



Western Australia

# **Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023**



# Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023

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Western Australia

## **Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023**

**An Act —**

- **to apply a national law relating to marine safety for domestic commercial vessels as a law of the State; and**
- **to make consequential and other amendments to the *Western Australian Marine Act 1982*; and**
- **to make consequential amendments to various other Acts; and**
- **for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **3. Purpose of Act**

- (1) The purpose of this Act is to adopt in the State a national approach to the regulation of marine safety in relation to domestic commercial vessels.
- (2) Accordingly, this Act —
  - (a) applies the Commonwealth domestic commercial vessel national law as a law of the State, subject to the disallowance processes under Part 2; and
  - (b) provides for the Commonwealth domestic commercial vessel national law and the applied provisions of the State to be administered on a uniform basis by the Commonwealth, and by State officials as delegates of the Commonwealth, as if they constituted a single law of the Commonwealth.

### **4. Terms used**

- (1) In this Act —

*amend* includes replace;

*amending Act* means a Commonwealth Act to the extent that it amends the Marine Safety (Domestic Commercial Vessel)

National Law of the Commonwealth and that receives the Royal Assent on or after 15 May 2023;

***applied provisions*** means the Domestic Commercial Vessel National Law that applies as a law of the State because of section 6;

***commencement day*** means the day on which section 6 comes into operation;

***Commonwealth administrative laws*** means the following —

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

***Commonwealth domestic commercial vessel national law*** means the provisions of the following Acts or legislative instruments —

- (a) the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth;
- (b) the legislative instruments in force under that Law;
- (c) any other provision of a Commonwealth Act (or of a legislative instrument in force under a Commonwealth Act) that is of a savings or transitional nature consequent on the enactment or amendment of that Law;

***legislative instrument*** means a regulation or other legislative instrument;

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

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**Scheduled Law** means the Marine Safety (Domestic Commercial Vessel) National Law set out in the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Commonwealth) Schedule 1.

- (2) A reference in this Act to a legislative instrument under the Scheduled Law is a reference to a legislative instrument to the extent made or amended —
  - (a) under the Scheduled Law; or
  - (b) by a provision of a Commonwealth Act for the purposes of the Scheduled Law.
- (3) Terms used in this Act and also in the Commonwealth domestic commercial vessel national law have the same meanings in this Act as they have in that law.

**5. Act binds Crown**

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## **Part 2 — Applied provisions**

### **6. Application of Domestic Commercial Vessel National Law as State law**

- (1) For the purposes of this section, the *Domestic Commercial Vessel National Law* consists of —
  - (a) the Scheduled Law as in force on 15 May 2023 and as amended by each provision that —
    - (i) is in an amending Act that has effect for the purposes of this Part under section 8; and
    - (ii) has come into operation for the purposes of this Part under section 9;
  - and
  - (b) subject to section 12, the legislative instruments for the time being in force under the Scheduled Law; and
  - (c) subject to section 16, any provision of a Commonwealth Act for the time being in force, or of a legislative instrument for the time being in force under a Commonwealth Act, that is of a savings or transitional nature consequent on the enactment or amendment of the Scheduled Law.
- (2) The Domestic Commercial Vessel National Law applies as a law of the State.
- (3) The Domestic Commercial Vessel National Law so applies as if it extended to matters in relation to which the State may make laws —
  - (a) whether or not the Commonwealth may make laws in relation to those matters; and
  - (b) even though the terms of the Domestic Commercial Vessel National Law provide that it applies only to specified matters with respect to which the Commonwealth may make laws.

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- (4) Subsection (3) does not operate to exclude a law of the State relating to marine safety that would not otherwise be excluded by the Commonwealth domestic commercial vessel national law.
- (5) Regulations made under section 33 may provide that the Domestic Commercial Vessel National Law applies under this section as if a specified amendment to the Commonwealth domestic commercial vessel national law made by a law of the Commonwealth had not taken effect.
- (6) The provisions of the Domestic Commercial Vessel National Law that apply as a law of the State because of this section apply —
  - (a) to the extent to which they are provisions of a Commonwealth Act — as a part of this Act; and
  - (b) to the extent to which they are provisions of a legislative instrument — as subsidiary legislation for the purposes of this Act.

**7. Tabling amending Acts**

An amending Act must be laid before each House of Parliament within 18 sitting days of the House after the day on which the Act receives the Royal Assent.

**8. Disallowance of amending Acts**

- (1) In this section —

**disallowance period**, in relation to a disallowance resolution of which notice is given in a House of Parliament, means the period of 30 sitting days of the House after the day on which the notice is given;

**disallowance resolution** means a resolution that an amending Act be disallowed;

**notice period**, in relation to an amending Act laid before a House of Parliament under section 7, means the period of

14 sitting days of the House after the day on which the amending Act is laid before it.

- (2) An amending Act has effect for the purposes of this Part if the amending Act is laid before each House of Parliament under section 7 and either —
- (a) no notice of a disallowance resolution is given in either House within the notice period; or
  - (b) at least 1 notice of a disallowance resolution is given in a House within the notice period and, for each such notice, 1 of the following applies —
    - (i) the notice is withdrawn or discharged within the disallowance period;
    - (ii) the disallowance resolution is lost in the House or not agreed to within the disallowance period.
- (3) For the purposes of this section and section 7 —
- (a) the period specified in section 7, a notice period or a disallowance period continues to run even though a House of Parliament is prorogued or dissolved or expires; and
  - (b) notice of a disallowance resolution given in a House of Parliament, or a motion that an amending Act be disallowed in the House, does not lapse even though the House is prorogued or dissolved or expires.

## **9. Commencement of provisions of amending Acts**

- (1) If an amending Act has effect for the purposes of this Part under section 8(2), the Governor must declare that fact by proclamation as soon as practicable.
- (2) If a provision of the amending Act has come into operation in the Commonwealth before the proclamation is published —
- (a) the proclamation must fix a day on which the provision comes into operation for the purposes of this Part, which

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must be on or after the day on which the proclamation is published; and

- (b) the provision comes into operation for the purposes of this Part on that day.
- (3) If a provision of the amending Act has not come into operation in the Commonwealth before the proclamation is published, the provision comes into operation for the purposes of this Part when the provision comes into operation in the Commonwealth.

**10. Amending Acts enacted on or after 15 May 2023 but before commencement day**

If an amending Act receives the Royal Assent on or after 15 May 2023 but before commencement day, sections 7 to 9 apply to the amending Act as if it received the Royal Assent on commencement day.

**11. Tabling of amending Act taken to be publication for Standing Orders**

- (1) In this section —  
*parliamentary committee* means a committee established by either or both of the Houses of Parliament.
- (2) If a Standing Order of a House of Parliament provides that on the publication of an instrument under a written law the instrument is referred to a parliamentary committee for consideration, the laying of an amending Act before the House under section 7 is taken to be publication of the amending Act for the purposes of the Standing Order.
- (3) This section does not apply if the Standing Orders of the House provide specifically for an amending Act to be considered by a parliamentary committee.

**12. Legislative instruments under Scheduled Law**

- (1) A legislative instrument made under the Scheduled Law on or after 15 May 2023 has effect for the purposes of its application under section 6(2) subject to sections 13 and 15.
- (2) A legislative instrument under the Scheduled Law, to the extent made by a provision of an amending Act, has effect for the purposes of its application under section 6(2) if —
  - (a) the amending Act has effect for the purposes of this Part under section 8; and
  - (b) the provision has come into operation for the purposes of this Part under section 9.

Note for this subsection:

The definition of **amending Act**, in section 4(1), includes that the Act receives the Royal Assent on or after 15 May 2023.

**13. Legislative instruments made under or for purposes of amending Act**

- (1) This section applies to a provision of a legislative instrument made under the Scheduled Law if the provision is made under or for the purposes of —
  - (a) a provision inserted into the Scheduled Law by a provision of an amending Act; or
  - (b) a provision of the Scheduled Law as amended by a provision of an amending Act.
- (2) The provision of the legislative instrument does not have effect for the purposes of its application under section 6(2) until the later of —
  - (a) the day on which the provision of the amending Act comes into operation for the purposes of this Part under section 9; and
  - (b) the day on which the provision of the legislative instrument comes into operation in the Commonwealth.

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- (3) However, if the amending Act does not have effect for the purposes of this Part under section 8, the provision of the legislative instrument does not have effect for the purposes of its application under section 6(2).

**14. Publication of legislative instruments made under Scheduled Law**

- (1) This section applies to a legislative instrument made under the Scheduled Law on or after 15 May 2023.
- (2) The legislative instrument must be published in the *Gazette* or on the WA legislation website no later than 18 days after the day on which it is made.
- (3) If the legislative instrument is made on or after 15 May 2023 but before commencement day, subsection (2) applies as if the legislative instrument were made on commencement day.

**15. Tabling and disallowance of legislative instruments under Scheduled Law**

- (1) This section applies to a legislative instrument made under the Scheduled Law on or after 15 May 2023.
- (2) A legislative instrument published under section 14 must be laid before each House of Parliament within 6 sitting days of the House after the day on which the instrument is published.
- (3) A legislative instrument ceases to have effect for the purposes of its application under section 6(2) if —
- (a) the instrument is not published under section 14; or
  - (b) the instrument is not laid before each House of Parliament in accordance with subsection (2); or
  - (c) the instrument is laid before each House of Parliament in accordance with subsection (2) and —
    - (i) notice of a resolution to disallow the instrument is given in 1 of those Houses within 14 sitting

- days of the House after the instrument is laid before the House under subsection (2); and
- (ii) the resolution to disallow the instrument is agreed to by the House.
- (4) A legislative instrument that ceases to have effect under subsection (3) ceases to have effect at the end of the day on which the circumstance in subsection (3)(a), (b) or (c) occurs.
- (5) If a resolution is agreed to under subsection (3)(c), notice of the resolution must be published in the *Gazette* or on the WA legislation website within 21 days after the day on which the motion is passed.
- (6) If a legislative instrument (*the instrument*) ceases to have effect under subsection (3), a legislative instrument that was amended or repealed by the instrument revives, for the purposes of its application under section 6(2), on the day after the day on which the instrument ceases to have effect.
- (7) For the purposes of this section —
- (a) the period specified in subsection (2) or (3)(c)(i) continues to run even though a House of Parliament is prorogued or dissolved or expires; and
- (b) notice of a resolution to disallow a legislative instrument given in a House of Parliament, or a motion that a legislative instrument be disallowed in the House, does not lapse even though the House is prorogued or dissolved or expires.

**16. Application of savings and transitional provisions consequent on Scheduled Law**

- (1) This section applies if a provision referred to in section 6(1)(c) (a *savings or transitional provision*) is consequent on the amendment of the Scheduled Law by a provision of an amending Act.

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- (2) The savings or transitional provision does not have effect for the purposes of its application under section 6(2) until the later of —
  - (a) the day on which the provision of the amending Act comes into operation for the purposes of this Part under section 9; or
  - (b) the day on which the savings or transitional provision comes into operation in the Commonwealth.
- (3) However, if the amending Act does not have effect for the purposes of this Part under section 8, the savings or transitional provision does not have effect for the purposes of its application under section 6(2).

**17. Interpretation of applied provisions**

- (1) The *Acts Interpretation Act 1901* (Commonwealth) applies as a law of the State in relation to the interpretation of the applied provisions and so applies as if the applied provisions were a Commonwealth Act or were legislative instruments under a Commonwealth Act, as the case requires.
- (2) The *Interpretation Act 1984* does not apply to the applied provisions.

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

**18. Functions and powers of National Regulator and other authorities and officers**

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

**19. Delegations by National Regulator**

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

## **Part 4 — Offences**

### **20. Object of Part**

- (1) The object of this Part is to further the purpose of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, but are not limited to —
  - (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) infringement notices in connection with offences; and
  - (h) liability to make reparation in connection with offences; and
  - (i) proceeds of crime; and
  - (j) spent convictions.
- (3) For the purposes of this Part, offences include contraventions for which a civil penalty may be imposed.

**21. Application of Commonwealth criminal laws to offences against applied provisions**

- (1) In this section —  
*relevant Commonwealth criminal law* means a law of the Commonwealth relating to a purpose referred to in section 20(2).
- (2) The relevant Commonwealth criminal laws apply as laws of the State in relation to an offence against the applied provisions as if the applied provisions were a law of the Commonwealth and not a law of the State.
- (3) For the purposes of a law of the State, an offence against the applied provisions —
  - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if the applied provisions were a law of the Commonwealth; and
  - (b) is taken not to be an offence against the laws of the State.
- (4) Subsection (3) has effect for the purposes of a law of the State except as provided by the regulations made under section 33.

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

- (1) A Commonwealth law applying because of section 21 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth domestic commercial vessel national law also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in

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

**23. No double jeopardy for offences against applied provisions**

- (1) Subsection (2) applies if —
  - (a) an act or omission is both an offence against the applied provisions and an offence against the Commonwealth domestic commercial vessel national law; and
  - (b) the offender has been punished for that offence under the Commonwealth domestic commercial vessel national law.
- (2) The offender is not liable to be punished for the offence under the applied provisions.

## **Part 5 — Administrative laws**

### **24. Application of Commonwealth administrative laws to applied provisions**

- (1) The Commonwealth administrative laws apply as laws of the State to any matter arising in relation to the applied provisions as if the applied provisions were a law of the Commonwealth and not a law of the State.
- (2) For the purposes of a law of the State, a matter arising in relation to the applied provisions —
  - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if the applied provisions were a law of the Commonwealth; and
  - (b) is taken not to be a matter arising in relation to laws of the State.
- (3) Subsection (2) has effect for the purposes of a law of the State except as provided by the regulations made under section 33.
- (4) A provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Commonwealth) (as that provision applies as a law of the State) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

### **25. Functions and powers conferred on Commonwealth officers and authorities**

- (1) A Commonwealth administrative law applying because of section 24 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the

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same function or power in relation to a matter arising in relation to the applied provisions.

- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

## **Part 6 — Fees and fines**

### **26. Fees payable to officers or employees of State acting as delegates**

- (1) In this section —  
*accredited person* includes a person approved by the National Regulator to conduct a final assessment that is a criterion for the issue of a certificate of competency.
- (2) Regulations under section 33 may provide for or with respect to fees payable to the State in relation to anything done under the Commonwealth domestic commercial vessel national law (as that law applies as a law of the Commonwealth), or under the applied provisions, by a delegate of the National Regulator, or an accredited person, who is an officer or employee of, or otherwise engaged by, the State or an agency of the State.

### **27. Infringement notice fines**

Any amount paid to the State by the National Regulator under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Commonwealth) section 10 in relation to an infringement notice must (subject to any refund payment under section 10(2) of that Act) be credited to the Consolidated Account.

### **28. Fines, fees, other money not otherwise payable to State**

- (1) All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the National Regulator.
- (2) Subsection (1) does not apply to any fees referred to in section 26.

## **Part 7 — Miscellaneous**

### **29. Things done for multiple purposes**

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

### **30. Reference in Commonwealth law to provision of another law**

For the purposes of sections 21 and 24, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

### **31. References to Domestic Commercial Vessel National Law**

(1) In this section —

*participating jurisdiction* means a State or Territory that applies the Commonwealth domestic commercial vessel national law (whether or not as modified) as a law of that jurisdiction.

(2) A reference in a written law or other instrument to the Domestic Commercial Vessel National Law is a reference to —

- (a) the Commonwealth domestic commercial vessel national law; and
- (b) the applied provisions; and
- (c) the Domestic Commercial Vessel National Law of the other participating jurisdictions, that is, the Commonwealth domestic commercial vessel national law that applies (whether or not as modified) as a law of each of those other jurisdictions.

(3) Subsection (2) applies except so far as the contrary intention appears or the context otherwise requires.

**32. Disclosure of information to National Regulator**

Without limiting section 152 of the Scheduled Law as applied by section 6(2), information obtained under a written law may be disclosed under that section whether it was obtained before, on or after commencement day.

**33. State regulations**

The Governor may make regulations, not inconsistent with this Act or the applied provisions, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act or the applied provisions.

**34. Review of Act**

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary.

## **Part 8 — Transitional and savings provisions**

### **35. Transitional regulations**

- (1) In this section —  
*publication day*, in relation to transitional regulations, means the day on which the transitional regulations are published on the WA legislation website;  
*transitional regulations* means regulations made for the purposes of subsection (2).
- (2) Regulations under section 33 may deal with matters of a transitional, savings or application nature arising in connection with the enactment of this Act.
- (3) Transitional regulations cannot be made after the end of the period of 2 years beginning on commencement day.
- (4) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than publication day, but not earlier than commencement day, the regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
  - (a) affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before publication day; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day.

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**Part 9 — *Western Australian Marine Act 1982* amended**

**36. Act amended**

This Part amends the *Western Australian Marine Act 1982*.

**37. Long title replaced**

Delete the long title and insert:

**An Act to regulate navigation of, and to provide for the safe use of, waters in or relating to the State, and for related purposes.**

**38. Part I heading amended**

In the heading to Part I delete “**Part I —**” and insert:

**Part 1 —**

**39. Section 3 amended**

(1) In section 3(1) delete the definitions of:

*agreement*

*Australian coastal and middle-water operations*

*Australian fishing vessel*

*Australian ship*

*boilers and machinery*

*casualty*

*commercial vessel*

*Disciplinary Appeal Tribunal*

*fishing vessel*

*floating restaurant*

*Government vessel*

*incompetent*

*inshore operations*

*Manning Committee*

*misconduct*

*Navigation Act*

*official*

*offshore operations*

*ply*

*port*

*repealed Act*

*restricted offshore operations*

*safety manning*

*seaman*

*special personnel*

*surveyor*

*trading ship*

*wages*

(2) In section 3(1) delete the definitions of:

*inspector*

*master*

*officer*

*pleasure vessel*

*ship* or *vessel*

(3) In section 3(1) insert in alphabetical order:

***authorised person*** means a person designated under section 117(1) as an authorised person for the purposes of the provision in which the term is used;

***detained vessel*** means a vessel detained under section 61;

***domestic commercial vessel*** has the meaning given in the Scheduled Domestic Commercial Vessel National Law section 7;

***foreign vessel*** has the meaning given in the *Navigation Act 2012* (Commonwealth) section 14(1);

***former Navigation Act*** means the *Navigation Act 1912* (Commonwealth) as in force before it was repealed;

***identity card*** means an identity card issued under section 118;

***infringement notice*** has the meaning given in section 132(1);

***inspector*** means —

- (a) a person designated under section 117(1) as an inspector for the purposes of the provision in which the term is used; or
- (b) a member of a class of police officer designated under section 117(2) as inspectors for the purposes of the provision in which the term is used;

***marine qualification information*** has the meaning given in section 107;

***master***, of a vessel —

- (a) means the person who has command or charge of the vessel; but
- (b) does not include a pilot;

**mooring information** has the meaning given in section 107;

**officer** —

- (a) of a body corporate — has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9; and
- (b) of the Department — means a public service officer in the Department;

**personal watercraft** —

- (a) means a craft that is —
  - (i) powered by a motor; and
  - (ii) designed (whether or not exclusively) to be operated by a person on or astride the hull and not within it;

and

- (b) includes a craft that was designed (whether or not exclusively) as a personal watercraft but which has been —
  - (i) modified; or
  - (ii) transformed into some other sort of vessel;

**pleasure vessel** —

- (a) means a vessel held wholly for the purpose of recreational or sporting activities and not for hire or reward; but
- (b) does not include a domestic commercial vessel;

**prescribed** means prescribed by regulations made under this Act;

**prescribed vessel** means a vessel that is prescribed, or in a class of vessel prescribed, for the purposes of this definition, other than a regulated Australian vessel, a

foreign vessel, a domestic commercial vessel or a pleasure vessel;

**regulated Australian vessel** has the meaning given in the *Navigation Act 2012* (Commonwealth) section 15;

**Scheduled Domestic Commercial Vessel National Law** means the Marine Safety (Domestic Commercial Vessel) National Law set out in the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Commonwealth) Schedule 1;

**specified**, in relation to a direction (whether or not in writing), order, notice, regulation or other instrument or document under this Act, means specified in the direction, order, notice, regulation, instrument or document;

**State 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;

**territorial sea** has the meaning given in the *Seas and Submerged Lands Act 1973* (Commonwealth) section 3(1);

**vessel**, subject to subsection (2) —

- (a) means, a craft for use, or that is capable of being used, in navigation by water, however propelled or moved; and
- (b) includes an air-cushion vehicle, a barge, a personal watercraft, a submersible and a wing-in-ground effect craft;

**vessel information** has the meaning given in section 107.

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- (4) In section 3(1) in the definition of *equipment*:
- (a) delete “ship,” and insert:  
  
vessel,
  - (b) delete “ship” and insert:  
  
vessel
- (5) In section 3(1) in the definition of *owner*:
- (a) delete “his” and insert:  
  
their
  - (b) delete “the manager or secretary of any body corporate or company;” and insert:  
  
an officer of a body corporate;
- (6) In section 3(1) in the definition of *passenger* paragraph (a) delete “vessel, and special personnel; and” and insert:  
  
vessel; and
- (7) Delete section 3(2) and insert:
- (2) The regulations may specify that a prescribed class of thing is or is not a class of vessel for the purposes of the definition of *vessel* in subsection (1).

**40. Sections 3A and 3B inserted**

After section 3 insert:

**3A. Vessels and crew to which Act applies**

- (1) Except as expressly provided otherwise in this Act, this Act applies to and in relation to the following vessels and their owners, masters and crew —
  - (a) a vessel in State waters;
  - (b) a vessel connected with the State, wherever it may be, other than a pleasure vessel or prescribed vessel while it is in the waters of another State or a Territory of the Commonwealth.
- (2) For the purposes of this section, a vessel is connected with the State if the vessel is —
  - (a) registered, or required to be registered, under this Act; or
  - (b) registered under the *Shipping Registration Act 1981* (Commonwealth), with a home port in the State; or
  - (c) owned by a person who is ordinarily resident in the State; or
  - (d) owned by a person whose place of business, or principal place of business, is in the State; or
  - (e) owned by a person whose principal place of business for managing the vessel's operations is in the State; or

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- (f) declared by the regulations to be a vessel connected with the State.

**3B. Relationship to Domestic Commercial Vessel National Law**

- (1) In this section —
  - applied provisions* has the meaning given in the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 4(1);
  - Commonwealth domestic commercial vessel national law* has the meaning given in the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 4(1);
  - Domestic Commercial Vessel National Law* means —
    - (a) the Commonwealth domestic commercial vessel national law; and
    - (b) the applied provisions.
- (2) The Domestic Commercial Vessel National Law prevails over this Act to the extent of any inconsistency.

**41. Section 6 deleted**

Delete section 6.

42. **Part II replaced**

Delete Part II and insert:

**Part 2 — Powers of inspectors**

**Division 1 — Preliminary**

6. **Terms used**

(1) In this Part —

*evidential material* means a thing that is relevant to an offence (within the meaning of subsection (2)) under this Act;

*judicial officer* means a magistrate;

*occupier*, in relation to premises, includes —

- (a) a person who apparently represents the occupier of the premises; and
- (b) if the premises are a vessel — the master of the vessel;

*official details* —

- (a) of a police officer — means the officer's surname and rank and, if the officer's official details are required to be stated on a document, the officer's registered number; and
- (b) of a public officer — means the officer's full name and official title;

*premises* includes —

- (a) a structure, building, vehicle, vessel or aircraft; and
- (b) a place (whether or not enclosed or built on); and

- (c) a part of a thing referred to in paragraph (a) or (b);

**remote communication** means any way of communicating at a distance, including by telephone, email and radio;

**warrant** means a warrant issued under section 26.

- (2) For the purposes of the definition of **evidential material**, a thing is relevant to an offence if it is relevant to an offence as described in the *Criminal Investigation Act 2006* section 5.

## **Division 2 — General powers**

### **Subdivision 1 — Powers relating to vessels, exercisable without consent or warrant**

#### **7. Boarding vessels**

- (1) An inspector may board a vessel, whether or not the vessel is underway, for 1 or both of the following purposes —
- (a) determining whether this Act is being or has been complied with;
  - (b) exercising any of the powers under this Act that the inspector may exercise in relation to the vessel.
- (2) The master of a vessel that an inspector proposes to board must take reasonable steps to facilitate the boarding if required by the inspector to do so.  
Penalty for this subsection: a fine of \$2 000.
- (3) An inspector proposing to board a vessel may enter any premises that are not used as a residence to gain access to the vessel.

- (4) If an inspector who boards a vessel or enters premises under this section fails to produce their identity card, or evidence that they are a police officer (if not in uniform), when requested to do so by the master of the vessel or by the occupier of the premises, the inspector —
- (a) must leave the vessel or premises; and
  - (b) must not board the vessel or enter the premises again without producing their identity card or evidence that they are a police officer (if not in uniform).

**8. Requiring master of vessel to answer questions about vessel's nature or operations**

- (1) An inspector may require the master of a vessel —
- (a) to answer questions put by the inspector about the nature or operations of the vessel; and
  - (b) to produce for inspection any books, records or other documents about the nature or operations of the vessel requested by the inspector.
- (2) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) commits an offence.
- Penalty for this subsection: a fine of \$2 000.

**9. Powers in relation to vessels**

- (1) An inspector may exercise the powers under this section in relation to a vessel for the purposes of determining whether this Act is being or has been complied with.
- (2) The inspector may, in relation to the vessel, do 1 or more of the following —
- (a) search the vessel or anything on the vessel;

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- (b) examine or observe any activity conducted on the vessel;
- (c) inspect, examine, take measurements of or conduct tests on the vessel or anything on or belonging to the vessel;
- (d) take photographs, video recordings or other recordings of the vessel or anything on the vessel;
- (e) without limiting section 18, require the production for inspection of any document on the vessel or issued or required to be held under this Act in relation to the vessel;
- (f) take extracts from, or make copies of, any document produced under paragraph (e);
- (g) take onto the vessel any equipment and materials that the inspector requires for the purpose of exercising powers in relation to the vessel;
- (h) require a person on the vessel to demonstrate the operation of machinery or equipment on the vessel;
- (i) require a person on the vessel to give the inspector 1 or more of the following —
  - (i) the person's name;
  - (ii) the person's residential address;
  - (iii) the person's date of birth;
  - (iv) evidence of the person's identity;
- (j) require, by any reasonable means, the master of the vessel to do 1 or more of the following —
  - (i) stop or manoeuvre the vessel;
  - (ii) adopt or maintain a specified course or speed;

- (iii) take the vessel to a specified place.
- (3) The inspector may, when on board the vessel, operate electronic equipment on the vessel to determine whether the following contain information that is relevant to the purposes of this section —
  - (a) the equipment;
  - (b) an information storage device that —
    - (i) is on the vessel; and
    - (ii) can be used with the equipment or is associated with the equipment.
- (4) If information that is relevant to the purposes of this section is found in the exercise of a power under this section, the inspector may, when on board or leaving the vessel, do 1 or more of the following —
  - (a) operate electronic equipment on the vessel to put the information in documentary form;
  - (b) operate electronic equipment on the vessel to transfer the information to an information storage device that —
    - (i) is brought onto the vessel for that purpose; or
    - (ii) is on the vessel and the use of which for that purpose has been agreed to in writing by the master of the vessel;
  - (c) remove the documents or information storage device from the vessel.
- (5) The inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

- (6) A power under subsection (2) may be exercised whether or not the inspector —
  - (a) is on board the vessel; or
  - (b) has reasonable grounds for suspecting that there may be evidential material on the vessel.

