Navigation Act 2012

No. 128, 2012

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About this compilation

This compilation

This is a compilation of the *Navigation Act 2012* that shows the text of the law as amended and in force on 8 January 2016 (the ***compilation date***).

This compilation was prepared on 8 February 2016.

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

Uncommenced amendments

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

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to maritime safety and the prevention of pollution of the marine environment, and for related purposes

Chapter 1—Preliminary

Part 1—Short title and commencement

1 Short title

This Act may be cited as the *Navigation Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 September 2012
2. Sections 3 to 343	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2013 (*see* F2013L00596)

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Section 2

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Part 2—Objects and simplified outline of Act

3 Objects of Act

The objects of this Act are:

(a) to promote the safety of life at sea; and

(b) to promote safe navigation; and

(c) to prevent pollution of the marine environment; and

(d) to ensure that AMSA has the necessary power to carry out inspections of vessels and enforce national and international standards.

4 Simplified outline of this Act

Overview of this Act

(1) This Act is about maritime safety, seafarers and the prevention of pollution of the marine environment. It provides for matters relating to the following:

(a) seafarers (Chapter 2);

(b) the safety of regulated Australian vessels and foreign vessels (Chapter 3);

(c) prevention of pollution (Chapter 4);

(d) tonnage (Chapter 5);

(e) the safety of navigation (Chapter 6);

(f) wrecks and salvage (Chapter 7);

(g) complying with, and enforcing, this Act (Chapter 8);

(h) other general matters that relate to the above (Chapter 9).

Overview of the rest of this Chapter

(2) The rest of this Chapter deals with:

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Section 4

(a) the application of this Act, including how it interacts with certain State and Territory laws and its geographical application (Part 3); and
(b) definitions that are used in this Act (Part 4); and
(c) provisions that enable a vessel that would not otherwise be a regulated Australian vessel to opt in to coverage (Part 5).

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Part 3—Provisions relating to the application of this Act

5 Extension to Territories

This Act extends to every external Territory.

6 Extraterritorial operation of Act

This Act applies both within and outside Australia.

7 Act to bind the Crown

(1) This Act binds the Crown in each of its capacities.

(2) Nothing in this Act makes the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

8 Geographical jurisdiction for offences

Section 15.3 of the *Criminal Code* (extended geographical jurisdiction—category C) applies to all offences against this Act.

9 Geographical application of offences and civil penalty provisions relating to foreign vessels, etc.

Despite sections 6 and 8, the master or owner of a foreign vessel, or a recreational vessel that does not have Australian nationality, does not:

(a) commit an offence against this Act that relates to the vessel; or

(b) contravene a civil penalty provision of this Act that relates to the vessel;

unless, at the time when the conduct constituting the alleged offence or contravention occurs, the vessel is:

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(c) in an Australian port; or
(d) entering or leaving an Australian port; or
(e) in the internal waters of Australia; or
(f) in the territorial sea of Australia, other than in the course of innocent passage.

Note: Certain provisions of this Act provide that this section does not apply to specified offences and civil penalty provisions.

10 Act does not apply to naval vessels etc.

This Act does not apply to, or in relation to:

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

11 Application of Act to certain Australian Border Force vessels

An Australian Border Force vessel that would, apart from this section, not comply with a provision of Chapter 2, 3 or 6, or a person who would, apart from this section, not comply with a provision of those Chapters in relation to an Australian Border Force vessel, is taken to comply with that provision if:

(a) there is a document (the ***Australian Border Force vessel management plan***) that:
  (i) has been prepared, reviewed and accepted in accordance with the regulations; and

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(ii) relates to the Australian Border Force vessel or person; and

(iii) specifies requirements to be met by the Australian Border Force vessel or the person in relation to that provision; and

(b) the Australian Border Force vessel or the person complies with the requirements of the Australian Border Force vessel management plan in relation to that provision.

12 Provisions that give effect to various conventions

A provision of this Act that gives effect to a provision of:

(a) the Safety Convention; or

(b) the Prevention of Pollution Convention; or

(c) the Prevention of Collisions Convention (in relation to an area other than the high seas); or

(ca) the Maritime Labour Convention;

does not apply in relation to a domestic commercial vessel, or a recreational vessel that has Australian nationality, when the vessel is in an area if:

(d) a provision of the Marine Safety (Domestic Commercial Vessel) National Law gives effect to that provision of the Convention in relation to that vessel when it is in that area; or

(e) if paragraph (d) does not apply—a provision of a law of a State or the Northern Territory gives effect to that provision of the Convention in relation to that vessel when it is in that area.

13 Provisions that give effect to the Container Convention

(1) Regulations giving effect to the Container Convention do not apply in relation to a container in a State or in the Northern Territory to the extent that a law of that State or Territory, as the case may be, makes provision giving effect to that Convention in relation to that container.

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(2) Structural safety requirements or tests that are not required or permitted by the Container Convention to be imposed on containers to which that Convention applies are not to be imposed by or under a law of a State or Territory on such containers.

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Part 4—Interpretation

14 Definitions

(1) In this Act:

accommodation includes sleeping rooms, mess rooms, duty rooms, recreation facilities, storerooms, change rooms, lockers, galleys, refrigerating chambers, sanitary facilities, hospital accommodation, office accommodation and catering accommodation.

agency:

(a) of the Commonwealth, includes the following:

(i) a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(ii) a body corporate established for a public purpose by or under a law of the Commonwealth; and

(b) of a State or a Territory, includes the following:

(i) a Department of State (however described) of the State or Territory;

(ii) a body corporate established for a public purpose by or under a law of the State or Territory.

aggravated contravention: see section 144.

aid to navigation means:

(a) a lighthouse, lightship, beacon or buoy; or

(b) an electronic aid that is used as an aid to marine navigation, such as a meteorological or oceanographic sensor, satellite navigation system or global positioning system; or

(c) maritime communications equipment and infrastructure; or

(d) any other structure, mark, device or apparatus that is an aid to marine navigation;

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but does not include any device or apparatus that forms part of the equipment of a vessel (unless the vessel is a lightship).

alcohol test means a test under section 78.

