notice.
- (2) If a requirement under subsection (1) is not complied with, the chief executive officer may remove or cause to be removed the navigational hazard from all navigable waters or to the place specified in the notice referred to in that subsection, as the case may be.
- (3) The cost of removal under subsection (2) is a debt due to the Crown and a first charge in priority to all other claims on the navigational hazard.

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- (4A) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 73(2)(a), it is declared that section 73(2) of that Act applies to a charge created under subsection (3).
- (4B) The chief executive officer may recover the cost of removal under subsection (2) by —
- (a) action in a court of competent jurisdiction against the owner of the navigational hazard; or
  - (b) selling or causing to be sold the navigational hazard.
- (4C) If under subsection (4B)(b) any navigational hazard is sold in good faith to a person and the person takes the property in good faith, the person receives good title to the navigational hazard against every other person including its true owner.
- (4) The proceeds of a sale referred to in subsection (4B)(b) shall be applied —
- (a) first in payment of the costs of that sale; and
  - (b) secondly in payment of the costs of removing the navigational hazard,
- and the balance, if any, of those proceeds shall be paid to the owner of the navigational hazard or, if the identity or whereabouts, or both, of that owner cannot be ascertained after making reasonable inquiries, credited to the Consolidated Account.
- (5) In this section, *waters* means waters within —
- (a) the territorial sea adjacent to the State; and
  - (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
  - (c) waters within the limits of the State.

*[Section 71 amended by No. 35 of 1990 s. 21; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4; No. 42 of 2011 s. 112.]*

**72. Offences in relation to disorderly persons on passenger ships**

- (1) A person who —
- (a) being drunk or disorderly, has been on that account refused admission into a passenger ship by the owner or any person in his employ, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship; or
  - (b) being drunk or disorderly on board such ship, is requested by the owner or any person in his employ to leave her at any place which she visits in the State, and, having had the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request; or
  - (c) being on board any such ship, after warning by the master or any other officer of the ship, molests or continues to molest any passenger; or
  - (d) having boarded such ship without permission of the master or other officer in authority, refuses to leave the ship after being requested to do so by the master or officer; or
  - (e) after having been refused admission into any such ship by the owner or any person in his employ on account of the ship being full, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship; or
  - (f) having boarded any such ship, upon being requested by the owner or any person in his employ to leave the ship before she has quitted the place at which such person boarded on account of the ship being full, and, upon having the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request; or

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- (g) travels or attempts to travel in any such ship without having previously paid the fare when demanded and with intent to avoid payment of the fare; or
- (h) having paid the fare for a certain distance, knowingly and wilfully proceeds in any such ship beyond that distance without previously paying the additional fare for the additional distance when demanded and with intent to avoid payment of the additional fare; or
- (i) knowingly and wilfully refuses or neglects, on arriving at the place or point to which he has paid the fare, to quit the ship; or
- (j) being on board any such ship does not, when required by the master or other officer of such ship, either pay the fare or exhibit such ticket or other receipt (if any) showing the payment of the fare as is usually given to persons travelling by the ship and paying the fare,

is guilty of an offence.

Penalty: \$500.

- (2) A penalty under this section shall not prejudice the recovery of any fare payable by the offender.

**73. Offences in relation to interference with machinery or obstruction of crew**

A person who on board a passenger ship wilfully does or causes to be done anything —

- (a) to obstruct or injure any part of the boilers, machinery, or equipment of the ship; or
- (b) to obstruct, impede or molest any member of the crew in the navigation or management of the ship or otherwise in the execution of his duty,

is guilty of an offence.

Penalty: \$1 000.

**74. Penalty for refusing to give name and address etc.**

A person reasonably suspected of having committed an offence against section 72 or 73 who, on being asked by the master, neglects or refuses to give his name and residential address or gives a false name or false residential address is guilty of an offence.

Penalty: \$500.

**75. Arrest of offenders on passenger ships**

The master or other officer of a passenger ship, and all persons called by him to his assistance, may detain any person who is reasonably suspected of having committed an offence against section 72, 73, or 74 and whose name and residential address are unknown to the master or officer and may convey the offender as soon as is practicable before a court to be dealt with according to law.

## **Part IV — International Conventions**

### **Division 1 — General**

#### **76. Terms used**

In this Part, unless the contrary intention appears —

*applied provisions of the Limitation Convention* means the provisions of the Limitation Convention that, as provided by section 84, have the force of law as part of the law of the State;

*container* has the same meaning as in the Container Convention;

*Container Convention* means the International Convention for Safe Containers as corrected by the Proces-Verbal of Rectification dated 25 June 1976 (a copy of the English text of the articles of which, and of the annexes to which, as so corrected, is set forth in Schedule 1) as affected by —

- (a) any amendment of the Convention, other than an amendment not accepted by Australia, made under Article IX of the Convention; and
- (b) any amendment of the annexes to the Convention, other than an amendment objected to by Australia, made under Article X of the Convention;

*Limitation Convention* means the International Convention relating to the limitation of the liability of owners of sea-going ships signed at Brussels on 10 October 1957, (a copy of the English text of which is set forth in Schedule 2);

*Prevention of Collisions Convention* means the Convention on the *International Regulations for Preventing Collisions at Sea, 1972* (a copy of the English text of the articles of which is set forth in Schedule 3), together with the *International Regulations for Preventing Collisions at Sea, 1972*, constituted by the rules, and other annexes attached to that Convention, as corrected by the Proces-Verbal of Rectification dated 1 December 1973 (a

copy of the English text of which rules and other annexes, as so corrected, is also set forth in Schedule 3), as affected by any amendment, other than an amendment objected to by Australia, made under Article VI of that Convention;

***Protocol of 1978 relating to the Safety Convention*** means the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of part of the annex to which, is set forth in Schedule 5), as affected by any amendment, other than an amendment objected to by Australia, made under Article VIII of the International Convention for the Safety of Life at Sea, 1974, as incorporated in that Protocol by Article II of that Protocol;

***Safety Convention*** means the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of part of the annex to which, is set forth in Schedule 4), as affected by any amendment, other than an amendment objected to by Australia, made under Article VIII of that Convention and, after the date on which the Protocol of 1978 relating to the Safety Convention enters into force for Australia, as also affected by that Protocol;

***sea*** includes any waters within the ebb and flow of the tide; and

***sheltered water passenger vessel*** means a passenger vessel permitted to operate in partially smooth and smooth waters only.

**77. Regulations under this Part**

- (1) The Governor may make regulations for or with respect to any matter authorised or required to be prescribed by the regulations for the purposes of this Part and, in particular, except as otherwise provided in this Part, for or with respect to prescribing penalties not exceeding a fine of \$1 000 for a contravention of, or failure to comply with, a provision of the regulations or a notice, order, direction or instruction given, issued or made under, or in force by virtue of, the regulations.

- (2) Regulations made under this Part may make provision for or with respect to any matter by applying, adopting or incorporating, with or without modification —
- (a) the provisions of any Act, or of any regulations, as in force at a particular time or as in force from time to time; or
  - (b) any matter contained in any other instrument or writing as in force or existing at the time when the first-mentioned regulations take effect,

but the regulations shall not, except as provided by this subsection, make provision for or with respect to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

*[Section 77 amended by No. 78 of 1995 s. 147.]*

**78. Regulations giving effect to Conventions: discretion of Governor and Minister**

- (1) Where, under this Part, the Governor is empowered to make regulations for and in relation to giving effect to any of the provisions of the Container Convention, the Safety Convention or the Prevention of Collisions Convention, the power shall, in the case of a provision of any of those Conventions the terms of which are such as to vest in the several Governments who are parties to the Convention a discretion as to whether any, and if so what, action should be taken under the Convention, be construed as an authority to the Governor to make by regulation such provision (if any) with respect to the matter in question as the Governor in the exercise of that discretion thinks proper.
- (2) Notwithstanding any regulation made under any provision of this Part for the purpose of giving effect to any provision of the Container Convention, the Safety Convention or the Prevention of Collisions Convention which requires a particular fitting, material, appliance or apparatus, or type thereof, to be fitted or carried in a ship, or any particular provision to be made in a ship, the Minister may allow any other fitting, material,



appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if he is satisfied that that other fitting, material, appliance or apparatus, or type thereof, of provision, is at least as effective as that required by the relevant Convention.

### **Division 2 — Prevention of Collisions Convention**

#### **79. Regulations giving effect to Prevention of Collisions Convention**

- (1) The regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention in relation to vessels, while they are in the area constituted by —
  - (a) the territorial sea adjacent to the State; and
  - (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
  - (c) waters within the limits of the State.
- (2) A person shall not contravene a regulation made under subsection (1).  
Penalty: \$10 000 or imprisonment for 2 years.
- (3) Section 6 does not apply in respect of this section.

### **Division 3 — Container Convention**

#### **80. Regulations giving effect to Container Convention**

- (1) The regulations may make provision for and in relation to giving effect to the Container Convention in relation to containers in the State.
- (2) Without limiting the generality of subsection (1), regulations made for the purpose of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

**81. Safety requirements and tests not required or permitted by the Container Convention not to be imposed**

- (1) Nothing in a law in force in the State at the commencement of this Division shall, after that commencement, be taken as imposing or authorising the imposition of structural safety requirements or tests on containers to which the Container Convention applies in relation to containers in the State that are not required or permitted by that Convention to be imposed on containers to which it applies.
- (2) Nothing in subsection (1) shall be taken to preclude the application in relation to containers in the State to which the Container Convention applies of a law in force in the State that prescribes additional structural safety requirements or tests of a kind referred to in paragraph (2) of Article V of that Convention.

**Division 4 — Limitation Convention and limitation provisions**

**82. Interpretation**

In this Division, except in so far as the contrary intention appears, a word or expression used in this Division has the same meaning as in the Limitation Convention.

**83. Application**

- (1) The provisions of this Division shall be read subject to any law in force in the State to the extent that, by giving effect to an international agreement to which Australia is a party, it excludes or limits the right of the owner of a sea-going ship to limit his liability in accordance with the Limitation Convention.
- (2) A reference in subsection (1) to the provisions of this Division shall be read as including a reference to the applied provisions of the Limitation Convention and the provisions of any regulations made for the purposes of section 87.

**84. Provisions of Limitation Convention having force of law**

- (1) Subject to section 85, the provisions of the Limitation Convention, other than Article 1(1)(c) of that Convention, have the force of law of as part of the law of the State in relation to —
- (a) a trading ship within the meaning of section 6 of the Navigation Act proceeding on a voyage other than an overseas voyage or an inter-state voyage; and
  - (b) an Australian fishing vessel within the meaning of section 6 of that Act proceeding on a voyage other than an overseas voyage; and
  - (c) an inland waterways vessel within the meaning of section 6 of that Act; and
  - (d) a pleasure craft within the meaning of section 6 of that Act; and
  - (e) an off-shore industry vessel within the meaning of section 8 of that Act —
    - (i) in respect of which there is not in force a declaration under section 8A(5) of that Act; and
    - (ii) that is proceeding on a voyage other than an overseas voyage or an inter-state voyage.
- (2) In subsection (1), *inter-state voyage* and *overseas voyage* have the same meanings as in section 6 of the Navigation Act.
- (3) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purpose of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.

**85. Limitation in relation to non-seagoing ferries**

Notwithstanding section 84, in relation to a trading ship or an inland waterways vessel which in either case is a sheltered water passenger vessel, the Limitation Convention shall be read and

construed as if the following paragraphs were substituted for Article 3 —

- (1) The amount to which the owner of a sheltered water passenger vessel may limit his liability under Article 1 shall be an aggregate amount of \$45 000 for each passenger permitted by the vessel's certificate of survey.
- (2) The distribution of the limitation fund among the claimants shall be made in proportion to the amounts of their established claims.
- (3) If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1 paragraph (1), he shall *pro tanto* be placed in the same position in relation to the fund as the claimant whose claim he has paid.
- (4) Where the ship owner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1 paragraph (1) the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable the ship owner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

**86. Application to determine liability**

- (1) Where a claim is, or claims are, made against or apprehended by a person in respect of any liability of that person that he may limit in accordance with the applied provisions of the Limitation Convention, the person may apply to the Supreme Court (whether or not in the course of other proceedings) to determine the limit of that liability in accordance with those provisions, and the Court may so determine the limit of that liability and may make such order or orders as it thinks fit with respect to the Constitution, administration and distribution in accordance with those provisions, of a limitation fund for the payment of claims in respect of which the person is so entitled to limit his liability.

- (2) The Supreme Court to which an application has been made under subsection (1) may, if the Court thinks fit, at any stage in the proceedings, upon application or of its own motion, by order, transfer the proceedings to the Supreme Court of another State or Territory of the Commonwealth.
- (3) Where proceedings are transferred from the Supreme Court in pursuance of subsection (2), all documents filed of record, and moneys lodged, in the Supreme Court shall be transmitted by the Master to the Registrar or other proper officer of the Court to which the proceedings are transferred.
- (4) Where proceedings are transferred to the Supreme Court by a Court of another State or Territory of the Commonwealth in pursuance of a law of that State or Territory analogous to this section, the Supreme Court shall proceed as if the proceedings had been originally instituted in the Supreme Court and as if the same proceedings had been taken in that Court as had been taken in the Court from which the proceedings are transferred.
- (5) For the purposes of this Division, amounts of money expressed in the franc mentioned in Article 3 of the Convention shall be converted into Australian currency in the manner provided by the *Navigation (Limitation of Shipowners' Liability) Regulations* of the Commonwealth or by regulations substituted for or amending those regulations.

**87. Regulations giving effect to Limitation Convention**

- (1) The regulations may prescribe matters that are necessary or convenient to be prescribed for the purposes of carrying out or giving effect to the applied provisions of the Limitation Convention and, for or in connection with those purposes, may make provision for and in relation to the ascertainment of the tonnage of ships, vessels or craft mentioned in section 84(1) including the estimation of such tonnage in circumstances where it is not possible or reasonably practicable to measure their tonnage.

- (2) Subsection (1) shall not be taken as limiting the power of the Judges of the Supreme Court to make rules with respect to a matter that is not provided for in regulations made under subsection (1).

**88. Ship owner not to be liable in certain cases of loss of, or damage to, goods**

The owner of a ship, vessel or craft mentioned in section 84(1) shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity where —

- (a) any goods, merchandise or other things whatsoever taken in or put on board the ship are lost or damaged by reason of fire on board the ship; or
- (b) any goods, being gold, silver, diamonds watches, jewels or precious stones taken in or put on board the ship, the true nature and value of which have not, at the time of shipment, been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with or secreting thereof.

**89. Ship owner not entitled to limit liability in respect of claims by crew etc.**

- (1) The owner of a ship is not entitled to limit his liability in respect of a claim that is made by the master or any other member of the crew of the ship, or by a servant of the owner on board the ship, or by a servant of the owner whose duties are connected with the ship, where the claim arises from an occurrence of a kind specified in subparagraph (1)(a) or (b) of Article 1 of the Limitation Convention.
- (2) The reference in subsection (1) to the master or any other member of the crew of a ship, or a servant of the owner of a ship on board the ship, or a servant of the owner of a ship whose

duties are connected with the ship, shall be read as including a reference to the heirs, personal representatives and dependants of the master or other member of the crew, or servant of the owner, as the case may be.

### **Division 5 — Safety Convention**

#### **90. Regulations giving effect to Safety Convention**

- (1) The regulations may make provision for or in relation to giving effect to a provision of Chapter V of the Regulations contained in the Annex to the Safety Convention (other than Regulation 13 or 15 of that Chapter of those Regulations) with respect to —
  - (a) a trading ship within the meaning of section 6 of the Navigation Act proceeding on a voyage other than an overseas voyage or an inter-state voyage; or
  - (b) an Australian fishing vessel within the meaning of section 6 of that Act proceeding on a voyage other than an overseas voyage; or
  - (c) an inland waterways vessel within the meaning of section 6 of that Act; or
  - (d) a pleasure craft within the meaning of section 6 of that Act; or
  - (e) an off-shore industry vessel within the meaning of section 8 of that Act —
    - (i) in respect of which there is not in force a declaration under section 8A(5) of that Act; and
    - (ii) that is proceeding on a voyage other than an overseas voyage or an inter-state voyage.
- (2) In subsection (1), *inter-state voyage* and *overseas voyage* have the same meanings as in section 6 of the Navigation Act.
- (3) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purposes of proceeding on the voyage until the time

when it is got under way for the purpose of proceeding on another voyage.

- (4) Where a provision of the Safety Convention applies only in relation to a particular class of ships or in relation to ships engaged on a particular class of voyages, any regulation under subsection (1) that gives effect to that provision may be applied to ships of any other class mentioned in that subsection or to such ships engaged in any other class of voyages other than an overseas voyage or, except in the case of an Australian fishing vessel, an inter-state voyage.



## **Part V — Carriage of dangerous goods**

### **91. Restriction on carriage of dangerous goods**

- (1) A person shall not carry dangerous goods in a ship or place dangerous goods, or cause dangerous goods to be placed, on board a ship for carriage in the ship unless —
- (a) the outside of the package containing the goods is distinctly marked with a description of the goods in the manner required under the *Dangerous Goods Safety Act 2004*; and
  - (b) a description in writing of the goods (not being a description contained in the ordinary shipping documents) is given to the owner or master of the ship at or before the time the goods are placed on board the ship.

Penalty: \$2 000.

- (2) Subsection (1) does not apply to the owner or master of the ship.  
*[Section 91 amended by No. 7 of 2004 s. 70.]*

### **92. Penalty for misdescription of goods and sender**

- (1) A person shall not knowingly send by or carry in any ship from any port in the State any goods dangerous goods under a false description.

Penalty: \$2 000.

- (2) Where any dangerous goods are on board a ship, or are to be placed on board a ship, a person shall not knowingly falsely describe the sender of the goods on any package containing the goods or in any document relating to the shipping of the goods.

Penalty: \$1 000.

### **93. Powers of owner or master as to dangerous goods**

- (1) The owner or master of any ship may refuse to take on board at any port in the State to any package which he suspects contains

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dangerous goods and may require it to be opened and may inspect the contents.

- (2) If any dangerous goods, or any goods which in the opinion of the owner or master of the ship are dangerous goods, have been sent or brought aboard any ship without being marked as required by section 91 or without notice having been given as required by that section, the owner or master of the ship may cause the goods to be thrown overboard, with any package or receptacle in which they are contained, and neither the owner nor the master shall be subject to any liability, civil or criminal, for doing so.

**94. Forfeiture of dangerous goods**

- (1) Where any dangerous goods have been sent or carried or an attempt has been made to send or carry dangerous goods on board any ship at any port in the State without being marked as required by section 91 or without notice having been given as required by that section, or under a false description, or with a false description of the sender or carrier thereof, any court having Admiralty jurisdiction may declare those goods and any receptacle in which they are contained to be, and they shall thereupon be, forfeited, and when forfeited shall be disposed of as the court directs.
- (2) The court shall have, and may exercise, the powers of forfeiture and disposal notwithstanding that the owner of the goods has not committed any offence under the provisions of this Act relating to dangerous goods, and is not before the court, and has not notice of the proceedings and notwithstanding that there is no evidence to show to whom the goods belong; but the court may in its discretion require such notice as it may direct to be given to the owner or shipper of the goods before declaring them to be forfeited.

**95. Minister may prohibit carriage of cargo**

If in the opinion of the Minister, the carriage of any particular cargo or goods in any ship would endanger her safety or interfere with the comfort of her passengers or crew, the Minister may give notice to the master or owner that the carriage in the ship of the cargo or goods specified in the notice is prohibited and, after receiving such a notice, the master shall not cause the ship to be underway, and the owner shall not permit the ship to be underway, with the prohibited cargo or goods.

Penalty: \$2 000.

**96. Regulations as to dangerous goods**

The Governor may make regulations prescribing the matters that are necessary or convenient to be prescribed with respect to the carriage of dangerous goods and in particular may prescribe —

- (a) the classes of ships in which dangerous goods may be carried; and
- (b) the quantities of dangerous goods that may be carried from any port in the State in such ships; and
- (c) the precautions to be observed in connection with the loading and unloading of dangerous goods at any port in the State; and
- (d) the conditions as to packing and stowage of dangerous goods, and the ventilation of holds containing dangerous goods, loaded at any port in the State.

**97. Explosives on passenger ships**

- (1) If a ship carrying passengers carries explosives, the explosives shall be protected in the manner directed by the chief executive officer or an authorised officer.
- (2) The master and the owner of a ship on which explosives are carried contrary to subsection (1) are each guilty of an offence.

Penalty: \$2 000.

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- (3) This section does not apply to explosives forming part of the equipment or stores required for the navigation, safety, or maintenance of the ship.
- (4) An authorised officer may seize and detain without warrant any explosives which are in or on board a ship contrary to this section.
- (5) Explosives seized under this section may be forfeited on the order of a court of summary jurisdiction and disposed of as the court directs.

*[Section 97 amended by No. 35 of 1990 s. 21.]*

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## Part VI — Pleasure vessels

### 98. Terms used

- (1) In this Part, unless the contrary intention appears —
- authorised person** means a member of the Police Force, an inspector, or any person authorised for the purpose by the chief executive officer either generally or in a particular case;
- owner** includes a person who is a joint owner or part owner of a pleasure vessel and, where a pleasure vessel is the subject of a hire-purchase agreement, means the person who is entitled to the use of the pleasure vessel under the agreement;
- pleasure vessel** means —
- (a) a vessel held wholly for the purpose of recreational or sporting activities and not for hire or reward; and
  - (b) any other vessel declared to be a vessel to which this Part applies by order of the Minister under subsection (2).
- (2) The Minister may by order declare that this Part shall apply to any vessel or any type of vessel specified in that order (not being a vessel required to be licensed otherwise under this Act).
- (3) An order under subsection (2) shall be published for general information in the *Gazette* as soon as practicable after it is made but a failure to so publish shall not affect the validity of the order.
- (4) The Minister may by order published in the *Gazette* vary or revoke an order made under this section.

[Section 98 amended by No. 35 of 1990 s. 21.]

### 99. Regulations in respect of pleasure vessels

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed in respect of the registration, navigation and operation of pleasure vessels and

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otherwise for giving effect to the purposes of this Part and in particular —

- (a) providing for the registration and transfer of registration of pleasure vessels or any class of pleasure vessels, whether generally or where registration is limited in respect of time, place or circumstance, and providing for the suspension or cancellation of such registration; and
- (b) prohibiting the navigation of pleasure vessels that cannot safely be navigated; and
- (c) regulating the maintenance and repair of pleasure vessels; and
- (d) prescribing the equipment to be provided on pleasure vessels and for the use and maintenance of such equipment; and
- (e) providing for the inspection of pleasure vessels and their equipment; and
- (f) regulating noise, fumes and smoke arising from the operation of pleasure vessels; and
- (g) prescribing the age of persons who may be in charge of pleasure vessels, or pleasure vessels of any class; and
- (h) providing for the manning of pleasure vessels, generally or in respect of journeys of specified durations; and
- (ha) regulating, controlling or prohibiting water related activities generally or any kind of water related activity specified in the regulations; and
- (i) regulating or prohibiting the use of specified waters —
  - (i) by any pleasure vessel or pleasure vessels of any class; or
  - (ii) for any specified purpose;and
- (j) prescribing safety regulations in respect of the navigation, mooring and berthing of pleasure vessels; and

- (k) regulating the provision and use on pleasure vessels of lights and signals.
- (2) Without limiting in any way the powers conferred by subsection (1), the Governor may by regulation empower the chief executive officer to regulate by notice published in the *Gazette* times, places, and conditions in respect of any matter or thing for which regulations may be made under subsection (1)(b), (i) and (j) and such a notice has the force of law.
- (3) Regulations made or a notice published under this section prescribing safety regulations may provide that where the chief executive officer is satisfied that appropriate measures are taken to ensure the safety of competitors, spectators and members of the public generally, specified pleasure vessels or persons or classes of pleasure vessels or persons engaged in aquatic events or exhibitions approved by the chief executive officer may be exempted by the chief executive officer from the requirement to carry all, or a specified part, of the required safety equipment and such an exemption may be granted unconditionally or subject to specified conditions.