**10. Failing to comply with certain requirements under s. 9**

- (1) A person who, without reasonable excuse, fails to comply with a requirement under section 9(2)(e), (h), (i) or (j) commits an offence.

Penalty for this subsection: a fine of \$5 000.

- (2) A person commits an offence if, in response to a requirement made under section 9(2)(i), the person gives a false name, address or date of birth or false evidence of identity.

Penalty for this subsection: a fine of \$5 000.

**11. Sampling, securing or seizing things found**

- (1) This section applies if —
  - (a) a thing is found during the exercise of a power under section 9 in relation to a vessel; and
  - (b) the inspector believes on reasonable grounds that —
    - (i) the thing is evidential material; and
    - (ii) 1 or more of the powers under this section need to be exercised in order to prevent concealment, loss or destruction of the evidential material; and
    - (iii) the power or powers need to be exercised without a warrant either because of serious and urgent

circumstances or because it is not practicable to obtain a warrant.

- (2) The inspector may do 1 or more of the following —
  - (a) take a sample of the thing and remove the sample from the vessel;
  - (b) secure the thing for up to 72 hours;
  - (c) subject to subsection (3), seize the thing.
- (3) If the thing is equipment or an information storage device that has been operated or used under section 9(3), the inspector may seize the thing only if —
  - (a) it is not practicable to put all the evidential material the thing contains in documentary form as mentioned in section 9(4)(a) or to transfer all that evidential material as mentioned in section 9(4)(b); or
  - (b) the inspector believes on reasonable grounds that possession of the equipment or the information storage device could constitute an offence against a law of the State.
- (4) In exercising a power under this section, the inspector must, as far as practicable, minimise damage to any property.

**Subdivision 2 — Powers relating to premises, exercisable with consent or under warrant**

**12. Entering premises**

- (1) An inspector may enter any premises for the purposes of determining whether this Act is being or has been complied with.

- (2) An inspector may enter any premises if the inspector has reasonable grounds for suspecting that there may be evidential material on the premises.
- (3) Despite subsections (1) and (2), the inspector cannot enter the premises unless —
  - (a) entry is in accordance with the consent of the occupier of the premises, given under section 24, and, if requested to do so by the occupier, the inspector has produced their identity card or evidence that they are a police officer (if not in uniform); or
  - (b) the entry is made under a warrant.

Note for this subsection:

Division 4 includes provisions that deal with consent to entry and matters relating to entry under a warrant.

### **13. Powers of inspectors in relation to premises**

- (1) An inspector may exercise the powers under this section in relation to premises entered under section 12 for the purposes of determining whether this Act is being or has been complied with (whether or not the inspector has reasonable grounds for suspecting that there may be evidential material on the premises).
- (2) The inspector may, in relation to the premises, do 1 or more of the following —
  - (a) search the premises or anything on the premises;
  - (b) examine or observe any activity conducted on the premises;
  - (c) inspect, examine, take measurements of or conduct tests on anything on the premises;

- (d) take photographs, video recordings or any other recordings of the premises or anything on the premises;
  - (e) inspect any document on the premises;
  - (f) take extracts from, or make copies of, any document inspected under paragraph (e);
  - (g) take onto the premises any equipment and materials that the inspector requires for the purpose of exercising powers in relation to the premises.
- (3) The inspector may, when on the premises, operate electronic equipment on the premises to determine whether the following contain information that is relevant to the purposes of this section —
- (a) the equipment;
  - (b) an information storage device that —
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with the equipment.
- (4) If information that is relevant to the purposes of this section is found in the exercise of a power under this section, the inspector may, when on or leaving the premises, do 1 or more of the following —
- (a) operate electronic equipment on the premises to put the information in documentary form;
  - (b) operate electronic equipment on the premises to transfer the information to an information storage device that —
    - (i) is brought to the premises for that purpose; or

- (ii) is on the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;
  - (c) remove the document or information storage device from the premises.
- (5) The inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (6) The inspector may secure a thing on the premises for up to 72 hours if —
  - (a) the thing is found during the exercise of a power under this section in relation to the premises; and
  - (b) the inspector believes on reasonable grounds that —
    - (i) the thing is evidential material; and
    - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (iii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

#### **14. Enforcement powers**

- (1) An inspector may exercise the powers under this section in relation to premises entered under section 12 if the inspector has reasonable grounds for suspecting that there may be evidential material on premises.

- (2) The inspector may, in relation to the premises, do 1 or more of the following —
- (a) if entry to the premises is with the occupier's consent — search the premises and anything on the premises for evidential material;
  - (b) if entry to the premises is under a warrant —
    - (i) search the premises and anything on the premises for evidential material of the kind specified in the warrant; and
    - (ii) seize evidential material of that kind;
  - (c) inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b) (whichever is relevant);
  - (d) take photographs, video recordings or any other recordings of the premises or evidential material referred to in paragraph (a) or (b) (whichever is relevant);
  - (e) take onto the premises any equipment and materials that the inspector requires for the purpose of exercising powers in relation to the premises;
  - (f) require a person on the premises to demonstrate the operation of machinery or equipment on the premises.
- (3) The inspector may, when on the premises, operate electronic equipment on the premises to determine whether the following contain evidential material referred to in subsection (2)(a) or (b) (whichever is relevant) —
- (a) the equipment; or

- (b) an information storage device that —
  - (i) is on the premises; and
  - (ii) can be used with the equipment or is associated with the equipment.
- (4) If evidential material is found in the exercise of a power under this section, the inspector may, when on or leaving the premises, do 1 or more of the following —
  - (a) operate electronic equipment on the premises to put the evidential material in documentary form;
  - (b) operate electronic equipment on the premises to transfer the evidential material to an information storage device that —
    - (i) is brought to the premises for that purpose; or
    - (ii) is on the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;
  - (c) remove the document or information storage device from the premises;
  - (d) if entry to the premises is under a warrant and the equipment or information storage device referred to in subsection (3) contains evidential material — seize the equipment or information storage device.
- (5) The inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if the inspector believes on reasonable grounds that the operation of

the equipment can be carried out without damage to the equipment.

- (6) The inspector may seize the equipment or information storage device as mentioned in subsection (4)(d) only if —
- (a) it is not practicable to put the evidential material in documentary form as mentioned in subsection (4)(a) or to transfer the evidential material to a device as mentioned in subsection (4)(b); or
  - (b) the inspector believes on reasonable grounds that possession of the equipment or information storage device by the occupier could constitute an offence against a law of the State.
- (7) The inspector may seize a thing if —
- (a) entry to the premises is under a warrant; and
  - (b) the inspector, in the course of searching for evidential material of the kind specified in the warrant, finds the thing and the inspector believes on reasonable grounds that the thing is evidential material; and
  - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.
- (8) A person who, without reasonable excuse, fails to comply with a requirement under subsection (2)(f) commits an offence.

Penalty for this subsection: a fine of \$5 000.

**15. Failing to comply with certain requirements of inspectors**

- (1) An inspector who is on premises that the inspector has entered under a warrant may require any person on the premises to —
  - (a) answer any questions put by the inspector; and
  - (b) produce for inspection any books, records or documents requested by the inspector.
- (2) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) commits an offence.

Penalty for this subsection: a fine of \$5 000.

**16. Using force in executing warrant**

In executing a warrant, an inspector may use any force against persons and things that is necessary and reasonable in the circumstances.

**17. Relationship with Subdivision 1**

- (1) This Subdivision does not limit Subdivision 1.
- (2) Subdivision 1 does not prevent this Subdivision from applying to premises that are vessels.

**Subdivision 3 — Requiring certain documents under Act to be produced for inspection**

**18. Requiring certain documents to be produced for inspection**

- (1) An inspector may, in the exercise of a power under this Act, require a person to produce for inspection any licence, permit, certificate or other document issued to or required to be held by the person under this Act.

- (2) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) commits an offence.  
Penalty for this subsection: a fine of \$5 000.
- (3) An inspector may take an extract from, or make a copy of, a document produced under subsection (1).

### **Division 3 — Directions and improvement notices**

#### **19. Power to give directions**

- (1) An inspector may give a person a direction requiring the person to take any action that is reasonable in the circumstances if the inspector believes on reasonable grounds that —
  - (a) the person is contravening, or likely to contravene, a provision of this Act; or
  - (b) it is desirable in the public interest for the inspector to give the person the direction.
- (2) An inspector may give a person a direction requiring the person to take any action that is reasonable in the circumstances if, in relation to the use of State waters or in relation to a vessel, an inspector believes on reasonable grounds that it is necessary to give the person the direction in order to protect the safety of people or to protect the environment.
- (3) Without limiting subsection (1) or (2), a direction may require the person given the direction to ensure that —
  - (a) a specified vessel is not operated; or
  - (b) a specified vessel is moved from, or taken to, a specified place; or
  - (c) a specified activity is or is not engaged in; or

(d) a specified activity is or is not engaged in, in a specified manner or at a specified place.

(4) A person given a direction under subsection (1) or (2) must comply with it.

Penalty for this subsection: a fine of \$5 000.

**20. Directions under s. 19: procedural details**

(1) A direction under section 19 must —

- (a) be given in writing, unless the inspector believes on reasonable grounds that there is an urgent need to protect the safety of people or to protect the environment; and
- (b) specify the period within which the action must be taken; and
- (c) include the inspector's reasons for giving the direction.

(2) The direction may include specified steps that the person given the direction must take to satisfy the inspector that the action required to be taken to comply with the direction has been taken.

(3) Before the end of the period specified in a direction, an inspector may extend the period in writing and, in that case, the references in sections 19 and 21 to the period specified are references to that period as extended under this subsection.

**21. Directions under s. 19: inspector may remedy failure to comply**

(1) If a person given a direction under section 19 does not take the action specified in the direction within the period specified, an inspector may take the action or arrange for it to be taken.

- (2) The inspector may do all things necessary for the purposes of subsection (1).
- (3) The chief executive officer may recover the reasonable costs and expenses incurred under subsection (1) from the person given the direction and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.

## **22. Improvement notices**

- (1) An inspector may give a notice under this section (an ***improvement notice***) to a person if the inspector believes on reasonable grounds that the person —
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act and is likely to contravene that provision again.
- (2) The inspector must specify in the notice —
  - (a) the provision that the inspector believes is being or is likely to be contravened; and
  - (b) the reasons for that belief; and
  - (c) that the person given the notice must take action to remedy or prevent the contravention; and
  - (d) the period within which the person must comply with the notice.
- (3) The inspector may specify in the notice any action the person must or must not take during the period specified in the notice.
- (4) Before the end of the period specified in the notice, an inspector may extend the period in writing.

- (5) A person given an improvement notice must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.  
Penalty for this subsection: a fine of \$5 000.

**23. Improvement notices given in relation to vessels**

- (1) A person given an improvement notice under section 22(1) in relation to a vessel must ensure that a copy of the notice is displayed —
- (a) as directed by the inspector who issued the notice; or
  - (b) if there is no such direction — in a prominent place on or near the vessel.
- Penalty for this subsection: a fine of \$2 000.
- (2) The inspector who gave the notice referred to in subsection (1) must give a copy of the notice to each of the following persons, unless the person has been given the notice under section 22(1) —
- (a) the owner of the vessel; and
  - (b) the master of the vessel.
- (3) A failure to comply with subsection (2) does not affect the validity of the notice.
- (4) A person must not, without reasonable excuse —
- (a) tamper with a notice displayed under subsection (1); or
  - (b) remove a notice displayed under subsection (1) before the notice has ceased to have effect.

Penalty for this subsection: a fine of \$2 000.

**Division 4 — General provisions relating to powers  
under Part**

**Subdivision 1 — General matters concerning entry and  
exercise of powers**

**24. Consent to entry**

- (1) For the purposes of section 12(3)(a), a person gives consent to entry to premises by an inspector if the person consents after being informed by the inspector —
  - (a) of the power of entry that the inspector wants to exercise in respect of the premises; and
  - (b) of the reason why the inspector wants to exercise the power; and
  - (c) that the person can refuse to consent to the inspector entering the premises.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period and, if so, the consent has effect for that period unless the consent is withdrawn, or the purposes of the entry are fulfilled, before the end of that period.
- (4) A consent that is not limited to a period has effect until the consent is withdrawn or the purposes of the entry are fulfilled.
- (5) If an inspector enters premises under section 12 with the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises as soon as practicable after the consent ceases to have effect.

**25. Premises with 2 or more occupiers**

If under this Part any information must be given to, or consent may be obtained from, or any thing must be done in respect of, the occupier of premises, then in a case where there are 2 or more occupiers of the premises, it is sufficient to give the information to, or obtain consent from, or do the thing in respect of, any 1 of the occupiers.