AMSA means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

AMSA aid to navigation means an aid to navigation that is owned or controlled by AMSA.

approved form means a form approved under section 338.

article in the course of post means an article that is being carried by or through the Australian Postal Corporation, and includes an article that has been collected or received by the Australian Postal Corporation for carriage by post, but has not been delivered by the Australian Postal Corporation.

Australia includes the external Territories.

Australian Border Force vessel: see section 17.

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*.

Australian Navy has the same meaning as in the *Naval Defence Act 1910*.

Australian port means:

(a) an Australian port; or

(b) a port in the Great Barrier Reef Region.

cargo of a vessel does not include ballast for the vessel or goods intended for consumption on the vessel.

Example: Ship's stores and fuel that are intended for consumption on the vessel are not cargo of the vessel.

child of a person includes a person who is a child of the person within the meaning of the *Family Law Act 1975*.

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civil penalty order: see section 291.

civil penalty provision means a provision for whose contravention another provision states that a person is liable to a civil penalty.

close quarters situation means a situation in which vessels pass each other, or a vessel passes another vessel, a person or an object, in such proximity that a reasonable person would conclude that in all the circumstances there was a risk of an imminent collision.

coastal sea of Australia means:

(a) the territorial sea of Australia; and

(b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory;

and includes the airspace over, and the sea-bed and subsoil beneath, any such sea.

compulsory pilotage area: see subsection 163(1).

constable has the meaning given by section 3 of the *Crimes Act 1914*.

container has the same meaning as in the Container Convention.

Container Convention means the International Convention for Safe Containers, done at Geneva on 2 December 1972, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1981 No. 3 ([1981] ATS 3). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

dangerous goods has the same meaning as in Chapter VII of the Safety Convention.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

domestic commercial vessel has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law.

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drug test means a test under section 79.

eligible court means:

(a) the Federal Court of Australia; or

(b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

enforcement powers: see section 260.

enforcement warrant means:

(a) a warrant issued under section 287; or

(b) a warrant signed by a magistrate under section 288.

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.

evidential material means:

(a) in relation to an offence against this Act:

(i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; and

(b) in relation to a contravention of a civil penalty provision:

(i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.

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foreign vessel means a vessel:

(a) that does not have Australian nationality; and

(b) that is not a recreational vessel.

Government vessel means a vessel:

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

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

(c) that is for the time being demised or sub-demised to the Commonwealth or a State or Territory or an agency of the Commonwealth or a State or Territory.

Great Barrier Reef Region has the same meaning as in the *Great Barrier Reef Marine Park Act 1975*.

harbour means a natural or artificial harbour, and includes:

(a) a navigable estuary, river, creek or channel; or

(b) a haven, roadstead, dock, pier, jetty or offshore terminal; or

(c) any other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.

historic wreck means:

(a) a historic shipwreck within the meaning of the *Historic Shipwrecks Act 1976*; or

(b) a historic relic within the meaning of that Act.

home port of a seafarer means:

(a) the port specified in the seafarer's work agreement as the home port of the seafarer; or

(b) if there is no home port of the seafarer specified in a work agreement—the port at which the seafarer embarked.

improvement notice means a notice given under section 265.

inspector means a person appointed as an inspector under subsection 254(1).

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

International Tonnage Certificate (1969) means a certificate in the form of the International Tonnage Certificate (1969) set out in Annex II to the Tonnage Convention.

issuing body means AMSA or a recognised organisation.

length overall, of a vessel, has the meaning given by section 20.

licensed pilot means a person who is licensed as a pilot under regulations made for the purposes of Part 2 of Chapter 6.

Limitation of Liability for Maritime Claims Convention means the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 12 ([1991] ATS 12). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Load Lines Convention means the International Convention on Load Lines, done at London on 5 April 1966, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1968 No. 23 ([1968] ATS 23). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

make fast to an object means use the object as a mooring.

mandatory ship routeing system means a ship routeing system that is:

(a) adopted or mandated by the International Maritime Organization; and

(b) prescribed by the regulations;

as in force from time to time.

marine incident means any of the following:

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(a) a death of, or injury to, a person associated with the operation or navigation of a vessel;
(b) the loss or presumed loss of a vessel;
(c) a collision of a vessel with another vessel;
(d) a collision of a vessel with an object;
(e) the grounding, sinking, flooding or capsizing of a vessel;
(f) a fire on board a vessel;
(g) a loss of stability of a vessel that affects the safety of the vessel;
(h) the structural failure of a vessel;
(i) a close quarters situation;
(j) an event that results in, or could have resulted in:
  (i) the death of, or injury to, a person on board a vessel; or
  (ii) the loss of a person from a vessel; or
  (iii) a vessel becoming disabled and requiring assistance;
(k) the fouling or damaging by a vessel of:
  (i) any pipeline or submarine cable; or
  (ii) any aid to navigation;
(l) an incident that is prescribed by the regulations and involves a vessel.

Marine Order: see section 342.

Marine Safety (Domestic Commercial Vessel) National Law has the meaning given by section 17 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

Maritime Labour Convention means the Maritime Labour Convention, 2006, done at Geneva on 23 February 2006, as amended and in force for Australia from time to time.

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

member of a person's family includes the following:
(a) a de facto partner of the person;
(b) a child of the person;

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(c) a parent, grandparent, grandchild or sibling of the person.

monitoring powers has the meaning given by section 259.

monitoring warrant means a warrant issued under section 286.

nautical publication includes the following:

(a) sailing directions;
(b) lists of lights;
(c) notices to mariners;
(d) tide tables.

navigates without a licensed pilot has the meaning given by section 21.

non-Convention tonnage certificate means a tonnage certificate other than an International Tonnage Certificate (1969).

non-Tonnage Convention vessel means a vessel to which the Tonnage Convention does not apply.

officer means the master, mate or engineer of a vessel.

officer of Customs means an officer of Customs within the meaning of the *Customs Act 1901*.

official logbook means a logbook kept in accordance with regulations made for the purposes of section 309.

operate a vessel means:

(a) determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel, whether or not the vessel is underway; or
(b) load or unload the vessel when it is moored or berthed.

opt-in declaration, in relation to a vessel, means a declaration under subsection 25(2) in relation to the vessel.

overloaded, in relation to a vessel, has the meaning given by regulations made for the purposes of paragraph 113(a).

