



Western Australia

Western Australian Marine Act 1982

Compare between:

[21 Dec 2023, 03-f0-02] and [02 May 2024, 03-g0-00]

Western Australia

Western Australian Marine Act 1982

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.

[Long Title inserted: No. 24 of 2023 s. 37.]

Part 1 — Preliminary

[Heading amended: No. 24 of 2023 s. 38.]

1. Short title

This Act may be cited as the *Western Australian Marine Act 1982*.

2. Commencement

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

3. Terms used

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

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

~~*alcohol or drug testing requirement*, in relation to a person, means a requirement imposed on the person under Part 3B Division 2 or 3;~~

~~*analyst* has the meaning given in the *Road Traffic Act 1974* section 65;~~

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

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

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

~~*Australian fishing vessel* means a fishing vessel that is registered, or entitled to be registered, in Australia or in relation to which an instrument under section 4(2) of the *Fisheries Act 1952*¹ of the Commonwealth is in force;~~

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

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;

BAC, in relation to a person, means the concentration of alcohol in the person's blood, expressed in grams of alcohol per 100 mL of blood;

Example for this definition:

A BAC of 0.08 g is a concentration of 0.08 g of alcohol per 100 mL of blood.

bodily harm has the meaning given in *The Criminal Code* section 1(1);

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

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

Chemistry Centre (WA) means the body established by the *Chemistry Centre (WA) Act 2007* section 4(1);

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

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

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

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

dentist means a person —

- (a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession; and
- (b) whose name is entered on the dentists division of the Register of Dental Practitioners kept under that Law;

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

detained vessel means a vessel detained under section 61;

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

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

drug has the meaning given in the *Road Traffic Act 1974* section 65;

drugs analyst has the meaning given in the *Road Traffic Act 1974* section 65;

equipment in relation to a vessel, includes every thing or article belonging to or to be used in connection with, or necessary for the navigation and safety of, the vessel and, in particular, includes boats, tackle, pumps, apparel, furniture, lifesaving appliances, spars, masts, rigging, sails, fog signals, lights, signals of distress, signalling lamps, pilot ladders, radio equipment, medicines, medical and surgical stores and appliances, fire prevention, detecting and extinguishing appliances, inert gas systems, echo-sounding devices,

mechanical pilot hoists, buckets, compasses, charts, axes, lanterns and gear and apparatus for loading or unloading, or otherwise handling, cargo, and includes also such other things as may be prescribed;

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

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

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

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;

~~**Government vessel** means a ship~~

~~(a) that belongs to the Commonwealth or a State or Territory of the Commonwealth; or~~

~~(b) the beneficial interest in which is vested in the Commonwealth or a State or Territory of the Commonwealth; or~~

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

grievous bodily harm has the meaning given in *The Criminal Code* section 1(1);

identity card means an identity card issued under section 118;

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

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

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

~~(a) operations within a limit of 15 nautical miles to seaward of the coast but not more than 30 nautical miles from a safe anchorage; or~~

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

inspector means —

(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;

leave vessel, accompany officer or wait requirement, in relation to a person, means a requirement imposed on the person under section 75G;

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

marine qualification means —

(a) a WA marine qualification; or

(b) a qualification, permit, licence or certificate (however described) issued to a person —

(i) in relation to navigating or operating a vessel (as those terms are defined in section 75AA(1) and (2)), or required by crew of a vessel; and

- (ii) under a law of another Australian jurisdiction or an overseas jurisdiction;

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;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

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

mooring information has the meaning given in section 107;

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

nurse practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession whose registration under that Law is endorsed as nurse practitioner;

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;

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

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

- ~~(a) operations within a limit of 200 nautical miles to seaward of the coast; or~~

~~(b) operations within such lesser limits as the chief executive officer may specify;~~

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

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

passenger means every person on board a vessel other than —

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

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

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;

pilot means a person who does not belong to, but has the conduct of, a 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;

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

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

prescribed means prescribed by regulations made under this Act;

prescribed illicit drug means a drug that is —

- (a) a prescribed illicit drug as defined in the *Road Traffic Act 1974* section 65; or
- (b) a drug prescribed for the purposes of this definition;

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;

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

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

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

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

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;

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

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

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

~~(a) members of the crew engaged in navigation, engineering or maintenance of the vessel or attached to the vessel to provide services for other persons on board; or~~

~~(b) directly or indirectly paying passengers;~~

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;

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

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

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

~~(a) the carriage of passengers or cargo for hire or reward; or~~

~~(b) the provision of services to ships or shipping, whether for reward or otherwise,~~

~~but does not include a fishing vessel;~~

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.

~~wages~~ includes emoluments of any kind;

WA marine qualification means a qualification, including a licence, issued to a person under this Act that authorises the person to navigate a vessel (as defined in section 75AA(2)).

- (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).

[Section 3 amended: No. 35 of 1990 s. 4 and 21; No. 47 of 1993 s. 33(1); No. 57 of 1997 s. 130(1); No. 7 of 2004 s. 70; No. 55 of 2004 s. 1309; No. 24 of 2023 s. 39(21)-(7); No. 31 of 2023 s. 4.]

s. 3A

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

[Section 3A inserted: No. 24 of 2023 s 40; amended: No 31 of 2023 s. 5.]

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.

[Section 3B inserted: No. 24 of 2023 s. 40.]

4. Act not to apply to naval ships etc.

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

5. Application to Crown

This Act binds the Crown.

Part 2 — Powers of inspectors

[Heading inserted: No. 24 of 2023 s. 42.]

Division 1 — Preliminary

[Heading inserted: No. 24 of 2023 s. 42.]

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 an inspector — means the inspector'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.

[Section 6 inserted: No. 24 of 2023 s. 42; amended: No. 31 of 2023 s. 6.]

Division 2 — General powers

[Heading inserted: No. 24 of 2023 s. 42.]

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

[Heading inserted: No. 24 of 2023 s. 42.]

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).

[Section 7 inserted: No. 24 of 2023 s. 42.]

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.

[Section 8 inserted: No. 24 of 2023 s. 42.]

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;
 - (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.

[Section 9 inserted: No. 24 of 2023 s. 42.]

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.

[Section 10 inserted: No. 24 of 2023 s. 42.]

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.

[Section 11 inserted: No. 24 of 2023 s. 42.]

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

[Heading inserted: No. 24 of 2023 s. 42.]

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.

[Section 12 inserted: No. 24 of 2023 s. 42.]

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.

[Section 13 inserted: No. 24 of 2023 s. 42.]

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.
[Section 14 inserted: No. 24 of 2023 s. 42.]

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.
[Section 15 inserted: No. 24 of 2023 s. 42.]

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.

[Section 16 inserted: No. 24 of 2023 s. 42.]

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.

[Section 17 inserted: No. 24 of 2023 s. 42.]

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

[Heading inserted: No. 24 of 2023 s. 42.]

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).

[Section 18 inserted: No. 24 of 2023 s. 42.]

[Subdivision 4 — Obtaining business records](#)

[Heading inserted: No. 31 of 2023 s. 7.]

18A. Terms used

In this Subdivision —

business means any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling;

business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

order to produce means an order issued under section 18D.

[Section 18A inserted: No. 31 of 2023 s. 7.]

18B. Application of this Subdivision

(1) An order to produce must not be issued under this Subdivision to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.

(2) This Subdivision does not prevent an inspector from applying for a warrant in relation to a business record, whether before or after the issue of an order to produce.

[Section 18B inserted: No. 31 of 2023 s. 7.]

18C. Application for order to produce

(1) An inspector may apply for an order to produce a business record for the purpose of investigating a suspected contravention of this Act.

(2) An application for an order to produce must be made in person to a JP.

(3) An application for an order to produce a business record must —

(a) state the applicant's official details; and

- (b) state the suspected contravention of this Act in relation to which the order is required; and
- (c) state the grounds on which the applicant suspects that the contravention has occurred; and
- (d) set out the prescribed information (if any); and
- (e) state the name of the person to whom the order will apply; and
- (f) state that the person is not suspected of having committed an offence under this Act to which the business record relates; and
- (g) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and
- (h) state the grounds on which the applicant suspects the business record or class of business record is relevant to the investigation; and
- (i) state whether the original or a copy of the business record or class of business record is required.

[Section 18C inserted: No. 31 of 2023 s. 7.]

18D. Issue of order to produce

- (1) On an application made under section 18C, a JP may issue an order to produce a business record if satisfied, by information on oath and in respect of each of the matters in section 18C(3) that the applicant suspects, that there are reasonable grounds for the applicant to have that suspicion.
- (2) However, the JP must not issue the order to produce unless the applicant or some other person has given the JP, either orally or by affidavit, any further information that the JP may require concerning the grounds on which the issue of the order to produce is sought.
- (3) An order to produce must contain the following information —

- (a) the applicant's official details;
 - (b) the name of the person to whom the order applies;
 - (c) a reasonably particular description of the business record or class of business record to be produced by the person;
 - (d) an order that the person produce the record or records;
 - (e) whether the original or a copy of the record or records is required;
 - (f) whether a paper, electronic or other version of the record or records is required;
 - (g) the place where the record or records are to be produced;
 - (h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
 - (i) the name of the JP who issued the order;
 - (j) the date and time when the order was issued.
- (4) An order to produce must be in the prescribed form.
- (5) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

[Section 18D inserted: No. 31 of 2023 s. 7.]

18E. Order to produce applied for remotely

- (1) An inspector may apply, by remote communication, to a JP for an order to produce under section 18C —
- (a) in an urgent case; or
 - (b) if the inspector believes on reasonable grounds that a JP is not available within a reasonable distance of the inspector.
- (2) The JP must not issue the order to produce 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) apply in relation to an application under this section.

[Section 18E inserted: No. 31 of 2023 s. 7.]

18F. Service of order to produce

(1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.

(2) An order to produce may be served —

(a) by personal service or by post; or

(b) with the consent of the person to be served, by email or fax or in another agreed way.

[Section 18F inserted: No. 31 of 2023 s. 7.]

18G. Effect of order to produce

(1) An order to produce has effect according to its contents.

(2) A person who is served with an order to produce and who, without reasonable excuse, fails to comply with it commits an offence.

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

[Section 18G inserted: No. 31 of 2023 s. 7.]

18H. Powers in relation to order to produce

(1) An inspector to whom a business record is produced under an order to produce may retain it for a reasonable time to determine its evidentiary value.

(2) An inspector to whom a business record is produced may, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis —

(a) seize the document; and

(b) whether or not the document is seized, inspect, examine, take measurements of or conduct tests on it; and

(c) make and retain a copy of it.

(3) Section 40(1)(c) does not apply in relation to a thing seized under subsection (2)(a).

(4) A person who produces a business record in compliance with an order to produce is not liable to any action or remedy by any person at common law for producing that document.

[Section 18H inserted: No. 31 of 2023 s. 7.]

Division 3 — Directions and improvement notices

[Heading inserted: No. 24 of 2023 s. 42.]

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.

[Section 19 inserted: No. 24 of 2023 s. 42.]

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.

[Section 20 inserted: No. 24 of 2023 s. 42.]

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.
[Section 21 inserted: No. 24 of 2023 s. 42.]

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.

[Section 22 inserted: No. 24 of 2023 s. 42.]

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.

[Section 23 inserted: No. 24 of 2023 s. 42.]

Division 4 — General provisions relating to powers under Part

[Heading inserted: No. 24 of 2023 s. 42.]

Subdivision 1 — General matters concerning entry and exercise of powers

[Heading inserted: No. 24 of 2023 s. 42.]

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.

[Section 24 inserted: No. 24 of 2023 s. 42.]

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.

[Section 25 inserted: No. 24 of 2023 s. 42.]

Subdivision 2 — Warrants

[Heading inserted: No. 24 of 2023 s. 42.]

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.

[Section 26 inserted: No. 24 of 2023 s. 42.]

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.

[Section 27 inserted: No. 24 of 2023 s. 42.]

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.

[Section 28 inserted: No. 24 of 2023 s. 42.]

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.

[Section 29 inserted: No. 24 of 2023 s. 42.]

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.

[Section 30 inserted: No. 24 of 2023 s. 42.]

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.

[Section 31 inserted: No. 24 of 2023 s. 42.]

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.

[Section 32 inserted: No. 24 of 2023 s. 42.]

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.

[Section 33 inserted: No. 24 of 2023 s. 42.]

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.

[Section 34 inserted: No. 24 of 2023 s. 42.]

Subdivision 3 — Securing things

[Heading inserted: No. 24 of 2023 s. 42.]

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.

[Section 35 inserted: No. 24 of 2023 s. 42.]

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.

[Section 36 inserted: No. 24 of 2023 s. 42.]

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.

[Section 37 inserted: No. 24 of 2023 s. 42.]

Subdivision 4 — Seizing and detaining things

[Heading inserted: No. 24 of 2023 s. 42.]

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~~[following persons](#) may request the inspector to give a copy of the thing or the information to [that person](#) —
 - [\(a\) if the inspector seized the thing or information under section 18H\(2\)\(a\) — the person who produced the thing or the information to the inspector;](#)
 - [\(b\) otherwise — the occupier of the premises.](#)
- (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 [person or occupier](#) constitutes an offence against a law of the State or another Australian jurisdiction.

[Section 38 inserted: No. 24 of 2023 s. ~~42~~42; amended: No. 31 of 2023 s. 8.]

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.

[Section 39 inserted: No. 24 of 2023 s. 42.]

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.

[Section 40 inserted: No. 24 of 2023 s. 42.]

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.

[Section 41 inserted: No. 24 of 2023 s. 42.]

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.

[Section 42 inserted: No. 24 of 2023 s. 42.]

[43-56. Deleted: No. 24 of 2023 s. 42.]

Part 3 — Marine powers and duties

[Heading inserted: No. 24 of 2023 s. 43.]

57. General powers to stop and search vessels

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

58. Power to inspect logs and muster crew

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

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

is guilty of an offence.

Penalty: \$1 000.

58A. Compensation in respect of false distress signals

The master of a vessel who uses or displays, or causes or permits any person to use or display, any of the signals of distress, except where the vessel is in distress, is liable to pay compensation and costs incidental thereto, recoverable in any

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court of competent jurisdiction, for any labour undertaken, risk incurred, or loss sustained in consequence of the signal having been regarded as a genuine signal of distress.

[Section 58A inserted: No. 35 of 1990 s. 11; amended: No 24 of 2023 s. 45.]

58B. ~~Offence~~ Unsafe pleasure or prescribed vessels not to take unsafe ship to sea ~~be operated~~

- (1) A person ~~shall not send~~ who is the owner or ~~take~~ master of a pleasure vessel to sea if the 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 ~~ship~~ vessel.

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

- ~~(2)~~ (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) ~~that~~ the person charged used all reasonable means to ensure that the vessel was not an unsafe ~~ship~~ vessel; or
(b) ~~that~~ the ~~sending or taking~~ operation of the vessel ~~to sea~~ (where relevant) was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

- ~~(3)~~ (5) The fact that an unsafe ~~ship~~ vessel has been detained under section 61 is not a bar to proceedings under this section.

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

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

- ~~— (e) — the undermanning of the vessel,~~
~~— the vessel is unfit to proceed on its proposed voyage without risk of injury or danger to human life.~~
~~— (5) — No proceedings~~ (6) Proceedings for an offence against subsection (1) ~~shall~~ or (2) cannot be brought without the consent of the chief executive officer.

[Section 58B inserted: No. 3524 of 19902023 s. 1146.]

[59. Deleted: No. 31 of 2023 s. 9.]

60. Penalty for unlawfully assuming control

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

Penalty: a fine of \$5 000.

[Section 60 amended: No. 24 of 2023 s. 48.]

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.

[Section 61 inserted: No. 24 of 2023 s. 49.]

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.

[Section 62 inserted: No. 24 of 2023 s. 49.]

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;

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- (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.

[Section 63 inserted: No. 24 of 2023 s. 49.]

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.

[Section 63A inserted: No. 24 of 2023 s. 49.]

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.

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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.

[Section 63B inserted: No. 24 of 2023 s. 49.]

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.

[Section 63C inserted: No. 24 of 2023 s. 49.]

64. Marine incidents: terms used

In this section and sections 64A, 64B and 64D —

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 vessel; and
- (b) paragraph (i) of that definition were omitted.

[Section 64 inserted: No. 24 of 2023 s. 49; amended: No. 31 of 2023 s. 10.]

64A. Marine incidents: duties

- (1) If a vessel is involved in a marine incident, the master of the vessel must do each of the following, 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;
 - (b) render assistance to persons and other vessels involved in the incident;
 - (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) The master of a vessel commits a crime if —
 - (a) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, a person; and
 - (b) the master, without reasonable excuse, fails to comply with subsection (1)(a) or (b) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of a person — imprisonment for 20 years;
- (b) if the marine incident occasions grievous bodily harm to a person — imprisonment for 14 years;

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- (c) if the marine incident occasions bodily harm to a person — imprisonment for 10 years.

Summary conviction penalty for this subsection in a case in which the marine incident does not occasion the death of, or grievous bodily harm to, a person: imprisonment for 3 years.

- (2A) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
 - (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — for a period of not less than 2 years;
 - (b) if the marine incident occasions bodily harm to a person — for a period of not less than 12 months.
- (3) The master of a vessel commits an offence if the master, without reasonable excuse, fails to comply with subsection (1)(a), (b) or (c).

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

[Section 64A inserted: No. 24 of 2023 s. 49; amended: No. 31 of 2023 s. 11.]

64B. Marine incidents: reporting

- (1) This section applies if a 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 each of 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.
- (3) However, if either of the master or owner of the vessel complies with subsection (2), the other need not comply with subsection (2).
- (3A) A person commits a crime if —
 - (a) the person is the master or owner of a vessel; and
 - (b) the vessel is involved in a marine incident that occasions the death of, or grievous bodily harm or bodily harm to, another person; and
 - (c) the person, without reasonable excuse, fails to comply with subsection (2) in relation to the incident.

Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm to, a person — imprisonment for 10 years;
- (b) if the marine incident occasions bodily harm to a person — imprisonment for 12 months.

Summary conviction penalty for this subsection in a case in which the marine incident occasions the death of, or grievous bodily harm to, a person: imprisonment for 12 months.

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(3B) A court sentencing a person for an offence against subsection (3A) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 12 months.

(3C) A person commits an offence if —

- (a) the person is the master or owner of a vessel; and
- (b) the person, without reasonable excuse, fails to comply with subsection (2).

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

(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).

[Section 64B inserted: No. 24 of 2023 s. 49; amended: No. 31 of 2023 s. 12.]

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.

[Section 64C inserted: No. 24 of 2023 s. 49.]

64D. Marine incidents: power to require responsible person to give information

- (1) In this section —

responsible person, in relation to a vessel, means —

- (a) the master or owner of the vessel; or
- (b) another person who appears to be in possession or control of the vessel.

- (2) This section applies if a vessel is involved in a marine incident.

- (3) An inspector or police officer may require a responsible person for the vessel to give the inspector or police officer any information that —

- (a) is in the responsible person's power to give; and
- (b) may assist in identifying a person who was the master of the vessel, or operating or attempting to operate the vessel (as defined in section 75AA(1)), when the marine incident occurred.

- (4) A person who, without reasonable excuse, fails to comply with a requirement under subsection (3) commits an offence.

Penalty for this subsection:

- (a) if the marine incident occasions the death of, or grievous bodily harm or bodily harm to, a

person — imprisonment for 12 months or a fine of \$3 000;

(b) otherwise — a fine of \$3 000.

[Section 64D inserted: No. 31 of 2023 s. 13.]

65. Mooring licences

- (1) The Minister may grant a licence to any person conferring on that person the right to use, exclusively or in common with another person or other persons, the waters specified in the licence for the purpose of mooring vessels.
- (2) A licence may be granted under this section upon such terms and subject to such conditions as the Minister thinks fit.

66. Closure of waters

- (1) Where the chief executive officer is satisfied that for reasons of safety or by reason of an emergency it is expedient that any State waters should be closed to navigation or closed to navigation by vessels of a particular type or class, the chief executive officer may by order close those waters to navigation accordingly and effect shall be given to such an order in accordance with its terms.
- (2) An order under subsection (1) —
 - (a) may be served on the master of a vessel; and
 - (b) shall be published for general information in such part of the State as is likely to be affected by the order as soon as practicable and in such manner as the chief executive officer considers likely to be appropriate having regard to the circumstances and what may be practicable; and
 - (c) may be varied, renewed or cancelled by subsequent order so made; and
 - (d) has effect and the force of law in relation to the waters therein specified on and from the time of the making of the order, or such other subsequent time as is specified

in the order, and may be made so as to apply only to the period specified in the order or without specifying any such period; and

- (e) may be made so as to be unconditional and so as to apply to any vessel, or so as to provide, whether subject to conditions or unconditionally, that specified persons or vessels may be exempted; and
- (f) may confer a discretionary authority on any person therein specified.

(3) A person who —

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

is guilty of an offence.

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

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

[(5) deleted]

[Section 66 amended: No. 35 of 1990 s. 13 and 21; No. 78 of 1995 s. 137; No. 24 of 2023 s. 50.]

67. Limiting speed of vessels

- (1) The chief executive officer may by order published in the *Gazette* limit the speed at which vessels may be navigated in any State waters specified in the order.

- (2) An order published under subsection (1) may —
- [(a) *deleted*]
 - (b) apply to vessels generally or to a particular vessel or class of vessels; and
 - (c) be of general application or may apply only in relation to the time, place and circumstances specified in the order; and
 - (d) be varied or cancelled by a further order published in the *Gazette*.
- (3) A person who causes, permits or suffers a vessel to be navigated contrary to an order published under this section commits an offence.

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

[Section 67 amended: No. 35 of 1990 s. 21; No. 24 of 2023 s. 51.]

68. Speed measuring equipment

- (1) The Minister may, by notice published in the *Gazette*, approve of types of apparatus for ascertaining the speed at which a vessel is moving and may, by notice so published, revoke any such approval.
- (2) In any proceeding for an offence against this or any other Act or regulations made thereunder evidence may be given of the use of speed measuring equipment by an inspector in relation to a vessel and of the speed at which that vessel was moving as ascertained by the use of that equipment, and that evidence is *prima facie* evidence of the speed at which that vessel was moving at the time of the use of that equipment in relation to that vessel.
- (3) In any proceeding of the kind mentioned in subsection (2), evidence by an inspector that apparatus used by him was speed

measuring equipment within the meaning of this section is *prima facie* evidence of that fact.

- (4) Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act or regulations made thereunder.
- (5) In this section —
speed measuring equipment means apparatus of a type approved by the Minister under subsection (1).

69. Offences relating to hatches

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.

[Section 69 inserted: No. 24 of 2023 s. 52.]

70. Offence of being on board vessel unlawfully

- (1) A person (other than an inspector or authorised person) must not, without reasonable excuse or the permission of the master of a vessel, board or remain alongside the vessel in any port during the night.

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

- (2) The master or a police officer may apprehend and detain any person found to be offending against subsection (1) and a person so detained must be brought before a court as soon as practicable.

[Section 70 amended: No. 35 of 1990 s. 21; No. 24 of 2023 s. 53.]

71. Removal of vessels constituting hazards or obstructions

- (1) Whenever a vessel which is in navigable waters and, in the opinion of an inspector, constitutes or is likely to constitute a hazard or obstruction to other vessels using those waters, whether as a result of being abandoned, derelict, stranded, sunk, unfit for sea service, wrecked or otherwise, the chief executive officer may, by notice in writing served on the owner of that vessel or, if the identity or whereabouts, or both, of the owner of that vessel cannot be ascertained after the making of reasonable inquiries, published once in a newspaper circulating through out the State, declare that vessel to be a navigational hazard and require that vessel to be removed within such period, being not less than 7 days after the date of service or publication of that notice, as is specified in that notice from all navigable waters or to a place specified in that notice.
- (2) If a requirement under subsection (1) is not complied with, the chief executive officer may remove or cause to be removed the navigational hazard from all navigable waters or to the place specified in the notice referred to in that subsection, as the case may be.
- (3) The cost of removal under subsection (2) is a debt due to the Crown and a first charge in priority to all other claims on the navigational hazard.
- (4A) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 73(2)(a), it is declared that section 73(2) of that Act applies to a charge created under subsection (3).
- (4B) The chief executive officer may recover the cost of removal under subsection (2) by —
 - (a) action in a court of competent jurisdiction against the owner of the navigational hazard; or
 - (b) selling or causing to be sold the navigational hazard.

- (4C) If under subsection (4B)(b) any navigational hazard is sold in good faith to a person and the person takes the property in good faith, the person receives good title to the navigational hazard against every other person including its true owner.
- (4) The proceeds of a sale referred to in subsection (4B)(b) shall be applied —
- (a) first in payment of the costs of that sale; and
 - (b) secondly in payment of the costs of removing the navigational hazard,

and the balance, if any, of those proceeds shall be paid to the owner of the navigational hazard or, if the identity or whereabouts, or both, of that owner cannot be ascertained after making reasonable inquiries, credited to the Consolidated Account.

- (5) In this section, *waters* means waters within —
- (a) the territorial sea adjacent to the State; and
 - (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
 - (c) waters within the limits of the State.

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

72. Offences in relation to disorderly persons on passenger ships

- (1) A person who —
- (a) being drunk or disorderly, has been on that account refused admission into a passenger ship by the owner or any person in his employ, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship; or

- (b) being drunk or disorderly on board such ship, is requested by the owner or any person in his employ to leave her at any place which she visits in the State, and, having had the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request; or
- (c) being on board any such ship, after warning by the master or any other officer of the ship, molests or continues to molest any passenger; or
- (d) having boarded such ship without permission of the master or other officer in authority, refuses to leave the ship after being requested to do so by the master or officer; or
- (e) after having been refused admission into any such ship by the owner or any person in his employ on account of the ship being full, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship; or
- (f) having boarded any such ship, upon being requested by the owner or any person in his employ to leave the ship before she has quitted the place at which such person boarded on account of the ship being full, and, upon having the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request; or
- (g) travels or attempts to travel in any such ship without having previously paid the fare when demanded and with intent to avoid payment of the fare; or
- (h) having paid the fare for a certain distance, knowingly and wilfully proceeds in any such ship beyond that distance without previously paying the additional fare for the additional distance when demanded and with intent to avoid payment of the additional fare; or

- (i) knowingly and wilfully refuses or neglects, on arriving at the place or point to which he has paid the fare, to quit the ship; or
- (j) being on board any such ship does not, when required by the master or other officer of such ship, either pay the fare or exhibit such ticket or other receipt (if any) showing the payment of the fare as is usually given to persons travelling by the ship and paying the fare,

is guilty of an offence.

Penalty: \$500.

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

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

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

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

is guilty of an offence.

Penalty: \$1 000.

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

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

Penalty: \$500.

75. Arrest of offenders on passenger ships

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

Part 3A — Safe navigation of vessels, and alcohol and drug related offences

[Heading inserted: No. 31 of 2023 s. 14(1).]

Division 1 — Preliminary

[Heading inserted: No. 31 of 2023 s. 14(1).]

75A. Terms used

In this Part —

0.08+ and illicit drug offence means an offence against section 75DD(1);

0.08+ offence means an offence against section 75DA(1);

circumstances of aggravation has the meaning given in section 75AF;

involved, for a vessel in relation to an incident, has the meaning given in section 75AB;

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1).

[Section 75A inserted: No. 31 of 2023 s. 14(1).]

75AA. When individual operates or navigates vessel

- (1) An individual **operates** a vessel if the individual —
 - (a) determines or exercises control over the course or direction of the vessel, or the means of propulsion of the vessel, whether or not the vessel is underway or being towed by another vessel; or
 - (b) pilots the vessel.
- (2) An individual **navigates** a vessel if the individual —
 - (a) operates the vessel; or

- (b) is in command or charge of the vessel while the individual, or another individual or other individuals, operate or attempt to operate the vessel.

[Section 75AA inserted: No. 31 of 2023 s. 14(1).]

75AB. When vessel is involved in incident

A vessel is *involved* in an incident if —

- (a) the presence of the vessel occasioned the incident; or
- (b) the use of the vessel is an immediate or proximate cause of the death of, or injury to, a person or damage to property occasioned by the incident.

[Section 75AB inserted: No. 31 of 2023 s. 14(1).]

75AC. Person taken to be in command or charge of vessel for purposes of Parts 3A and 3B

- (1) This section applies for the purposes of Parts 3A and 3B and in the absence of proof to the contrary.
- (2) A person is taken to be in command or charge of a vessel at a particular time if, at that time —
 - (a) the person is the only person, or the only person who is 18 years of age or above, on the vessel; or
 - (b) the person appears, without contradiction by any other person on the vessel, to be in command or charge of the vessel; or
 - (c) the other persons on the vessel, or a majority of them, acknowledge that the person is in charge of the vessel; or
 - (d) of all the persons on the vessel, the person has ultimate control over the course or direction of the vessel, or the means of propulsion of the vessel, whether or not —
 - (i) the vessel is underway; or
 - (ii) the person is operating the vessel.

Example for this subsection:

For the purposes of paragraph (b), the person says or does something that makes them appear to be in command or charge of the vessel.

- (3) A person who owns a vessel is taken to be in command or charge of the vessel if the person —
- (a) is on the vessel; and
 - (b) holds a marine qualification that authorises the person to navigate the vessel.
- (4) A person who has command or charge of a vessel continues to have command or charge of the vessel until the person has ensured that —
- (a) the command or charge of the vessel has been handed to another person; and
 - (b) the other person has accepted the command or charge.

[Section 75AC inserted: No. 31 of 2023 s. 14(1).]

75AD. Person is incapable of having proper control of vessel

For the purposes of this Part, a reference to a person being incapable of having proper control of a vessel includes —

- (a) a reference to the person being incapable of having proper control over —
 - (i) the course or direction of the vessel; or
 - (ii) the means of propulsion of the vessel;and
- (b) a reference to the person who is the pilot of the vessel being incapable of having proper conduct of the vessel; and
- (c) a reference to the person who is the master of a vessel being incapable of having proper command or charge of the vessel.

[Section 75AD inserted: No. 31 of 2023 s. 14(1).]

75AE. Person with BAC of 0.15 or above taken to be incapable of proper control

- (1) This section applies in a proceeding for an offence if it is alleged that, at the time of the alleged offence, the person charged was under the influence of alcohol to such an extent as to be incapable of having proper control of a vessel.
- (2) The person is taken to have been under the influence of alcohol to that extent at the time of the alleged offence if the person had a BAC of 0.15 g or above at that time.

[Section 75AE inserted: No. 31 of 2023 s. 14(1).]

75AF. Circumstances of aggravation

- (1) For the purposes of this Part, a person commits an offence, or navigates a vessel, in *circumstances of aggravation* if at the time of the alleged offence or navigation —
 - (a) the person was unlawfully navigating the vessel without the consent of an owner or the master of the vessel; or
 - (b) if a speed limit applied to the vessel or the waters in which it was operating — the person was navigating the vessel at a speed that exceeded the speed limit by 10 knots or more; or
 - (c) the person was navigating the vessel to escape pursuit by an inspector or police officer.
- (2) Subsection (1)(c) applies whether the pursuit was proceeding, or had been suspended or terminated, at the time of the alleged offence.

[Section 75AF inserted: No. 31 of 2023 s. 14(1).]

Division 2 — Safe navigation of vessels and alcohol and drug related offences

[Heading inserted: No. 31 of 2023 s. 14(1).]

Subdivision 1 — Dangerous navigation of vessels occasioning death, grievous bodily harm or bodily harm

[Heading inserted: No. 31 of 2023 s. 14(1).]

75B. Dangerous navigation of vessel occasioning death

- (1) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning the death of another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (2) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel

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s. 75B

Section no.	Section heading
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 20 years and a fine of any amount.

- (2) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning the death of another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation — imprisonment for 20 years and a fine of any amount;
 - (b) otherwise — imprisonment for 10 years and a fine of any amount.
- (3) A court sentencing a person for an offence against subsection (1) or (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 2 years.

[Section 75B inserted: No. 31 of 2023 s. 14(1).]

75BA. Dangerous navigation of vessel occasioning grievous bodily harm

- (1) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning grievous bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (2) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm

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s. 75BA

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 14 years and a fine of any amount.

Summary conviction penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning grievous bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation — imprisonment for 14 years and a fine of any amount;
- (b) otherwise — imprisonment for 7 years or a fine of any amount.

Summary conviction penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (3) A court sentencing a person for an offence against subsection (1) or (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 2 years.

[Section 75BA inserted: No. 31 of 2023 s. 14(1).]

75BB. Dangerous navigation of vessel occasioning bodily harm

- (1) A person commits a crime if —
 - (a) a vessel navigated by the person is involved in an incident occasioning bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel while under the influence of alcohol, a drug, or alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: subsection (3) or an offence specified in the Table.

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s. 75BB

Table — Alternative offences

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 10 years and a fine of any amount.

Summary conviction penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) if the person is convicted on indictment — for a period of not less than 2 years;
 - (b) if the person is convicted summarily — for a period of not less than 18 months.
- (3) A person commits a crime if —
- (a) a vessel navigated by the person is involved in an incident occasioning bodily harm to another person; and
 - (b) at the time of the incident, the person was navigating the vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: subsection (1) or an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection:

- (a) if the offence is committed in circumstances of aggravation —
 - (i) if the person is convicted on indictment — imprisonment for 10 years or a fine of any amount;
 - (ii) if the person is convicted summarily — imprisonment for 3 years or a fine of \$36 000;
 - (b) otherwise —
 - (i) for a first offence, imprisonment for 9 months or a fine of \$9 000;
 - (ii) for a second or subsequent offence, imprisonment for 18 months or a fine of \$18 000.
- (4) A court sentencing a person for an offence against subsection (3) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) if the offence is committed in circumstances of aggravation — a period of not less than 2 years;
 - (b) otherwise — a period of not less than 12 months.

