



Coastal Trading (Revitalising Australian Shipping) Act 2012

No. 55, 2012 as amended

Compilation start date: 1 July 2014

Includes amendments up to: Act No. 62, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 4 August 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

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

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Object of Act	1
4 Constitutional basis for Act	2
5 Simplified outline	3
Part 2—Interpretation	5
6 Definitions	5
7 Meaning of <i>coastal trading</i>	10
Part 3—Provisions relating to the application of this Act	12
8 Extension to Territories	12
9 Act to bind the Crown	12
10 Act does not apply to certain vessels	12
11 Minister may exempt certain vessels or persons	12
12 Application to vessels on intrastate voyages	13
Part 4—Licences	15
Division 1—General licences	15
Subdivision A—Application for, and grant of, general licences	15
13 Application for general licence	15
14 Application may be varied or withdrawn	16
15 Deciding applications	16
16 Grant of general licence	17
17 Application taken to be granted in certain circumstances	17
18 Issue of general licence	17
19 When general licence is in force	18
20 Refusal of application	18
Subdivision B—Conditions of general licences	18
21 Conditions imposed on all general licences	18
22 Additional conditions may be imposed by Minister	19
23 Breaching condition of general licence	19
Subdivision C—Renewal, cancellation and surrender of general licences	19
24 Renewal of general licence	19
25 Cancellation of general licence	20
26 Surrender of general licence	21

Subdivision D—Miscellaneous	21
27 Reporting requirements for general licences	21
Division 2—Temporary licences	23
Subdivision A—Application for, and grant of, temporary licences	23
28 Application for temporary licence	23
29 Application may be withdrawn.....	24
30 Publication and notification of application	24
31 Holder of general licence may give notice in response.....	24
32 Process if notice in response received	25
33 Comments by third parties.....	26
34 Minister to decide applications.....	26
35 Grant of temporary licence	28
36 Application taken to be granted in certain circumstances.....	28
37 Issue of temporary licence	29
38 When temporary licence is in force	30
39 Refusal of application.....	30
Subdivision B—Conditions of temporary licences	30
40 Conditions imposed on all temporary licences	30
41 Additional conditions may be imposed by Minister	31
42 Breaching condition of temporary licence.....	31
Subdivision C—Variation of matters authorised by temporary licences	31
43 Application to vary matters authorised by temporary licence.....	31
44 Application may be withdrawn.....	32
45 Consultation on proposed variation	32
46 Minister to decide application	33
47 Grant of variation to temporary licence	34
47A Application taken to be granted in certain circumstances.....	34
48 Issue of varied temporary licence	34
49 Refusal of application.....	34
Subdivision D—Variation of temporary licences to include new matters	35
50 Application of Subdivision	35
51 Application to vary temporary licence.....	35
52 Application may be withdrawn.....	35
53 Process for deciding application	36
54 Time for deciding application.....	36
55 Grant of variation to temporary licence	36
56 Application taken to be granted in certain circumstances.....	36

57	Issue of varied temporary licence	37
58	Refusal of application	37
Subdivision E—Cancellation and surrender of temporary licences		37
59	Cancellation of temporary licence	37
60	Surrender of temporary licence	39
Subdivision F—Miscellaneous		39
61	Voyage notification requirements for temporary licences	39
62	Reporting requirements for temporary licences	40
63	Inappropriate use of temporary licence	41
Division 3—Emergency licences		42
Subdivision A—Application for, and grant of, emergency licences		42
64	Application for emergency licence	42
65	Application may be varied or withdrawn	43
66	Deciding applications	43
67	Grant of emergency licence	44
68	Application taken to be granted in certain circumstances	44
69	Issue of emergency licence	44
70	When emergency licence is in force	45
71	Refusal of application	45
Subdivision B—Conditions of emergency licences		45
72	Conditions imposed on all emergency licences	45
73	Additional conditions may be imposed by Minister	46
74	Breaching condition of emergency licence	46
Subdivision C—Miscellaneous		47
74A	Voyage notification requirements for emergency licences	47
75	Reporting requirements for emergency licences	47
Division 4—Miscellaneous		49
76	Requests for further information—general and emergency licence applications	49
77	Requests for further information—temporary licence applications	49
78	Basis on which licences granted	50
Part 5—Enforcement		51
Division 1—Requiring people to give information and produce documents or things		51
Subdivision A—Notices to give information or produce documents or things		51
79	Notice to give information or produce document or thing	51

80	Department may retain documents and things	52
Subdivision B—Offence and related provisions		52
81	Failure to comply with notice etc.	52
82	Self-incrimination etc.	53
Division 2—Civil penalty provisions		55
83	Engaging in coastal trading without licence	55
84	Breaching condition of exemption—vessels.....	55
85	Breaching condition of exemption—persons.....	55
Division 3—Civil penalty proceedings		57
Subdivision A—Obtaining a civil penalty order		57
86	Civil penalty orders	57
87	Civil enforcement of penalty	57
88	Conduct contravening more than one civil penalty provision.....	58
89	Multiple contraventions.....	58
90	Proceedings may be heard together	58
91	Civil evidence and procedure rules to apply	58
92	Contravening a civil penalty provision is not an offence.....	59
Subdivision B—Miscellaneous		59
93	Ancillary contravention of civil penalty provisions.....	59
94	Continuing contraventions of civil penalty provisions	59
95	Mistake of fact.....	60
96	State of mind	60
97	Civil penalty provisions contravened by employees, agents or officers	61
98	Civil penalty provisions contravened by executive officers	61
99	Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision.....	61
Division 4—Infringement notices		63
100	<i>Enforceable</i> provisions	63
101	When an infringement notice may be given	63
102	Matters to be included in an infringement notice.....	63
103	Extension of time to pay amount	64
104	Withdrawal of an infringement notice	65
105	Effect of payment of amount	66
106	Effect of this Division	67
Part 6—Miscellaneous		68
Division 1—Review of decisions		68
107	Review by the Administrative Appeals Tribunal.....	68

Division 2—Appointment of authorised persons etc.	70
108 Appointment of authorised persons	70
109 Identity cards	70
Division 3—Disclosure of information	72
110 Disclosure of information by the Secretary	72
Division 4—Miscellaneous	73
111 Delegation	73
112 Customs treatment of certain vessels.....	73
113 Regulations.....	73
Endnotes	74
Endnote 1—About the endnotes	74
Endnote 2—Abbreviation key	76
Endnote 3—Legislation history	77
Endnote 4—Amendment history	78
Endnote 5—Uncommenced amendments [none]	79
Endnote 6—Modifications [none]	79
Endnote 7—Misdescribed amendments [none]	79
Endnote 8—Miscellaneous [none]	79

An Act to regulate coastal trading, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

2 Commencement

This Act commences on 1 July 2012.

3 Object of Act

- (1) The object of this Act is to provide a regulatory framework for coastal trading in Australia that:
 - (a) promotes a viable shipping industry that contributes to the broader Australian economy; and
 - (b) facilitates the long term growth of the Australian shipping industry; and
 - (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and
 - (d) maximises the use of vessels registered in the Australian General Shipping Register in coastal trading; and
 - (e) promotes competition in coastal trading; and
 - (f) ensures efficient movement of passengers and cargo between Australian ports.
- (2) This Act aims to achieve its object by the following means:
 - (a) ensuring that a vessel that is used to engage in coastal trading under a general licence has unrestricted access to Australian waters;
 - (b) ensuring that a vessel that is used to engage in coastal trading has access to Australian waters under a temporary licence

Section 4

that is limited in time and to voyages authorised by the licence;

- (c) ensuring that a vessel that is used to engage in coastal trading under an emergency licence has the access to Australian waters required to deal with the emergency to which the licence relates.

4 Constitutional basis for Act

- (1) Without limiting its effect apart from this section, this Act applies to activities of, or matters that relate to, the following:
 - (a) a vessel engaged in trade and commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory; or
 - (iii) between 2 Territories;
 - (b) a vessel that is external to Australia;
 - (c) a vessel of which the owner, or any of the owners, is a constitutional corporation;
 - (d) a vessel, so far as the application of this Act to activities of, or in relation to, the vessel is reasonably appropriate and adapted to giving effect to Australia's obligations under an international agreement;
 - (e) a vessel of which the owner, or any of the owners, is the Commonwealth or a Commonwealth agency;
 - (f) navigation or shipping, to the extent that the navigation or shipping relates to trade and commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory; or
 - (iii) between 2 Territories;
 - (g) things that are incidental to activities or matters referred to in any of the above paragraphs.
- (2) For the purposes of subsection (1), an activity of, or a matter that relates to, a vessel includes, but is not limited to, an activity done by a person, or in relation to a person, in the capacity of owner of the vessel or seafarer working on the vessel.
- (3) For the purposes of subsection (1), ***external to Australia*** means:

- (a) beyond the baseline from which the breadth of the territorial sea is measured under section 7 of the *Seas and Submerged Lands Act 1973*; or
- (b) any waters on the landward side of the territorial sea that are not within the limits of a State or internal Territory.