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overseas voyage: see section 16.

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 paragraph (b), a person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.

passenger means a person carried on board a vessel with the knowledge or consent of the owner of the vessel or his or her representative, or of the charterer or master of the vessel, other than:

(a) a person employed or engaged in any capacity on board the vessel on the business of the vessel; or

(b) a person on board the vessel:

(i) under an obligation imposed on the master by any law (including a law of a country other than Australia) to assist shipwrecked, distressed or other persons; or

(ii) because of circumstances that could not have been prevented by the owner, charterer, agent or master of the vessel; or

(c) a child under the age of 1 year; or

(d) if the vessel is a special purpose vessel—special personnel in relation to the vessel.

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

pilotage provider includes a person who is responsible for the following:

(a) training pilots;

(b) the safe transfer and operation of pilots;

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(c) assigning or allocating a pilot to the transit of a vessel through particular waters;
(d) undertaking such other activities in relation to pilotage as are prescribed by the regulations;

irrespective of the legal relationship, contractual or otherwise, between that person and the pilot concerned.

pollution certificate means a certificate issued under section 132.

port includes a harbour.

PPSA security interest means a security interest within the meaning of the *Personal Property Securities Act 2009*.

premises includes the following:
(a) a structure, building, vehicle or vessel;
(b) a place (whether or not enclosed or built upon);
(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

Prevention of Collisions Convention means the Convention on the International Regulations for Preventing Collisions at Sea, done at London on 20 October 1972, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1980 No. 5 ([1980] ATS 5). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Prevention of Pollution Convention has the same meaning as ***the Convention*** has in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

proceeding on a voyage: a vessel is taken to be ***proceeding on a voyage*** from the time when it is got underway for the purpose of proceeding on the voyage until the time when it is got underway for the purpose of proceeding on another voyage.

prohibition notice means a notice given under section 267.

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Protected Zone means the zone that is:

(a) established under Article 10 of the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, done at Sydney on 18 December 1978, as amended and in force for Australia from time to time; and

(b) the area bounded by the line described in Annex 9 to that Treaty.

Note: The text of the Treaty is set out in Australian Treaty Series 1985 No. 4 ([1985] ATS 4). In 2012, the text of a Treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

recognised organisation means an organisation that is prescribed by the regulations for the purposes of this definition.

record of service means a record of service, however described, and includes articles of agreement.

recreational vessel means a vessel that is not for use in connection with a commercial, governmental or research activity.

Note: A recreational vessel can include a vessel that does not have Australian nationality.

regulated Australian vessel: see section 15.

ride by an object means go close to the object in such a way as to create a significant wash that affects the object.

safety certificate means a certificate issued under section 100.

Safety Convention means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1983 No. 22 ([1983] ATS 22). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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Salvage Convention means the International Convention on Salvage, done at London on 28 April 1989, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1998 No. 2 ([1998] ATS 2). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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.

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

(a) a licensed pilot of the vessel (acting as such a pilot);
(b) an owner of the vessel or a person (except the master) representing the owner;
(c) law enforcement personnel (in their capacity as law enforcement personnel);
(d) if the vessel is a special purpose vessel—special personnel in relation to the vessel;
(e) a person temporarily employed on the vessel in port;
(f) a person prescribed by the regulations.

seafarer certificate means a certificate issued under section 31.

seafarer's vessel means the vessel on which the seafarer concerned is employed, is engaged or works.

seaworthy: see section 23.

special personnel, in relation to a special purpose vessel, means a person who is carried on board the vessel in connection with the special purpose of the vessel.

special purpose vessel: see section 18.

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STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, done at London on 7 July 1978, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1984 No. 7 ([1984] ATS 7). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

substandard: see section 24.

taken to sea: see section 22.

this Act includes regulations and other legislative instruments made under this Act.

tonnage certificate means a certificate issued under section 155.

Tonnage Convention means the International Convention on Tonnage Measurement of Ships, done at London on 23 June 1969, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1982 No. 15 ([1982] ATS 15). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

unclaimed wreck means any wreck in respect of which no claim has been made during the period of a year beginning when AMSA first publishes a notice under section 234 in relation to the wreck.

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

vessel means any kind of vessel used in navigation by water, however propelled or moved, and includes the following:

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

vessel traffic service means a navigational service implemented under a law of the Commonwealth or of a State or Territory and in accordance with guidelines for vessel traffic services adopted by the International Maritime Organization on 27 November 1997 to improve the safety and efficiency of vessel traffic and to protect the environment, as in force from time to time.

vessel traffic service authority means an entity authorised by AMSA to provide a vessel traffic service.

warrant means a monitoring warrant or an enforcement warrant.

work agreement means an agreement that is made between a seafarer and the owner of the seafarer's vessel.

wreck includes:
(a) a vessel that is wrecked, derelict, stranded, sunk or abandoned or that has foundered; and
(b) any thing that belonged to or came from a vessel mentioned in paragraph (a); and
(c) any thing that belonged to or came from a vessel in distress; and
(d) jetsam, flotsam and lagan.

(2) A reference in this Act to failure to do an act or thing includes a reference to refusing or neglecting to do that act or thing.

15 Definition of *regulated Australian vessel*

(1) A vessel is a ***regulated Australian vessel*** if:
(a) under the *Shipping Registration Act 1981*, the vessel is registered, required to be registered or exempt under section 13 of that Act from that requirement; and
(b) the vessel is not a recreational vessel; and
(c) any of the following apply:

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(i) the vessel is proceeding on an overseas voyage or is for use on an overseas voyage;

(ii) a certificate issued under this Act, other than a non-Convention tonnage certificate or a certificate prescribed by the regulations, is in force for the vessel;

(iii) an opt-in declaration is in force for the vessel.