[Section 75BB inserted: No. 31 of 2023 s. 14(1).]

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s. 75BC

75BC. Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

- (1) A person commits an offence if —
- (a) a vessel navigated by the person is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and
 - (b) at the time of the incident, the person was navigating the vessel without due care and attention.

Alternative offence for this subsection: section 75BF (Careless navigation of vessel).

Penalty for this subsection: imprisonment for 3 years or a fine of \$36 000.

- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 3 months.

[Section 75BC inserted: No. 31 of 2023 s. 14(1).]

Subdivision 2 — Reckless, dangerous and careless navigation of vessels

[Heading inserted: No. 31 of 2023 s. 14(1).]

75BD. Reckless navigation of vessel

- (1) A person commits an offence if the person wilfully navigates a vessel in a manner that is —
- (a) inherently dangerous; or
 - (b) dangerous to the public or to any person, having regard to all the circumstances of the case.

Penalty for this subsection:

- (a) for a first offence, a fine of \$6 000;
- (b) for a second offence, a fine of \$9 000;

(c) for a third or subsequent offence, a fine of \$12 000.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

(2) If an offence against subsection (1) is committed in the circumstance of aggravation referred to in section 75AF(1)(c), the offence is a crime.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offence

Section no.	Section heading
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty for this subsection: imprisonment for 2 years.

(3) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —

(a) for an offence committed in a circumstance of aggravation —

(i) for a first or second offence, for a period of not less than 2 years; or

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- (ii) for a third or subsequent offence, permanently;
- (b) otherwise —
 - (i) for a first offence, for a period of not less than 6 months; or
 - (ii) for a second offence, for a period of not less than 12 months; or
 - (iii) for a third or subsequent offence, permanently.
- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75BD inserted: No. 31 of 2023 s. 14(1).]

75BE. Dangerous navigation of vessel

- (1) A person commits an offence if the person navigates a vessel in a manner that is dangerous to the public or to any person, having regard to all the circumstances of the case.

Alternative offence for this subsection: section 75BF (Careless navigation of vessel).

Penalty for this subsection:

- (a) for an offence committed in the circumstance of aggravation referred to in section 75AF(1)(c) — imprisonment for 3 years or a fine of \$36 000;
- (b) otherwise —
 - (i) for a first offence, a fine of \$3 000;
 - (ii) for a second or subsequent offence, a fine of \$6 000.
- (2) A court sentencing a person for an offence against subsection (1) must order that the offender is disqualified from holding or obtaining a WA marine qualification as follows —
 - (a) for an offence committed in the circumstance of aggravation referred to in section 75AF(1)(c) — for a period of not less than 2 years;

- (b) if paragraph (a) does not apply and the offence is a second or subsequent offence — for a period of not less than 12 months.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were a previous offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75B(1) or (2)	Dangerous navigation of vessel occasioning death
s. 75BA(1) or (2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1) or (3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

[Section 75BE inserted: No. 31 of 2023 s. 14(1).]

75BF. Careless navigation of vessel

A person commits an offence if the person navigates a vessel without due care and attention.

Penalty: a fine of \$1 500.

[Section 75BF inserted: No. 31 of 2023 s. 14(1).]

Subdivision 3 — Provisions relating to offences in Subdivisions 1 and 2

[Heading inserted: No. 31 of 2023 s. 14(1).]

75BG. Application of Subdivision

This Subdivision applies for the purposes of an offence against a provision of Subdivision 1 or 2.

[Section 75BG inserted: No. 31 of 2023 s. 14(1).]

75BH. Circumstances occasioning death, grievous bodily harm or bodily harm

The circumstances in which a vessel is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, a person include circumstances in which the death or harm is occasioned through any of the following —

- (a) the vessel overturning or running aground while the person is in or on the vessel (whether as a passenger or otherwise);
- (b) the person falling from the vessel, or being thrown or ejected from the vessel, while in or on the vessel (whether as a passenger or otherwise);
- (c) an impact between any object or thing and the vessel while the person is in or on the vessel (whether as a passenger or otherwise);
- (d) an impact between the person and the vessel;
- (e) an impact between the vessel and another vessel, or an object or thing, while the person is on or near the other vessel, object or thing;
- (f) an impact between the person and any object on or attached to the vessel;
- (g) an impact between the person and any object that is in motion having fallen from the vessel;

- (h) an impact between any object or thing and the person while the person is in or on the vessel (whether as a passenger or otherwise);
- (i) the vessel causing an impact between other vessels or between another vessel and any object, thing or person;
- (j) the vessel causing another vessel to overturn or run aground;
- (k) the vessel causing a person (whether as a passenger or otherwise) in or on another vessel to fall from that other vessel.

[Section 75BH inserted: No. 31 of 2023 s. 14(1).]

75BI. Provisions for offences involving incidents occasioning death, grievous bodily harm or bodily harm

- (1) This section applies for the purposes of an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person (the *casualty*).
- (2) It is immaterial that the death, grievous bodily harm or bodily harm —
 - (a) might have been avoided by proper precaution on the part of a person other than the person charged; or
 - (b) might have been prevented if the casualty received proper care or treatment.
- (3) The incident is taken to have caused the death of the casualty if —
 - (a) the incident occasions grievous bodily harm to the casualty; and
 - (b) the casualty receives surgical or medical treatment for the harm; and
 - (c) the death results from the harm or the treatment.

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- (4) Subsection (3) applies even though the immediate cause of the casualty's death was the surgical or medical treatment, if the treatment was reasonably proper in the circumstances and provided in good faith.

[Section 75BI inserted: No. 31 of 2023 s. 14(1).]

75BJ. Defence: death or harm not attributable to alcohol or drugs

- (1) This section applies if it is alleged that an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person occurred while the person charged was under the influence of alcohol, a drug, or alcohol and a drug.
- (2) It is a defence to a charge of the offence for the person charged to prove that the death, grievous bodily harm or bodily harm was not attributable to the fact that the person charged was under the influence of alcohol, the drug, or alcohol and the drug.

[Section 75BJ inserted: No. 31 of 2023 s. 14(1).]

75BK. Defence: death or harm not attributable to manner of operation or level of care and attention

- (1) This section applies if it is alleged that an offence involving an incident that occasioned the death of, or grievous bodily harm or bodily harm to, a person occurred while the person charged was navigating the vessel.
- (2) It is a defence to a charge of the offence for the person charged to prove that the death, grievous bodily harm or bodily harm was not attributable to —
- (a) the manner in which the person navigated the vessel; or
 - (b) the person's level of care or attention when navigating the vessel.

[Section 75BK inserted: No. 31 of 2023 s. 14(1).]

75BL. Defence: inspector or police officer navigating vessel in certain circumstances

- (1) This section applies if it is alleged that the person charged with an offence navigated a vessel in a manner that was —
- (a) inherently dangerous; or
 - (b) dangerous to the public or to any person.
- (2) It is a defence to a charge of the offence for the person charged to prove that, at the time of the alleged offence —
- (a) the person was on official duty as an inspector or police officer; and
 - (b) the person navigated the vessel substantially in accordance with —
 - (i) the chief executive officer's or Commissioner of Police's policies and guidelines relating to navigating vessels; and
 - (ii) a direction given under any of those policies or guidelines;
- and
- (c) it was reasonable and in the public interest for the person charged to navigate the vessel in that manner, having regard to all of the circumstances of the case.

[Section 75BL inserted: No. 31 of 2023 s. 14(1).]

Division 3 — Navigation of vessels while under the influence of alcohol or drugs or impaired by drugs

[Heading inserted: No. 31 of 2023 s. 14(1).]

75C. Navigation of vessel while under influence of alcohol or drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while under the influence of

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alcohol or a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$3 750;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$2 750 or more than \$3 750;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$2 750 or more than \$3 750;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$3 750;

- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	10 months
Second offence	30 months
Subsequent offence	Permanent

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a

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provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.
- (5) The charging of a person for an offence against this section does not limit the operation of sections 75EE, 75EF, 75EH, 75EN and 75EO.

[Section 75C inserted: No. 31 of 2023 s. 14(1).]

75CA. Navigation of vessel while under influence of both alcohol and drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while under the influence of alcohol and a drug to such an extent as to be incapable of having proper control of the vessel.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

Penalty for this subsection:

- (a) for a first offence —

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- (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$5 650;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;
- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;
- (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	Disqualification
First offence:	
(a) 1 previous conviction for a 0.08+ offence	18 months
(b) 2 or more previous convictions for a 0.08+ offence	30 months

	Disqualification
(c) 1 previous conviction for a 0.08+ and illicit drug offence	27 months
(d) 2 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence	42 months
(f) any other case	15 months
Second offence	42 months
Subsequent offence	Permanent

- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment

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s. 75CB

Section no.	Section heading
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.
- (5) The charging of a person for an offence against this section does not limit the operation of sections 75EE, 75EF, 75EH, 75EN and 75EO.

[Section 75CA inserted: No. 31 of 2023 s. 14(1).]

75CB. Defence: under influence of drug prescribed or administered for therapeutic reasons

- (1) This section applies in relation to an offence against section 75C(1) or 75CA(1) if it is alleged, or it appears on the evidence, that the person charged was under the influence of a particular drug.
- (2) It is a defence to a charge of the offence for the person charged to prove that —
- (a) the particular drug was prescribed for, or administered to, the person by a medical practitioner, nurse practitioner or dentist for therapeutic reasons; and
 - (b) the person was not aware, and could not reasonably have been expected to be aware, that the particular drug was likely to affect the person in a way that would be inconsistent with the person being capable of having proper control of a vessel.

[Section 75CB inserted: No. 31 of 2023 s. 14(1).]

75CC. Master must not permit person under influence of alcohol or drugs or both to operate vessel

The master of a vessel commits an offence if the master —

- (a) is aware or has reason to suspect that another person is under the influence of alcohol, a drug or alcohol and a drug; and
- (b) permits the other person to operate the vessel.

Penalty: a fine of \$3 750.

[Section 75CC inserted: No. 31 of 2023 s. 14(1).]

75CD. Navigation of vessel while impaired by drugs

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person is impaired by a drug.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

Penalty for this subsection:

- (a) for a first offence, a fine of not less than \$1 700 or more than \$3 750;
- (b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;

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s. 75CD

- (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.
- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —
- (a) for a first offence, for a period of not less than 10 months;
- (b) for a second offence, for a period of not less than 30 months;
- (c) for a third or subsequent offence, permanently.
- (3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, greivous bodily harm or bodily harm

Section no.	Section heading
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75CD inserted: No. 31 of 2023 s. 14(1).]

75CE. When person may be convicted of navigation of vessel while impaired by drugs offence

A person may be convicted of an offence against section 75CD(1) if the prosecutor proves that —

- (a) the person navigated, or attempted to operate, a vessel; and
- (b) at the time of the navigation or attempted operation of the vessel, 1 or more drugs were present in the person's body; and
- (c) the person's behaviour, condition or appearance was consistent with the behaviour, condition or appearance associated with a person who has consumed or used that drug or combination of drugs; and
- (d) the behaviour or condition associated with a person who has consumed or used that drug or combination of drugs would be inconsistent with the person being capable of having proper control of a vessel.

[Section 75CE inserted: No. 31 of 2023 s. 14(1).]

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s. 75CF

75CF. Defence: impaired by drug prescribed or administered for therapeutic reasons

- (1) This section applies in relation to an offence against section 75CD(1) if it is alleged, or it appears on the evidence, that the person charged was impaired by 1 or more drugs.
- (2) It is a defence to a charge of the offence for the person charged to prove that —
 - (a) the drug, or each drug, was prescribed for, or administered to, the person charged by a medical practitioner, nurse practitioner or dentist for therapeutic reasons; and
 - (b) if the person charged received the drug, or 1 of the drugs, in packaged form — the packaging did not include a label advising that the drug was likely to affect a person in a way that would be inconsistent with the person being capable of having proper control of a vessel; and
 - (c) the person charged was not aware, and could not reasonably have been expected to be aware, that the drug or combination of drugs were likely to affect the person in a way that would be inconsistent with the person being capable of having proper control of a vessel.
- (3) This section has effect despite section 75CE.

[Section 75CF inserted: No. 31 of 2023 s. 14(1).]

75CG. Rights of person charged with particular offences

- (1) This section applies if —
 - (a) a person is charged with an offence against section 75C(1), 75CA(1) or 75CD(1); and
 - (b) a sample of the person's blood was not taken under an alcohol or drug testing requirement before the person was charged.

- (2) The person has the right to be examined by a medical practitioner nominated by them, if one is available, for the purpose of arranging for a sample of the person's blood to be taken.
- (3) An inspector or police officer must —
 - (a) inform the person charged of this right; and
 - (b) make every reasonable effort to afford the person charged this right.

[Section 75CG inserted: No. 31 of 2023 s. 14(1).]

Division 4 — Navigation of vessels with particular BAC or prescribed illicit drug present

[Heading inserted: No. 31 of 2023 s. 14(2).]

75D. Navigation of vessel while BAC is 0.05 or above

- (1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person's BAC is 0.05 g or above.
- (2) If a person is convicted of an offence against subsection (1) —
 - (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
 - (b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

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Division 4 Navigation of vessels with particular BAC or prescribed illicit drug present

s. 75D

Table — Penalties and disqualification

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>≥ 0.05 g</u> <u>but <</u> <u>0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 250</u>	<u>\$1 250</u> <u>\$2 000</u> <u>6 months</u>	<u>\$1 250</u> <u>\$2 000</u> <u>8 months</u>
<u>≥ 0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 250</u>	<u>\$1 500</u> <u>\$2 000</u> <u>8 months</u>	<u>\$1 500</u> <u>\$2 000</u> <u>10 months</u>

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person's BAC when committing the previous offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were a previous offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>

<u>Section no.</u>	<u>Section heading</u>
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HG(1)	Failure to comply with drug testing requirement: BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

[\[Section 75D inserted: No. 31 of 2023 s. 14\(2\).\]](#)

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Part 3A Safe navigation of vessels, and alcohol and drug related offences

Division 4 Navigation of vessels with particular BAC or prescribed illicit drug present

s. 75DA

75DA. Navigation of vessel while BAC is 0.08 or above

(1) A person commits an offence if the person navigates, or attempts to operate, a vessel while the person's BAC is 0.08 g or above.

Alternative offence for this subsection: 75D(1) (Navigation of vessel while BAC is 0.05 or above).

(2) If a person is convicted of an offence against subsection (1) —

(a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and

(b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>≥ 0.08 g but < 0.09 g</u>	<u>Min: Max: Disq:</u>	<u>\$750 \$2 250 6 months</u>	<u>\$1 600 \$2 250 8 months</u>	<u>\$1 600 \$2 250 10 months</u>
<u>≥ 0.09 g but < 0.11 g</u>	<u>Min: Max: Disq:</u>	<u>\$850 \$2 250 7 months</u>	<u>\$1 700 \$2 250 10 months</u>	<u>\$1 700 \$2 250 13 months</u>
<u>≥ 0.11 g but < 0.13 g</u>	<u>Min: Max: Disq:</u>	<u>\$1 000 \$2 250 8 months</u>	<u>\$1 800 \$3 000 14 months</u>	<u>\$1 800 \$3 000 17 months</u>
<u>≥ 0.13 g</u>	<u>Min: Max: Disq:</u>	<u>\$1 150 \$2 250 9 months</u>	<u>\$2 400 \$3 750 18 months</u>	<u>\$2 400 \$4 500 30 months</u>

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the previous offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>

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Division 4 Navigation of vessels with particular BAC or prescribed illicit drug present

s. 75DB

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75DA inserted: No. 31 of 2023 s. 14(2).]

75DB. Navigation of vessel while prescribed illicit drug present

(1) A person commits an offence if the person navigates, or attempts to operate, a vessel while a prescribed illicit drug is present in the person's body.

Penalty for this subsection:

(a) for a first offence, a fine of \$1 250;

(b) for a second or subsequent offence, a fine of not less than \$1 250 or more than \$2 000.

(2) A court sentencing a person for a second or subsequent offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 6 months.

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75DB inserted: No. 31 of 2023 s. 14(2).]

75DC. Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

(1) A person commits an offence if the person navigates, or attempts to operate, a vessel while —

(a) the person’s BAC is 0.05 g or above; and

(b) a prescribed illicit drug is present in the person’s body.

Alternative offence for this subsection: an offence specified in the Table.

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s. 75DC

Table — Alternative offences

<u>Section no.</u>	<u>Section heading</u>
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present

(2) If a person is convicted of an offence against subsection (1) —

(a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and

(b) a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Penalties and disqualification

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>≥ 0.05 g</u> <u>but</u> <u>< 0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 900</u> <u>3 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>9 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>12 months</u>
<u>≥ 0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 900</u> <u>3 months</u>	<u>\$2 250</u> <u>\$3 000</u> <u>12 months</u>	<u>\$2 250</u> <u>\$3 000</u> <u>15 months</u>

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the previous offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75D(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>

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s. 75DD

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75DC inserted: No. 31 of 2023 s. 14(2).]

75DD. Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

(1) A person commits an offence if the person navigates, or attempts to operate, a vessel while —

(a) the person's BAC is 0.08 g or above; and

(b) a prescribed illicit drug is present in the person's body.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

<u>Section no.</u>	<u>Section heading</u>
s. 75D(1)	Navigation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present

(2) If a person is convicted of an offence against subsection (1) —

- (a) the person is liable to a penalty of a fine of not less than [the minimum fine or more than the maximum fine specified in the Table](#); and
- (b) a court sentencing the person must order that the person is [disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table](#).

Table — Penalties and disqualification

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
≥ 0.08 g but < 0.09 g	Min: Max: Disq:	\$1 150 \$3 400 9 months	\$2 400 \$3 400 12 months	\$2 400 \$3 400 15 months
≥ 0.09 g but < 0.11 g	Min: Max: Disq:	\$1 300 \$3 400 11 months	\$2 550 \$3 400 15 months	\$2 550 \$3 400 20 months

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s. 75DD

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>≥ 0.11 g</u> <u>but</u> <u>< 0.13 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 500</u> <u>\$3 400</u> <u>12 months</u>	<u>\$2 700</u> <u>\$4 500</u> <u>21 months</u>	<u>\$2 700</u> <u>\$4 500</u> <u>26 months</u>
<u>≥ 0.13 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 750</u> <u>\$3 400</u> <u>14 months</u>	<u>\$3 600</u> <u>\$5 650</u> <u>27 months</u>	<u>\$3 600</u> <u>\$6 750</u> <u>42 months</u>

Note for this Table:

≥ signifies of or more than

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person's BAC when committing the previous offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75DD inserted: No. 31 of 2023 s. 14(2).]

75DE. Mistaken belief about prescribed illicit drug is not defence

It is not a defence to a charge of an offence against section 75DB(1), 75DC(1) or 75DD(1) that the person charged took a prescribed illicit drug mistakenly believing it to be another drug if that other drug is also —

(a) a drug to which the *Misuse of Drugs Act 1981* applies;
or

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s. 75DE

(b) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3.

[Section 75DE inserted: No. 31 of 2023 s. 14(2).]

Part 3B — Testing for alcohol and drugs

[Heading inserted: No. 31 of 2023 s. 15.]

Division 1 — Preliminary

[Heading inserted: No. 31 of 2023 s. 15.]

75E. Terms used

(1) In this Part —

authorised drug tester has the meaning given in section 75EB(1);

authorised operator has the meaning given in section 75EA(1);

breath analysing equipment means —

(a) breath analysing equipment as defined in the *Road Traffic Act 1974* section 65; or

(b) a device of a type approved under section 75JA(b);

breath analysis means the analysis of a sample of a person's breath to determine the person's BAC using breath analysing equipment;

drug testing means testing a sample of a person's oral fluid for the presence of a prescribed illicit drug using a drug testing device;

drug testing device means —

(a) an approved device as defined in the *Road Traffic Act 1974* section 65; or

(b) a device of a type approved under section 75JA(d);

hospital has the meaning given in the *Health Services Act 2016* section 8(4);

involved, for a vessel in relation to an incident, has the meaning given in section 75AB;

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1);

preliminary breath test means —

- (a) a preliminary test as defined in the *Road Traffic Act 1974* section 65; or
- (b) a test of a sample of a person's breath using a preliminary breath testing device;

preliminary breath testing device means —

- (a) an apparatus of a type referred to in the definition of **preliminary test** in the *Road Traffic Act 1974* section 65; or
- (b) a device of a type approved under section 75JA(a);

preliminary oral fluid test means a test of a sample of a person's oral fluid using a preliminary oral fluid testing device;

preliminary oral fluid testing device means —

- (a) a device of a type referred to in the definition of **preliminary oral fluid test** as that term is defined in the *Road Traffic Act 1974* section 65; or
- (b) a device of a type approved under section 75JA(c);

prescribed sample taker means —

- (a) a medical practitioner; or
- (b) a registered nurse; or
- (c) a prescribed person who is appropriately qualified to take samples for testing in relation to alcohol or drugs;

registered nurse means a person —

- (a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession; and
- (b) whose name is entered on Division 1 of the Register of Nurses kept under that Law;

stop, in relation to a vessel, includes —

- (a) stop the vessel's motor; and
- (b) drop the vessel's anchor; and

(c) fasten the vessel to a mooring, wharf or jetty.

(2) For the purposes of this Part, anything done by a person acting under the supervision or direction of an analyst, a drugs analyst, a medical practitioner or a prescribed sample taker is taken to have been done by the analyst, drugs analyst, medical practitioner or prescribed sample taker (as the case requires).

[Section 75E inserted: No. 31 of 2023 s. 15.]

75EA. Authorised operators for operating breath analysing equipment

(1) An *authorised operator* is —

(a) an authorised person as defined in the *Road Traffic Act 1974* section 65; or

(b) a police officer certified by the Commissioner of Police under subsection (2); or

(c) an inspector certified by the chief executive officer under subsection (3).

(2) The Commissioner of Police may certify that a police officer is competent to operate breath analysing equipment.

(3) The chief executive officer may certify that an inspector is competent to operate breath analysing equipment.

[Section 75EA inserted: No. 31 of 2023 s. 15.]

75EB. Authorised drug testers for operating drug testing devices

(1) An *authorised drug tester* is —

(a) an authorised drug tester as defined in the *Road Traffic Act 1974* section 65; or

(b) a police officer certified by the Commissioner of Police under subsection (2); or

(c) an inspector certified by the chief executive officer under subsection (3).

(2) The Commissioner of Police may certify that a police officer is competent to operate a drug testing device.

(3) The chief executive officer may certify that an inspector is competent to operate a device.

[Section 75EB inserted: No. 31 of 2023 s. 15.]

75EC. Using breath sample to work out BAC

(1) A concentration of alcohol in a person's breath of a number of grams per 210 L of breath is taken to be a concentration in the person's blood of that number of grams of alcohol per 100 mL of blood.

(2) Breath analysing equipment is taken to be a device that determines a person's BAC by analysing a sample of the person's breath, whether the device —

(a) gives the BAC directly; or

(b) allows the BAC to be worked out under subsection (1).

(3) A device used to conduct a preliminary breath test is taken to be a device that indicates a person's BAC, or indicates whether or not the person has a BAC of or above a particular level, whether the device —

(a) gives the indication directly; or

(b) allows the BAC to be worked out under subsection (1).

[Section 75EC inserted: No. 31 of 2023 s. 15.]

75ED. Powers additional to other powers

A power of an inspector or police officer under this Part is additional to, and does not limit, any other power the inspector or police officer may have under this Act or another written law.

[Section 75ED inserted: No. 31 of 2023 s. 15.]

Division 2 — Testing for alcohol

[Heading inserted: No. 31 of 2023 s. 15.]

Subdivision 1 — Preliminary breath tests

[Heading inserted: No. 31 of 2023 s. 15.]

75EE. General power to require breath sample for preliminary breath test

(1) An inspector or police officer may require a person to provide a sample of breath for a preliminary breath test if the inspector or police officer believes on reasonable grounds that the person is or was —

(a) navigating, or attempting to operate, a vessel; or

(b) the master of a vessel.

(2) The inspector or police officer must conduct a preliminary breath test of the person.

[Section 75EE inserted: No. 31 of 2023 s. 15.]

75EF. Power to require breath sample for preliminary breath test following incident

(1) This section applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —

(a) does not know, or has doubt about, who was navigating the vessel at the time of the incident; and

(b) believes on reasonable grounds that the person may have been navigating the vessel at that time.

(2) The inspector or police officer may require the person to provide a sample of breath for a preliminary breath test.

(3) The inspector or police officer must conduct a preliminary breath test of the person.

[Section 75EF inserted: No. 31 of 2023 s. 15.]

75EG. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75EE or 75EF by providing a sample of the person's breath in accordance with the directions of the inspector or police officer.

[Section 75EG inserted: No. 31 of 2023 s. 15.]

Subdivision 2 — Breath analysis or blood samples following preliminary breath test or commission of certain offences

[Heading inserted: No. 31 of 2023 s. 15.]

75EH. Power to require breath or blood sample following requirement for preliminary breath test

(1) This section applies if —

(a) an inspector or police officer requires a person to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; and

(b) either —

(i) the person's preliminary breath test indicates they have a BAC of 0.05 g or above; or

(ii) the person fails to comply with the requirement.

(2) This section also applies if —

(a) an inspector or police officer has power to require a person to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; and

(b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.

(3) An inspector or police officer may require a person —

(a) to provide a sample of breath for breath analysis; or

(b) to allow a prescribed sample taker to take a sample of the person's blood for analysis.

(4) If a requirement to provide a sample of breath for breath analysis is imposed on a person under subsection (3)(a), an inspector or police officer who is an authorised operator must conduct a breath analysis of the person.

(5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

[Section 75EH inserted: No. 31 of 2023 s. 15.]

75EI. Power to require breath or blood sample for analysis following commission of certain offences

(1) This section applies if an inspector or police officer believes on reasonable grounds that a person has committed an offence against section 75C(1) or 75CA(1).

(2) This section also applies if an inspector or police officer —

(a) believes on reasonable grounds that a vessel was involved in either —

(i) the commission of an offence against section 75B(1) or (2), 75BA(1) or (2) or 75BB(1) or (3); or

(ii) an incident occasioning injury to a person or damage to property;

and

(b) does not know, or has doubt about, who was navigating the vessel at the time of the offence or incident; and

(c) believes on reasonable grounds that the person may have been navigating the vessel at that time.

(3) The inspector or police officer may require the person —

(a) to provide a sample of breath for breath analysis; or

(b) to allow a prescribed sample taker to take a sample of the person's blood for analysis.

(4) If a requirement to provide a sample of breath for breath analysis is imposed on a person under subsection (3)(a), an inspector or police officer who is an authorised operator must conduct a breath analysis of the person.

(5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

[Section 75EI inserted: No. 31 of 2023 s. 15.]

75EJ. Compliance with requirement

(1) A person must comply with a requirement imposed on the person under section 75EH or 75EI to provide a sample of breath for breath analysis by providing the sample in accordance with the directions of the authorised officer conducting the breath analysis.

(2) A person must comply with a requirement imposed on the person under section 75EH or 75EI to allow a prescribed sample taker to take a sample of the person's blood for analysis by —

(a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and

(b) complying with the directions of the sample taker.

[Section 75EJ inserted: No. 31 of 2023 s. 15.]

75EK. Further sample of breath for breath analysis

(1) This section applies if —

(a) a person provides a sample of breath for breath analysis in accordance with a requirement imposed under section 75EH or 75EI; and

(b) breath analysis of the sample fails.

(2) An inspector or police officer may require the person to provide 1 additional breath sample for breath analysis under section 75EH or 75EI.

(3) If the person provides 2 breath samples for analysis under section 75EH or 75EI and the analysis of each sample fails, the person cannot be required to provide another sample of breath for analysis under those sections.

(4) An analysis of a sample of breath is taken to have failed only if the breath analysing equipment used for the analysis does not indicate a result in the prescribed manner.

[Section 75EK inserted: No. 31 of 2023 s. 15.]

75EL. When inspector or police officer must not impose testing requirement because of physical incapacity

(1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of providing a sample of breath that is sufficient for breath analysing equipment to operate.

(2) The inspector or police officer must not require the person to provide a sample of breath for a breath analysis under section 75EH or 75EI.

[Section 75EL inserted: No. 31 of 2023 s. 15.]

75EM. Breath analysis indicates BAC of 0.05 or above

(1) This section applies if a breath analysis indicates a person has a BAC of 0.05 g or above.

(2) The authorised operator who operated the breath analysing equipment used for the breath analysis must immediately give the person a written statement, or a statement printed by the instrument, that includes all of the following information —

- (a) the date and time the breath sample was taken;
- (b) the date and time the sample was analysed;
- (c) the result of the analysis.

(3) If the breath analysing equipment indicates a result in the prescribed manner at the conclusion of the analysis, the result indicated by the breath analysing equipment is taken to be the person's BAC at the time the sample of breath was provided.

[Section 75EM inserted: No. 31 of 2023 s. 15.]

Subdivision 3 — Blood samples in other circumstances including following serious incident

[Heading inserted: No. 31 of 2023 s. 15.]

75EN. Power to require blood sample in other circumstances

(1) This section applies if an inspector or police officer has power to require a person to provide a sample of breath for breath analysis under section 75EH or 75EI and either —

- (a) the inspector or police officer is prevented by section 75EK(3) from imposing the requirement; or
- (b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.

(2) This section also applies if an inspector or police officer requires a person to provide a sample of breath for breath analysis under section 75EH or 75EI and either —

- (a) the breath analysis indicates there is no alcohol present in the person's blood; or

(b) both of the following apply —

(i) the person's behaviour, condition or appearance is consistent with that of a person who is under the influence of alcohol or something else;

(ii) the breath analysis indicates a BAC that does not reasonably explain the person's behaviour, condition or appearance.

(3) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.

(4) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis.

(5) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

[Section 75EN inserted: No. 31 of 2023 s. 15.]

75EO. Power to require blood sample following incident occasioning death or serious bodily harm

(1) This section applies if an inspector or police officer believes on reasonable grounds that —

(a) a vessel is involved in an incident occasioning the death of, or grievous bodily harm or serious bodily harm to, a person; and

(b) at the time of the incident, a person is or was —

(i) navigating, or attempting to operate, the vessel;
or

(ii) the master of the vessel.

(2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.

(3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis.

(4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed in relation to drugs in addition to being analysed for the presence of alcohol or to determine the person's BAC.

(5) For the purposes of subsection (1)(a), *serious bodily harm* to a person is bodily harm to a person, other than grievous bodily harm, that an inspector or police officer believes on reasonable grounds is likely to require treatment at a hospital, whether or not treatment at a hospital is practicable.

[Section 75EO inserted: No. 31 of 2023 s. 15.]

75EP. When inspector or police officer must not require blood sample to be taken

If an incident referred to in section 75EO(1)(a) occurs, an inspector or police officer must not require or cause a sample of a person's blood to be taken under that section in relation to the incident if it appears to the inspector or police officer that the sample cannot be taken within 12 hours after the incident occurred.

[Section 75EP inserted: No. 31 of 2023 s. 15.]

75EQ. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75EN or 75EO to allow a prescribed

sample taker to take a sample of the person's blood for analysis by —

- (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
- (b) complying with the directions of the sample taker.

[Section 75EQ inserted: No. 31 of 2023 s. 15.]

Division 3 — Testing for drugs

[Heading inserted: No. 31 of 2023 s. 15.]

Subdivision 1 — Preliminary oral fluid tests

[Heading inserted: No. 31 of 2023 s. 15.]

75F. General power to require oral fluid sample for preliminary oral fluid test

- (1) An inspector or police officer may require a person to provide a sample of oral fluid for a preliminary oral fluid test if the inspector or police officer believes on reasonable grounds that the person is or was —
 - (a) navigating, or attempting to operate, a vessel; or
 - (b) the master of a vessel.

- (2) The inspector or police officer must conduct a preliminary oral fluid test of the person in accordance with the prescribed procedure.

[Section 75F inserted: No. 31 of 2023 s. 15.]

75FA. Powers to require oral fluid samples for preliminary oral fluid tests

- (1) This section applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —

(a) does not know, or has doubt about, who was navigating the vessel at the time of the incident; and

(b) believes on reasonable grounds that a person may have been navigating the vessel at that time.

(2) The inspector or police officer may require the person to provide a sample of oral fluid for a preliminary oral fluid test.

(3) The inspector or police officer must conduct a preliminary oral fluid test of the person in accordance with the prescribed procedure.

[Section 75FA inserted: No. 31 of 2023 s. 15.]

75FB. Compliance with requirement

A person must comply with a requirement imposed on the person under section 75F or 75FA by providing a sample of the person's oral fluid for a preliminary oral fluid test in accordance with the directions of the inspector or police officer.

[Section 75FB inserted: No. 31 of 2023 s. 15.]

Subdivision 2 — Drug testing and blood samples

[Heading inserted: No. 31 of 2023 s. 15.]

75FC. Power to require oral fluid sample for drug testing following preliminary oral fluid test

(1) This section applies if an inspector or police officer requires a person to provide a sample of oral fluid for a preliminary oral fluid test under section 75F or 75FA and either —

(a) the preliminary oral fluid test indicates a sample of the person's oral fluid contains a prescribed illicit drug; or

(b) the person refuses or fails to comply with the requirement.

(2) The inspector or police officer may require the person to provide a sample of oral fluid for drug testing.

(3) An inspector or police officer who is an authorised drug tester must conduct drug testing of the person by —

(a) collecting a sample of the person’s oral fluid in the prescribed manner; and

(b) conducting the drug testing in accordance with the prescribed procedure.