*[Section 99 amended by No. 35 of 1990 s. 14 and 21.]*

## **Part VII — Investigations and inquiries**

### **Division 1 — General**

#### **100. Application**

Nothing in this Act authorises the making of a preliminary inquiry or the holding of a formal investigation into the matter of a casualty occurring to a foreign ship (except so far as the same affects any Australian ship on an intra-state voyage, any Australian fishing vessel not on an overseas voyage or any certificate of an officer granted by the Department or any other Australian marine authority) and subject to the same exception nothing in this Act authorises the making of a preliminary inquiry or the holding of a formal investigation into the matter of any incompetence or misconduct on the part of a master, mate, marine engineer, or marine engine driver of a foreign ship.

### **Division 2 — Preliminary investigations and powers**

#### **101. Preliminary inquiries and reports**

- (1) If the chief executive officer has reason to believe that —
- (a) a casualty has occurred to a commercial vessel; or
  - (b) any incompetence or misconduct has occurred on the part of any certificated master, mate, marine engineer, marine engine driver or coxswain on a commercial vessel,

and that a Court of Marine Inquiry has jurisdiction in the matter of the casualty, incompetence, or misconduct and in the opinion of the chief executive officer it is expedient to do so, he shall direct that an official of the Department or some other person or persons appointed for the purpose by him shall make a preliminary inquiry respecting the casualty, incompetence, misconduct.



- (2) The chief executive officer may, whenever he considers it expedient to do so, depute an official of the Department or, with the approval of the Minister, appoint any other person as an inspector, to report to him upon one or more of the following matters —
- (a) whether in particular circumstances or in relation to a particular event this Act or regulations made under this Act have been complied with; and
  - (b) whether the hull, boilers, machinery, or any part of a ship or of any equipment or articles in or on board a ship to which this Act applies are sufficient and in good condition; and
  - (c) such other matters as the chief executive officer considers necessary to ensure compliance with this Act and the regulations under this Act.

*[Section 101 amended by No. 35 of 1990 s. 21.]*

**102. Powers of investigators and inspectors**

A person who is required to make a preliminary inquiry under section 101(1) or a report under section 101(2) may for the purpose of that inquiry or report —

- (a) go on board any ship, to which the provisions of this Act apply, and inspect her or any part of her and any of the equipment, boilers and machinery, and articles in or on board and may require the unloading or removal of any cargo, ballast, or tackle, but shall not unnecessarily detain or delay the ship from proceeding on any voyage; and
- (b) enter and inspect any premises the entry or inspection of which appears necessary to him; and
- (c) by summons signed by him require the attendance of any person before him for examination and may require answers or returns to his questions or inquiries; and

- (d) require and enforce the production of all books, papers, logs, accounts, agreements and other documents relating to his inquiry or report; and
- (e) administer oaths or, instead of requiring or administering an oath, require a person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

**103. Formal investigation by Court**

Where it appears to the chief executive officer that a formal investigation into any casualty incompetence, or misconduct is necessary or desirable, the chief executive officer shall, either upon or in the absence of a preliminary inquiry under section 101, with the approval of the Minister refer the matter or matters for investigation to a Court of Marine Inquiry and the chief executive officer may prefer, or cause or permit to be preferred, before the Court a charge or charges of incompetence or misconduct, or both, on the part of masters, mates, marine engineers, marine engine drivers and coxswains.

*[Section 103 amended by No. 35 of 1990 s. 21.]*

**Division 3 — Courts of Marine Inquiry**

**104. Governor may establish Court of Marine Inquiry**

- (1) The Governor, by proclamation, may establish a Court of Marine Inquiry to hear and determine an inquiry, investigation, appeal or reference under this Act.
- (2) A Court of Marine Inquiry is a court of record.
- (3) More than one Court of Marine Inquiry may be established at any one time.
- (4) Subject to any rules made under section 108, the practice and procedure of a Court of Marine Inquiry shall be the same as that of the Magistrates Court exercising its civil jurisdiction.

- (5) Subject to section 109(4) sections 15, 16, 35 and 36 and Part 3 Division 2 of the *Magistrates Court Act 2004* apply to and in relation to a Court of Marine Inquiry and its officers in the same way as they apply to and in relation to the Magistrates Court and its officers.

*[Section 104 inserted by No. 59 of 2004 s. 141; amended by No. 8 of 2009 s. 137(3).]*

**105. Magistrates and assessors to sit**

- (1) One or more magistrates nominated by the Chief Magistrate of the Magistrates Court shall constitute a Court of Marine Inquiry, and shall be assisted by 2 of the assessors appointed under this Act who shall have power to advise but not to adjudicate on any matter before the Court.
- (2) Where the inquiry involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, marine engineer, marine engine driver or coxswain, the Court shall hold the inquiry with the assistance of not less than 2 assessors having experience in the merchant service, both of whom shall have had experience in the calling of the person concerned.

*[Section 105 amended by No. 59 of 2004 s. 141.]*

**106. Assessors**

- (1) Persons of nautical, engineering or other special skill or knowledge shall be appointed assessors to assist in a Court of Marine Inquiry.
- (2) The Governor may make rules with regard to the appointment and summoning of assessors.
- (3) Every assessor shall, for every day or portion of a day during which he is engaged in a Court of Marine Inquiry, or in attendance waiting to perform his duties in the Court, be paid such sum as is fixed by the chief executive officer from time to time.

- (4) The chief executive officer shall furnish to the Minister lists of persons eligible for appointment as assessors of the Court of Marine Inquiry.

*[Section 106 amended by No. 35 of 1990 s. 21.]*

**107. Officers of Court of Marine Inquiry**

Officers of the Magistrates Court shall be officers of Courts of Marine Inquiry.

*[Section 107 inserted by No. 59 of 2004 s. 141.]*

**108. Rules of Court**

- (1) The Governor may make rules regulating the practice and procedure of Courts of Marine Inquiry and in particular —
- (a) providing for sittings of the Court; and
  - (b) in respect of appeals before the Court, providing for security for costs and damages to be given; and
  - (c) prescribing fees and providing for the application of fees.
- (2) Rules made under this section shall not be invalid by reason of any conflict with the *Magistrates Court (Civil Proceedings) Act 2004*.
- (3) To the extent that the rules of practice and procedure of the Court do not apply to a particular matter or circumstance arising before the Court, the presiding magistrate may issue such directions as he considers appropriate.

*[Section 108 amended by No. 59 of 2004 s. 141.]*

**Division 4 — The powers and duties of Courts of Marine Inquiry**

**109. Functions of Court of Marine Inquiry**

- (1) A Court of Marine Inquiry is authorised to and shall hold formal investigations —
- (a) into casualties to commercial vessels;

- (b) for the purpose of hearing and determining a charge or charges of incompetence or misconduct, or both, on the part of masters, mates, marine engineers, marine engine drivers or coxswains of commercial vessels holding certificates of competency or service in respect of incompetence or misconduct on any such vessel, referred to it or preferred before it, as the case may be, under section 103.
- (2) Where more than one matter is referred to a Court of Marine Inquiry under section 103 for formal investigation under subsection (1) and it appears to the Court that any number of the matters arise out of or relate to the same incident or a number of incidents in common, the Court may hold a formal investigation at the one hearing into such of the matters referred and to such of the charges preferred whether the charges have been preferred against one or more persons.
- (3) An investigation shall not be held under this section into a matter —
- (a) which has been the subject of an investigation or inquiry and has been reported on by a competent court or tribunal in any part of a Commonwealth country; or
  - (b) with reference to which an investigation or inquiry has been commenced in the United Kingdom.
- (4) For the purposes of any inquiry under this section a Court of Marine Inquiry shall, so far as relates to the summoning of parties, compelling the attendance of witnesses, and contempt of court, have all the powers of the Supreme Court.

**110. Powers and duties in respect of unsafe ships**

- (1) A Court of Marine Inquiry shall hear and determine in open court any appeal or reference under this Act in respect of the detention of a ship alleged to be unsafe and shall follow in any such appeal or reference the procedure under this Act for the investigation of casualties.

- (2) The Court may appoint a competent person or persons to survey the ship and report to the Court.
- (3) The presiding magistrate of the Court, an assessor and a person or persons appointed under subsection (2) may survey the ship and shall for the purposes of this section have all the powers of an inspector under section 102.
- (4) The Court shall have the same power as the chief executive officer has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.
- (5) The owner and master of the ship, any person appointed by the owner or master and any person appointed by the chief executive officer may attend at any inspection or survey made under this section.
- (6) The presiding magistrate of the Court shall send to the Minister a report (in such form as may be directed by the Rules) and each assessor shall either sign the report as an expression of his concurrence or report to the Minister the reasons for his dissent.

*[Section 110 amended by No. 47 of 1993 s. 33(2).]*

**111. Presiding magistrate and procedure**

- (1) The senior magistrate present shall preside at any sitting of a Court of Marine Inquiry.
- (2) An investigation under this Act shall be conducted in open court and the presiding magistrate shall deliver the decision of the Court in open court.
- (3) In the event of an equality of votes in relation to the matter for decision by the Court, the presiding magistrate shall have a casting as well as a deliberative vote.
- (4) The Court may make such order as it thinks fit respecting the costs of any proceedings, and any costs awarded against any

party to the proceeding may be recovered by the party in whose favour the order is made in any court of competent jurisdiction.

- (5) The presiding magistrate shall, in every case forward to the Minister a copy of the decision of the Court, together with notes of the evidence given, and any member of the Court who dissents from the decision may likewise forward his written reasons for so dissenting.

**112. Power of Court to suspend or cancel certificate**

- (1) A Court of Marine Inquiry has the power to cancel or suspend the certificate of a master, mate, marine engineer, marine engine driver or coxswain if the Court finds that he is incompetent or has been guilty of any gross act of misconduct or that he has failed in his duty in regard to a collision or in a matter relating to the navigation or management of a ship.
- (2) A master, mate, marine engineer, marine engine driver or coxswain whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his certificate to the Court on demand, or, if not so demanded, to the Department or as the Department directs.
- (3) A certificate shall not be cancelled or suspended by a Court of Marine Inquiry unless a copy of any charge against the holder of the certificate or a copy of the report on any preliminary inquiry containing or indicating any such charges, together with a copy of the evidence taken on that inquiry, has been served on him at least 48 hours before the commencement of the investigation into those charges.
- (4) A master, mate, marine engineer, marine engine driver or coxswain who fails without reasonable cause to comply with subsection (2) is guilty of an offence.

Penalty: \$500.

**113. Rehearing**

Where an investigation under this Part has been conducted by a Court of Marine Inquiry, the Governor may order the case to be reheard, either generally or as to a part of the case, and the Governor shall so order if —

- (a) new and important evidence, which could not be produced at the investigation, has been discovered; or
- (b) in the opinion of the Governor, there is for any other reason ground for suspecting that a miscarriage of justice has occurred.



## **Part VIII — Supplementary and administrative provisions**

### **114. Powers in relation to regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act and in particular —
  - (a) providing for the control, supervision and guidance of the inspectors, officials and persons engaged by or on behalf of the Department and over whom, by virtue of this Act, the Minister or chief executive officer has control, and for prescribing the form and manner of signing of, and the persons authorised to sign, notices, certificates, returns, statements, declarations, licences and other documents to be given, made, or issued under this Act, and for the promulgation of all acts, matters and things necessary, expedient or convenient for carrying into operation or for facilitating the operation of this Act; and
  - (b) prescribing the fees, charges and expenses to be charged or made in respect of matters arising under or provided for or authorised by this Act; and
  - (c) prescribing the form or contents of applications, licences, permits, certificates, registers, notices, orders, exemptions, dispensations and other documents required for the purposes of this Act or authorising the Minister to specify forms required to be used.
- (2) Regulations may be made under this Act, whether or not for the particular purposes of any Part or Division —
  - (a) so as to provide that —
    - (i) contravention or failure to comply with a regulation; or

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- (ii) the breach of a condition imposed in relation to any exemption or dispensation from the provisions of the regulations, or of a requirement of a proclamation or rule made, or order or notice published, under this Act,

constitutes an offence, and may provide for penalties not exceeding a fine of \$1 000, and if the offence is a continuing offence a further fine not exceeding \$50 for every day or part of a day during which the offence continues after notice of the offence, for such offences other than in those cases where a special penalty may be imposed under this Act in respect of a specific offence; and

- (b) so as to prescribe a modified penalty not exceeding \$300 for any offence, or class of offence, if dealt with under a section of this Act authorising the service of an infringement notice and the payment of a modified penalty in relation to such an offence; and

- (c) so as to apply —

- (i) generally or in a particular class of case or in particular classes of cases; and
- (ii) at all times or at a specified time or at specified times; and
- (iii) in all waters or in specified waters, or throughout the State or in a specified part or specified parts of the State;

and

- (d) so as to require a matter affected by them to be —

- (i) in accordance with a specified standard or specified requirement; or
- (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

and

- (e) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and
  - (f) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations or of a requirement of any proclamation or rule made, or order or notice published pursuant to this Act, either wholly or to such extent as is specified; and
  - (g) so as to authorise the chief executive officer, at any time, to cancel an exemption or dispensation wholly or in part, and to cancel, or from time to time waive, add to, or otherwise vary the condition of an exemption or dispensation.
- (3) In subsection (2) *specified* means specified in the regulations.  
*[Section 114 amended by No. 35 of 1990 s. 21.]*

**115. Regulations may adopt codes etc.**

- (1) Regulations made under this Act may —
  - (a) adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom or any of the standards, rules, codes or specifications of the bodies known as Standards Australia, the British Standards Institution, The Association of Australian Port and Marine Authorities, or other like body specified in the rules or regulations; and
  - (b) incorporate by reference, with or without modification, all or any of the provisions of the Uniform Shipping

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Laws Code adopted by the Marine and Ports Council of Australia; and

- (c) provide that where by reason of unavailability of materials or other reason that the chief executive officer considers valid any requirement adopted by the rules or regulations cannot be conformed to, the chief executive officer may approve such use of materials or other matters as he considers to be consistent with the achievement of the objects of the rules or regulations.
- (2) The production of a printed document purporting to be a copy of or extract from the *Commonwealth of Australia Gazette* containing the Uniform Shipping Laws Code or any part of that Code shall be evidence that the document is a copy of the Uniform Shipping Laws Code or a part of that Code (as the case may be) and that the document has been adopted by the Marine and Ports Council of Australia.

*[Section 115 amended by No. 35 of 1990 s. 21; No. 74 of 2003 s. 130.]*

**115A. Exemptions and equivalents**

- (1) The chief executive officer may exempt a vessel, or vessels included in a specified class of vessel, from the application of any of the provisions of this Act or regulations made under this Act to the extent that the chief executive officer is satisfied that compliance with such provision or provisions is unreasonable or impractical in relation to that vessel or those vessels.
- (2) In exercising the power conferred on him by subsection (1), the chief executive officer shall have regard to the principles embodied in this Act and the regulations made under this Act.
- (3) Where under this Act provision is made that a particular fitting, material, appliance, or apparatus, or type thereof, shall be fitted or carried in a vessel, or that any particular provision shall be made, the chief executive officer may allow any other fitting, material, appliance, or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if the chief executive

officer is satisfied, by trial or otherwise, that such fitting, material, appliance, or apparatus, or such provision is at least as effective as that required under this Act.

- (4) The chief executive officer may grant an exemption or make an allowance under this section subject to such conditions as he thinks fit.

*[Section 115A inserted by No. 35 of 1990 s. 15.]*

#### **116. Minister may delegate**

- (1) The Minister or the chief executive officer, as the case may be, (the *delegator*) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers or duties under this Act, other than this power of delegation.
- (2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the delegator.
- (3) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.
- (4) A delegation under this section may —
- (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
  - (b) be revoked or varied by instrument in writing signed by the delegator.
- (5) The delegator may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.
- (6) Where, under this Act, the exercise of a power or the performance of a function by the delegator is dependent upon

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the opinion, belief or state of mind of the delegator in relation to a matter and that power or function has been delegated under this section, that power or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

*[Section 116 amended by No. 35 of 1990 s. 16.]*

**117. Appointment of inspectors and authorised officers**

- (1) The chief executive officer may designate officers of the Department or any other persons to be inspectors or surveyors for the purposes of this Act.
- (2) The chief executive officer may in writing appoint persons to be authorised persons for the purposes of this Act or for the purposes of any Part, Division or provision of this Act and a person may be appointed either generally in relation to specified purposes or in relation to a particular case.

*[Section 117 amended by No. 35 of 1990 s. 17 and 21.]*

**118. Certificate of appointment**

The chief executive officer shall issue to each authorised person who is not a member of the Police Force and to each inspector a certificate of his appointment in the prescribed form specifying that the person is an authorised person and the general nature of his function or that the person is an inspector, as the case may be, and the holder shall produce the certificate whenever required to do so by a person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

*[Section 118 amended by No. 35 of 1990 s. 21.]*

**119. Penalty for obstruction**

A person who wilfully assaults, obstructs, endeavours to intimidate, or uses abusive or offensive language to, or disobeys a lawful requisition or order of, a person performing or

endeavouring to perform a power or duty conferred on him by or under this Act, whether on board a vessel or elsewhere, is guilty of an offence and is liable to a fine not exceeding \$2 000 and may be detained by that person or by any person whom he may call to his assistance until the offender can be conveniently taken before a court having appropriate jurisdiction.

**120. Penalty for false declarations etc.**

A person who knowingly —

- (a) makes a false declaration, false statement or false representation; or
- (b) gives false evidence on oath,

in connection with an application or proceeding under this Act is guilty of an offence.

Penalty: \$2 000.

**120A. Inspector may request name and address**

- (1) An inspector may request any person whom the inspector reasonably believes to have committed an offence against this Act to give his or her name and address to the inspector.
- (2) A person who fails to comply with a request made under subsection (1) or who gives a false name or address when such a request is made commits an offence.

Penalty: \$200.

*[Section 120A inserted by No. 35 of 1990 s. 18.]*

**121. Offences in connection with certificates, licences etc.**

- (1) A person shall not —
  - (a) knowingly make a false representation for the purpose of obtaining a certificate, licence, permit, exemption or dispensation either for himself or for another person; or
  - (b) forge or fraudulently alter a certificate, licence, permit, exemption or dispensation; or

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- (c) fraudulently use a certificate, licence, permit, exemption or dispensation that is forged, altered, cancelled or suspended or to which he is not justly entitled; or
- (d) allow a person to use fraudulently a certificate, licence, permit, exemption or dispensation that does not relate to that person.

Penalty: \$2 000.

- (2) In this section, *certificate, licence, permit, exemption or dispensation* means a certificate, licence, permit, exemption or dispensation issued granted, or recognized under this Act and includes a certified copy of such a certificate, licence, permit, exemption or dispensation.

**122. Liability of chief executive officer and owner for costs and compensation**

- (1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship under Part III as an unsafe ship, the chief executive officer shall be liable to pay the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.
- (2) If a ship is finally detained under Part III or if it appears that a ship provisionally detained was at the time of the detention an unsafe ship within the meaning of that Part, the owner of the ship shall be liable to pay to the Department the costs of and incidental to the detention and survey of the ship, which costs shall without prejudice to any other remedy be recoverable by the chief executive officer in any court of competent jurisdiction.
- (3) For the purposes of this Act, the costs of and incidental to any proceeding before a Court of Marine Inquiry, and a reasonable amount in respect of the remuneration of the surveyor or other official of the Department, shall be part of the costs of the



detention and survey of the ship; and any dispute as to the amount of the costs may be referred to the taxing officer of the Supreme Court who, on request made to him for that purpose by the chief executive officer, shall ascertain and certify the proper amount of costs.

- (4) If a ship is so loaded that it is deemed by section 36(3) to be overloaded for the purposes of Division 8 of Part II, the ship shall be deemed to be an unsafe ship for the purposes of Part III and there shall for the purposes of this section be deemed to be reasonable and probable cause for the detention of the ship.

*[Section 122 amended by No. 35 of 1990 s. 21.]*

**123. Complainant may be ordered to give security**

- (1) Where a complaint is made to the Department or to a detaining official that a ship is unsafe, the chief executive officer or a detaining official may require the complainant to give security to the satisfaction of the chief executive officer for the costs and compensation which the complainant may become liable to pay under this section.
- (2) Where the complaint is made by one-fourth, being not less than 2, of the crew belonging to the ship, and is not, in the opinion of the chief executive officer or detaining official, frivolous or vexatious, security shall not be required; and the chief executive officer or detaining official shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.
- (3) Where a ship is detained in consequence of any complaint, and the circumstances are such that the chief executive officer is liable under this Act to pay to the owner of the ship any costs or compensation, the chief executive officer may by notice in writing given to the complainant require the complainant to pay to the chief executive officer the amount of all such costs and compensation as the chief executive officer incurs or is liable to pay in respect of the detention and survey of the ship, and

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failing payment the same may be recovered in any court of competent jurisdiction.

*[Section 123 amended by No. 35 of 1990 s. 21.]*

**124. Immunity of Minister and officials**

No liability shall attach to the Minister, the chief executive officer or any other official of the Department, or to any person acting with the authority or on the direction of the Minister or the chief executive officer in good faith and in the exercise or purported exercise of a power or in the discharge or purported discharge of a duty under this Act.

*[Section 124 amended by No. 35 of 1990 s. 21.]*

## Part IX — Legal proceedings

### 125. Evidence of documents and proof of signature

- (1) All documents whatever purporting to be issued or written under this Act by or under the direction of or with the authority of the Minister, the Department or the chief executive officer and purporting to be signed by a person acting with the authority of the Minister, the Department or the chief executive officer, as the case may be, shall be admissible as evidence and be deemed, on production by any person, to have been so written and so signed until evidence to the contrary is shown.
- (2) In this section, *document* includes certificate, permit, licence, exemption, dispensation, and register.
- (3) A document required by or under this Act to be executed in the presence of or attested by a witness may be proved by the evidence of any person who is able to bear witness to the facts of execution or attestation without calling any attesting witness.

*[Section 125 amended by No. 35 of 1990 s. 21.]*

### 125A. Limitation period for prosecutions

A prosecution for an offence against this Act or any subsidiary legislation under this Act must be commenced within 3 years after the date on which the offence was allegedly committed.

*[Section 125A inserted by No. 84 of 2004 s. 80.]*

### 126. Admissibility of documents in evidence

- (1) Where a document is by this Act declared to be admissible in evidence, it shall, on production from the proper custody, be admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or in pursuance of any duty under this Act.

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- (2) A copy of, or extract from, any such document shall also be admissible in evidence if —
- (a) it is proved to be an examined copy or extract; or
  - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,
- and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.
- (3) The provisions of this section shall be without prejudice to those of the *Evidence Act 1906*.

**127. Service of summons and process**

- (1) Service of any summons or other process in any legal proceeding under this Act shall be deemed good service if made —
- (a) personally on the person to be served; or
  - (b) at his last known place of abode or business; or
  - (c) on board any vessel to which he belongs and accompanied with a statement of the purport thereof, to the person being or appearing to be in command or charge of the vessel.
- (2) In subsection (1) —
- legal proceeding under this Act*** includes any proceeding under the *State Administrative Tribunal Act 2004* in a matter commenced by an application under this Act for a review.

*[Section 127 amended by No. 55 of 2004 s. 1312.]*

**128. Service of notice where no master**

Where any order, notice, statement or document is required for the purpose of any provision of this Act to be served on the master of a ship, it shall be served, where there is no master and the ship is within the limits of Australia, on the managing owner

of the ship, or, if there is no managing owner, on some agent of the owner residing in Australia, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

**129. Averment as to ownership of vessel**

In a prosecution under this Act an averment in the charge that —

- (a) a person is or was the owner of a vessel which is or was licensed, or required to be licensed, by or under any Act, or is or was unlicensed under this or any other Act or in respect of which no licence, certificate or permit subsists; or
- (b) a vessel is a trading ship or a fishing vessel; or
- (c) a vessel is or was licensed or required to be licensed by or under any Act,

shall be deemed to be sufficient evidence of that fact in the absence of evidence to the contrary.