(2) A vessel is a ***regulated Australian vessel*** if the vessel is an Australian Border Force vessel.

(3) A vessel referred to in subparagraph (1)(c)(i) or (ii) is not a regulated Australian vessel if a declaration under section 19 is in force for the vessel.

(4) A vessel in the course of construction is a ***regulated Australian vessel*** if the vessel is, after completion, for use as a vessel referred to in subparagraph (1)(c)(i) or subsection (2).

(5) For the purposes of subsection (4), a vessel that has been launched, but has not been completed and delivered, is taken to be a vessel in the course of construction.

16 Definition of *overseas voyage*

(1) A vessel's voyage is an ***overseas voyage*** if in the course of the voyage the vessel is present in waters outside the outer limits of the exclusive economic zone of Australia.

(2) Despite subsection (1), a vessel's voyage is not an ***overseas voyage*** if:

(a) the voyage commences from a port in Queensland and ends at the same port or another port in Queensland; and

(b) as an incidental part of its voyage, the vessel is present in waters that are outside the outer limits of the exclusive economic zone of Australia but within the Protected Zone; and

(c) the vessel is not otherwise present in waters that are outside the outer limits of the exclusive economic zone of Australia.

(3) Despite subsection (1), a vessel's voyage is not an ***overseas voyage*** if the presence of the vessel in waters outside the outer limits of the exclusive economic zone of Australia is because of stress of weather, saving life at sea or other unavoidable cause.

17 Definition of *Australian Border Force vessel*

(1) A vessel is an ***Australian Border Force vessel*** if it is:

(a) used or for use for the purposes of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*); and

(b) declared by AMSA by written instrument under subsection (2) to be an Australian Border Force vessel.

(2) AMSA may make a declaration that a vessel, or vessel included in a class of vessels, is an Australian Border Force vessel.

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

18 Definition of *special purpose vessel*

A vessel is a ***special purpose vessel*** if it is:

(a) a vessel that is used or for use for a purpose specified in the regulations; and

(b) specified by the regulations to be a special purpose vessel for the purposes of this section.

19 AMSA may declare that a vessel is not a regulated Australian vessel

(1) AMSA may, by written instrument, make a declaration that a vessel, or vessel included in a class of vessels, is not a regulated Australian vessel.

(2) AMSA may make the declaration if AMSA is satisfied of such matters as are prescribed by the regulations.

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(3) A declaration made under subsection (1) is not a legislative instrument.

20 Definition of vessel's *length overall*

(1) Subject to subsection (2), the ***length overall*** of a vessel is 110% of the length as shown on the vessel's load line certification.

(2) If the length overall of a vessel cannot be worked out under subsection (1), the ***length overall*** is taken to be the distance between:

(a) a vertical line passing through a point that is the foremost part of the bow; and

(b) a vertical line passing through a point that is the aftermost part of the stern.

21 Definition of *navigates without a licensed pilot*

(1) Subject to subsection (2), a vessel ***navigates without a licensed pilot*** if the vessel does not have a licensed pilot on board to assist the master in navigating it.

(2) If:

(a) apart from this subsection, a vessel navigates without a licensed pilot; and

(b) the vessel is being towed by another vessel that is navigating with a licensed pilot;

the vessel under tow is to be treated as if it had a licensed pilot on board to assist the master in navigating it.

22 Definition of *taken to sea*

(1) A vessel is ***taken to sea*** if the vessel:

(a) goes to sea, plies, runs or proceeds on a voyage; or

(b) has been got underway for the purpose of going to sea, plying, running or proceeding on a voyage.

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(2) Despite subsection (1), a vessel is not taken to sea merely because the vessel has been got underway for the purpose of moving it from one berth or place in a port to another berth or place in the port.

23 Definition of *seaworthy*

A vessel is ***seaworthy*** if, and only if:

(a) it is in a fit state as to the condition of hull and equipment, boilers (if any) and machinery, the stowage of ballast or cargo, the number and qualifications of seafarers, and in every other respect, to:

(i) encounter the ordinary perils of the voyage undertaken; and

(ii) not pose a threat to the environment; and

(b) it is not overloaded; and

(c) the living and working conditions on board the vessel do not pose a threat to the health, safety or welfare of the vessel's seafarers.

Note: An unseaworthy vessel can be detained under section 248.

24 Definition of *substandard*

A vessel to which the Safety Convention, the Load Lines Convention, the Prevention of Pollution Convention or the Maritime Labour Convention applies is ***substandard***, in relation to the condition of the vessel or its equipment in respect of a particular voyage or operation of the vessel, if:

(a) a certificate required by the Convention concerned for the proposed voyage or operation is not in force; or

(b) both:

(i) one or more certificates required by the Convention concerned for the proposed voyage or operation are in force; and

(ii) the condition of the vessel or its equipment does not correspond substantially with the particulars of the certificate or certificates.

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Note: A substandard vessel can be detained under section 248.

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Part 5—Opting in to coverage

25 Opting in to coverage—vessel declared to be a regulated Australian vessel

(1) The owner, or any of the owners, of a vessel may apply to AMSA for a declaration (an ***opt-in declaration***) that the vessel is a regulated Australian vessel.

(2) AMSA must, by written instrument, make an opt-in declaration for a vessel if AMSA is satisfied:
  (a) that the vessel is registered under the *Shipping Registration Act 1981*; and
  (b) that the vessel is seaworthy; and
  (c) that the vessel is not substandard (if applicable); and
  (d) of such other matters (if any) as are prescribed by the regulations.

(3) AMSA must make a decision on an application under subsection (1) within 30 days of the making of the application.

(4) An opt-in declaration is not a legislative instrument.

(5) AMSA must not make an opt-in declaration other than as mentioned in subsection (2).

26 Revocation and variation of opt-in declarations

(1) An opt-in declaration for a vessel ceases to be in force, unless sooner revoked:
  (a) at the end of the period, if any, specified in the declaration; or
  (b) when the vessel ceases to have Australian nationality.