[Section 75FC inserted: No. 31 of 2023 s. 15.]

75FD. Further sample of oral fluid for drug testing

(1) This section applies if —

(a) a person provides a sample of oral fluid in accordance with a requirement imposed on the person under section 75FC; and

(b) the drug testing of the sample using a drug testing device fails.

(2) An inspector or police officer may require the person to provide 1 additional sample of oral fluid for drug testing under section 75FC.

(3) If the person has provided 2 samples of oral fluid for drug testing under section 75FC and the drug testing of each sample using a drug testing device fails, the person cannot be required to provide another sample of oral fluid for drug testing under that section.

(4) For the purposes of this section, the drug testing of a sample of oral fluid is taken to have failed only if the drug testing device used for the drug testing —

(a) is not in proper working order; or

(b) does not indicate a positive or negative result.

[Section 75FD inserted: No. 31 of 2023 s. 15.]

75FE. When inspector or police officer must not impose testing requirement because of physical incapacity

(1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of providing a sample of oral fluid that is sufficient for a drug testing device to operate.

(2) The inspector or police officer must not require the person to provide a sample of oral fluid for drug testing under section 75FC.

[Section 75FE inserted: No. 31 of 2023 s. 15.]

75FF. Power to require blood sample instead of oral fluid sample

(1) This section applies if —

(a) an inspector or police officer has power to require a person to provide a sample of oral fluid for drug testing under section 75FC; and

(b) it appears to the inspector or police officer that the person may be incapable of complying with the requirement because of the person's physical condition.

(2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.

(3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of a person's blood for analysis.

(4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed for the presence of alcohol or to determine the person's BAC in addition to being analysed in relation to drugs.

[Section 75FF inserted: No. 31 of 2023 s. 15.]

75FG. Compliance with requirement

- (1) A person must comply with a requirement imposed on the person under section 75FC to provide an oral fluid sample for drug testing by providing the sample in accordance with the directions of an authorised drug tester.
- (2) A person must comply with a requirement imposed on the person under section 75FF to allow a blood sample to be taken by a prescribed sample taker by —
- (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
- (b) complying with the directions of the sample taker.

[Section 75FG inserted: No. 31 of 2023 s. 15.]

Subdivision 3 — Assessment of drug impairment and related provisions

[Heading inserted: No. 31 of 2023 s. 15.]

75FH. Assessments of drug impairment

- (1) This section applies if an inspector or police officer believes on reasonable grounds that a person is or was navigating, or attempting to operate, a vessel while impaired by something (other than only alcohol) affecting the person's capacity to navigate the vessel.
- (2) This section also applies if a vessel is involved in an incident occasioning injury to a person or damage to property and an inspector or police officer —
- (a) does not know, or has doubt about, who was navigating, or attempting to operate, the vessel at the time of the incident; and
- (b) believes on reasonable grounds that a person —
- (i) may have been navigating, or attempting to operate, the vessel at the time of the incident; and

(ii) was impaired by something (other than only alcohol) affecting the person's capacity to navigate a vessel.

(3) The inspector or police officer may require the person to undergo an assessment of drug impairment.

(4) An inspector or police officer must conduct an assessment of drug impairment of the person in accordance with the prescribed procedure for conducting the assessment.

[Section 75FH inserted: No. 31 of 2023 s. 15.]

75FI. When inspector or police officer must not impose testing requirement because of physical incapacity

(1) This section applies if it appears to an inspector or police officer that, because of a person's physical condition, the person is incapable of undergoing an assessment of drug impairment.

(2) The inspector or police officer must not require the person to undergo an assessment of drug impairment under section 75FH.

[Section 75FI inserted: No. 31 of 2023 s. 15.]

75FJ. Power to require blood samples for drug analysis

(1) This section applies if an inspector or police officer —

(a) requires a person to undergo an assessment of drug impairment under section 75FH and either —

(i) it appears to the inspector or police officer that the assessment indicates the person is impaired by a drug; or

(ii) the person fails to comply with the requirement;

or

(b) is prevented by section 75FI from requiring a person to undergo an assessment of drug impairment because of the person's physical condition.

- (2) The inspector or police officer may require the person to allow a prescribed sample taker to take a sample of the person's blood for analysis.
- (3) If it appears to the inspector or police officer that the person's physical condition renders them incapable of complying with the requirement, the inspector or police officer may cause a prescribed sample taker nominated by the inspector or police officer to take a sample of a person's blood for analysis.
- (4) A sample of a person's blood taken in accordance with a requirement under this section may be analysed for the presence of alcohol or to determine the person's BAC in addition to being analysed in relation to drugs.

[Section 75FJ inserted: No. 31 of 2023 s. 15.]

75FK. Compliance with requirement

- (1) A person must comply with a requirement imposed on the person under section 75FH to undergo an assessment of drug impairment by undergoing the assessment in accordance with the directions of the inspector or police officer.
- (2) A person must comply with a requirement imposed on the person under section 75FJ to allow a prescribed sample taker to take a sample of the person's blood for analysis by —
 - (a) allowing a prescribed sample taker nominated by the inspector or police officer to take the sample; and
 - (b) complying with the directions of the sample taker.

[Section 75FK inserted: No. 31 of 2023 s. 15.]

Division 4 — Enforcement powers relating to testing for alcohol and drugs

[Heading inserted: No. 31 of 2023 s. 15.]

75G. Requirement to leave vessel, accompany inspector or police officer to place or wait at place

(1) An inspector or police officer may require a person to leave a vessel, accompany an inspector or police officer to a specified place or wait at a specified place for any of the following purposes —

(a) to impose an alcohol or drug testing requirement on the person;

(b) for a sample of the person's breath, oral fluid or blood to be provided or taken in accordance with an alcohol or drug testing requirement;

(c) for an assessment of drug impairment to be carried out in relation to a person in accordance with an alcohol or drug testing requirement.

(2) An inspector or police officer may require a person to do 1 or more things under subsection (1), or impose further requirements on the person under that subsection, as is reasonable in the circumstances to achieve a purpose referred to in subsection (1)(a), (b) or (c).

(3) A requirement given to a person under subsection (1) ceases to have effect to the extent that an inspector or police officer —

(a) gives the person a later inconsistent requirement; or

(b) indicates to the person that the requirement no longer has effect.

(4) A person must comply with a requirement imposed on the person under subsection (1) in accordance with the directions of the inspector or police officer.

[Section 75G inserted: No. 31 of 2023 s. 15.]

75GA. Requirement to stop vessel or navigate to suitable location

- (1) This section applies if an inspector or police officer believes on reasonable grounds that it may be necessary to impose an alcohol or drug testing requirement on a person on a vessel.
- (2) The inspector or police officer may give a person navigating the vessel a direction requiring the person to —
- (a) stop the vessel at a specified place; or
 - (b) navigate the vessel to a specified place that the inspector or police officer considers is suitable for —
 - (i) the purposes of imposing an alcohol or drug testing requirement on a person; or
 - (ii) another purpose under this Part or Part 3A.

Example for this subsection:

For the purposes of paragraph (b), a suitable place may be a location to fasten a vessel to a mooring, wharf or jetty or a location close to the shore.

- (3) An inspector or police officer may require a person to do 1 or more things under subsection (2), or impose further requirements on the person under that subsection, as is reasonable in the circumstances to achieve a purpose referred to in subsection (2)(a) or (b)(i) or (ii).
- (4) A requirement under subsection (2) may be given to a person orally or by means of a sign or signal (electronic or otherwise), or in any other manner.
- (5) A requirement given under subsection (2) to a person ceases to have effect to the extent that an inspector or police officer —
- (a) gives the person a later inconsistent direction; or
 - (b) indicates to the person that the direction no longer has effect.
- (6) A person must comply with a requirement imposed on the person under subsection (2) in accordance with the directions of the inspector or police officer.

[Section 75GA inserted: No. 31 of 2023 s. 15.]

75GB. Power to board and move vessel

(1) An inspector or police officer may board a vessel, or move a vessel to a place for safe custody —

(a) if the inspector or police officer believes on reasonable grounds that the vessel has been used in connection with an offence under Part 3A or this Part; or

(b) for the purposes of imposing an alcohol or drug testing requirement on a person on the vessel.

(2) An inspector or police officer may require a person on the vessel, or the owner, operator, master or pilot of the vessel, to take reasonable steps to facilitate the boarding or moving of the vessel under subsection (1).

(3) A person must comply with a requirement imposed on the person under subsection (2) in accordance with the directions of the inspector or police officer.

[Section 75GB inserted: No. 31 of 2023 s. 15.]

75GC. Power to prevent use of vessel by alleged offender

(1) In this section —

key includes a device or thing that allows a vessel to be operated.

Example for this definition:

A lanyard for a lanyard kill switch on an outboard motor.

(2) This section applies if an inspector or police officer has reason for suspecting that a person has committed an offence against any of the sections specified in the Table.

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75D(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>

(3) The inspector or police officer may require the person to immediately give each key to a vessel in the person's possession —

(a) to the inspector or police officer; or

(b) to another person in the person's company if the inspector or police officer is satisfied that the other person —

(i) is authorised to navigate the vessel; and

(ii) is responsible and able to navigate the vessel properly.

(4) An inspector or police officer may impose a requirement under subsection (3) —

(a) if satisfied that the requirement is necessary in the circumstances and is in the interests of the person, or of any other person or of the public; and

(b) whether or not the person has been or is to be charged with an offence.

(5) If the keys to a vessel are given to an inspector or police officer under subsection (3)(a), the inspector or police officer may take any appropriate and practicable steps to ensure that the vessel is secure and not causing an obstruction.

(6) Those steps may include moving the vessel to a more suitable place.

(7) Before giving the keys to a vessel to a person under subsection (3)(b), an inspector or police officer may require the person to provide a sample of breath for a preliminary breath test for the purposes of the inspector or police officer being satisfied that the person is able to navigate the vessel properly.

[Section 75GC inserted: No. 31 of 2023 s. 15.]

75GD. Compliance with requirement

A person commits an offence if the person —

(a) fails to comply with any requirement imposed on the person under section 75GC(3); or

(b) obstructs, or attempts to obstruct, an inspector or police officer in the exercise of a power under section 75GC(3), (5) or (7).

Penalty for this subsection: a fine of \$600.

[Section 75GD inserted: No. 31 of 2023 s. 15.]

75GE. Return of keys to vessel

- (1) This section applies if the keys to a vessel are given to an inspector or police officer under section 75GC(3)(a).
- (2) If a person asks an inspector or police officer to give the person the keys to the vessel, the inspector or police officer must comply with the request if satisfied that the person —
- (a) is entitled to lawful possession of the vessel or is in the company of a person who is entitled to lawful possession of the vessel; and
 - (b) is authorised to navigate the vessel; and
 - (c) is responsible and able to navigate the vessel properly.
- (3) Before giving keys to a vessel to a person under subsection (2), an inspector or police officer may require the person to provide a sample of breath for a preliminary breath test for the purposes of the inspector or police officer being satisfied that the person is able to navigate the vessel properly.
- (4) If keys to a vessel are not given to a person who makes a request under subsection (2) within 24 hours after the request is made, the person may apply to the Magistrates Court for an order for the keys to be given to the person named in the application.

[Section 75GE inserted: No. 31 of 2023 s. 15.]

75GF. Prohibiting person from navigating vessel for 24 hours if prescribed illicit drug present

- (1) This section applies if —
- (a) drug testing of a sample of a person's oral fluid indicates a prescribed illicit drug is present; or
 - (b) each of the following applies —
 - (i) a preliminary oral fluid test of a sample of the person's oral fluid gives a preliminary indication that a prescribed illicit drug is present;

- (ii) an inspector or police officer is prevented by section 75FE from requiring the person to provide a sample of oral fluid for drug testing;
 - (iii) the inspector or police officer requires the person to allow a prescribed sample taker to take the person's blood for analysis under section 75FF;
- or
- (c) a preliminary oral fluid test of a sample of the person's oral fluid gives a preliminary indication that a prescribed illicit drug is present and, because of section 75FD(3), the person cannot be required to provide another sample of oral fluid for drug testing; or
 - (d) the person refuses or fails to provide a sample of oral fluid for a preliminary oral fluid test or drug testing, or to allow a sample of the person's blood to be taken for analysis, having been required to do so under Division 3.

(2) An inspector or police officer may give the person a notice (a **prohibition notice**) prohibiting the person from navigating a vessel for 24 hours.

(3) A prohibition under subsection (2) applies in relation to a vessel if a WA marine qualification is required to navigate the vessel under this Act.

(4) A prohibition notice given to a person under subsection (2) must be given personally.

(5) A person given a prohibition notice commits an offence if the person fails to comply with the notice.

Penalty for this subsection:

(a) for a first offence, a fine of \$1 250;

(b) for a second or subsequent offence, a fine of \$2 000.

[Section 75GF inserted: No. 31 of 2023 s. 15.]

75GG. Requirements for prohibition notice

A prohibition notice under section 75GF must —

- (a) specify the grounds on which the notice is given, including when subsection (1) of that section applied to the person; and
- (b) contain a statement to the effect that, because the person has been given the notice, the person must not navigate a vessel for a period commencing on receipt of the notice and ending 24 hours after receipt of the notice; and
- (c) specify the time at which the person is given the prohibition notice and when the 24-hour period ends.

[Section 75GG inserted: No. 31 of 2023 s. 15.]

Division 5 — Failure to comply with alcohol or drug testing requirements

[Heading inserted: No. 31 of 2023 s. 15.]

Subdivision 1 — General offences relating to failure to comply with alcohol or drug testing requirements

[Heading inserted: No. 31 of 2023 s. 15.]

75H. Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel

- (1) A person commits an offence if the person fails to comply with —
 - (a) a requirement to provide a sample of breath for a preliminary breath test under section 75EE or 75EF; or
 - (b) a requirement to provide a sample of oral fluid for a preliminary oral fluid test under section 75F or 75FA; or
 - (c) a leave vessel, accompany officer or wait requirement relating to a requirement referred to in paragraph (a) or (b); or

(d) a requirement to take reasonable steps to facilitate an inspector or police officer boarding or moving a vessel under section 75GB.

Penalty for this subsection:

(a) for a first offence, a fine of not less than \$450 or more than \$1 200;

(b) for a second or subsequent offence, a fine of not less than \$900 or more than \$2 100.

(2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —

(a) for a first offence, for a period of not less than 3 months;

(b) for a second or subsequent offence, for a period of not less than 6 months.

(3) In determining whether an offence against subsection (1) is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

[Section 75H inserted: No. 31 of 2023 s. 15.]

75HA. Defence: compliance with later requirement

(1) It is a defence to a charge of an offence against section 75H(1) for the person charged to prove that the person complied with a later requirement that arose out of —

(a) the person's failure to comply with the requirement the subject of the charge; or

(b) the circumstances that gave rise to the requirement the subject of the charge.

(2) For the purposes of subsection (1), a *later requirement* is —

(a) in relation to a requirement referred to in section 75H(1)(a) —

(i) a requirement to provide a sample of breath for breath analysis under section 75EH or 75EI; or

(ii) a requirement to allow a blood sample to be taken for analysis under section 75EH or 75EI;

or

(b) in relation to a requirement referred to in section 75H(1)(b) —

(i) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or

(ii) a requirement to allow a blood sample to be taken for analysis under section 75FF.

[Section 75HA inserted: No. 31 of 2023 s. 15.]

75HB. Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place

(1) A person commits an offence if the person fails to comply with —

(a) a requirement to provide a sample of breath for breath analysis under section 75EH or 75EI; or

(b) a requirement to allow a sample of the person's blood to be taken for analysis under section 75EH, 75EI, 75EN or 75EO; or

(c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b); or

(d) a requirement to stop a vessel at, or navigate a vessel to, a specified place under section 75GA.

Penalty for this subsection:

- (a) for a first offence —
 - (i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$5 650;
 - (ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;
 - (iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;
 - (b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;
 - (c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.
- (2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	<u>Disqualification</u>
<u>First offence:</u>	
<u>(a) 1 previous conviction for a 0.08+ offence</u>	<u>18 months</u>

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	<u>Disqualification</u>
<u>(b) 2 or more previous convictions for a 0.08+ offence</u>	<u>30 months</u>
<u>(c) 1 previous conviction for a 0.08+ and illicit drug offence</u>	<u>27 months</u>
<u>(d) 2 or more previous convictions for a 0.08+ and illicit drug offence</u>	<u>42 months</u>
<u>(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence</u>	<u>42 months</u>
<u>(f) any other case</u>	<u>15 months</u>
<u>Second offence</u>	<u>42 months</u>
<u>Third or subsequent offence</u>	<u>Permanent</u>

(3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

[\(4\) A police officer may arrest a person for an offence against subsection \(1\) without a warrant.](#)

[\[Section 75HB inserted: No. 31 of 2023 s. 15.\]](#)

[75HC. Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm](#)

[\(1\) A person commits a crime if the person commits an offence against section 75HB\(1\) in the circumstance of aggravation stated in subsection \(2\).](#)

[Alternative offence for this subsection: section 75HB\(1\) \(Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place\).](#)

[Penalty for this subsection: imprisonment for 14 years or a fine of any amount.](#)

[Summary conviction penalty for this subsection: imprisonment for 18 months or a fine of \\$8 000.](#)

[\(2\) For the purposes of subsection \(1\), the *circumstance of aggravation* is that when an inspector or police officer imposes the requirement on the person the subject of the offence against section 75HB\(1\), the inspector or police officer —](#)

[\(a\) advises the person that the inspector or police officer believes the vessel the person was, or is believed to have been, navigating was involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and](#)

[\(b\) explains the consequences of failing to comply with the requirement to the person.](#)

(3) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification as follows —

- (a) in relation to a conviction on indictment — for a period of not less than 2 years;
- (b) in relation to a summary conviction — for a period of not less than 18 months.

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75HC inserted: No. 31 of 2023 s. 15.]

75HD. Failure to comply with requirement: oral fluid sample for drug testing or blood sample

(1) A person commits an offence if the person fails to comply with —

- (a) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or
- (b) a requirement to allow a sample of the person's blood to be taken for analysis under section 75FF; or
- (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

Penalty for this subsection:

- (a) for a first offence, a fine of not more than \$1 250;
- (b) for a second or subsequent offence, a fine of not less than \$1 250 or more than \$2 000.

(2) A court sentencing a person for a second or subsequent offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 6 months.

(3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a

provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75HD inserted: No. 31 of 2023 s. 15.]

75HE. Failure to comply with requirements relating to assessment of drug impairment

(1) A person commits an offence if the person fails to comply with —

(a) a requirement to undergo an assessment of drug impairment under section 75FH; or

(b) a requirement to allow a blood sample to be taken for analysis under section 75FJ; or

(c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

Penalty for this subsection:

(a) for a first offence, a fine of not less than \$1 750 or more than \$3 750;

(b) for a second offence, imprisonment for 9 months or a fine of not less than \$3 150 or more than \$5 250;

(c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$3 150 or more than \$7 500.

- (2) A court sentencing a person for an offence against subsection (1) must order that the person is disqualified from holding or obtaining a WA marine qualification —
- (a) for a first offence, for a period of not less than 10 months;
 - (b) for a second offence, for a period of not less than 30 months;
 - (c) for a third or subsequent offence, permanently.
- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(4) A police officer may arrest a person for an offence against subsection (1) without a warrant.

[Section 75HE inserted: No. 31 of 2023 s. 15.]

Subdivision 2 — Failure to comply with drug testing requirements in circumstances relating to person’s BAC

[Heading inserted: No. 31 of 2023 s. 15.]

75HF. Term used: drug testing requirement

In this Subdivision —

drug testing requirement means —

- (a) a requirement to provide a sample of oral fluid for drug testing under section 75FC; or
- (b) a requirement to allow a sample of blood to be taken for analysis under section 75FF or 75FJ; or
- (c) a leave vessel, accompany officer or wait requirement imposed in relation to a requirement referred to in paragraph (a) or (b).

[Section 75HF inserted: No. 31 of 2023 s. 15.]

75HG. Failure to comply with drug testing requirement: BAC of 0.05 or above

(1) A person commits an offence if the person fails to comply with a drug testing requirement in circumstances that, before an inspector or police officer makes the drug testing requirement of the person —

- (a) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and
- (b) the breath analysis conducted by an authorised operator indicates that the person has a BAC of 0.05 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(2) If a person is convicted of an offence against subsection (1) —

- (a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and
- (b) the court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the minimum period of disqualification specified in the Table.

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Table

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>> 0.05 g</u> <u>but</u> <u>< 0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 900</u> <u>3 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>9 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>12 months</u>
<u>> 0.07 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 900</u> <u>3 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>12 months</u>	<u>\$1 900</u> <u>\$3 000</u> <u>15 months</u>

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

- (3) In determining whether an offence against this section is a first, second or subsequent offence, a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>

<u>Section no.</u>	<u>Section heading</u>
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

[\(4\) A police officer may arrest a person for an offence against subsection \(1\) without a warrant.](#)

[\[Section 75HG inserted: No. 31 of 2023 s. 15.\]](#)

[75HH. Failure to comply with drug testing requirement: BAC of 0.08 or above](#)

[\(1\) A person commits an offence if the person fails to comply with a drug testing requirement in circumstances that, before an inspector or police officer makes the drug testing requirement of the person —](#)

[\(a\) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and](#)

(b) the breath analysis conducted by an authorised operator indicates that the person has a BAC of 0.08 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(2) If a person is convicted of an offence against subsection (1) —

(a) the person is liable to a penalty of a fine of not less than the minimum fine or more than the maximum fine specified in the Table; and

(b) the court convicting the person must, in any event, order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the

minimum period of disqualification specified in the Table.

Table

<u>BAC</u>		<u>First offence</u>	<u>Second offence</u>	<u>Third or subsequent offence</u>
<u>≥ 0.08 g</u> <u>but</u> <u>< 0.09 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 150</u> <u>\$3 400</u> <u>9 months</u>	<u>\$2 400</u> <u>\$3 400</u> <u>12 months</u>	<u>\$2 400</u> <u>\$3 400</u> <u>15 months</u>
<u>≥ 0.09 g</u> <u>but</u> <u>< 0.11 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 300</u> <u>\$3 400</u> <u>11 months</u>	<u>\$2 550</u> <u>\$3 400</u> <u>15 months</u>	<u>\$2 550</u> <u>\$3 400</u> <u>20 months</u>
<u>≥ 0.11 g</u> <u>but</u> <u>< 0.13 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 500</u> <u>\$3 400</u> <u>12 months</u>	<u>\$2 700</u> <u>\$4 500</u> <u>21 months</u>	<u>\$2 700</u> <u>\$4 500</u> <u>26 months</u>
<u>≥ 0.13 g</u>	<u>Min:</u> <u>Max:</u> <u>Disq:</u>	<u>\$1 750</u> <u>\$3 400</u> <u>14 months</u>	<u>\$3 600</u> <u>\$5 650</u> <u>27 months</u>	<u>\$3 600</u> <u>\$6 750</u> <u>42 months</u>

Note: ≥ signifies of or above

< signifies less than

Disq signifies the minimum period of disqualification

Max signifies the maximum fine

Min signifies the minimum fine

(3) In determining whether an offence against this section is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person's BAC when committing the offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

[\(4\) A police officer may arrest a person for an offence against subsection \(1\) without a warrant.](#)

[\[Section 75HH inserted: No. 31 of 2023 s. 15.\]](#)

75HI. Failure to comply with drug testing requirement: BAC of 0.15 or above

(1) A person commits an offence if the person fails to comply with a drug testing requirement in circumstances that, before an inspector or police officer makes the drug testing requirement of the person —

(a) the person provides a sample of breath for breath analysis under section 75EH or 75EI; and

(b) the breath analysis conducted by the inspector or police officer indicates that the person has a BAC of 0.15 g or above.

Alternative offence for this subsection: an offence specified in the Table.

Table — Alternative offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HE(1)</u>	<u>Failure to comply with requirements relating to assessment of drug impairment</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>

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<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>

Penalty for this subsection:

(a) for a first offence —

(i) if the person has 1 or more previous convictions for a 0.08+ offence — a fine of not less than \$2 400 or more than \$5 650;

(ii) if the person has 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;

(iii) if the person has 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence — a fine of not less than \$3 600 or more than \$5 650;

(iv) in any other case — a fine of not less than \$2 050 or more than \$5 650;

(b) for a second offence, imprisonment for 9 months or a fine of not less than \$4 750 or more than \$7 900;

(c) for a third or subsequent offence, imprisonment for 18 months or a fine of not less than \$4 750 or more than \$11 250.

(2) If a person is convicted of an offence against subsection (1), a court sentencing the person must order that the person is disqualified from holding or obtaining a WA marine qualification for not less than the period of disqualification specified in the Table.

Table — Disqualification periods

	<u>Disqualification</u>
<u>First offence:</u>	
<u>(a) 1 previous conviction for a 0.08+ offence</u>	<u>18 months</u>
<u>(b) 2 or more previous convictions for a 0.08+ offence</u>	<u>30 months</u>
<u>(c) 1 previous conviction for a 0.08+ and illicit drug offence</u>	<u>27 months</u>
<u>(d) 2 or more previous convictions for a 0.08+ and illicit drug offence</u>	<u>42 months</u>
<u>(e) 1 or more previous convictions for a 0.08+ offence and 1 or more previous convictions for a 0.08+ and illicit drug offence</u>	<u>42 months</u>
<u>(f) any other case</u>	<u>15 months</u>
<u>Second offence</u>	<u>42 months</u>
<u>Third or subsequent offence</u>	<u>Permanent</u>

(3) In determining whether an offence against this section is a first, second or subsequent offence —

(a) a previous offence against subsection (1) is to be taken into account regardless of the person’s BAC when committing the offence; and

(b) a previous offence against a provision specified in the Table must be taken into account as if it were an offence against subsection (1).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75CD(1)	Navigation of vessel while impaired by drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment

[\(4\) A police officer may arrest a person for an offence against subsection \(1\) without a warrant.](#)

[\[Section 75HI inserted: No. 31 of 2023 s. 15.\]](#)

Subdivision 3 — Defence for failing to comply with alcohol or drug testing requirement

[\[Heading inserted: No. 31 of 2023 s. 15.\]](#)

75HJ. Substantial reasons for failing to comply with requirements or later providing certain samples

[It is a defence to a charge of an offence of failing to comply with an alcohol or drug testing requirement for the person charged to prove that the substantial reason for the failure to](#)

comply was a reason other than to avoid providing information that might be used as evidence.

[Section 75HJ inserted: No. 31 of 2023 s. 15.]

Division 6 — General provisions relating to alcohol and drug testing

[Heading inserted: No. 31 of 2023 s. 15.]

75I. Responsibility to facilitate medical assistance

- (1) This section applies if it appears to an inspector or police officer that a person on whom the inspector or police officer may impose an alcohol or drug testing requirement is unconscious or seriously injured.
- (2) The inspector or police officer must facilitate the provision of medical assistance for the person.

[Section 75I inserted: No. 31 of 2023 s. 15.]

75IA. When inspector or police officer must not impose testing requirement because of passage of time

- (1) This section applies if an inspector or police officer has power under Division 2 or 3 to require a person —
 - (a) to provide a sample of breath for breath analysis; or
 - (b) to provide a sample of oral fluid for drug testing; or
 - (c) to allow a sample of the person's blood to be taken for analysis; or
 - (d) to undergo an assessment of drug impairment.
- (2) The inspector or police officer must not impose the requirement on the person if it appears to the inspector or police officer that the sample cannot be taken, or the assessment of drug impairment cannot be conducted, within 4 hours after the circumstances giving rise to the requirement occurred.

(3) This section applies subject to section 75EP.

Note for this subsection:

Section 75EP allows a requirement to allow or cause a sample of a person's blood to be taken within 12 hours after an incident occurs in particular circumstances.

[Section 75IA inserted: No. 31 of 2023 s. 15.]

75IB. Taking of oral fluid samples for oral fluid analysis

(1) This section applies if —

(a) an authorised drug tester conducts drug testing of a sample of a person's oral fluid provided in compliance with a requirement imposed under section 75FC; and

(b) in the opinion of the authorised drug tester, the drug testing indicates that the person's oral fluid contains a prescribed illicit drug.

(2) The sample must be divided into 2 parts, each of which is taken be a sample of the person's oral fluid for the purposes of this Act.

(3) The authorised drug tester must ensure that both samples are delivered to an inspector or police officer.

(4) An inspector, police officer or other person engaged for the purpose must deliver 1 of the samples to the Chemistry Centre (WA) on behalf of the person who provided the sample.

Note for this subsection:

See section 75IF for the obligations of the Chemistry Centre (WA) relating to the sample.

[Section 75IB inserted: No. 31 of 2023 s. 15.]

75IC. Authorisation for prescribed sample takers authorised to take blood samples

(1) A prescribed sample taker is authorised to take a sample of a person's blood for analysis if an inspector or police officer under this Part —

(a) has required a person to allow a prescribed sample taker nominated by the inspector or police officer to take a sample of the person's blood for analysis; or

(b) causes a prescribed sample taker to take a sample of the person's blood for analysis.

(2) No action lies against a prescribed sample taker by reason only of the person taking a sample of a person's blood for analysis under this Part.

[Section 75IC inserted: No. 31 of 2023 s. 15.]

75ID. Authorisation to take blood samples when person deceased

(1) In this section —

serious incident means an incident in which a vessel is involved that occasions the death of, or injury, to a person.

(2) This section applies if —

(a) a person who may have been on a vessel when the vessel was involved in a serious incident is dead on arrival at a hospital or dies in a hospital before a sample of the person's blood can be taken; and

(b) were the person alive, they —

(i) may have been required to allow a prescribed sample taker to take a sample of the person's blood for analysis in accordance with an alcohol or drug testing requirement; or

(ii) may have been a person for whom a prescribed sample taker may have been caused to take a sample of the person's blood for analysis.

(3) The medical practitioner who reports the death under the *Coroners Act 1996* section 17(3) may —

(a) take a sample of blood from the body of the person; or

(b) as soon as practicable after reporting the death, notify the coroner that a sample of blood should be taken from

the person's body because of the circumstances of the person's death.

(4) If the coroner is notified under subsection (3)(b), the coroner may direct and authorise a pathologist to take a sample of blood from the person's body.

(5) A person is not obliged to take a sample of blood under this section if another sample of blood has previously been taken from the person's body in accordance with an alcohol or drug testing requirement relating to the serious incident.

[Section 75ID inserted: No. 31 of 2023 s. 15.]

75IE. Taking blood samples for analysis

(1) This section applies if a prescribed sample taker takes a sample of a person's blood for analysis in accordance with an alcohol or drug testing requirement imposed on the person.

(2) The sample must be taken —

(a) in accordance with the regulations or otherwise in a proper manner; and

(b) either —

(i) as a single sample which is then divided into 2 parts; or

(ii) as 2 samples taken 1 immediately after the other.

(3) If 2 samples of the person's blood are taken under subsection (2)(b) —

(a) the 2 samples are taken to be a single sample, taken at the time the first of the 2 samples was taken; and

(b) each of the 2 samples is taken to be —

(i) a part of that single sample that has been divided into 2 parts; and

(ii) a sample of the person's blood for the purposes of this Act.

(4) The prescribed sample taker must ensure that both samples are delivered to an inspector or police officer.

(5) An inspector, police officer or other person engaged for the purpose must deliver 1 of the samples to the Chemistry Centre (WA) on behalf of the person from whom the samples were taken.

Note for this subsection:

See section 75IF for the obligations of the Chemistry Centre (WA) relating to the sample.

(6) If a sample of a person's blood is analysed for alcohol by an analyst in accordance with the regulations, the BAC of the sample is the analysis result and is taken to be the person's BAC at the time the sample of blood was taken.

[Section 75IE inserted: No. 31 of 2023 s. 15.]

75IF. Oral fluid and blood samples delivered to Chemistry Centre (WA)

(1) This section applies to a sample of oral fluid or blood delivered to the Chemistry Centre (WA) on behalf of a person under section 75IB(4) or 75IE(5).

(2) The Chemistry Centre (WA) must retain and appropriately store the sample until the person requests it.

(3) Within 3 months after the day on which the sample is given to the Chemistry Centre (WA), the person may ask for the sample to be delivered to an analyst (as defined in the *Misuse of Drugs Act 1981* section 3(1)) nominated by the person for analysis.

(4) The cost of delivering the sample must be paid for by the person.

(5) The Chemistry Centre (WA) is not required to store the sample for more than 3 months.

[Section 75IF inserted: No. 31 of 2023 s. 15.]

75IG. Samples of oral fluid or blood not to be used to obtain DNA profile

(1) In this section —

sample means a sample of oral fluid or blood taken from or provided by a person (the *subject*) and given to an inspector or police officer under section 75IB or 75IE.

(2) A person must not use a sample to obtain the subject's DNA profile.

Penalty for this subsection: imprisonment for 12 months.

[Section 75IG inserted: No. 31 of 2023 s. 15.]

Division 7 — Administrative matters

[Heading inserted: No. 31 of 2023 s. 15.]

75J. Regulations relating to alcohol and drug testing and other matters

(1) The regulations may make provision in relation to testing for alcohol or drugs, including —

(a) the procedures for, or equipment to be used in —

(i) conducting a preliminary breath test, breath analysis, preliminary oral fluid test or drug testing; or

(ii) taking a sample of oral fluid or a blood sample;

or

(b) the destruction of a sample, or other forensic material, taken under this Part.

(2) Regulations may apply or adopt instruments under the *Road Traffic Act 1974* for a purpose under this Act —

(a) with or without modifications; or

(b) as in force at a particular time or from time to time.

[Section 75J inserted: No. 31 of 2023 s. 15.]