Note: For the baseline see *Australia's territorial sea baseline* (AGPS) 1988: generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

5 Simplified outline

The following is a simplified outline of this Act:

- This Act regulates coastal trading by providing for licences to be granted that authorise vessels to carry passengers or cargo between ports in Australia. Using a vessel to engage in coastal trading without a licence may lead to a pecuniary penalty being imposed for the contravention of a civil penalty provision.
- Part 2 contains definitions for the Act, including a definition of *coastal trading* and *voyage*.
- Part 3 contains provisions relating to the application of the Act to various kinds of vessels, including provisions allowing the Minister to grant exemptions from the Act for vessels and people.
- Part 4 sets out the 3 kinds of licences (general licences, temporary licences and emergency licences) that may be granted and the application process for each. It also deals with matters such as conditions of licences and the cancellation of licences.
- Part 5 contains provisions relating to the enforcement of the Act.

Part 1 Preliminary

Section 5

- Part 6 deals with miscellaneous matters such as the review of certain decisions by the Administrative Appeals Tribunal and the delegation of the Minister's and Secretary's functions and powers under the Act.

Part 2—Interpretation

6 Definitions

(1) In this Act:

acceptable tolerance limits means:

- (a) in relation to cargo authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the volume of cargo authorised to be carried under the licence; or
- (b) in relation to passengers authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the number of passengers authorised to be carried under the licence; or
- (c) in relation to a loading date—5 days before or after the loading date.

Australia, when used in a geographical sense, includes the external Territories.

Australian General Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Australian International Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Australian nationality: a vessel has ***Australian nationality*** if it is a ship that has Australian nationality within the meaning of the *Shipping Registration Act 1981*.

authorised person means a person appointed as an authorised person under section 108.

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory; or
- (d) 27, 28, 29, 30 or 31 December.

Section 6

cargo means any personal property:

- (a) that is carried on board a vessel; and
- (b) for which a bill of lading, or a receipt of a similar kind, is issued.

civil penalty order has the meaning given by section 86.

civil penalty provision means a subsection, or a section that is not divided into subsections, that has set out at its foot the words “civil penalty” and one or more amounts in penalty units.

coastal trading: see section 7.

Commonwealth agency includes:

- (a) a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); and
- (b) a body corporate established for a public purpose under a law of the Commonwealth.

Commonwealth vessel means a vessel that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth agency.

emergency licence means a licence granted under Division 3 of Part 4.

energy security situation: see subsection (1A).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

fish includes turtles, dugong, crustacea, molluscs and any other living resources of the sea or of the seabed.

fishing fleet support vessel means a vessel (other than a Commonwealth vessel or an inland waterways vessel) that is used wholly or primarily in activities in support of the fishing operations of a fishing vessel.

Note: For *in support of the fishing operations*, see subsection (2).

fishing operations means:

- (a) the taking, catching or capturing of fish for trading or manufacturing purposes; and
- (b) the processing or carrying of the fish that are taken, caught or captured.

fishing vessel means a vessel (other than a Commonwealth vessel or an inland waterways vessel) that is used wholly or primarily for fishing operations.

general licence means a licence granted or renewed under Division 1 of Part 4.

harbour means a natural or artificial harbour, and includes an estuary, navigable river, creek, channel, haven, roadstead, dock, pier, jetty or other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.

inland waterways vessel means a vessel (other than a Commonwealth vessel) that is used wholly in waters other than waters of the sea.

internal waters of Australia has the same meaning as in the *Seas and Submerged Lands Act 1973*.

international agreement means a treaty or agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

licence means a general licence, a temporary licence or an emergency licence.

Section 6

liquid fuel product means any of the following:

- (a) biodiesel (within the meaning of paragraph (a) of the definition of that expression in the *Energy Grants (Cleaner Fuels) Scheme Act 2004*);
- (b) liquid fuel (within the meaning of the *Liquid Fuel Emergency Act 1984*);
- (c) liquid petrochemical (within the meaning of that Act);
- (d) liquid petroleum (within the meaning of that Act);
- (e) liquid petroleum product (within the meaning of that Act);
- (f) petrochemical (within the meaning of that Act);
- (g) petroleum (within the meaning of that Act);
- (h) petroleum product (within the meaning of that Act);
- (i) refined liquid petroleum product (within the meaning of that Act).

loading date means the date passengers or cargo are expected to be loaded on board a vessel.

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

notice in response, in relation to an application, has the meaning given by section 31.

offshore industry vessel means a vessel that is used wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the mineral and other non-living resources of the seabed and its subsoil.

owner of a vessel means one or more of the following:

- (a) a person who has a legal or beneficial interest in the vessel, other than as a mortgagee;
- (b) a person with overall general control and management of the vessel;
- (c) a person who has assumed responsibility for the vessel from a person referred to in paragraph (a) or (b).

For the purposes of paragraphs (b) and (c), a person is not taken to have overall general control and management of a vessel, or to

have assumed responsibility for a vessel, merely because he or she is the master or pilot of the vessel.

passenger means a person who is carried on board a vessel with the knowledge or consent of the owner, charterer or master of the vessel, if consideration (whether monetary or otherwise) is required to be, or has been, paid for the person to be so carried.

permanent visa has the same meaning as in the *Migration Act 1958*.

port includes a harbour.

recreational vessel means a vessel (other than a Commonwealth vessel or an inland waterways vessel) that is used wholly for recreational or sporting activities (whether or not let, or intended to be let, for hire or reward or consideration of any kind).

salvage operation means any act or activity undertaken to assist a vessel or any other property not permanently and intentionally attached to the shoreline (including freight at risk) in danger in any waters.

salvage vessel means a vessel that is used wholly or primarily for salvage operations.

sea includes any waters within the ebb and flow of the tide.

seafarer means any person who is employed or engaged or works in any capacity on board a vessel on the business of the vessel, other than the following:

- (a) a pilot;
- (b) an owner of the vessel or a person representing the owner;
- (c) law enforcement personnel;
- (d) special personnel (within the meaning of section 283 of the *Navigation Act 1912*);
- (e) a person temporarily employed on the vessel in port;
- (f) a person prescribed by the regulations.

temporary licence means a licence granted under Division 2 of Part 4 and includes such a licence as varied under that Division.

Section 7

temporary visa has the same meaning as in the *Migration Act 1958*.

vessel means any kind of vessel used in navigation by water, however propelled or moved.

voyage means the movement of a vessel from one port to another port in a way that would satisfy paragraph 7(1)(a), (b) or (c).

- (1A) For the purposes of this Act, an **energy security situation** exists if:
- (a) a vessel is used to undertake a voyage authorised by a temporary licence; and
 - (b) the vessel is carrying a liquid fuel product; and
 - (c) there are special circumstances, of a kind prescribed by the regulations, requiring the vessel to load or unload a liquid fuel product at a port that is not authorised by the licence.
- (2) For the purposes of this Act, activities **in support of the fishing operations** of a fishing vessel include:
- (a) the storage and transport of fish taken, caught or captured by the fishing vessel; and
 - (b) the provision of food, fuel and other supplies to the fishing vessel while it is engaged in fishing operations; and
 - (c) the transport of crew to and from the fishing vessel while it is engaged in fishing operations.

7 Meaning of *coastal trading*

- (1) For the purposes of this Act, and subject to subsection (2), a vessel is used to engage in **coastal trading** if, for or in connection with a commercial activity:
- (a) the vessel:
 - (i) takes on board passengers or cargo at a port in a State or Territory; and
 - (ii) carries the passengers or cargo to a port in another State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; or
 - (b) the vessel:

- (i) takes on board passengers or cargo at a port in a State or Territory; and
 - (ii) carries the passengers or cargo to a port in the same State or Territory where some passengers disembark or some cargo is unloaded; and
 - (iii) carries passengers or cargo to a port in another State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; or
- (c) the vessel:
- (i) takes on board passengers or cargo at a port in a State or Territory; and
 - (ii) carries the passengers or cargo to a port in the same State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; and
 - (iii) is one in relation to which a declaration under subsection 12(2) is in force.
- (2) Subsection (1) does not apply in respect of the following:
- (a) a passenger who:
 - (i) holds a through ticket to or from a port outside Australia; and
 - (ii) disembarks at a port in Australia for transit purposes only;
 - (b) cargo that:
 - (i) is consigned on a through bill of lading to or from a port outside Australia; and
 - (ii) is unloaded at a port in Australia for transshipment only;
 - (c) passengers, or cargo, of a kind prescribed by the regulations for the purposes of this paragraph.

Part 3—Provisions relating to the application of this Act

8 Extension to Territories

This Act extends to every external Territory.

9 Act to bind the Crown

This Act binds the Crown in each of its capacities.

10 Act does not apply to certain vessels

This Act does not apply to or in relation to the following kinds of vessels:

- (a) a vessel belonging to, or operated by:
 - (i) the Australian Defence Force; or
 - (ii) the naval, military or air forces of a country other than Australia;
- (b) a Commonwealth vessel that is used wholly or primarily for non-commercial activities;
- (c) a fishing vessel or fishing fleet support vessel;
- (d) an inland waterways vessel;
- (e) an offshore industry vessel;
- (f) a recreational vessel;
- (g) a salvage vessel;
- (h) a tugboat.

11 Minister may exempt certain vessels or persons

- (1) The Minister may, by legislative instrument, direct that this Act does not apply to:
 - (a) a vessel or class of vessels; or
 - (b) a person or class of persons.