*[Section 129 amended by No. 84 of 2004 s. 80.]*

**130. Averment as to membership of crew**

In a prosecution under this Act relating to the manning of a vessel, an averment in the charge that a person is or was, or is not or was not, the holder of a particular certificate or a particular class of certificate shall be deemed to be sufficient evidence of that fact in the absence of evidence to the contrary.

*[Section 130 amended by No. 84 of 2004 s. 80.]*

**131. Place where act committed**

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either —

- (a) in the place in which it actually was committed or arose; or

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- (b) in any place in which the offender or person complained against is.

**132. Proceedings by way of infringement notice**

- (1) An authorised person who has reason to believe that a person has committed an offence against this Act in connection with a vessel, in respect of which offence a modified penalty is prescribed, may serve, by personal delivery to the person or by posting to him at his address ascertained from him at or about the time that offence is believed to have been committed, a notice in the prescribed form informing the person that if he does not wish to be prosecuted for the alleged offence in a court he may pay to a designated officer, not being a designated officer who is the authorised person serving that notice, within a period of 28 days after the date of service of that notice, the amount of the modified penalty.
- (2) An authorised person may —
  - (a) if the identity of the alleged offender is not known and cannot immediately be ascertained, address the infringement notice concerned to, and serve it on, the owner of the vessel concerned within a period of 30 days after the date on which the alleged offence is believed to have been committed; or
  - (b) if the identity of the alleged offender is not known and cannot immediately be ascertained and the identity of the owner of the vessel is not known and cannot be ascertained after reasonable enquiry, address the infringement notice concerned to the owner of that vessel, without naming him or stating his address, and serve that infringement notice by attaching it to that vessel or by leaving it in or on the vessel within the period referred to in paragraph (a).
- (3) When, under subsection (2) an infringement notice is addressed to and served on the owner of a vessel within the period referred to in paragraph (a) of that subsection or addressed to the owner

of a vessel and served by attaching it to the vessel or leaving it in or on the vessel within that period, then, unless within a period of 21 days after the date of service of the infringement notice —

- (a) the modified penalty concerned is paid; or
- (b) the owner of the vessel —
  - (i) informs an authorised person of the identity and address of the person who was in charge of the vessel; or
  - (ii) satisfies an authorised person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,

at the time when the alleged offence is believed to have been committed,

the owner of the vessel is, in the absence of proof to the contrary, deemed to be the person who was in charge of the vessel at the time when the alleged offence is believed to have been committed.

- (4) A person on whom an infringement notice is served —
  - (a) may decline; or
  - (b) if he fails to pay the modified penalty concerned within a period of 21 days after the date of that service, is deemed to have declined,

to be dealt with under the provisions of this section.

- (5) An authorised person may, whether or not the modified penalty concerned has been paid, withdraw an infringement notice at any time within a period of 28 days after it is served by sending to the alleged offender a notice in the prescribed form signed by the authorised person and advising the alleged offender that the infringement notice has been withdrawn.
- (6) The amount of any modified penalty paid pursuant to an infringement notice which has been withdrawn under subsection (5) shall be refunded.

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- (7) When a modified penalty has been paid pursuant to an infringement notice and the infringement notice has not been withdrawn under subsection (5), proceedings shall not be brought against any person in respect of the alleged offence specified in the infringement notice.
- (8) A person, other than the owner or person in charge of a vessel in respect of which an alleged offence is believed to have been committed, shall not remove an infringement notice relating to the alleged offence attached to or left in or on that vessel by an authorised person.  
Penalty: \$200.
- (9) An infringement notice served under subsection (2) shall contain, *inter alia*, a short statement of the effect of subsection (3).
- (10) The Minister may by notice published in the *Gazette* designate a public service officer or class of public service officer, within the meaning of the *Public Sector Management Act 1994*, to receive payment of the amounts of modified penalties.
- (11) In this section, unless the context otherwise requires —  
***alleged offence*** means offence referred to in subsection (1);  
***alleged offender*** means person who is believed by the authorised person concerned to have committed an alleged offence;  
***authorised person*** means —  
    (a) inspector; or  
    (b) person authorised in writing for the purposes of this section by the chief executive officer;  
***designated officer*** means person designated under subsection (10); and  
***infringement notice*** means notice referred to in subsection (1).



(12) In subsection (3) —

*person who was in charge of the vessel* includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, as the case requires.

[Section 132 amended by No. 47 of 1993 s. 33(2); No. 32 of 1994 s. 19; No. 84 of 2004 s. 80.]

**133. Onus on owner to identify person in charge of vessel**

- (1) Any owner of a vessel and any person to whom for the time being the possession or control of a vessel may be entrusted shall, if required by an authorised person, give to the authorised person any information —
- (a) which it is in his power to give; and
  - (b) which may lead to the identification of any person who was in charge of the vessel when an offence against this Act is alleged to have been committed.

Penalty: \$1 000.

- (2) When an offence against this Act is alleged to have been committed and the identity of the person who was in charge of the vessel in respect of which that allegation is made is not known and cannot immediately be ascertained, an authorised person may, within a period of 30 days after the date on which that offence is alleged to have been committed, serve on the owner of that vessel a notice in the prescribed form containing particulars of that offence and requiring that owner to identify the person who was in charge of that vessel at the time when that offence is alleged to have been committed.
- (3) When, under the provisions of subsection (2), notice is served on the owner of a vessel within the period specified in that subsection then, unless within 21 days after the date of the service of the notice that owner —
- (a) informs an authorised person of the identity and address of the person who was in charge of the vessel; or

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- (b) satisfies an authorised person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,

at the time when the offence concerned is alleged to have been committed, that owner is, in the absence of proof to the contrary, deemed to be the person who was in charge of the vessel at the time when that offence is alleged to have been committed.

- (4) A notice served under subsection (2) shall contain, *inter alia*, a short statement of the effect of subsection (3).

- (5) In this section —

***authorised person*** has the meaning given by section 132;

***person who was in charge of the vessel*** includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, the case requires.

**134. Production of proof of identity by authorised person**

- (1) The chief executive officer shall issue to each authorised person, other than an authorised person who is an inspector, a certificate in the prescribed form.
- (2) An authorised person —
  - (a) who is not an inspector shall produce the certificate issued to him under subsection (1); or
  - (b) who is an inspector shall produce the certificate issued to him by the chief executive officer in connection with his appointment as an inspector,

whenever required to do so by any person in respect of whom he has exercised or is about to exercise any of his powers under section 132 or 133.

- (3) In any proceedings under this Act, production of a certificate referred to in subsection (2) is conclusive evidence in any court

of the authorisation or appointment, as the case requires, by reason of which the person to whom that certificate relates became an authorised person and of his authority to exercise the powers conferred on an authorised person by sections 132 and 133.

(4) In this section —

*authorised person* has the meaning given by section 132.

*[Section 134 amended by No. 35 of 1990 s. 21.]*

## **Part X — Repeal and transitional**

### **135. Repeals**

- (1) The *Western Australian Marine Act 1948-1980* is repealed.
- (2) Part VIII of the Merchant Shipping Act is repealed.
- (3) In this Part, ***Merchant Shipping Act*** means the Imperial Act known as the *Merchant Shipping Act 1894*, as amended, or otherwise affected in its operation, by the provisions of any other Imperial Act or of any Act, in so far as that Act, as so amended or otherwise affected in its operation, is part of the law of the State.
- (4) The right of a shipowner to limit his liability in respect of a claim arising out of an occurrence that took place before the coming into operation of this section is not affected by the repeal of Part VIII of the Merchant Shipping Act by subsection (2) or by the provisions of Divisions 1 and 4 of Part IV of this Act.

[136. *Omitted under the Reprints Act 1984 s. 7(4)(g).*]

## Schedule 1 — Container Convention

[s. 76]

*[Heading amended by No. 19 of 2010 s. 4.]*

### INTERNATIONAL CONVENTION FOR SAFE CONTAINERS

#### ARTICLE I

##### *General Obligation under the present Convention*

The Contracting Parties undertake to give effect to the provisions of the present Convention and the Annexes hereto, which shall constitute an integral part of the present Convention.

#### ARTICLE II

##### *Definitions*

For the purpose of the present Convention, unless expressly provided otherwise:

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

the term “container” includes neither vehicles nor packaging; however, containers when carried on chassis are included.
2. “Corner fittings” means an arrangement of apertures and faces at the top and/or bottom of a container for the purposes of handling, stacking and/or securing.

3. "Administration" means the Government of a Contracting Party under whose authority containers are approved.
4. "Approved" means approved by the Administration.
5. "Approval" means the decision by an Administration that a design type or a container is safe within the terms of the present Convention.
6. "International transport" means transport between points of departure and destination situated in the territory of two countries to at least one of which the present Convention applies. The present Convention shall also apply when part of a transport operation between two countries takes place in the territory of a country to which the present Convention applies.
7. "Cargo" means any goods, wares, merchandise and articles of every kind whatsoever carried in the containers.
8. "New container" means a container the construction of which was commenced on or after the date of entry into force of the present Convention.
9. "Existing container" means a container which is not a new container.
10. "Owner" means the owner as provided for under the national law of the Contracting Party or the lessee or bailee, if an agreement between the parties provides for the exercise of the owner's responsibility for maintenance and examination of the container by such lessee or bailee.
11. "Type of container" means the design type approved by the Administration.
12. "Type-series container" means any container manufactured in accordance with the approved design type.
13. "Prototype" means a container representative of those manufactured or to be manufactured in a design type series.
14. "Maximum Operating Gross Weight or Rating" or "R" means the maximum allowable combined weight of the container and its cargo.
15. "Tare Weight" means the weight of the empty container including permanently affixed ancillary equipment.
16. "Maximum Permissible Payload" or "P" means the difference between maximum operating gross weight or rating and tare weight.

ARTICLE III

*Application*

1. The present Convention applies to new and existing containers used in international transport, excluding containers specially designed for air transport.
2. Every new container shall be approved either in accordance with the provisions for type-testing or for individual testing as contained in Annex I.
3. Every existing container shall be approved in accordance with the relevant provisions for approval of existing containers set out in Annex I within 5 years from the date of entry into force of the present Convention.

ARTICLE IV

*Testing, Inspection, Approval and Maintenance*

1. For the enforcement of the provisions in Annex I every Administration shall establish an effective procedure for the testing, inspection and approval of containers in accordance with the criteria established in the present Convention, provided however that an Administration may entrust such testing, inspection and approval to organizations duly authorized by it.
2. An Administration which entrusts such testing, inspection and approval to an organization shall inform the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") for communication to Contracting Parties.
3. Application for approval may be made to the Administration of any Contracting Party.
4. Every container shall be maintained in a safe condition in accordance with the provisions of Annex I.
5. If an approved container does not in fact comply with the requirements of Annexes I and II the Administration concerned shall take such steps as it deems necessary to bring the container into compliance with such requirements or to withdraw the approval.

ARTICLE V

*Acceptance of Approval*

1. Approval under the authority of a Contracting Party, granted under the terms of the present Convention, shall be accepted by the other Contracting Parties for all purposes covered by the present Convention. It shall be regarded by the other Contracting Parties as having the same force as an approval issued by them.
2. A Contracting Party shall not impose any other structural safety requirements or tests on containers covered by the present Convention, provided however that nothing in the present Convention shall preclude the application of provisions of national regulations or legislation or of international agreements, prescribing additional structural safety requirements or tests for containers specially designed for the transport of dangerous goods, or for those features unique to containers carrying bulk liquids or for containers when carried by air. The term “dangerous goods” shall have that meaning assigned to it by international agreements.

ARTICLE VI

*Control*

1. Every container which has been approved under article III shall be subject to control in the territory of the Contracting Parties by officers duly authorized by such Contracting Parties. This control shall be limited to verifying that the container carries a valid Safety Approval Plate as required by the present Convention, unless there is significant evidence for believing that the condition of the container is such as to create an obvious risk to safety. In that case the officer carrying out the control shall only exercise it in so far as it may be necessary to ensure that the container is restored to a safe condition before it continues in service.
2. Where the container appears to have become unsafe as a result of a defect which may have existed when the container was approved, the Administration responsible for that approval shall be informed by the Contracting Party which detected the defect.



ARTICLE VII

*Signature, ratification, acceptance, approval and accession*

1. The present Convention shall be open for signature until 15 January 1973 at the Office of the United Nations at Geneva and subsequently from 1 February 1973 until 31 December 1973 inclusive at the Headquarters of the Organization at London by all States Members of the United Nations or Members of any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the present Convention.
2. The present Convention is subject to ratification, acceptance or approval by States which have signed it.
3. The present Convention shall remain open for accession by any State referred to in paragraph 1.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General").

ARTICLE VIII

*Entry into force*

1. The present Convention shall enter into force twelve months from the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force twelve months after the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. Any State which becomes a Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State,
  - (a) be considered as a Party to the Convention as amended; and
  - (b) be considered as a Party to the unamended Convention in relation to any Party to the Convention not bound by the amendment.

ARTICLE IX

*Procedure for amending any part or parts of the present Convention*

1. The present Convention may be amended upon the proposal of a Contracting Party by any of the procedures specified in this article.
2. Amendment after consideration in the Organization:
  - (a) Upon the request of a Contracting Party, any amendment proposed by it to the present Convention shall be considered in the Organization. If adopted by a majority of two-thirds of those present and voting in the Maritime Safety Committee of the Organization, to which all Contracting Parties shall have been invited to participate and vote, such amendment shall be communicated to all Members of the Organization and all Contracting Parties at least six months prior to its consideration by the Assembly of the Organization. Any Contracting Party which is not a Member of the Organization shall be entitled to participate and vote when the amendment is considered by the Assembly.
  - (b) If adopted by a two-thirds majority of those present and voting in the Assembly, and if such majority includes a two-thirds majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.
  - (c) Such amendment shall come into force twelve months after the date on which it is accepted by two-thirds of the Contracting Parties. The amendment shall come into force with respect to all Contracting Parties except those which, before it comes into force, make a declaration that they do not accept the amendment.
3. Amendment by a Conference:

Upon the request of a Contracting Party, concurred in by at least one-third of the Contracting Parties, a Conference to which the States referred to in article VII shall be invited will be convened by the Secretary-General.

ARTICLE X

*Special procedure for amending the Annexes*

1. Any amendment to the Annexes proposed by a Contracting Party shall be considered in the Organization at the request of that Party.
2. If adopted by a two-thirds majority of those present and voting in the Maritime Safety Committee of the Organization to which all Contracting Parties shall have been invited to participate and to vote, and if such majority includes a two-thirds majority of the Contracting Parties present and voting, such amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.
3. Such an amendment shall enter into force on a date to be determined by the Maritime Safety Committee at the time of its adoption unless by a prior date determined by the Maritime Safety Committee at the same time, one-fifth or five of the Contracting Parties, whichever number is less, notify the Secretary-General of their objection to the amendment. Determination by the Maritime Safety Committee of the dates referred to in this paragraph shall be by a two-thirds majority of those present and voting, which majority shall include a two-thirds majority of the Contracting Parties present and voting.
4. On entry into force any amendment shall, for all Contracting Parties which have not objected to the amendment, replace and supersede any previous provision to which the amendment refers; an objection made by a Contracting Party shall not be binding on other Contracting Parties as to acceptance of containers to which the present Convention applies.
5. The Secretary-General shall inform all Contracting Parties and Members of the Organization of any request and communication under this article and the date on which any amendment enters into force.
6. Where a proposed amendment to the Annexes has been considered but not adopted by the Maritime Safety Committee, any Contracting Party may request the convening of a Conference to which the States referred to in article VII shall be invited. Upon receipt of notification of concurrence by at least one-third of the other Contracting Parties such a Conference shall be convened by the Secretary-General to consider amendments to the Annexes.

ARTICLE XI

*Denunciation*

1. Any Contracting Party may denounce the present Convention by effecting the deposit of an instrument with the Secretary-General. The denunciation shall take effect one year from the date of such deposit with the Secretary-General.
2. A Contracting Party which has communicated an objection to an amendment to the Annexes may denounce the present Convention and such denunciation shall take effect on the date of entry into force of such an amendment.

ARTICLE XII

*Termination*

The present Convention shall cease to be in force if the number of Contracting Parties is less than five for any period of twelve consecutive months.

ARTICLE XIII

*Settlement of Disputes*

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of the present Convention which cannot be settled by negotiation or other means of settlement shall, at the request of one of them, be referred to an arbitration tribunal composed as follows: each party to the dispute shall appoint an arbitrator and these two arbitrators shall appoint a third arbitrator, who shall be the Chairman. If, three months after receipt of a request, one of the parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the Chairman, any of the parties may request the Secretary-General to appoint an arbitrator or the Chairman of the arbitration tribunal.
2. The decision of the arbitration tribunal established under the provisions of paragraph 1 shall be binding on the parties to the dispute.
3. The arbitration tribunal shall determine its own rules of procedure.
4. Decisions of the arbitration tribunal, both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote.

5. Any controversy which may arise between the parties to the dispute as regards the interpretation and execution of the award may be submitted by any of the parties for judgment to the arbitration tribunal which made the award.

#### ARTICLE XIV

##### *Reservations*

1. Reservations to the present Convention shall be permitted, excepting those relating to the provision of articles I-VI, XIII, the present article and the Annexes, on condition that such reservations are communicated in writing and, if communicated before the deposit of the instrument of ratification, acceptance, approval or accession, are confirmed in that instrument. The Secretary-General shall communicate such reservations to all States referred to in article VII.
2. Any reservations made in accordance with paragraph 1:
  - (a) modifies for the Contracting Party which made the reservation the provisions of the present Convention to which the reservation relates to the extent of the reservation; and
  - (b) modifies those provisions to the same extent for the other Contracting Parties in their relations with the Contracting Party which entered the reservation.
3. Any Contracting Party which has formulated a reservation under paragraph 1 may withdraw it at any time by notification to the Secretary-General.

#### ARTICLE XV

##### *Notification*

In addition to the notifications and communications provided for in articles IX, X and XIV, the Secretary-General shall notify all the States referred to in article VII of the following:

- (a) signatures, ratifications, acceptances, approvals and accessions under article VII;
- (b) the dates of entry into force of the present Convention in accordance with article VIII;

- (c) the date of entry into force of amendments to the present Convention in accordance with articles IX and X;
- (d) denunciations under article XI;
- (e) the termination of the present Convention under article XII.

#### ARTICLE XVI

##### *Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall communicate certified true copies to all States referred to in article VII.

#### ANNEX I

### **REGULATIONS FOR THE TESTING, INSPECTION, APPROVAL AND MAINTENANCE OF CONTAINERS**

#### CHAPTER I — REGULATIONS COMMON TO ALL SYSTEMS OF APPROVAL

##### **Regulation 1**

##### *Safety Approval Plate*

1. A Safety Approval Plate conforming to the specifications set out in the Appendix to this Annex shall be permanently affixed to every approved container at a readily visible place, adjacent to any other approval plate issued for official purposes, where it would not be easily damaged.
2. (a) The Plate shall contain the following information in at least the English or French language:
  - “CSC SAFETY APPROVAL”
  - Country of approval and approval reference
  - Date (month and year) of manufacture
  - Manufacturer’s identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration
  - Maximum operating gross weight (kilogrammes and lbs)

Allowable stacking weight for 1.8 g (kilogrammes and lbs)

Transverse racking test load value (kilogrammes and lbs).

- (b) A blank space should be reserved on the Plate for insertion of end-wall and/or side-wall strength values (factors) in accordance with paragraph 3 of this Regulation and Annex II, tests 6 and 7. A blank space should also be reserved on the Plate for the first and subsequent maintenance examination dates (month and year) when used.
- 3. Where the Administration considers that a new container satisfies the requirements of the present Convention in respect of safety and if, for such container, the end-wall and/or side-wall strength values (factors) are designed to be greater or less than those stipulated in Annex II, such values shall be indicated on the Safety Approval Plate.
- 4. The presence of the Safety Approval Plate does not remove the necessity of displaying such labels or other information as may be required by other regulations which may be in force.

## **Regulation 2**

### *Maintenance*

- 1. The owner of the container shall be responsible for maintaining it in safe condition.
- 2. The owner of an approved container shall examine the container or have it examined in accordance with the procedure either prescribed or approved by the Contracting Party concerned, at intervals appropriate to operating conditions. The date (month and year) before which a new container shall undergo its first examination shall be marked on the Safety Approval Plate.
- 3. The date (month and year) before which the container shall be re-examined shall be clearly marked on the container on or as close as practicable to the Safety Approval Plate and in a manner acceptable to that Contracting Party which prescribed or approved the particular maintenance procedure involved.
- 4. The interval from the date of manufacture to the date of the first examination shall not exceed five years. Subsequent examination of new containers and re-examination of existing containers shall be at intervals

of not more than 24 months. All examinations shall determine whether the container has any defects which could place any person in danger.

5. For the purpose of this Regulation “the Contracting Party concerned” is the Contracting Party of the territory in which the owner is domiciled or has his head office.

**CHAPTER II — REGULATIONS FOR APPROVAL OF NEW  
CONTAINERS BY DESIGN TYPE**

**Regulation 3**

*Approval of New Containers*

To qualify for approval for safety purposes under the present Convention all new containers shall comply with the requirements set out in Annex II.

**Regulation 4**

*Design Type Approval*

In the case of containers for which an application for approval has been submitted, the Administration will examine designs and witness testing of a prototype container to ensure that the containers will conform with the requirements set out in Annex II. When satisfied, the Administration shall notify the applicant in writing that the container meets the requirements of the present Convention and this notification shall entitle the manufacturer to affix the Safety Approval Plate to every container of the design type series.

**Regulation 5**

*Provisions for Approval by Design Type*

1. Where the containers are to be manufactured by design type series, application made to an Administration for approval by design type shall be accompanied by drawings, a design specification of the type of container to be approved and such other data as may be required by the Administration.
2. The applicant shall state the identification symbols which will be assigned by the manufacturer to the type of container to which the application for approval relates.



3. The application shall also be accompanied by an assurance from the manufacturer that he will:
  - (a) produce to the Administration such containers of the design type concerned as the Administration may wish to examine;
  - (b) advise the Administration of any change in the design or specification and await its approval before affixing the Safety Approval Plate to the container.
  - (c) affix the Safety Approval Plate to each container in the design type series and to no others;
  - (d) keep a record of containers manufactured to the approved design type. This record shall at least contain the manufacturer's identification numbers, dates of delivery and names and addresses of customers to whom the containers are delivered.
4. Approval may be granted by the Administration to containers manufactured as modifications of an approved design type if the Administration is satisfied that the modifications do not affect the validity of tests conducted in the course of design type approval.
5. The Administration shall not confer on a manufacturer authority to affix Safety Approval Plates on the basis of design type approval unless satisfied that the manufacturer has instituted internal production-control features to ensure that the containers produced will conform to the approved prototype.

### **Regulation 6**

#### *Examination during Production*

In order to ensure that containers of the same design type series are manufactured to the approved design, the Administration shall examine or test as many units as it considers necessary, at any stage during production of the design type series concerned.

### **Regulation 7**

#### *Notification of Administration*

The manufacturer shall notify the Administration prior to commencement of production of each new series of containers to be manufactured in accordance with an approved design type.

CHAPTER III — REGULATIONS FOR APPROVAL OF NEW  
CONTAINERS BY INDIVIDUAL APPROVAL

**Regulation 8**

*Approval of Individual Containers*

Approval of individual containers may be granted where the Administration, after examination and witnessing of tests, is satisfied that the container meets the requirements of the present Convention; the Administration, when so satisfied, shall notify the applicant in writing of approval and this notification shall entitle him to affix the Safety Approval Plate to such container.

CHAPTER IV — REGULATIONS FOR APPROVAL OF EXISTING  
CONTAINERS

**Regulation 9**

*Approval of Existing Containers*

1. If, within 5 years from the date of entry into force of the present Convention, the owner of an existing container presents the following information to an Administration:
  - (a) date and place of manufacture;
  - (b) manufacturer's identification number of the container if available;
  - (c) maximum operating gross weight capability;
  - (d)
    - (i) evidence that a container of this type has been safely operated in maritime and/or inland transport for a period of at least 2 years, or
    - (ii) evidence to the satisfaction of the Administration that the container was manufactured to a design type which had been tested and found to comply with the technical conditions set out in Annex II, with the exception of those technical conditions relating to the end-wall and side-wall strength tests, or
    - (iii) evidence that the container was constructed to standards which, in the opinion of the Administration, were equivalent to the technical conditions set out in Annex II, with the exception of those technical conditions relating to the end-wall and side-wall strength tests;

- (e) allowable stacking weight for 1.8 g (kilogrammes and lbs); and
- (f) such other data as required for the Safety Approval Plate,

then the Administration, after investigation, shall notify the owner in writing whether approval is granted; and if so, this notification shall entitle the owner to affix the Safety Approval Plate after an examination of the container concerned has been carried out in accordance with Regulation 2.