75JA. Minister may approve alcohol and drug testing devices

The Minister may approve, by notice published in the *Gazette*, any of the following —

(a) a type of device that uses a sample of a person's breath to indicate 1 or more of the following —

(i) a person's BAC;

(ii) whether a person's BAC is of a particular level or above;

(iii) whether or not alcohol is present in the person's blood;

(b) a type of device that analyses a sample of a person's breath to determine the person's BAC;

(c) a type of device that provides a preliminary indication of the presence of a prescribed illicit drug in a sample of a person's oral fluid;

(d) a type of device that ascertains whether a prescribed illicit drug is present in a sample of a person's oral fluid.

[Section 75JA inserted: No. 31 of 2023 s. 15.]

75JB. Delegation by Commissioner of Police

(1) The Commissioner of Police may delegate the Commissioner's power under section 75EA(2), 75EB(2) or 124HP(2) to —

(a) a specified police officer; or

(b) a police officer of a specified class; or

(c) a person who is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.

(2) The delegation must be in writing signed by the Commissioner of Police.

(3) A person to whom a power is delegated under this section cannot delegate that power.

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(4) A person performing a power that has been delegated to the person 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 Commissioner of Police to exercise a power or perform a function through an officer or agent.

[Section 75JB inserted: No. 31 of 2023 s. 15.]

Part 4 — International Conventions

[Heading amended: No. 24 of 2023 s. 55.]

Division 1 — General

76. Terms used

In this Part, unless the contrary intention appears —

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

container has the same meaning as in the Container Convention;

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

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

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

Prevention of Collisions Convention means the Convention on the *International Regulations for Preventing Collisions at Sea, 1972* (a copy of the English text of the articles of which is set forth in Schedule 3), together with the *International Regulations for Preventing Collisions at Sea, 1972*, constituted by the rules,

and other annexes attached to that Convention, as corrected by the Proces-Verbal of Rectification dated 1 December 1973 (a copy of the English text of which rules and other annexes, as so corrected, is also set forth in Schedule 3), as affected by any amendment, other than an amendment objected to by Australia, made under Article VI of that Convention;

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

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

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

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

77. Regulations under this Part

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

~~[(1) deleted]~~

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

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

[Section 77 amended: No. 78 of 1995 s. 147; [No. 24 of 2023 s. 56.](#)]

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

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

material, appliance or apparatus, or type thereof, to be fitted or carried in a ship, or any particular provision to be made in a ship, the Minister may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if the Minister is satisfied that that other fitting, material, appliance or apparatus, or type thereof, of provision, is at least as effective as that required by the relevant Convention.

[Section 78 amended: No. 24 of 2023 s. 57.]

Division 2 — Prevention of Collisions Convention

79. Regulations giving effect to Prevention of Collisions Convention

- (1) The regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention in relation to vessels, while they are in State waters.
- (2) A person shall not contravene a regulation made under subsection (1).

Penalty for this subsection: a fine of \$10 000 or imprisonment for 2 years.

~~—(3)—*deleted*~~

- (3) The regulations referred to in subsection (1) may make provision for applying, adopting or incorporating, with or without modification, the Prevention of Collisions Convention.

[Section 79 amended: No. 24 of 2023 s. ~~58~~58; No. 31 of 2023 s. 16.]

Division 3 — Container Convention

80. Regulations giving effect to Container Convention

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

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

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

Division 4 — Limitation Convention and limitation provisions

82. Interpretation

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

83. Application

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

84. Provisions of Limitation Convention having force of law

- (1) Subject to section 85, the provisions of the Limitation Convention, other than Article 1(1)(c) of that Convention, have the force of law of as part of the law of the State in relation to —
 - (a) a trading ship within the meaning of section 6 of the former Navigation Act proceeding on a voyage other than an overseas voyage or an inter-state voyage; and
 - (b) an Australian fishing vessel within the meaning of section 6 of that Act proceeding on a voyage other than an overseas voyage; and
 - (c) an inland waterways vessel within the meaning of section 6 of that Act; and
 - (d) a pleasure craft within the meaning of section 6 of that Act; and
 - (e) an off-shore industry vessel within the meaning of section 8 of that Act —
 - (i) in respect of which there is not in force a declaration under section 8A(2) of that Act; and
 - (ii) that is proceeding on a voyage other than an overseas voyage or an inter-state voyage.

- (2) In subsection (1), *inter-state voyage* and *overseas voyage* have the same meanings as in section 6 of the former Navigation Act.
- (3) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purpose of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.

[Section 84 amended: No. 24 of 2023 s. 59.]

85. Limitation in relation to non-seagoing ferries

Notwithstanding section 84, in relation to a trading ship or an inland waterways vessel which in either case is a sheltered water passenger vessel, the Limitation Convention shall be read and construed as if the following paragraphs were substituted for Article 3 —

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

at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

86. Application to determine liability

- (1) Where a claim is, or claims are, made against or apprehended by a person in respect of any liability of that person that he may limit in accordance with the applied provisions of the Limitation Convention, the person may apply to the Supreme Court (whether or not in the course of other proceedings) to determine the limit of that liability in accordance with those provisions, and the Court may so determine the limit of that liability and may make such order or orders as it thinks fit with respect to the Constitution, administration and distribution in accordance with those provisions, of a limitation fund for the payment of claims in respect of which the person is so entitled to limit his liability.
- (2) The Supreme Court to which an application has been made under subsection (1) may, if the Court thinks fit, at any stage in the proceedings, upon application or of its own motion, by order, transfer the proceedings to the Supreme Court of another State or Territory of the Commonwealth.
- (3) Where proceedings are transferred from the Supreme Court in pursuance of subsection (2), all documents filed of record, and moneys lodged, in the Supreme Court shall be transmitted by the Master to the Registrar or other proper officer of the Court to which the proceedings are transferred.
- (4) Where proceedings are transferred to the Supreme Court by a Court of another State or Territory of the Commonwealth in pursuance of a law of that State or Territory analogous to this section, the Supreme Court shall proceed as if the proceedings had been originally instituted in the Supreme Court and as if the same proceedings had been taken in that Court as had been taken in the Court from which the proceedings are transferred.
- (5) For the purposes of this Division, amounts of money expressed in the franc mentioned in Article 3 of the Convention shall be

converted into Australian currency in the manner provided by the *Navigation (Limitation of Shipowners' Liability) Regulations* of the Commonwealth or by regulations substituted for or amending those regulations.

87. Regulations giving effect to Limitation Convention

- (1) The regulations may prescribe matters that are necessary or convenient to be prescribed for the purposes of carrying out or giving effect to the applied provisions of the Limitation Convention and, for or in connection with those purposes, may make provision for and in relation to the ascertainment of the tonnage of ships, vessels or craft mentioned in section 84(1) including the estimation of such tonnage in circumstances where it is not possible or reasonably practicable to measure their tonnage.
- (2) Subsection (1) shall not be taken as limiting the power of the Judges of the Supreme Court to make rules with respect to a matter that is not provided for in regulations made under subsection (1).

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

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

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

any robbery, embezzlement, making away with or secreting thereof.

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

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

Division 5 — Safety Convention

90. Regulations giving effect to Safety Convention

- (1) The regulations may make provision for or in relation to giving effect to a provision of Chapter V of the Regulations contained in the Annex to the Safety Convention (other than Regulation 13 or 15 of that Chapter of those Regulations) with respect to —
 - (a) a trading ship within the meaning of section 6 of the former Navigation Act proceeding on a voyage other than an overseas voyage or an inter-state voyage; or
 - (b) an Australian fishing vessel within the meaning of section 6 of that Act proceeding on a voyage other than an overseas voyage; or

- (c) an inland waterways vessel within the meaning of section 6 of that Act; or
 - (d) a pleasure craft within the meaning of section 6 of that Act; or
 - (e) an off-shore industry vessel within the meaning of section 8 of that Act —
 - (i) in respect of which there is not in force a declaration under section 8A(2) of that Act; and
 - (ii) that is proceeding on a voyage other than an overseas voyage or an inter-state voyage.
- (2) In subsection (1), *inter-state voyage* and *overseas voyage* have the same meanings as in section 6 of the former Navigation Act.
- (3) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purposes of proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.
- (4) Where a provision of the Safety Convention applies only in relation to a particular class of ships or in relation to ships engaged on a particular class of voyages, any regulation under subsection (1) that gives effect to that provision may be applied to ships of any other class mentioned in that subsection or to such ships engaged in any other class of voyages other than an overseas voyage or, except in the case of an Australian fishing vessel, an inter-state voyage.

[Section 90 amended: No. 24 of 2023 s. 60.]

Part 5 — Carriage of dangerous goods

[Heading amended: No. 24 of 2023 s. 61.]

91. Restriction on carriage of dangerous goods

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

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

- (2) Subsection (1) does not apply to the owner or master of the vessel.

[Section 91 amended: No. 7 of 2004 s. 70; No. 24 of 2023 s. 62.]

92. Penalty for misdescription of goods and sender

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

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

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

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

*[Section 92: Correction: Gazette 26 Jul 2013 p. 3354;
amended: No. 24 of 2023 s. 63.]*

93. Powers of owner or master as to dangerous goods

- (1) The owner or master of any vessel may refuse to take on board at any port in the State any package which the owner or master suspects contains dangerous goods and may require it to be opened and may inspect the contents.
- (2) If any dangerous goods, or any goods which in the opinion of the owner or master of the vessel are dangerous goods, have been sent or brought aboard any vessel without being marked as required by section 91 or without notice having been given as required by that section, the owner or master of the vessel may cause the goods to be thrown overboard, with any package or receptacle in which they are contained, and neither the owner nor the master shall be subject to any liability, civil or criminal, for doing so.

[Section 93 amended: No. 24 of 2023 s. 64.]

94. Forfeiture of dangerous goods

- (1) Where any dangerous goods have been sent or carried or an attempt has been made to send or carry dangerous goods on board any vessel at any port in the State without being marked as required by section 91 or without notice having been given as required by that section, or under a false description, or with a false description of the sender or carrier thereof, any court having Admiralty jurisdiction may declare those goods and any receptacle in which they are contained to be, and they shall thereupon be, forfeited, and when forfeited shall be disposed of as the court directs.
- (2) The court shall have, and may exercise, the powers of forfeiture and disposal notwithstanding that the owner of the goods has not committed any offence under the provisions of this Act

relating to dangerous goods, and is not before the court, and has not notice of the proceedings and notwithstanding that there is no evidence to show to whom the goods belong; but the court may in its discretion require such notice as it may direct to be given to the owner or shipper of the goods before declaring them to be forfeited.

[Section 94 amended: No. 24 of 2023 s. 65.]

95. Minister may prohibit carriage of cargo

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

Penalty: a fine of \$2 000.

[Section 95 amended: No. 24 of 2023 s. 66.]

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.

[Section 96 inserted: No. 24 of 2023 s. 67.]

97. Explosives on passenger vessels

- (1) If a vessel carrying passengers carries explosives, the explosives shall be protected in the manner directed by the chief executive officer.
- (2) The master and the owner of a vessel on which explosives are carried contrary to subsection (1) are each guilty of an offence.
Penalty for this subsection: a fine of \$2 000.
- (3) This section does not apply to explosives forming part of the equipment or stores required for the navigation, safety, or maintenance of the vessel.
- (4) Without limiting any power conferred on an inspector or authorised person under this Act, an inspector or authorised person may seize and detain without warrant any explosives which are in or on board a vessel contrary to this section.
- (5) Explosives seized under this section may be forfeited on the order of a court of summary jurisdiction and disposed of as the court directs.

[Section 97 amended: No. 35 of 1990 s. 21; No. 24 of 2023 s. 68.]

Part ~~VI~~6 — Pleasure vessels

~~98.~~ **Terms used**

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

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

~~owner includes a person who is a joint owner or part owner of a pleasure vessel and, where a pleasure vessel is the subject of a hire purchase agreement, means the person who is entitled to the use of the pleasure vessel under the agreement;~~ **prescribed vessels**

~~pleasure vessel means—~~

- ~~(a) a vessel held wholly for the purpose of recreational or sporting activities and not for hire or reward; and~~
 - ~~(b) any other vessel declared to be a vessel to which this Part applies by order of the Minister under subsection (2).~~
- ~~(2) The Minister may by order declare that this Part shall apply to any vessel or any type of vessel specified in that order (not being a vessel required to be licensed otherwise under this Act).~~
- ~~(3) An order under subsection (2) shall be published for general information in the *Gazette* as soon as practicable after it is made but a failure to so publish shall not affect the validity of the order.~~
- ~~(4) The Minister may by order published in the *Gazette* vary or revoke an order made under this section.~~

~~[Section 98 amended [Heading inserted: No. 3524 of 1990 2023 s. 2169.]~~

~~[98. Deleted: No. 24 of 2023 s. 69.]~~

99. Regulations in respect of pleasure vessels and prescribed vessels

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

pleasure vessels and ~~otherwise for giving effect to the purposes of this Part and in particular~~ prescribed vessels, including by —

- ~~(a)~~ (a) prescribing the duties of owners, masters and operators of pleasure vessels and prescribed vessels;
- ~~(b)~~ (b) providing for the registration and transfer of registration of pleasure vessels ~~or any class of pleasure vessels, whether generally or where registration is limited in respect of time, place or circumstance, and providing for the~~ and prescribed vessels, and the suspension or cancellation of ~~such~~ registration; ~~and~~
- ~~(bc)~~ (bc) prohibiting the navigation of ~~pleasure vessels that 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 ~~safely~~ be navigated; ~~and~~ safely;
- ~~(e)~~ ~~regulating~~ (d) providing for the maintenance and repair of pleasure vessels; and prescribed vessels;
- ~~(d)~~ ~~prescribing~~ (e) providing for the equipment ~~to that must~~ be provided on pleasure vessels and ~~for~~ prescribed vessels and the use and maintenance of ~~such~~ the equipment; ~~and~~
- ~~(ef)~~ (ef) providing for the inspection of pleasure vessels and prescribed vessels and their equipment; ~~and~~
- ~~(f)~~ ~~regulating noise, fumes and smoke arising from the operation of pleasure vessels; and~~
- ~~(g)~~ ~~prescribing the age of persons who may be in charge of pleasure vessels, or pleasure vessels of any class; and~~
- ~~(h)~~ ~~providing for the manning of pleasure vessels, generally or in respect of journeys of specified durations; and~~
- ~~(ha)~~ ~~regulating, controlling or prohibiting water related activities generally or any kind of water related activity specified in the regulations; and~~
- ~~(i)~~ ~~regulating or prohibiting the use of specified waters~~

- ~~(i) by any pleasure vessel or pleasure vessels of any class; or~~
- ~~(ii) for any specified purpose;~~
- ~~and~~
- ~~(j) prescribing safety regulations in respect of the navigation, mooring and berthing of pleasure vessels; and~~
- ~~(k) regulating the provision and use on pleasure vessels of lights and signals.~~
- ~~(2) Without limiting in any way by inspectors or authorised persons, and the powers conferred by subsection (1), the Governor may by regulation empower the chief executive officer to regulate by notice published in the *Gazette* times, places, and conditions in respect of any matter or thing for which regulations may be made under subsection (1)(b), (i) and (j) and such a notice has the force of law.~~
- ~~(3) Regulations made or a notice published under this section prescribing safety regulations may provide that where the chief executive officer is satisfied that appropriate measures are taken to ensure the safety of competitors, spectators and members of the public generally, specified pleasure vessels or of authorised persons or classes of pleasure vessels or persons engaged in aquatic events or exhibitions approved by the chief executive officer may be exempted by the chief executive officer from the requirement to who carry all, or a specified part, of the required safety equipment and such an exemption may be granted unconditionally or subject to specified conditions. out those inspections;~~
- ~~[Section 99 amended: No. 35 of 1990 s. 14 and 21.]~~

Part VII—Investigations and inquiries

Division 1—General

100.—Application

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

~~Division 2—Preliminary investigations~~ (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 powers~~

101.—Preliminary inquiries and reports

~~(1) If the chief executive officer has reason to believe that~~

~~(a) a casualty has occurred to a commercial vessel; or~~

~~(b) any incompetence or misconduct has occurred on the part of any certificated master, mate, marine engineer, marine engine driver or coxswain on a commercial vessel,~~

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

~~(2) The chief executive officer may, whenever he considers it expedient to do so, depute an official of the Department or, with the approval of the Minister, appoint any other person as an inspector, to report to him upon one or more of the following matters —~~

~~(a) whether in particular circumstances or in relation to a particular event this Act or regulations made under this Act have been complied with; and~~

~~(b) whether the hull, boilers, machinery, or any part of a ship or of any equipment or articles in or on board a ship to which this Act applies are sufficient and in good condition; and~~

~~(c) such other matters as the chief executive officer considers necessary to ensure compliance with this Act and the regulations under this Act.~~

~~[Section 101 amended: No. 35 of 1990 s. 21.]~~

102. Powers of investigators and inspectors

~~A person who is [prescribed vessels, including the qualifications required to make a preliminary inquiry under section 101\(1\) or a report under section 101\(2\)](#) may for the purpose of that inquiry or report —~~

~~(a) go on board any ship, to which the provisions of this Act apply, and inspect her or any part of her and any of the equipment, boilers and machinery, and articles in or on board and may require the unloading or removal of any cargo, ballast, or tackle, but shall not unnecessarily~~

~~detain or delay the ship from proceeding on any voyage;
and~~

~~(b) enter and inspect any premises the entry or inspection of
which appears necessary to him; and~~

~~(c) by summons signed by him require the attendance of
any person before him for examination and may require
answers or returns to his questions or inquiries; and~~

~~(d) require and enforce the production of all books, papers,
logs, accounts, agreements and other documents relating
to his inquiry or report; and~~

~~(e) administer oaths or, instead of requiring or administering
an oath, require a person examined by him to make and
subscribe a declaration of the truth of the statements
made by him in his examination.~~

103. Formal investigation by Court

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

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

Division 3—Courts of Marine Inquiry

104.—Governor may establish Court of Marine Inquiry

- ~~—(1) The Governor, by proclamation, may establish a Court of Marine Inquiry to hear and determine an inquiry, investigation, appeal or reference under this Act.~~
 - ~~—(2) A Court of Marine Inquiry is a court of record.~~
 - ~~—(3) More than one Court of Marine Inquiry may be established at any one time.~~
 - ~~—(4) Subject to any rules made under section 108, the practice and procedure of a Court of Marine Inquiry shall be the same as that of the Magistrates Court exercising its civil jurisdiction.~~
 - ~~—(5) Subject to section 109(4) sections 15, 16, 35 and 36 and Part 3 Division 2 of the *Magistrates Court Act 2004* apply to and in relation to a Court of Marine Inquiry and its officers in the same way as they apply to and in relation to the Magistrates Court and its officers.~~
- ~~— [Section 104 inserted: No. 59 of 2004 s. 141; amended: No. 8 of 2009 s. 137(3).]~~

105.—Magistrates and assessors to sit

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

~~service, both of whom shall have had experience in the calling of the person concerned.~~

~~———— [Section 105 amended: No. 59 of 2004 s. 141.]~~

106. — Assessors

- ~~—— (1) — Persons of nautical, engineering or other special skill or knowledge shall be appointed assessors to assist in a Court of Marine Inquiry.~~
- ~~—— (2) — The Governor may make rules with regard to the appointment and summoning of assessors.~~
- ~~—— (3) — Every assessor shall, for every day or portion of a day during which he is engaged in a Court of Marine Inquiry, or in attendance waiting to perform his duties in the Court, be paid such sum as is fixed by the chief executive officer from time to time.~~
- ~~—— (4) — The chief executive officer shall furnish to the Minister lists of persons eligible for appointment as assessors of the Court of Marine Inquiry.~~

~~———— [Section 106 amended: No. 35 of 1990 s. 21.]~~

107. — Officers of Court of Marine Inquiry

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

~~———— [Section 107 inserted: No. 59 of 2004 s. 141.]~~

108. — Rules of Court

- ~~—— (1) — The Governor may make rules regulating the practice and procedure of Courts of Marine Inquiry and in particular ——~~
 - ~~—— (a) — providing for sittings of the Court; and~~
 - ~~—— (b) — in respect of appeals before the Court, providing for security for costs and damages to be given; and~~

- ~~— (e) prescribing fees and — (j) providing for the application of fees. provision and use on pleasure vessels and prescribed vessels of lights and signals;~~
- ~~(2) Rules made under this section shall not be invalid by reason of any conflict with the *Magistrates Court (Civil Proceedings) Act 2004*.~~
- ~~— (3) To the extent that the rules of practice and procedure of the Court do not apply to a particular matter or circumstance arising before the Court, the presiding magistrate may issue such directions as he considers appropriate.~~
- ~~— [Section 108 amended: No. 59 of 2004 s. 141.]~~

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

109. — Functions of Court of Marine Inquiry

- ~~— (1) A Court of Marine Inquiry is authorised to and shall hold formal investigations —~~
- ~~— (a) into casualties to commercial vessels;~~
- ~~— (b) k) providing for the purpose of hearing and determining a charge or charges of incompetence or misconduct, or both, on the part of licensing of owners, masters, mates, marine engineers, marine engine drivers or coxswains of commercial operators and crew of pleasure vessels and prescribed vessels holding certificates of competency or service in respect of incompetence or misconduct on any such vessel, including —~~
- ~~— referred to it or preferred before it, as the case may be, under section 103.~~

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

110. Powers and duties in respect of unsafe ships

- ~~(1) A Court of Marine Inquiry shall hear and determine in open court any appeal or reference under this Act in respect of the detention of a ship alleged to be unsafe and shall follow in any such appeal or reference the procedure under this Act for the investigation of casualties.~~
- ~~(2) The Court may appoint a competent person or persons to survey the ship and report to the Court.~~
- ~~(3) The presiding magistrate of the Court, an assessor and a person or persons appointed under subsection (2) may survey the ship and shall for the purposes of this section have all the powers of an inspector under section 102.~~

- ~~(4) The Court shall have the same power as (i)
issuing licences; and~~
- (ii) authorising the chief executive officer ~~has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.~~
- ~~(5) The owner and master of the ship, any person appointed by the owner or master and any person appointed by the chief executive officer may attend at any inspection or survey made under this section.~~
- ~~(6) The presiding magistrate of the Court shall send to the Minister a report (in such form as may be directed by the Rules) and each assessor shall either sign the report as an expression of his concurrence or report to the Minister the reasons for his dissent.~~
- ~~[Section 110 amended: No. 47 of 1993 s. 33(2).]~~

111. Presiding magistrate and procedure

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

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

112. Power of Court to suspend or cancel certificate

~~— (1) A Court of Marine Inquiry has the power to cancel or suspend the certificate of a master, mate, marine engineer, marine engine driver or coxswain if the Court finds that he is incompetent or has been guilty of any gross act of misconduct or that he has failed in his duty in regard to a collision or in a matter relating to the navigation or management of a ship.~~

~~— (2) A master, mate, marine engineer, marine engine driver or coxswain whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his certificate to the Court on demand, or, if not so demanded, to the Department or as the Department directs.~~

~~— (3) A certificate shall not be cancelled or suspended by a Court of Marine Inquiry unless a copy of any charge against the holder of the certificate or a copy of the report on any preliminary inquiry containing or indicating any such charges, together with a copy of the evidence taken on that inquiry, has been served on him at least 48 hours before the commencement of the investigation into those charges.~~

~~— (4) A master, mate, marine engineer, marine engine driver or coxswain who fails without reasonable cause to comply with subsection (2) is guilty of an offence.~~

~~— Penalty: \$500.~~

113. Rehearing

~~— Where an investigation under this Part has been conducted by a Court of Marine Inquiry, the Governor may order the case to be~~

~~reheard, either generally or as to a part of the case, and the Governor shall so order if —~~

~~(a) new and important evidence, which could not be produced at the investigation, has been discovered; or~~

~~(b) in the opinion of the Governor, there is for any other reason ground for suspecting that a miscarriage of justice has occurred.~~

(iii) assessing the competency of people to hold licences;

(ka) providing for schemes for assessing the competency of people to hold licences in relation to owners, masters, operators and crew of pleasure vessels and prescribed vessels;

(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.

(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.

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Part VII Investigations and inquiries

Division 4 The powers and duties of Courts of Marine Inquiry

s. 113

(3) The *Interpretation Act 1984* section 43(8)(d) does not limit subsection (1)(k) or (ka).

[Section 99 inserted: No. 24 of 2023 s. 69; amended: No. 31 of 2023 s. 17.]

Part 7 — Seaplanes

[Heading inserted: No. 24 of 2023 s. 70.]

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, 64D, 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.

[Section 100 inserted: No. 24 of 2023 s. 70; amended: No. 31 of 2023 s. 18.]

[101-106. Deleted: No. 24 of 2023 s. 70.]

Part 8 — Supplementary and administrative provisions

[Heading amended: No. 24 of 2023 s. 71.]

Division 1 — Information protection, disclosure and exchange

[Heading inserted: No. 24 of 2023 s. 72.]

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 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;

(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.

[Section 107 inserted: No. 24 of 2023 s. 72; amended: No. 31 of 2023 s. 19.]

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.

[Section 108 inserted: No. 24 of 2023 s. 72.]

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.

[Section 109 inserted: No. 24 of 2023 s. 72.]

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 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.

[Section 110 inserted: No. 24 of 2023 s. 72.]

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.

- (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.

[Section 111 inserted: No. 24 of 2023 s. 72.]

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.

[Section 112 inserted: No. 24 of 2023 s. 72.]

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 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.

[Section 113 inserted: No. 24 of 2023 s. 72.]

Division 2 — Regulations

[Heading inserted: No. 24 of 2023 s. 73.]

114. Powers in relation to regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are

necessary or convenient to be prescribed for giving effect to the purposes of this Act and in particular —

- (a) providing for the control, supervision and guidance of ~~the~~ inspectors, ~~officials and~~ authorised persons ~~engaged by or on behalf of the Department and over whom, by virtue of~~ and other persons with functions under this Act, ~~the Minister or chief executive officer has control~~, and for prescribing the form and manner of signing of, and the persons authorised to sign, notices, certificates, returns, statements, declarations, licences and other documents to be given, made, or issued under this Act, and for the promulgation of all acts, matters and things necessary, expedient or convenient for carrying into operation or for facilitating the operation of this Act; and
- (b) prescribing the fees, charges and expenses to be charged or made in respect of matters arising under or provided for or authorised by this Act; and
- (c) prescribing the form or contents of applications, licences, permits, certificates, registers, notices, orders, exemptions, dispensations and other documents required for the purposes of this Act or authorising the ~~Minister~~ chief executive officer to specify forms required to be used.

(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;
- (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).

(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.

(2) Regulations may be made under this Act, whether or not for the particular purposes of any Part or Division —

(a) so as to provide that—

~~(i)~~ contravention 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

~~(ii)~~ (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 requirement of a proclamation or rule made, or order or notice published, under this Act, 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

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

- (b) so as to prescribe, subject to subsection (3), a modified penalty ~~not exceeding \$300~~ for any offence, or class of offence, if dealt with under a section of this Act authorising the service of an infringement notice and the payment of a modified penalty in relation to such an offence; and
- (c) so as to apply —
- (i) generally or in a particular class of case or in particular classes of cases; and
 - (ii) at all times or at a specified time or at specified times; and
 - (iii) in all waters or in specified waters, or throughout the State or in a specified part or specified parts of the State;
- and
- (d) so as to require a matter affected by them to be —
- (i) in accordance with a specified standard or specified requirement; or

- (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;
- and
- (e) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and
 - (f) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations or of a ~~requirement of any proclamation or rule made, or order or notice published pursuant to~~ direction, notice, order or rule under this Act, either wholly or to such extent as is specified; and
 - (g) so as to authorise the chief executive officer, at any time, to cancel an exemption or dispensation wholly or in part, and to cancel, or from time to time waive, add to, or otherwise vary the condition of an exemption or dispensation.
- (3) ~~In~~ A modified penalty prescribed under subsection (2)(b) for an offence —
- (a) must be an amount of money; and
 - (b) must not exceed —
 - (i) in relation to an offence under Part 3A or Part 3B or section 124GS(2) — \$2 000; or
 - (ii) in relation to any other offence — 20% of the penalty specified ~~means specified infor~~ the ~~regulations~~ offence.

[Section 114 amended: No. 35 of 1990 s. ~~21~~21; No. 24 of 2023 s. 74; No. 31 of 2023 s. 20.]

115. Regulations may adopt codes etc.

- (1) Regulations made under this Act may —
- (a) adopt, either wholly or in part or with modifications and either specifically or by reference, any subsidiary legislation or other instrument under any Act of the State, another Australian jurisdiction or the United Kingdom or any of the standards, rules, codes or specifications of the bodies known as Standards Australia, the British Standards Institution, the International Organization for Standardization, the Australian Maritime Safety Authority (established by the *Australian Maritime Safety Authority Act 1990* (Commonwealth)) or other like body specified in the regulations; and
 - (b) incorporate by reference, with or without modification, all or any of the provisions of the Uniform Shipping Laws Code or the National Standard for Commercial Vessels; and
 - (c) provide that where by reason of unavailability of materials or other reason that the chief executive officer considers valid any requirement adopted by the rules or regulations cannot be conformed to, the chief executive officer may approve such use of materials or other matters as the chief executive officer considers to be consistent with the achievement of the objects of the rules or regulations.

[(2) *deleted*]

[Section 115 amended: No. 35 of 1990 s. 21; No. 74 of 2003 s. 130; No. 24 of 2023 s. 75.]

Division 3 — Exemptions and equivalents

[Heading inserted: No. 24 of 2023 s. 76.]

115A. Exemptions and equivalents

- (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 exercising the power conferred by subsection (1) or (1A), the chief executive officer shall have regard to the principles embodied in this Act and the regulations made under this Act.
- (3) Where under this Act provision is made that a particular fitting, material, appliance, or apparatus, or type thereof, shall be fitted or carried in a vessel or in vessels in a specified class of vessel, or that any particular provision shall be made, the chief executive officer may allow any other fitting, material, appliance, or apparatus, or type thereof, to be fitted or carried, or

any other provision to be made if the chief executive officer is satisfied, by trial or otherwise, that such fitting, material, appliance, or apparatus, or such provision is at least as effective as that required under this Act.

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

[Section 115A inserted: No. 35 of 1990 s.15; amended: No. 24 of 2023 s. 77.]

~~116.— Minister may delegate~~

- ~~(1) The Minister or the chief executive officer, as the case may be, (the *delegator*) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers or duties under this Act, other than this power of delegation.~~
- ~~(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the delegator.~~
- ~~(3) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.~~
- ~~(4) A delegation under this section may~~

- ~~(a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;~~
- ~~(b) be revoked or varied by instrument in writing signed by the delegator.~~
- ~~(5) The delegator may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.~~
- ~~(6) Where, under this Act, the exercise of a power or the performance of a function by the delegator is dependent upon the opinion, belief or state of mind of the delegator in relation to a matter and that power or function has been delegated under this section, that power or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.~~
- ~~[Section 116 amended: No. 35 of 1990 s. 16.]~~

~~117.~~ Appointment of inspectors **Division 4 — Inspectors and authorised officers persons**

~~[Heading inserted: No. 24 of 2023 s. 78.]~~

~~[116. Deleted: No. 24 of 2023 s. 79.]~~

117. Designation

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

[Section 117 ~~amended~~ inserted: No. 3524 of 1990 2023 s. 17 and 2179.]

118. ~~Certificate of appointment~~ Identity cards

(1) The chief executive officer ~~shall~~ must issue ~~to each authorised person who is not a member of the Police Force and~~ an identity card to each inspector ~~and authorised person, other than a certificate of his appointment~~ police officer.

~~(2) An identity card must —~~

~~(a) be in the prescribed~~ a form ~~specifying that approved by the chief executive officer; and~~

~~(b) contain a recent photograph or digital image of the person is an~~ inspector or authorised person ~~and the general nature of his function or; and~~

~~(c) specify that the person is an inspector, as the case may be, and the holder shall produce the certificate whenever required to do so by a person in respect of whom he has exercised or is about to exercise any of his powers or~~ authorised person under this Act.

~~(2) In the case of~~ (3) A person who ceases to be an inspector, the certificate issued under 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) is also to specify any functions that the inspector has under other enactments by virtue of being~~ 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.

[Section 118 ~~amended: No. 35 of 1990 s. 21; inserted: No. 224 of 2019 2023 s. 6379.]~~

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.

[Section 118A inserted: No. 24 of 2023 s. 79.]

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.

[Section 118B inserted: No. 24 of 2023 s. 79.]

Division 5 — Certain offences

[Heading inserted: No. 24 of 2023 s. 80.]

119. Penalty for obstruction

A person who wilfully assaults, obstructs, endeavours to intimidate, or uses abusive or offensive language to, or disobeys a lawful requisition or order of, a person (the *official*) performing or endeavouring to perform a power or duty conferred on the official by or under this Act, whether on board a vessel or elsewhere, is guilty of an offence and is liable to a fine not exceeding \$5 000 and may be detained by the official or by any person whom the official may call to their assistance until the offender can be conveniently taken before a court having appropriate jurisdiction.

[Section 119 amended: No. 24 of 2023 s. 81.]

120. Penalty for false declarations etc.

A person who knowingly —

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

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

Penalty:

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

[Section 120 amended: No. 24 of 2023 s. 82.]

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.

[Section 120A inserted: No. 24 of 2023 s. 83.]

121. Offences in connection with certificates, licences etc.

- (1) A person shall not —
- (a) knowingly make a false representation for the purpose of obtaining a certificate, licence, permit, exemption or dispensation either for themselves or for another person;
or
 - (b) forge or fraudulently alter a certificate, licence, permit, exemption or dispensation; or
 - (c) fraudulently use a certificate, licence, permit, exemption or dispensation that is forged, altered, cancelled or suspended or to which the person is not justly entitled;
or
 - (d) allow a person to use fraudulently a certificate, licence, permit, exemption or dispensation that does not relate to that person.