- (2) An exemption under subsection (1) may be confined to one or both of the following:
 - (a) one or more specified periods;
 - (b) one or more specified voyages.
- (3) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the direction.

Note: Breach of a condition of an exemption is a civil penalty provision, see sections 84 and 85.
- (4) The Minister must not make a direction if the proposed exemption would be inconsistent with an obligation of Australia under an international agreement.
- (5) The Minister must not make a direction unless satisfied that the proposed exemption will not jeopardise the safety of a vessel or persons on board a vessel.

12 Application to vessels on intrastate voyages

- (1) The owner of a vessel may apply to the Minister for a declaration under subsection (2) in relation to the vessel.
- (2) The Minister may, in writing, declare that this Act applies in relation to the vessel even when, for or in connection with a commercial activity, the vessel:
 - (a) takes on board passengers or cargo at a port in a State or Territory; and
 - (b) carries the passengers or cargo to a port in the same State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded.

Expiry or revocation of declaration

- (3) A declaration made under subsection (2) ceases to have effect at the end of the period, if any, specified in the declaration, unless it is revoked before that time.
 - (4) The Minister must revoke a declaration made under subsection (2) if requested to do so by the owner of the vessel to which the declaration relates.
-

Section 12

- (5) The Minister may revoke a declaration made under subsection (2) if the Minister is satisfied:
- (a) that the vessel to which the declaration relates no longer exists or has been lost; or
 - (b) that the name or any other details of the vessel have been changed since the making of the declaration; or
 - (c) that the vessel no longer operates in Australia.

Declaration not a legislative instrument

- (6) A declaration made under subsection (2) is not a legislative instrument.

Part 4—Licences

Division 1—General licences

Subdivision A—Application for, and grant of, general licences

13 Application for general licence

- (1) A person may apply to the Minister for a general licence, including renewal of a general licence, authorising a vessel to be used to engage in coastal trading if:
 - (a) the vessel is registered in the Australian General Shipping Register; and
 - (b) the person is:
 - (i) the owner, charterer, master or agent of the vessel; or
 - (ii) a person of a kind prescribed by the regulations.
- (2) The application must be in writing and be accompanied by the following:
 - (a) evidence that the vessel is registered in the Australian General Shipping Register;
 - (b) a statement that each seafarer working on the vessel, when the vessel is used to engage in coastal trading:
 - (i) is or will be an Australian citizen; or
 - (ii) is or will hold a permanent visa; or
 - (iii) is or will hold a temporary visa that does not prohibit the seafarer from performing the work he or she performs on the vessel;
 - (c) such information as is prescribed by the regulations;
 - (d) the application fee prescribed by the regulations.

Note: The Minister may ask the applicant to provide further information, see section 76.

- (3) The application must relate to one vessel only.

Section 14

14 Application may be varied or withdrawn

- (1) At any time before the Minister decides an application, the applicant may notify the Minister, in writing, that the applicant wishes to:
- (a) vary the application; or
 - (b) withdraw the application.

Note: Varying an application affects the period within which the Minister must decide the application, see section 15.

- (2) If the applicant withdraws the application, the application fee is not refundable.

15 Deciding applications

- (1) The Minister decides an application by:
- (a) granting the application; or
 - (b) refusing the application.
- (2) In deciding an application, the Minister may have regard to the following:
- (a) whether the applicant has previously held a licence that was cancelled;
 - (b) whether the applicant has been issued with an infringement notice under this Act;
 - (c) the object of this Act;
 - (d) any other matters the Minister thinks relevant.
- (3) The Minister must decide an application:
- (a) within 10 business days after the day the application is made; or
 - (b) if the applicant varies the application under section 14—within 10 business days after the day the Minister receives written notice of the variation.

Note: The period within which an application is to be decided may be affected by section 76.

16 Grant of general licence

- (1) If the Minister grants an application, the Minister must also determine the period for which the general licence is granted or renewed. The period must not be more than 5 years.

Note: For conditions of general licences, see sections 21 and 22.

- (2) If the Minister grants an application for a general licence, including renewal of a general licence, the Minister must cause the following information to be published on the Department's website:
- (a) the general licence number;
 - (b) the holder of the licence;
 - (c) the holder's business name and business address;
 - (d) the vessel to which the licence relates;
 - (e) the period of the licence;
 - (f) any other information prescribed by the regulations.

17 Application taken to be granted in certain circumstances

If the Minister has not decided an application by the end of the period within which a decision is required under section 15, then, at the end of the last day of that period:

- (a) the Minister is taken to have granted the application; and
- (b) the Minister is taken to have determined that the period for which the general licence is granted or renewed, as the case may be, is 5 years.

18 Issue of general licence

- (1) If the Minister decides to grant an application, or is taken to have granted an application, he or she must, as soon as practicable, give the applicant a general licence.
- (2) The licence must specify the following:
- (a) the general licence number;
 - (b) the holder of the licence;
 - (c) the holder's business name and business address;
 - (d) the vessel to which the licence relates;

Section 19

- (e) that the licence is subject to conditions under section 21;
- (f) any additional conditions imposed on the licence under section 22;
- (g) the day the licence commences and the period of the licence;
- (h) any other matters prescribed by the regulations.

19 When general licence is in force

A general licence:

- (a) commences on the day specified in the licence; and
- (b) expires at the end of the period specified in the licence, unless the licence is cancelled or surrendered before that time.

Note: A general licence is taken to continue in force beyond its expiry date in certain circumstances, see subsection 24(2).

20 Refusal of application

If the Minister decides to refuse an application, he or she must, as soon as practicable, notify the applicant, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision.

Subdivision B—Conditions of general licences

21 Conditions imposed on all general licences

A general licence is subject to the following conditions:

- (a) the vessel to which the licence relates must continue to be registered in the Australian General Shipping Register;
- (b) when the vessel is used to engage in coastal trading, each seafarer working on the vessel must:
 - (i) be an Australian citizen; or
 - (ii) hold a permanent visa; or
 - (iii) hold a temporary visa that does not prohibit the seafarer from performing the work he or she performs on the vessel;

- (c) when the vessel is used to engage in coastal trading, a copy of the licence must be displayed on the vessel in a conspicuous place accessible to all persons on board;
- (d) the holder of the licence must comply with the reporting requirements under section 27;
- (e) the holder of the licence must comply with any other condition prescribed by the regulations.

22 Additional conditions may be imposed by Minister

- (1) The Minister may, at any time:
 - (a) impose an additional condition on a general licence; or
 - (b) vary or remove such a condition;by notifying, in writing, the holder of the licence.
- (2) A condition imposed under subsection (1), including such a condition as varied, must not be inconsistent with a condition under section 21.

23 Breaching condition of general licence

A person contravenes this section if:

- (a) the person is the holder of a general licence; and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission breaches a condition imposed on the licence under section 21 or 22.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Subdivision C—Renewal, cancellation and surrender of general licences

24 Renewal of general licence

- (1) The Minister may renew a general licence if the holder of the licence makes an application for renewal before the licence expires.
-

Section 25

- (2) If an application for renewal of a general licence is made, the licence is taken to continue to be in force until the application is decided.
- (3) A general licence may be renewed more than once.

25 Cancellation of general licence

Minister to give show cause notice

- (1) If the Minister believes on reasonable grounds that a condition of a general licence has been contravened, the Minister may give a written notice (a **show cause notice**) to the holder of the licence.
- (2) The show cause notice must:
 - (a) state the grounds on which the notice is given; and
 - (b) invite the holder of the licence to give the Minister, within 10 business days after the day the notice is given, a written statement showing cause why the licence should not be cancelled.

Minister may decide to cancel licence

- (3) If the Minister:
 - (a) has given a show cause notice under subsection (1) to the holder of a general licence; and
 - (b) after considering any written statement given in accordance with the show cause notice, is satisfied that a condition of the licence has been contravened;the Minister may cancel the licence.

Note: Section 107 provides that an application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister to cancel a general licence.

- (4) The Minister must give written notice of the cancellation to the holder of the licence. The notice must set out:
 - (a) the day the cancellation takes effect; and
 - (b) the reasons for the cancellation; and
 - (c) the effect of subsection (5).

Holder of licence to return cancelled licence

- (5) The holder of a general licence contravenes this subsection if:
- (a) the licence is cancelled under this section; and
 - (b) the holder of the licence does not return the licence to the Minister within 10 business days after the day the cancellation takes effect.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Show cause notice not a legislative instrument

- (6) A show cause notice given under subsection (1) is not a legislative instrument.

26 Surrender of general licence

- (1) The holder of a general licence may, at any time, surrender the licence by:
- (a) returning the licence to the Minister; and
 - (b) giving the Minister written notice that it is surrendered.
- (2) The surrender of the licence takes effect on the day the notice is received by the Minister or, if a later day is specified in the notice, on that later day.