2. Existing containers which do not qualify for approval under paragraph 1 of this Regulation may be presented for approval under the provisions of Chapter II or Chapter III of this Annex. For such containers the requirements of Annex II relating to end-wall and/or side-wall strength tests shall not apply. The Administration may, if it is satisfied that the containers in question have been in service, waive such of the requirements in respect of presentation of drawings and testing, other than the lifting and floor-strength tests, as it may deem appropriate.

#### APPENDIX

The Safety Approval Plate, conforming to the model reproduced below, shall take the form of a permanent, non-corrosive, fire-proof rectangular plate measuring not less than 200 mm by 100 mm. The words "CSC Safety Approval" of a minimum letter height of 8 mm and all other words and numbers of a minimum height of 5 mm shall be stamped into, embossed on or indicated on the surface of the Plate in any other permanent and legible way.



1. Country of Approval and Approval Reference as given in the example on line 1. (The country of Approval should be indicated by means of the distinguishing sign used to indicate country of registration of motor vehicles in international road traffic).

2. Date (month and year) of manufacture.
3. Manufacturer's identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration.
4. Maximum Operating Gross Weight (kilogrammes and lbs.).
5. Allowable Stacking Weight for 1.8 g (kilogrammes and lbs.).
6. Transverse Racking Test Load Value (kilogrammes and lbs.).
7. End Wall Strength to be indicated on plate only if end walls are designed to withstand a load of less or greater than 0.4 times the maximum permissible payload, i.e. 0.4 P.
8. Side Wall Strength to be indicated on plate only if the side walls are designed to withstand a load of less or greater than 0.6 times the maximum permissible payload, i.e. 0.6 P.
9. First maintenance examination date (month and year) for new containers and subsequent maintenance examination dates (month and year) if Plate used for this purpose.

## ANNEX II

### STRUCTURAL SAFETY REQUIREMENTS AND TESTS

#### **Introduction**

In setting the requirements of this Annex, it is implicit that in all phases of the operation of containers the forces as a result of motion, location, stacking and weight of the loaded container and external forces will not exceed the design strength of the container. In particular, the following assumptions have been made:

- (a) the container will so be restrained that it is not subjected to forces in excess of those for which it has been designed;
- (b) the container will have its cargo stowed in accordance with the recommended practices of the trade so that the cargo does not impose upon the container forces in excess of those for which it has been designed.

**Construction**

1. A container made from any suitable material which satisfactorily performs the following tests without sustaining any permanent deformation or abnormality which would render it incapable of being used for its designed purpose shall be considered safe.
2. The dimensions, positioning and associated tolerances of corner fittings shall be checked having regard to the lifting and securing systems in which they will function.
3. When containers are provided with special fittings for use only when such containers are empty, this restriction shall be marked on the container.

**Test loads and test procedures**

Where appropriate to the design of the container, the following test loads and test procedures shall be applied to all kinds of containers under test:

| <b>Test loadings and applied forces</b>  | <b>Test procedures</b>   |
|--|--|
|  | 1. LIFTING   |
|  | The container, having the prescribed INTERNAL LOADING, shall be lifted in such a way that no significant acceleration forces are applied. After lifting, the container shall be suspended or supported for five minutes and then lowered to the ground.  |
|  | <b>(A) Lifting from corner fittings</b>  |
| Internal loading:<br><br>A uniformly distributed load such that the combined weight of container and test load is equal to 2R. | <ol style="list-style-type: none"><li>(i) Lifting from top corner fittings:<br/><br/>Containers greater than 3,000 mm (10 ft.) (nominal) in length shall have lifting forces applied vertically at all four top corner fittings.<br/><br/>Containers of 3,000 mm (10 ft.) (nominal) in length or less shall have lifting forces applied at all four top corner fittings, in such a way that the angle between each lifting device and the vertical shall be 30°.</li></ol> |

| <b>Test loadings and applied forces</b>  | <b>Test procedures</b>  |
|--|---|
| <p>Externally applied forces:</p> <p>Such as to lift the combined weight of 2R in the manner prescribed (under the heading TEST PROCEDURES).</p>   | <p>(ii) Lifting from bottom corner fittings:</p> <p>Containers shall have lifting forces applied in such a manner that the lifting devices bear on the bottom corner fittings only. The lifting forces shall be applied at angles to the horizontal of:</p> <p>30° for containers of length 12,000 mm (40 ft.) (nominal) or greater;</p> <p>37° for containers of length 9,000 mm (30 ft.) (nominal) and up to but not including 12,000 mm (40 ft.) (nominal),</p> <p>45° for containers of length 6,000 mm (20 ft.) (nominal) and up to but not including 9,000 mm (30 ft.) (nominal),</p> <p>60° for containers of less than 6,000 mm (20 ft.) (nominal).</p> |
| <p><b>(B) Lifting by any other additional methods</b></p>  |   |
| <p>Internal loading:</p> <p>A uniformly distributed load such that the combined weight of container and test load is equal to 1.25 R.</p> <p>Externally applied forces:</p> <p>Such as to lift the combined weight of 1.25 R in the manner prescribed (under the heading TEST PROCEDURES).</p> | <p>(i) Lifting from fork lift pockets:</p> <p>The container shall be placed on bars which are in the same horizontal plane, one bar centred within each fork lift pocket which is used for lifting the loaded container. The bars shall be of the same width as the forks intended to be used in the handling, and shall project into the fork pocket 75 per cent of the length of the fork pocket.</p>   |
| <p>Internal loading:</p> <p>A uniformly distributed load such that the combined weight of containers and test load is equal to 1.25 R.</p>   | <p>(ii) Lifting from grappler arm positions:</p> <p>The container shall be placed on pads in the same horizontal plane, one under each grappler arm position. These pads shall be of the same sizes as the lifting area of the grappler arms intended to be used.</p>   |

| <b>Test loadings and applied forces</b>   | <b>Test procedures</b>   |
|---|--|
| <p>Externally applied forces:</p> <p>Such as to lift the combined weight of 1.25 R, in the manner prescribed (under the heading TEST PROCEDURES).</p>   | <p>(iii) Other Methods</p> <p>Where containers are designed to be lifted in the loaded condition by any method not mentioned in (A) or (B)(i) and (ii) they shall also be tested with the INTERNAL LOADING AND EXTERNALLY APPLIED FORCES representative of the acceleration conditions appropriate to that method.</p>                                     |
| <p><b>2. STACKING</b></p>   |  |
| <p>1. For conditions of international transport where the maximum vertical acceleration forces vary significantly from 1.8 g and when the container is reliably and effectively limited to such conditions of transport, the stacking load may be varied by the appropriate ratio of acceleration forces.</p> <p>2. On successful completion of this test the container may be rated for the allowable superimposed static stacking weight which should be indicated on the Safety Approval Plate against the heading "Allowable stacking weight for 1.8 g (kilogrammes and lbs)".</p> <p>Internal loading:</p> <p>A uniformly distributed load such that the combined weight of container and test load is equal to 1.8 R.</p> | <p>The container, having the prescribed INTERNAL LOADING, shall be placed on four level pads which are in turn supported on a rigid horizontal surface, one under each bottom corner fitting or equivalent corner structure. The pads shall be centralized under the fittings and shall be of approximately the same plane dimensions as the fittings.</p> |

| <b>Test loadings and applied forces</b>  | <b>Test procedures</b>  |
|--|---|
| <p>Externally applied force:</p> <p>Such as to subject each of the four top corner fittings to a vertical downward force equal to <math>\frac{1}{4} \times 1.8</math> x the allowable superimposed static stacking weight.</p>       | <p>Each EXTERNALLY APPLIED FORCE shall be applied to each of the corner fittings through a corresponding test corner fitting or through a pad of the same plane dimensions. The test corner fitting or pad shall be offset with respect to the top corner fitting of the container by 25 mm (1 in.) laterally and 38 mm (1½ in.) longitudinally.</p>  |
| <p>3. CONCENTRATED LOADS</p>   |   |
| <p>Internal loading:</p> <p>None.</p> <p>Externally applied forces:</p> <p>A concentrated load of 300 kg (660 lb.) uniformly distributed over an area of 600 mm x 300 mm (24 in. x 12 in.).</p>                                      | <p><b>(a) On roof</b></p> <p>The EXTERNALLY APPLIED FORCES shall be applied vertically downwards to the outer surface of the weakest area of the roof of the container.</p>   |
| <p>Internal loading:</p> <p>Two concentrated loads each of 2,730 kg (6,000 lb.) and each applied to the container floor through a contact area of 142 cm<sup>2</sup> (22 sq in.).</p> <p>Externally applied forces:</p> <p>None.</p> | <p><b>(b) On floor</b></p> <p>The test should be made with the container resting on four level supports under its four bottom corners in such a manner that the base structure of the container is free to deflect.</p> <p>A testing device loaded to a weight of 5,460 kg (12,000 lb.) that is 2,730 kg (6,000 lb.) on each of two surfaces having, when loaded, a total contact area of 284 cm<sup>2</sup> (44 sq in.) that is 142 cm<sup>2</sup> (22 sq in.) on each surface, the surface width being 180 mm (7 in.) spaced 760 mm (30 in.) apart, centre to centre, should be manoeuvred over the entire floor area of the container.</p> |



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| <b>Test loadings and applied forces</b> | <b>Test procedures</b> |
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4. TRANSVERSE RACKING

Internal loading:

None.

The container in tare condition shall be placed on four level supports one under each bottom corner and shall be restrained against lateral and vertical movement by means of anchor devices so arranged that the lateral restraint is provided only at the bottom corners diagonally opposite to those at which the forces are applied.

Externally applied forces:

Such as to rack the end structures of the container sideways. The forces shall be equal to those for which the container was designed.

The EXTERNALLY APPLIED FORCES shall be applied either separately or simultaneously to each of the top corner fittings on one side of the container in lines parallel both to the base and to the planes of the ends of the container. The forces shall be applied first towards and then away from the top corner fittings. In the case of containers in which each end is symmetrical about its own vertical centreline, one side only need be tested, but both sides of containers with asymmetric ends shall be tested.

5. LONGITUDINAL RESTRAINT (STATIC TEST)

When designing and constructing containers, it must be borne in mind that containers, when carried by inland modes of transport may sustain accelerations of 2 g applied horizontally in a longitudinal direction.

Internal loading:

A uniformly distributed load, such that the combined weight of a container and test load is equal to the maximum operating gross weight or rating, R.

The container having the prescribed INTERNAL LOADING shall be restrained longitudinally by securing the two bottom corner fittings or equivalent corner structures at one end to suitable anchor points.

| <b>Test loadings and applied forces</b>   | <b>Test procedures</b>   |
|---|--|
| <p>Externally applied forces:</p> <p>Such as to subject each side of the container to longitudinal compressive and tensile forces of magnitude R, that is, a combined force of 2R on the base of the container as a whole.</p>  | <p>The EXTERNALLY APPLIED FORCES shall be applied first towards and then away from the anchor points. Each side of the container shall be tested.</p>  |
| <p>6. END-WALLS</p>   |  |
| <p>The end-walls should be capable of withstanding a load of not less than 0.4 times the maximum permissible payload. If, however, the end-walls are designed to withstand a load of less or greater than 0.4 times the maximum permissible payload such a strength factor shall be indicated on the Safety Approval Plate in accordance with Annex I, Regulation 1.</p> <p>Internal loading:</p> <p>Such as to subject the inside of an end-wall to a uniformly distributed load of 0.4 P or such other load for which the container may be designed.</p> <p>Externally applied forces:</p> <p>None.</p> | <p>The prescribed INTERNAL LOADING shall be applied as follows:</p> <p>Both ends of a container shall be tested except where the ends are identical only one end need be tested. The end-walls of containers which do not have open sides or side doors may be tested separately or simultaneously.</p> <p>The end-walls of containers which do have open sides or side doors should be tested separately. When the ends are tested separately the reactions to the forces applied to the end-wall shall be confined to the base structure of the container.</p> |

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| <b>Test loadings and applied forces</b> | <b>Test procedures</b> |
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7. SIDE-WALLS

The side-walls should be capable of withstanding a load of not less than 0.6 times the maximum permissible payload. If, however, the side-walls are designed to withstand a load of less or greater than 0.6 times the maximum permissible payload, such a strength factor shall be indicated on the Safety Approval Plate in accordance with Annex I, Regulation 1.

Internal loading:

Such as to subject the inside of a side-wall to a uniformly distributed load of 0.6 P or such other load for which the container may be designed.

The prescribed INTERNAL LOADING shall be applied as follows:

Both sides of a container shall be tested except where the sides are identical only one side need be tested. Side-walls shall be tested separately and the reactions to the internal loading shall be confined to the corner fittings or equivalent corner structures. Open topped containers shall be tested in the condition in which they are designed to be operated, for example, with removable top members in position.

Externally applied forces:

None.

## **Schedule 2 — Limitation Convention**

[s. 76]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS**

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules relating to the limitation of the liability of owners of sea-going ships;

Have decided to conclude a Convention for this purpose, and thereto have agreed as follows:

#### **ARTICLE 1**

- (1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:
  - (a) loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;
  - (b) loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible: Provided however that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers;
  - (c) any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on

board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

- (2) In the present Convention the expression “personal claims” means claims resulting from loss of life and personal injury; the expression “property claims” means all other claims set out in paragraph (1) of this Article.
- (3) An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the ship.
- (4) Nothing in this Article shall apply:
  - (a) to claims for salvage or to claims for contribution in general average;
  - (b) to claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependants, if under the law governing the contract of service between the owner and such servants the owner is not entitled to limit his liability in respect of such claims or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 3 of this Convention.
- (5) If the owner of a ship is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.
- (6) The question upon whom lies the burden of proving whether or not the occurrence giving rise to the claim resulted from the actual fault or privity of the owner shall be determined by the *lex fori*.
- (7) The act of invoking limitation of liability shall not constitute an admission of liability.

ARTICLE 2

- (1) The limit of liability prescribed by Article 3 of this Convention shall apply to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or may arise on any other distinct occasion.
- (2) When the aggregate of the claims which arise on any distinct occasion exceeds the limits of liability provided for by Article 3 the total sum representing such limits of liability may be constituted as one distinct limitation fund.
- (3) The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
- (4) After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

ARTICLE 3

- (1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:
  - (a) where the occurrence has only given rise to property claims an aggregate amount of 1,000 francs for each ton of the ship's tonnage;
  - (b) where the occurrence has only given rise to personal claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage;
  - (c) where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of the personal claims and of which a second portion amounting to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with

the property claims for payment against the second portion of the fund.

- (2) In each portion of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their established claims.
- (3) If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1 paragraph (1), he shall *pro tanto* be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent that the claimant whose claim he has paid would have had a right of recovery against him under the national law of the State where the fund has been constituted.
- (4) Where the shipowner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1 paragraph (1) the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable the shipowner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.
- (5) For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this Article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.
- (6) The franc mentioned in this Article shall be deemed to refer to a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph (1) of this Article shall be converted into the national currency of the State in which limitation is sought on the basis of the value of that currency by reference to the unit defined above at the date on which the shipowner shall have constituted the limitation fund, made the payment or given a guarantee which under the law of that State is equivalent to such payment.
- (7) For the purpose of this convention tonnage shall be calculated as follows:
  - in the case of steamships or other mechanically propelled ships there shall be taken the net tonnage with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage;
  - in the case of all other ships there shall be taken the net tonnage.

ARTICLE 4

Without prejudice to the provisions of Article 3, paragraph (2) of this Convention, the rules relating to the constitution and distribution of the limitation fund, if any, and all rules of procedure shall be governed by the national law of the State in which the fund is constituted.

ARTICLE 5

(1) Whenever a shipowner is entitled to limit his liability under this Convention, and the ship or another ship or other property in the same ownership has been arrested within the jurisdiction of a Contracting State or bail or other security has been given to avoid arrest, the Court or other competent authority of such State may order the release of the ship or other property or of the security given if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability under this Convention and that the bail or other security so given is actually available for the benefit of the claimant in accordance with his rights.

(2) Where, in circumstances mentioned in paragraph (1) of this Article, bail or other security has already been given:

- (a) at the port where the accident giving rise to the claim occurred;
- (b) at the first port of call after the accident if the accident did not occur in a port;
- (c) at the port of disembarkation or discharge if the claim is a personal claim or relates to damage to cargo;

the court or other competent authority shall order the release of the ship or the bail or other security given, subject to the conditions set forth in paragraph (1) of this Article.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply likewise if the bail or other security already given is in a sum less than the full limit of liability under this Convention: Provided that satisfactory bail or other security is given for the balance.

(4) When the shipowner has given bail or other security in a sum equal to the full limit of his liability under this Convention such bail or other security shall be available for the payment of all claims arising on a distinct occasion and in respect of which the shipowner may limit his liability.



- (5) Questions of procedure relating to actions brought under the provisions of this Convention and also the time limit within which such actions shall be brought or prosecuted shall be decided in accordance with the national law of the Contracting State in which the action takes place.

#### ARTICLE 6

- (1) In this Convention the liability of the shipowner includes the liability of the ship herself.
- (2) Subject to paragraph (3) of this Article, the provisions of this Convention shall apply to the charterer, manager and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself: Provided that the total limits of liability of the owner and all such other persons in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with Article 3 of this Convention.
- (3) When actions are brought against the master or against members of the crew such persons may limit their liability even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons. If, however, the master or member of the crew is at the same time the owner, co-owner, charterer, manager or operator of the ship the provisions of this paragraph shall only apply where the act, neglect or default in question is an act, neglect or default committed by the person in question in his capacity as master or as member of the crew of the ship.

#### ARTICLE 7

This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 hereof the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State.

Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in

accordance with the provisions of Article 5 hereof, is not ordinarily resident in a Contracting State, or does not have his principal place of business in a Contracting State, or any ship in respect of which limitation of liability or release is sought which does not at the time specified above fly the flag of a Contracting State.

ARTICLE 8

Each Contracting State reserves the right to decide what other classes of ship shall be treated in the same manner as sea-going ships for the purposes of this Convention.

ARTICLE 9

This Convention shall be open for signature by the States represented at the tenth session of the Diplomatic Conference on Maritime Law.

ARTICLE 10

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposit.

ARTICLE 11

- (1) This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.
- (2) For each signatory State which ratifies the Convention after the date of deposit of the instrument of ratification determining the coming into force such as is stipulated in paragraph (1) of this Article, this Convention shall come into force six months after the deposit of their instrument of ratification.

ARTICLE 12

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 11(1).

#### ARTICLE 13

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of such notification.

#### ARTICLE 14

- (1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of this Convention in respect of such High Contracting Party;
- (2) Any High Contracting Party which has made a declaration under paragraph (1) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government;
- (3) The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

ARTICLE 15

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the Conference within six months thereafter.

ARTICLE 16

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules concerning the limitation of the liability of the owners of sea-going ships, signed at Brussels, on the 25th of August 1924.

In Witness whereof the Plenipotentiaries, duly authorized, have signed this Convention.

Done at Brussels, this tenth day of October 1957, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

*(Here follows the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed.)*

PROTOCOL OF SIGNATURE

- (1) Any State, at the time of signing, ratifying or acceding to this Convention may make any of the reservations set forth in paragraph (2). No other reservations to this Convention shall be admissible.
- (2) The following are the only reservations admissible:
  - (a) Reservation of the right to exclude the application of Article 1 paragraph (1)(c).
  - (b) Reservation of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

- (c) Reservation of the right to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

*(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Protocol was signed.)*

## **Schedule 3 — Prevention of Collisions Convention**

[s. 76]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **CONVENTION ON THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

#### **ARTICLE I**

##### *General Obligations*

The Parties to the present Convention undertake to give effect to the Rules and other Annexes constituting the International Regulations for Preventing Collisions at Sea, 1972, (hereinafter referred to as “the Regulations”) attached hereto.

#### **ARTICLE II**

##### *Signature, Ratification, Acceptance, Approval and Accession*

1. The present Convention shall remain open for signature until 1 June 1973 and shall thereafter remain open for accession.
2. States Members of the United Nations, or of any of the Specialized Agencies, or the International Atomic Energy Agency, or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval;
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Organization”) which shall inform the Governments of States that have signed or acceded to the present Convention of the deposit of each instrument and of the date of its deposit.

ARTICLE III

*Territorial Application*

1. The United Nations in cases where they are the administering authority for a territory or any Contracting Party responsible for the international relations of a territory may at any time by notification in writing to the Secretary-General of the Organization (hereinafter referred to as “the Secretary-General”), extend the application of this Convention to such a territory.
2. The present Convention shall, upon the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.
3. Any notification made in accordance with paragraph 1 of this Article may be withdrawn in respect of any territory mentioned in that notification and the extension of this Convention to that territory shall cease to apply after one year or such longer period as may be specified at the time of the withdrawal.
4. The Secretary-General shall inform all Contracting Parties of the notification of any extension or withdrawal of any extension communicated under this Article.

ARTICLE IV

*Entry into force*

1.
  - (a) The present Convention shall enter into force twelve months after the date on which at least 15 States, the aggregate of whose merchant fleets constitutes not less than 65 per cent by number or by tonnage of the world fleet of vessels of 100 gross tons and over have become Parties to it, whichever is achieved first.
  - (b) Notwithstanding the provisions in sub-paragraph (a) of this paragraph, the present Convention shall not enter into force before 1 January 1976.
2. Entry into force for States which ratify, accept, approve or accede to this Convention in accordance with Article II after the conditions prescribed in sub-paragraph 1(a) have been met and before the Convention enters into force, shall be on the date of entry into force of the Convention.

3. Entry into force for States which ratify, accept, approve or accede after the date on which this Convention enters into force, shall be on the date of deposit of an instrument in accordance with Article II.
4. After the date of entry into force of an amendment to this Convention in accordance with paragraph 4 of Article VI, any ratification, acceptance, approval or accession shall apply to the Convention as amended.
5. On the date of entry into force of this Convention, the Regulations replace and abrogate the International Regulations for Preventing Collisions at Sea, 1960.
6. The Secretary-General shall inform the Governments of States that have signed or acceded to this Convention of the date of its entry into force.

#### ARTICLE V

##### *Revision Conference*

1. A Conference for the purpose of revising this Convention or the Regulations or both may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting Parties for the purpose of revising this Convention or the Regulations or both at the request of not less than one-third of the Contracting Parties.

#### ARTICLE VI

##### *Amendments to the Regulations*

1. Any amendment to the Regulations proposed by a Contracting Party shall be considered in the Organization at the request of that Party.
2. If adopted by a two-thirds majority of those present and voting in the Maritime Safety Committee of the Organization, such amendment shall be communicated to all Contracting Parties and Members of the Organization at least six months prior to its consideration by the Assembly of the Organization. Any Contracting Party which is not a Member of the Organization shall be entitled to participate when the amendment is considered by the Assembly.
3. If adopted by a two-thirds majority of those present and voting in the Assembly, the amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.



4. Such an amendment shall enter into force on a date to be determined by the Assembly at the time of its adoption unless, by a prior date determined by the Assembly at the same time, more than one-third of the Contracting Parties notify the Organization of their objection to the amendment. Determination by the Assembly of the dates referred to in this paragraph shall be by a two-thirds majority of those present and voting.
5. On entry into force any amendment shall, for all Contracting Parties which have not objected to the amendment, replace and supersede any previous provision to which the amendment refers.
6. The Secretary-General shall inform all Contracting Parties and Members of the Organization of any request and communication under this Article and the date on which any amendment enters into force.