Penalty for this subsection:

- (a) for an individual — a fine of \$3 000;
 - (b) for a body corporate — a fine of \$10 000.
- (2) In this section, *certificate, licence, permit, exemption or dispensation* means a certificate, licence, permit, exemption or dispensation issued granted, or recognized under this Act and includes a certified copy of such a certificate, licence, permit, exemption or dispensation.

[Section 121 amended: No. 24 of 2023 s. 84.]

Division 6 — Liability

[Heading inserted: No. 24 of 2023 s. 86.]

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

- ~~(1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship under Part III as an unsafe ship, — (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 ~~shall be liable to pay the owner of the ship his~~ the reasonable costs of and incidental to the detention and ~~survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.~~~~
- ~~(2) If a ship is finally detained under Part III or if it appears that a ship provisionally detained was at the time of the detention an unsafe ship within the meaning of that Part, the owner of the ship shall be liable to pay to the Department the costs of and incidental to the detention and survey of the ship inspection of the vessel, which costs ~~shall be~~ are, without prejudice to any other remedy ~~be~~ are, recoverable by the chief executive officer in anya court of competent jurisdiction.~~

~~(32)~~ For the purposes of ~~this Act~~, subsection (1), the costs referred to include the costs of and incidental to any proceeding before a Court of Marine Inquiry, and a reasonable amount in respect of the State Administrative Tribunal under section 63C and the remuneration of the surveyor or other official of the Department, shall be part of the costs of the detention and survey of the ship; and any dispute as to the amount of the costs may be referred to the taxing officer of the Supreme Court who, on request made to him for that purpose by the 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, shall ascertain and certify is liable to pay the proper amount owner of costs the vessel —

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

(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.

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

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

~~(1) Where a complaint is made to the Department or to a detaining official that a ship is unsafe, the chief executive officer or a detaining official may require the complainant to give security to the satisfaction of the chief executive officer for the costs and compensation which the complainant may become liable to pay under this section.~~

~~(2) Where the complaint is made by one-fourth, being not less than 2, of the crew belonging to the ship, and is not, in the opinion of the chief executive officer or detaining official, frivolous or vexatious, security shall not be required; and the chief executive officer or detaining official shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.~~

~~(3) Where a ship is detained in consequence of any complaint, and the circumstances are such that the chief executive officer is liable under this Act to pay to the owner of the ship any costs or compensation, the chief executive officer may by notice in writing given to the complainant require the complainant to pay to the chief executive officer the amount of all such costs and compensation as the chief executive officer incurs or is liable to pay in respect of the detention and survey of the ship, and failing payment the same may be recovered in any court of competent jurisdiction.~~

~~[Section 123 amended^{inserted}: No. 3524 of 1990²⁰²³ s. 2186.]~~

124. Immunity of Minister and officials

~~**123. No liability shall attach to the Minister, the chief executive officer or any other official of the Department, or to any person acting with the authority or on the direction of the Minister or the chief executive officer**~~
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 and, in the exercise performance or purported exercise of a power or in the discharge or purported discharge of a duty 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) The Minister, the chief executive officer, the Commissioner of Police, and the State are also relieved of any liability that any of them might otherwise have had for another person having done anything as described in subsection (1).

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 123 inserted: No. 24 of 2023 s. 86; amended: No. 31 of 2023 s. 21.]

Division 7 — Administration

[Heading inserted: No. 24 of 2023 s. 86.]

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.

[Section 124 ~~amended~~ inserted: No. ~~35~~24 of ~~1990~~2023 s. ~~21~~86.]

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.

[Section 124A inserted: No. 24 of 2023 s. 86.]

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.

[Section 124B inserted: No. 24 of 2023 s. 86.]

Division 8 — Miscellaneous

[Heading inserted: No. 24 of 2023 s. 86.]

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.

[Section 124C inserted: No. 24 of 2023 s. 86.]

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.

[Section 124D inserted: No. 24 of 2023 s. 86.]

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.

[Section 124E inserted: No. 24 of 2023 s. 86.]

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.

[Section 124F inserted: No. 24 of 2023 s. 86.]

124FA. Approved forms

- (1) The chief executive officer may approve forms for use under this Act.
- (2) A certificate that is prescribed for a purpose under the *Road Traffic Act 1974* is taken to be the form of a certificate approved under subsection (1) for a corresponding purpose under this Act.
- (3) A form approved under subsection (1) may apply or adopt a form approved or prescribed under the *Road Traffic Act 1974* (other than a prescribed certificate referred to in subsection (2)) for use for a corresponding purpose under this Act.
- (4) A form referred to in subsection (2) or (3) may be used even if the form is not modified in any way, including not modified to refer to a provision of this Act relating to the corresponding purpose for which it is used.
- (5) The chief executive officer must make forms approved under subsection (1) (other than forms to which subsection (3) applies) available on the Department's website.

[Section 124FA inserted: No. 31 of 2023 s. 22.]

Part 8A — Disqualification from holding or obtaining WA marine qualification

[Heading inserted: No. 31 of 2023 s. 23(1).]

Division 1 — Preliminary

[Heading inserted: No. 31 of 2023 s. 23(1).]

124G. Terms used

In this Part —

alleged offence, in relation to a person, has the meaning given in section 124GA(1);

disqualification notice has the meaning given in section 124GA(3);

disqualification order, in relation to a person, means an order made by a court on convicting the person for an offence that disqualifies the person from holding or obtaining a WA marine qualification for the period specified in the order;

disqualified, in relation to a person, means the person is disqualified from holding or obtaining a WA marine qualification by a disqualification order or under a disqualification notice.

[Section 124G inserted: No. 31 of 2023 s. 23(1).]

Division 2 — Disqualification notices

[Heading inserted: No. 31 of 2023 s. 23(2).]

124GA. Disqualification by inspector or police officer

- (1) This section applies if an inspector or police officer suspects on reasonable grounds that a person has committed an offence specified in the Table (the ***alleged offence***).

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>
<u>s. 75HB(1)</u>	<u>Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place</u>
<u>s. 75HC(1)</u>	<u>Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>

(2) For the purposes of subsection (1), reasonable grounds in relation to an offence against 75C(1), 75CA(1), 75DA(1) or 75DD(1) include the result of a breath analysis of a sample of a person's breath or analysis of a person's blood.

(3) The inspector or police officer may give the person a notice (a **disqualification notice**) stating that the person is disqualified

from holding or obtaining a WA marine qualification for a period of 2 months starting when the notice is given to the person.

Note for this subsection:

See section 124GD for the period for which a disqualification notice is in effect.

(4) A disqualification notice given to a person under subsection (3) must be given personally.

(5) The inspector or police officer giving the disqualification notice to the person must write on it —

(a) the time and date the notice is given to the person; and

(b) the time and date the period of disqualification ends.

[Section 124GA inserted: No. 31 of 2023 s. 23(2).]

124GB. Requirements for disqualification notice

A disqualification notice given to a person must —

(a) specify the grounds on which the notice is given; and

(b) identify the time and date on which the alleged offence was committed; and

(c) identify where the alleged offence was committed; and

(d) describe the alleged offence with reasonable clarity; and

(e) identify the offence, or offences, that the person is suspected of committing; and

(f) state that the person may be able to apply to a court under section 124GH for an order revoking the disqualification notice in certain circumstances.

[Section 124GB inserted: No. 31 of 2023 s. 23(2).]

124GC. Limitation on giving disqualification notice

An inspector or police officer cannot give a disqualification notice to a person in relation to an alleged offence more than 10 days after the later of the following days —

- (a) the day the alleged offence was committed;
- (b) if a sample of the alleged offender's blood was taken under section 75EH, 75EI, 75EN or 75EO in relation to the commission of the alleged offence — the day on which an inspector or police officer receives information about the result of the analysis of the sample.

[Section 124GC inserted: No. 31 of 2023 s. 23(2).]

124GD. Period of disqualification under disqualification notice

A disqualification notice given to a person has effect for the period —

- (a) starting when the notice is given to the person; and
- (b) ending on the day that is 2 months after the day on which it is given to the person, unless the notice is revoked earlier.

[Section 124GD inserted: No. 31 of 2023 s. 23(2).]

124GE. Amendment of disqualification notice

An inspector or police officer may, by written notice given to a person to whom a disqualification notice has been given, amend the disqualification notice to correct an error in the notice.

[Section 124GE inserted: No. 31 of 2023 s. 23(2).]

124GF. Particulars of disqualification notice given to chief executive officer

If an inspector or police officer gives a person a disqualification notice, or a notice amending a disqualification notice under section 124GE, the inspector or police officer must ensure that

particulars of the notice are sent to the chief executive officer as soon as practicable after giving the notice.

[Section 124GF inserted: No. 31 of 2023 s. 23(2).]

124GG. Revocation of disqualification notice by inspector or police officer

(1) An inspector or police officer must immediately revoke a disqualification notice given to a person in relation to an alleged offence if —

(a) the inspector or police officer becomes aware that the breath analysing equipment used to conduct a breath analysis of a sample of the person's breath in connection with the offence was faulty at the time of the analysis; or

(b) a charge for the offence has not been laid within 1 month after the day on which the notice was given; or

(c) a charge for the offence is discontinued.

(2) The inspector or police officer who revokes a disqualification notice under subsection (1) must, as soon as practicable after the revocation, ensure that notice of the revocation is given to —

(a) the person to whom the disqualification notice was given; and

(b) the chief executive officer.

[Section 124GG inserted: No. 31 of 2023 s. 23(2).]

124GH. Court may order revocation of disqualification notice

(1) A person may apply to the Magistrates Court or, if the person is under 18 years of age, to the Children's Court, for an order revoking a disqualification notice given to the person on the grounds that there are exceptional circumstances that justify the revocation.

(2) An application made under subsection (1) must —

- (a) include particulars of the exceptional circumstances that the applicant alleges justify revoking the notice; and
- (b) be given to the chief executive officer at least 14 days before it is heard and determined.

(3) If the disqualification notice was issued by an inspector, the chief executive officer is entitled to be heard on the application.

(4) If the disqualification notice was issued by a police officer, the Commissioner of Police is entitled to be heard on the application.

(5) The court may make an order directing that the disqualification notice be revoked from a specified day if the court is satisfied that there are exceptional circumstances that justify revoking the notice.

(6) If the court makes an order directing that a disqualification notice issued by a police officer is revoked, the court must ensure a copy of the order is given to the chief executive officer.

[Section 124GH inserted: No. 31 of 2023 s. 23(2).]

124GI. Disqualification notice automatically revoked on acquittal or dismissal of charge

(1) A disqualification notice given to a person in relation to an alleged offence is revoked if a court —

- (a) acquits the person of the offence; or
- (b) dismisses a charge for the offence.

(2) If a disqualification notice is revoked under this section, the court must ensure that information about the revocation is sent to the chief executive officer.

[Section 124GI inserted: No. 31 of 2023 s. 23(2).]

124GJ. Period of disqualification under disqualification notice to be taken into account in sentencing

(1) This section applies if a court convicts a person of an offence to which a disqualification notice relates.

(2) When making an order disqualifying the person from holding or obtaining a WA marine qualification, the court must take into account the period of disqualification that applies to the person under the disqualification notice.

[Section 124GJ inserted: No. 31 of 2023 s. 23(2).]

Division 3 — Provisions relating to disqualification orders by court

[Heading inserted: No. 31 of 2023 s. 23(3).]

124GK. Application of Division

This Division applies if a court sentencing a person for an offence makes a disqualification order in relation to the person.

[Section 124GK inserted: No. 31 of 2023 s. 23(3).]

124GL. Notifying chief executive officer of disqualification order

The court must ensure that the following information about a disqualification order is given to the chief executive officer —

- (a) details of the order;
- (b) details of the offence to which the disqualification relates;
- (c) any other information prescribed for this section.

[Section 124GL inserted: No. 31 of 2023 s. 23(3).]

124GM. Removal of disqualification

- (1) A disqualified person may apply to a court for an order removing the disqualification.
- (2) However, the person cannot apply before the end of the following period, starting on the day on which the disqualification took effect —
 - (a) if the disqualification is for no more than 6 years — 3 years;
 - (b) if the disqualification is for more than 6 years but no more than 20 years — one-half of the period of the disqualification;
 - (c) if the disqualification is for more than 20 years or is permanent — 10 years.
- (3) The application must be made to —
 - (a) if the disqualification was imposed by the Supreme Court — the Supreme Court; or
 - (b) in any other case — the District Court.
- (4) The court may make an order removing the disqualification from the day specified in the order or refuse the application.
- (5) In deciding the application, the court must have regard to the following matters —
 - (a) the safety of the public generally;
 - (b) the character of the applicant;
 - (c) the circumstances of the case;
 - (d) the nature of the offence or offences giving rise to the disqualification;
 - (e) the conduct of the applicant subsequent to the disqualification.

[Section 124GM inserted: No. 31 of 2023 s. 23(3).]

124GN. Removal of disqualification: additional provisions

- (1) A court to which an application is made under section 124GM may order the applicant to pay all or part of the costs of an application.
- (2) The chief executive officer has a right to be heard in proceedings for the application.
- (3) If the court refuses the application, a further application cannot be heard during the period of 1 year after the day of refusal.
- (4) This section and section 124GM do not limit or otherwise affect any right a person may have to appeal against a disqualification order.

[Section 124GN inserted: No. 31 of 2023 s. 23(3).]

124GO. Notifying chief executive officer of disqualification order

A court ordering that the disqualification of a person be removed must ensure that the following information is given to the chief executive officer —

- (a) details of the order;
- (b) details of the disqualification;
- (c) any other information prescribed for this section.

[Section 124GO inserted: No. 31 of 2023 s. 23(3).]

Division 4 — Effect of disqualifications and other matters

[Heading inserted: No. 31 of 2023 s. 23(3).]

124GP. Effect of disqualification

- (1) A WA marine qualification held by a person is suspended while the person is disqualified.
- (2) A WA marine qualification obtained by a person while the person is disqualified has no effect.

- (3) Subsection (2) applies whether or not the person applied for the WA marine qualification before becoming disqualified.
- (4) This section —
- (a) does not operate to extend the period for which a WA marine qualification may be valid or effective beyond the time it would otherwise expire; and
 - (b) does not affect the cancellation of a WA marine qualification under regulations referred to in section 124GQ(a).

[Section 124GP inserted: No. 31 of 2023 s. 23(3).]

124GQ. Other effects of disqualification

The regulations may provide —

- (a) for the circumstances in which a WA marine qualification held by a person who is disqualified under a disqualification order may be cancelled; and
- (b) if a person is disqualified from holding or obtaining a marine qualification under the law of another Australian jurisdiction or an overseas jurisdiction, that —
 - (i) a WA marine qualification held by the person is suspended while the disqualification is in effect or may be cancelled; or
 - (ii) the person cannot obtain a WA marine qualification.

[Section 124GQ inserted: No. 31 of 2023 s. 23(3).]

124GR. Calculating period of disqualification

Any of the following periods do not count towards a period of disqualification for a person —

- (a) a period during which the person is in custody serving a sentence of imprisonment;

- (b) if the person appeals against the conviction or sentence that gave rise to the disqualification — the period starting when the person commences the appeal and ending when the appeal is decided, dismissed or withdrawn.

[Section 124GR inserted: No. 31 of 2023 s. 23(3).]

124GS. Navigating certain vessels when disqualified from holding or obtaining WA marine qualification

- (1) In this section —
navigate, a vessel, has the meaning given in section 75AA(2);
relevant vessel means a vessel for which a WA marine qualification is required to navigate it under this Act.
- (2) A person commits an offence if the person navigates a relevant vessel while the person is disqualified.
Penalty for this subsection:
- (a) for a first offence, imprisonment for 12 months or a fine of not less than \$400 or more than \$2 000;
- (b) for a second or subsequent offence, imprisonment for 18 months or a fine of not less than \$1 000 or not more than \$4 000.
- (3) A court sentencing a person for an offence against subsection (2) must order that the person is disqualified from holding or obtaining a WA marine qualification for a period of not less than 3 months or more than 9 months.
- (4) A period of disqualification ordered under subsection (3) is cumulative upon —
- (a) another period for which the person is disqualified; or
- (b) if a WA marine qualification held by the person is suspended when the order is made — the period of suspension.

- (5) It is a defence to a charge of an offence against subsection (2) for the person charged to prove that the person —
- (a) held an exemption issued by the chief executive officer under this Act from holding a WA marine qualification; and
 - (b) was navigating the vessel in accordance with the exemption at the time the alleged offence was committed.
- (6) A police officer may arrest a person for an offence against subsection (2) without a warrant.

[Section 124GS inserted: No. 31 of 2023 s. 23(3).]

Part 9 — Legal proceedings

[Heading amended: No. 24 of 2023 s. 87.]

Division 1 — Evidentiary provisions for alcohol-related offences and drug-related offences

[Heading inserted: No. 31 of 2023 s. 24(1).]

Subdivision 1 — Preliminary

[Heading inserted: No. 31 of 2023 s. 24(1).]

124H. Terms used

In this Division —

alcohol-related offence has the meaning given in section 124HC(1);

approved expert has the meaning given in the *Road Traffic Act 1974* section 70(7);

authorised drug tester has the meaning given in section 75EB(1);

authorised operator has the meaning given in section 75EA(1);

certificate means a certificate in the form approved under section 124FA(1);

drug-related offence has the meaning given in section 124HI(1);

material time has the meaning given in —

(a) in relation to an alcohol-related offence — section 124HC(2); or

(b) in relation to a drug-related offence — section 124HI(2);

navigate, a vessel, has the meaning given in section 75AA(2);

operate, a vessel, has the meaning given in section 75AA(1);

preliminary breath test has the meaning given in section 75E;

preliminary oral fluid test has the meaning given in section 75E;

prescribed sample taker has the meaning given in section 75E;

sampling equipment means the equipment referred to in the *Road Traffic Act 1974* section 70 as the prescribed equipment that must be used for taking blood samples for the purposes of Part 3B.

[Section 124H inserted: No. 31 of 2023 s. 24(1).]

124HA. Certificate is evidence of stated facts

(1) This section applies in relation to a certificate —

(a) purporting to be signed by a person; and

(b) stating any of the matters that, under this Division, the person may certify.

(2) In a proceeding for an alcohol-related offence or a drug-related offence, the certificate is evidence of the facts stated in the certificate without proof of the person's signature.

[Section 124HA inserted: No. 31 of 2023 s. 24(1).]

124HB. No limit on other evidence in proceedings

(1) Nothing in this Division is to be construed as limiting the evidence that may be introduced in a proceeding for an offence against this Act or another written law that is relevant to whether or not a person is guilty of the offence.

(2) Subsection (1) applies in relation to evidence regardless of whether the evidence is in addition to, or independent of, any evidence that is provided for under this Division.

[Section 124HB inserted: No. 31 of 2023 s. 24(1).]

Subdivision 2 — Evidence in proceedings for alcohol-related offences

[Heading inserted: No. 31 of 2023 s. 24(1).]

124HC. Alcohol-related offence and material time

(1) An alcohol-related offence is —

(a) an offence against a section specified in the Table; or

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75D(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above</u>
<u>s. 75DA(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>

(b) an offence against this Act or another written law if either of the following matters is relevant to the proceeding —

(i) whether or not a person was under the influence of alcohol at a material time;

(ii) the extent to which a person was under the influence of alcohol at a material time.

(2) The **material time**, in relation to a person about whom evidence is given for an alcohol-related offence, is —

- (a) for an offence mentioned in subsection (1)(a) — the time at which a person is alleged to have navigated, or attempted to operate, a vessel while the person had a particular BAC;
- (b) for an offence mentioned in subsection (1)(b) — the material time mentioned in subsection (1)(b)(i) or (ii) in relation to the offence.

[Section 124HC inserted: No. 31 of 2023 s. 24(1).]

124HD. Evidence in proceeding for alcohol-related offence

(1) Evidence about any of the following matters may be given in a proceeding for an alcohol-related offence —

- (a) the provision of a sample of breath by a person for breath analysis, if the sample is provided within 4 hours after the material time;
- (b) the analysis of the sample of the person's breath by breath analysing equipment operated by an authorised operator;
- (c) the manner in which the breath analysing equipment indicated a result of the breath analysis;
- (d) the result indicated by the breath analysing equipment;
- (e) the taking of a sample of blood from the person by a prescribed sample taker, if the sample is taken —
 - (i) within 4 hours after the material time; or
 - (ii) if the sample is taken in accordance with a requirement under section 75EO — within 12 hours after the material time;
- (f) the analysis of the sample of the person's blood for alcohol by an analyst;
- (g) the result of the analysis of the sample.

(2) Subsection (1) does not limit the admissibility of other evidence that may be given in the proceeding.

[Section 124HD inserted: No. 31 of 2023 s. 24(1).]

124HE. Evidence of authorised operator of breath analysing equipment

In a proceeding for an alcohol-related offence, evidence given by an authorised operator about any of the following is evidence of that fact —

(a) the device operated by the authorised operator to conduct an analysis of a breath sample was breath analysing equipment;

(b) the authorised operator operated the breath analysing equipment —

(i) in the prescribed manner; and

(ii) in compliance with the regulations relating to the type of breath analysing equipment;

(c) when operated, the breath analysing equipment indicated a result in the prescribed manner.

[Section 124HE inserted: No. 31 of 2023 s. 24(1).]

124HF. Certificate of authorised operator of breath analysing equipment

For the purposes of section 124HA, the matters that a person who is an authorised operator may certify in a certificate are that, on a specified date or at a specified time —

(a) a specified person provided a sample of breath for breath analysis; and

(b) the person was an authorised operator; and

(c) the sample of breath provided was analysed using a device that was breath analysing equipment that was operated by the person; and

- (d) the person used the breath analysing equipment in the prescribed manner and in accordance with the regulations relating to breath analysis conducted using that type of breath analysing equipment; and
- (e) at the conclusion of the breath analysis, the breath analysing equipment indicated a result in the prescribed manner; and
- (f) the result of the breath analysis was the specified result; and
- (g) in accordance with section 75EM, the person gave the specified person a written statement or statement printed by the breath analysing equipment referred to in that section.

[Section 124HF inserted: No. 31 of 2023 s. 24(1).]

124HG. Certificate of analyst relating to analysis of blood sample for alcohol

For the purposes of section 124HA, the matters that a person who is an analyst may certify in a certificate are that, on a specified date or at a specified time —

- (a) the person was an analyst; and
- (b) the person received a sample of blood —
 - (i) identified in the specified way; and
 - (ii) identified as a sample taken from a specified person;
- and
- (c) the person analysed the sample for alcohol in accordance with the regulations, and
- (d) the result from the analysis was the specified BAC.

Example for this section:

For the purposes of paragraph (b)(i), a sample may be identified by a number on the container for the sample.

[Section 124HG inserted: No. 31 of 2023 s. 24(1).]

124HH. Proof of person's BAC for certain offences

- (1) This section applies in a proceeding for an alcohol-related offence referred to in section 124HC(1)(a).
- (2) In the absence of proof to the contrary, the accused is taken to have a particular BAC at the time the accused navigated, or attempted to operate, a vessel if it is proved the person had that BAC —
- (a) within 4 hours after the time of the navigation or attempted operation; or
- (b) if the proof of the person's BAC relates to a sample of the person's blood taken in accordance with a requirement imposed under section 75EO — within 12 hours after the time of the navigation or attempted operation.
- (3) Evidence that the accused consumed alcohol during the relevant period is not admissible to rebut the presumption created under subsection (2).
- (4) For the purposes of subsection (3), the *relevant period* is the period —
- (a) starting at the latest time it is alleged the accused navigated or attempted to operate a vessel; and
- (b) ending when the person provided the sample of breath, or the sample of the person's blood was taken, which established proof of the person's BAC.

[Section 124HH inserted: No. 31 of 2023 s. 24(1).]

Subdivision 3 — Evidence in proceedings for drug-related offences

[Heading inserted: No. 31 of 2023 s. 24(1).]

124HI. Drug-related offence and material time

(1) A drug-related offence is —

(a) an offence against any of the sections specified in the Table; or

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75C(1)</u>	<u>Navigation of vessel while under influence of alcohol or drugs</u>
<u>s. 75CA(1)</u>	<u>Navigation of vessel while under influence of both alcohol and drugs</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>

(b) an offence against this Act or another written law if either of the following matters is relevant to the proceeding —

(i) whether or not a person was under the influence of, or impaired by, a drug at a material time;

(ii) the extent to which a person was under the influence of, or impaired by, a drug at a material time.

(2) The *material time*, in relation to a person about whom evidence for a drug-related offence is given, is —

(a) for an offence mentioned in subsection (1)(a) — the time at which a person is alleged to have navigated, or attempted to operate, a vessel while —

(i) the person was under the influence of a drug; or

(ii) the person was impaired by drugs; or

(iii) a prescribed illicit drug was present in the person's body;

or

(b) for an offence mentioned in subsection (1)(b) — the material time mentioned in subsection (1)(b)(i) or (ii) in relation to the offence.

[Section 124HI inserted: No. 31 of 2023 s. 24(1).]

124HJ. Evidence in proceedings for drug-related offences

(1) Evidence about the following matters may be given in a proceeding for a drug-related offence —

(a) the taking of a sample of blood from a person by a prescribed sample taker, if the sample is taken —

(i) within 4 hours after the material time; or

(ii) if the sample is taken in accordance with a requirement imposed under section 75EO — within 12 hours after the material time;

(b) the analysis of the sample of the person's blood for drugs by a drugs analyst;

(c) the result obtained from the analysis;

(d) the behaviour, condition or appearance of a person at the material time;

(e) the behaviour or a condition associated with a person who has consumed or used a particular drug or combination of drugs;

(f) the usual effect that the behaviour or a condition associated with a person who has consumed or used a particular drug or combination of drugs has on a person's capacity to have proper control of a vessel;

(g) the provision of a sample of oral fluid by the person, if the sample is provided within 4 hours after the material time;

(h) the analysis of the sample of the person's oral fluid for drugs by a drugs analyst;

(i) the result obtained from the analysis.

(2) Subsection (1) does not limit the admissibility of other evidence that may be given in the proceeding.

[Section 124HJ inserted: No. 31 of 2023 s. 24(1).]

124HK. Certificate of authorised drug tester

For the purposes of section 124HA, the matters that a person who is an authorised drug tester may certify in a certificate are that, on a specified date or at a specified time —

(a) the person was an authorised drug tester; and

(b) the person —

(i) took a sample of oral fluid from a specified person on a specified date and at a specified time; and

(ii) identified the sample in the specified way;

and

(c) the sampling equipment the person used to take the sample —

(i) is identified in the specified way; and

(ii) was given to the person by a specified person; and

(iii) was received in the specified condition;

and

(d) the person took the sample in accordance with the regulations.

Example for this section:

For the purposes of paragraph (c)(i), a sample may be identified by a number on the container for the sample.

[Section 124HK inserted: No. 31 of 2023 s. 24(1).]

124HL. Certificate of drugs analyst relating to analysis of oral fluid or blood sample for drugs

For the purposes of section 124HA, the matters that a person who is a drugs analyst may certify in a certificate are that, on a specified date or at a specified time —

(a) the person was a drugs analyst; and

(b) the person received a sample of oral fluid or blood —

(i) identified in the specified way; and

(ii) identified as a sample taken from a specified person;

and

(c) the person analysed the sample for drugs; and

(d) the analysis produced the specified result.

Example for this section:

For the purposes of paragraph (b)(i): a sample may be identified by a number on the container for the sample.

[Section 124HL inserted: No. 31 of 2023 s. 24(1).]

124HM. Certificate of approved expert relating to usual effect of particular drugs

For the purposes of section 124HA, the matters that a person who is an approved expert may certify in a certificate are —

- (a) that, on a specified date or at a specified time, the person was an approved expert; and
- (b) a description of the usual behaviour, condition or appearance associated with a person who has consumed or used a specified drug or combination of drugs; and
- (c) a description of the usual effect that the behaviour or a condition associated with a person who has consumed or used a specified drug or combination of drugs has on a person's capacity to have proper control of a vessel.

[Section 124HM inserted: No. 31 of 2023 s. 24(1).]

124HN. Certificate of inspector or police officer

For the purposes of section 124HA, the matters that a person who is an inspector or police officer may certify in a certificate are that, on a specified date or at a specified time —

- (a) a specified person who navigated, or attempted to operate, a vessel behaved in a specified way or had a specified condition or appearance; and
- (b) the person conducted an assessment of drug impairment on a specified person; and
- (c) the person conducted the assessment in accordance with the regulations; and
- (d) during the assessment, the specified person behaved in a specified way or had a specified condition or appearance.

[Section 124HN inserted: No. 31 of 2023 s. 24(1).]

124HO. Proof of presence of drugs

- (1) This section applies in a proceeding for an offence specified in the Table.

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75CD(1)</u>	<u>Navigation of vessel while impaired by drugs</u>
<u>s. 75DB(1)</u>	<u>Navigation of vessel while prescribed illicit drug present</u>
<u>s. 75DC(1)</u>	<u>Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug present</u>
<u>s. 75DD(1)</u>	<u>Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present</u>

[\(2\) In the absence of evidence to the contrary, the presence of a drug in a person's body is taken to be proved if it is proved that the drug was present in the person's body —](#)

[\(a\) within 4 hours after the material time; or](#)

[\(b\) if the presence of the drug is proved in relation to a sample of the person's blood taken in accordance with a requirement imposed under section 75EO — within 12 hours after the material time.](#)

[\[Section 124HO inserted: No. 31 of 2023 s. 24\(1\).\]](#)

Subdivision 4 — Other evidentiary provisions

[\[Heading inserted: No. 31 of 2023 s. 24\(1\).\]](#)

124HP. Certificate of chief executive officer, Commissioner of Police or CEO of Chemistry Centre (WA)

[\(1\) The chief executive officer may issue a certificate certifying, on a specified date or during a specified period —](#)

(a) that a specified person was an inspector; and

(b) as to whether or not the person was competent to operate breath analysing equipment or a drug testing device.

(2) The Commissioner of Police may issue a certificate certifying that, on a specified date or during a specified period —

(a) a specified police officer was an authorised operator competent to operate breath analysing equipment; or

(b) a specified police officer was an authorised drug tester competent to operate a drug testing device.

(3) The chief executive officer of the Chemistry Centre (WA) may issue a certificate certifying that, on a specified date or during a specified period —

(a) a specified person was an analyst; or

(b) a specified person was a drugs analyst.

(4) In any proceeding, a certificate referred to in subsection (1), (2) or (3), purporting to be signed by the person mentioned in that subsection, is evidence of the facts stated in the certificate without proof of the person's signature.

[Section 124HP inserted: No. 31 of 2023 s. 24(1).]

124HQ. Certificate of technologist who prepared sampling equipment

(1) In this section —

approved body means a body referred to in the *Road Traffic Act 1974* section 70 as a body approved by the Minister in relation to technologists who prepare sampling equipment;

prescribed items means items referred to in the *Road Traffic Act 1974* section 70 as the prescribed items that must comprise sampling equipment;

technologist has the meaning given in the *Road Traffic Act 1974* section 70(7).

(2) For the purposes of section 124HA, the matters that a person who is a technologist of an approved body may certify in a certificate are that —

- (a) sampling equipment identified in the certificate comprises the prescribed items; and
- (b) the technologist prepared the prescribed items; and
- (c) the prescribed items are sterile and fit for the purpose of taking a sample of blood for analysis if used for that purpose no later than a specified date.

Example for this subsection:

For the purposes of paragraph (a), sampling equipment may be identified by a serial number.

[Section 124HQ inserted: No. 31 of 2023 s. 24(1).]

124HR. Certificate of prescribed sample taker

For the purposes of section 124HA, the matters that a person who is a prescribed sample taker may certify in a certificate are that, on a specified date or at a specified time —

- (a) the person was a prescribed sample taker; and
- (b) the person —
 - (i) took a sample of blood from a specified person on a specified date and at a specified time; and
 - (ii) identified the sample in the specified way;and
- (c) the sampling equipment the person used to take the sample —
 - (i) is identified in the specified way; and
 - (ii) was given to the person by a specified person;and
 - (iii) was received in the specified condition;and

(d) the person took the sample in accordance with the regulations.

Examples for this subsection:

1. For the purposes of paragraph (b)(ii), a sample may be identified by a number on the container for the sample.
2. For the purposes of paragraph (c)(i), sampling equipment may be identified by a serial number.

[Section 124HR inserted: No. 31 of 2023 s. 24(1).]

124HS. Evidence of delivery of blood or oral fluid samples

(1) In this section —

prescribed particulars means the prescribed particulars of the delivery of a sample to an analyst or drugs analyst referred to in the *Road Traffic Act 1974* section 70B(1).

(2) This section applies in a proceeding for —

- (a) an alcohol-related offence referred to in section 124HC(1)(a); or
- (b) a drug-related offence referred to in section 124HI(1)(a).

(3) For the purposes of section 124HA, a person who takes delivery of a sample delivered to an analyst or drugs analyst may certify in a certificate the prescribed particulars of the delivery of the sample.

[Section 124HS inserted: No. 31 of 2023 s. 24(1).]

124HT. Procedural requirements for admissibility of particular certificate evidence

(1) This section relates to evidence in the form of a certificate of —

- (a) an analyst under section 124HG; or
- (b) a drugs analyst under section 124HL; or
- (c) an approved expert under section 124HM; or
- (d) a person who takes delivery of a sample delivered to an analyst or a drugs analyst under section 124HS.