Subdivision D—Miscellaneous

27 Reporting requirements for general licences

- (1) A person who holds a general licence at any time during a financial year must give to the Department a report containing the following information relating to the vessel used to engage in coastal trading under the licence during the year:
- (a) if passengers were carried during the year:
 - (i) the number of passengers carried; and

Section 27

- (ii) the ports at which the passengers were taken on board; and
 - (iii) the ports at which the passengers disembarked;
 - (b) if cargo was carried during the year:
 - (i) the kinds and volume of cargo carried; and
 - (ii) the ports at which the cargo was taken on board; and
 - (iii) the ports at which the cargo was unloaded;
 - (c) such other information as is prescribed by the regulations.
 - (2) The report must be given to the Department no later than 30 business days after the end of the financial year to which the report relates.
 - (3) A person contravenes this subsection if:
 - (a) the person holds a general licence at any time during a financial year; and
 - (b) the person fails to give the Department a report containing the information required by subsection (1) within the time required by subsection (2).
- Civil penalty:
- (a) for an individual—50 penalty units; and
 - (b) for a body corporate—250 penalty units.
- (4) After the end of each financial year, the Minister must cause a summary of the information contained in the reports given under subsection (1) in respect of the year to be published on the Department's website.

Division 2—Temporary licences

Subdivision A—Application for, and grant of, temporary licences

28 Application for temporary licence

- (1) A person may apply to the Minister for a temporary licence to enable a vessel to be used to engage in coastal trading over a 12-month period if the person is:
 - (a) the owner, charterer, master or agent of a vessel; or
 - (b) a shipper.
- (2) The application must be in writing and specify the following:
 - (a) the number of voyages, which must be 5 or more, to be authorised by the licence;
 - (b) the expected loading dates;
 - (c) the number of passengers expected to be carried (if any);
 - (d) the kinds and volume of cargo expected to be carried (if any);
 - (e) the type and size, or type and capacity, of the vessel to be used to carry the passengers or cargo (if known);
 - (ea) the name of the vessel (if known);
 - (f) the ports at which the passengers or cargo are expected to be taken on board;
 - (g) the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded;
 - (h) such other information as is prescribed by the regulations.

Note: The Minister may ask the applicant to provide further information, see section 77.
- (3) The application must be accompanied by the application fee prescribed by the regulations.

29 Application may be withdrawn

- (1) At any time before the Minister decides an application, the applicant may notify the Minister, in writing, that the applicant wishes to withdraw the application.
- (2) If the applicant withdraws the application, the application fee is not refundable.

30 Publication and notification of application

Within 2 business days after the day the Minister receives an application under section 28, the Minister must:

- (a) cause to be published on the Department's website a copy of the application, but must delete from the copy information that the Minister is satisfied:
 - (i) is commercial in confidence; or
 - (ii) consists of personal details of an individual; and
- (b) cause the following persons to be notified of the application:
 - (i) every holder of a general licence;
 - (ii) a body or organisation that the Minister considers would be directly affected, or whose members would be directly affected, if the application were granted.

31 Holder of general licence may give notice in response

The holder of a general licence may, within 2 business days after the day an application is published under section 30, give the Minister a written notice (a *notice in response*):

- (a) stating that:
 - (i) all of the passengers specified in the application could be carried under the holder's general licence; or
 - (ii) all of a particular kind of cargo specified in the application could be carried under the holder's general licence; or
 - (iii) all of the passengers and all of a particular kind of cargo specified in the application could be carried under the holder's general licence; or

- (iv) all of the passengers and all of the cargo specified in the application could be carried under the holder's general licence; or
- (v) one or more voyages specified in the application could be undertaken under the holder's general licence; and
- (b) if subparagraph (a)(i), (ii) or (iii) applies—identifying which passengers or cargo could be so carried; and
- (c) if subparagraph (a)(v) applies—identifying which voyage or voyages could be so undertaken.

Note: The period within which the Minister must decide an application does not run if the Minister receives a notice in response in relation to the application, see subsection 34(5).

32 Process if notice in response received

Minister to give copy of notice in response to applicant

- (1) If the Minister receives one or more notices in response in relation to an application, the Minister must, as soon as practicable after the end of the 2 business day period mentioned in section 31, give a copy of each notice in response to the applicant.

Negotiation between applicant and holder of general licence

- (2) Within 2 business days after the day the applicant receives a copy of each notice in response, the applicant must:
 - (a) undertake negotiations in accordance with subsection (3); and
 - (b) notify the Minister, in writing, of the outcome of the negotiations.
- (3) For the purposes of paragraph (2)(a), the applicant must negotiate, with each holder of a general licence who gave a notice in response, in respect of the following matters:
 - (a) whether, and to what extent, the vessel authorised by the holder's general licence is equipped to carry the passengers or cargo specified in the application;
 - (b) whether those passengers or cargo can be carried in a timely manner.

Section 33

- (4) If an application relates to the carriage of cargo, negotiations under subsection (3) in relation to the application must have regard to the requirements of the shipper of the cargo.

33 Comments by third parties

Within 2 business days after the day an application is published under section 30, written comments on the application may be given to the Minister by:

- (a) a person (other than the holder of a general licence) who would be directly affected if the application were, or were not, granted; or
- (b) a body or organisation that would be directly affected, or whose members would be directly affected, if the application were, or were not, granted.

34 Minister to decide applications

- (1) The Minister decides an application by:
 - (a) granting the application; or
 - (b) refusing the application.
- (2) In deciding an application, the Minister may have regard to the following (whether or not the Minister receives a notice in response in relation to the application):
 - (a) whether the applicant has previously held, or applied for, a temporary licence;
 - (b) whether the applicant has previously held a licence that was cancelled;
 - (ba) if the application relates to cargo and a vessel registered in the Australian International Shipping Register—both:
 - (i) whether the applicant owns the cargo and the vessel; and
 - (ii) whether the cargo is to be carried on the vessel;
 - (c) whether the applicant has been issued with an infringement notice under this Act;
 - (d) any written comments received by the Minister in relation to the application;

- (e) any report given to the Department by the applicant under section 62;
 - (f) the object of this Act;
 - (g) any other matters the Minister thinks relevant.
- (3) If the Minister receives one or more notices in response in relation to an application, the Minister must have regard to the following in deciding the application:
- (a) the outcome of negotiations, as notified by the applicant under paragraph 32(2)(b);
 - (b) whether, and to what extent, the vessel authorised by the holder's general licence is equipped to carry the passengers or cargo specified in the application;
 - (c) whether those passengers or cargo can be carried on the expected loading dates or within 5 days before or after the relevant date;
 - (d) if the application relates to the carriage of cargo—the reasonable requirements of a shipper of the kind of cargo specified in the application.
- (4) The Minister must decide an application for a temporary licence within 15 business days after the day the application is made.
- (5) A day is not to be counted as a business day for the purposes of subsection (4) if it is:
- (a) on or after the day the Minister receives a notice in response in respect of the application; and
 - (b) on or before:
 - (i) the day the applicant notifies the Minister under paragraph 32(2)(b); or
 - (ii) if the applicant fails to notify the Minister under that paragraph—the last day of the period within which the applicant was required to notify the Minister under that paragraph.

Note: The period within which an application is to be decided may also be affected by section 77.

35 Grant of temporary licence

- (1) If the Minister grants an application:
- (a) the licence is valid for 12 months; and
 - (b) the Minister must determine the number of voyages authorised by the licence.

Note: For conditions of temporary licences, see sections 40 and 41.

- (2) If the Minister grants an application for a temporary licence, the Minister must cause the following information to be published on the Department's website:
- (a) the temporary licence number;
 - (b) the day the licence commences;
 - (c) the number of voyages authorised by the licence;
 - (d) the loading dates;
 - (e) the number of passengers (if any) authorised to be carried under the licence;
 - (f) the kinds and volume of cargo (if any) authorised to be carried under the licence;
 - (g) the ports at which the passengers or cargo will be taken on board;
 - (h) the ports at which the passengers will disembark or the cargo will be unloaded;
 - (i) any other information prescribed by the regulations.

36 Application taken to be granted in certain circumstances

If the Minister has not decided an application by the end of the period within which a decision is required under section 34, then, at the end of the last day of that period, the Minister is taken to have:

- (a) granted the application; and
- (b) determined that the matters specified in the application are authorised by the licence.

37 Issue of temporary licence

- (1) If the Minister decides to grant an application, or is taken to have granted an application, he or she must, as soon as practicable, give the applicant a temporary licence.
- (2) The licence must specify the following:
 - (a) the temporary licence number;
 - (b) the holder of the licence;
 - (c) the holder's business name and business address;
 - (d) the number of voyages authorised by the licence;
 - (e) the loading dates;
 - (f) that the loading dates are subject to acceptable tolerance limits;
 - (g) the number of passengers authorised to be carried under the licence (if any);
 - (h) that, if paragraph (g) applies, the number of passengers is subject to acceptable tolerance limits;
 - (i) the kinds and volume of cargo authorised to be carried under the licence (if any);
 - (j) that, if paragraph (i) applies, the volume of cargo is subject to acceptable tolerance limits;
 - (k) the ports at which the passengers or cargo are authorised to be taken on board;
 - (l) the ports at which the passengers are authorised to disembark or the cargo is authorised to be unloaded;
 - (m) that the licence is subject to conditions under section 40;
 - (n) any additional conditions imposed on the licence under section 41;
 - (o) the day the licence commences;
 - (p) any other matters prescribed by the regulations.
- (3) If the Minister grants an application for which he or she received one or more notices in response, the Minister must, as soon as practicable, give written notice of the decision to each holder of a general licence who gave a notice in response.