#### ARTICLE VII

##### *Denunciation*

1. The present Convention may be denounced by a Contracting Party at any time after the expiry of five years from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Organization. The Secretary-General shall inform all other Contracting Parties of the receipt of the instrument of denunciation and of the date of its deposit.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument, after its deposit.

#### ARTICLE VIII

##### *Deposit and Registration*

1. The present Convention and the Regulations shall be deposited with the Organization, and the Secretary-General shall transmit certified true copies thereof to all Governments of States that have signed this Convention or acceded to it.
2. When the present Convention enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United

Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE IX

*Languages*

The present Convention is established, together with the Regulations, in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

**INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS  
AT SEA, 1972**

PART A — GENERAL

RULE 1

*Application*

- (a) These Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- (b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.
- (c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any State with respect to additional station or signal lights or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights for fishing vessels engaged in fishing as a fleet. These additional station or signal lights or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light or signal authorized elsewhere under these Rules.
- (d) Traffic separation schemes may be adopted by the Organization for the purpose of these Rules.
- (e) Whenever the Government concerned shall have determined that a vessel of special construction or purpose cannot comply fully with the

provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her Government shall have determined to be the closest possible compliance with these Rules in respect to that vessel.

## RULE 2

### *Responsibility*

- (a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.
- (b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

## RULE 3

### *General Definitions*

For the purpose of these Rules, except where the context otherwise requires:

- (a) The word “vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.
- (b) The term “power-driven vessel” means any vessel propelled by machinery.
- (c) The term “sailing vessel” means any vessel under sail provided that propelling machinery, if fitted, is not being used.
- (d) The term “vessel engaged in fishing” means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability.

- (e) The word “seaplane” includes any aircraft designed to manoeuvre on the water.
- (f) The term “vessel not under command” means a vessel which through some exceptional circumstance is unable to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.
- (g) The term “vessel restricted in her ability to manoeuvre” means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.

The following vessels shall be regarded as vessels restricted in their ability to manoeuvre:

- (i) a vessel engaged in laying, servicing or picking up a navigation mark, submarine cable or pipeline;
  - (ii) a vessel engaged in dredging, surveying or underwater operations;
  - (iii) a vessel engaged in replenishment or transferring persons, provisions or cargo while underway;
  - (iv) a vessel engaged in the launching or recovery of aircraft;
  - (v) a vessel engaged in minesweeping operations;
  - (vi) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.
- (h) The term “vessel constrained by her draught” means a power-driven vessel which because of her draught in relation to the available depth of water is severely restricted in her ability to deviate from the course she is following.
  - (i) The word “underway” means that a vessel is not at anchor, or made fast to the shore, or aground.
  - (j) The words “length” and “breadth” of a vessel mean her length overall and greatest breadth.
  - (k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.
  - (l) The term “restricted visibility” means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

PART B — STEERING AND SAILING RULES

SECTION I — CONDUCT OF VESSELS IN ANY CONDITION OF  
VISIBILITY

RULE 4

*Application*

Rules in this Section apply in any condition of visibility.

RULE 5

*Look-out*

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

RULE 6

*Safe speed*

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
  - (i) the state of visibility;
  - (ii) the traffic density including concentrations of fishing vessels or any other vessels;
  - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
  - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;
  - (v) the state of wind, sea and current, and the proximity of navigational hazards;

- (vi) the draught in relation to the available depth of water.
- (b) Additionally, by vessels with operational radar:
  - (i) the characteristics, efficiency and limitations of the radar equipment;
  - (ii) any constraints imposed by the radar range scale in use;
  - (iii) the effect on radar detection of the sea state, weather and other sources of interference;
  - (iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
  - (v) the number, location and movement of vessels detected by radar;
  - (vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

#### RULE 7

##### *Risk of Collision*

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
  - (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
  - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

RULE 8

*Action to avoid collision*

- (a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
- (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
- (e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

RULE 9

*Narrow channels*

- (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
- (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
- (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal

prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.

- (e)
  - (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).
  - (ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.
- (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).
- (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

#### RULE 10

##### *Traffic separation schemes*

- (a) This Rule applies to traffic separation schemes adopted by the Organization.
- (b) A vessel using a traffic separation scheme shall:
  - (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;
  - (ii) so far as practicable keep clear of a traffic separation line or separation zone;
  - (iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from the side shall do so at as small an angle to the general direction of traffic flow as practicable.
- (c) A vessel shall so far as practicable avoid crossing traffic lanes, but if obliged to do so shall cross as nearly as practicable at right angles to the general direction of traffic flow.



- (d) Inshore traffic zones shall not normally be used by through traffic which can safely use the appropriate traffic lane within the adjacent traffic separation scheme.
- (e) A vessel, other than a crossing vessel, shall not normally enter a separation zone or cross a separation line except:
  - (i) in cases of emergency to avoid immediate danger;
  - (ii) to engage in fishing within a separation zone.
- (f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.
- (g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.
- (h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.
- (i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.
- (j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

## SECTION II — CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

### RULE 11

#### *Application*

Rules in this section apply to vessels in sight of one another.

### RULE 12

#### *Sailing vessels*

- (a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:
  - (i) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

- (ii) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward;
  - (iii) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.
- (b) For the purposes of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

#### RULE 13

##### *Overtaking*

- (a) Notwithstanding anything contained in the Rules of this Section any vessel overtaking any other shall keep out of the way of the vessel being overtaken.
- (b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.
- (c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.
- (d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

#### RULE 14

##### *Head-on situation*

- (a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

- (b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
- (c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

RULE 15

*Crossing Situation*

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

RULE 16

*Action by give-way vessel*

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

RULE 17

*Action by stand-on vessel*

- (a)
  - (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
  - (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

- (c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

#### RULE 18

##### *Responsibilities between vessels*

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
  - (i) a vessel not under command;
  - (ii) a vessel restricted in her ability to manoeuvre;
  - (iii) a vessel engaged in fishing;
  - (iv) a sailing vessel.
- (b) A sailing vessel underway shall keep out of the way of:
  - (i) a vessel not under command;
  - (ii) a vessel restricted in her ability to manoeuvre;
  - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
  - (i) a vessel not under command;
  - (ii) a vessel restricted in her ability to manoeuvre.
- (d)
  - (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28.
  - (ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition.

- (e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

### SECTION III — CONDUCT OF VESSELS IN RESTRICTED VISIBILITY

#### RULE 19

*Conduct of vessels in restricted visibility*

- (a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- (b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- (c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I of this Part.
- (d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
  - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
  - (ii) an alteration of course towards a vessel abeam or abaft the beam.
- (e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can be kept on her course. She shall if necessary take all her way off and in any event navigate with extreme caution until danger of collision is over.

PART C — LIGHTS AND SHAPES

RULE 20

*Application*

- (a) Rules in this Part shall be complied with in all weathers.
- (b) The rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out.
- (c) The lights prescribed by these Rules shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary.
- (d) The Rules concerning shapes shall be complied with by day.
- (e) The lights and shapes specified in these Rules shall comply with the provisions of Annex I to these Regulations.

RULE 21

*Definitions*

- (a) “Masthead light” means a white light placed over the fore and aft centreline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel.
- (b) “Sidelights” means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. In a vessel of less than 20 metres in length the sidelights may be combined in one lantern carried on the fore and aft centreline of the vessel.
- (c) “Sternlight” means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.

- (d) “Towing light” means a yellow light having the same characteristics as the “sternlight” defined in paragraph (c) of this Rule.
- (e) “All-round light” means a light showing an unbroken light over an arc of the horizon of 360 degrees.
- (f) “Flashing light” means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.

RULE 22

*Visibility of Lights*

The lights prescribed in these Rules shall have an intensity as specified in Section 8 of Annex I to these Regulations so as to be visible at the following minimum ranges:

- (a) In vessels of 50 metres or more in length:
  - a masthead light, 6 miles;
  - a sidelight, 3 miles;
  - a sternlight, 3 miles;
  - a towing light, 3 miles;
  - a white, red, green or yellow all-round light, 3 miles.
- (b) In vessels of 12 metres or more in length but less than 50 metres in length:
  - a masthead light, 5 miles; except that where the length of the vessel is less than 20 metres, 3 miles;
  - a sidelight, 2 miles;
  - a sternlight, 2 miles;
  - a towing light, 2 miles;
  - a white, red, green or yellow all-round light, 2 miles.
- (c) In vessels of less than 12 metres in length:
  - a masthead light, 2 miles;
  - a sidelight, 1 mile;
  - a sternlight, 2 miles;
  - a towing light, 2 miles;
  - a white, red, green or yellow all-round light, 2 miles.

RULE 23

*Power-driven vessels underway*

- (a) A power-driven vessel underway shall exhibit:
  - (i) a masthead light forward;
  - (ii) a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 metres in length shall not be obliged to exhibit such light but may do so;
  - (iii) sidelights;
  - (iv) sternlight.
- (b) An air-cushion vessel when operating in the non-displacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit an all-round flashing yellow light.
- (c) A power-driven vessel of less than 7 metres in length and whose maximum speed does not exceed 7 knots may, in lieu of the lights prescribed in paragraph (a) of this Rule, exhibit an all-round white light. Such vessel shall, if practicable, also exhibit sidelights.

RULE 24

*Towing and pushing*

- (a) A power-driven vessel when towing shall exhibit:
  - (i) Instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line. When the length of the tow, measuring from the stern of the towing vessel to the after end of the tow exceeds 200 metres, three such lights in a vertical line;
  - (ii) sidelights;
  - (iii) a sternlight;
  - (iv) a towing light in a vertical line above the sternlight;
  - (v) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23.



- (c) A power-driven vessel when pushing ahead or towing alongside, except in the case of a composite unit, shall exhibit:
  - (i) Instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line;
  - (ii) sidelights;
  - (iii) a sternlight.
- (d) A power-driven vessel to which paragraphs (a) and (c) of this Rule apply shall also comply with Rule 23(a)(ii).
- (e) A vessel or object being towed shall exhibit:
  - (i) sidelights;
  - (ii) a sternlight;
  - (iii) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel,
  - (i) a vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights;
  - (ii) a vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights.
- (g) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights prescribed in paragraph (e) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of the unlighted vessel or object.

#### RULE 25

##### *Sailing vessels underway and vessels under oars*

- (a) A sailing vessel underway shall exhibit:
  - (i) sidelights;
  - (ii) a sternlight.
- (b) In a sailing vessel of less than 12 metres in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.

- (c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights shall not be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule.
- (d)
  - (i) A sailing vessel of less than 7 metres in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
  - (ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downwards.

RULE 26

*Fishing vessels*

- (a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.
- (b) A vessel when engaged in trawling, by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit:
  - (i) two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
  - (ii) a masthead light abaft of and higher than the all-round green light; a vessel of less than 50 metres in length shall not be obliged to exhibit such a light but may do so;
  - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

- (c) A vessel engaged in fishing, other than trawling, shall exhibit:
  - (i) two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
  - (ii) when there is outlying gear extending more than 150 metres horizontally from the vessel, an all-round white light or a cone apex upwards in the direction of the gear;
  - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (d) A vessel engaged in fishing in close proximity to other vessels engaged in fishing may exhibit the additional signals described in Annex II to these Regulations.
- (e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule, but only those prescribed for a vessel of her length.

RULE 27

*Vessels not under command or restricted in their ability to manoeuvre*

- (a) A vessel not under command shall exhibit:
  - (i) two all-round red lights in a vertical line where they can best be seen;
  - (ii) two balls or similar shapes in a vertical line where they can best be seen;
  - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (b) A vessel restricted in her ability to manoeuvre, except a vessel engaged in minesweeping operations, shall exhibit:
  - (i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;
  - (ii) three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;

- (iii) when making way through the water, masthead lights, sidelights and a sternlight, in addition to the lights prescribed in sub-paragraph (i);
  - (iv) when at anchor, in addition to the lights or shapes prescribed in sub-paragraph (i) and (ii), the light, lights or shape prescribed in Rule 30.
- (c) A vessel engaged in a towing operation such as renders her unable to deviate from her course shall, in addition to the lights or shapes prescribed in sub-paragraph (b)(i) and (ii) of this Rule, exhibit the lights or shape prescribed in Rule 24(a).
- (d) A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, shall exhibit the lights and shapes prescribed in paragraph (b) of this Rule and shall in addition, when an obstruction exists, exhibit:
  - (i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;
  - (ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass;
  - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, masthead lights, sidelights and a sternlight;
  - (iv) a vessel to which this paragraph applies when at anchor shall exhibit the lights or shapes prescribed in sub-paragraph (i) and (ii) instead of the lights or shape prescribed in Rule 30.
- (e) Whenever the size of a vessel engaged in diving, operations makes it impracticable to exhibit the shapes prescribed in paragraph (d) of this Rule, a rigid replica of the International Code flag "A" not less than 1 metre in height shall be exhibited. Measures shall be taken to ensure all-round visibility.
- (f) A vessel engaged in minesweeping operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited at or near the foremast head and one at each end of the fore yard. These lights or shapes indicate that it is dangerous for another vessel to approach closer than 1,000 metres astern or 500 metres on either side of the minesweeper.

- (g) Vessels of less than 7 metres in length shall not be required to exhibit the lights prescribed in this Rule.
- (h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV to these Regulations.

RULE 28

*Vessels constrained by their draught*

A vessel constrained by her draught may, in addition to the lights prescribed for power-driven vessels in Rule 23, exhibit where they can best be seen three all-round red lights in a vertical line, or a cylinder.

RULE 29

*Pilot vessels*

- (a) A vessel engaged on pilotage duty shall exhibit:
  - (i) at or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red;
  - (ii) when underway, in addition, sidelights and a sternlight;
  - (iii) when at anchor, in addition to the lights prescribed in sub-paragraph (i), the anchor light, lights or shape.
- (b) A pilot vessel when not engaged on pilotage duty shall exhibit the lights or shapes prescribed for a similar vessel of her length.

RULE 30

*Anchored vessels and vessels aground*

- (a) A vessel at anchor shall exhibit where it can best be seen:
  - (i) in the fore part, an all-round white light or one ball;
  - (ii) at or near the stern and at a lower level than the light prescribed in sub-paragraph (i), an all-round white light.
- (b) A vessel of less than 50 metres in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule.

- (c) A vessel at anchor may, and a vessel of 100 metres and more in length shall, also use the available working or equivalent lights to illuminate her decks.
- (d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b) of this Rule and in addition, where they can best be seen:
  - (i) two all-round red lights in a vertical line;
  - (ii) three balls in a vertical line.
- (e) A vessel of less than 7 metres in length, when at anchor or aground, not in or near a narrow channel, fairway or anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shapes prescribed in paragraphs (a), (b), or (d) of this Rule.

RULE 31

*Seaplanes*

Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

PART D — SOUND AND LIGHT SIGNALS

RULE 32

*Definitions*

- (a) The word “whistle” means any sound signalling appliance capable of producing the prescribed blasts and which complies with the specifications in Annex III to these Regulations.
- (b) The term “short blast” means a blast of about one second’s duration.
- (c) The term “prolonged blast” means a blast of from four to six seconds’ duration.

RULE 33

*Equipment for sound signals*

- (a) A vessel of 12 metres or more in length shall be provided with a whistle and a bell and a vessel of 100 metres or more in length shall, in addition,

be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Regulations. The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the required signals shall always be possible.

- (b) A vessel of less than 12 metres in length shall not be obliged to carry the sound signalling appliances prescribed in paragraph (a) of this Rule but if she does not, she shall be provided with some other means of making an efficient sound signal.

#### RULE 34

##### *Manoeuvring and warning signals*

- (a) When vessels are in sight of one another, a power-driven vessel underway, when manoeuvring as authorized or required by these Rules, shall indicate that manoeuvre by the following signals on her whistle:
- one short blast to mean “I am altering my course to starboard”;
  - two short blasts to mean “I am altering my course to port”;
  - three short blasts to mean “I am operating astern propulsion”.
- (b) Any vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals, repeated as appropriate, whilst the manoeuvre is being carried out:
- (i) these light signals shall have the following significance:
    - one flash to mean “I am altering my course to starboard”;
    - two flashes to mean “I am altering my course to port”;
    - three flashes to mean “I am operating astern propulsion”;
  - (ii) the duration of each flash shall be about one second, the interval between flashes shall be about one second, and the interval between successive signals shall be not less than ten seconds;
  - (iii) the light used for this signal shall, if fitted, be an all-round white light, visible at a minimum range of 5 miles, and shall comply with the provisions of Annex I.

- (c) When in sight of one another in a narrow channel or fairway:
- (i) a vessel intending to overtake another shall in compliance with Rule 9(e)(i) indicate her intention by the following signals on her whistle:
    - two prolonged blasts followed by one short blast to mean “I intend to overtake you on your starboard side”;
    - two prolonged blasts followed by two short blasts to mean “I intend to overtake you on your port side”;
  - (ii) the vessel about to be overtaken when acting in accordance with Rule 9(e)(i) shall indicate her agreement by the following signal on her whistle:
    - one prolonged, one short, one prolonged and one short blast, in that order.
- (d) When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. Such signal may be supplemented by a light signal of at least five short and rapid flashes.
- (e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. Such signal shall be answered with a prolonged blast by any approaching vessel that, may be within hearing around the bend or behind the intervening obstruction.
- (f) If whistles are fitted on a vessel at a distance apart of more than 100 metres, one whistle only shall be used for giving manoeuvring and warning signals.

#### RULE 35

##### *Sound signals in restricted visibility*

In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows:

- (a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.



- (b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.
- (c) A vessel not under command, a vessel restricted in her ability to manoeuvre, a vessel constrained by her draught, a sailing vessel, a vessel engaged in fishing and a vessel engaged in towing or pushing another vessel shall, instead of the signals prescribed in paragraphs (a) or (b) of this Rule, sound at intervals of not more than 2 minutes three blasts in succession, namely one prolonged followed by two short blasts.
- (d) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession, namely one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.
- (e) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.
- (f) A vessel at anchor shall at intervals of not more than one minute ring the bell rapidly for about 5 seconds. In a vessel of 100 metres or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.
- (g) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.
- (h) A vessel of less than 12 metres in length shall not be obliged to give the abovementioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.

- (i) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (f) of this Rule sound an identity signal consisting of four short blasts.

RULE 36

*Signals to attract attention*

If necessary to attract the attention of another vessel any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel.

RULE 37

*Distress signals*

When a vessel is in distress and requires assistance she shall use or exhibit the signals prescribed in Annex IV to these Regulations.

PART E — EXEMPTIONS

RULE 38

*Exemptions*

Any vessel (or class of vessels) provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960, the keel of which is laid or which is at a corresponding stage of construction before the entry into force of these Regulations may be exempted from compliance therewith as follows:

- (a) The installation of lights with ranges prescribed in Rule 22, until four years after the date of entry into force of these Regulations.
- (b) The installation of lights with colour specifications as prescribed in Section 7 of Annex I to these Regulations, until four years after the date of entry into force of these Regulations.
- (c) The repositioning of lights as a result of conversion from imperial to metric units and rounding off measurement figures, permanent exemption.
- (d)
  - (i) The repositioning of masthead lights on vessels of less than 150 metres in length, resulting from the

prescriptions of Section 3(a) of Annex I, permanent exemption.

- (ii) The repositioning of masthead lights on vessels of 150 metres or more in length, resulting from the prescriptions of Section 3(a) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.
- (e) The repositioning of masthead lights resulting from the prescriptions of Section 2(b) of Annex I, until nine years after the date of entry into force of these Regulations.
- (f) The repositioning of sidelights resulting from the prescriptions of Sections 2(g) and 3(b) of Annex I, until nine years after the date of entry into force of these Regulations.
- (g) The requirements for sound signal appliances prescribed in Annex III, until nine years after the date of entry into force of these Regulations.

## ANNEX I

### POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. *Definition*

The term “height above the hull” means height above the uppermost continuous deck.

2. *Vertical positioning and spacing of lights*

- (a) On a power-driven vessel of 20 metres or more in length the masthead lights shall be placed as follows:
  - (i) the forward masthead light, or if only one masthead light is carried, then that light, at a height above the hull of not less than 6 metres, and, if the breadth of the vessel exceeds 6 metres, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 12 metres;
  - (ii) when two masthead lights are carried the after one shall be at least 4.5 metres vertically higher than the forward one.

- (b) The vertical separation of masthead lights of power-driven vessels shall be such that in all normal conditions of trim the after light will be seen over and separate from the forward light at a distance of 1 000 metres from the stern when viewed from sea level.
- (c) The masthead light of a power-driven vessel of 12 metres but less than 20 metres in length shall be placed at a height above the gunwale of not less than 2.5 metres.
- (d) A power-driven vessel of less than 12 metres in length may carry the uppermost light at a height of less than 2.5 metres above the gunwale. When however a masthead light is carried in addition to sidelights and a sternlight, then such masthead light shall be carried at least 1 metre higher than the sidelights.
- (e) One of the two or three masthead lights prescribed for a power-driven vessel when engaged in towing or pushing another vessel shall be placed in the same position as the forward masthead light of a power-driven vessel.
- (f) In all circumstances the masthead light or lights shall be so placed as to be above and clear of all other lights and obstructions.
- (g) The sidelights of a power-driven vessel shall be placed at a height above the hull not greater than three quarters of that of the forward masthead light. They shall not be so low as to be interfered with by deck lights.
- (h) The sidelights, if in a combined lantern and carried on a power-driven vessel of less than 20 metres in length, shall be placed not less than 1 metre below the masthead light.
- (i) When the Rules prescribe two or three lights to be carried in a vertical line, they shall be spaced as follows:
  - (i) on a vessel of 20 metres in length or more such lights shall be spaced not less than 2 metres apart, and the lowest of these lights shall, except where a towing light is required, not be less than 4 metres above the hull;
  - (ii) on a vessel of less than 20 metres in length such lights shall be spaced not less than 1 metre apart and the lowest of these lights shall, except where a towing light is required, not be less than 2 metres above the gunwale;

- (iii) when three lights are carried they shall be equally spaced.
  - (j) The lower of the two all-round lights prescribed for a fishing vessel when engaged in fishing shall be at a height above the sidelights not less than twice the distance between the two vertical lights.
  - (k) The forward anchor light, when two are carried, shall not be less than 4.5 metres above the after one. On a vessel of 50 metres or more in length this forward anchor light shall not be less than 6 metres above the hull.
- 3. *Horizontal positioning and spacing of lights*
  - (a) When two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them shall not be less than one half of the length of the vessel but need not be more than 100 metres. The forward light shall be placed not more than one quarter of the length of the vessel from the stem.
  - (b) On a vessel of 20 metres or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.
- 4. *Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in underwater operations*
  - (a) The light indicating the direction of the outlying gear from a vessel engaged in fishing as prescribed in Rule 26(c)(ii) shall be placed at a horizontal distance of not less than 2 metres and not more than 6 metres away from the two all-round red and white lights. This light shall be placed not higher than the all-round white light prescribed in Rule 26(c)(i) and not lower than the sidelights.
  - (b) The lights and shapes on a vessel engaged in dredging or underwater operations to indicate the obstructed side and/or the side on which it is safe to pass, as prescribed in Rule 27(d)(i) and (ii), shall be placed at the maximum practical horizontal distance, but in no case less than 2 metres, from the lights or shapes prescribed in Rule 27(b)(i) and (ii). In no case shall the upper of these lights or shapes be at a greater height than the lower of the three lights or shapes prescribed in Rule 27(b)(i) and (ii).

5. *Screens for sidelights*

The sidelights shall be fitted with inboard screens painted matt black, and meeting the requirements of Section 9 of this Annex. With a combined lantern, using a single vertical filament and a very narrow division between the green and red sections, external screens need not be fitted.

6. *Shapes*

- (a) Shapes shall be black and of the following sizes:
  - (i) a ball shall have a diameter of not less than 0.6 metre;
  - (ii) a cone shall have a base diameter of not less than 0.6 metre and a height equal to its diameter;
  - (iii) a cylinder shall have a diameter of at least 0.6 metre and a height of twice its diameter;
  - (iv) a diamond shape shall consist of two cones as defined in (ii) above having a common base.
- (b) The vertical distance between shapes shall be at least 1.5 metres.
- (c) In a vessel of less than 20 metres in length shapes of lesser dimensions but commensurate with the size of the vessel may be used and the distance apart may be correspondingly reduced.