(2) AMSA must revoke an opt-in declaration for a vessel if AMSA is requested to do so by the owner, or any of the owners, of the vessel and is satisfied of the matters prescribed by the regulations.

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(3) AMSA may vary an opt-in declaration for a vessel if:

(a) AMSA is satisfied that the name or any other details of the vessel have been changed since the making of the declaration; and

(b) AMSA is satisfied that it is appropriate to vary, rather than revoke, the declaration.

(4) AMSA may revoke an opt-in declaration for a vessel if:

(a) AMSA is satisfied that the vessel no longer exists or has been lost; or

(b) AMSA is satisfied that the name or any other details of the vessel have been changed since the making of the declaration and that it is appropriate to revoke, rather than vary, the declaration; or

(c) AMSA is no longer satisfied as mentioned in subsection 25(2) in relation to the vessel.

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Chapter 2—Seafarers

Part 1—Preliminary

27 Simplified outline of this Chapter

(1) This Chapter deals with matters relating to seafarers.

(2) Part 2 deals with seafarer certificates.

(3) Part 3 provides for the issue of maritime labour certificates for regulated Australian vessels.

(4) Part 4 deals with the manning of regulated Australian vessels and the engagement of seafarers.

(5) Part 5 deals with the health, accommodation and welfare of seafarers of regulated Australian vessels and foreign vessels.

(6) Part 6 provides for alcohol and drug testing of seafarers of regulated Australian vessels and foreign vessels.

(7) Part 7 contains miscellaneous provisions that relate to seafarers of regulated Australian vessels and foreign vessels.

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Part 2—Seafarer certificates

Division 1—Regulations relating to seafarer certificates

28 Regulations relating to seafarer certificates

(1) The regulations may make provision in relation to seafarer certificates.

Note: Part 4 of Chapter 9 contains general provisions that apply to regulations about certificates.

(2) Without limiting subsection (1), the regulations may give effect to the STCW Convention.

29 Particular matters that may be prescribed by regulations

(1) The regulations may prescribe different classes of seafarer certificates and may require that an individual hold a seafarer certificate of a particular kind in order to undertake particular duties, or perform particular functions, as a seafarer.

(2) The regulations may prescribe criteria relating to the following in relation to seafarer certificates:
(a) proficiencies, competencies and standards;
(b) qualifications;
(c) experience;
(d) minimum age;
(e) character;
(f) health;
(g) nationality, citizenship or residence.

(3) The regulations may make provision in relation to the following:
(a) the manner in which the attainment of proficiencies, competencies and standards is to be evidenced;
(b) the instruction, training and examination of seafarers, including:

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(i) the gaining of sea service and other experience; and

(ii) the conduct of examinations, the conditions for admission to examinations and the appointment and remuneration of examiners;

(c) the recognition of certificates and other documents granted or issued to or in respect of masters, officers and seafarers under the Marine Safety (Domestic Commercial Vessel) National Law of the Commonwealth or a law of a State, a Territory or a foreign country;

(d) conditions to which seafarer certificates are subject.

(4) This section does not limit section 28.

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Division 2—Issue of seafarer certificates

30 Persons may apply for a seafarer certificate

(1) An individual may apply to AMSA for a seafarer certificate of a kind specified in the regulations.

(2) The application must be in accordance with the regulations.

31 Issue of seafarer certificate

(1) AMSA may issue a seafarer certificate to a person if:
  (a) the person has made an application for the certificate under section 30; and
  (b) AMSA is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.

(2) A seafarer certificate is subject to:
  (a) the conditions (if any) prescribed by the regulations; and
  (b) the conditions (if any) imposed by AMSA.

32 AMSA may vary seafarer certificate

(1) AMSA may vary a seafarer certificate if AMSA is satisfied that the criteria prescribed by the regulations are met in relation to the variation of the certificate.

(2) Without limiting subsection (1), AMSA may vary a seafarer certificate to impose, vary or remove a condition on the certificate.

33 Revocation of seafarer certificate

AMSA may revoke a seafarer certificate if AMSA is satisfied that the criteria prescribed by the regulations are met in relation to the revocation of the certificate.

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Division 3—Offences and civil penalties relating to seafarer certificates

34 False representations about seafarer certificates

(1) A person must not represent that he or she holds a seafarer certificate of a particular kind if the representation is false.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

35 Person performing duties or functions without a seafarer certificate

(1) A person must not perform duties or functions in relation to a regulated Australian vessel if:
  (a) the regulations require the person to hold a particular seafarer certificate in order to perform those duties or functions; and
  (b) the person does not hold such a seafarer certificate.

(2) Subsection (1) does not apply to the performance of duties or functions in exceptional circumstances.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

36 Master causing etc. performance of duties or functions without a seafarer certificate

(1) The master of a regulated Australian vessel must not cause or permit another person to perform duties or functions in relation to the vessel if:

(a) the regulations require the other person to hold a particular seafarer certificate in order to perform those duties or functions; and

(b) the other person does not hold such a seafarer certificate.

(2) Subsection (1) does not apply to the performance of duties or functions in exceptional circumstances.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

37 Breach of a condition of a seafarer certificate

(1) A person must not breach a condition of a seafarer certificate held by the person.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

38 Master causing etc. breach of a condition of a seafarer certificate

(1) The master of a regulated Australian vessel must not cause or permit another person to breach a condition of a seafarer certificate held by the other person.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

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Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

39 Failing to produce seafarer certificate

(1) The holder of a seafarer certificate must ensure that the certificate is made available at all reasonable times for examination on request by any of the following:
  (a) AMSA;
  (b) an inspector;
  (c) an officer of Customs.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

40 AMSA may require delivery of revoked certificates

If a seafarer certificate is revoked, AMSA may require the certificate to be delivered to AMSA in accordance with the regulations.

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Part 3—Maritime labour certificates

Division 1—Vessels to which this Part applies

41 Vessels to which this Part applies

This Part applies to regulated Australian vessels.