38 When temporary licence is in force

A temporary licence:

- (a) commences on the day specified in the licence; and
- (b) expires at the end of the period specified in the licence, unless it is cancelled or surrendered before that time.

39 Refusal of application

- (1) If the Minister decides to refuse an application, he or she must, as soon as practicable, notify the applicant, in writing, of:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (2) The Minister must cause the decision to be published on the Department's website.

Subdivision B—Conditions of temporary licences

40 Conditions imposed on all temporary licences

A temporary licence is subject to the following conditions:

- (a) any vessel used to undertake a voyage authorised by the licence must be registered in the Australian International Shipping Register or under a law of a foreign country;
- (b) when a vessel undertakes such a voyage, a copy of the licence must be displayed on the vessel in a conspicuous place accessible to all persons on board;
- (c) subject to paragraph (ca), the holder of the licence must comply with what is authorised by the licence, as specified in the licence under section 37;
- (ca) if a voyage authorised by the licence is not going to be undertaken—the holder of the licence must notify the Secretary, in writing, of that fact and the reasons why the voyage is not going to be undertaken;
- (d) the holder of the licence must comply with the notification requirements under section 61;
- (e) the holder of the licence must comply with the reporting requirements under section 62;

- (f) the holder of the licence must comply with any other condition prescribed by the regulations.

41 Additional conditions may be imposed by Minister

- (1) The Minister may, at any time:
- (a) impose an additional condition on a temporary licence; or
 - (b) vary or remove such a condition;
- by notifying, in writing, the holder of the licence.
- (2) A condition imposed under subsection (1), including such a condition as varied, must not be inconsistent with a condition under section 40.

42 Breaching condition of temporary licence

A person contravenes this section if:

- (a) the person is the holder of a temporary licence; and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission breaches a condition imposed on the licence under section 40 or 41.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Subdivision C—Variation of matters authorised by temporary licences

43 Application to vary matters authorised by temporary licence

- (1) A person may apply to the Minister for a variation of a matter authorised by a temporary licence other than a matter authorising a voyage that the Secretary has been notified is not going to be undertaken.
- (2) The application must:
- (a) be in writing; and
 - (b) specify:
-

Section 44

- (i) the matter authorised by the temporary licence that the applicant wishes to vary; and
 - (ii) how the applicant wishes to vary that matter; and
 - (ba) if the application relates to an energy security situation—be accompanied by a statutory declaration giving details of the special circumstances; and
 - (c) be accompanied by the application fee prescribed by the regulations.
- (3) An application relating to a voyage authorised by a temporary licence may be made:
- (a) in the case of an energy security situation—at any time:
 - (i) after the notification requirements under section 61 for the voyage have been complied with; and
 - (ii) before the end of the voyage; and
 - (b) in any other case—before the notification requirements under section 61 for the voyage have been complied with.

44 Application may be withdrawn

- (1) At any time before the Minister decides an application, the applicant may notify the Minister, in writing, that the applicant wishes to withdraw the application.
- (2) If the applicant withdraws the application, the application fee is not refundable.

45 Consultation on proposed variation

- (1) As soon as the Minister receives an application under section 43 (other than an application relating to an energy security situation), the Minister must cause the following persons to be notified of the application:
 - (a) every holder of a general licence;
 - (b) a body or organisation that the Minister considers would be directly affected, or whose members would be directly affected, if the application were granted.

- (2) If the variation proposed by the application could be accommodated by a voyage to be undertaken under a holder's general licence, the holder must notify the Minister, in writing, of that fact.
- (3) Notification must be provided to the Minister within 24 hours of receiving notification of the application.

46 Minister to decide application

- (1) The Minister decides an application by:
 - (a) granting the application; or
 - (b) refusing the application.
- (2) In deciding an application, the Minister may have regard to the following:
 - (a) whether the applicant has previously held, or applied for, a temporary licence;
 - (b) whether the applicant has previously applied for a variation of a temporary licence (whether under this Subdivision or Subdivision D of this Division);
 - (c) whether the applicant has previously held a licence that was cancelled;
 - (d) whether the applicant has been issued with an infringement notice under this Act;
 - (e) any report given to the Department by the applicant under section 62;
 - (f) the object of this Act;
 - (g) any other matters the Minister thinks relevant.
- (3) If the Minister is notified that the variation proposed by the application could be accommodated by a voyage to be undertaken under a holder's general licence, the Minister must have regard to that fact in deciding the application.
- (4) The Minister must decide an application for variation of a temporary licence:
 - (a) in the case of an application relating to an energy security situation—within 24 hours of receiving the application; and

Section 47

- (b) in any other case—within 2 business days after the day the application is made.

47 Grant of variation to temporary licence

If the Minister grants an application for the variation of a temporary licence, the Minister must cause the details of the variation to be published on the Department's website.

47A Application taken to be granted in certain circumstances

If the Minister has not decided an application relating to an energy security situation by the end of the period within which a decision is required under section 46, then, at the end of that period, the Minister is taken to have:

- (a) granted the application; and
- (b) determined that the matters specified in the application are authorised by the licence.

48 Issue of varied temporary licence

- (1) If the Minister decides to grant an application, he or she must, as soon as practicable, give the applicant a varied temporary licence.
- (2) The licence must specify the matters set out in subsection 37(2).

49 Refusal of application

- (1) If the Minister decides to refuse an application, he or she must, as soon as practicable, notify the applicant, in writing, of:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (2) The Minister must cause the decision to be published on the Department's website.

Subdivision D—Variation of temporary licences to include new matters

50 Application of Subdivision

This Subdivision applies if a holder of a temporary licence proposes to vary the licence to include a matter not already authorised by the licence.

51 Application to vary temporary licence

- (1) A holder of a temporary licence may apply to the Minister for a variation of the licence.
- (2) The application must be in writing and specify the following:
 - (a) the number of voyages, which must be 5 or more, to be authorised by the licence;
 - (b) the expected loading dates;
 - (c) the number of passengers expected to be carried;
 - (d) the kinds and volume of cargo expected to be carried (if any);
 - (e) the type and size, or type and capacity, of the vessel to be used to carry the passengers or cargo (if known);
 - (f) the ports at which the passengers or cargo are expected to be taken on board;
 - (g) the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded;
 - (h) such other information as is prescribed by the regulations.
- (3) The application must be accompanied by the application fee prescribed by the regulations.

52 Application may be withdrawn

- (1) At any time before the Minister decides an application, the applicant may notify the Minister, in writing, that the applicant wishes to withdraw the application.
- (2) If the applicant withdraws the application, the application fee is not refundable.

53 Process for deciding application

Sections 30 to 34 apply in relation to an application made under subsection 51(1), except that, in deciding the application, the Minister may also have regard to whether the applicant has previously applied for a variation of a temporary licence (whether under this Subdivision or Subdivision C of this Division).

54 Time for deciding application

- (1) The Minister must decide an application for variation of a temporary licence within 7 business days after the day the application is made.
- (2) A day is not to be counted as a business day for the purposes of subsection (1) if it is:
 - (a) on or after the day the Minister receives a notice in response in respect of the application; and
 - (b) on or before:
 - (i) the day the applicant notifies the Minister under paragraph 32(2)(b); or
 - (ii) if the applicant fails to notify the Minister under that paragraph—the last day of the period within which the applicant was required to notify the Minister under that paragraph.

Note: The period within which an application is to be decided may also be affected by section 77.

55 Grant of variation to temporary licence

If the Minister grants an application for the variation of a temporary licence, the Minister must cause the details of the variation to be published on the Department's website.

56 Application taken to be granted in certain circumstances

If the Minister has not decided an application by the end of the period within which a decision is required under section 54, then, at the end of the last day of that period, the Minister is taken to have varied the licence in accordance with the application.

57 Issue of varied temporary licence

- (1) If the Minister decides to grant an application, he or she must, as soon as practicable, give the applicant a varied temporary licence.
- (2) The licence must specify the matters set out in subsection 37(2).
- (3) If the Minister grants an application for which he or she received one or more notices in response, the Minister must, as soon as practicable, give written notice of the decision to each holder of a general licence who gave a notice in response.

58 Refusal of application

- (1) If the Minister decides to refuse an application, he or she must, as soon as practicable, notify the applicant, in writing, of:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (2) The Minister must cause the decision to be published on the Department's website.

Subdivision E—Cancellation and surrender of temporary licences

59 Cancellation of temporary licence

Minister to give show cause notice

- (1) If the Minister believes on reasonable grounds that a condition of a temporary licence has been contravened, the Minister may give a written notice (a **show cause notice**) to the holder of the licence.

Note: The Minister may also give a show cause notice if the Minister considers that a temporary licence is being used inappropriately, see section 63.

- (2) The show cause notice must:
 - (a) state the grounds on which the notice is given; and
 - (b) invite the holder of the licence to give the Minister, within 10 business days after the day the notice is given, a written

statement showing cause why the licence should not be cancelled.

Minister may decide to cancel licence

- (3) If the Minister:
- (a) has given a show cause notice under subsection (1) to the holder of a temporary licence; and
 - (b) after considering any written statement given in accordance with the show cause notice, is satisfied that a condition of the licence has been contravened;
- the Minister may cancel the licence.