7. *Colour specifications of lights*

The chromaticity of all navigation lights shall conform to the following standards, which lie within the boundaries of the area of the diagram specified for each colour by the International Commission on Illumination (CIE).

The boundaries of the area for each colour are given by indicating the corner co-ordinates, which are as follows:

- (i) *White*

|   |       |       |       |       |       |       |
|---|-------|-------|-------|-------|-------|-------|
| x | 0.525 | 0.525 | 0.452 | 0.310 | 0.310 | 0.443 |
| y | 0.382 | 0.440 | 0.440 | 0.348 | 0.283 | 0.382 |
- (ii) *Green*

|   |       |       |       |       |
|---|-------|-------|-------|-------|
| x | 0.028 | 0.009 | 0.300 | 0.203 |
| y | 0.385 | 0.723 | 0.511 | 0.356 |

|       |               |       |       |       |       |
|-------|---------------|-------|-------|-------|-------|
| (iii) | <i>Red</i>    |       |       |       |       |
|       | x             | 0.680 | 0.660 | 0.735 | 0.721 |
|       | y             | 0.320 | 0.320 | 0.265 | 0.259 |
| (iv)  | <i>Yellow</i> |       |       |       |       |
|       | x             | 0.612 | 0.618 | 0.575 | 0.575 |
|       | y             | 0.382 | 0.382 | 0.425 | 0.406 |

8. *Intensity of lights*

- (a) The minimum luminous intensity of lights shall be calculated by using the formula:

$$I = 3.43 \times 10^6 \times T \times D^2 \times K^{-D}$$

where I is luminous intensity in candelas under service conditions,

T is threshold factor  $2 \times 10^{-7}$  lux,

D is range of visibility (luminous range) of the light in nautical miles,

K is atmospheric transmissivity.

For prescribed lights the value of K shall be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

- (b) A selection of figures derived from the formula is given in the following table:

| Range of visibility (luminous range) of light in nautical miles | Luminous intensity of light in candelas for K = 0.8 |
|---|---|
| D   | I   |
| 1   | 0.9   |
| 2   | 4.3   |
| 3   | 12  |
| 4   | 27  |
| 5   | 52  |
| 6   | 94  |

NOTE: The maximum luminous intensity of navigation lights should be limited to avoid undue glare.

9. *Horizontal Sectors*

- (a) (i) In the forward direction, sidelights as fitted on the vessel must show the minimum required intensities. The intensities must decrease to reach practical cut-off between 1 degree and 3 degrees outside the prescribed sectors.
- (ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21. From 5 degrees within the prescribed sectors the intensity may decrease by 50 per cent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed limits.
- (b) All-round lights shall be so located as not to be obscured by masts, topmasts or structures within angular sectors of more than 6 degrees, except anchor lights, which need not be placed at an impracticable height above the hull.

10. *Vertical Sectors*

- (a) The vertical sectors of electric lights, with the exception of lights on sailing vessels shall ensure that:
  - (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
  - (ii) at least 60 per cent of the required minimum intensity is maintained from 7.5 degrees above to 7.5 degrees below the horizontal.
- (b) In the case of sailing vessels the vertical sectors of electric lights shall ensure that:
  - (i) at least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;
  - (ii) at least 50 per cent of the required minimum intensity is maintained from 25 degrees above to 25 degrees below the horizontal.



- (c) In the case of lights other than electric these specifications shall be met as closely as possible.

11. *Intensity of non-electric lights*

Non-electric lights shall so far as practicable comply with the minimum intensities, as specified in the Table given in Section 8 of this Annex.

12. *Manoeuvring light*

Notwithstanding the provisions of paragraph 2(f) of this Annex the manoeuvring light described in Rule 34(b) shall be placed in the same fore and aft vertical plane as the masthead light or lights and, where practicable, at a minimum height of 2 metres vertically above the forward masthead light, provided that it shall be carried not less than 2 metres vertically above or below the after masthead light. On a vessel where only one masthead light is carried the manoeuvring light, if fitted, shall be carried where it can best be seen, not less than 2 metres vertically apart from the masthead light.

13. *Approval*

The construction of lanterns and shapes and the installation of lanterns on board the vessel shall be to the satisfaction of the appropriate authority of the State where the vessel is registered.

## ANNEX II

### ADDITIONAL SIGNALS FOR FISHING VESSELS FISHING IN CLOSE PROXIMITY

1. *General*

The lights mentioned herein shall, if exhibited in pursuance of Rule 26(d), be placed where they can best be seen. They shall be at least 0.9 metre apart but at a lower level than lights prescribed in Rule 26(b)(i) and (c)(i). The lights shall be visible all round the horizon at a distance of at least 1 mile but at a lesser distance than the lights prescribed by these Rules for fishing vessels.

2. *Signals for Trawlers*

- (a) Vessels when engaged in trawling, whether using demersal or pelagic gear, may exhibit:
  - (i) when shooting their nets: two white lights in a vertical line;
  - (ii) when hauling their nets: one white light over one red light in a vertical line;
  - (iii) when the net has come fast upon an obstruction: two red lights in a vertical line.
- (b) Each vessel engaged in pair trawling may exhibit:
  - (i) by night a searchlight directed forward and in the direction of the other vessel of the pair;
  - (ii) when shooting or hauling their nets or when their nets have come fast upon an obstruction, the lights prescribed in 2(a) above.

3. *Signals for purse seiners*

Vessels engaged in fishing with purse seine gear may exhibit two yellow lights in a vertical line. These lights shall flash alternately every second and with equal light and occultation duration. These lights may be exhibited only when the vessel is hampered by its fishing gear.

**ANNEX III**

**TECHNICAL DETAILS OF SOUND SIGNAL APPLIANCES**

1. *Whistles*

- (a) *Frequencies and range of audibility.* The fundamental frequency of the signal shall lie within the range 70-700 Hz.  
The range of audibility of the signal from a whistle shall be determined by those frequencies, which may include the fundamental and/or one or more higher frequencies, which lie within the range 180-700 Hz ( $\pm 1$  per cent) and which provide the sound pressure levels specified in paragraph 1(c) below.
- (b) *Limits of fundamental frequencies.* To ensure a wide variety of whistle characteristics, the fundamental frequency of a whistle shall be between the following, limits:
  - (i) 70-200 Hz, for a vessel 200 metres or more in length;

- (ii) 130-350 Hz, for a vessel 75 metres but less than 200 metres in length;
  - (iii) 250-700 Hz, for a vessel less than 75 metres in length.
- (c) *Sound signal intensity and range of audibility.* A whistle fitted in a vessel shall provide, in the direction of maximum intensity of the whistle and at a distance of 1 metre from it, a sound pressure level in at least one 1/3rd-octave band within the range of frequencies 180-700 Hz ( $\pm 1$  per cent) of not less than the appropriate figure given in the table below.

| Length of vessel in metres | 1/3rd-octave band level at 1 metre in dB referred to $2 \times 10^{-5} \text{ N/m}^2$ | Audibility range in nautical miles |
|----------------------------|---|------------------------------------|
| 200 or more .....          | 143   | 2                                  |
| 75 but less than 200 ..... | 138   | 1.5                                |
| 20 but less than 75 .....  | 130   | 1                                  |
| Less than 20 .....         | 120   | 0.5                                |

The range of audibility in the table above is for information and is approximately the range at which a whistle may be heard on its forward axis with 90 per cent probability in conditions of still air on board a vessel having average background noise level at the listening posts (taken to be 68 dB in the octave band centred on 250 Hz and 63 dB in the octave band centred on 500 Hz).

In practice the range at which a whistle may be heard is extremely variable and depends critically on weather conditions; the values given can be regarded as typical but under conditions of strong wind or high ambient noise level at the listening post the range may be much reduced.

- (d) *Directional properties.* The sound pressure level of a directional whistle shall be not more than 4 dB below the sound pressure level on the axis at any direction in the horizontal plane within  $\pm 45$  degrees of the axis. The sound pressure level at any other direction in the horizontal plane shall be not more than 10 dB below the sound pressure level on the axis, so that the range in any direction will be at least half the range on the forward axis.

The sound pressure level shall be measured in that 1/3rd-octave band which determines the audibility range.

- (e) *Positioning of whistles.* When a directional whistle is to be used as the only whistle on a vessel, it shall be installed with its maximum intensity directed straight ahead.

A whistle shall be placed as high as practicable on a vessel, in order to reduce interception of the emitted sound by obstructions and also to minimize hearing damage risk to personnel. The sound pressure level of the vessel's own signal at listening posts shall not exceed 110 dB (A) and so far as practicable should not exceed 100 dB (A).

- (f) *Fitting of more than one whistle.* If whistles are fitted at a distance apart of more than 100 metres, it shall be so arranged that they are not sounded simultaneously.
- (g) *Combined whistle systems.* If due to the presence of obstructions the sound field of a single whistle or of one of the whistles referred to in paragraph 1(f) above is likely to have a zone of greatly reduced signal level, it is recommended that a combined whistle system be fitted so as to overcome this reduction. For the purposes of the Rules a combined whistle system is to be regarded as a single whistle. The whistles of a combined system shall be located at a distance apart of not more than 100 metres and arranged to be sounded simultaneously. The frequency of any one whistle shall differ from those of the others by at least 10 Hz.

2. *Bell or gong*

- (a) *Intensity of signal.* A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less than 110 dB at 1 metre.
- (b) *Construction.* Bells and gongs shall be made of corrosion-resistant material and designed to give a clear tone. The diameter of the mouth of the bell shall be not less than 300 mm for vessels of more than 20 metres in length, and shall be not less than 200 mm for vessels of 12 to 20 metres in length. Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 per cent of the mass of the bell.

3. *Approval*

The construction of sound signal appliances, their performance and their installation on board the vessel shall be to the satisfaction of the appropriate authority of the State where the vessel is registered.

**ANNEX IV**

**DISTRESS SIGNALS**

1. The following signals, used or exhibited either together or separately, indicate distress and need of assistance:
  - (a) a gun or other explosive signal fired at intervals of about a minute;
  - (b) a continuous sounding with any fog-signalling apparatus;
  - (c) rockets or shells, throwing red stars fired one at a time at short intervals;
  - (d) a signal made by radiotelegraphy or by any other signalling method consisting of the group ... — — — ... (SOS) in the Morse Code;
  - (e) a signal sent by radiotelephony consisting of the spoken word "Mayday";
  - (f) the International Code Signal of distress indicated by N.C.;
  - (g) a signal consisting of a square flag having above or below it a ball or anything resembling a ball;
  - (h) flames on the vessel (as from a burning tar barrel, oil barrel, etc.);
  - (i) a rocket parachute flare or a hand flare showing a red light;
  - (j) a smoke signal giving off orange-coloured smoke;
  - (k) slowly and repeatedly raising and lowering arms outstretched to each side;
  - (l) the radiotelegraph alarm signal;
  - (m) the radiotelephone alarm signal;
  - (n) signals transmitted by emergency position-indicating radio beacons.
  
2. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other

signals which may be confused with any of the above signals is prohibited.

3. Attention is drawn to the relevant sections of the International Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals:
  - (a) a piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air);
  - (b) a dye marker.

## Schedule 4 — Safety Convention

[s. 76]

*[Heading amended by No. 19 of 2010 s. 4.]*

### INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

#### ARTICLE I

##### *General Obligations under the Convention*

- (a) The Contracting Governments undertake to give effect to the provisions of the present Convention and the Annex thereto, which shall constitute an integral part of the present Convention. Every reference to the present Convention constitutes at the same time a reference to the Annex
- (b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended.

#### ARTICLE II

##### *Application*

The present Convention shall apply to ships entitled to fly the flag of States the Governments of which are Contracting Governments.

#### ARTICLE III

##### *Laws, Regulations*

The Contracting Governments undertake to communicate to and deposit with the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Organization”):

- (a) a list of non-governmental agencies which are authorized to act in their behalf in the administration of measures for safety of life at sea for circulation to the Contracting Governments for the information of their officers;

- (b) the text of laws, decrees, orders and regulations which shall have been promulgated on the various matters within the scope of the present Convention;
- (c) a sufficient number of specimens of their Certificates issued under the provisions of the present Convention for circulation to the Contracting Governments for the information of their officers.

#### ARTICLE IV

##### *Cases of Force Majeure*

- (a) A ship, which is not subject to the provisions of the present Convention at the time of its departure on any voyage, shall not become subject to the provisions of the present Convention on account of any deviation from its intended voyage due to stress of weather or any other cause of *force majeure*.
- (b) Persons who are on board a ship by reason of *force majeure* or in consequence of the obligation laid upon the master to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to a ship of any provisions of the present Convention.

#### ARTICLE V

##### *Carriage of Persons in Emergency*

- (a) For the purpose of evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention.
- (b) Such permission shall not deprive other Contracting Governments of any right of control under the present Convention over such ships which come within their ports.
- (c) Notice of any such permission, together with a statement of the circumstances, shall be sent to the Secretary-General of the Organization by the Contracting Government granting such permission.



ARTICLE VI

*Prior Treaties and Conventions*

- (a) As between the Contracting Governments, the present Convention replaces and abrogates the International Convention for the Safety of Life at Sea which was signed in London on 17 June 1960.
- (b) All other treaties, conventions and arrangements relating to safety of life at sea, or matters appertaining thereto, at present in force between Governments parties to the present Convention shall continue to have full and complete effect during the terms thereof as regards:
  - (i) ships to which the present Convention does not apply;
  - (ii) ships to which the present Convention applies, in respect of matters for which it has not expressly provided.
- (c) To the extent, however, that such treaties, conventions or arrangements conflict with the provisions of the present Convention, the provisions of the present Convention shall prevail.
- (d) All matters which are not expressly provided for in the present Convention remain subject to the legislation of the Contracting Governments.

ARTICLE VII

*Special Rules drawn up by Agreement*

When in accordance with the present Convention special rules are drawn up by agreement between all or some of the Contracting Governments, such rules shall be communicated to the Secretary-General of the Organization for circulation to all Contracting Governments.

ARTICLE VIII

*Amendments*

- (a) The present Convention may be amended by either of the procedures specified in the following paragraphs.
- (b) Amendments after consideration within the Organization:
  - (i) Any amendment proposed by a Contracting Government shall be submitted to the Secretary-General of the Organization, who

shall then circulate it to all Members of the Organization and all Contracting Governments at least six months prior to its consideration.

- (ii) Any amendment proposed and circulated as above shall be referred to the Maritime Safety Committee of the Organization for consideration.
- (iii) Contracting Governments of States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.
- (iv) Amendments shall be adopted by a two-thirds majority of the Contracting Governments present and voting in the Maritime Safety Committee expanded as provided for in sub-paragraph (iii) of this paragraph (hereinafter referred to as “the expanded Maritime Safety Committee”) on condition that at least one-third of the Contracting Governments shall be present at the time of voting.
- (v) Amendments adopted in accordance with sub-paragraph (iv) of this paragraph shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
- (vi)
  - (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Contracting Governments.
  - (2) An amendment to the Annex other than Chapter I shall be deemed to have been accepted:
    - (aa) at the end of two years from the date on which it is communicated to Contracting Governments for acceptance; or
    - (bb) at the end of a different period, which shall not be less than one year, if so determined at the time of its adoption by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee.

However, if within the specified period either more than one-third of Contracting Governments, or Contracting Governments the combined merchant fleets of which

constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, notify the Secretary-General of the Organization that they object to the amendment, it shall be deemed not to have been accepted.

- (vii) (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall enter into force with respect to those Contracting Governments which have accepted it, six months after the date on which it is deemed to have been accepted and with respect to each Contracting Government which accepts it after that date, six months after the date of that Contracting Government's acceptance.
  - (2) An amendment to the Annex other than Chapter I shall enter into force with respect to all Contracting Governments, except those which have objected to the amendment under sub-paragraph (vi)(2) of this paragraph and which have not withdrawn such objections, six months after the date on which it is deemed to have been accepted. However, before the date set for entry into force, any Contracting Government may give notice to the Secretary-General of the Organization that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee at the time of the adoption of the amendment.
- (c) Amendment by a Conference:
- (i) Upon the request of a Contracting Government concurred in by at least one-third of the Contracting Governments, the Organization shall convene a Conference of Contracting Governments to consider amendments to the present Convention.
  - (ii) Every amendment adopted by such a Conference by a two-thirds majority of the Contracting Governments present and voting shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.

- (iii) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in sub-paragraph (b)(vi) and (b)(vii) respectively of this Article, provided that references in these paragraphs to the expanded Maritime Safety Committee shall be taken to mean references to the Conference.
- (d)
  - (i) A Contracting Government which has accepted an amendment to the Annex which has entered into force shall not be obliged to extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph (b)(vi)(2) of this Article, has objected to the amendment and has not withdrawn such an objection, but only to the extent that such certificates relate to matters covered by the amendment in question.
  - (ii) A Contracting Government which has accepted an amendment to the Annex which has entered into force shall extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph (b)(vii)(2) of this Article, has notified the Secretary-General of the Organization that it exempts itself from giving effect to the amendment.
- (e) Unless expressly provided otherwise, any amendment to the present Convention made under this Article, which relates to the structure of a ship, shall apply only to ships the keels of which are laid or which are at a similar stage of construction on or after the date on which the amendment enters into force.
- (f) Any declaration of acceptance of, or objection to, an amendment or any notice given under sub-paragraph (b)(vii)(2) of this Article shall be submitted in writing to the Secretary-General of the Organization, who shall inform all Contracting Governments of any such submission and the date of its receipt.
- (g) The Secretary-General of the Organization shall inform all Contracting Governments of any amendments which enter into force under this Article, together with the date on which each such amendment enters into force.

ARTICLE IX

*Signature, Ratification, Acceptance, Approval and Accession*

- (a) The present Convention shall remain open for signature at the Headquarters of the Organization from 1 November 1974 until 1 July 1975 and shall thereafter remain open for accession. States may become parties to the present Convention by:
  - (i) signature without reservation as to ratification, acceptance or approval; or
  - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
- (c) The Secretary-General of the Organization shall inform the Governments of all States which have signed the present Convention or acceded to it of any signature or of the deposit of any instrument of ratification, acceptance, approval or accession and the date of its deposit.

ARTICLE X

*Entry into Force*

- (a) The present Convention shall enter into force twelve months after the date on which not less than twenty-five States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become parties to it in accordance with Article IX.
- (b) Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Convention enters into force shall take effect three months after the date of deposit.
- (c) After the date on which an amendment to the present Convention is deemed to have been accepted under Article VIII, any instrument of ratification, acceptance, approval or accession deposited shall apply to the Convention as amended.

ARTICLE XI

*Denunciation*

- (a) The present Convention may be denounced by any Contracting Government at any time after the expiry of five years from the date on which the Convention enters into force for that Government.
- (b) Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Organization who shall notify all the other Contracting Governments of any instrument of denunciation received and of the date of its receipt as well as the date on which such denunciation takes effect.
- (c) A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General of the Organization.

ARTICLE XII

*Deposit and Registration*

- (a) The present Convention shall be deposited with the Secretary-General of the Organization who shall transmit certified true copies thereof to the Governments of all States which have signed the present Convention or acceded to it.
- (b) As soon as the present Convention enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretary-General of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XIII

*Languages*

The present Convention is established in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

ANNEX

**CHAPTER I**

**GENERAL PROVISIONS**

PART A — APPLICATION, DEFINITIONS, ETC.

**Regulation 1**

*Application*

- (a) Unless expressly provided otherwise, the present Regulations apply only to ships engaged on international voyages.
- (b) The classes of ships to which each Chapter applies are more precisely defined, and the extent of the application is shown, in each Chapter.

**Regulation 2**

*Definitions*

For the purpose of the present Regulations, unless expressly provided otherwise:

- (a) “Regulations ” means the Regulations contained in the Annex to the present Convention.
- (b) “Administration” means the Government of the State whose flag the ship is entitled to fly.
- (c) “Approved” means approved by the Administration.
- (d) “International voyage” means a voyage from a country to which the present Convention applies to a port outside such country, or conversely.
- (e) A passenger is every person other than:
  - (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
  - (ii) a child under one year of age.
- (f) A passenger ship is a ship which carries more than twelve passengers.
- (g) A cargo ship is any ship which is not a passenger ship.
- (h) A tanker is a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of an inflammable \* nature.

- (i) A fishing vessel is a vessel used for catching fish, whales, seals, walrus or other living resources of the sea.
- (j) A nuclear ship is a ship provided with a nuclear power plant.
- (k) “New ship” means a ship the keel of which is laid or which is at a similar stage of construction on or after the date of coming into force of the present Convention.
- (l) “Existing ship” means a ship which is not a new ship.
- (m) A mile is 1,852 metres or 6,080 feet.

\* “Inflammable” has the same meaning as “flammable”

### **Regulation 3**

#### *Exceptions*

- (a) The present Regulations, unless expressly provided otherwise, do not apply to:
  - (i) Ships of war and troopships.
  - (ii) Cargo ships of less than 500 tons gross tonnage.
  - (iii) Ships not propelled by mechanical means.
  - (iv) Wooden ships of primitive build.
  - (v) Pleasure yachts not engaged in trade.
  - (vi) Fishing vessels.
- (b) Except as expressly provided in Chapter V, nothing herein shall apply to ships solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

### **Regulation 4**

#### *Exemptions*

- (a) A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Administration from any of the requirements of the present Regulations provided that it complies with safety requirements which are adequate in the opinion of the Administration for the voyage which is to be undertaken by the ship.



- (b) The Administration may exempt any ship which embodies features of a novel kind from any of the provisions of Chapters II-1, II-2, III and IV of these Regulations the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages. Any such ship shall, however, comply with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship and which are acceptable to the Governments of the States to be visited by the ship. The Administration which allows any such exemption shall communicate to the Organization particulars of same and the reasons therefor which the Organization shall circulate to the Contracting Governments for their information.

### **Regulation 5**

#### *Equivalents*

- (a) Where the present Regulations require that a particular fitting, material, appliance or apparatus, or type thereof, shall be fitted or carried in a ship, or that any particular provision shall be made, the Administration may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made in that ship, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the present Regulations.
- (b) Any Administration which so allows, in substitution, a fitting, material, appliance or apparatus, or type thereof, or provision, shall communicate to the Organization particulars thereof together with a report on any trials made and the Organization shall circulate such particulars to other Contracting Governments for the information of their officers.

## **CHAPTER V**

### **SAFETY OF NAVIGATION**

#### **Regulation 1**

#### *Application*

This Chapter, unless otherwise expressly provided in this Chapter, applies to all ships on all voyages, except ships of war and ships solely navigating the Great

Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada.

## **Regulation 2**

### *Danger Messages*

- (a) The master of every ship which meets with dangerous ice, a dangerous derelict, or any other direct danger to navigation, or a tropical storm, or encounters sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received, is bound to communicate the information by all the means at his disposal to ships in the vicinity, and also to the competent authorities at the first point on the coast with which he can communicate. The form in which the information is sent is not obligatory. It may be transmitted either in plain language (preferably English) or by means of the International Code of Signals. It should be broadcast to all ships in the vicinity and sent to the first point on the coast to which communication can be made, with a request that it be transmitted to the appropriate authorities.
- (b) Each Contracting Government will take all steps necessary to ensure that when intelligence of any of the dangers specified in paragraph (a) of this Regulation is received, it will be promptly brought to the knowledge of those concerned and communicated to other interested Governments.
- (c) The transmission of messages respecting the dangers specified is free of cost to the ships concerned.
- (d) All radio messages issued under paragraph (a) of this Regulation shall be preceded by the Safety Signal, using the procedure as prescribed by the Radio Regulations as defined in Regulation 2 of Chapter IV.

## **Regulation 3**

### *Information required in Danger Messages*

The following information is required in danger messages:

- (a) *Ice, Derelicts and other Direct Dangers to Navigation*
  - (i) The kind of ice, derelict or danger observed.