**Subdivision 2 — Warrants**

**26. Warrants**

- (1) An inspector may apply in person to a judicial officer for a warrant in relation to premises.
- (2) The judicial officer may issue the warrant if satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the judicial officer must not issue the warrant unless the inspector or some other person has given to the judicial officer, either orally or by affidavit, any further information that the judicial officer may require concerning the grounds on which the issue of the warrant is sought.
- (4) The warrant must —
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) specify the offence or offences to which the warrant relates; and

- (d) state the kind of evidential material that may be searched for under the warrant; and
  - (e) state the inspector's official details; and
  - (f) authorise the inspector to enter the premises for the purposes of this Part; and
  - (g) state that the inspector may exercise powers under this Part in relation to the premises; and
  - (h) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (i) specify the day, not more than 1 week after the issue of the warrant, on which the warrant ceases to be in force.
- (5) A warrant must be in the prescribed form.

**27. Warrants applied for remotely**

- (1) An inspector may apply, by remote communication, to a judicial officer for a warrant under section 26 —
  - (a) in an urgent case; or
  - (b) if the inspector believes on reasonable grounds that a judicial officer is not available within a reasonable distance of the inspector.
- (2) The judicial officer must not grant the warrant unless satisfied as to the matter in subsection (1)(a) or (b) (whichever is relevant).
- (3) The *Criminal Investigation Act 2006* section 13(5) to (8) applies in relation to an application under this section.

**28. Entry under warrant: rights of occupier**

- (1) An inspector must, before entering premises under a warrant —
  - (a) announce that they are authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) If the occupier is present when it is proposed to enter premises under a warrant, the inspector must, before the entry is made —
  - (a) if they are not a police officer — identify themselves to the occupier by producing their identity card; and
  - (b) if they are a police officer who is not in uniform — identify themselves to the occupier by producing evidence that they are a police officer; and
  - (c) inform the occupier that it is proposed to enter the premises; and
  - (d) make a copy of the warrant available to the occupier; and
  - (e) inform the occupier of their rights and responsibilities under this Subdivision.
- (3) However, an inspector need not comply with subsections (1) and (2) if the inspector believes on reasonable grounds that immediate entry to the premises is required —
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.

- (4) If subsections (1) and (2) are not fully complied with before premises are entered, then as soon as practicable after the premises are entered, they must be complied with to the extent relevant.
- (5) If premises entered are unoccupied, the inspector must leave the following in a prominent position at the premises before leaving —
  - (a) a notice stating —
    - (i) the inspector's official details; and
    - (ii) that the premises have been entered;
  - (b) a copy of the warrant completed in accordance with section 32(2).
- (6) The copy of a warrant given or left under this section must omit the name of the judicial officer who issued it.

**29. Inspector must be in possession of warrant**

While a warrant is being executed in relation to premises, the inspector executing the warrant must be in possession of the warrant or a copy of it.

**30. Occupier entitled to observe execution of warrant**

- (1) The occupier of premises in relation to which a warrant is being executed is, if the occupier is present at the time of its execution, entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

**31. Occupier to provide inspector with facilities and assistance**

- (1) The occupier of premises to which a warrant relates must provide an inspector executing the warrant, and any person assisting the inspector, with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person who fails to comply with subsection (1) commits an offence.

Penalty for this subsection: a fine of \$5 000.

**32. Execution of warrant**

- (1) A warrant may be executed by the inspector to whom it was issued or by another inspector authorised for that purpose by the chief executive officer.
- (2) On completing the execution of a warrant, the inspector in charge of executing the warrant must record the following matters on it —
  - (a) the inspector's official details;
  - (b) the date and time when the warrant was executed;
  - (c) any other matter that is prescribed.

**33. Completing execution of warrant after temporary cessation**

- (1) This section applies if an inspector temporarily ceases executing a warrant and, with all persons assisting the inspector, leaves the premises.
- (2) The inspector may complete the execution of the warrant if —
  - (a) the warrant is still in force; and

- (b) 1 of the following applies —
  - (i) the inspector and persons assisting are absent from the premises for not more than 1 hour;
  - (ii) if there is an emergency — the inspector and persons assisting are absent from the premises for not more than 12 hours or any longer period allowed by a judicial officer under subsection (5);
  - (iii) the occupier of the premises consents in writing.
- (3) An inspector may apply to a judicial officer for an extension of the 12-hour period mentioned in subsection (2)(b)(ii) if —
  - (a) there is an emergency; and
  - (b) the inspector believes on reasonable grounds that the inspector will not be able to return to the premises within the 12-hour period.
- (4) If it is practicable to do so, the inspector must, before making the application, give notice to the occupier of the premises of their intention to apply for an extension.
- (5) The judicial officer may extend the period during which the inspector and persons assisting may be absent from the premises if —
  - (a) the judicial officer is satisfied, by information on oath, that there are exceptional circumstances that justify the extension; and
  - (b) the extension would not result in the period ending after the warrant ceases to be in force.

**34. Completing execution of warrant stopped by court order**

An inspector may complete the execution of a warrant that has been stopped by an order of a court if —

- (a) the order is later revoked or reversed; and
- (b) the warrant is still in force when the order is revoked or reversed.

**Subdivision 3 — Securing things**

**35. Electronic equipment may be secured pending expert assistance to operate it**

- (1) This section applies if an inspector believes on reasonable grounds that —
  - (a) on premises to which a warrant relates, there is information (*relevant information*) relevant to determining whether there is evidential material on the premises; and
  - (b) the relevant information may be accessed by operating electronic equipment on the premises; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the relevant information may be destroyed, altered or otherwise interfered with if the inspector does not take action under this section.
- (2) The inspector may do whatever is necessary to secure the equipment for up to 72 hours, whether by locking it up, placing a guard or other means.

- (3) The inspector must give notice to the occupier of the premises of their intention to secure the equipment and of the fact that the equipment may be secured for up to 72 hours.

**36. Extending period for which something is secured**

- (1) If an inspector believes on reasonable grounds that a thing needs to be secured under section 11(2)(b), 13(6) or 35(2) for more than 72 hours, the inspector may apply to a judicial officer for an extension of that period.
- (2) The inspector must give notice to the occupier of the premises on which the thing is secured of the inspector's intention to apply for an extension, and the occupier is entitled to be heard in relation to that application.
- (3) The provisions of Subdivision 2 relating to the issue of warrants apply, with necessary modifications, to the granting of an extension.
- (4) The 72-hour period may be extended more than once.

**37. Interfering with securing of things**

A person commits an offence if —

- (a) an inspector is securing, or has secured, a thing under section 11(2)(b), 13(6) or 35(2); and
- (b) the person interferes with the securing of the thing, or the secured thing; and
- (c) the period for which the thing is secured has not ended.

Penalty: a fine of \$10 000.

**Subdivision 4 — Seizing and detaining things**

**38. Copies of seized things to be provided**

- (1) This section applies if, under this Part, an inspector seizes 1 or more of the following —
  - (a) a document, film, computer file or other thing that can be readily copied;
  - (b) an information storage device from which information can be readily copied.
- (2) The occupier of the premises may request the inspector to give a copy of the thing or the information to the occupier.
- (3) The inspector must comply with the request as soon as practicable after the seizure.
- (4) However, the inspector is not required to comply with the request if the inspector believes on reasonable grounds that possession of the thing or information by the occupier constitutes an offence against a law of the State or another Australian jurisdiction.

**39. Receipts for seized things**

- (1) If a thing is seized under this Part, an inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the 1 receipt.

**40. Return of seized things**

- (1) An inspector must take reasonable steps to return a thing seized under this Part when the earliest of the following happens —
  - (a) the reason for the thing's seizure no longer exists;

- (b) it is decided that the thing is not to be used in evidence;
  - (c) the period of 60 days after the thing's seizure ends.
- (2) Subsection (1) —
- (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing —
    - (i) is forfeited or forfeitable to the State; or
    - (ii) is the subject of a dispute as to ownership.
- (3) An inspector need not take steps to return a thing because of subsection (1)(c) if —
- (a) proceedings in respect of which the thing may afford evidence commenced before the end of the period referred to in subsection (1)(c) and have not been completed, including an appeal to a court in relation to those proceedings; or
  - (b) the thing may be retained under an order under section 41; or
  - (c) the State, the chief executive officer or an inspector is otherwise authorised, by a law or an order of a court, to retain, destroy, dispose of or otherwise deal with the thing.
- (4) A thing that is required to be returned under this section must be returned —
- (a) to the person from whom it was seized; or
  - (b) if the person from whom it was seized is not entitled to possess the thing — to the owner of the thing.

**41. Judicial officer may permit seized things to be retained**

- (1) An inspector may apply to a judicial officer for an order permitting the retention of a thing seized under this Part if —
  - (a) proceedings in respect of which the thing may afford evidence have not been commenced; and
  - (b) the application is made before the expiry of —
    - (i) the period referred to in section 40(1)(c); or
    - (ii) a previous order under this section.
- (2) The judicial officer may order that the thing may be retained for the period specified in the order if satisfied that it is necessary for the thing to be retained —
  - (a) for the purposes of an investigation in respect of an offence under this Act; or
  - (b) to enable evidence of an offence under this Act to be secured for the purposes of a prosecution.
- (3) The total period for which a thing may be retained must not exceed 3 years.
- (4) Before making an application under subsection (1), the inspector must —
  - (a) take reasonable steps to discover who has an interest in the thing or the retention of the thing; and
  - (b) if it is practicable to do so, notify each person the inspector believes to have such an interest of the proposed application.

**42. Forfeiture and disposal of seized things**

- (1) This section applies to a thing seized under this Part if an inspector has taken reasonable steps to return the thing to a person and 1 of the following applies —
  - (a) the inspector has been unable to locate the person, despite making reasonable efforts;
  - (b) the person has refused to take possession of the thing;
  - (c) the inspector has contacted the person about the return of the thing, and the person has not taken possession of the thing within 3 months after being contacted or any longer period agreed to in writing by the inspector.
- (2) The chief executive officer may declare, by order published in the *Gazette*, that the thing is forfeited to the State.
- (3) A thing that is the subject of a declaration under subsection (2) is forfeited to the State.
- (4) The *Criminal and Found Property Disposal Act 2006* applies to the disposal of a thing that is forfeited to the State under this section.

Note for this subsection:

The Department is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*; see section 124F.

**43. Part III heading replaced**

Delete the heading to Part III and insert:

**Part 3 — Marine powers and duties**

**s. 45**

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[44. *Has not come into operation.*]

**45. Section 58A amended**

In section 58A delete “ship” (each occurrence) and insert:

vessel

**46. Section 58B replaced**

Delete section 58B and insert:

**58B. Unsafe pleasure or prescribed vessels not to be operated**

- (1) A person who is the owner or master of a pleasure vessel or prescribed vessel must ensure that the vessel is not operated if it is an unsafe vessel.  
Penalty for this subsection: a fine of \$5 000.
- (2) A person who hires a prescribed vessel must ensure that the vessel is not used if it is an unsafe vessel.  
Penalty for this subsection: a fine of \$5 000.
- (3) Subsection (2) does not apply to a person and a vessel if subsection (1) does.
- (4) It is a defence in a prosecution for an offence against subsection (1) or (2) to show that —
  - (a) the person charged used all reasonable means to ensure that the vessel was not an unsafe vessel;  
or
  - (b) the operation of the vessel (where relevant) was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

- (5) The fact that an unsafe vessel has been detained under section 61 is not a bar to proceedings under this section.
- (6) Proceedings for an offence against subsection (1) or (2) cannot be brought without the consent of the chief executive officer.

**47. Section 59 amended**

- (1) In section 59(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$5 000.

- (2) In section 59(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$5 000.

- (3) In section 59(3) delete the Penalty and insert:

Penalty for this subsection: a fine of \$5 000.

- (4) In section 59(4) delete the Penalty and insert:

Penalty for this subsection: a fine of \$5 000.

**48. Section 60 amended**

- (1) In section 60 delete “person in charge” and insert:

master

- (2) In section 60 delete the Penalty and insert:

Penalty: a fine of \$5 000.

**49. Sections 61 to 64 replaced**

Delete sections 61 to 64 and insert:

**61. Power to detain unsafe pleasure or prescribed vessels**

- (1) The chief executive officer may detain a pleasure vessel or prescribed vessel and bring it, or cause it to be brought, to a port or to another place that the chief executive officer considers appropriate, if the chief executive officer believes on reasonable grounds that the vessel is an unsafe vessel.
- (2) If a vessel is detained under subsection (1), the chief executive officer must give written notice (the *initial notice*), within 7 days after the day on which the vessel was detained, to —
- (a) the master of the vessel; or
  - (b) if the master of the vessel cannot be located — the person who had possession or control of the vessel immediately before it was detained.
- (3) The notice must —
- (a) identify the vessel; and
  - (b) state that the vessel has been detained because it is believed to be an unsafe vessel; and
  - (c) specify the grounds for that belief; and
  - (d) provide the contact details of an officer of the Department who can provide further information.

- (4) The chief executive officer must, within 21 days after the day on which the vessel was detained, do 1 of the following —
  - (a) designate a person under section 63(2) to inspect the vessel and provide a report on it;
  - (b) give a further notice to the person given the initial notice specifying —
    - (i) the conditions that the chief executive officer determines are required to be complied with before the vessel may be released from detention and returned; and
    - (ii) the period (which cannot be less than 3 months) within which those conditions are to be complied with;
  - (c) authorise the vessel to be released from detention and returned.
- (5) The chief executive officer may enter into a written contract for the provision of services relating to —
  - (a) bringing a vessel detained under this section, or causing it to be brought, to a port or other place under subsection (1); or
  - (b) storing a vessel detained under this section.

**62. Detained vessels: unauthorised operation**

- (1) A person commits an offence if —
  - (a) the person operates a detained vessel, or causes or permits the operation of a detained vessel; and
  - (b) the vessel has not been released from detention; and

- (c) the chief executive officer has not authorised the person to operate the vessel.