(2) The certificate is not admissible as evidence in a proceeding unless —

- (a) a copy of the certificate is served on the accused at least 28 days before the day on which the certificate is adduced in the proceeding; or
- (b) it is adduced in the proceeding by, or with the consent of, the accused.

(3) The accused cannot challenge or call into question any matter set out in a certificate admitted under subsection (2) unless —

- (a) written notice of the accused's intention to challenge or question the matter is served on the prosecutor at least 14 days before the day on which the certificate is produced; or
- (b) the court, in the interests of justice, gives the accused leave to challenge or question the matter.

(4) A notice referred to in subsection (3)(a) must specify the matter that is to be challenged or called into question.

[Section 124HT inserted: No. 31 of 2023 s. 24(1).]

124HU. Evidence relating to preliminary oral fluid test, drug testing and preliminary breath test admissible in certain proceedings with consent

(1) Evidence about a matter referred to subsection (2) is only admissible in a proceeding for an offence if —

- (a) the proceeding is for an offence specified in the Table;
- or

Table — Offences

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75H(1)</u>	<u>Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel</u>

<u>Section no.</u>	<u>Section heading</u>
<u>s. 75HD(1)</u>	<u>Failure to comply with requirement: oral fluid sample for drug testing or blood sample</u>
<u>s. 75HG(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.05 or above</u>
<u>s. 75HH(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.08 or above</u>
<u>s. 75HI(1)</u>	<u>Failure to comply with drug testing requirement: BAC of 0.15 or above</u>
<u>s. 75GF(5)</u>	<u>Prohibiting person from navigating vessel for 24 hours if prescribed illicit drug present</u>

(b) for a proceeding for any other offence against this Act or another written law — the evidence is adduced in the proceeding by, or with the consent of, the person the subject of the evidence.

(2) For the purposes of subsection (1), the matters are —

(a) that a person provided a sample of breath for a preliminary breath test and any indication provided by the preliminary breath testing device used for the test; and

(b) that a person provided a sample of oral fluid for a preliminary oral fluid test and any indication provided by the preliminary oral fluid testing device used for the test; and

(c) the result of the drug testing of a sample of a person's oral fluid by a drug testing device.

(3) Evidence that a person provided a sample of the person's oral fluid for drug testing is only admissible in a proceeding for an offence if —

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(a) the proceeding is for a drug-related offence; or

(b) the proceeding is for an offence specified in the Table to subsection (1)(a); or

(c) the evidence is adduced by, or with the consent of, the person the subject of the evidence.

[Section 124HU inserted: No. 31 of 2023 s. 24(1).]

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[Heading inserted: No. 31 of 2023 s. 24(2).]

124I. Term used: young person

In this Division —

young person has the meaning given in the *Young Offenders Act 1994* section 3(1).

[Section 124I inserted: No. 31 of 2023 s. 24(2).]

124IA. Limitation on period for which previous offences taken into account

- (1) This section applies if a person is convicted of an offence against Part 3A or 3B and the penalty for the offence varies according to whether the person has been previously convicted for another offence.
- (2) If a person's conviction for a previous offence was recorded more than 20 years before the commission of the offence for which the person is being sentenced, the previous offence must not be taken into account in determining the penalty to be imposed.

[Section 124IA inserted: No. 31 of 2023 s. 24(2).]

124IB. Sentencing for particular offences: option for community based order or youth community based order

- (1) This section applies if a court is sentencing a person who has been convicted of —
- (a) a first offence against a section mentioned in Table 1; or

Table 1 — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

- (b) any offence against a section mentioned in Table 2.

Table 2 — Offences

Section no.	Section heading
s. 75DA(1)	Navigation of vessel while BAC is 0.08 or above
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug present

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Section no.	Section heading
s. 75H(1)	Failure to comply with requirement: preliminary breath test, preliminary oral fluid test or boarding or moving vessel
s. 75HH(1)	Failure to comply with drug testing requirement: BAC of 0.08 or above

- (2) The court may, instead of imposing a fine —
- (a) order the release of the person; and
 - (b) impose a community based order under the *Sentencing Act 1995* with at least a community service requirement as a primary requirement of the order.
- (3) If the offender is a young person, the court may, instead of imposing a fine, make a youth community based order under the *Young Offenders Act 1994*, imposing at least community work conditions on the offender.
- (4) Subsection (3) applies subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*.

[Section 124IB inserted: No. 31 of 2023 s. 24(2).]

124IC. Sentencing for particular offences if community based order or intensive supervision order imposed

- (1) This section applies if —
- (a) a court is sentencing a person who has been convicted of —
 - (i) an offence against section 75HG(1) (Failure to comply with drug testing requirement: BAC of 0.05 or above); or
 - (ii) a second or subsequent offence against a section specified in the Table;

Table — Offences

Section no.	Section heading
s. 75C(1)	Navigation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation of vessel while under influence of both alcohol and drugs
s. 75HB(1)	Failure to comply with requirement: breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement: incident occasioning death, grievous bodily harm or bodily harm
s. 75HI(1)	Failure to comply with drug testing requirement: BAC of 0.15 or above

and

- (b) the court orders the release of the offender; and
 - (c) the court imposes —
 - (i) a community based order or an intensive supervision order under the *Sentencing Act 1995*; or
 - (ii) if the offender is a young person — a youth community based order or an intensive youth supervision order under the *Young Offenders Act 1994*.
- (2) If the court imposes an order referred to in subsection (1)(c)(i), the court must impose at least a community service requirement as a primary requirement of the community based order or intensive supervision order.

- (3) If the court imposes an order referred to in subsection (1)(c)(ii), the court must impose community work conditions on the offender as part of the youth community based order or intensive youth supervision order.

[Section 124IC inserted: No. 31 of 2023 s. 24(2).]

124ID. Pre-sentence report required for sentencing for navigation while impaired by drugs

A court sentencing a person who has been convicted of an offence against section 75CD(1) (Navigation of vessel while impaired by drugs) must order a pre-sentence report about the offender under the *Sentencing Act 1995* Part 3 Division 3.

[Section 124ID inserted: No. 31 of 2023 s. 24(2).]

124IE. Sentencing for first offence of navigation while impaired by drugs or failure to comply with drug impairment assessment

- (1) This section applies if a court is sentencing a person who has been convicted of a first offence against —
- (a) section 75CD(1) (Navigation of vessel while impaired by drugs); or
 - (b) section 75HE(1) (Failure to comply with requirements relating to assessment of drug impairment).
- (2) Despite the *Sentencing Act 1995* section 39(3) and (4), the court must, instead of or in addition to imposing a fine —
- (a) order the release of the person; and
 - (b) impose a community based order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order.
- (3) If the offender is a young person, the court must, instead of or in addition to imposing a fine, make a youth community based order under the *Young Offenders Act 1994*, imposing at least attendance conditions on the offender.

- (4) Subsection (3) applies —
- (a) subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*; and
 - (b) despite section 74 of that Act.

[Section 124IE inserted: No. 31 of 2023 s. 24(2).]

124IF. Sentencing for second or subsequent offence of navigation while impaired by drugs or failure to comply with drug impairment assessment

- (1) This section applies if a court is sentencing a person who has been convicted of a second or subsequent offence against —
- (a) section 75CD(1) (Navigation of vessel while impaired by drugs); or
 - (b) section 75HE(1) (Failure to comply with requirements relating to assessment of drug impairment).
- (2) The court must, instead of or in addition to imposing a fine, order the release of the person and impose either of the following under the *Sentencing Act 1995* —
- (a) a community based order with at least a supervision requirement and a programme requirement as primary requirements of the order; or
 - (b) an intensive supervision order with at least a programme requirement as a primary requirement of the order.
- (3) Subsection (2) applies despite the *Sentencing Act 1995* section 39(3) and (4).
- (4) If the offender is a young person, the court must, instead of or in addition to imposing a fine —
- (a) make a youth community based order or an intensive youth supervision order under the *Young Offenders Act 1994*; and
 - (b) impose at least attendance conditions and supervision conditions on the offender.

- (5) Subsection (4) applies —
- (a) subject to sections 50, 50A and 50B of the *Young Offenders Act 1994*; and
 - (b) despite section 74 of that Act.
- (6) Subsections (2) and (4) do not apply if the court imposes a custodial sentence on the offender.

[Section 124IF inserted: No. 31 of 2023 s. 24(2).]

124IG. Mandatory disqualification

- (1) This section applies if this Act requires a court sentencing a person for an offence to disqualify the offender from holding or obtaining a WA marine qualification for —
- (a) a specified period, or permanently, in relation to the offence; or
 - (b) a period not less than a specified minimum period in relation to the offence; or
 - (c) a period not less than a specified minimum period, and no more than a specified maximum period, in relation to the offence.
- (2) Regardless of any sentence the court imposes on the offender for the offence, the court —
- (a) must disqualify the offender for the specified period, or at least the specified minimum period and more than the specified maximum period; and
 - (b) cannot reduce the period of disqualification other than by the period the offender was disqualified by a disqualification notice given to the offender under section 124GA in relation to the offence.
- (3) Without limiting subsection (2)(b), the specified period of disqualification cannot be reduced in mitigation.
- (4) This section applies despite any other written law.

[Section 124IG inserted: No. 31 of 2023 s. 24(2).]

124IH. Minimum fines

Without limiting the *Sentencing Act 1995*, and despite any other written law, a fine provided for an offence under Part 3A or Part 3B of this Act that is a minimum penalty (however expressed) cannot be reduced in mitigation.

[Section 124IH inserted: No. 31 of 2023 s. 24(2).]

Division 3 — General matters

[Heading inserted: No. 31 of 2023 s. 25.]

125. Evidence of documents and proof of signature

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

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

125A. Limitation period for prosecutions

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

[Section 125A inserted: No. 84 of 2004 s. 80; amended: No. 24 of 2023 s. 88.]

126. Admissibility of documents in evidence

- (1) Where a document is by this Act declared to be admissible in evidence, it shall, on production from the proper custody, be admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or in pursuance of any duty under this Act.
- (2) A copy of, or extract from, any such document shall also be admissible in evidence if —
 - (a) it is proved to be an examined copy or extract; or
 - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.
- (3) The provisions of this section shall be without prejudice to those of the *Evidence Act 1906*.

127. Service of summons and process

- (1) Service of any summons or other process in any legal proceeding under this Act shall be deemed good service if made —
 - (a) personally on the person to be served; or
 - (b) at the person's last known place of abode or business; or
 - (c) on board any vessel to which the person belongs and accompanied with a statement of the purport thereof, to the person being or appearing to be the master of the vessel.

(2) In subsection (1) —

legal proceeding under this Act includes any proceeding under the *State Administrative Tribunal Act 2004* in a matter commenced by an application under this Act for a review.

[Section 127 amended: No. 55 of 2004 s. 1312; No. 24 of 2023 s. 89.]

[128. ~~Service Deleted: No. 24 of notice where no master 2023 s. 90.]~~

~~Where any order, notice, statement or document is required for the purpose of any provision of this Act to be served on the master of a ship, it shall be served, where there is no master and the ship is within the limits of Australia, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in Australia, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.~~

129. 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.

[Section 129 inserted: No. 24 of 2023 s. 91.]

130. Averment relating to qualifications of crew

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

[Section 130 amended: No. 84 of 2004 s. 80; No. 24 of 2023 s. 92.]

131. Place where act committed

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

- (a) in the place in which it actually was committed or arose;
or
- (b) in any place in which the offender or person complained against is.

132. Proceedings by way of infringement notice

- (1) An authorised person who believes on reasonable grounds that a person has committed an offence under this Act, in respect of which offence a modified penalty is prescribed, may serve, by personal delivery to the person or by posting to him at his address ascertained from him at or about the time that offence is believed to have been committed, a notice (an ***infringement notice***) in the prescribed form informing the person that if he does not wish to be prosecuted for the alleged offence in a court he may pay to a designated officer, not being a designated officer who is the authorised person serving that notice, within a period of 28 days after the date of service of that notice, the amount of the modified penalty.

- (2) If the alleged offence was allegedly committed in connection with a vessel, an authorised person may —
- (a) if the identity of the alleged offender is not known and cannot immediately be ascertained — address the infringement notice concerned to, and serve it on, the owner of the vessel concerned within a period of 30 days after the date on which the alleged offence is believed to have been committed; or
 - (b) if the identity of the alleged offender is not known and cannot immediately be ascertained and the identity of the owner of the vessel is not known and cannot be ascertained after reasonable enquiry — address the infringement notice concerned to the owner of that vessel, without naming him or stating his address, and serve that infringement notice by attaching it to that vessel or by leaving it in or on the vessel within the period referred to in paragraph (a).
- (3) When, under subsection (2) an infringement notice is addressed to and served on the owner of a vessel within the period referred to in paragraph (a) of that subsection or addressed to the owner of a vessel and served by attaching it to the vessel or leaving it in or on the vessel within that period, then, unless within a period of 21 days after the date of service of the infringement notice —
- (a) the modified penalty concerned is paid; or
 - (b) the owner of the vessel —
 - (i) informs an authorised person of the identity and address of the person who was in charge of the vessel; or
 - (ii) satisfies an authorised person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,at the time when the alleged offence is believed to have been committed,

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

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

to be dealt with under the provisions of this section.

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

- (5A) An authorised person may not withdraw an infringement notice under subsection (5) if the authorised person served the infringement notice.

- (6) The amount of any modified penalty paid pursuant to an infringement notice which has been withdrawn under subsection (5) shall be refunded.

- (7) When a modified penalty has been paid pursuant to an infringement notice and the infringement notice has not been withdrawn under subsection (5), proceedings shall not be brought against any person in respect of the alleged offence specified in the infringement notice.

- (8) A person, other than the owner or person in charge of a vessel in respect of which an alleged offence is believed to have been committed, shall not remove an infringement notice relating to

the alleged offence attached to or left in or on that vessel by an authorised person.

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

- (9) An infringement notice served under subsection (2) shall contain, *inter alia*, a short statement of the effect of subsection (3).
- (10) The Minister may by notice published in the *Gazette* designate a public service officer or class of public service officer, within the meaning of the *Public Sector Management Act 1994*, to receive payment of the amounts of modified penalties.
- (11) In this section, unless the context otherwise requires —
alleged offence means offence referred to in subsection (1);
alleged offender means person who is believed by the authorised person concerned to have committed an alleged offence;
authorised person includes an inspector;
designated officer means person designated under subsection (10).
- (12) In subsection (3) —
person who was in charge of the vessel includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, as the case requires.

[Section 132 amended: No. 47 of 1993 s. 33(2); No. 32 of 1994 s. 19; No. 84 of 2004 s. 80; No. 2 of 2019 s 64; No. 24 of 2023 s. 93.]

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

- (1) Any owner of a vessel and any person to whom for the time being the possession or control of a vessel may be entrusted

shall, if required by an authorised person, give to the authorised person any information —

- (a) which it is in the owner's or other person's power to give; and
- (b) which may lead to the identification of the person who was in charge of the vessel at the time when an offence under this Act is alleged to have been committed.

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

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

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

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

(5) In this section —

authorised person ~~has~~ includes —

~~(a meaning affected by)~~ an inspector; and

(b) in relation to a suspected offence under Part 3A or Part 3B or section ~~132~~124GS(2) — a police officer;

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

[Section 133 amended: No. 24 of 2023 s. 9494; No. 31 of 2023 s. 26.]

[134. Production of proof of identity by authorised person

~~— (1) The chief executive officer shall issue to each authorised person, other than an authorised person who is an inspector, a certificate in the prescribed form.~~

~~— (2) An authorised person —~~

~~— (a) who is not an inspector shall produce the certificate issued to him under subsection (1); or~~

~~— (b) who is an inspector shall produce the certificate issued to him by the chief executive officer in connection with his appointment as an inspector,~~

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

~~— (3) In any proceedings under this Act, production of a certificate referred to in subsection (2) is conclusive evidence in any court of the authorisation or appointment, as the case requires, by reason of which the person to whom that certificate relates~~

Western Australian Marine Act 1982

Part 9 Legal proceedings

Division 3 General matters

s. 133

~~became an authorised person and of his authority to exercise the powers conferred on an authorised person by sections 132 and 133.~~

~~(4) In this section—~~

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

~~[Section 134 amended Deleted: No. 3524 of 1990 2023 s. 2195.]~~

Part 10 — Repeal and transitional provisions

[Heading inserted: No. 24 of 2023 s. 96.]

Division 1 — Western Australian Marine Act 1982

[Heading inserted: No. 24 of 2023 s. 97.]

135. Repeals

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

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

[Heading inserted: No. 24 of 2023 s. 99.]

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).

Western Australian Marine Act 1982

Part 10 Repeal and transitional provisions

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

s. 137

- (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.

[Section 136 inserted: No. 24 of 2023 s. 99.]

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.

[Section 137 inserted: No. 24 of 2023 s. 99.]

Division 3 — Western Australian Marine Amendment Act 2023

[Heading inserted: No. 31 of 2023 s. 27.]

138. Offences against repealed section 59

- (1) In this section —

repeal day means the day on which the *Western Australian Marine Amendment Act 2023* section 9 comes into operation.

- (2) Despite *The Criminal Code* section 11, a person may be prosecuted and punished for an offence committed against section 59 before repeal day.

[Section 138 inserted: No. 31 of 2023 s. 27.]

139. Transitional regulations

- (1) In this section —

assent day means the day on which the *Western Australian Marine Amendment Act 2023* receives the Royal Assent;

publication day, for transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41;

specified means specified or described in transitional regulations;

transitional matter —

- (a) means a matter or issue of a transitional nature that arises because of the enactment of the *Western Australian Marine Amendment Act 2023*; and
- (b) includes a saving or application matter.
- (2) Regulations (**transitional regulations**) may do either or both of the following —
- (a) make any provision that is necessary or convenient for dealing with a transitional matter; or
- (b) make any provision that is necessary or convenient in consequence of, or for giving effect to, the enactment of the *Western Australian Marine Amendment Act 2023*.
- (3) Transitional regulations may provide that specified provisions of this Act —
- (a) do not apply to, or in relation to, a specified matter or thing; or
- (b) apply with specified modifications to, or in relation to, a specified matter or thing.

- (4) If transitional regulations provide that a specified 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 assent day, the transitional 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 a 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 a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day.

[Section 139 inserted: No. 31 of 2023 s. 27.]

Schedule 1 — Container Convention

[s. 76]

[Heading amended: No. 19 of 2010 s. 4.]

INTERNATIONAL CONVENTION FOR SAFE CONTAINERS

ARTICLE I

General Obligation under the present Convention

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

ARTICLE II

Definitions

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

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

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

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

16. “Maximum Permissible Payload” or “P” means the difference between maximum operating gross weight or rating and tare weight.

ARTICLE III

Application

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

ARTICLE IV

Testing, Inspection, Approval and Maintenance

1. For the enforcement of the provisions in Annex I every Administration shall establish an effective procedure for the testing, inspection and approval of containers in accordance with the criteria established in the present Convention, provided however that an Administration may entrust such testing, inspection and approval to organizations duly authorized by it.
2. An Administration which entrusts such testing, inspection and approval to an organization shall inform the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Organization”) for communication to Contracting Parties.
3. Application for approval may be made to the Administration of any Contracting Party.
4. Every container shall be maintained in a safe condition in accordance with the provisions of Annex I.

5. If an approved container does not in fact comply with the requirements of Annexes I and II the Administration concerned shall take such steps as it deems necessary to bring the container into compliance with such requirements or to withdraw the approval.

ARTICLE V

Acceptance of Approval

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

ARTICLE VI

Control

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

Administration responsible for that approval shall be informed by the Contracting Party which detected the defect.

ARTICLE VII

Signature, ratification, acceptance, approval and accession

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

ARTICLE VIII

Entry into force

1. The present Convention shall enter into force twelve months from the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force twelve months after the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. Any State which becomes a Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State,

- (a) be considered as a Party to the Convention as amended; and
- (b) be considered as a Party to the unamended Convention in relation to any Party to the Convention not bound by the amendment.

ARTICLE IX

Procedure for amending any part or parts of the present Convention

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

Upon the request of a Contracting Party, concurred in by at least one-third of the Contracting Parties, a Conference to which the States

referred to in article VII shall be invited will be convened by the Secretary-General.

ARTICLE X

Special procedure for amending the Annexes

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

shall be convened by the Secretary-General to consider amendments to the Annexes.

ARTICLE XI

Denunciation

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

ARTICLE XII

Termination

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

ARTICLE XIII

Settlement of Disputes

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

4. Decisions of the arbitration tribunal, both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote.
5. Any controversy which may arise between the parties to the dispute as regards the interpretation and execution of the award may be submitted by any of the parties for judgment to the arbitration tribunal which made the award.

ARTICLE XIV

Reservations

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

ARTICLE XV

Notification

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

- (a) signatures, ratifications, acceptances, approvals and accessions under article VII;
- (b) the dates of entry into force of the present Convention in accordance with article VIII;
- (c) the date of entry into force of amendments to the present Convention in accordance with articles IX and X;
- (d) denunciations under article XI;
- (e) the termination of the present Convention under article XII.

ARTICLE XVI

Authentic texts

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

ANNEX I

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

CHAPTER I — REGULATIONS COMMON TO ALL SYSTEMS OF APPROVAL

Regulation 1

Safety Approval Plate

1. A Safety Approval Plate conforming to the specifications set out in the Appendix to this Annex shall be permanently affixed to every approved container at a readily visible place, adjacent to any other approval plate issued for official purposes, where it would not be easily damaged.
2. (a) The Plate shall contain the following information in at least the English or French language:
 - “CSC SAFETY APPROVAL”
 - Country of approval and approval reference
 - Date (month and year) of manufacture

Manufacturer's identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration

Maximum operating gross weight (kilogrammes and lbs)

Allowable stacking weight for 1.8 g (kilogrammes and lbs)

Transverse racking test load value (kilogrammes and lbs).

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

Regulation 2

Maintenance

1. The owner of the container shall be responsible for maintaining it in safe condition.
2. The owner of an approved container shall examine the container or have it examined in accordance with the procedure either prescribed or approved by the Contracting Party concerned, at intervals appropriate to operating conditions. The date (month and year) before which a new container shall undergo its first examination shall be marked on the Safety Approval Plate.
3. The date (month and year) before which the container shall be re-examined shall be clearly marked on the container on or as close as practicable to the Safety Approval Plate and in a manner acceptable to

that Contracting Party which prescribed or approved the particular maintenance procedure involved.

4. The interval from the date of manufacture to the date of the first examination shall not exceed five years. Subsequent examination of new containers and re-examination of existing containers shall be at intervals of not more than 24 months. All examinations shall determine whether the container has any defects which could place any person in danger.
5. For the purpose of this Regulation “the Contracting Party concerned” is the Contracting Party of the territory in which the owner is domiciled or has his head office.

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

Regulation 3

Approval of New Containers

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

Regulation 4

Design Type Approval

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

Regulation 5

Provisions for Approval by Design Type

1. Where the containers are to be manufactured by design type series, application made to an Administration for approval by design type shall be accompanied by drawings, a design specification of the type of container to be approved and such other data as may be required by the Administration.

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

Regulation 6

Examination during Production

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

Regulation 7

Notification of Administration

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

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

Regulation 8

Approval of Individual Containers

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

CHAPTER IV — REGULATIONS FOR APPROVAL OF EXISTING CONTAINERS

Regulation 9

Approval of Existing Containers

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

conditions set out in Annex II, with the exception of those technical conditions relating to the end-wall and side-wall strength tests, or

- (iii) evidence that the container was constructed to standards which, in the opinion of the Administration, were equivalent to the technical conditions set out in Annex II, with the exception of those technical conditions relating to the end-wall and side-wall strength tests;
- (e) allowable stacking weight for 1.8 g (kilogrammes and lbs); and
- (f) such other data as required for the Safety Approval Plate,

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

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

APPENDIX

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

CSC SAFETY APPROVAL	
1 [GB - L/749/2/7/75]
2 DATE MANUFACTURED
3 IDENTIFICATION No.
4 MAXIMUM GROSS WEIGHT..... kg lb
5 ALLOWABLE STACKING WEIGHT ... FOR 1.8 g. .kg . . lb
6 RACKING TEST LOAD VALUE..... kg..... lb
7
8
9

↑
≥ 100 mm
↓

← ≥ 200 mm →

1. Country of Approval and Approval Reference as given in the example on line 1. (The country of Approval should be indicated by means of the distinguishing sign used to indicate country of registration of motor vehicles in international road traffic).
2. Date (month and year) of manufacture.
3. Manufacturer's identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration.
4. Maximum Operating Gross Weight (kilogrammes and lbs.).
5. Allowable Stacking Weight for 1.8 g (kilogrammes and lbs.).
6. Transverse Racking Test Load Value (kilogrammes and lbs.).
7. End Wall Strength to be indicated on plate only if end walls are designed to withstand a load of less or greater than 0.4 times the maximum permissible payload, i.e. 0.4 P.
8. Side Wall Strength to be indicated on plate only if the side walls are designed to withstand a load of less or greater than 0.6 times the maximum permissible payload, i.e. 0.6 P.
9. First maintenance examination date (month and year) for new containers and subsequent maintenance examination dates (month and year) if Plate used for this purpose.

ANNEX II

STRUCTURAL SAFETY REQUIREMENTS AND TESTS

Introduction

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

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

Construction

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

Test loads and test procedures

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

Test loadings and applied forces	Test procedures
	1. LIFTING
	The container, having the prescribed INTERNAL LOADING, shall be lifted in such a way that no significant acceleration forces are applied. After lifting, the container shall be suspended or supported for five minutes and then lowered to the ground.

Test loadings and applied forces	Test procedures
(A) Lifting from corner fittings	
<p>Internal loading: A uniformly distributed load such that the combined weight of container and test load is equal to 2R.</p> <p>Externally applied forces: Such as to lift the combined weight of 2R in the manner prescribed (under the heading TEST PROCEDURES).</p>	<p>(i) Lifting from top corner fittings: Containers greater than 3,000 mm (10 ft.) (nominal) in length shall have lifting forces applied vertically at all four top corner fittings. Containers of 3,000 mm (10 ft.) (nominal) in length or less shall have lifting forces applied at all four top corner fittings, in such a way that the angle between each lifting device and the vertical shall be 30°.</p> <p>(ii) Lifting from bottom corner fittings: Containers shall have lifting forces applied in such a manner that the lifting devices bear on the bottom corner fittings only. The lifting forces shall be applied at angles to the horizontal of: 30° for containers of length 12,000 mm (40 ft.) (nominal) or greater; 37° for containers of length 9,000 mm (30 ft.) (nominal) and up to but not including 12,000 mm (40 ft.) (nominal), 45° for containers of length 6,000 mm (20 ft.) (nominal) and up to but not including 9,000 mm (30 ft.) (nominal), 60° for containers of less than 6,000 mm (20 ft.) (nominal).</p>
(B) Lifting by any other additional methods	
<p>Internal loading:</p>	<p>(i) Lifting from fork lift pockets:</p>

Test loadings and applied forces	Test procedures
<p>A uniformly distributed load such that the combined weight of container and test load is equal to 1.25 R.</p> <p>Externally applied forces:</p> <p>Such as to lift the combined weight of 1.25 R in the manner prescribed (under the heading TEST PROCEDURES).</p> <p>Internal loading:</p> <p>A uniformly distributed load such that the combined weight of containers and test load is equal to 1.25 R.</p> <p>Externally applied forces:</p> <p>Such as to lift the combined weight of 1.25 R, in the manner prescribed (under the heading TEST PROCEDURES).</p>	<p>The container shall be placed on bars which are in the same horizontal plane, one bar centred within each fork lift pocket which is used for lifting the loaded container. The bars shall be of the same width as the forks intended to be used in the handling, and shall project into the fork pocket 75 per cent of the length of the fork pocket.</p> <p>(ii) Lifting from grappler arm positions:</p> <p>The container shall be placed on pads in the same horizontal plane, one under each grappler arm position. These pads shall be of the same sizes as the lifting area of the grappler arms intended to be used.</p> <p>(iii) Other Methods</p> <p>Where containers are designed to be lifted in the loaded condition by any method not mentioned in (A) or (B)(i) and (ii) they shall also be tested with the INTERNAL LOADING AND EXTERNALLY APPLIED FORCES representative of the acceleration conditions appropriate to that method.</p>

Test loadings and applied forces	Test procedures
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2. STACKING

1. For conditions of international transport where the maximum vertical acceleration forces vary significantly from 1.8 g and when the container is reliably and effectively limited to such conditions of transport, the stacking load may be varied by the appropriate ratio of acceleration forces.
2. On successful completion of this test the container may be rated for the allowable superimposed static stacking weight which should be indicated on the Safety Approval Plate against the heading "Allowable stacking weight for 1.8 g (kilogrammes and lbs)".

Internal loading:

A uniformly distributed load such that the combined weight of container and test load is equal to 1.8 R.

The container, having the prescribed INTERNAL LOADING, shall be placed on four level pads which are in turn supported on a rigid horizontal surface, one under each bottom corner fitting or equivalent corner structure. The pads shall be centralized under the fittings and shall be of approximately the same plane dimensions as the fittings.

Externally applied force:

Such as to subject each of the four top corner fittings to a vertical downward force equal to $\frac{1}{4} \times 1.8 \times$ the allowable superimposed static stacking weight.

Each EXTERNALLY APPLIED FORCE shall be applied to each of the corner fittings through a corresponding test corner fitting or through a pad of the same plane dimensions. The test corner fitting or pad shall be offset with respect to the top corner fitting of the container by 25 mm (1 in.) laterally and 38 mm ($1\frac{1}{2}$ in.) longitudinally.

3. CONCENTRATED LOADS

(a) On roof

Internal loading:

None.

Externally applied forces:

A concentrated load of 300 kg (660 lb.) uniformly distributed over an area of 600 mm x 300 mm (24 in. x 12 in.).

The EXTERNALLY APPLIED FORCES shall be applied vertically downwards to the outer surface of the weakest area of the roof of the container.

Test loadings and applied forces	Test procedures
<p>Internal loading:</p> <p>Two concentrated loads each of 2,730 kg (6,000 lb.) and each applied to the container floor through a contact area of 142 cm² (22 sq in.).</p> <p>Externally applied forces:</p> <p>None.</p>	<p>(b) On floor</p> <p>The test should be made with the container resting on four level supports under its four bottom corners in such a manner that the base structure of the container is free to deflect.</p> <p>A testing device loaded to a weight of 5,460 kg (12,000 lb.) that is 2,730 kg (6,000 lb.) on each of two surfaces having, when loaded, a total contact area of 284 cm² (44 sq in.) that is 142 cm² (22 sq in.) on each surface, the surface width being 180 mm (7 in.) spaced 760 mm (30 in.) apart, centre to centre, should be manoeuvred over the entire floor area of the container.</p>
4. TRANSVERSE RACKING	
<p>Internal loading:</p> <p>None.</p> <p>Externally applied forces:</p> <p>Such as to rack the end structures of the container sideways. The forces shall be equal to those for which the container was designed.</p>	<p>The container in tare condition shall be placed on four level supports one under each bottom corner and shall be restrained against lateral and vertical movement by means of anchor devices so arranged that the lateral restraint is provided only at the bottom corners diagonally opposite to those at which the forces are applied.</p> <p>The EXTERNALLY APPLIED FORCES shall be applied either separately or simultaneously to each of the top corner fittings on one side of the container in lines parallel both to the base and to the planes of the ends of the container. The forces shall be applied first towards and then away from the top corner fittings. In the case of containers in which each end is symmetrical</p>

Test loadings and applied forces	Test procedures
	about its own vertical centreline, one side only need be tested, but both sides of containers with asymmetric ends shall be tested.

5. LONGITUDINAL RESTRAINT (STATIC TEST)

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

Internal loading:

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

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

Externally applied forces:

Such as to subject each side of the container to longitudinal compressive and tensile forces of magnitude R, that is, a combined force of 2R on the base of the container as a whole.

The EXTERNALLY APPLIED FORCES shall be applied first towards and then away from the anchor points. Each side of the container shall be tested.

6. END-WALLS

The end-walls should be capable of withstanding a load of not less than 0.4 times the maximum permissible payload. If, however, the end-walls are designed to withstand a load of less or greater than 0.4 times the maximum permissible payload such a strength factor shall be indicated on the Safety Approval Plate in accordance with Annex I, Regulation 1.

Internal loading:

Such as to subject the inside of an end-wall to a uniformly distributed load of 0.4 P or such other load for which the container may be designed.

The prescribed INTERNAL LOADING shall be applied as follows:

Both ends of a container shall be tested except where the ends are identical only one end need be tested. The end-walls of containers which do not have open sides or side doors may be tested separately or simultaneously.

Test loadings and applied forces	Test procedures
Externally applied forces: None.	The end-walls of containers which do have open sides or side doors should be tested separately. When the ends are tested separately the reactions to the forces applied to the end-wall shall be confined to the base structure of the container.

7. SIDE-WALLS

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

Internal loading:

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

The prescribed INTERNAL LOADING shall be applied as follows:

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

Externally applied forces:

None.

Schedule 2 — Limitation Convention

[s. 76]

[Heading amended: No. 19 of 2010 s. 4.]

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

The High Contracting Parties,

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

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

ARTICLE 1

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

stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

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

ARTICLE 2

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

ARTICLE 3

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

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

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

ARTICLE 4

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

ARTICLE 5

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

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

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

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

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

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

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

ARTICLE 6

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

ARTICLE 7

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

Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the

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

ARTICLE 8

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

ARTICLE 9

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

ARTICLE 10

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

ARTICLE 11

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

ARTICLE 12

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

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

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

ARTICLE 13

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

ARTICLE 14

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

ARTICLE 15

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

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

ARTICLE 16

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

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

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

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

PROTOCOL OF SIGNATURE

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

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

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

Schedule 3 — Prevention of Collisions Convention

[s. 76]

[Heading amended: No. 19 of 2010 s. 4.]