- (ii) The position of the ice, derelict or danger when last observed.
  - (iii) The time and date (Greenwich Mean Time) when danger last observed.
- (b) *Tropical Storms* (Hurricanes in the West Indies, Typhoons in the China Sea, Cyclones in Indian waters, and storms of a similar nature in other regions)
  - (i) A statement that a tropical storm has been encountered. This obligation should be interpreted in a broad spirit, and information transmitted whenever the master has good reason to believe that a tropical storm is developing or exists in his neighbourhood.
  - (ii) Time, date (Greenwich Mean Time) and position of ship when the observation was taken.
  - (iii) As much of the following information as is practicable should be included in the message:
    - barometric pressure, preferably corrected (stating millibars, millimetres, or inches, and whether corrected or uncorrected);
    - barometric tendency (the change in barometric pressure during the past three hours);
    - true wind direction;
    - wind force (Beaufort scale);
    - state of the sea (smooth, moderate, rough, high);
    - swell (slight, moderate, heavy) and the true direction from which it comes. Period or length of swell (short, average, long) would also be of value;
    - true course and speed of ship.
- (c) *Subsequent Observations*

When a master has reported a tropical or other dangerous storm, it is desirable, but not obligatory, that further observations be made and transmitted hourly, if practicable, but in any case at intervals of not more than three hours, so long as the ship remains under the influence of the storm.

- (d) *Winds of force 10 or above on the Beaufort scale for which no storm warning has been received*

This is intended to deal with storms other than the tropical storms referred to in paragraph (b) of this Regulation; when such a storm is encountered, the message should contain similar information to that listed under that paragraph but excluding the details concerning sea and swell.

- (e) *Sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures*
- (i) Time and date (Greenwich Mean Time).
  - (ii) Air temperature.
  - (iii) Sea temperature (if practicable).
  - (iv) Wind force and direction.

*Examples*

*Ice*

TTT Ice. Large berg sighted in 4605 N., 4410 W., at 0800 GMT. May 15.

*Derelicts*

TTT Derelict. Observed derelict almost submerged in 4006 N., 1243 W., at 1630 GMT. April 21.

*Danger to Navigation*

TTT Navigation. Alpha lightship not on station. 1800 GMT. January 3.

*Tropical Storm*

TTT Storm. 0030 GMT. August 18. 2004 N., 11354 E. Barometer corrected 994 millibars, tendency down 6 millibars. Wind NW., force 9, heavy squalls. Heavy easterly swell. Course 067, 5 knots.

TTT Storm. Appearances indicate approach of hurricane. 1300 GMT. September 14. 2200 N., 7236 W. Barometer corrected 29.64 inches, tendency down .015 inches. Wind NE., force 8, frequent rain squalls. Course 035, 9 knots.

TTT Storm. Conditions indicate intense cyclone has formed. 0200 GMT. May 4. 1620 N., 9203 E. Barometer uncorrected 753 millimetres, tendency down 5 millimetres. Wind S. by W., force 5. Course 300, 8 knots.

TTT Storm. Typhoon to southeast. 0300 GMT. June 12. 1812 N., 12605 E. Barometer falling rapidly. Wind increasing from N.

TTT Storm. Wind force 11, no storm warning received. 0300 GMT. May 4. 4830 N., 30 W. Barometer corrected 983 millibars, tendency down 4 millibars. Wind S.W., force 11 veering. Course 260, 6 knots.

*Icing*

TTT experiencing severe icing. 1400 GMT. March 2. 69 N., 10 W. Air temperature 18. Sea temperature 29. Wind NE., force 8.

**Regulation 4**

*Meteorological Services*

- (a) The Contracting Governments undertake to encourage the collection of meteorological data by ships at sea and to arrange for their examination, dissemination and exchange in the manner most suitable for the purpose of aiding navigation. Administrations shall encourage the use of instruments of a high degree of accuracy, and shall facilitate the checking of such instruments upon request.
- (b) In particular, the Contracting Governments undertake to co-operate in carrying out, as far as practicable, the following meteorological arrangements:
  - (i) To warn ships of gales, storms and tropical storms, both by the issue of radio messages and by the display of appropriate signals at coastal points.
  - (ii) To issue daily, by radio, weather bulletins suitable for shipping, containing data of existing weather, waves and ice, forecasts and, where practicable, sufficient additional information to enable simple weather charts to be prepared at sea and also to encourage the transmission of suitable facsimile weather charts.
  - (iii) To prepare and issue such publications as may be necessary for the efficient conduct of meteorological work at sea and to arrange, if practicable, for the publication and making available of daily weather charts for the information of departing ships.

- (iv) To arrange for selected ships to be equipped with tested instruments (such as a barometer, a barograph, a psychrometer, and suitable apparatus for measuring sea temperature) for use in this service, and to take meteorological observations at main standard times for surface synoptic observations (at least four times daily, whenever circumstances permit) and to encourage other ships to take observations in a modified form, particularly when in areas where shipping is sparse; these ships to transmit their observations by radio for the benefit of the various official meteorological services, repeating the information for the benefit of ships in the vicinity. When in the vicinity of a tropical storm, or of a suspected tropical storm, ships should be encouraged to take and transmit their observations at more frequent intervals whenever practicable, bearing in mind navigational preoccupations of ships' officers during storm conditions.
  - (v) To arrange for the reception and transmission by coast radio stations of weather messages from and to ships. Ships which are unable to communicate direct with shore shall be encouraged to relay their weather messages through ocean weather ships or through other ships which are in contact with shore.
  - (vi) To encourage all masters to inform ships in the vicinity and also shore stations whenever they experience a wind speed of 50 knots or more (force 10 on the Beaufort scale).
  - (vii) To endeavour to obtain a uniform procedure in regard to the international meteorological services already specified, and, as far as is practicable, to conform to the Technical Regulations and recommendations made by the World Meteorological Organization, to which the Contracting Governments may refer for study and advice any meteorological question which may arise in carrying out the present Convention.
- (c) The information provided for in this Regulation shall be furnished in form for transmission and transmitted in the order of priority prescribed by the Radio Regulations, and during transmission "to all stations" of meteorological information, forecasts and warnings, all ship stations must conform to the provisions of the Radio Regulations.
- (d) Forecasts, warnings, synoptic and other meteorological reports intended for ships shall be issued and disseminated by the national service in the best position to serve various zones and areas, in accordance with mutual arrangements made by the Contracting Governments concerned.

**Regulation 5**

*Ice Patrol Service*

- (a) The Contracting Governments undertake to continue an ice patrol and a service for study and observation of ice conditions in the North Atlantic. During the whole of the ice season the south-eastern, southern and south-western limits of the regions of icebergs in the vicinity of the Grand Banks of Newfoundland shall be guarded for the purpose of informing passing ships of the extent of this dangerous region; for the study of ice conditions in general; and for the purpose of affording assistance to ships and crews requiring aid within the limits of operation of the patrol ships. During the rest of the year the study and observation of ice conditions shall be maintained as advisable.
- (b) Ships and aircraft used for the ice patrol service and the study and observation of ice conditions may be assigned other duties by the managing Government, provided that such other duties do not interfere with their primary purpose or increase the cost of this service.

**Regulation 6**

*Ice Patrol. Management and Cost*

- (a) The Government of the United States of America agrees to continue the management of the ice patrol service and the study and observation of ice conditions, including the dissemination of information received therefrom. The Contracting Governments specially interested in these services undertake to contribute to the expense of maintaining and operating these services; each contribution to be based upon the total gross tonnage of the vessels of each contributing Government passing through the regions of icebergs guarded by the Ice Patrol; in particular, each Contracting Government specially interested undertakes to contribute annually to the expense of maintaining and operating these services a sum determined by the ratio which the total gross tonnage of that Contracting Government's vessels passing during the ice season through the regions of icebergs guarded by the Ice Patrol bears to the combined total gross tonnage of the vessels of all contributing Governments passing during the ice season through the regions of icebergs guarded by the Ice Patrol. Non-contracting Governments specially interested may contribute to the expense of maintaining and operating these services on the same basis. The managing Government

will furnish annually to each contributing Government a statement of the total cost of maintaining and operating the Ice Patrol and of the proportionate share of each contributing Government.

- (b) Each of the contributing Governments has the right to alter or discontinue its contribution, and other interested Governments may undertake to contribute to the expense. The contributing Government which avails itself of this right will continue responsible for its current contribution up to 1 September following the date of giving notice of intention to alter or discontinue its contribution. To take advantage of the said right it must give notice to the managing Government at least six months before the said 1 September.
- (c) If, at any time, the United States Government should desire to discontinue these services, or if one of the contributing Governments should express a wish to relinquish responsibility for its pecuniary contribution, or to have its contribution altered, or another Contracting Government should desire to undertake to contribute to the expense, the contributing Governments shall settle the question in accordance with their mutual interests.
- (d) The contributing Governments shall have the right by common consent to make from time to time such alterations in the provisions of this Regulation and of Regulation 5 of this Chapter as appear desirable.
- (e) Where this Regulation provides that a measure may be taken after agreement among the contributing Governments, proposals made by any Contracting Government for effecting such a measure shall be communicated to the managing Government which shall approach the other contributing Governments with a view to ascertaining whether they accept such proposals, and the results of the enquiries thus made shall be sent to the other contributing Governments and the Contracting Government making the proposals. In particular, the arrangements relating to contributions to the cost of the services shall be reviewed by the contributing Governments at intervals not exceeding three years. The managing Government shall initiate the action necessary to this end.

### **Regulation 7**

#### *Speed Near Ice*

When ice is reported on or near his course the master of every ship at night is bound to proceed at a moderate speed or to alter his course so as to go well clear of the danger zone.



### **Regulation 8**

#### *Routeing*

- (a) The practice of following, particularly in converging areas, routes adopted for the purpose of separation of traffic including avoidance of passage through areas designated as areas to be avoided by ships or certain classes of ships, or for the purpose of avoiding unsafe conditions, has contributed to the safety of navigation and is recommended for use by all ships concerned.
- (b) The Organization is recognized as the only international body for establishing and adopting measures on an international level concerning routeing and areas to be avoided by ships or certain classes of ships. It will collate and disseminate to Contracting Governments all relevant information.
- (c) The selection of the routes and the initiation of action with regard to them, and the delineation of what constitutes converging areas, will be primarily the responsibility of the Governments concerned. In the development of routeing schemes which impinge upon international waters, or such other schemes they may wish adopted by the Organization, they will give due consideration to relevant information published by the Organization.
- (d) Contracting Governments will use their influence to secure the appropriate use of adopted routes and will do everything in their power to ensure adherence to the measures adopted by the Organization in connection with routeing of ships.
- (e) Contracting Governments will also induce all ships proceeding on voyages in the vicinity of the Grand Banks of Newfoundland to avoid, as far as practicable, the fishing banks of Newfoundland north of latitude 43° N and to pass outside regions known or believed to be endangered by ice.

### **Regulation 9**

#### *Misuse of Distress Signals*

The use of an international distress signal, except for the purpose of indicating that a ship or aircraft is in distress, and the use of any signal which may be confused with an international distress signal, are prohibited on every ship or aircraft.

### **Regulation 10**

#### *Distress Messages — Obligations and Procedures*

- (a) The master of a ship at sea, on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so. If he is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress.
- (b) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress.
- (c) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation when he learns that one or more ships other than his own have been requisitioned and are complying with the requisition.
- (d) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation, and if his ship has been requisitioned, from the obligation imposed by paragraph (b) of this Regulation, if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer necessary.
- (e) The provisions of this Regulation do not prejudice the International Convention for the unification of certain rules with regard to Assistance and Salvage at Sea, signed at Brussels on 23 September 1910, particularly the obligation to render assistance imposed by Article 11 of that Convention.

### **Regulation 11**

#### *Signalling Lamps*

All ships of over 150 tons gross tonnage, when engaged on international voyages, shall have on board an efficient daylight signalling lamp which shall not be solely dependent upon the ship's main source of electrical power.

**Regulation 12**

*Shipborne Navigational Equipment*

- (a) All ships of 1,600 tons gross tonnage and upwards shall be fitted with a radar of a type approved by the Administration. Facilities for plotting radar readings shall be provided on the bridge in those ships.
- (b) All ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio direction-finding apparatus complying with the provisions of Regulation 12 of Chapter IV. The Administration may, in areas where it considers it unreasonable or unnecessary for such apparatus to be carried, exempt any ship of less than 5,000 tons gross tonnage from this requirement, due regard being had to the fact that radio direction-finding apparatus is of value both as a navigational instrument and as an aid to locating ships, aircraft or survival craft.
- (c) All ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with a gyro-compass in addition to the magnetic compass. The Administration, if it considers it unreasonable or unnecessary to require a gyrocompass, may exempt any ship of less than 5,000 tons gross tonnage from this requirement.
- (d) All new ships of 500 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with an echo-sounding device.
- (e) Whilst all reasonable steps shall be taken to maintain the apparatus in an efficient condition, malfunction of the radar equipment, the gyro-compass or the echo-sounding device shall not be considered as making the ship unseaworthy or as a reason for delaying the ship in ports where repair facilities are not readily available.
- (f) All new ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio equipment for homing on the radiotelephone distress frequency complying with the relevant provisions of paragraph (b) of Regulation 12 of Chapter IV.

**Regulation 13**

*Manning*

The Contracting Governments undertake, each for its national ships, to maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned.

**Regulation 14**

*Aids to Navigation*

The Contracting Governments undertake to arrange for the establishment and maintenance of such aids to navigation, including radio beacons and electronic aids as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned.

**Regulation 15**

*Search and Rescue*

- (a) Each Contracting Government undertakes to ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea round its coasts. These arrangements should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, so far as possible, afford adequate means of locating and rescuing such persons.
- (b) Each Contracting Government undertakes to make available information concerning its existing rescue facilities and the plans for changes therein, if any.

**Regulation 16**

*Life-Saving Signals*

The following signals shall be used by life-saving stations and maritime rescue units when communicating with ships or persons in distress and by ships or persons in distress when communicating with life-saving stations and maritime rescue units. The signals used by aircraft engaged in search and rescue

operations to direct ships are indicated in paragraph (d) below. An illustrated table describing the signals listed below shall be readily available to the officer of the watch of every ship to which this Chapter applies.

- (a) Replies from life-saving stations or maritime rescue units to distress signals made by a ship or person:

| <i>Signal</i>   | <i>Signification</i>  |
|---|---|
| <i>By day</i> - Orange smoke signal or combined light and sound signal (thunder-light) consisting of three single signals which are fired at intervals of approximately one minute. | } "You are seen - assistance will be given as soon as possible."<br><br>(Repetition of such signals shall have the same meaning.) |
| <i>By night</i> - White star rocket consisting of three single signals which are fired at intervals of approximately one minute.  |   |

If necessary the day signals may be given at night or the night signals by day.

- (b) Landing signals for the guidance of small boats with crews or persons in distress:

| <i>Signal</i>  | <i>Signification</i>                |
|--|-------------------------------------|
| <i>By day</i> - Vertical motion of a white flag or the arms or firing of a green star-signal or signalling the code letter "K" (-.) given by light or sound-signal apparatus.  | } "This is the best place to land." |
| <i>By night</i> - Vertical motion of a white light or flare, or firing of a green star-signal or signalling the code letter "K" (-.) given by light or sound-signal apparatus. A range (indication of direction) may be given by placing a steady white light or flare at a lower level and in line with the observer. |                                     |
| <i>By day</i> - Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.   | } "Landing here highly dangerous."  |
| <i>By night</i> - Horizontal motion of a white light or flare or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.   |                                     |

*By day* - Horizontal motion of a white flag, followed by the placing of the white flag in the ground and the carrying of another white flag in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by the code letter "R" (-.) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (-..) if a better landing place for the craft in distress is located more to the left in the direction of approach.

"Landing here highly dangerous. A more favourable location for landing is in the direction indicated."

*By night* - Horizontal motion of a white light or flare, followed by the placing of the white light or flare on the ground and the carrying of another white light or flare in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by code letter "R" (-.) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (-..) if a better landing place for the craft in distress is located more to the left in the direction of approach.

"Landing here highly dangerous. A more favourable location for landing is in the direction indicated."

(c) **Signals to be employed in connection with the use of shore life-saving apparatus:**

*Signal*

*By day* - Vertical motion of a white flag or the arms or firing of a green star-signal.

*By night* - Vertical motion of a white light or flare or firing of a green star-signal.

*Signification*

In general - "Affirmative."  
 Specifically:  
 "Rocket line is held."  
 "Tail block is made fast."  
 "Hawser is made fast."  
 "Man is in the breeches buoy."  
 "Haul away."

*By day* - Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal.

*By night* - Horizontal motion of a white light or flare or firing of a red star-signal.

In general - "Negative."  
 Specifically: "Slack away."  
 "Avast hauling."

(d) **Signals used by aircraft engaged on search and rescue operations to direct ships towards an aircraft, ship or person in distress (see explanatory Note below):**

(i) The following procedures performed in sequence by an aircraft mean that the aircraft is directing a surface craft towards an aircraft or a surface craft in distress:

- (1) circling the surface craft at least once;

- (2) crossing the projected course of the surface craft close ahead at a low altitude, opening and closing the throttle or changing the propeller pitch;
- (3) heading in the direction in which the surface craft is to be directed.

Repetition of such procedures has the same meaning.

- (ii) The following procedure performed by an aircraft means that the assistance of the surface craft to which the signal is directed is no longer required:
  - crossing the wake of the surface craft close astern at a low altitude, opening and closing the throttle or changing the propeller pitch.

Note: Advance notification of changes in these signals will be given by the Organization as necessary.

### **Regulation 17**

#### *Pilot Ladders and Mechanical Pilot Hoists*

Ships engaged on voyages in the course of which pilots are likely to be employed shall comply with the following requirements:

- (a) *Pilot Ladders*
  - (i) The ladder shall be efficient for the purpose of enabling pilots to embark and disembark safely, kept clean and in good order and may be used by officials and other persons while a ship is arriving at or leaving a port.
  - (ii) The ladder shall be secured in a position so that it is clear from any possible discharges from the ship, that each step rests firmly against the ship's side, that it is clear so far as is practicable of the finer lines of the ship and that the pilot can gain safe and convenient access to the ship after climbing not less than 1.5 metres (5 feet) and not more than 9 metres (30 feet.) A single length of ladder shall be used capable of reaching the water from the point of access to the ship; in providing for this due allowance shall be made for all conditions of loading and trim of the ship and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship

is more than 9 metres (30 feet), access from the pilot ladder to the ship shall be by means of an accommodation ladder or other equally safe and convenient means.

- (iii) The steps of the pilot ladder shall be:
  - (1) of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;
  - (2) not less than 480 millimetres (19 inches) long, 115 millimetres (4½ inches) wide, and 25 millimetres (1 inch) in depth, excluding any nonslip device;
  - (3) equally spaced not less than 300 millimetres (12 inches) nor more than 380 millimetres (15 inches) apart and be secured in such a manner that they will remain horizontal.
- (iv) No pilot ladder shall have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder and any steps so secured shall be replaced as soon as reasonably practicable by steps secured in position by the method used in the original construction of the ladder. When any replacement step is secured to the side ropes of the ladder by means of grooves in the sides of the step, such grooves shall be in the longer sides of the step.
- (v) The side ropes of the ladder shall consist of two uncovered manila ropes not less than 60 millimetres (2¼ inches) in circumference on each side. Each rope shall be continuous with no joints below the top step. Two man-ropes properly secured to the ship and not less than 65 millimetres (2½ inches) in circumference and a safety line shall be kept at hand ready for use if required.
- (vi) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 metres (5 feet 10 inches) long shall be provided at such intervals



as will prevent the pilot ladder from twisting. The lowest batten shall be on the fifth step from the bottom of the ladder and the interval between any batten and the next shall not exceed 9 steps.

- (vii) Means shall be provided to ensure safe and convenient passage on to or into and off the ship between the head of the pilot ladder or of any accommodation ladder or other appliance provided. Where such passage is by means of a gateway in the rains or bulwark, adequate handholds shall be provided. Where such passage is by means of a bulwark ladder, such ladder shall be securely attached to the bulwark rail or platform and two handhold stanchions shall be fitted at the point of boarding or leaving the ship not less than 0.70 metre (2 feet 3 inches) nor more than 0.80 metre (2 feet 7 inches) apart. Each stanchion shall be rigidly secured to the ship's structure at or near its base and also at a higher point, shall not be less than 40 millimetres (1½ inches) in diameter and shall extend not less than 1.20 metres (3 feet 11 inches) above the top of the bulwark.
- (viii) Lighting shall be provided at night such that both the pilot ladder overside and also the position where the pilot boards the ship shall be adequately lit. A lifebuoy equipped with a self-igniting light shall be kept at hand ready for use. A heaving line shall be kept at hand ready for use if required.
- (ix) Means shall be provided to enable the pilot ladder to be used on either side of the ship.
- (x) The rigging of the ladder and the embarkation and disembarkation of a pilot shall be supervised by a responsible officer of the ship.
- (xi) Where on any ship constructional features such as rubbing bands would prevent the implementation of any of these provisions, special arrangements shall be made to the satisfaction of the Administration to ensure that persons are able to embark and disembark safely.

(b) *Mechanical Pilot Hoists*

- (i) A mechanical pilot hoist, if provided, and its ancillary equipment shall be of a type approved by the Administration. It shall be of such design and construction as to ensure that the pilot can be embarked and disembarked in a safe manner including a safe access from the hoist to the deck and *vice versa*.
- (ii) A pilot ladder complying with the provisions of paragraph (a) of this Regulation shall be kept on deck adjacent to the hoist and available for immediate use.

**Regulation 18**

*VHF Radiotelephone Stations*

When a Contracting Government requires ships navigating in an area under its sovereignty to be provided with a Very High Frequency (VHF) radiotelephone station to be used in conjunction with a system which it has established in order to promote safety of navigation, such station shall comply with the provisions of Regulation 17 of Chapter IV and shall be operated in accordance with Regulation 8 of Chapter IV.

**Regulation 19**

*Use of the Automatic Pilot*

- (a) In areas of high traffic density, in conditions of restricted visibility and in all other hazardous navigational situations where the automatic pilot is used, it shall be possible to establish human control of the ship's steering immediately.
- (b) In circumstances as above, it shall be possible for the officer of the watch to have available without delay the services of a qualified helmsman who shall be ready at all times to take over steering control.
- (c) The change-over from automatic to manual steering and *vice versa* shall be made by or under the supervision of a responsible officer.

**Regulation 20**

*Nautical Publications*

All ships shall carry adequate and up-to-date charts, sailing directions, lists of lights, notices to mariners, tide tables and all other nautical publications necessary for the intended voyage.

**Regulation 21**

*International Code of Signals*

All ships which in accordance with the present Convention are required to carry a radiotelegraph or a radiotelephone installation shall carry the International Code of Signals. This publication shall also be carried by any other ship which in the opinion of the Administration has a need to use it.

## **Schedule 5 — 1978 Protocol relating to Safety Convention**

[s. 76]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974**

#### **ARTICLE I**

##### *General Obligations*

The parties to the present Protocol undertake to give effect to the provisions of the present Protocol and the Annex hereto which shall constitute an integral part of the present Protocol. Every reference to the present Protocol constitutes at the same time a reference to the Annex hereto.

#### **ARTICLE II**

##### *Application*

1. The provisions of Articles II, III (other than paragraph (a)), IV, VI(b), (c) and (d), VII and VIII of the International Convention for the Safety of Life at Sea, 1974 (hereinafter referred to as “the Convention”) are incorporated in the present Protocol, provided that references in those Articles to the Convention and to Contracting Governments shall be taken to mean references to the present Protocol and to the Parties to the present Protocol, respectively.
2. Any ship to which the present Protocol applies shall comply with the provisions of the Convention, subject to the modifications and additions set out in the present Protocol.
3. With respect to the ships of non-parties to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships.

#### **ARTICLE III**

##### *Communication of Information*

The Parties to the present Protocol undertake to communicate to, and deposit with, the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Organization”), a list of nominated

surveyors or recognized organizations which are authorized to act on their behalf in the administration of measures for safety of life at sea for circulation to the Parties for information of their officers. The Administration shall therefore notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

#### ARTICLE IV

##### *Signature, Ratification, Acceptance, Approval and Accession*

1. The present Protocol shall be open for signature at the Headquarters of the Organization from 1 June 1978 to 1 March 1979 and shall thereafter remain open for accession. Subject to the provisions of paragraph 3 of this Article, States may become Parties to the present Protocol by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (c) accession.
2. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
3. The present Protocol may be signed without reservation, ratified, accepted, approved or acceded to only by States which have signed without reservation, ratified, accepted, approved or acceded to the Convention.