Note: Section 107 provides that an application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister to cancel a temporary licence.

- (4) The Minister must give written notice of the cancellation to the holder of the licence. The notice must set out:
- (a) the day the cancellation takes effect; and
 - (b) the reasons for the cancellation; and
 - (c) the effect of subsection (5).

Holder of licence to return cancelled licence

- (5) The holder of a temporary licence contravenes this subsection if:
- (a) the licence is cancelled under this section; and
 - (b) the holder of the licence does not return the licence to the Minister within 10 business days after the day the cancellation takes effect.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Show cause notice not a legislative instrument

- (6) A show cause notice given under subsection (1) is not a legislative instrument.

60 Surrender of temporary licence

- (1) The holder of a temporary licence may, at any time, surrender the licence by:
 - (a) returning the licence to the Minister; and
 - (b) giving the Minister written notice that it is surrendered.
- (2) The surrender of the licence takes effect on the day the notice is received by the Minister or, if a later day is specified in the notice, on that later day.

Subdivision F—Miscellaneous

61 Voyage notification requirements for temporary licences

The holder of a temporary licence must, at least 2 business days before the actual loading date for a voyage authorised by the licence, notify the Minister, in writing, of the following:

- (a) the vessel to be used to undertake the voyage;
- (b) evidence that the vessel to be used is registered in the Australian International Shipping Register or under a law of a foreign country;
- (ba) the date of the voyage;
- (c) the number of passengers to be carried during the voyage (if any);
- (d) the kinds and volume of cargo to be carried during the voyage (if any);
- (e) the ports at which the passengers or cargo will be taken on board;
- (f) the ports at which the passengers will disembark or the cargo will be unloaded.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

62 Reporting requirements for temporary licences

- (1) A person who is or was the holder of a temporary licence must give to the Department a report containing the following information in respect of each voyage authorised by the licence:
 - (a) the name of the vessel used;
 - (b) the actual loading date for the voyage;
 - (c) if passengers were carried during the voyage:
 - (i) the number of passengers carried; and
 - (ii) the dates the passengers were carried; and
 - (iii) the ports at which the passengers were taken on board; and
 - (iv) the ports at which the passengers disembarked;
 - (d) if cargo was carried during the voyage:
 - (i) the kinds and volume of cargo carried; and
 - (ii) the dates the cargo was carried; and
 - (iii) the ports at which the cargo was taken on board; and
 - (iv) the ports at which the cargo was unloaded;
 - (e) such other information as is prescribed by the regulations.
- (2) The report must be given to the Department no later than 10 business days after the end of each voyage authorised by the licence.
- (3) A person contravenes this subsection if:
 - (a) the person is or was the holder of a temporary licence; and
 - (b) the person fails to give the Department a report containing the information required by subsection (1) within the time required by subsection (2).

Civil penalty:

 - (a) for an individual—50 penalty units; and
 - (b) for a body corporate—250 penalty units.
- (4) The Minister must cause a copy of each report given under subsection (1) to be published on the Department's website.

63 Inappropriate use of temporary licence

- (1) The Minister may give a written notice (a *show cause notice*) to the holder of a temporary licence under subsection 59(1) if the Minister considers that, having regard to:
- (a) the number of voyages authorised by the temporary licence; and
 - (b) the loading dates authorised by the temporary licence; and
 - (c) the ports at which passengers or cargo are taken on board; and
 - (d) the ports at which passengers disembark or cargo is unloaded; and
 - (e) whether the licence has been varied under Subdivision C or D of this Division, and if so, how many times; and
 - (f) the provisions of Division 1 of this Part for the grant of a general licence;
- the temporary licence is being used in a way that circumvents the purpose of the general licence provisions or the object of this Act.
- (2) If subsection (1) applies, paragraph 59(3)(b) applies as if it required the Minister, after considering any written statement given in accordance with the show cause notice, to be satisfied that the temporary licence is being used in a way that circumvents the purpose of the general licence provisions or the object of this Act.
- Note: The Minister may cancel a temporary licence under subsection 59(3).

Division 3—Emergency licences

Subdivision A—Application for, and grant of, emergency licences

64 Application for emergency licence

- (1) A person may apply to the Minister for an emergency licence for one or more vessels to be used to engage in coastal trading if:
 - (a) the person is the owner, charterer, master or agent of the vessel or those vessels; or
 - (b) a shipper.
- (2) The application must:
 - (a) be in writing; and
 - (b) specify:
 - (i) details of the emergency, being an emergency of a kind prescribed by the regulations; and
 - (ii) the number of voyages for which the applicant is seeking the licence (if known); and
 - (iii) the number of passengers expected to be carried (if any); and
 - (iv) the kinds and volume of cargo expected to be carried (if any) and the shipper of the cargo; and
 - (v) the ports at which the passengers or cargo are expected to be taken on board (if known); and
 - (vi) the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded (if known); and
 - (c) set out the reasons why the voyages cannot be undertaken by a vessel authorised to be used to engage in coastal trading under a general licence.
- (3) The application must be accompanied by:
 - (a) if the vessel, or each vessel, to which the licence will relate is known at the time the application is made—evidence that the vessel, or each vessel, is registered in the Australian General

- Shipping Register, the Australian International Shipping Register or under a law of a foreign country; and
- (b) such other information as is prescribed by the regulations; and
 - (c) the application fee prescribed by the regulations.

Note: The Minister may ask the applicant to provide further information, see section 76.

65 Application may be varied or withdrawn

- (1) At any time before the Minister decides an application, the applicant may notify the Minister, in writing, that the applicant wishes to:
 - (a) vary the application; or
 - (b) withdraw the application.

Note: Varying an application affects the period within which the Minister must decide the application, see section 66.

- (2) If the applicant withdraws the application, the application fee is not refundable.

66 Deciding applications

- (1) The Minister decides an application by:
 - (a) granting the application; or
 - (b) refusing the application.
- (2) In deciding an application, the Minister may have regard to the following:
 - (a) whether the applicant has previously held a licence that was cancelled;
 - (b) whether the applicant has been issued with an infringement notice under this Act;
 - (c) the object of this Act;
 - (d) any other matters the Minister thinks relevant.
- (3) The Minister must not grant an application unless he or she is satisfied that the emergency specified in the application exists.

Part 4 Licences

Division 3 Emergency licences

Section 67

- (4) The Minister must decide an application:
- (a) within 3 business days after the application is made; or
 - (b) if the applicant varies the application under section 65—
within 3 business days after the Minister receives written notice of the variation.

Note: The period within which an application is to be decided may be affected by section 76.

67 Grant of emergency licence

- (1) If the Minister grants an application, the Minister must also determine the period for which the emergency licence is granted, which must not be more than 30 days.

Note: For conditions of emergency licences, see sections 72 and 73.

- (2) If the Minister grants an application for an emergency licence, the Minister must cause the following information to be published on the Department's website:
- (a) the holder of the licence;
 - (b) the holder's business name and business address;
 - (c) the period of the licence;
 - (d) any other information prescribed by the regulations.

68 Application taken to be granted in certain circumstances

If the Minister has not decided an application by the end of the period within which a decision is required under section 66, then, at the end of the last day of that period:

- (a) the Minister is taken to have granted the application; and
- (b) the Minister is taken to have determined that the period for which the emergency licence is granted is 30 days.

69 Issue of emergency licence

- (1) If the Minister decides to grant an application, or is taken to have granted an application, he or she must, as soon as practicable, give the applicant an emergency licence.
- (2) The licence must specify the following:
-

- (a) the holder of the licence;
- (b) the holder's business name and business address;
- (c) the number of passengers authorised to be carried under the licence (if any);
- (d) the kinds and volume of cargo authorised to be carried under the licence (if any);
- (e) the ports at which the passengers or cargo are authorised to be taken on board (if known);
- (f) the ports at which the passengers are authorised to disembark or the cargo is authorised to be unloaded (if known);
- (g) that the licence is subject to conditions under section 72;
- (h) any additional conditions imposed on the licence under section 73;
- (i) the day the licence commences and the period of the licence;
- (j) any other matters prescribed by the regulations.

70 When emergency licence is in force

An emergency licence:

- (a) commences on the day specified in the licence; and
- (b) expires at the end of the period specified in the licence.

71 Refusal of application

If the Minister decides to refuse an application, he or she must, as soon as practicable, notify the applicant, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision.

Subdivision B—Conditions of emergency licences

72 Conditions imposed on all emergency licences

An emergency licence is subject to the following conditions:

- (a) any vessel used to undertake a voyage under the licence must be registered in the Australian General Shipping Register, the Australian International Shipping Register or under a law of a foreign country;

Section 73

- (b) when a vessel undertakes a voyage under the licence, a copy of the licence must be displayed on the vessel in a conspicuous place accessible to all persons on board;
- (c) the holder of the licence must comply with what is authorised by the licence, as specified in the licence under section 69;
- (ca) the holder of the licence must comply with the notification requirements under section 74A;
- (d) the holder of the licence must comply with the reporting requirements under section 75;
- (e) the holder of the licence must comply with any other condition prescribed by the regulations.