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

ARTICLE I

General Obligations

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

ARTICLE II

Signature, Ratification, Acceptance, Approval and Accession

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

ARTICLE III

Territorial Application

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

ARTICLE IV

Entry into force

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

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

ARTICLE V

Revision Conference

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

ARTICLE VI

Amendments to the Regulations

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

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

ARTICLE VII

Denunciation

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

ARTICLE VIII

Deposit and Registration

1. The present Convention and the Regulations shall be deposited with the Organization, and the Secretary-General shall transmit certified true

copies thereof to all Governments of States that have signed this Convention or acceded to it.

2. When the present Convention enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE IX

Languages

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

INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

PART A — GENERAL

RULE 1

Application

- (a) These Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- (b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.
- (c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any State with respect to additional station or signal lights or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights for fishing vessels engaged in fishing as a fleet. These additional station or signal lights or whistle signals shall, so far as possible, be such

that they cannot be mistaken for any light or signal authorized elsewhere under these Rules.

- (d) Traffic separation schemes may be adopted by the Organization for the purpose of these Rules.
- (e) Whenever the Government concerned shall have determined that a vessel of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her Government shall have determined to be the closest possible compliance with these Rules in respect to that vessel.

RULE 2

Responsibility

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

RULE 3

General Definitions

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

- (a) The word “vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.
- (b) The term “power-driven vessel” means any vessel propelled by machinery.

- (c) The term “sailing vessel” means any vessel under sail provided that propelling machinery, if fitted, is not being used.
- (d) The term “vessel engaged in fishing” means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability.
- (e) The word “seaplane” includes any aircraft designed to manoeuvre on the water.
- (f) The term “vessel not under command” means a vessel which through some exceptional circumstance is unable to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.
- (g) The term “vessel restricted in her ability to manoeuvre” means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.

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

- (i) a vessel engaged in laying, servicing or picking up a navigation mark, submarine cable or pipeline;
 - (ii) a vessel engaged in dredging, surveying or underwater operations;
 - (iii) a vessel engaged in replenishment or transferring persons, provisions or cargo while underway;
 - (iv) a vessel engaged in the launching or recovery of aircraft;
 - (v) a vessel engaged in minesweeping operations;
 - (vi) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.
- (h) The term “vessel constrained by her draught” means a power-driven vessel which because of her draught in relation to the available depth of water is severely restricted in her ability to deviate from the course she is following.
 - (i) The word “underway” means that a vessel is not at anchor, or made fast to the shore, or aground.

- (j) The words “length” and “breadth” of a vessel mean her length overall and greatest breadth.
- (k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.
- (l) The term “restricted visibility” means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

PART B — STEERING AND SAILING RULES

SECTION I — CONDUCT OF VESSELS IN ANY CONDITION OF VISIBILITY

RULE 4

Application

Rules in this Section apply in any condition of visibility.

RULE 5

Look-out

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

RULE 6

Safe speed

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

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

- (a) By all vessels:
 - (i) the state of visibility;

- (ii) the traffic density including concentrations of fishing vessels or any other vessels;
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
 - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;
 - (v) the state of wind, sea and current, and the proximity of navigational hazards;
 - (vi) the draught in relation to the available depth of water.
- (b) Additionally, by vessels with operational radar:
- (i) the characteristics, efficiency and limitations of the radar equipment;
 - (ii) any constraints imposed by the radar range scale in use;
 - (iii) the effect on radar detection of the sea state, weather and other sources of interference;
 - (iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
 - (v) the number, location and movement of vessels detected by radar;
 - (vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

RULE 7

Risk of Collision

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
 - (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
 - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

RULE 8

Action to avoid collision

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

RULE 9

Narrow channels

- (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
- (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
- (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
- (e)
 - (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).
 - (ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.
- (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).
- (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

RULE 10

Traffic separation schemes

- (a) This Rule applies to traffic separation schemes adopted by the Organization.
- (b) A vessel using a traffic separation scheme shall:
 - (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;
 - (ii) so far as practicable keep clear of a traffic separation line or separation zone;
 - (iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from the side shall do so at as small an angle to the general direction of traffic flow as practicable.
- (c) A vessel shall so far as practicable avoid crossing traffic lanes, but if obliged to do so shall cross as nearly as practicable at right angles to the general direction of traffic flow.
- (d) Inshore traffic zones shall not normally be used by through traffic which can safely use the appropriate traffic lane within the adjacent traffic separation scheme.
- (e) A vessel, other than a crossing vessel, shall not normally enter a separation zone or cross a separation line except:
 - (i) in cases of emergency to avoid immediate danger;
 - (ii) to engage in fishing within a separation zone.
- (f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.
- (g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.
- (h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.
- (i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.

- (j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

SECTION II — CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

RULE 11

Application

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

RULE 12

Sailing vessels

- (a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:
- (i) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;
 - (ii) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward;
 - (iii) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.
- (b) For the purposes of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

RULE 13

Overtaking

- (a) Notwithstanding anything contained in the Rules of this Section any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

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

RULE 14

Head-on situation

- (a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.
- (b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
- (c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

RULE 15

Crossing Situation

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

RULE 16

Action by give-way vessel

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

RULE 17

Action by stand-on vessel

- (a)
 - (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
 - (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.
- (c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

RULE 18

Responsibilities between vessels

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing;
 - (iv) a sailing vessel.

- (b) A sailing vessel underway shall keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre;
 - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
 - (i) a vessel not under command;
 - (ii) a vessel restricted in her ability to manoeuvre.
- (d)
 - (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28.
 - (ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition.
- (e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

SECTION III — CONDUCT OF VESSELS IN RESTRICTED VISIBILITY

RULE 19

Conduct of vessels in restricted visibility

- (a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- (b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- (c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I of this Part.

- (d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
 - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
 - (ii) an alteration of course towards a vessel abeam or abaft the beam.
- (e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can be kept on her course. She shall if necessary take all her way off and in any event navigate with extreme caution until danger of collision is over.

PART C — LIGHTS AND SHAPES

RULE 20

Application

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

RULE 21

Definitions

- (a) “Masthead light” means a white light placed over the fore and aft centreline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel.
- (b) “Sidelights” means a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. In a vessel of less than 20 metres in length the sidelights may be combined in one lantern carried on the fore and aft centreline of the vessel.
- (c) “Sternlight” means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.
- (d) “Towing light” means a yellow light having the same characteristics as the “sternlight” defined in paragraph (c) of this Rule.
- (e) “All-round light” means a light showing an unbroken light over an arc of the horizon of 360 degrees.
- (f) “Flashing light” means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.

RULE 22

Visibility of Lights

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

- (a) In vessels of 50 metres or more in length:
 - a masthead light, 6 miles;
 - a sidelight, 3 miles;
 - a sternlight, 3 miles;
 - a towing light, 3 miles;

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

RULE 23

Power-driven vessels underway

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

RULE 24

Towing and pushing

- (a) A power-driven vessel when towing shall exhibit:
- (i) Instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line. When the length of the tow, measuring from the stern of the towing vessel to the after end of the tow exceeds 200 metres, three such lights in a vertical line;
 - (ii) sidelights;
 - (iii) a sternlight;
 - (iv) a towing light in a vertical line above the sternlight;
 - (v) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23.
- (c) A power-driven vessel when pushing ahead or towing alongside, except in the case of a composite unit, shall exhibit:
- (i) Instead of the light prescribed in Rule 23(a)(i), two masthead lights forward in a vertical line;
 - (ii) sidelights;
 - (iii) a sternlight.
- (d) A power-driven vessel to which paragraphs (a) and (c) of this Rule apply shall also comply with Rule 23(a)(ii).
- (e) A vessel or object being towed shall exhibit:
- (i) sidelights;
 - (ii) a sternlight;
 - (iii) when the length of the tow exceeds 200 metres, a diamond shape where it can best be seen.
- (f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel,
- (i) a vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights;

- (ii) a vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights.
- (g) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights prescribed in paragraph (e) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of the unlighted vessel or object.

RULE 25

Sailing vessels underway and vessels under oars

- (a) A sailing vessel underway shall exhibit:
 - (i) sidelights;
 - (ii) a sternlight.
- (b) In a sailing vessel of less than 12 metres in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.
- (c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights shall not be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule.
- (d)
 - (i) A sailing vessel of less than 7 metres in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
 - (ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.
- (e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downwards.

RULE 26

Fishing vessels

- (a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.
- (b) A vessel when engaged in trawling, by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit:
 - (i) two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
 - (ii) a masthead light abaft of and higher than the all-round green light; a vessel of less than 50 metres in length shall not be obliged to exhibit such a light but may do so;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (c) A vessel engaged in fishing, other than trawling, shall exhibit:
 - (i) two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other; a vessel of less than 20 metres in length may instead of this shape exhibit a basket;
 - (ii) when there is outlying gear extending more than 150 metres horizontally from the vessel, an all-round white light or a cone apex upwards in the direction of the gear;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.
- (d) A vessel engaged in fishing in close proximity to other vessels engaged in fishing may exhibit the additional signals described in Annex II to these Regulations.
- (e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule, but only those prescribed for a vessel of her length.

RULE 27

Vessels not under command or restricted in their ability to manoeuvre

- (a) A vessel not under command shall exhibit:
 - (i) two all-round red lights in a vertical line where they can best be seen;
 - (ii) two balls or similar shapes in a vertical line where they can best be seen;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

- (b) A vessel restricted in her ability to manoeuvre, except a vessel engaged in minesweeping operations, shall exhibit:
 - (i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;
 - (ii) three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;
 - (iii) when making way through the water, masthead lights, sidelights and a sternlight, in addition to the lights prescribed in sub-paragraph (i);
 - (iv) when at anchor, in addition to the lights or shapes prescribed in sub-paragraph (i) and (ii), the light, lights or shape prescribed in Rule 30.

- (c) A vessel engaged in a towing operation such as renders her unable to deviate from her course shall, in addition to the lights or shapes prescribed in sub-paragraph (b)(i) and (ii) of this Rule, exhibit the lights or shape prescribed in Rule 24(a).

- (d) A vessel engaged in dredging or underwater operations, when restricted in her ability to manoeuvre, shall exhibit the lights and shapes prescribed in paragraph (b) of this Rule and shall in addition, when an obstruction exists, exhibit:
 - (i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;

- (ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass;
 - (iii) when making way through the water, in addition to the lights prescribed in this paragraph, masthead lights, sidelights and a sternlight;
 - (iv) a vessel to which this paragraph applies when at anchor shall exhibit the lights or shapes prescribed in sub-paragraph (i) and (ii) instead of the lights or shape prescribed in Rule 30.
- (e) Whenever the size of a vessel engaged in diving, operations makes it impracticable to exhibit the shapes prescribed in paragraph (d) of this Rule, a rigid replica of the International Code flag “A” not less than 1 metre in height shall be exhibited. Measures shall be taken to ensure all-round visibility.
- (f) A vessel engaged in minesweeping operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited at or near the foremast head and one at each end of the fore yard. These lights or shapes indicate that it is dangerous for another vessel to approach closer than 1,000 metres astern or 500 metres on either side of the minesweeper.
- (g) Vessels of less than 7 metres in length shall not be required to exhibit the lights prescribed in this Rule.
- (h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV to these Regulations.

RULE 28

Vessels constrained by their draught

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

RULE 29

Pilot vessels

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

RULE 30

Anchored vessels and vessels aground

- (a) A vessel at anchor shall exhibit where it can best be seen:
 - (i) in the fore part, an all-round white light or one ball;
 - (ii) at or near the stern and at a lower level than the light prescribed in sub-paragraph (i), an all-round white light.
- (b) A vessel of less than 50 metres in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule.
- (c) A vessel at anchor may, and a vessel of 100 metres and more in length shall, also use the available working or equivalent lights to illuminate her decks.
- (d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b) of this Rule and in addition, where they can best be seen:
 - (i) two all-round red lights in a vertical line;
 - (ii) three balls in a vertical line.
- (e) A vessel of less than 7 metres in length, when at anchor or aground, not in or near a narrow channel, fairway or anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shapes prescribed in paragraphs (a), (b), or (d) of this Rule.

RULE 31

Seaplanes

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

PART D — SOUND AND LIGHT SIGNALS

RULE 32

Definitions

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

RULE 33

Equipment for sound signals

- (a) A vessel of 12 metres or more in length shall be provided with a whistle and a bell and a vessel of 100 metres or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Regulations. The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the required signals shall always be possible.
- (b) A vessel of less than 12 metres in length shall not be obliged to carry the sound signalling appliances prescribed in paragraph (a) of this Rule but if she does not, she shall be provided with some other means of making an efficient sound signal.

RULE 34

Manoeuvring and warning signals

- (a) When vessels are in sight of one another, a power-driven vessel underway, when manoeuvring as authorized or required by these Rules, shall indicate that manoeuvre by the following signals on her whistle:
- one short blast to mean “I am altering my course to starboard”;
 - two short blasts to mean “I am altering my course to port”;
 - three short blasts to mean “I am operating astern propulsion”.
- (b) Any vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals, repeated as appropriate, whilst the manoeuvre is being carried out:
- (i) these light signals shall have the following significance:
 - one flash to mean “I am altering my course to starboard”;
 - two flashes to mean “I am altering my course to port”;
 - three flashes to mean “I am operating astern propulsion”;
 - (ii) the duration of each flash shall be about one second, the interval between flashes shall be about one second, and the interval between successive signals shall be not less than ten seconds;
 - (iii) the light used for this signal shall, if fitted, be an all-round white light, visible at a minimum range of 5 miles, and shall comply with the provisions of Annex I.
- (c) When in sight of one another in a narrow channel or fairway:
- (i) a vessel intending to overtake another shall in compliance with Rule 9(e)(i) indicate her intention by the following signals on her whistle:
 - two prolonged blasts followed by one short blast to mean “I intend to overtake you on your starboard side”;
 - two prolonged blasts followed by two short blasts to mean “I intend to overtake you on your port side”;
 - (ii) the vessel about to be overtaken when acting in accordance with Rule 9(e)(i) shall indicate her agreement by the following signal on her whistle:

— one prolonged, one short, one prolonged and one short blast, in that order.

- (d) When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. Such signal may be supplemented by a light signal of at least five short and rapid flashes.
- (e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. Such signal shall be answered with a prolonged blast by any approaching vessel that, may be within hearing around the bend or behind the intervening obstruction.
- (f) If whistles are fitted on a vessel at a distance apart of more than 100 metres, one whistle only shall be used for giving manoeuvring and warning signals.

RULE 35

Sound signals in restricted visibility

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

- (a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.
- (b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.
- (c) A vessel not under command, a vessel restricted in her ability to manoeuvre, a vessel constrained by her draught, a sailing vessel, a vessel engaged in fishing and a vessel engaged in towing or pushing another vessel shall, instead of the signals prescribed in paragraphs (a) or (b) of this Rule, sound at intervals of not more than 2 minutes three blasts in succession, namely one prolonged followed by two short blasts.

- (d) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession, namely one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.
- (e) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.
- (f) A vessel at anchor shall at intervals of not more than one minute ring the bell rapidly for about 5 seconds. In a vessel of 100 metres or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession, namely one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.
- (g) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.
- (h) A vessel of less than 12 metres in length shall not be obliged to give the abovementioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.
- (i) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (f) of this Rule sound an identity signal consisting of four short blasts.

RULE 36

Signals to attract attention

If necessary to attract the attention of another vessel any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in

these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel.

RULE 37

Distress signals

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

PART E — EXEMPTIONS

RULE 38

Exemptions

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

- (a) The installation of lights with ranges prescribed in Rule 22, until four years after the date of entry into force of these Regulations.
- (b) The installation of lights with colour specifications as prescribed in Section 7 of Annex I to these Regulations, until four years after the date of entry into force of these Regulations.
- (c) The repositioning of lights as a result of conversion from imperial to metric units and rounding off measurement figures, permanent exemption.
- (d)
 - (i) The repositioning of masthead lights on vessels of less than 150 metres in length, resulting from the prescriptions of Section 3(a) of Annex I, permanent exemption.
 - (ii) The repositioning of masthead lights on vessels of 150 metres or more in length, resulting from the prescriptions of Section 3(a) of Annex I to these Regulations, until nine years after the date of entry into force of these Regulations.

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

ANNEX I

POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

1. *Definition*

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

2. *Vertical positioning and spacing of lights*

- (a) On a power-driven vessel of 20 metres or more in length the masthead lights shall be placed as follows:
 - (i) the forward masthead light, or if only one masthead light is carried, then that light, at a height above the hull of not less than 6 metres, and, if the breadth of the vessel exceeds 6 metres, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 12 metres;
 - (ii) when two masthead lights are carried the after one shall be at least 4.5 metres vertically higher than the forward one.
- (b) The vertical separation of masthead lights of power-driven vessels shall be such that in all normal conditions of trim the after light will be seen over and separate from the forward light at a distance of 1 000 metres from the stern when viewed from sea level.

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

- (k) The forward anchor light, when two are carried, shall not be less than 4.5 metres above the after one. On a vessel of 50 metres or more in length this forward anchor light shall not be less than 6 metres above the hull.

3. *Horizontal positioning and spacing of lights*

- (a) When two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them shall not be less than one half of the length of the vessel but need not be more than 100 metres. The forward light shall be placed not more than one quarter of the length of the vessel from the stem.
- (b) On a vessel of 20 metres or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.

4. *Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in underwater operations*

- (a) The light indicating the direction of the outlying gear from a vessel engaged in fishing as prescribed in Rule 26(c)(ii) shall be placed at a horizontal distance of not less than 2 metres and not more than 6 metres away from the two all-round red and white lights. This light shall be placed not higher than the all-round white light prescribed in Rule 26(c)(i) and not lower than the sidelights.
- (b) The lights and shapes on a vessel engaged in dredging or underwater operations to indicate the obstructed side and/or the side on which it is safe to pass, as prescribed in Rule 27(d)(i) and (ii), shall be placed at the maximum practical horizontal distance, but in no case less than 2 metres, from the lights or shapes prescribed in Rule 27(b)(i) and (ii). In no case shall the upper of these lights or shapes be at a greater height than the lower of the three lights or shapes prescribed in Rule 27(b)(i) and (ii).

5. *Screens for sidelights*

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

6. *Shapes*

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

7. *Colour specifications of lights*

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

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

(i)	<i>White</i>							
	x	0.525	0.525	0.452	0.310	0.310	0.443	
	y	0.382	0.440	0.440	0.348	0.283	0.382	
(ii)	<i>Green</i>							
	x	0.028	0.009	0.300	0.203			
	y	0.385	0.723	0.511	0.356			
(iii)	<i>Red</i>							
	x	0.680	0.660	0.735	0.721			
	y	0.320	0.320	0.265	0.259			
(iv)	<i>Yellow</i>							
	x	0.612	0.618	0.575	0.575			
	y	0.382	0.382	0.425	0.406			

8. *Intensity of lights*

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

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

where I is luminous intensity in candelas under service conditions,

T is threshold factor 2×10^{-7} lux,

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

K is atmospheric transmissivity.

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

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

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

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

9. *Horizontal Sectors*

- (a) (i) In the forward direction, sidelights as fitted on the vessel must show the minimum required intensities. The intensities must decrease to reach practical cut-off between 1 degree and 3 degrees outside the prescribed sectors.

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

10. *Vertical Sectors*

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

11. *Intensity of non-electric lights*

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

12. *Manoeuvring light*

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

13. *Approval*

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

ANNEX II

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

1. *General*

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

2. *Signals for Trawlers*

- (a) Vessels when engaged in trawling, whether using demersal or pelagic gear, may exhibit:
 - (i) when shooting their nets: two white lights in a vertical line;
 - (ii) when hauling their nets: one white light over one red light in a vertical line;
 - (iii) when the net has come fast upon an obstruction: two red lights in a vertical line.

- (b) Each vessel engaged in pair trawling may exhibit:
 - (i) by night a searchlight directed forward and in the direction of the other vessel of the pair;
 - (ii) when shooting or hauling their nets or when their nets have come fast upon an obstruction, the lights prescribed in 2(a) above.
- 3. *Signals for purse seiners*

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

ANNEX III

TECHNICAL DETAILS OF SOUND SIGNAL APPLIANCES

- 1. *Whistles*
 - (a) *Frequencies and range of audibility.* The fundamental frequency of the signal shall lie within the range 70-700 Hz.

The range of audibility of the signal from a whistle shall be determined by those frequencies, which may include the fundamental and/or one or more higher frequencies, which lie within the range 180-700 Hz (± 1 per cent) and which provide the sound pressure levels specified in paragraph 1(c) below.
 - (b) *Limits of fundamental frequencies.* To ensure a wide variety of whistle characteristics, the fundamental frequency of a whistle shall be between the following, limits:
 - (i) 70-200 Hz, for a vessel 200 metres or more in length;
 - (ii) 130-350 Hz, for a vessel 75 metres but less than 200 metres in length;
 - (iii) 250-700 Hz, for a vessel less than 75 metres in length.
 - (c) *Sound signal intensity and range of audibility.* A whistle fitted in a vessel shall provide, in the direction of maximum intensity of the whistle and at a distance of 1 metre from it, a sound pressure level in at least one 1/3rd-octave band within the range of frequencies 180-700 Hz (± 1 per cent) of not less than the appropriate figure given in the table below.

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

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

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

- (d) *Directional properties.* The sound pressure level of a directional whistle shall be not more than 4 dB below the sound pressure level on the axis at any direction in the horizontal plane within ± 45 degrees of the axis. The sound pressure level at any other direction in the horizontal plane shall be not more than 10 dB below the sound pressure level on the axis, so that the range in any direction will be at least half the range on the forward axis. The sound pressure level shall be measured in that 1/3rd-octave band which determines the audibility range.
- (e) *Positioning of whistles.* When a directional whistle is to be used as the only whistle on a vessel, it shall be installed with its maximum intensity directed straight ahead.

A whistle shall be placed as high as practicable on a vessel, in order to reduce interception of the emitted sound by obstructions and also to minimize hearing damage risk to personnel. The sound pressure level of the vessel's own signal at listening posts

shall not exceed 110 dB (A) and so far as practicable should not exceed 100 dB (A).

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

2. *Bell or gong*

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

3. *Approval*

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

ANNEX IV

DISTRESS SIGNALS

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

2. The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other signals which may be confused with any of the above signals is prohibited.

3. Attention is drawn to the relevant sections of the International Code of Signals, the Merchant Ship Search and Rescue Manual and the following signals:

- (a) a piece of orange-coloured canvas with either a black square and circle or other appropriate symbol (for identification from the air);
- (b) a dye marker.

Schedule 4 — Safety Convention

[s. 76]

[Heading amended: No. 19 of 2010 s. 4.]

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

ARTICLE I

General Obligations under the Convention

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

ARTICLE II

Application

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

ARTICLE III

Laws, Regulations

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

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

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

ARTICLE IV

Cases of Force Majeure

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

ARTICLE V

Carriage of Persons in Emergency

- (a) For the purpose of evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention.
- (b) Such permission shall not deprive other Contracting Governments of any right of control under the present Convention over such ships which come within their ports.
- (c) Notice of any such permission, together with a statement of the circumstances, shall be sent to the Secretary-General of the Organization by the Contracting Government granting such permission.

ARTICLE VI

Prior Treaties and Conventions

- (a) As between the Contracting Governments, the present Convention replaces and abrogates the International Convention for the Safety of Life at Sea which was signed in London on 17 June 1960.
- (b) All other treaties, conventions and arrangements relating to safety of life at sea, or matters appertaining thereto, at present in force between Governments parties to the present Convention shall continue to have full and complete effect during the terms thereof as regards:
 - (i) ships to which the present Convention does not apply;
 - (ii) ships to which the present Convention applies, in respect of matters for which it has not expressly provided.
- (c) To the extent, however, that such treaties, conventions or arrangements conflict with the provisions of the present Convention, the provisions of the present Convention shall prevail.
- (d) All matters which are not expressly provided for in the present Convention remain subject to the legislation of the Contracting Governments.

ARTICLE VII

Special Rules drawn up by Agreement

When in accordance with the present Convention special rules are drawn up by agreement between all or some of the Contracting Governments, such rules shall be communicated to the Secretary-General of the Organization for circulation to all Contracting Governments.

ARTICLE VIII

Amendments

- (a) The present Convention may be amended by either of the procedures specified in the following paragraphs.
- (b) Amendments after consideration within the Organization:
 - (i) Any amendment proposed by a Contracting Government shall be submitted to the Secretary-General of the Organization, who

shall then circulate it to all Members of the Organization and all Contracting Governments at least six months prior to its consideration.

- (ii) Any amendment proposed and circulated as above shall be referred to the Maritime Safety Committee of the Organization for consideration.
- (iii) Contracting Governments of States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.
- (iv) Amendments shall be adopted by a two-thirds majority of the Contracting Governments present and voting in the Maritime Safety Committee expanded as provided for in sub-paragraph (iii) of this paragraph (hereinafter referred to as “the expanded Maritime Safety Committee”) on condition that at least one-third of the Contracting Governments shall be present at the time of voting.
- (v) Amendments adopted in accordance with sub-paragraph (iv) of this paragraph shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
- (vi)
 - (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Contracting Governments.
 - (2) An amendment to the Annex other than Chapter I shall be deemed to have been accepted:
 - (aa) at the end of two years from the date on which it is communicated to Contracting Governments for acceptance; or
 - (bb) at the end of a different period, which shall not be less than one year, if so determined at the time of its adoption by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee.

However, if within the specified period either more than one-third of Contracting Governments, or Contracting

Governments the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, notify the Secretary-General of the Organization that they object to the amendment, it shall be deemed not to have been accepted.

- (vii) (1) An amendment to an Article of the Convention or to Chapter I of the Annex shall enter into force with respect to those Contracting Governments which have accepted it, six months after the date on which it is deemed to have been accepted and with respect to each Contracting Government which accepts it after that date, six months after the date of that Contracting Government's acceptance.
- (2) An amendment to the Annex other than Chapter I shall enter into force with respect to all Contracting Governments, except those which have objected to the amendment under sub-paragraph (vi)(2) of this paragraph and which have not withdrawn such objections, six months after the date on which it is deemed to have been accepted. However, before the date set for entry into force, any Contracting Government may give notice to the Secretary-General of the Organization that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee at the time of the adoption of the amendment.
- (c) Amendment by a Conference:
- (i) Upon the request of a Contracting Government concurred in by at least one-third of the Contracting Governments, the Organization shall convene a Conference of Contracting Governments to consider amendments to the present Convention.
- (ii) Every amendment adopted by such a Conference by a two-thirds majority of the Contracting Governments present and voting shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.

- (iii) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in sub-paragraph (b)(vi) and (b)(vii) respectively of this Article, provided that references in these paragraphs to the expanded Maritime Safety Committee shall be taken to mean references to the Conference.
- (d)
 - (i) A Contracting Government which has accepted an amendment to the Annex which has entered into force shall not be obliged to extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph (b)(vi)(2) of this Article, has objected to the amendment and has not withdrawn such an objection, but only to the extent that such certificates relate to matters covered by the amendment in question.
 - (ii) A Contracting Government which has accepted an amendment to the Annex which has entered into force shall extend the benefit of the present Convention in respect of the certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of sub-paragraph (b)(vii)(2) of this Article, has notified the Secretary-General of the Organization that it exempts itself from giving effect to the amendment.
- (e) Unless expressly provided otherwise, any amendment to the present Convention made under this Article, which relates to the structure of a ship, shall apply only to ships the keels of which are laid or which are at a similar stage of construction on or after the date on which the amendment enters into force.
- (f) Any declaration of acceptance of, or objection to, an amendment or any notice given under sub-paragraph (b)(vii)(2) of this Article shall be submitted in writing to the Secretary-General of the Organization, who shall inform all Contracting Governments of any such submission and the date of its receipt.
- (g) The Secretary-General of the Organization shall inform all Contracting Governments of any amendments which enter into force under this Article, together with the date on which each such amendment enters into force.

ARTICLE IX

Signature, Ratification, Acceptance, Approval and Accession

- (a) The present Convention shall remain open for signature at the Headquarters of the Organization from 1 November 1974 until 1 July 1975 and shall thereafter remain open for accession. States may become parties to the present Convention by:
 - (i) signature without reservation as to ratification, acceptance or approval; or
 - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
- (c) The Secretary-General of the Organization shall inform the Governments of all States which have signed the present Convention or acceded to it of any signature or of the deposit of any instrument of ratification, acceptance, approval or accession and the date of its deposit.

ARTICLE X

Entry into Force

- (a) The present Convention shall enter into force twelve months after the date on which not less than twenty-five States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become parties to it in accordance with Article IX.
- (b) Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Convention enters into force shall take effect three months after the date of deposit.
- (c) After the date on which an amendment to the present Convention is deemed to have been accepted under Article VIII, any instrument of ratification, acceptance, approval or accession deposited shall apply to the Convention as amended.

ARTICLE XI

Denunciation

- (a) The present Convention may be denounced by any Contracting Government at any time after the expiry of five years from the date on which the Convention enters into force for that Government.
- (b) Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the Organization who shall notify all the other Contracting Governments of any instrument of denunciation received and of the date of its receipt as well as the date on which such denunciation takes effect.
- (c) A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General of the Organization.

ARTICLE XII

Deposit and Registration

- (a) The present Convention shall be deposited with the Secretary-General of the Organization who shall transmit certified true copies thereof to the Governments of all States which have signed the present Convention or acceded to it.
- (b) As soon as the present Convention enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretary-General of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XIII

Languages

The present Convention is established in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

ANNEX

CHAPTER I

GENERAL PROVISIONS

PART A — APPLICATION, DEFINITIONS, ETC.

Regulation 1

Application

- (a) Unless expressly provided otherwise, the present Regulations apply only to ships engaged on international voyages.
- (b) The classes of ships to which each Chapter applies are more precisely defined, and the extent of the application is shown, in each Chapter.

Regulation 2

Definitions

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

- (a) “Regulations ” means the Regulations contained in the Annex to the present Convention.
- (b) “Administration” means the Government of the State whose flag the ship is entitled to fly.
- (c) “Approved” means approved by the Administration.
- (d) “International voyage” means a voyage from a country to which the present Convention applies to a port outside such country, or conversely.
- (e) A passenger is every person other than:
 - (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
 - (ii) a child under one year of age.
- (f) A passenger ship is a ship which carries more than twelve passengers.
- (g) A cargo ship is any ship which is not a passenger ship.
- (h) A tanker is a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of an inflammable * nature.

- (i) A fishing vessel is a vessel used for catching fish, whales, seals, walrus or other living resources of the sea.
- (j) A nuclear ship is a ship provided with a nuclear power plant.
- (k) “New ship” means a ship the keel of which is laid or which is at a similar stage of construction on or after the date of coming into force of the present Convention.
- (l) “Existing ship” means a ship which is not a new ship.
- (m) A mile is 1,852 metres or 6,080 feet.

* “Inflammable” has the same meaning as “flammable”

Regulation 3

Exceptions

- (a) The present Regulations, unless expressly provided otherwise, do not apply to:
 - (i) Ships of war and troopships.
 - (ii) Cargo ships of less than 500 tons gross tonnage.
 - (iii) Ships not propelled by mechanical means.
 - (iv) Wooden ships of primitive build.
 - (v) Pleasure yachts not engaged in trade.
 - (vi) Fishing vessels.
- (b) Except as expressly provided in Chapter V, nothing herein shall apply to ships solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

Regulation 4

Exemptions

- (a) A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Administration from any of the requirements of the present Regulations provided that it complies with safety requirements which are adequate in the opinion of the Administration for the voyage which is to be undertaken by the ship.

- (b) The Administration may exempt any ship which embodies features of a novel kind from any of the provisions of Chapters II-1, II-2, III and IV of these Regulations the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages. Any such ship shall, however, comply with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship and which are acceptable to the Governments of the States to be visited by the ship. The Administration which allows any such exemption shall communicate to the Organization particulars of same and the reasons therefor which the Organization shall circulate to the Contracting Governments for their information.

Regulation 5

Equivalents

- (a) Where the present Regulations require that a particular fitting, material, appliance or apparatus, or type thereof, shall be fitted or carried in a ship, or that any particular provision shall be made, the Administration may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made in that ship, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the present Regulations.
- (b) Any Administration which so allows, in substitution, a fitting, material, appliance or apparatus, or type thereof, or provision, shall communicate to the Organization particulars thereof together with a report on any trials made and the Organization shall circulate such particulars to other Contracting Governments for the information of their officers.

CHAPTER V

SAFETY OF NAVIGATION

Regulation 1

Application

This Chapter, unless otherwise expressly provided in this Chapter, applies to all ships on all voyages, except ships of war and ships solely navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada.

Regulation 2

Danger Messages

- (a) The master of every ship which meets with dangerous ice, a dangerous derelict, or any other direct danger to navigation, or a tropical storm, or encounters sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received, is bound to communicate the information by all the means at his disposal to ships in the vicinity, and also to the competent authorities at the first point on the coast with which he can communicate. The form in which the information is sent is not obligatory. It may be transmitted either in plain language (preferably English) or by means of the International Code of Signals. It should be broadcast to all ships in the vicinity and sent to the first point on the coast to which communication can be made, with a request that it be transmitted to the appropriate authorities.
- (b) Each Contracting Government will take all steps necessary to ensure that when intelligence of any of the dangers specified in paragraph (a) of this Regulation is received, it will be promptly brought to the knowledge of those concerned and communicated to other interested Governments.
- (c) The transmission of messages respecting the dangers specified is free of cost to the ships concerned.