#### ARTICLE V

##### *Entry into Force*

1. The present Protocol shall enter into force six months after the date on which not less than fifteen States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become Parties to it in accordance with Article IV of the present Protocol, provided however that the present Protocol shall not enter into force before the Convention has entered into force.

2. Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Protocol enters into force shall take effect three months after the date of deposit.
3. After the date on which an amendment to the present Protocol is deemed to have been accepted under Article VIII of the Convention, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

#### ARTICLE VI

##### *Denunciation*

1. The present Protocol may be denounced by any Party at any time after the expiry of five years from the date on which the present Protocol enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Organization.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General of the Organization.
4. A denunciation of the Convention by a Party shall be deemed to be a denunciation of the present Protocol by that Party.

#### ARTICLE VII

##### *Depositary*

1. The present Protocol shall be deposited with the Secretary-General of the Organization (hereinafter referred to as "the Depositary").
2. The Depositary shall:
  - (a) Inform all States which have signed the present Protocol or acceded thereto of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of the present Protocol;
    - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which it was

received and the date on which the denunciation takes effect;

- (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.
3. As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## ARTICLE VIII

### *Languages*

The present Protocol is established in a single original in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

## ANNEX

### MODIFICATIONS AND ADDITIONS TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

## CHAPTER I

### GENERAL PROVISIONS

#### PART A — APPLICATION, DEFINITIONS, ETC.

### **Regulation 2**

#### *Definitions*

*The following paragraph is added to the existing text:*

- (n) “Age of a ship” means the elapsed period of time determined from the year of build as indicated on the ship’s registry papers.

## **CHAPTER V**

### **SAFETY OF NAVIGATION**

#### **Regulation 12**

##### *Shipborne Navigational Equipment*

*The existing text of paragraph (a) is replaced by the following:*

- (a) All ships of 1,600 tons gross tonnage and upwards but less than 10,000 tons gross tonnage shall be fitted with at least one radar. All ships of 10,000 tons gross tonnage and upwards shall be fitted with at least two radars, each capable of operating independently of the other. All radars fitted in compliance with this Regulation shall be of a type approved by the Administration and shall conform to operational standards not inferior to those adopted by the Organization. Facilities for plotting radar readings shall be provided on the bridge in those ships.

#### **Regulation 19**

##### *Use of the Automatic Pilot*

*The following paragraph is added to the existing text:*

- (d) The manual steering shall be tested after prolonged use of the automatic pilot, and before entering areas where navigation demands special caution.

*The following new Regulations are added to this Chapter:*

#### **Regulation 19-1**

##### *Operation of Steering Gear*

In areas where navigation demands special caution, ships shall have more than one steering gear power unit in operation when such units are capable of simultaneous operation.

#### **Regulations 19-2**

##### *Steering Gear — Testing and Drills*

- (a) Within 12 hours before departure, the ship's steering gear shall be checked and tested by the ship's crew. The test procedure shall include, where applicable, the operation of the following:
  - (i) the main steering gear;



- (ii) the auxiliary steering gear;
  - (iii) the remote steering gear control systems;
  - (iv) the steering positions located on the navigating bridge;
  - (v) the emergency power supply;
  - (vi) the rudder angle indicators in relation to the actual position of the rudder;
  - (vii) the remote steering gear control system power failure alarms; and
  - (viii) the steering gear power unit failure alarms.
- (b) The checks and tests shall include:
- (i) the full movement of the rudder according to the required capabilities of the steering gear;
  - (ii) a visual inspection of the steering gear and its connecting linkage; and
  - (iii) the operation of the means of communication between the navigating bridge and steering gear compartment.
- (c)
- (i) Simple operating instructions with a block diagram showing the change-over procedures for remote steering gear control systems and steering gear power units shall be permanently displayed on the navigating bridge and in the steering gear compartment.
  - (ii) All officers concerned with the operation and/or maintenance of steering gear shall be familiar with the operation of the steering systems fitted on the ship and with the procedures for changing from one system to another.
- (d) In addition to the routine checks and tests prescribed in paragraphs (a) and (b) of this Regulation, emergency steering drills shall take place at least once every three months in order to practise emergency steering procedures. These drills shall include direct control from within the steering gear compartment, the communications procedure with the navigating bridge and, where applicable, the operation of alternative power supplies.
- (e) The Administration may waive the requirement to carry out the checks and tests prescribed in paragraphs (a) and (b) of this Regulation for ships which regularly ply on voyages of short duration. Such ships shall carry out these checks and tests at least once every week.

- (f) The date upon which the checks and tests prescribed in paragraphs (a) and (b) of this Regulation are carried out and the date and details of emergency steering drills carried out under paragraph (d) of this Regulation, shall be recorded in the log book as may be prescribed by the Administration.

*[Schedule 6 omitted under the Reprints Act 1984 s. 7(4)(g).]*

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**Notes**

<sup>1</sup> This reprint is a compilation as at 27 July 2012 of the *Western Australian Marine Act 1982* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

| <b>Short title</b>  | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>  |
|---|------------------------|---------------|--|
| <i>Western Australian Marine Act 1982</i>   | 55 of 1982             | 5 Nov 1982    | 1 Jul 1983 (see s. 2 and <i>Gazette</i> 24 Jun 1983 p. 1977)   |
| <i>Western Australian Marine Amendment Act 1990</i>                               | 35 of 1990             | 9 Oct 1990    | Act other than s. 4(b) and (d), 6-9, 12 and 21: 9 Jun 1992 (see s. 2 and <i>Gazette</i> 9 Jun 1992 p. 2379);<br>s. 4(b) and 21: 1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861) |
| <i>Financial Administration Legislation Amendment Act 1993 s. 11</i>              | 6 of 1993              | 27 Aug 1993   | 1 Jul 1993 (see s. 2(1))   |
| <i>Acts Amendment (Department of Transport) Act 1993 Pt. 15</i>                   | 47 of 1993             | 20 Dec 1993   | 1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)   |
| <i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>                   | 32 of 1994             | 29 Jun 1994   | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)   |
| <i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 21</i> | 92 of 1994             | 23 Dec 1994   | 1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)  |
| <i>Sentencing (Consequential Provisions) Act 1995 Pt. 83 and s. 147</i>           | 78 of 1995             | 16 Jan 1996   | 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)   |
| <i>Financial Legislation Amendment Act 1996 s. 64</i>                             | 49 of 1996             | 25 Oct 1996   | 25 Oct 1996 (see s. 2(1))  |
| <i>Statutes (Repeals and Minor Amendments) Act 1997 s. 130</i>                    | 57 of 1997             | 15 Dec 1997   | 15 Dec 1997 (see s. 2(1))  |

## Western Australian Marine Act 1982

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| Short title  | Number and year | Assent      | Commencement   |
|--|-----------------|-------------|--|
| <b>Reprint of the Western Australian Marine Act 1982 as at 28 Jan 2000</b> (includes amendments listed above)  |                 |             |  |
| <i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 130   | 74 of 2003      | 15 Dec 2003 | 15 Dec 2003 (see s. 2)   |
| <i>Dangerous Goods Safety Act 2004</i> s. 70   | 7 of 2004       | 10 Jun 2004 | 1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)  |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141   | 59 of 2004      | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)   |
| <i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 135 <sup>3</sup>   | 55 of 2004      | 24 Nov 2004 | 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)   |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80  | 84 of 2004      | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| <b>Reprint 2: The Western Australian Marine Act 1982 as at 2 Dec 2005</b> (includes amendments listed above except those in the <i>Dangerous Goods Safety Act 2004</i> ) |                 |             |  |
| <i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4  | 77 of 2006      | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)   |
| <i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 137   | 8 of 2009       | 21 May 2009 | 22 May 2009 (see s. 2(b))  |
| <i>Standardisation of Formatting Act 2010</i> s. 4   | 19 of 2010      | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)   |
| <i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> Pt. 12 Div. 7  | 42 of 2011      | 4 Oct 2011  | 30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)      |
| <b>Reprint 3: The Western Australian Marine Act 1982 as at 27 Jul 2012</b> (includes amendments listed above)  |                 |             |  |

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<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

| Short title  | Number and year | Assent      | Commencement                |
|--|-----------------|-------------|-----------------------------|
| <i>Western Australian Marine Amendment Act 1987</i> s. 4-6 <sup>4</sup>              | 15 of 1987      | 25 Jun 1987 | To be proclaimed (see s. 2) |
| <i>Western Australian Marine Amendment Act 1990</i> s. 4(d), 6-9 and 12 <sup>5</sup> | 35 of 1990      | 9 Oct 1990  | To be proclaimed (see s. 2) |

<sup>2</sup> Repealed by the *Fisheries Legislation (Consequential Provisions) Act 1991* s. 3(2) (Cwlth).

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>4</sup> On the date as at which this reprint was prepared, the *Western Australian Marine Amendment Act 1987* s. 4-6 had not come into operation. They read as follows:

**4. Section 76 amended**

Section 76 of the principal Act is amended by inserting after the definition of “Prevention of Collisions Convention” the following definition —

“

*Prevention of Pollution from Ships Convention* has the same meaning as ‘Convention’ has in the *Pollution of Waters by Oil and Noxious Substances Act 1987*;

”.

**5. Section 78 amended**

Section 78 of the principal Act is amended by inserting after “the Safety Convention”, in both places where it occurs, the following —

“ , the Prevention of Pollution from Ships Convention ”.

6. **Divisions 6 and 7 of Part IV inserted**

After Division 5 of Part IV of the principal Act, the following Divisions are inserted —

“

**Division 6 — Prevention of Pollution from Ships Convention  
(Ships Carrying or Using Oil)**

**90A. Interpretation**

- (1) In this Division, unless the contrary intention appears —  
*Annex I* means Annex I to the Prevention of Pollution from Ships Convention;  
*foreign ship* means a ship that is not an Australian ship.
- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex I but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.
- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex I if it does not comply with the regulations and orders referred to in section 90B.

**90B. Regulations to give effect to Regulations 13 to 19 (inclusive) of Annex I**

- (1) The regulations may make provision for and in relation to giving effect to Regulations 13 to 19 (inclusive) of Annex I.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.
- (3) Sections 37, 41 and 42 of the *Interpretation Act 1984* apply in relation to orders made in

pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders and references in those sections to an Act included a reference to regulations.

- (4) Unless the contrary intention appears, expressions used in orders made in pursuance of the regulations made under subsection (1) have the same meanings as in this Division.
- (5) Orders made in pursuance of the regulations made under subsection (1) shall be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that where such orders would, but for this subsection, have been construed as being in excess of the power conferred by subsection (1) and the regulations, they shall be deemed to be valid orders to the extent that they are not in excess of that power.
- (6) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.

**90C. Ship construction certificates**

Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex I, he may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of the ship a ship construction certificate in the prescribed form attesting such compliance.

**90D. Alteration, etc. of construction of ships and cancellation of certificates**

- (1) Where the construction of a ship in respect of which a ship construction certificate issued under section 90C is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex I, the master or owner of the ship shall, within 7 days after the construction

of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding —

- (a) if the offender is a natural person — \$1 000; or
- (b) if the offender is a body corporate — \$5 000.

(2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect —

- (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
- (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
- (c) the penalty applicable to each such separate and further offence is a fine not exceeding —
  - (i) if the offender is a natural person — \$1 000; or
  - (ii) if the offender is a body corporate — \$5 000.

(3) Where the Minister has reason to believe that —

- (a) the report of a surveyor concerning a ship in respect of which a ship construction certificate issued under section 90C is in force was fraudulently or erroneously made or obtained;
- (b) a ship construction certificate has been issued under section 90C in respect of a ship upon false or erroneous information;



- (c) the construction of a ship in respect of which a ship construction certificate issued under section 90C is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex I; or
- (d) the owner of a ship in respect of which a ship construction certificate issued under section 90C is in force has failed to comply with section 90E in respect of the ship,

he may, by instrument signed by him, cancel the certificate.

- (4) Where the Minister cancels a ship construction certificate issued by him in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.
- (5) Where a ship construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

**90E. Ships to be surveyed periodically**

- (1) The owner of a ship in respect of which a ship construction certificate issued under section 90C is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex I.
- (2) Where the owner of a ship in respect of which a ship construction certificate issued under section 90C is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in

relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding —

- (a) if the owner is a natural person — \$2 000;  
or
- (b) if the owner is a body corporate — \$10 000.

**90F. Requirement for ship construction certificates**

- (1) This section applies to —
  - (a) a trading ship proceeding on an intrastate voyage;
  - (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; or
  - (c) a pleasure vessel,

that is —

- (d) an oil tanker of 150 tons gross tonnage and above; or
- (e) a ship, other than an oil tanker, of 400 tons gross tonnage and above.

- (2) The master of a ship to which this section applies shall not begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty: \$10 000 or imprisonment for 4 years, or both.

- (3) The owner of a ship to which this section applies shall not permit the ship to begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty —

- (a) if the offender is a natural person — \$10 000, or imprisonment for 4 years, or both; or
- (b) if the offender is a body corporate — \$50 000.

- (4) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

- (5) In this section *ship construction certificate* means —
- (a) a ship construction certificate issued under section 90C;
  - (b) a ship construction certificate issued under section 267B of the Navigation Act;
  - (c) a ship construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed as acceptable for the purposes of this Division;
  - (d) an International Oil Pollution Prevention Certificate issued to a foreign ship under section 267C of the Navigation Act; or
  - (e) an International Oil Pollution Prevention Certificate issued to an Australian ship under the law of a country other than Australia giving effect to Regulation 6 of Annex I.
- (6) The owner of a ship to which this section applies in respect of which a ship construction certificate is in force shall cause the certificate to be carried on board the ship.
- Penalty: \$1 000.

**Division 7 — Prevention of Pollution from Ships Convention  
(Ships Carrying Noxious Liquid Substances in Bulk)**

**90G. Interpretation**

- (1) In this Division, unless the contrary intention appears —
- Annex II* means Annex II to the Prevention of Pollution from Ships Convention;
- foreign ship* means a ship that is not an Australian ship.
- (2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex II but not including any other Annex to that Convention, (whether or not a

particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.

- (3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex II if it does not comply with the regulations and orders referred to in section 90H.

**90H. Regulations to give effect to Regulation 13 of Annex II**

- (1) The regulations may make provision for and in relation to giving effect to Regulation 13 of Annex II.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.
- (3) Sections 37, 41 and 42 of the *Interpretation Act 1984* apply in relation to orders made in pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders and references in those sections to an Act included a reference to regulations.
- (4) Unless the contrary intention appears, expressions used in orders made in pursuance of the regulations made under subsection (1) have the same meanings as in this Division.
- (5) Orders made in pursuance of the regulations made under subsection (1) shall be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that where such orders would, but for this subsection, have been construed as being in excess of the power conferred by subsection (1) and the regulations, they shall be deemed to be valid orders to the extent that they are not in excess of that power.
- (6) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a

provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.

**90I. Chemical tanker construction certificates**

Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex II, he may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship a chemical tanker construction certificate in the prescribed form attesting such compliance.

**90J. Alteration, etc. of construction of ships and cancellation of certificates**

- (1) Where the construction of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex II, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding —
  - (a) if the offender is a natural person — \$1 000; or
  - (b) if the offender is a body corporate — \$5 000.
- (2) Without limiting the generality of subsection (1), a ship in respect of which a chemical tanker construction certificate is in force shall, for the purposes of that subsection, be taken to be damaged if the ship becomes unfit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.
- (3) Where a notice required to be given under subsection (1) is not given within the period referred

to in that subsection, the following provisions of this subsection have effect —

- (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
  - (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
  - (c) the penalty applicable to each such separate and further offence is a fine not exceeding —
    - (i) if the offender is natural person — \$1 000; or
    - (ii) if the offender is a body corporate — \$5 000.
- (4) Where the Minister has reason to believe that —
- (a) the report of a surveyor concerning a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force was fraudulently or erroneously made or obtained;
  - (b) a chemical tanker construction certificate has been issued under section 90I in respect of a ship upon false or erroneous information;
  - (c) the construction of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provision of Annex II; or
  - (d) the owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force has failed to comply with section 90K in respect of the ship,

he may, by instrument signed by him, cancel the certificate.

- (5) Where the Minister cancels a chemical tanker construction certificate issued by him in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.
- (6) Where a chemical tanker construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

**90K. Ships to be surveyed periodically**

- (1) The owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex II.
- (2) Where the owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding —
  - (a) if the owner is a natural person — \$2 000; or
  - (b) if the owner is a body corporate — \$10 000.

**90L. Requirement for chemical tanker construction certificates**

- (1) Where a trading ship proceeding on an intrastate voyage is constructed or adapted so that it can carry as cargo, or part cargo, in bulk any substance that, for the purposes of Part III of the *Pollution of*

*Waters by Oil and Noxious Substances Act 1987*, is a substance in Category A, B, C or D, the master of that ship shall not begin a voyage, and the owner of that ship shall not permit that ship to begin a voyage, unless there is in force in respect of that ship a chemical tanker construction certificate.

Penalty —

- (a) if the offender is a natural person —  
\$10 000, or imprisonment for 4 years, or both; or
  - (b) if the offender is a body corporate —  
\$50 000.
- (2) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.
- (3) In this section ***chemical tanker construction certificate*** means —
- (a) a chemical tanker construction certificate issued under section 90I;
  - (b) a chemical tanker construction certificate issued under section 267Q of the Navigation Act;
  - (c) a chemical tanker construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed as acceptable for the purposes of this Division; or
  - (d) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued to a foreign ship under section 267R of the Navigation Act.
- (4) The owner of a ship of the kind referred to in subsection (1) in respect of which a chemical tanker construction certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1 000.

”.



<sup>5</sup> On the date as at which this reprint was prepared, the *Western Australian Marine Amendment Act 1990* s. 4(d), 6-9 and 12 had not come into operation. They read as follows:

**4. Section 3 amended**

Section 3 of the principal Act is amended in subsection (1) —  
(d) by deleting the definition of “Manning Committee”;

**6. Section 12 amended**

Section 12 of the principal Act is amended in paragraphs (a) and (b) by deleting “by the Manning Committee” wherever occurring.

**7. Sections 15, 16, 17 and 18 repealed and section 15 inserted**

Sections 15, 16, 17 and 18 of the principal Act are repealed and the following section is inserted —

“

**15. Safety manning**

- (1) The chief executive officer may determine the safety manning of trading ships by determination made in accordance with the regulations in relation to a particular trading ship or in relation to a class of trading ship specified in the determination.
- (2) A person or organization who or which in the opinion of the chief executive officer has a legitimate interest in the operation of the trading ship in relation to which a determination has been made under subsection (1), or, if the determination is made in respect of a class of trading vessel, a trading vessel of that class, who or which is aggrieved by the determination may request the chief executive officer to review the determination so made.
- (3) For the purposes of reviewing a determination made under subsection (1) the chief executive officer may consult with any person or organization in addition to the person or organization referred to in subsection (2), who or which, in the opinion of the chief executive officer, has a legitimate interest in the operation of the trading ship the subject of the determination.
- (4) Subject to any variation under section 19, a determination under this section has effect in relation

to the trading ship or class of trading ship in relation to which the determination is made until varied or revoked by the chief executive officer.

”.

**8. Section 19 amended**

Section 19 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

- (1) Subject to subsection (3), the Minister may by instrument signed by the Minister vary a determination made by the chief executive officer under section 15 and the determination as so varied by the Minister shall thereafter be deemed to be the determination for the purposes of this Act and the regulations in relation to the trading ship or trading ships in question.

”.

’

and

- (b) in subsection (3) —

- (i) by deleting “, review or provision” and substituting the following —  
“ or provision ”; and
- (ii) by deleting “, review, or provision” and substituting the following —  
“ or provision ”.

**9. Section 20 repealed**

Section 20 of the principal Act is repealed.

**12. Section 65 repealed**

Section 65 of the principal Act is repealed.

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

| <b>Defined Term</b>   | <b>Provision(s)</b>                   |
|---|---------------------------------------|
| agreement .....   | 3(1)                                  |
| alleged offence .....   | 132(11)                               |
| alleged offender .....  | 132(11)                               |
| applied provisions of the Limitation Convention .....         | 76                                    |
| Australian coastal and middle-water operations .....          | 3(1)                                  |
| Australian fishing vessel .....                               | 3(1)                                  |
| Australian ship .....   | 3(1)                                  |
| authorised person .....                                       | 66(5), 98(1), 132(11), 133(5), 134(4) |
| boilers and machinery .....                                   | 3(1)                                  |
| casualty .....  | 3(1)                                  |
| certificate, licence, permit, exemption or dispensation ..... | 121(2)                                |
| chief executive officer .....                                 | 3(1)                                  |
| commercial vessel .....                                       | 3(1)                                  |
| container .....   | 76                                    |
| Container Convention .....                                    | 76                                    |
| dangerous goods .....   | 3(1)                                  |
| delegator .....   | 116(1)                                |
| Department .....  | 3(1)                                  |
| designated officer .....                                      | 132(11)                               |
| Disciplinary Appeal Tribunal .....                            | 3(1)                                  |
| document .....  | 125(2)                                |
| equipment .....   | 3(1)                                  |
| explosives .....  | 3(1)                                  |
| fishing vessel .....  | 3(1)                                  |
| floating restaurant .....                                     | 3(1)                                  |
| Government vessel .....                                       | 3(1)                                  |
| hire and drive vessel .....                                   | 53                                    |
| hirer .....   | 53                                    |
| incompetence .....  | 3(1)                                  |
| incompetent .....   | 3(1)                                  |
| infringement notice .....                                     | 132(11)                               |
| inshore operations .....                                      | 3(1)                                  |
| inspector .....   | 3(1)                                  |
| inter-state voyage .....                                      | 6(4), 84(2), 90(2)                    |
| legal proceeding under this Act .....                         | 127(2)                                |
| Limitation Convention .....                                   | 76                                    |
| Manning Committee .....                                       | 3(1)                                  |
| master .....  | 3(1)                                  |

**Defined Terms**

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|  |                    |
|--|--------------------|
| Merchant Shipping Act .....                              | 135(3)             |
| miscellaneous equipment .....                            | 45                 |
| misconduct .....   | 3(1)               |
| Navigation Act .....                                     | 3(1)               |
| officer .....  | 3(1)               |
| official .....   | 3(1)               |
| official logbook .....                                   | 47(2)              |
| offshore operations .....                                | 3(1)               |
| overseas voyage .....                                    | 6(4), 84(2), 90(2) |
| owner .....  | 3(1), 53, 98(1)    |
| partially smooth waters .....                            | 3(1)               |
| passenger .....  | 3(1)               |
| passenger vessel .....                                   | 3(1)               |
| person in charge of a vessel .....                       | 66(5)              |
| person who was in charge of the vessel .....             | 132(12), 133(5)    |
| pleasure vessel .....                                    | 3(1), 98(1)        |
| ply .....  | 3(1)               |
| port .....   | 3(1)               |
| Prevention of Collisions Convention .....                | 76                 |
| Protocol of 1978 relating to the Safety Convention ..... | 76                 |
| repealed Act .....                                       | 3(1)               |
| restricted offshore operations .....                     | 3(1)               |
| Safety Convention .....                                  | 76                 |
| safety manning .....                                     | 3(1)               |
| sea .....  | 76                 |
| seaman .....   | 3(1)               |
| sheltered water passenger vessel .....                   | 76                 |
| ship .....   | 3(1)               |
| smooth waters .....                                      | 3(1)               |
| special personnel .....                                  | 3(1)               |
| specified .....  | 114(3)             |
| speed measuring equipment .....                          | 68(5)              |
| surveyor .....   | 3(1)               |
| trading ship .....                                       | 3(1)               |
| vessel .....   | 3(1)               |
| vessel record book .....                                 | 47(2)              |
| wages .....  | 3(1)               |
| waters .....   | 66(5), 71(5)       |