73 Additional conditions may be imposed by Minister

- (1) The Minister may, at any time:
 - (a) impose an additional condition on an emergency licence; or
 - (b) vary or remove such a condition;by notifying, in writing, the holder of the licence.
- (2) A condition imposed under subsection (1), including such a condition as varied, must not be inconsistent with a condition under section 72.

74 Breaching condition of emergency licence

A person contravenes this section if:

- (a) the person is the holder of an emergency licence; and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission breaches a condition imposed on the licence under section 72 or 73.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Subdivision C—Miscellaneous

74A Voyage notification requirements for emergency licences

The holder of an emergency licence must, at least 2 days before the actual loading date for a voyage to be undertaken under the licence, notify the Minister, in writing, of the following:

- (a) the vessel to be used to undertake the voyage;
- (b) the date of the voyage;
- (c) the number of passengers to be carried during the voyage (if any);
- (d) the kind and volume of cargo to be carried during the voyage (if any);
- (e) the ports at which the passengers or cargo will be taken on board;
- (f) the ports at which the passengers will disembark or the cargo will be unloaded.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

75 Reporting requirements for emergency licences

- (1) A person who is or was the holder of an emergency licence must give to the Department a report containing the following information in respect of each voyage undertaken under the licence:
 - (a) the name of the vessel used;
 - (b) if passengers were carried during the voyage:
 - (i) the number of passengers carried; and
 - (ii) the dates the passengers were carried; and
 - (iii) the ports at which the passengers were taken on board; and
 - (iv) the ports at which the passengers disembarked;
 - (c) if cargo was carried during the voyage:
 - (i) the kinds and volume of cargo carried; and

Part 4 Licences

Division 3 Emergency licences

Section 75

- (ii) the dates the cargo was carried; and
 - (iii) the ports at which the cargo was taken on board; and
 - (iv) the ports at which the cargo was unloaded;
 - (d) such other information as is prescribed by the regulations.
- (2) The report must be given to the Department no later than 10 business days after the end of the period of the licence.
- (3) A person contravenes this subsection if:
 - (a) the person is or was the holder of an emergency licence; and
 - (b) the person fails to give the Department a report containing the information required by subsection (1) within the time required by subsection (2).

Civil penalty:

- (a) for an individual—50 penalty units; and
 - (b) for a body corporate—250 penalty units.
- (4) The Minister must cause a copy of each report given under subsection (1) to be published on the Department's website.

Division 4—Miscellaneous

76 Requests for further information—general and emergency licence applications

- (1) If the Minister needs further information to decide an application made under section 13 or 64, the Minister may, by written notice, ask the applicant to provide the information to the Minister.
- (2) The Minister must, as soon as practicable after receiving the information, notify the applicant, in writing, whether or not the information provided satisfies the Minister's request.
- (3) A day is not to be counted as a business day for the purposes of section 15 or 66, as applicable, if it is:
 - (a) on or after the day the Minister asks for the further information; and
 - (b) on or before the day the Minister notifies the applicant that the further information provided satisfies the Minister's request.

77 Requests for further information—temporary licence applications

- (1) If the Minister needs further information to decide an application made under section 28 or 51, the Minister may, by written notice, ask one or more of the following persons (as the Minister considers appropriate):
 - (a) the applicant;
 - (b) any holder of a general licence who has given a notice in response in relation to the application;to provide the information to the Minister.
- (2) A request under subsection (1) in relation to an application must not be made before:
 - (a) if one or more notices in response have been given in relation to the application—either:

Section 78

- (i) the day the applicant notifies the Minister under paragraph 32(2)(b); or
 - (ii) in a case where the applicant fails to notify the Minister under that paragraph—the end of the period within which the applicant was required to notify the Minister under that paragraph; or
 - (b) otherwise—the end of the 2 business day period mentioned in section 31.
- (3) The Minister must, as soon as practicable after receiving the information, notify the person who provided the information, in writing, whether or not the information provided satisfies the Minister's request.
- (4) A day is not to be counted as a business day for the purposes of subsection 34(4) or 54(1) if it is:
- (a) on or after the day the Minister asks a person for further information under subsection (1); and
 - (b) on or before the day the Minister notifies the person that the further information provided satisfies the Minister's request.

78 Basis on which licences granted

A licence granted under this Act is granted on the basis that:

- (a) conditions may be imposed on the licence, varied or removed under section 22, 41 or 73, respectively; and
- (b) the licence may be cancelled under section 25 or 59, as applicable; and
- (c) the licence may be cancelled, revoked, terminated or varied by or under later legislation; and
- (d) no compensation is payable if:
 - (i) conditions are imposed on the licence, varied or removed, as mentioned in paragraph (a); or
 - (ii) the licence is cancelled, revoked, terminated or varied as mentioned in any of the above paragraphs.

Part 5—Enforcement

Division 1—Requiring people to give information and produce documents or things

Subdivision A—Notices to give information or produce documents or things

79 Notice to give information or produce document or thing

- (1) For the purposes of this Act, an authorised person may, by notice in writing, require a person to do one or more of the following:
 - (a) give the information specified in the notice;
 - (b) produce the documents or things specified in the notice;
 - (c) appear before an authorised person specified in the notice to answer any questions put by the authorised person;if the authorised person has reasonable grounds to believe that the person is capable of giving the information, producing the documents or things, or answering the questions.
- (2) The authorised person may require that information to be provided under paragraph (1)(a) is to be provided in writing.
- (3) The authorised person may require that:
 - (a) information to be provided under paragraph (1)(a) be verified on oath; or
 - (b) answers under paragraph (1)(c) be given on oath;and for that purpose the authorised person may administer an oath.
- (4) The notice must:
 - (a) be served on the person; and
 - (b) be signed by the authorised person; and
 - (c) if paragraph (1)(a) or (b) applies—specify the period within which the person must comply with the notice; and
 - (d) if paragraph (1)(c) applies—both:

Part 5 Enforcement

Division 1 Requiring people to give information and produce documents or things

Section 80

- (i) specify the time and place at which the person must appear; and
 - (ii) state that the person may be accompanied by a lawyer; and
 - (e) set out the effect of sections 81 and 82.
- (5) The period specified under paragraph (4)(c) must be at least 14 days after the notice is served on the person.
- (6) The person must comply with the notice within the time specified in the notice, or within such further time as the authorised person allows.

Note: Failure to comply with a notice is an offence, see section 81.

80 Department may retain documents and things

- (1) If a document or thing is produced to an authorised person in accordance with a notice served under section 79:
- (a) the authorised person may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
 - (b) the Department may retain possession of the document or thing for such period as is necessary:
 - (i) for the purposes of this Act; or
 - (ii) for the purposes of an investigation to which the document or thing relates; or
 - (iii) to enable evidence to be secured for the purposes of a prosecution or proceedings for a civil penalty order.
- (2) While the Department retains the document or thing, it must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subdivision B—Offence and related provisions

81 Failure to comply with notice etc.

- (1) A person commits an offence if:
-

- (a) the person is served with a notice under section 79; and
- (b) the notice requires the person to:
 - (i) give information; or
 - (ii) produce documents or things; specified in the notice; and
- (c) the person fails to comply with the notice:
 - (i) within the period specified in the notice; or
 - (ii) if the authorised person has allowed the person further time under subsection 79(6)—within such further time.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) A person commits an offence if:
- (a) the person is served with a notice under section 79; and
 - (b) the notice requires the person to appear before an authorised person to answer questions put by the authorised person; and
 - (c) the person fails to comply with the notice.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (3) A person commits an offence if:
- (a) the person is required to take an oath; and
 - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (4) A person commits an offence if:
- (a) the person is served with a notice under section 79; and
 - (b) the notice requires the person to appear before an authorised person to answer questions put by the authorised person; and
 - (c) the person refuses or fails to answer a question put by the authorised person.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

82 Self-incrimination etc.

- (1) A person is not excused from:
- (a) giving information; or

Part 5 Enforcement

Division 1 Requiring people to give information and produce documents or things

Section 82

(b) producing a document or thing; or
(c) answering a question asked by an authorised person;
in relation to a notice under section 79 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual, none of the following:

- (a) the information or answer given;
- (b) the document or thing produced;
- (c) the giving of the information or the answer, or the producing of the document or thing;
- (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;

is admissible in evidence against the individual in:

- (e) criminal proceedings, other than:
 - (i) proceedings for an offence against section 81; or
 - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or
 - (iii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; and
- (f) civil proceedings for a contravention of a civil penalty provision.

Division 2—Civil penalty provisions

83 Engaging in coastal trading without licence

A person contravenes this section if:

- (a) the person is:
 - (i) the owner, charterer, master or agent of a vessel; or
 - (ii) a shipper in relation to a vessel; and
- (b) the vessel is used to engage in coastal trading; and
- (c) the vessel is not authorised by a licence to be used to engage in coastal trading; and
- (d) neither of the following apply:
 - (i) the vessel is not subject to an exemption under section 11;
 - (ii) the person is not subject to an exemption under section 11.

Civil penalty:

- (a) for an individual—300 penalty units; and
- (b) for a body corporate—1,500 penalty units.

84 Breaching condition of exemption—vessels

The owner and the master of a vessel contravene this section if:

- (a) the vessel is subject to an exemption under section 11; and
- (b) a condition applies to the exemption; and
- (c) the condition of the exemption is breached.