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Division 2—Regulations relating to maritime labour certificates

42 Regulations relating to maritime labour certificates

(1) The regulations may make provision in relation to maritime labour certificates.

Note: Part 4 of Chapter 9 contains general provisions that apply to regulations about certificates.

(2) The regulations may provide that vessels included in a particular class are required to have maritime labour certificates of specified kinds, either generally or in specified circumstances, including certificates relating to the working and living conditions of the vessel's seafarers.

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Division 3—Issue of maritime labour certificates

43 Persons may apply for a maritime labour certificate

(1) A person may apply to an issuing body for a maritime labour certificate of a kind specified in the regulations for a vessel.

(2) The application must be in accordance with the regulations.

44 Issue of maritime labour certificate

(1) An issuing body may issue a maritime labour certificate for a vessel if:
  (a) an application for the certificate has been made under section 43; and
  (b) the issuing body is satisfied that the criteria prescribed by the regulations are met in relation to the issue of the certificate.

(2) A maritime labour certificate is subject to:
  (a) the conditions (if any) prescribed by the regulations; and
  (b) the conditions (if any) imposed by the issuing body.

45 Issuing body may vary maritime labour certificate

(1) An issuing body may vary a maritime labour certificate if the issuing body is satisfied that the criteria prescribed by the regulations are met in relation to the variation of the certificate.

(2) Without limiting subsection (1), an issuing body may vary a maritime labour certificate to impose, vary or remove a condition on the certificate.

46 Revocation of maritime labour certificate

An issuing body may revoke a maritime labour certificate if the issuing body is satisfied that the criteria prescribed by the regulations are met in relation to the revocation of the certificate.

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Division 4—Offences and civil penalties relating to taking a vessel to sea without a maritime labour certificate

47 Taking a regulated Australian vessel to sea without maritime labour certificate—owner

(1) The owner of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a maritime labour certificate of a specified kind; and

(b) a maritime labour certificate of that kind is not in force for the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

48 Taking a regulated Australian vessel to sea without maritime labour certificates—master

(1) The master of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a maritime labour certificate of a specified kind; and

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(b) a maritime labour certificate of that kind is not in force for the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

49 Obligation to notify alterations of regulated Australian vessels that relate to maritime labour certificates

(1) A person contravenes this subsection if:
(a) the person is the owner or master of a regulated Australian vessel; and
(b) the vessel is altered in such a way as to affect the maritime labour certificates that vessel is required to have; and
(c) AMSA, and each issuing body that has issued a maritime labour certificate for the vessel, are not informed of the alterations within the period prescribed by the regulations.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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Part 4—Manning and engagement of seafarers

Division 1—Vessels to which this Part applies

50 Vessels to which this Part applies

This Part applies to regulated Australian vessels.

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Division 2—Manning of vessels

51 Minimum complement of seafarers on vessels

(1) AMSA may determine in writing that a vessel, or a vessel included in a class of vessels, must carry:
  (a) a master who holds a specified seafarer certificate; and
  (b) not less than:
    (i) a specified number of officers who hold specified seafarer certificates; and
    (ii) a specified number of seafarers who hold specified seafarer certificates.

(2) AMSA must have regard to any matters prescribed by the regulations in making a determination under subsection (1).

(3) A determination under subsection (1) may require a vessel, or a vessel included in a class of vessels, to carry a master who holds a specified seafarer certificate and to carry a different complement of seafarers:
  (a) for different voyages; or
  (b) for the carriage of different cargoes; or
  (c) for the performance (whether in port or at sea) of different operations done by, or in relation to, the vessel; or
  (d) according to whether the vessel is in port or at sea.

(4) A determination under subsection (1) may specify conditions to which the determination is subject.

(5) More than one determination under subsection (1) may apply in relation to a vessel.

(6) A determination made under subsection (1) is not a legislative instrument.

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52 Operating a vessel other than in accordance with determination

(1) The master of a vessel must not operate the vessel, or cause or permit another person to operate the vessel, if:

(a) a determination under section 51 is in force for the vessel; and

(b) the operation of the vessel is not in accordance with the determination.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

53 Owner or master to give details of complement of vessel's seafarers

(1) The owner or master of a vessel must, at such times as are required by AMSA, give to a person prescribed by the regulations such details of, and such details of changes in, the complement of the vessel's seafarers as the regulations require the owner or the master to give.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

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

Penalty: 10 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

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Division 3—Engagement of seafarers, etc.

54 Work agreements

(1) The master of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:
  (a) a seafarer is on board the vessel; and
  (b) when the vessel is taken to sea, a work agreement that complies with the regulations made for the purposes of subsection (5) is not in force in relation to the seafarer.

(2) The owner of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:
  (a) a seafarer is on board the vessel; and
  (b) when the vessel is taken to sea, a work agreement that complies with the regulations made for the purposes of subsection (5) is not in force in relation to the seafarer.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 30 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 300 penalty units.

Regulations

(5) The regulations may prescribe matters relating to work agreements including, but not limited to, the following:
  (a) the content and form of work agreements;

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(b) the right of a seafarer to review, and seek advice on, a work agreement before signing it;
(c) the process for signing work agreements;
(d) the information or documents that must be given to, or made available to, seafarers in relation to work agreements and the manner in which such information or documents must be given or made available;
(e) the termination of work agreements;
(f) keeping records of work agreements and retaining such records;
(g) the home port of seafarers.

55 Owner to make available information about conditions of employment

(1) The regulations may prescribe:
(a) information, in relation to the conditions of employment of seafarers, that the owner of a vessel is required to make available to the vessel's seafarers; and
(b) the manner and form (including electronic form) in which the prescribed information is required to be made available.

(2) The owner of a vessel must not contravene a requirement of the regulations made for the purposes of subsection (1).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: 10 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 100 penalty units.

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56 Offences and civil penalties relating to content of work agreements

(1) A person must not:
  (a) fraudulently alter a work agreement; or
  (b) make a false entry in a work agreement; or
  (c) give a false copy of a work agreement to another person.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

57 Regulations about records of service

The regulations may make provision in relation to keeping, retaining and producing records of service of seafarers.