Penalty for this subsection: a fine of \$5 000.

- (2) It is a defence in a prosecution for an offence against subsection (1) to show that the operation of the vessel was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

**63. Detained vessels: inspection**

- (1) In this section —  
*designated person* means an officer of the Department or another person designated under subsection (2).
- (2) The chief executive officer may designate an officer of the Department or another person to inspect a detained vessel and provide a report on the vessel to the chief executive officer.
- (3) The chief executive officer must, within 14 days after the day on which a report is provided under subsection (2), do 1 of the following —
  - (a) give a further notice to the person given the initial notice (under section 61(2)) in relation to the vessel specifying —
    - (i) the conditions that the chief executive officer determines are required to be complied with before the vessel may be released from detention and returned; and
    - (ii) the period (which cannot be less than 3 months) within which those conditions are to be complied with;
  - (b) authorise the vessel to be released from detention and returned.

- (4) The designated person has, for the purpose of inspecting a detained vessel, the powers of an inspector under sections 7 and 9.
- (5) For the purposes of subsection (4) —
  - (a) sections 7 and 9 apply as if references in them to an inspector were references to the designated person; and
  - (b) section 7(4) applies as if the reference in that subsection to an inspector failing to produce their identity card were a reference to a designated person failing to produce evidence of their designation under subsection (2); and
  - (c) section 10 applies for the purposes of section 9, as applied by paragraph (a).
- (6) The designated person may authorise other persons to assist in the exercise of the designated person's powers under this section.

**63A. Detained vessels: return**

- (1) The chief executive officer must authorise a detained vessel to be released from detention and returned if satisfied that —
  - (a) the vessel is not an unsafe vessel; or
  - (b) the grounds for the belief that the vessel was an unsafe vessel, specified in the initial notice (under section 61(2)) in relation to the vessel, no longer apply; or
  - (c) the conditions specified in a notice under section 61(4)(b) or 63(3)(a) in relation to the vessel have been complied with.

- (2) The regulations may make provision for and in relation to the return of detained vessels, including —
  - (a) the steps that must be taken to return a detained vessel; and
  - (b) the person to whom a detained vessel must be returned.

**63B. Detained vessels: forfeiture and disposal**

- (1) This section applies to a detained vessel if the chief executive officer has taken the steps required by regulations under section 63A(2) to return the vessel to a person and 1 of the following applies —
  - (a) the chief executive officer has been unable to locate the person, despite making reasonable efforts;
  - (b) the person has refused to take possession of the vessel;
  - (c) the chief executive officer has contacted the person about the return of the vessel, and the person has not taken possession of the vessel within 3 months after being contacted or any longer period agreed to in writing by the chief executive officer.
- (2) This section applies to a detained vessel if the conditions specified in a notice given under section 61(4)(b) or 63(3)(a) in relation to the vessel have not been complied with within the period specified in the notice or any longer period agreed to in writing by the chief executive officer.
- (3) The chief executive officer may declare, by order published in the *Gazette*, that the vessel is forfeited to the State.

- (4) A vessel that is the subject of a declaration under subsection (3) is, subject to section 63C, forfeited to the State.
- (5) The *Criminal and Found Property Disposal Act 2006* applies to the disposal of a vessel that is forfeited to the State under this section.

Note for this subsection:

The Department is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*; see section 124F.

**63C. SAT review of decision to detain vessel or forfeiture declaration**

- (1) In this section —  
*decision* means 1 of the following —
  - (a) a decision under section 61(1) to detain a vessel;
  - (b) a notice under section 61(4)(b) or 63(3)(a) given in relation to a vessel;
  - (c) a declaration under section 63B(3) that a vessel is forfeited to the State.
- (2) A person aggrieved by a decision may apply to the State Administrative Tribunal for a review of the decision.

**64. Marine incidents: terms used**

In this section and sections 64A and 64B —

*contact details*, of a person, means the name and other prescribed details of the person;

*identification details*, of a vessel, means each of the following, to the extent relevant —

- (a) the jurisdiction in which the vessel is registered;

- (b) the name of the vessel;
- (c) the registration number of the vessel;
- (d) the contact details of the owner of the vessel (if known);

**marine incident** has the meaning given by the definition of that term in the Scheduled Domestic Commercial Vessel National Law section 6, as if —

- (a) references in that definition to a domestic commercial vessel were references to a pleasure vessel or a prescribed vessel; and
- (b) paragraph (i) of that definition were omitted.

**64A. Marine incidents: duties**

- (1) If a pleasure vessel or a prescribed vessel is involved in a marine incident, the master of the vessel must, to the extent that they can do so without endangering their vessel, crew or passengers (if any) —
  - (a) stand by to render assistance to persons or other vessels involved in the incident until satisfied that there is no need or no further need to render assistance; and
  - (b) render assistance to persons and other vessels involved in the incident; and
  - (c) give to any person injured as a result of the incident, and to the master or owner of any other vessel involved in the incident —
    - (i) the master's contact details; and
    - (ii) the identification details of their vessel.
- (2) A master of a vessel who, without reasonable excuse, fails to comply with subsection (1) is guilty of an offence.

Penalty for this subsection: a fine of \$2 000.

- (3) Subsections (1) and (2) apply to the master of a vessel that is not a pleasure vessel or a prescribed vessel if the vessel is involved in a marine incident with a pleasure vessel or a prescribed vessel.
- (4) For the purposes of this section, to render assistance to a person or vessel is to assist to the extent that the assistance is practicable and necessary to save the person or vessel from danger resulting from the incident.

**64B. Marine incidents: reporting**

- (1) This section applies if a pleasure vessel or a prescribed vessel is involved in a marine incident and 1 or more of the following result —
  - (a) a person is injured or dies;
  - (b) the vessel sustains damage affecting its seaworthiness;
  - (c) another vessel is lost or sustains damage affecting its seaworthiness.
- (2) The master and the owner of the vessel must, as soon as practicable after becoming aware of the incident, give a report (which need not be in writing) to the chief executive officer that includes the following —
  - (a) particulars of the incident and its possible cause;
  - (b) the contact details of the master and the owner;
  - (c) the identification details of the vessel;
  - (d) the present position of the vessel (where practicable);
  - (e) details of the marine qualifications of the master.

Penalty for this subsection: a fine of \$2 000.

- (3) However, if either of the master or owner of the vessel complies with subsection (2), the other need not comply with subsection (2).
- (4) The master and owner of the vessel must, within 72 hours after becoming aware of the incident, give a written report to the chief executive officer, in a form and manner approved by the chief executive officer, that —
  - (a) contains all of the details referred to in subsection (2), and any other relevant details required by the form; and
  - (b) confirms any report given under subsection (2).Penalty for this subsection: a fine of \$2 000.
- (5) However, if either of the master or owner of the vessel complies with subsection (4), the other need not comply with subsection (4).

**64C. Marine incidents: preserving evidence**

- (1) This section applies in relation to a vessel if section 64B applies in relation to the vessel.
- (2) The master of the vessel must take all reasonable steps to ensure the preservation of any material that may be relevant to an investigation of the incident.  
Penalty for this subsection: a fine of \$5 000.
- (3) The owner of the vessel must take all reasonable steps to ensure the preservation of any material that may be relevant to an investigation of the incident.  
Penalty for this subsection: a fine of \$5 000.

- (4) A person on board the vessel must not interfere with any material that may be relevant to an investigation of the incident.

Penalty for this subsection: a fine of \$5 000.

**50. Section 66 amended**

- (1) In section 66(1):

- (a) before “waters” (1<sup>st</sup> occurrence) insert:

State

- (b) delete “direct an authorised person by order to” and insert:

by order

- (2) In section 66(2):

- (a) delete “made by an authorised person”;

- (b) in paragraph (a) delete “person in charge” and insert:

master

- (c) in paragraph (d) delete “notice” and insert:

order

- (3) In section 66(3)(b) delete “being the person in charge of a vessel, knowingly navigates that” and insert:

knowingly navigates a

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- (4) In section 66(3) delete the Penalty and insert:

Penalty for this subsection: a fine of \$5 000.

- (5) Delete section 66(5).

Note: The heading to amended section 66 is to read:

**Closure of waters**

**51. Section 67 amended**

- (1) In section 67(1):

- (a) delete “notice” (1<sup>st</sup> occurrence) and insert:

order

- (b) before “waters” insert:

State

- (c) delete “notice.” and insert:

order.

- (2) In section 67(2):

- (a) delete “A notice” and insert:

An order

- (b) delete paragraph (a);

(c) in paragraph (c) delete “notice; and” and insert:

order; and

(d) in paragraph (d) delete “notice” and insert:

order

(3) In section 67(3) delete “a notice” and insert:

an order

(4) At the end of section 67(3) insert:

Penalty for this subsection: a fine of \$2 000.

(5) At the end of section 67 delete the Penalty.

**52. Section 69 replaced**

Delete section 69 and insert:

**69. Offences relating to hatches**

The master of a pleasure vessel or a prescribed vessel that departs from or arrives at any port in the State with the hatches of the vessel not properly battened down and secured, or not in a position and condition that they can be battened down and secured without delay, is guilty of an offence.

Penalty: a fine of \$2 000.

**53. Section 70 amended**

(1) In section 70(1):

- (a) delete “No person (other than an official or a person duly authorised by the chief executive officer) shall” and insert:

A person (other than an inspector or authorised person) must not,

- (b) delete “go on board or remain alongside any ship” and insert:

of a vessel, board or remain alongside the vessel

(2) In section 70(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$500.

(3) In section 70(2):

- (a) delete “member of the Police Force” and insert:

police officer

- (b) delete “shall” and insert:

must

- (c) delete “is”.

Note: The heading to amended section 70 is to read:

**Offence of being on board vessel unlawfully**

*[54. Has not come into operation.]*

**55. Part IV heading amended**

In the heading to Part IV delete “**Part IV** —” and insert:

**Part 4** —

**56. Section 77 amended**

Delete section 77(1).

**57. Section 78 amended**

In section 78(2) delete “he” and insert:

the Minister

**58. Section 79 amended**

- (1) In section 79(1) delete the passage that begins with “the area constituted by —” and continues to the end of the subsection and insert:

State waters.

- (2) In section 79(2) in the Penalty delete “Penalty:” and insert:

Penalty for this subsection: a fine of

- (3) Delete section 79(3).

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**59. Section 84 amended**

- (1) In section 84(1):
- (a) in paragraph (a) before “Navigation” insert:  
  
former
  - (b) in paragraph (e)(i) delete “section 8A(5)” and insert:  
  
section 8A(2)
- (2) In section 84(2) before “Navigation” insert:  
  
former

**60. Section 90 amended**

- (1) In section 90(1):
- (a) in paragraph (a) before “Navigation” insert:  
  
former
  - (b) in paragraph (e)(i) delete “section 8A(5)” and insert:  
  
section 8A(2)
- (2) In section 90(2) before “Navigation” insert:  
  
former

**61. Part V heading amended**

In the heading to Part V delete “**Part V** —” and insert:

**Part 5** —

**62. Section 91 amended**

(1) In section 91(1):

(a) delete “ship” (1<sup>st</sup> to 3<sup>rd</sup> occurrences) and insert:

vessel

(b) in paragraph (b) delete “owner or master of the ship” and insert:

owner and master of the vessel

(c) in paragraph (b) delete “ship.” and insert:

vessel.

(2) In section 91(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

(3) In section 91(2) delete “ship.” and insert:

vessel.

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**63. Section 92 amended**

- (1) In section 92(1) delete “ship” and insert:

vessel

- (2) In section 92(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

- (3) In section 92(2) delete “ship,” (each occurrence) and insert:

vessel,

- (4) In section 92(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

**64. Section 93 amended**

- (1) In section 93(1):

- (a) delete “ship” and insert:

vessel

- (b) delete “he” and insert:

the owner or master

- (2) In section 93(2) delete “ship” (each occurrence) and insert:

vessel

**65. Section 94 amended**

In section 94(1) delete “ship” and insert:

vessel

**66. Section 95 amended**

- (1) In section 95:

- (a) delete “ship” (each occurrence) and insert:

vessel

- (b) delete “her” (each occurrence) and insert:

its

- (2) In section 95 in the Penalty after “Penalty:” insert:

a fine of

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**67. Section 96 replaced**

Delete section 96 and insert:

**96. Regulations as to dangerous goods**

The regulations may deal with the carriage of dangerous goods, including by —

- (a) prescribing the classes of vessel in which dangerous goods may be carried; and
- (b) providing for the quantities of dangerous goods that may be carried from any port in the State in such vessels; and
- (c) providing for the precautions to be observed in connection with the loading and unloading of dangerous goods at any port in the State; and
- (d) providing for 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.

**68. Section 97 amended**

(1) In section 97(1):

(a) delete “ship” and insert:

vessel

(b) delete “officer or an authorised”.

- (2) In section 97(2) delete “ship” and insert:

vessel

- (3) In section 97(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

- (4) In section 97(3) delete “ship.” and insert:

vessel.