- (d) All radio messages issued under paragraph (a) of this Regulation shall be preceded by the Safety Signal, using the procedure as prescribed by the Radio Regulations as defined in Regulation 2 of Chapter IV.

Regulation 3

Information required in Danger Messages

The following information is required in danger messages:

- (a) *Ice, Derelicts and other Direct Dangers to Navigation*
- (i) The kind of ice, derelict or danger observed.
 - (ii) The position of the ice, derelict or danger when last observed.
 - (iii) The time and date (Greenwich Mean Time) when danger last observed.
- (b) *Tropical Storms* (Hurricanes in the West Indies, Typhoons in the China Sea, Cyclones in Indian waters, and storms of a similar nature in other regions)
- (i) A statement that a tropical storm has been encountered. This obligation should be interpreted in a broad spirit, and information transmitted whenever the master has good reason to believe that a tropical storm is developing or exists in his neighbourhood.
 - (ii) Time, date (Greenwich Mean Time) and position of ship when the observation was taken.
 - (iii) As much of the following information as is practicable should be included in the message:
 - barometric pressure, preferably corrected (stating millibars, millimetres, or inches, and whether corrected or uncorrected);
 - barometric tendency (the change in barometric pressure during the past three hours);
 - true wind direction;
 - wind force (Beaufort scale);
 - state of the sea (smooth, moderate, rough, high);
 - swell (slight, moderate, heavy) and the true direction from which it comes. Period or length

of swell (short, average, long) would also be of value;

— true course and speed of ship.

(c) *Subsequent Observations*

When a master has reported a tropical or other dangerous storm, it is desirable, but not obligatory, that further observations be made and transmitted hourly, if practicable, but in any case at intervals of not more than three hours, so long as the ship remains under the influence of the storm.

(d) *Winds of force 10 or above on the Beaufort scale for which no storm warning has been received*

This is intended to deal with storms other than the tropical storms referred to in paragraph (b) of this Regulation; when such a storm is encountered, the message should contain similar information to that listed under that paragraph but excluding the details concerning sea and swell.

(e) *Sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures*

- (i) Time and date (Greenwich Mean Time).
- (ii) Air temperature.
- (iii) Sea temperature (if practicable).
- (iv) Wind force and direction.

Examples

Ice

TTT Ice. Large berg sighted in 4605 N., 4410 W., at 0800 GMT. May 15.

Derelicts

TTT Derelict. Observed derelict almost submerged in 4006 N., 1243 W., at 1630 GMT. April 21.

Danger to Navigation

TTT Navigation. Alpha lightship not on station. 1800 GMT. January 3.

Tropical Storm

TTT Storm. 0030 GMT. August 18. 2004 N., 11354 E. Barometer corrected 994 millibars, tendency down 6 millibars. Wind NW., force 9, heavy squalls. Heavy easterly swell. Course 067, 5 knots.

TTT Storm. Appearances indicate approach of hurricane. 1300 GMT. September 14. 2200 N., 7236 W. Barometer corrected 29.64 inches, tendency down .015 inches. Wind NE., force 8, frequent rain squalls. Course 035, 9 knots.

TTT Storm. Conditions indicate intense cyclone has formed. 0200 GMT. May 4. 1620 N., 9203 E. Barometer uncorrected 753 millimetres, tendency down 5 millimetres. Wind S. by W., force 5. Course 300, 8 knots.

TTT Storm. Typhoon to southeast. 0300 GMT. June 12. 1812 N., 12605 E. Barometer falling rapidly. Wind increasing from N.

TTT Storm. Wind force 11, no storm warning received. 0300 GMT. May 4. 4830 N., 30 W. Barometer corrected 983 millibars, tendency down 4 millibars. Wind S.W., force 11 veering. Course 260, 6 knots.

Icing

TTT experiencing severe icing. 1400 GMT. March 2. 69 N., 10 W. Air temperature 18. Sea temperature 29. Wind NE., force 8.

Regulation 4

Meteorological Services

- (a) The Contracting Governments undertake to encourage the collection of meteorological data by ships at sea and to arrange for their examination, dissemination and exchange in the manner most suitable for the purpose of aiding navigation. Administrations shall encourage the use of instruments of a high degree of accuracy, and shall facilitate the checking of such instruments upon request.
- (b) In particular, the Contracting Governments undertake to co-operate in carrying out, as far as practicable, the following meteorological arrangements:
 - (i) To warn ships of gales, storms and tropical storms, both by the issue of radio messages and by the display of appropriate signals at coastal points.

- (ii) To issue daily, by radio, weather bulletins suitable for shipping, containing data of existing weather, waves and ice, forecasts and, where practicable, sufficient additional information to enable simple weather charts to be prepared at sea and also to encourage the transmission of suitable facsimile weather charts.
- (iii) To prepare and issue such publications as may be necessary for the efficient conduct of meteorological work at sea and to arrange, if practicable, for the publication and making available of daily weather charts for the information of departing ships.
- (iv) To arrange for selected ships to be equipped with tested instruments (such as a barometer, a barograph, a psychrometer, and suitable apparatus for measuring sea temperature) for use in this service, and to take meteorological observations at main standard times for surface synoptic observations (at least four times daily, whenever circumstances permit) and to encourage other ships to take observations in a modified form, particularly when in areas where shipping is sparse; these ships to transmit their observations by radio for the benefit of the various official meteorological services, repeating the information for the benefit of ships in the vicinity. When in the vicinity of a tropical storm, or of a suspected tropical storm, ships should be encouraged to take and transmit their observations at more frequent intervals whenever practicable, bearing in mind navigational preoccupations of ships' officers during storm conditions.
- (v) To arrange for the reception and transmission by coast radio stations of weather messages from and to ships. Ships which are unable to communicate direct with shore shall be encouraged to relay their weather messages through ocean weather ships or through other ships which are in contact with shore.
- (vi) To encourage all masters to inform ships in the vicinity and also shore stations whenever they experience a wind speed of 50 knots or more (force 10 on the Beaufort scale).
- (vii) To endeavour to obtain a uniform procedure in regard to the international meteorological services already specified, and, as far as is practicable, to conform to the Technical Regulations and recommendations made by the World Meteorological Organization, to which the Contracting Governments may refer for study and advice any meteorological question which may arise in carrying out the present Convention.

- (c) The information provided for in this Regulation shall be furnished in form for transmission and transmitted in the order of priority prescribed by the Radio Regulations, and during transmission “to all stations” of meteorological information, forecasts and warnings, all ship stations must conform to the provisions of the Radio Regulations.
- (d) Forecasts, warnings, synoptic and other meteorological reports intended for ships shall be issued and disseminated by the national service in the best position to serve various zones and areas, in accordance with mutual arrangements made by the Contracting Governments concerned.

Regulation 5

Ice Patrol Service

- (a) The Contracting Governments undertake to continue an ice patrol and a service for study and observation of ice conditions in the North Atlantic. During the whole of the ice season the south-eastern, southern and south-western limits of the regions of icebergs in the vicinity of the Grand Banks of Newfoundland shall be guarded for the purpose of informing passing ships of the extent of this dangerous region; for the study of ice conditions in general; and for the purpose of affording assistance to ships and crews requiring aid within the limits of operation of the patrol ships. During the rest of the year the study and observation of ice conditions shall be maintained as advisable.
- (b) Ships and aircraft used for the ice patrol service and the study and observation of ice conditions may be assigned other duties by the managing Government, provided that such other duties do not interfere with their primary purpose or increase the cost of this service.

Regulation 6

Ice Patrol. Management and Cost

- (a) The Government of the United States of America agrees to continue the management of the ice patrol service and the study and observation of ice conditions, including the dissemination of information received therefrom. The Contracting Governments specially interested in these services undertake to contribute to the expense of maintaining and operating these services; each contribution to be based upon the total gross tonnage of the vessels of each contributing Government passing through the regions of icebergs guarded by the Ice Patrol; in particular,

each Contracting Government specially interested undertakes to contribute annually to the expense of maintaining and operating these services a sum determined by the ratio which the total gross tonnage of that Contracting Government's vessels passing during the ice season through the regions of icebergs guarded by the Ice Patrol bears to the combined total gross tonnage of the vessels of all contributing Governments passing during the ice season through the regions of icebergs guarded by the Ice Patrol. Non-contracting Governments specially interested may contribute to the expense of maintaining and operating these services on the same basis. The managing Government will furnish annually to each contributing Government a statement of the total cost of maintaining and operating the Ice Patrol and of the proportionate share of each contributing Government.

- (b) Each of the contributing Governments has the right to alter or discontinue its contribution, and other interested Governments may undertake to contribute to the expense. The contributing Government which avails itself of this right will continue responsible for its current contribution up to 1 September following the date of giving notice of intention to alter or discontinue its contribution. To take advantage of the said right it must give notice to the managing Government at least six months before the said 1 September.
- (c) If, at any time, the United States Government should desire to discontinue these services, or if one of the contributing Governments should express a wish to relinquish responsibility for its pecuniary contribution, or to have its contribution altered, or another Contracting Government should desire to undertake to contribute to the expense, the contributing Governments shall settle the question in accordance with their mutual interests.
- (d) The contributing Governments shall have the right by common consent to make from time to time such alterations in the provisions of this Regulation and of Regulation 5 of this Chapter as appear desirable.
- (e) Where this Regulation provides that a measure may be taken after agreement among the contributing Governments, proposals made by any Contracting Government for effecting such a measure shall be communicated to the managing Government which shall approach the other contributing Governments with a view to ascertaining whether they accept such proposals, and the results of the enquiries thus made shall be sent to the other contributing Governments and the Contracting

Government making the proposals. In particular, the arrangements relating to contributions to the cost of the services shall be reviewed by the contributing Governments at intervals not exceeding three years. The managing Government shall initiate the action necessary to this end.

Regulation 7

Speed Near Ice

When ice is reported on or near his course the master of every ship at night is bound to proceed at a moderate speed or to alter his course so as to go well clear of the danger zone.

Regulation 8

Routeing

- (a) The practice of following, particularly in converging areas, routes adopted for the purpose of separation of traffic including avoidance of passage through areas designated as areas to be avoided by ships or certain classes of ships, or for the purpose of avoiding unsafe conditions, has contributed to the safety of navigation and is recommended for use by all ships concerned.
- (b) The Organization is recognized as the only international body for establishing and adopting measures on an international level concerning routeing and areas to be avoided by ships or certain classes of ships. It will collate and disseminate to Contracting Governments all relevant information.
- (c) The selection of the routes and the initiation of action with regard to them, and the delineation of what constitutes converging areas, will be primarily the responsibility of the Governments concerned. In the development of routeing schemes which impinge upon international waters, or such other schemes they may wish adopted by the Organization, they will give due consideration to relevant information published by the Organization.
- (d) Contracting Governments will use their influence to secure the appropriate use of adopted routes and will do everything in their power to ensure adherence to the measures adopted by the Organization in connection with routeing of ships.

- (e) Contracting Governments will also induce all ships proceeding on voyages in the vicinity of the Grand Banks of Newfoundland to avoid, as far as practicable, the fishing banks of Newfoundland north of latitude 43° N and to pass outside regions known or believed to be endangered by ice.

Regulation 9

Misuse of Distress Signals

The use of an international distress signal, except for the purpose of indicating that a ship or aircraft is in distress, and the use of any signal which may be confused with an international distress signal, are prohibited on every ship or aircraft.

Regulation 10

Distress Messages — Obligations and Procedures

- (a) The master of a ship at sea, on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so. If he is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress.
- (b) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition such one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress.
- (c) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation when he learns that one or more ships other than his own have been requisitioned and are complying with the requisition.
- (d) The master of a ship shall be released from the obligation imposed by paragraph (a) of this Regulation, and if his ship has been requisitioned, from the obligation imposed by paragraph (b) of this Regulation, if he is

informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer necessary.

- (e) The provisions of this Regulation do not prejudice the International Convention for the unification of certain rules with regard to Assistance and Salvage at Sea, signed at Brussels on 23 September 1910, particularly the obligation to render assistance imposed by Article 11 of that Convention.

Regulation 11

Signalling Lamps

All ships of over 150 tons gross tonnage, when engaged on international voyages, shall have on board an efficient daylight signalling lamp which shall not be solely dependent upon the ship's main source of electrical power.

Regulation 12

Shipborne Navigational Equipment

- (a) All ships of 1,600 tons gross tonnage and upwards shall be fitted with a radar of a type approved by the Administration. Facilities for plotting radar readings shall be provided on the bridge in those ships.
- (b) All ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio direction-finding apparatus complying with the provisions of Regulation 12 of Chapter IV. The Administration may, in areas where it considers it unreasonable or unnecessary for such apparatus to be carried, exempt any ship of less than 5,000 tons gross tonnage from this requirement, due regard being had to the fact that radio direction-finding apparatus is of value both as a navigational instrument and as an aid to locating ships, aircraft or survival craft.
- (c) All ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with a gyro-compass in addition to the magnetic compass. The Administration, if it considers it unreasonable or unnecessary to require a gyrocompass, may exempt any ship of less than 5,000 tons gross tonnage from this requirement.
- (d) All new ships of 500 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with an echo-sounding device.

- (e) Whilst all reasonable steps shall be taken to maintain the apparatus in an efficient condition, malfunction of the radar equipment, the gyro-compass or the echo-sounding device shall not be considered as making the ship unseaworthy or as a reason for delaying the ship in ports where repair facilities are not readily available.
- (f) All new ships of 1,600 tons gross tonnage and upwards, when engaged on international voyages, shall be fitted with radio equipment for homing on the radiotelephone distress frequency complying with the relevant provisions of paragraph (b) of Regulation 12 of Chapter IV.

Regulation 13

Manning

The Contracting Governments undertake, each for its national ships, to maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned.

Regulation 14

Aids to Navigation

The Contracting Governments undertake to arrange for the establishment and maintenance of such aids to navigation, including radio beacons and electronic aids as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned.

Regulation 15

Search and Rescue

- (a) Each Contracting Government undertakes to ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea round its coasts. These arrangements should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, so far as possible, afford adequate means of locating and rescuing such persons.

- (b) Each Contracting Government undertakes to make available information concerning its existing rescue facilities and the plans for changes therein, if any.

Regulation 16

Life-Saving Signals

The following signals shall be used by life-saving stations and maritime rescue units when communicating with ships or persons in distress and by ships or persons in distress when communicating with life-saving stations and maritime rescue units. The signals used by aircraft engaged in search and rescue operations to direct ships are indicated in paragraph (d) below. An illustrated table describing the signals listed below shall be readily available to the officer of the watch of every ship to which this Chapter applies.

- (a) Replies from life-saving stations or maritime rescue units to distress signals made by a ship or person:

<i>Signal</i>	<i>Signification</i>
<p><i>By day</i> - Orange smoke signal or combined light and sound signal (thunder-light) consisting of three single signals which are fired at intervals of approximately one minute.</p>	<p>“You are seen - assistance will be given as soon as possible.”</p> <p>(Repetition of such signals shall have the same meaning.)</p>
<p><i>By night</i> - White star rocket consisting of three single signals which are fired at intervals of approximately one minute.</p>	

If necessary the day signals may be given at night or the night signals by day.

- (b) Landing signals for the guidance of small boats with crews or persons in distress:

<i>Signal</i>	<i>Signification</i>
<p><i>By day</i> - Vertical motion of a white flag or the arms or firing of a green star-signal or signalling the code letter “K” (-.) given by light or sound-signal apparatus.</p>	<p>“This is the best place to land.”</p>
<p><i>By night</i> - Vertical motion of a white light or flare, or firing of a green star-signal or signalling the code letter “K” (-.) given by light or sound-signal apparatus. A range (indication of direction) may be given by placing a steady white light or flare at a lower level and in line with the observer.</p>	

<p><i>By day</i> - Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.</p> <p><i>By night</i> - Horizontal motion of a white light or flare or firing of a red star-signal or signalling the code letter "S" (...) given by light or sound-signal apparatus.</p>	}	<p>"Landing here highly dangerous."</p>
<p><i>By day</i> - Horizontal motion of a white flag, followed by the placing of the white flag in the ground and the carrying of another white flag in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by the code letter "R" (-.) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (-.) if a better landing place for the craft in distress is located more to the left in the direction of approach.</p>	}	<p>"Landing here highly dangerous. A more favourable location for landing is in the direction indicated."</p>
<p><i>By night</i> - Horizontal motion of a white light or flare, followed by the placing of the white light or flare on the ground and the carrying of another white light or flare in the direction to be indicated or firing of a red star-signal vertically and a white star-signal in the direction towards the better landing place or signalling the code letter "S" (...) followed by code letter "R" (-.) if a better landing place for the craft in distress is located more to the right in the direction of approach or the code letter "L" (-.) if a better landing place for the craft in distress is located more to the left in the direction of approach.</p>	}	<p>"Landing here highly dangerous. A more favourable location for landing is in the direction indicated."</p>

(c) **Signals to be employed in connection with the use of shore life-saving apparatus:**

<p style="text-align: center;"><i>Signal</i></p> <p><i>By day</i> - Vertical motion of a white flag or the arms or firing of a green star-signal.</p> <p><i>By night</i> - Vertical motion of a white light or flare or firing of a green star-signal.</p>	}	<p style="text-align: center;"><i>Signification</i></p> <p>In general - "Affirmative." Specifically: "Rocket line is held." "Tail block is made fast." "Hawser is made fast." "Man is in the breeches buoy." "Haul away."</p>
<p><i>By day</i> - Horizontal motion of a white flag or arms extended horizontally or firing of a red star-signal.</p> <p><i>By night</i> - Horizontal motion of a white light or flare or firing of a red star-signal.</p>	}	<p>In general - "Negative." Specifically: "Slack away." "Avast hauling."</p>

- (d) Signals used by aircraft engaged on search and rescue operations to direct ships towards an aircraft, ship or person in distress (see explanatory Note below):
- (i) The following procedures performed in sequence by an aircraft mean that the aircraft is directing a surface craft towards an aircraft or a surface craft in distress:
 - (1) circling the surface craft at least once;
 - (2) crossing the projected course of the surface craft close ahead at a low altitude, opening and closing the throttle or changing the propeller pitch;
 - (3) heading in the direction in which the surface craft is to be directed.
- Repetition of such procedures has the same meaning.
- (ii) The following procedure performed by an aircraft means that the assistance of the surface craft to which the signal is directed is no longer required:
 - crossing the wake of the surface craft close astern at a low altitude, opening and closing the throttle or changing the propeller pitch.

Note: Advance notification of changes in these signals will be given by the Organization as necessary.

Regulation 17

Pilot Ladders and Mechanical Pilot Hoists

Ships engaged on voyages in the course of which pilots are likely to be employed shall comply with the following requirements:

- (a) *Pilot Ladders*
 - (i) The ladder shall be efficient for the purpose of enabling pilots to embark and disembark safely, kept clean and in good order and may be used by officials and other persons while a ship is arriving at or leaving a port.
 - (ii) The ladder shall be secured in a position so that it is clear from any possible discharges from the ship, that each step rests firmly against the ship's side, that it is clear so far as is practicable of the finer lines of the ship and that the

pilot can gain safe and convenient access to the ship after climbing not less than 1.5 metres (5 feet) and not more than 9 metres (30 feet.) A single length of ladder shall be used capable of reaching the water from the point of access to the ship; in providing for this due allowance shall be made for all conditions of loading and trim of the ship and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 metres (30 feet), access from the pilot ladder to the ship shall be by means of an accommodation ladder or other equally safe and convenient means.

- (iii) The steps of the pilot ladder shall be:
 - (1) of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;
 - (2) not less than 480 millimetres (19 inches) long, 115 millimetres (4½ inches) wide, and 25 millimetres (1 inch) in depth, excluding any nonslip device;
 - (3) equally spaced not less than 300 millimetres (12 inches) nor more than 380 millimetres (15 inches) apart and be secured in such a manner that they will remain horizontal.
- (iv) No pilot ladder shall have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder and any steps so secured shall be replaced as soon as reasonably practicable by steps secured in position by the method used in the original construction of the ladder. When any replacement step is secured to the side ropes of the ladder by means of grooves in the sides of the step, such grooves shall be in the longer sides of the step.
- (v) The side ropes of the ladder shall consist of two uncovered manila ropes not less than 60 millimetres

(2¼ inches) in circumference on each side. Each rope shall be continuous with no joints below the top step. Two man-ropes properly secured to the ship and not less than 65 millimetres (2½ inches) in circumference and a safety line shall be kept at hand ready for use if required.

- (vi) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 metres (5 feet 10 inches) long shall be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten shall be on the fifth step from the bottom of the ladder and the interval between any batten and the next shall not exceed 9 steps.
- (vii) Means shall be provided to ensure safe and convenient passage on to or into and off the ship between the head of the pilot ladder or of any accommodation ladder or other appliance provided. Where such passage is by means of a gateway in the rains or bulwark, adequate handholds shall be provided. Where such passage is by means of a bulwark ladder, such ladder shall be securely attached to the bulwark rail or platform and two handhold stanchions shall be fitted at the point of boarding or leaving the ship not less than 0.70 metre (2 feet 3 inches) nor more than 0.80 metre (2 feet 7 inches) apart. Each stanchion shall be rigidly secured to the ship's structure at or near its base and also at a higher point, shall not be less than 40 millimetres (1½ inches) in diameter and shall extend not less than 1.20 metres (3 feet 11 inches) above the top of the bulwark.
- (viii) Lighting shall be provided at night such that both the pilot ladder overside and also the position where the pilot boards the ship shall be adequately lit. A lifebuoy equipped with a self-igniting light shall be kept at hand ready for use. A heaving line shall be kept at hand ready for use if required.
- (ix) Means shall be provided to enable the pilot ladder to be used on either side of the ship.

- (x) The rigging of the ladder and the embarkation and disembarkation of a pilot shall be supervised by a responsible officer of the ship.
 - (xi) Where on any ship constructional features such as rubbing bands would prevent the implementation of any of these provisions, special arrangements shall be made to the satisfaction of the Administration to ensure that persons are able to embark and disembark safely.
- (b) *Mechanical Pilot Hoists*
- (i) A mechanical pilot hoist, if provided, and its ancillary equipment shall be of a type approved by the Administration. It shall be of such design and construction as to ensure that the pilot can be embarked and disembarked in a safe manner including a safe access from the hoist to the deck and *vice versa*.
 - (ii) A pilot ladder complying with the provisions of paragraph (a) of this Regulation shall be kept on deck adjacent to the hoist and available for immediate use.

Regulation 18

VHF Radiotelephone Stations

When a Contracting Government requires ships navigating in an area under its sovereignty to be provided with a Very High Frequency (VHF) radiotelephone station to be used in conjunction with a system which it has established in order to promote safety of navigation, such station shall comply with the provisions of Regulation 17 of Chapter IV and shall be operated in accordance with Regulation 8 of Chapter IV.

Regulation 19

Use of the Automatic Pilot

- (a) In areas of high traffic density, in conditions of restricted visibility and in all other hazardous navigational situations where the automatic pilot is used, it shall be possible to establish human control of the ship's steering immediately.

- (b) In circumstances as above, it shall be possible for the officer of the watch to have available without delay the services of a qualified helmsman who shall be ready at all times to take over steering control.
- (c) The change-over from automatic to manual steering and *vice versa* shall be made by or under the supervision of a responsible officer.

Regulation 20

Nautical Publications

All ships shall carry adequate and up-to-date charts, sailing directions, lists of lights, notices to mariners, tide tables and all other nautical publications necessary for the intended voyage.

Regulation 21

International Code of Signals

All ships which in accordance with the present Convention are required to carry a radiotelegraph or a radiotelephone installation shall carry the International Code of Signals. This publication shall also be carried by any other ship which in the opinion of the Administration has a need to use it.

Schedule 5 — 1978 Protocol relating to Safety Convention

[s. 76]

[Heading amended: No. 19 of 2010 s. 4.]

PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

ARTICLE I

General Obligations

The parties to the present Protocol undertake to give effect to the provisions of the present Protocol and the Annex hereto which shall constitute an integral part of the present Protocol. Every reference to the present Protocol constitutes at the same time a reference to the Annex hereto.

ARTICLE II

Application

1. The provisions of Articles II, III (other than paragraph (a)), IV, VI(b), (c) and (d), VII and VIII of the International Convention for the Safety of Life at Sea, 1974 (hereinafter referred to as “the Convention”) are incorporated in the present Protocol, provided that references in those Articles to the Convention and to Contracting Governments shall be taken to mean references to the present Protocol and to the Parties to the present Protocol, respectively.
2. Any ship to which the present Protocol applies shall comply with the provisions of the Convention, subject to the modifications and additions set out in the present Protocol.
3. With respect to the ships of non-parties to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships.

ARTICLE III

Communication of Information

The Parties to the present Protocol undertake to communicate to, and deposit with, the Secretary-General of the Inter-Governmental Maritime Consultative

Organization (hereinafter referred to as “the Organization”), a list of nominated surveyors or recognized organizations which are authorized to act on their behalf in the administration of measures for safety of life at sea for circulation to the Parties for information of their officers. The Administration shall therefore notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

ARTICLE IV

Signature, Ratification, Acceptance, Approval and Accession

1. The present Protocol shall be open for signature at the Headquarters of the Organization from 1 June 1978 to 1 March 1979 and shall thereafter remain open for accession. Subject to the provisions of paragraph 3 of this Article, States may become Parties to the present Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
2. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
3. The present Protocol may be signed without reservation, ratified, accepted, approved or acceded to only by States which have signed without reservation, ratified, accepted, approved or acceded to the Convention.

ARTICLE V

Entry into Force

1. The present Protocol shall enter into force six months after the date on which not less than fifteen States, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have become Parties to it in accordance with Article IV of the present Protocol, provided however that the present

Protocol shall not enter into force before the Convention has entered into force.

2. Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Protocol enters into force shall take effect three months after the date of deposit.
3. After the date on which an amendment to the present Protocol is deemed to have been accepted under Article VIII of the Convention, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

ARTICLE VI

Denunciation

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

ARTICLE VII

Depositary

1. The present Protocol shall be deposited with the Secretary-General of the Organization (hereinafter referred to as “the Depositary”).
2. The Depositary shall:
 - (a) Inform all States which have signed the present Protocol or acceded thereto of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

- (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which it was received and the date on which the denunciation takes effect;
 - (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.
3. As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE VIII

Languages

The present Protocol is established in a single original in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

ANNEX

MODIFICATIONS AND ADDITIONS TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

CHAPTER I

GENERAL PROVISIONS

PART A — APPLICATION, DEFINITIONS, ETC.

Regulation 2

Definitions

The following paragraph is added to the existing text:

- (n) “Age of a ship” means the elapsed period of time determined from the year of build as indicated on the ship’s registry papers.

CHAPTER V

SAFETY OF NAVIGATION

Regulation 12

Shipborne Navigational Equipment

The existing text of paragraph (a) is replaced by the following:

- (a) All ships of 1,600 tons gross tonnage and upwards but less than 10,000 tons gross tonnage shall be fitted with at least one radar. All ships of 10,000 tons gross tonnage and upwards shall be fitted with at least two radars, each capable of operating independently of the other. All radars fitted in compliance with this Regulation shall be of a type approved by the Administration and shall conform to operational standards not inferior to those adopted by the Organization. Facilities for plotting radar readings shall be provided on the bridge in those ships.

Regulation 19

Use of the Automatic Pilot

The following paragraph is added to the existing text:

- (d) The manual steering shall be tested after prolonged use of the automatic pilot, and before entering areas where navigation demands special caution.

The following new Regulations are added to this Chapter:

Regulation 19-1

Operation of Steering Gear

In areas where navigation demands special caution, ships shall have more than one steering gear power unit in operation when such units are capable of simultaneous operation.

Regulations 19-2

Steering Gear — Testing and Drills

- (a) Within 12 hours before departure, the ship's steering gear shall be checked and tested by the ship's crew. The test procedure shall include, where applicable, the operation of the following;

- (i) the main steering gear;
 - (ii) the auxiliary steering gear;
 - (iii) the remote steering gear control systems;
 - (iv) the steering positions located on the navigating bridge;
 - (v) the emergency power supply;
 - (vi) the rudder angle indicators in relation to the actual position of the rudder;
 - (vii) the remote steering gear control system power failure alarms; and
 - (viii) the steering gear power unit failure alarms.
- (b) The checks and tests shall include:
- (i) the full movement of the rudder according to the required capabilities of the steering gear;
 - (ii) a visual inspection of the steering gear and its connecting linkage; and
 - (iii) the operation of the means of communication between the navigating bridge and steering gear compartment.
- (c)
- (i) Simple operating instructions with a block diagram showing the change-over procedures for remote steering gear control systems and steering gear power units shall be permanently displayed on the navigating bridge and in the steering gear compartment.
 - (ii) All officers concerned with the operation and/or maintenance of steering gear shall be familiar with the operation of the steering systems fitted on the ship and with the procedures for changing from one system to another.
- (d) In addition to the routine checks and tests prescribed in paragraphs (a) and (b) of this Regulation, emergency steering drills shall take place at least once every three months in order to practise emergency steering procedures. These drills shall include direct control from within the steering gear compartment, the communications procedure with the navigating bridge and, where applicable, the operation of alternative power supplies.
- (e) The Administration may waive the requirement to carry out the checks and tests prescribed in paragraphs (a) and (b) of this Regulation for ships which

regularly ply on voyages of short duration. Such ships shall carry out these checks and tests at least once every week.

- (f) The date upon which the checks and tests prescribed in paragraphs (a) and (b) of this Regulation are carried out and the date and details of emergency steering drills carried out under paragraph (d) of this Regulation, shall be recorded in the log book as may be prescribed by the Administration.

[Schedule 6 deleted: No. 24 of 2023 s. 100.]

Notes

This is a compilation of the *Western Australian Marine Act 1982* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, 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>Western Australian Marine Act 1982</i> ^{2,3-4}	55 of 1982	5 Nov 1982	1 Jul 1983 (see s. 2 and <i>Gazette</i> 24 Jun 1983 p. 1977)
<i>Western Australian Marine Amendment Act 1990</i>	35 of 1990	9 Oct 1990	Act other than s. 4(b) and (d), 6-9, 12 and 21: 9 Jun 1992 (see s. 2 and <i>Gazette</i> 9 Jun 1992 p. 2379); s. 4(b) and 21: 1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Department of Transport) Act 1993</i> Pt. 15	47 of 1993	20 Dec 1993	1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> Pt. 21	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 83 and s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))

Western Australian Marine Act 1982**Notes** Compilation table

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 130	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the Western Australian Marine Act 1982 as at 28 Jan 2000 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 130	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Dangerous Goods Safety Act 2004</i> s. 70	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 135 ²¹	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 2: The Western Australian Marine Act 1982 as at 2 Dec 2005 (includes amendments listed above except those in the <i>Dangerous Goods Safety Act 2004</i>)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 137	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> Pt. 12 Div. 7	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)

Short title	Number and year	Assent	Commencement
Reprint 3: The Western Australian Marine Act 1982 as at 27 Jul 2012 (includes amendments listed above) Correction in <i>Gazette</i> 26 Jul 2013 p. 3354			
<i>Ports Legislation Amendment Act 2019</i> Pt 8	2 of 2019	26 Feb 2019	27 Feb 2019 (see s. 2(b))
<i>Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023</i> Pt. 9 (other than s. 39(1) , 44, 46 , 54 , 56 , 69 , 70 , 72 to 74 , 76 , 78 to 80 , 85 , 86 , 90 and 95 54)	24 of 2023	24 Oct 2023	Pt. 9 (other than s. 39(1), 44, 46, 54, 56, 69, 70, 72 to 74, 76, 78 to 80, 85, 86, 90 and 95): 21 Dec 2023 (see s. 2(b) and SL 2023/203 cl. 2(a)); s. 39(1), 46, 56, 69, 70, 72-74, 76, 78-80, 85, 86, 90 and 95: 2 May 2024 (see s. 2(b) and SL 2024/55 cl. 2)
<i>Western Australian Marine Amendment Act 2023</i> Pt. 2 (s. 3-6 , 9-13 , 14(1) , 23(1) and (3) , 24(2) , 25 and 27) 2	31 of 2023	11 Dec 2023	Pt. 2 (other than s. 7, 8, 14(2), 15-22, 23(2), 24(1), 26 and 31): 21 Dec 2023 (see s. 2(c) and SL 2023/202 cl. 2 and SL 2023/203 cl. 2(a)); s. 7, 8, 14(2), 15-22, 23(2), 24(1), 26 and 31: 2 May 2024 (see s. 2(c) and SL 2024/52 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>Aquatic Resources Management Act 2016</i> s. 376	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
<i>Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023</i> s. 39(1) , 44, 46 , 54 , 56 , 69 , 70 , 72 to 74 , 76 , 78 to 80 , 85 , 86 , 90 and 95 54	24 of 2023	24 Oct 2023	To be proclaimed (see s. 2(b))

Short title	Number and year	Assent	Commencement
Western Australian Marine Amendment Act 2023 Pt. 2 (other than s. 3-6, 9-13, 14(1), 23(1) and (3), 24(2), 25 and 27)	31 of 2023	11 Dec 2023	To be proclaimed (see s. 2(e))

Other notes

[†] ~~Repealed by the *Fisheries Legislation (Consequential Provisions) Act 1991* s. 3(2) (Cwlth).~~

²¹ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

³² The *Western Australian Marine Amendment Act 1987* (other than s. 1 and 2) was repealed by the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* Pt. 10 Div. 9 (No. 24 of 2023) before it came into operation.

⁴³ The *Western Australian Marine Amendment Act 1990* s. 4(d), 6-9 and 12 were deleted by the *Marine Safety (Domestic Commercial Vessel National Law Application) Act 2023* Pt. 10 Div. 10 (No. 24 of 2023) before they came into operation.

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