58 Regulations about hours of work and rest

The regulations may make provision in relation to the hours of work, and hours of rest, of seafarers.

59 Regulations about payment of wages

(1) The regulations may make provision in relation to the payment of wages to seafarers.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

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(a) the frequency of making payments to seafarers;
(b) the method of making payments to seafarers;
(c) permitted deductions from payments to seafarers;
(d) pay slips, including the information relating to exchange rates that must be included in any pay slip given to a seafarer;
(e) the payment of part or all of the wages of a seafarer, with the seafarer's consent, to a person other than the seafarer;
(f) the charges that may be imposed for making payments in accordance with paragraph (e);
(g) the entitlement to wages of a seafarer left at a port because he or she is ill or injured.

(3) The regulations must not provide for the quantum or amount of wages payable to seafarers.

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Part 5—Health, accommodation and welfare

Division 1—Vessels to which this Part applies

60 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) foreign vessels.

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Division 2—Provisions

61 Regulations about provision of food and water

(1) The regulations may make provision in relation to the provision of food and drinking water on board vessels.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

(a) the quantity and quality of food and drinking water to be carried and made available on board vessels;

(b) mechanisms for making and dealing with complaints about the quantity and quality of food and drinking water.

62 Free provisions

(1) The owner of a vessel must provide or ensure the provision of free provisions to the vessel's seafarers.

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

63 Provisions adequate for voyage

(1) The master of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, unless the vessel is carrying:

(a) drinking water of suitable quality and quantity; and

(b) food of suitable quality, quantity, nutritive value and variety;

having regard to the nature and duration of the voyage and the number, and cultural and religious backgrounds, of the vessel's seafarers.

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

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64 Adequate food catering facilities to be provided

(1) The owner of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, unless the vessel has catering facilities that are arranged and equipped so as to enable proper meals to be served to the vessel's seafarers.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

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Division 3—Health

65 Regulations about health

(1) The regulations may make provision in relation to the health of seafarers.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

(a) the appointment of a person as a medical inspector;

(b) fees payable for services performed by medical inspectors;

(c) the medical examination of seafarers and people proposing to become seafarers, including requirements for:

(i) periodic medical examinations; and

(ii) medical examinations on the request of AMSA;

(d) reporting requirements relating to medical examinations;

(e) issuing of certificates of fitness to seafarers and people proposing to become seafarers;

(f) requiring seafarers to hold specified certificates of fitness;

(g) prohibiting the employment or engagement of a person as a seafarer unless the person holds specified certificates of fitness;

(h) medicines, medical and surgical stores and appliances and antiscorbutics;

(i) instructions for dispensing and using medicines, medical and surgical stores and appliances and antiscorbutics;

(j) the inspection of medicines, medical and surgical stores and appliances, antiscorbutics and other things required to be carried on board vessels.

66 Medicines etc. must be carried on vessels—owner

(1) The owner of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, unless the vessel is provided, in accordance with the regulations, with:

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(a) medicines, medical and surgical stores and appliances and antiscorbutics; and
(b) instructions for dispensing and using medicines, medical and surgical stores and appliances and antiscorbutics.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 100 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

67 Medicines etc. must be carried on vessels—master

(1) The master of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, unless the vessel is provided, in accordance with the regulations, with:
(a) medicines, medical and surgical stores and appliances and antiscorbutics; and
(b) instructions for dispensing and using medicines, medical and surgical stores and appliances and antiscorbutics.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 100 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 1000 penalty units.

68 Owner liable for medical attendance etc.

(1) This section applies if a seafarer who is not at his or her home port:
  (a) is hurt or injured or contracts a disease; or
  (b) suffers from any illness that is not due to an intentional act or default, or to misbehaviour, on the part of the seafarer; or
  (c) requires essential dental care.

(2) Expenses for the following are to be paid by the owner of the seafarer's vessel:
  (a) providing the necessary surgical and medical advice and attendance, and medicine, until the seafarer is cured, dies or arrives at that port;
  (b) the maintenance of the seafarer until he or she is cured, dies or arrives at that port;
  (c) the conveyance of the seafarer to that port;
  (d) if the seafarer dies before arriving at that port—his or her burial or, if the seafarer's body is conveyed to that port at the request of a member of his or her family, the conveyance of the seafarer's body to that port.

69 Owner liable where certain seafarers removed from vessel etc.

(1) This section applies if:
  (a) a seafarer is suffering from a disease or illness or requires essential dental care; and
  (b) the seafarer is temporarily removed from the seafarer's vessel for the purpose of preventing infection or otherwise for the convenience of the vessel.

(2) Expenses for the following are to be paid by the owner of the vessel:
  (a) the removal of the seafarer from, and the seafarer's return to, the vessel;

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(b) providing the necessary surgical and medical advice and attendance, essential dental care and medicine, while the seafarer is away from the vessel;

(c) the maintenance of the seafarer while he or she is away from the vessel.

70 Owner liable for medical attendance etc. on board vessel

Expenses for all medicine, surgical and medical advice and attendance, and essential dental care, given to a seafarer while the seafarer is on board a vessel must be paid by the owner of the vessel.

71 Other expenses to be paid by seafarer

Any reasonable expenses incurred by the owner of a vessel in respect of the illness or burial of a seafarer that are not expenses required to be paid by the owner of the seafarer's vessel under section 68, 69 or 70 may be recovered from the seafarer.

72 Medical practitioners and first-aid attendants—owner

(1) The owner of a vessel that has 100 or more persons on board must ensure that a qualified medical practitioner is carried, as part of the vessel's complement, if the vessel is:

(a) proceeding on an overseas voyage; or

(b) on a passage between 2 consecutive ports which exceeds the distance prescribed by the regulations.

(2) The owner of a vessel that has more than 10 but fewer than 100 persons on board must cause to be carried as part of its complement a person qualified, in accordance with the regulations, to render first aid, if the vessel is:

(a) proceeding on an overseas voyage; or

(b) on a passage between 2 consecutive ports which exceeds the distance prescribed by the regulations;

unless the vessel is carrying a qualified medical practitioner as part of its complement.