Civil penalty:

- (a) for an individual—300 penalty units; and
- (b) for a body corporate—1,500 penalty units.

85 Breaching condition of exemption—persons

A person contravenes this section if:

- (a) the person is subject to an exemption under section 11; and

Part 5 Enforcement

Division 2 Civil penalty provisions

Section 85

- (b) the person does an act or omits to do an act; and
- (c) the act or omission breaches a condition of the exemption.

Civil penalty:

- (a) for an individual—300 penalty units; and
- (b) for a body corporate—1,500 penalty units.

Division 3—Civil penalty proceedings

Subdivision A—Obtaining a civil penalty order

86 Civil penalty orders

Application for order

- (1) The Secretary may apply to the Federal Court or the Federal Circuit Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Secretary must make the application within 6 years of the alleged contravention.

Court may order person to pay pecuniary penalty

- (3) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.
- (5) In determining a pecuniary penalty, the court may take into account all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered because of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court to have engaged in any similar conduct.

87 Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
-

Section 88

- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against a person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

88 Conduct contravening more than one civil penalty provision

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Subdivision against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under a law of the Commonwealth in relation to the same conduct.

89 Multiple contraventions

- (1) A court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 94.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

90 Proceedings may be heard together

A court may direct that 2 or more proceedings relating to a contravention, or proposed contravention, of a civil penalty provision be heard together.

91 Civil evidence and procedure rules to apply

A court must apply the rules of evidence and procedure for civil matters when hearing and determining an application relating to a

contravention, or proposed contravention, of a civil penalty provision.

92 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

Subdivision B—Miscellaneous

93 Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 96 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to this subsection.

Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

94 Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
 - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

Section 95

- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
 - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

95 Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

96 State of mind

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 93(1)), it is not necessary to prove:
-

- (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (2) Subsection (1) of this section does not affect the operation of section 95 (which is about mistake of fact).

97 Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

98 Civil penalty provisions contravened by executive officers

- (1) An executive officer of a body corporate contravenes this subsection if:
- (a) the body corporate contravenes a civil penalty provision; and
 - (b) the officer knew that the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (2) The civil penalty for a contravention of subsection (1) is the civil penalty that a Court could impose in respect of an individual for the civil penalty provision contravened by the body corporate.

99 Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision

- (1) For the purposes of section 98, in determining whether an executive officer of a body corporate failed to take all reasonable

Part 5 Enforcement

Division 3 Civil penalty proceedings

Section 99

steps to prevent the contravention of a civil penalty provision, a court is to have regard to:

- (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening this Act.
- (2) This section does not, by implication, limit the generality of section 98.

Division 4—Infringement notices

100 Enforceable provisions

A civil penalty provision is *enforceable* under this Division.

101 When an infringement notice may be given

- (1) If an authorised person has reasonable grounds to believe that a person has contravened a provision enforceable under this Division, the authorised person may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision enforceable under this Division.

102 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name of the person who gave the notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for the contravention; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then

Section 103

- (unless the notice is withdrawn) proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
- (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply to the Secretary to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that, if the notice is withdrawn, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (n) state that the person may make written representations to the Secretary seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum penalty that a court could impose on the person for that contravention.

103 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the Secretary for an extension of the period referred to in paragraph 102(1)(h).
- (2) If the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary may do so before or after the end of that period.
- (3) If the Secretary extends that period, a reference in this Division to the period referred to in paragraph 102(1)(h), is taken to be a reference to that period so extended.
- (4) If the Secretary does not extend that period, a reference in this Division to the period referred to in paragraph 102(1)(h) is taken to

be a reference to the period that ends on the later of the following days:

- (a) the day that is the last day of the period referred to in paragraph 102(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the Secretary's decision not to extend.
- (5) The Secretary may extend the period more than once under subsection (2).

104 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the Secretary seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The Secretary may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Secretary:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the Secretary; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision enforceable under this Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a

Section 105

provision enforceable under this Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;

- (iv) any other matter the Secretary considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the Secretary withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

105 Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention is given pays the amount stated in the notice before the end of the period referred to in paragraph 102(1)(h):
- (a) any liability of the person for the alleged contravention is discharged; and
 - (b) proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and
 - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention.

- (2) Subsection (1) does not apply if the notice has been withdrawn.

106 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision enforceable under this Division; or
- (b) affect the liability of a person for an alleged contravention of a provision enforceable under this Division if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision enforceable under this Division; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision enforceable under this Division.

Part 6—Miscellaneous

Division 1—Review of decisions

107 Review by the Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of any of the following decisions:
 - (a) a decision under section 11 refusing to exempt a particular vessel or a particular person from this Act;
 - (b) a decision to grant an exemption under section 11 subject to conditions;
 - (c) a decision under section 12 refusing to make a declaration in relation to a vessel;
 - (d) a decision by the Minister to cancel a general licence under subsection 25(3);
 - (e) a decision by the Minister to cancel a temporary licence under subsection 59(3).
- (2) A person who made an application for a temporary licence under section 28 may apply to the Administrative Appeals Tribunal for review of a decision by the Minister to refuse the application under section 39.
- (3) A person who applied for a variation of a temporary licence under section 51 may apply to the Administrative Appeals Tribunal for review of a decision by the Minister to refuse the application under section 58.
- (4) The holder of a general licence who gave the Minister a notice in response to an application for a temporary licence may apply to the Administrative Appeals Tribunal for review of:
 - (a) a decision by the Minister to grant the application under section 35; or
 - (b) a decision by the Minister to have taken to have granted the application under section 36.

Section 107

Note: The decision under review continues to operate during the review process, see section 41 of the *Administrative Appeals Tribunal Act 1975*.

- (5) The holder of a general licence who gave the Minister a notice in response to an application for a variation of a temporary licence under section 51 may apply to the Administrative Appeals Tribunal for review of:
- (a) a decision by the Minister to grant the application under section 55; or
 - (b) a decision by the Minister to have taken to have granted the application under section 56.

Note: The decision under review continues to operate during the review process, see section 41 of the *Administrative Appeals Tribunal Act 1975*.

- (6) An application for review mentioned in subsection (2) or (3) must be made within 20 business days after the day the person is notified of the decision.
- (7) An application for review mentioned in subsection (4) or (5) must be made within 20 business days after the day of the holder of the general licence is notified of the decision.

Note: Other applications for review must be made within the time prescribed for the purposes of paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*.

Division 2—Appointment of authorised persons etc.

108 Appointment of authorised persons

- (1) The Secretary may, in writing, appoint:
 - (a) a person engaged under the *Public Service Act 1999*; or
 - (b) a member of staff of the Australian Maritime Safety Authority;to be an authorised person for the purposes of this Act.
- (2) The Secretary must not appoint a person as an authorised person unless the Secretary is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised person.
- (3) An authorised person must, in exercising powers as an authorised person, comply with any directions of the Secretary.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

109 Identity cards

- (1) The Secretary must issue an identity card to an authorised person.

Form of identity card

- (2) The identity card must:
 - (a) be in the form approved by the Secretary; and
 - (b) contain a recent photograph of the authorised person.

Offence

- (3) A person commits an offence if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised person; and
 - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence: card lost or destroyed

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Authorised person must carry card

- (6) An authorised person must carry his or her identity card at all times when exercising powers as an authorised person.

Division 3—Disclosure of information

110 Disclosure of information by the Secretary

- (1) The Secretary may disclose any information, or give any document, obtained or generated for the purposes of this Act, to:
 - (a) the Minister; or
 - (b) the accountable authority, or a member of an accountable authority, of a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*;
for a purpose connected with administering this Act.
- (2) The Secretary may disclose information under subsection (1) only if the Secretary is satisfied that the recipient of the information will not disclose the information to anyone else without the Secretary's consent.
- (3) The Secretary may give a document under subsection (1) only if the Secretary is satisfied that the recipient of the document will not disclose any of the contents of the document to anyone else without the Secretary's consent.

Relationship with other laws

- (4) Subsection (1) applies despite:
 - (a) a law of the Commonwealth other than this section; and
 - (b) a law of a State or a Territory.

Division 4—Miscellaneous

111 Delegation

- (1) The Minister may, by writing, delegate all or any of his or her functions and powers under this Act (other than under section 11) to an SES employee or acting SES employee in the Department.
- (2) The Secretary may, by writing, delegate all or any of his or her functions and powers under this Act to an SES employee or acting SES employee in the Department.

112 Customs treatment of certain vessels

A vessel is not imported into Australia for the purposes of the *Customs Act 1901* only because it is used to carry passengers or cargo under a temporary licence or an emergency licence.

113 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

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

Legislation history and amendment history—Endnotes 3 and 4

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

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

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Coastal Trading (Revitalising Australian Shipping) Act 2012	55, 2012	21 June 2012	1 July 2012	
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 85, 86): 12 Apr 2013 (s. 2(1))	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 56, 57) and Sch 14 (items 1–4): 1 July 2014 (s 2(1) items 6, 14)	Sch 14 (items 1–4)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Pt 2	
s 6	am. No 13, 2013; No 62, 2014
Pt 5	
Div 3	
SdivA	
s 86	am. No 13, 2013
Pt 6	
Div 3	
s 110	am No 62, 2014

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]