- (5) In section 97(4):

- (a) delete “An authorised officer” and insert:

Without limiting any power conferred on an inspector or authorised person under this Act, an inspector or authorised person

- (b) delete “ship” and insert:

vessel

Note: The heading to amended section 97 is to read:

**Explosives on passenger vessels**

**69. Part VI replaced**

Delete Part VI and insert:

**Part 6 — Pleasure vessels and prescribed vessels**

**99. Regulations in respect of pleasure vessels and prescribed vessels**

- (1) The regulations may deal with the registration, navigation and operation of pleasure vessels and prescribed vessels, including by —
  - (a) prescribing the duties of owners, masters and operators of pleasure vessels and prescribed vessels;
  - (b) providing for the registration and transfer of registration of pleasure vessels and prescribed vessels, and the suspension or cancellation of registration;
  - (c) prohibiting the navigation of a pleasure vessel or a prescribed vessel in a class of pleasure vessel or prescribed vessel that the chief executive officer has determined under subsection (2) cannot be navigated safely;
  - (d) providing for the maintenance and repair of pleasure vessels and prescribed vessels;
  - (e) providing for the equipment that must be provided on pleasure vessels and prescribed vessels and the use and maintenance of the equipment;
  - (f) providing for the inspection of pleasure vessels and prescribed vessels and their equipment by inspectors or authorised persons, and the powers of authorised persons who carry out those inspections;

- (g) providing for design and construction requirements for pleasure vessels and prescribed vessels;
- (h) prescribing the age of persons who may operate or be in command or charge of pleasure vessels and prescribed vessels;
- (i) providing for the crewing of pleasure vessels and prescribed vessels, including the qualifications required by masters and crew;
- (j) providing for the provision and use on pleasure vessels and prescribed vessels of lights and signals;
- (k) providing for the licensing of owners, masters and operators of pleasure vessels and prescribed vessels and the issue of licences;
- (l) providing for the safe navigation of pleasure vessels and prescribed vessels, including emergency and safety management procedures and the testing or auditing of those procedures;
- (m) providing for the inspection or survey of prescribed vessels, including by providing for —
  - (i) the powers of authorised persons who carry out those inspections or surveys;
  - (ii) certificates of survey, the conditions to which they are subject and the renewal, transfer, suspension or cancellation of them;
  - (iii) the recognition of certificates of survey issued under a law of another Australian jurisdiction;
- (n) providing for requirements relating to the hiring of prescribed vessels and duties of hirers of prescribed vessels.

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- (2) The chief executive officer may, for the purposes of regulations made under subsection (1)(c), determine, by notice published in the *Gazette*, that a class of pleasure vessel or prescribed vessel cannot be navigated safely if satisfied that that is the case.

**70. Part VII replaced**

Delete Part VII and insert:

**Part 7 — Seaplanes**

**100. Certain provisions of Act and regulations apply to seaplanes**

- (1) In this section —  
*seaplane* means an aircraft capable of taking off from and landing on water.
- (2) In the following provisions, unless the contrary intention appears, a reference to a vessel or a pleasure vessel includes a reference to a seaplane and a reference to navigation includes a reference to the operation of a seaplane on water —
  - (a) section 3A(1)(a);
  - (b) sections 58A, 59, 60, 64, 64A, 64B, 64C, 65, 66, 67 and 68;
  - (c) section 79;
  - (d) section 99(1)(b), (i) and (j);
  - (e) sections 114(1A)(a), (c), (d), (e), (h) and (i) and (1D) and 115A;
  - (f) the provisions of regulations made under or for the purposes of a provision listed in paragraphs (a) to (e);

- (g) a provision of this Act or the regulations that applies in relation to or has effect for the purposes of a provision listed in paragraphs (a) to (f) — to the extent necessary for that application or effect.

**71. Part VIII heading amended**

In the heading to Part VIII delete “**Part VIII —**” and insert:

**Part 8 —**

**72. Part VIII Division 1 inserted**

At the beginning of Part VIII insert:

**Division 1 — Information protection, disclosure and exchange**

**107. Terms used**

In this Division —

*Commonwealth or interstate authority* means a person or body with functions of a public nature under a law of another Australian jurisdiction;

*details*, of a person, includes (as is relevant) the person’s —

- (a) name;
- (b) Australian Company Number;
- (c) residential address;
- (d) business address;
- (e) email address;

(f) telephone number;

(g) date of birth;

**incident information** has the meaning given in section 112(1);

**infringement notice information** means information about infringement notices under this Act, including information about the following —

(a) the giving of an infringement notice to a person;

(b) the payment of an amount of money in accordance with an infringement notice;

(c) the withdrawal of an infringement notice;

(d) a matter in relation to which an infringement notice was issued coming before a court for determination;

(e) the registration of an infringement notice under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3;

(f) any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 in relation to an infringement notice;

**marine Act** means 1 of the following —

(a) the *Harbours and Jetties Act 1928*;

(b) the *Jetties Act 1926*;

(c) the *Lights (Navigation Protection) Act 1938*;

(d) the *Marine and Harbours Act 1981*;

(e) the *Marine Navigational Aids Act 1973*;

(f) the *Pollution of Waters by Oil and Noxious Substances Act 1987*;

(g) the *Sea-Carriage of Goods Act 1909*;

- (h) the *Shipping and Pilotage Act 1967*;
- (i) the *Transport Co-ordination Act 1966* to the extent that it relates to ferries and ships;

***marine qualification*** means —

- (a) a qualification issued to a person under this Act in relation to navigating or operating a vessel; and
- (b) a qualification that corresponds, or substantially corresponds, to a qualification referred to in paragraph (a), issued to a person under a law of another Australian jurisdiction or an overseas jurisdiction;

***marine qualification information*** means information about marine qualifications, including details of the following —

- (a) the persons who have made applications for or in relation to marine qualifications;
- (b) the persons who hold or have held marine qualifications;
- (c) suspensions and cancellations of marine qualifications;
- (d) in relation to a particular qualification — any conditions or restrictions on the qualification;

***mooring authorisation*** means an authorisation (including a mooring licence) under this Act to use a mooring;

***mooring information*** means —

- (a) information about mooring authorisations, including details of the following —
  - (i) the holders of mooring authorisations;
  - (ii) the vessels and moorings to which mooring authorisations relate;

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- (iii) the registered owners of vessels to which mooring authorisations relate, including past owners;
- (iv) the registration (if any) of mooring authorisations, including transfers of mooring authorisations;

and

- (b) information about the use of moorings, including unauthorised use;

**offence information** means details of the following —

- (a) any offence under this Act or a marine Act with which a person has been charged or of which a person has been convicted;
- (b) any penalty, suspension, cancellation or disqualification arising from any such conviction;
- (c) the quashing or setting aside of any such conviction;

**overseas authority** means a person or body with functions of a public nature under a law of an overseas jurisdiction;

**registered owner**, of a vessel registered under regulations made for the purposes of section 99(1)(b), means the person specified as the owner of the vessel in the register;

**vessel information** means information about vessels, including the following —

- (a) information about registration of vessels, including transfers of registration;
- (b) details of the registered owners of vessels, including past owners;
- (c) hull identification numbers of vessels;
- (d) details of makes and models of vessels;

- (e) details of certificates of survey and operation;
- (f) information prescribed for the purposes of this definition.

**108. Protection of information**

- (1) A person must not, directly or indirectly, record, use or disclose information that was obtained by the person when performing a function under this Act, unless permitted to do so under subsection (2).

Penalty for this subsection: imprisonment for 12 months or a fine of \$12 000.

- (2) The person may record, use or disclose the information —
- (a) for the purpose of performing a function that the person has under this Act or a marine Act; or
  - (b) as required or allowed under this Act or another written law; or
  - (c) under the order of a court or person or body acting judicially; or
  - (d) for the purposes of the investigation of a suspected offence or disciplinary matter or the conduct of proceedings against a person for an offence or disciplinary matter; or
  - (e) if the information is personal information — with the consent of the person to whom it relates; or
  - (f) in circumstances prescribed for the purposes of this subsection.
- (3) Subsection (1) does not prevent the recording, use or disclosure of statistical or other information (*de-identified information*) that could not reasonably

be expected to lead to the identification of a person to whom it relates.

- (4) The chief executive officer may —
  - (a) publish de-identified information; and
  - (b) provide unpublished de-identified information to a person on payment of a fee (if any) determined by the chief executive officer.
- (5) A fee under subsection (4)(b) cannot exceed the costs and expenses of the Department in preparing or collating the information for the person.

**109. Exchange of information between chief executive officer and Commissioner of Police**

- (1) The chief executive officer must disclose the following information to the Commissioner of Police —
  - (a) marine qualification information;
  - (b) mooring information;
  - (c) incident information;
  - (d) offence information;
  - (e) infringement notice information;
  - (f) vessel information;
  - (g) information prescribed for the purposes of this subsection.
- (2) Information disclosed under subsection (1) —
  - (a) may be used in the performance of the functions of the Commissioner of Police, whether under a written law or otherwise, but not for any other purpose; and
  - (b) may be disclosed by the Commissioner of Police to an officer, department or instrumentality of the State, another Australian

jurisdiction or an overseas jurisdiction for use in the performance of the law enforcement functions of that officer, department or instrumentality, but not for any other purpose.

- (3) The Commissioner of Police must disclose the following information to the chief executive officer —
- (a) incident information;
  - (b) general offence information;
  - (c) infringement notice information;
  - (d) information prescribed for the purposes of this subsection.
- (4) In subsection (3)(b) —  
**general offence information** means offence information as defined in section 107, as if that definition were not limited to offences under this Act or a marine Act.
- (5) Information disclosed under subsection (3) may be used in the performance of the chief executive officer's functions under this Act or a marine Act, but not for any other purpose.

**110. Exchange of information between chief executive officer and other authorities**

- (1) In this section —  
**relevant authority** means —
- (a) a Commonwealth or interstate authority or an overseas authority with the function of granting marine qualifications; and
  - (b) a Commonwealth or interstate authority with functions, under a law of that jurisdiction, that correspond, or substantially correspond, to

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- functions of the chief executive officer under this Act; and
- (c) a person prescribed, or of a class prescribed, for the purposes of this definition.
- (2) The chief executive officer may disclose the following information to a relevant authority if the chief executive officer considers that the information is required by the relevant authority for the purposes of performing its functions —
- (a) marine qualification information;
  - (b) mooring information;
  - (c) infringement notice information;
  - (d) offence information;
  - (e) vessel information;
  - (f) information prescribed for the purposes of this subsection.
- (3) If information disclosed under subsection (2) includes information about an offence of which a person has been convicted or for which a person has been given an infringement notice, the chief executive officer must also disclose to the relevant authority, at the time or subsequently when the information becomes known to the chief executive officer, information about the following —
- (a) any quashing or setting aside of the conviction;
  - (b) the withdrawal of the infringement notice;
  - (c) the matter in relation to which the infringement notice was issued coming before a court for determination;
  - (d) the registration of the infringement notice under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3;

- (e) the withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 in relation to the infringement notice;
  - (f) anything else concerning the offence, the disclosure of which is likely to be favourable to that person.
- (4) The chief executive officer may seek from a relevant authority any information that the chief executive officer considers is required for the purposes of performing the chief executive officer's functions under this Act or a marine Act.
- (5) The chief executive officer may, for the purposes of performing the chief executive officer's functions under this Act or a marine Act, use information obtained from a relevant authority.

**111. Disclosure of information to prescribed persons for authorised purposes**

- (1) In this section —
- authorised purpose* means —
- (a) the purpose of performing functions under a written law or a law of another jurisdiction; or
  - (b) a purpose related to the administration or enforcement of a written law or a law of another jurisdiction; or
  - (c) a purpose prescribed for the purposes of this definition;

*prescribed person* means a person prescribed, or of a class prescribed, for the purposes of this definition.

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- (2) The chief executive officer may disclose the following information to a prescribed person if the chief executive officer considers that the information is required by the person for an authorised purpose —
- (a) marine qualification information;
  - (b) mooring information;
  - (c) vessel information;
  - (d) information prescribed for the purposes of this subsection.
- (3) A person to whom information is disclosed under subsection (2), or who is employed or engaged by or for a person to whom information is disclosed under subsection (2), must not use the information for a purpose other than the authorised purpose for which it was disclosed.

Penalty for this subsection: imprisonment for 12 months or a fine of \$12 000.

**112. Disclosure of incident information**

- (1) In this section —
- de-identified incident information*** means statistical or other information derived from incident information, that could not reasonably be expected to lead to the identification of a person to whom it relates;
- incident information*** means information relating to a marine incident, including the following —
- (a) details of any evidence, statement, report or other information obtained as a result of any investigation of the incident;
  - (b) a copy of a statement or report produced as a result of any investigation of the incident;

*marine incident* has the meaning given in section 64;

*marine safety education purpose* means —

- (a) the purpose of research directed to the promotion of marine safety; or
  - (b) the purpose of distributing information about marine safety.
- (2) The chief executive officer or the Commissioner of Police may disclose incident information in relation to a marine incident to a person involved in the incident.
- (3) A person is a person involved in a marine incident, for the purposes of this section, if the person was —
- (a) on board a vessel involved in the incident; or
  - (b) the owner of a vessel involved in the incident; or
  - (c) injured or suffered loss as a result of the incident; or
  - (d) otherwise involved (other than indirectly) in the incident.
- (4) The chief executive officer may provide de-identified incident information to a person for a marine safety education purpose, on payment of a fee (if any) determined by the chief executive officer, if the chief executive officer considers that the information is required by the person for that purpose.
- (5) A fee under subsection (4) cannot exceed the costs and expenses of the Department in preparing or collating the information for the person.

**113. Disclosure by means of automated system**

- (1) A disclosure of information that the chief executive officer or the Commissioner of Police is authorised or required to make under this Division may, subject to

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the regulations, be made by means of an automated system.

- (2) An automated system must comply with the requirements (if any) set out in the regulations.
- (3) An automated system may, subject to the regulations, allow relevant persons to retrieve data in the system and to be sent alerts about data that has been modified or added to the system.

**73. Part VIII Division 2 heading inserted**

Before section 114 insert:

**Division 2 — Regulations**

**74. Section 114 amended**

- (1) In section 114(1):
  - (a) in paragraph (a) delete the passage that begins with “the inspectors,” and ends with “has control,” and insert:

inspectors, authorised persons and other persons with functions under this Act,
  - (b) in paragraph (c) delete “Minister” and insert:

chief executive officer

(2) After section 114(1) insert:

- (1A) Without limiting subsection (1), the regulations may do any of the following —
- (a) regulate noise, fumes and smoke arising from the operation of vessels;
  - (b) regulate or prohibit water-related activities of any kind on or in all or specified State waters;
  - (c) regulate or prohibit the use of all or specified State waters —
    - (i) by all or specified vessels; or
    - (ii) for specified purposes;
  - (d) provide for safety in respect of the navigation, mooring and berthing of vessels, including (without limitation) by providing for the following —
    - (i) the prohibition of the navigation of a vessel that an inspector determines cannot be navigated safely;
    - (ii) the regulation of the navigation of a vessel that an inspector determines cannot be navigated safely except in accordance with the conditions or restrictions imposed on the navigation of the vessel by the inspector;
  - (e) regulate the towing of vessels and other objects and provide for the issue of towage permits;
  - (f) regulate the conduct and management of passengers;
  - (g) provide for the designation of waters, including the designation of waters by reference to the vessels that are or are not permitted to operate in those waters;

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- (h) provide for traffic management plans that regulate the movement of vessels, persons and other things in or on specified State waters and for the enforcement of those plans;
- (i) provide for the following —
  - (i) the removal from State waters, or from land immediately adjacent to State waters, of things that, in the opinion of the chief executive officer, are or are likely to become hazards or obstructions;
  - (ii) the storage and the destruction, sale or other disposal of things that are removed, including the acquisition of good title to things that are sold or otherwise disposed of;
  - (iii) the application of the proceeds of sale of things that are removed;
  - (iv) the creation of a charge in respect of things that are removed and the declaration, under the *Personal Property Securities Act 2009* (Commonwealth) section 73(2)(a), that section 73(2) of that Act applies to the charge;
  - (v) the recovery of costs incurred in the removal, storage, destruction, sale or disposal, including costs of work done on the removed thing and legal or other professional fees and disbursements for effecting the removal, storage, destruction, sale or disposal;
- (j) provide for the qualifications required by the hirer of a hire and drive vessel that is a domestic commercial vessel.

- (1B) Without limiting subsection (1A), regulations made for the purposes of subsection (1A)(c) or (d) may authorise the chief executive officer to deal with a matter covered by the paragraph by order published on the WA legislation website.
- (1C) An authorisation referred to in subsection (1B) may only be exercised if —
- (a) the chief executive officer is satisfied that the regulations do not deal with or adequately deal with the matter; and
  - (b) the matter needs to be dealt with urgently; and
  - (c) the order is temporary.
- (1D) Regulations made for the purposes of subsection (1A)(i) in relation to the removal of vessels —
- (a) must provide that a vessel cannot be removed unless —
    - (i) the chief executive officer is satisfied that the vessel is an immediate danger to safety or the environment; or
    - (ii) the chief executive officer has given the owner of the vessel at least 7 days' notice of the proposed removal;
- and
- (b) must provide that, if a vessel is removed without notice as described in paragraph (a)(ii), the chief executive officer must give notice of the removal to the owner of the vessel; and
  - (c) may provide for the details to be included in notice given under paragraph (a)(ii) or (b).

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- (1E) In subsection (1A)(j) —  
*hire and drive vessel* and *hirer* have the meanings given in the Scheduled Domestic Commercial Vessel National Law section 6.
- (1F) A reference in subsection (1D) to the owner of a vessel is, in relation to a vessel registered under regulations made for the purposes of section 99(1)(b), a reference to the person specified in the register as the owner of the vessel.
- (3) In section 114(2):
- (a) delete paragraph (a) and insert:
- (a) so as to provide that contravention of or failure to comply with a regulation constitutes an offence, and may provide for penalties not exceeding a fine of \$15 000, or \$75 000 for a body corporate, and if the offence is a continuing offence a further fine not exceeding \$200 for every day or part of a day during which the offence continues after notice of the offence; and
- (aa) so as to provide that the breach of a condition imposed in relation to any exemption or dispensation from the provisions of the regulations, or of a direction, notice, order or rule, under this Act, constitutes an offence, and may provide for penalties not exceeding a fine of \$3 000, or \$15 000 for a body corporate, and if the offence is a continuing offence a further fine not exceeding \$100 for every day or part of a day during which the offence continues after notice of the offence; and

- (b) in paragraph (b) delete “prescribe a modified penalty not exceeding \$300” and insert:

prescribe, subject to subsection (3), a modified penalty

- (c) in paragraph (f) delete “requirement of any proclamation or rule made, or order or notice published pursuant to” and insert:

direction, notice, order or rule under

- (4) Delete section 114(3) and insert:

- (3) A modified penalty prescribed under subsection (2)(b) for an offence —

- (a) must be an amount of money; and  
(b) must not exceed 20% of the penalty specified for the offence.

**75. Section 115 amended**

- (1) In section 115(1):

- (a) in paragraph (a) delete the passage that begins with “rules, regulations,” and ends with “the Commonwealth” and insert:

subsidiary legislation or other instrument under any Act of the State, another Australian jurisdiction

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- (b) in paragraph (a) delete “The Association of Australian Port and Marine Authorities,” and insert:

the International Organization for Standardization, the Australian Maritime Safety Authority (established by the *Australian Maritime Safety Authority Act 1990* (Commonwealth))

- (c) in paragraph (a) delete “rules or”;  
(d) in paragraph (b) delete “adopted by the Marine and Ports Council of Australia; and” and insert:

or the National Standard for Commercial Vessels; and

- (e) in paragraph (c) delete “he” and insert:

the chief executive officer

- (2) Delete section 115(2).

**76. Part VIII Division 3 heading inserted**

After section 115 insert:

**Division 3 — Exemptions and equivalents**

**77. Section 115A amended**

- (1) Delete section 115A(1) and insert:
- (1) The chief executive officer may exempt from the application of a specified provision of this Act or the regulations persons or vessels, or classes of person or

vessel, if satisfied that compliance with the provision is unreasonable or impractical.

- (1A) The chief executive officer may exempt from the application of a specified provision of this Act or the regulations persons or vessels, or classes of person or vessel, engaged in an aquatic event or activity, if satisfied that appropriate measures will be taken to ensure the safety of competitors, spectators and members of the public generally.
- (1B) The chief executive officer must ensure that written notice of an exemption under this section is —
- (a) if the exemption is under subsection (1) and for a person or in respect of a vessel — given to the person or master or owner of the vessel; or
  - (b) if the exemption is under subsection (1) and in respect of a class of person or vessel — made publicly available; or
  - (c) if the exemption is under subsection (1A) — given to the applicant for the exemption or the organiser of the aquatic event or activity.
- (1C) Failure to comply with subsection (1B) does not affect the validity of an exemption.
- (2) In section 115A(2) delete “on him by subsection (1),” and insert:
- by subsection (1) or (1A),
- (3) In section 115A(3) delete “a vessel,” and insert:
- a vessel or in vessels in a specified class of vessel,

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(4) After section 115A(3) insert:

(3A) Subsections (1B) and (1C) apply, with necessary modifications, to an allowance under subsection (3) in the same way as they apply to an exemption under this section.

(5) In section 115A(4) delete “he” and insert:

the chief executive officer

(6) After section 115A(4) insert:

(5) A person who fails to comply with a condition to which an exemption or allowance is subject commits an offence.

Penalty for this subsection: a fine of \$5 000.

**78. Part VIII Division 4 heading inserted**

After section 115A insert:

**Division 4 — Inspectors and authorised persons**

**79. Sections 116 to 118 replaced**

Delete sections 116 to 118 and insert:

**117. Designation**

- (1) The chief executive officer may, by instrument in writing, designate an officer of the Department or any other person to be an inspector or authorised person for the purposes of specified provisions of this Act.
- (2) The chief executive officer may, by instrument in writing, designate the members of a class of police officer as inspectors for the purposes of specified provisions of this Act.
- (3) A designation may be limited by reference to specified purposes or specified cases, or both.

**118. Identity cards**

- (1) The chief executive officer must issue an identity card to each inspector and authorised person, other than a police officer.
- (2) An identity card must —
  - (a) be in a form approved by the chief executive officer; and
  - (b) contain a recent photograph or digital image of the inspector or authorised person; and
  - (c) specify that the person is an inspector or authorised person under this Act.
- (3) A person who ceases to be an inspector or authorised person must, as soon as practicable, return their identity card to the chief executive officer or to another

person authorised by the chief executive officer to receive it.

Penalty for this subsection: a fine of \$1 000.

- (4) Subsection (3) does not apply if the identity card has been lost or destroyed.
- (5) The production in any proceedings of an identity card is, in the absence of evidence to the contrary, sufficient evidence of the designation of the inspector or authorised person to whom the card relates.

**118A. Proof of authority**

- (1) An inspector or authorised person, other than a police officer, must produce their identity card if requested to do so by a person in relation to whom the inspector or authorised person has exercised, or is about to exercise, a power under this Act.
- (2) A police officer who is not in uniform must produce evidence that they are a police officer if requested to do so by a person in relation to whom the police officer has exercised, or is about to exercise, a power under this Act.

**118B. Persons assisting inspectors and authorised persons**

- (1) An inspector or authorised person intending to exercise a power under this Act may authorise as many other persons as are reasonably necessary in the circumstances to assist in the exercise of the power.
- (2) Anything lawfully done by a person assisting an inspector or authorised person under this section is taken for all purposes to have been done by the inspector or authorised person.

- (3) A person assisting an inspector or authorised person to exercise a power must, in doing so, comply with any reasonable directions of the inspector or authorised person.

Penalty for this subsection: a fine of \$2 000.

**80. Part VIII Division 5 heading inserted**

Before section 119 insert:

**Division 5 — Certain offences**

**81. Section 119 amended**

In section 119:

- (a) after “a person” insert:

(the *official*)

- (b) delete “him” and insert:

the official

- (c) delete “\$2 000” and insert:

\$5 000

- (d) delete “that person” and insert:

the official

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(e) delete “he” and insert:

the official

(f) delete “his” and insert:

their

**82. Section 120 amended**

In section 120 delete the Penalty and insert:

Penalty:

- (a) for an individual — a fine of \$5 000;
- (b) for a body corporate — a fine of \$10 000.

**83. Section 120A replaced**

Delete section 120A and insert:

**120A. Inspector may request details**

- (1) An inspector may request any person whom the inspector believes on reasonable grounds to have committed an offence under this Act to give the inspector 1 or more of the following —
  - (a) the person’s name;
  - (b) the person’s residential address;
  - (c) the person’s date of birth;
  - (d) evidence of the person’s identity.

- (2) A person who fails to comply with a request made under subsection (1) or who gives false information when such a request is made commits an offence.

Penalty for this subsection: a fine of \$5 000.

**84. Section 121 amended**

- (1) In section 121(1):

- (a) in paragraph (a) delete “himself” and insert:

themselves

- (b) in paragraph (c) delete “he” and insert:

the person

- (2) In section 121(1) delete the Penalty and insert:

Penalty for this subsection:

- (a) for an individual — a fine of \$3 000;  
(b) for a body corporate — a fine of \$10 000.

**85. Sections 122 to 124 deleted**

Delete sections 122 to 124.

**86. Part VIII Divisions 6 to 8 inserted**

At the end of Part VIII insert:

**Division 6 — Liability**

**122. Liability of chief executive officer and owner for costs and compensation in relation to detained vessels**

- (1) If a vessel is detained under section 61 and subsection (3) does not apply, the owner of the vessel is liable to pay to the chief executive officer the reasonable costs of and incidental to the detention and inspection of the vessel, which costs are, without prejudice to any other remedy, recoverable by the chief executive officer in a court of competent jurisdiction.
- (2) For the purposes of subsection (1), the costs referred to include the costs of and incidental to any proceeding before the State Administrative Tribunal under section 63C and the remuneration of any person designated under section 63(2) to inspect the vessel and provide a report.
- (3) If there was no reasonable cause for the detention of a vessel under section 61, the chief executive officer is liable to pay the owner of the vessel —
  - (a) the owner's costs of and incidental to the detention and inspection of the vessel; and
  - (b) compensation for any loss or damage sustained by the owner by reason of the detention or inspection.

**123. No liability for certain acts and omissions**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the

performance or purported performance of a function under this Act.

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

### **Division 7 — Administration**

#### **124. Delegation by Minister**

- (1) The Minister may delegate to a person any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) If a power or duty is delegated to the chief executive officer, the delegation may expressly authorise the chief executive officer to further delegate the power or duty under section 124A.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

**124A. Delegation by chief executive officer**

- (1) The chief executive officer may delegate to a person any power or duty of the chief executive officer under another provision of this Act.
- (2) The delegation must be in writing signed by the chief executive officer.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

**124B. Agreement for performance of chief executive officer's functions**

- (1) The chief executive officer may enter into an agreement providing for the chief executive officer's functions under this Act that are described in the agreement to be performed on behalf of the chief executive officer.
- (2) The agreement may be with the Commissioner of Police, a local government, or any other person or body, whether or not the person or body has itself functions of a public nature.
- (3) A function described in the agreement may be performed —
  - (a) in accordance with the agreement; and
  - (b) on the terms and subject to the conditions in the agreement.

- (4) If the performance of a function is dependent upon the opinion, belief or state of mind of the chief executive officer, it may be performed under the agreement upon the opinion, belief or state of mind of the person with whom the agreement is made or another person provided for in the agreement.
- (5) The chief executive officer may disclose the following to the person with whom the agreement is made if the chief executive officer considers that the disclosure is required for the purposes of the performance of a function under the agreement —
  - (a) marine qualification information;
  - (b) mooring information;
  - (c) vessel information.
- (6) For the purposes of this Act or any other written law, an act or thing done by, to, by reference to, or in relation to, a person in connection with the performance by that person under the agreement of a function of the chief executive officer is as effectual as if it had been done by, to, by reference to or in relation to, the chief executive officer.

### **Division 8 — Miscellaneous**

#### **124C. Giving notices, orders, directions and other documents**

- (1) In this section —  
*electronic means* includes —
  - (a) an electronic database or document system; and
  - (b) any other means by which a document can be accessed electronically.

- (2) The regulations may make provision for and in relation to the following —
  - (a) the giving of a direction, order, notice or other document required or permitted to be given under this Act (including giving by electronic means);
  - (b) the time at which the direction, order, notice or document is taken to have been given;
  - (c) the means of satisfying a requirement under this Act in relation to a document in writing (for example, a requirement that the original of a document be given or that a document be signed) if the document is given by electronic means.
- (3) This section applies to a requirement or permission to give a document whether the expression “give”, “send” or “serve”, or any other word or expression, is used.

**124D. Fixing notices, orders, directions and other documents on or near vessels**

- (1) If a person is required or permitted under this Act to give a direction, order, notice or other document to the master or owner of a vessel or a person who has or had possession or control of a vessel, but that cannot be conveniently done, the document is effectively given if it is —
  - (a) given to the owner of the vessel; or
  - (b) fixed in a prominent place on or near the vessel.
- (2) This section applies to a requirement or permission to give a document whether the expression “give”, “send” or “serve”, or any other word or expression, is used.

**124E. Making certain things publicly available**

A requirement under this Act to make a notice or other thing publicly available may be satisfied by it being published on the Department's website.

**124F. Application of *Criminal and Found Property Disposal Act 2006***

The Department is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

**87. Part IX heading amended**

In the heading to Part IX delete “**Part IX —**” and insert:

**Part 9 —**

**88. Section 125A amended**

In section 125A delete “against” and insert:

under

**89. Section 127 amended**

In section 127(1):

(a) in paragraph (b) delete “his” and insert:

the person's

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**90. Section 128 deleted**

Delete section 128.

**91. Section 129 replaced**

Delete section 129 and insert:

**129. Averments relating to vessels**

In a prosecution under this Act, an averment in the charge as to 1 of the following matters is, in the absence of evidence to the contrary, sufficient evidence of the matter —

- (a) that a person is, or was at a specified time, the owner, master or operator of a specified vessel;
- (b) that a specified vessel is, or was at a specified time, a domestic commercial vessel, a pleasure vessel or a prescribed vessel;
- (c) that a specified vessel is not, or was not at a specified time, exempt from a specified provision of this Act;
- (d) that a specified vessel is, or was at a specified time, registered or licensed or required to be registered or licensed under an Act;
- (e) that a vessel is or was in or used in navigable waters.

**92. Section 130 amended**

In section 130:

- (a) delete “manning” and insert:

crewing

(b) after “particular certificate” insert:

or qualification

(c) delete “shall be deemed to be” and insert:

or qualification is

Note: The heading to amended section 130 is to read:

**Averment relating to qualifications of crew**

**93. Section 132 amended**

(1) In section 132(1):

(a) delete “has reason to believe that a person has committed an offence against this Act in connection with a vessel,” and insert:

believes on reasonable grounds that a person has committed an offence under this Act,

(b) after “a notice” insert:

(an *infringement notice*)

(2) In section 132(2):

(a) delete “An” and insert:

If the alleged offence was allegedly committed in connection with a vessel, an

(b) in paragraph (a) delete “ascertained,” and insert:

ascertained —

- (c) in paragraph (b) delete “enquiry,” and insert:

enquiry —

- (3) In section 132(8) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

- (4) In section 132(11) delete the definitions of:

*authorised person*

*infringement notice*

- (5) In section 132(11) insert in alphabetical order:

*authorised person* includes an inspector;

- (6) In section 132(11) in the definition of *designated officer* delete “subsection (10); and” and insert:

subsection (10).

**94. Section 133 amended**

- (1) In section 133(1):

- (a) in paragraph (a) delete “his” and insert:

the owner’s or other person’s

(b) in paragraph (b) delete “any” and insert:

the

(c) in paragraph (b) delete “when an offence against” insert:

at the time when an offence under

(2) In section 133(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$3 000.

(3) In section 133(2):

(a) delete “against” and insert:

under

(b) after “committed” (1<sup>st</sup> occurrence) insert:

in connection with a vessel

(4) In section 133(5) in the definition of *authorised person* delete  
“the meaning given” and insert:

a meaning affected

**95. Section 134 deleted**

Delete section 134.

**96. Part X heading replaced**

Delete the heading to Part X and insert:

**Part 10 — Repeal and transitional provisions**

**97. Part X Division 1 heading inserted**

At the beginning of Part X insert:

**Division 1 — *Western Australian Marine Act 1982***

**98. Section 136 deleted**

Delete section 136.

**99. Part X Division 2 inserted**

At the end of Part X insert:

**Division 2 — *Marine Safety (Domestic Commercial  
Vessel National Law Application) Act 2023***

**136. Certain orders, notices, exemptions and certificates**

- (1) An order in effect under section 66(1) immediately before the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 50(1) comes into operation has effect on and after that day as if made by the chief executive officer under section 66(1).
- (2) A notice in effect under section 67(1) immediately before the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application)*

*Act 2023* section 51 comes into operation has effect on and after that day as if it were an order under section 67(1).

- (3) A notice in effect under section 99(2) immediately before the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 69 comes into operation has effect on and after that day as if it were an exemption granted under section 115A(1), to the extent not inconsistent with section 115A(1).
- (4) An exemption in effect under section 99(3) immediately before the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 69 comes into operation has effect on and after that day as if it were granted under section 115A(1) or (1A) or both.
- (5) A certificate in effect under section 118 or 134 immediately before the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 79 comes into operation continues to have effect on and after that day as if it were an identity card issued under section 118 on the same terms and conditions as the certificate.
- (6) An order, notice, exemption or certificate that has effect under this section has effect subject to this Act.

### **137. Transitional regulations**

- (1) In this section —  
*commencement day* means the day on which the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* section 36 comes into operation;

**publication day**, in relation to transitional regulations, means the day on which the transitional regulations are published on the WA legislation website;

**transitional regulations** means regulations made for the purposes of subsection (2).

- (2) The regulations may deal with matters of a transitional, savings or application nature arising in connection with the enactment of the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* Parts 9 and 10.
- (3) Transitional regulations cannot be made after the end of the period of 2 years beginning on commencement day.
- (4) If transitional regulations provide that a state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than publication day, but not earlier than commencement day, the regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
  - (a) affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before publication day; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day.

**100. Schedule 6 deleted**

Delete Schedule 6.

## **Part 10 — Other Acts amended or repealed**

### **Division 1 — *Constitution Acts Amendment Act 1899* amended**

**101. Act amended**

This Division amends the *Constitution Acts Amendment Act 1899*.

**102. Schedule V amended**

In Schedule V Part 3 delete the item relating to the Western Australia Marine Manning Committee.

### **Division 2 — *Marine and Harbours Act 1981* amended**

**103. Act amended**

This Division amends the *Marine and Harbours Act 1981*.

**104. Section 18A amended**

In section 18A(13) delete “certificate” and insert:

identity card

### **Division 3 — *Personal Property Securities (Commonwealth Laws) Act 2011* amended**

**105. Act amended**

This Division amends the *Personal Property Securities (Commonwealth Laws) Act 2011*.

**106. Section 17 amended**

In section 17(1) in the definition of *relevant State property law* paragraph (i) delete “section 62;” and insert:

sections 61 to 63C;

**Division 4 — *Pilots' Limitation of Liability Act 1962* amended**

**107. Act amended**

This Division amends the *Pilots' Limitation of Liability Act 1962*.

**108. Section 3 amended**

In section 3 delete “*Navigation Act 1912* of the Parliament of the Commonwealth,” and insert:

*Navigation Act 2012* (Commonwealth),

**Division 5 — *Pollution of Waters by Oil and Noxious Substances Act 1987* amended**

**109. Act amended**

This Division amends the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

**110. Section 3 amended**

(1) In section 3(1) delete the definitions of:

*Australian fishing vessel*

*Tonnage Measurement Convention*

*trading ship*

- (2) In section 3(1) insert in alphabetical order:

*Tonnage Convention* has the meaning given in the  
*Navigation Act 2012* (Commonwealth) section 14(1);  
*trading ship* has the meaning given in the *Shipping  
Registration Act 1981* (Commonwealth) section 3(1).

- (3) Delete section 3(4).  
(4) In section 3(6) delete “Measurement”.

**111. Section 8 amended**

In section 8(6):

- (a) delete paragraph (a)(v) and insert:

(v) the oil tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulations made under the *Navigation Act 2012* (Commonwealth) section 340;

- (b) delete paragraph (b)(iv) and insert:

(iv) the ship has in operation an oil discharge monitoring and control system, oily-water separating equipment, oil filtering equipment or other installation as required by regulations made under the *Navigation Act 2012* (Commonwealth) section 340;

**Marine Safety (Domestic Commercial Vessel National Law Application)  
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**Part 10** Other Acts amended or repealed

**Division 5** Pollution of Waters by Oil and Noxious Substances Act 1987  
amended

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(c) delete paragraph (e)(iii) and insert:

(iii) the ship has in operation oil filtering equipment as required by regulations made under the *Navigation Act 2012* (Commonwealth) section 340;

(d) delete paragraph (g)(iii) and insert:

(iii) the ship has in operation oil filtering equipment as required by regulations made under the *Navigation Act 2012* (Commonwealth) section 340;

**112. Section 13 amended**

Delete section 13(1) and insert:

- (1) This section applies to a ship that is in State waters and —
- (a) is an oil tanker; or
  - (b) has a gross tonnage of 400 or more and is not an oil tanker.

**113. Section 23 amended**

In section 23(1) delete “proceeding on an intra-state voyage” and insert:

in State waters

**Division 6 — Sentencing Act 1995 amended**

**114. Act amended**

This Division amends the *Sentencing Act 1995*.

**115. Section 107 amended**

- (1) In section 107(5) delete the definition of *vessel* and insert:

*vessel* has the meaning given in the *Western Australian Marine Act 1982* section 3(1).

- (2) In section 107(5) in the definition of *marine qualification* delete “certificate of competency or any other”.

**Division 7 — Supreme Court Act 1935 amended**

**116. Act amended**

This Division amends the *Supreme Court Act 1935*.

**117. Section 30 amended**

In section 30 delete “*Navigation Act 1912*.” and insert:

*Navigation Act 2012* (Commonwealth).

Note: The heading to amended section 30 is to read:

**Sections 26 to 28 subject to *Navigation Act 2012* (Cwlth)**

**Division 8 — *Waterways Conservation Act 1976* amended**

**118. Act amended**

This Division amends the *Waterways Conservation Act 1976*.

**119. Section 48 amended**

Delete section 48(5a)(b) and insert:

- (b) has a carrying capacity of more than 10 passengers.

**Division 9 — *Western Australian Marine Amendment Act 1987*  
repealed**

**120. Act repealed**

The *Western Australian Marine Amendment Act 1987* is repealed.

**Division 10 — *Western Australian Marine Amendment Act 1990*  
amended**

**121. Act amended**

This Division amends the *Western Australian Marine Amendment Act 1990*.

**122. Section 4 amended**

Delete section 4(d).

**123. Sections 6 to 9 and 12 deleted**

Delete sections 6, 7, 8, 9 and 12.



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## Notes

This is a compilation of the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023</i> Pt. 1-8, Pt. 9 (other than s. 44 and 54) and Pt. 10	24 of 2023	24 Oct 2023	Pt. 1: 24 Oct 2023 (see s. 2(a)); Pt. 2-8 and Pt. 10 (other than Div. 1-5 and 7-10): 16 Dec 2023 (see s. 2(b) and SL 2023/190 cl. 2); Pt. 9 (s. 36-38, 39(2)-(7), 40-43, 45, 47-53, 55, 57-68, 71, 75, 77, 81-84, 87-89, 91-94 and 96-100) and Pt. 10 Div. 1-5 and 7-10: 21 Dec 2023 (see s. 2(b) and SL 2023/203 cl. 2); s. 39(1), 46, 56, 69, 70, 72-74, 76, 78-80, 85, 86, 90 and 95: 2 May 2024 (see cl. 2(b) and SL 2024/55 cl. 2)

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023</i> s. 44 and 54	24 of 2023	24 Oct 2023	To be proclaimed (see s. 2(b))

## 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>
accredited person .....	26(1)
amend.....	4(1)
amending Act.....	4(1)
applied provisions .....	4(1)
commencement day .....	4(1)
Commonwealth administrative laws .....	4(1)
Commonwealth domestic commercial vessel national law.....	4(1)
disallowance period .....	8(1)
disallowance resolution.....	8(1)
Domestic Commercial Vessel National Law .....	6(1)
legislative instrument .....	4(1)
Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth.....	4(1)
notice period .....	8(1)
parliamentary committee .....	11(1)
participating jurisdiction .....	31(1)
publication day.....	35(1)
relevant Commonwealth criminal law .....	21(1)
savings or transitional provision .....	16(1)
Scheduled Law.....	4(1)
the instrument .....	15(6)
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