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Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 600 penalty units.

73 Medical practitioners and first-aid attendants—master

(1) The master of a vessel that has 100 or more persons on board must ensure that a qualified medical practitioner is carried, as part of the vessel's complement, if the vessel is:

(a) proceeding on an overseas voyage; or

(b) on a passage between 2 consecutive ports which exceeds the distance prescribed by the regulations.

(2) The master of a vessel that has more than 10 but fewer than 100 persons on board must cause to be carried as part of its complement a person prescribed by the regulations as qualified to render first aid if the vessel is:

(a) proceeding on an overseas voyage; or

(b) on a passage between 2 consecutive ports which exceeds the distance prescribed by the regulations;

unless the vessel is carrying a qualified medical practitioner as part of its complement.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 600 penalty units.

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Division 4—Accommodation, etc.

74 Regulations relating to accommodation, etc.

(1) The regulations may make provision in relation to accommodation to be provided for seafarers on vessels.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

(a) the minimum amount of space to be provided for each seafarer;

(b) the maximum number of seafarers to be accommodated in a specified part of a vessel;

(c) the part of a vessel in which the whole or a part of the accommodation is to be provided;

(d) the requirements for the construction, furnishing and equipment of the accommodation, including heating, lighting and ventilation;

(e) the maximum levels of noise, vibration and other ambient factors;

(f) the maintenance and repair of the accommodation;

(g) the prohibition or restriction of the use of accommodation for a purpose other than that specified;

(h) the provision of hot and cold fresh water;

(i) the provision of bedding, mess utensils, towels and toiletries;

(j) the submission of plans and specifications relating to the provision or alteration of accommodation.

(3) Regulations may make provision in relation to the following:

(a) the provision of ventilation of machinery and boiler spaces;

(b) the provision of wheelhouses.

75 Vessels not to go to sea without required accommodation

(1) The owner of a vessel must not take the vessel to sea, or cause or permit the vessel to be taken to sea, if the vessel does not comply

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with the accommodation prescribed by the regulations made for the purposes of subsection 74(1).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 100 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

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Division 5—Repatriation and protection

76 Regulations relating to repatriation

(1) The regulations may make provision in relation to the repatriation of seafarers at no cost to the seafarer.

(2) Without limiting subsection (1), the regulations may make provision for or in relation to the following:

(a) the circumstances in which a seafarer is entitled to be repatriated, including in the following circumstances:

(i) expiry or termination of the seafarer's work agreement;

(ii) inability to carry out the seafarer's duties;

(iii) injury or illness of the seafarer;

(iv) transfer, sale or wreck of the seafarer's vessel;

(b) the liability for the costs of repatriation and recovery of costs;

(c) the mode of transport of repatriation;

(d) the destination to which the seafarer is repatriated.

77 Regulations relating to complaints etc. about employment

The regulations may make provision in relation to complaints and legal proceedings relating to a seafarer's employment, including in relation to:

(a) how such complaints are to be handled; and

(b) leave to go to shore in relation to such complaints or legal proceedings.

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Part 6—Alcohol and drugs

Division 1—Alcohol and drug testing of seafarers and pilots

78 Seafarer or licensed pilot may be required to undergo alcohol test

AMSA may require a seafarer or a licensed pilot on board a regulated Australian vessel or a foreign vessel to undergo a test of a kind prescribed by the regulations for the purpose of determining the level of alcohol in the blood of the seafarer or pilot.

79 Seafarer or licensed pilot may be required to undergo drug tests etc.

AMSA may require a seafarer or a licensed pilot on board a regulated Australian vessel or a foreign vessel to undergo a test of a kind prescribed by the regulations for the purpose of determining the presence of a drug in the blood of the seafarer or pilot.

80 Limitation on exercise of powers in relation to foreign vessels

AMSA must not exercise a power under section 78 or 79 in relation to a seafarer of a foreign vessel, or a pilot on board a foreign vessel, unless the vessel is:

(a) in an Australian port; or
(b) entering or leaving an Australian port; or
(c) in the internal waters of Australia; or
(d) in the territorial sea of Australia, other than in the course of innocent passage.

81 Refusal to undergo alcohol or drug test

(1) A person contravenes this subsection if:

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(a) the person has been required to undergo an alcohol test or a drug test; and
(b) the person fails to undergo the test.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

82 Information to be provided after test

As soon as practicable after a seafarer or a licensed pilot has undergone an alcohol test or a drug test, the person who conducted the test must give the seafarer or pilot a written statement specifying:

(a) the test result; and
(b) the date and time of the test.

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Division 2—Offences and civil penalties relating to alcohol and drugs

83 Impairment of person's capacity to carry out duties as seafarer or pilot

(1) A person contravenes this subsection if:

(a) the person is a seafarer or a licensed pilot on board a regulated Australian vessel or a foreign vessel; and

(b) the person is under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that his or her capacity to carry out the duties of a seafarer or pilot is impaired.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

84 Unacceptable blood alcohol level—seafarers and pilots

(1) A person contravenes this subsection if:

(a) the person is a seafarer or a licensed pilot on board a regulated Australian vessel or a foreign vessel; and

(b) the blood alcohol level of the person equals or exceeds the blood alcohol level prescribed by the regulations.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

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

Penalty: 60 penalty units.

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85 Drugs prescribed by the regulations: seafarers and pilots

(1) A person contravenes this subsection if:

(a) the person is a seafarer or a licensed pilot on board a regulated Australian vessel or a foreign vessel; and

(b) a drug prescribed by the regulations is present in the blood of the person.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

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

Penalty: 60 penalty units.

86 Permitting or requiring performance of duties by impaired person

(1) A person contravenes this subsection if:

(a) the person is the owner or master of a regulated Australian vessel or a foreign vessel; and

(b) the person permits or requires a seafarer or pilot to undertake or to continue duty on board the vessel; and

(c) the person knows that the capacity of the seafarer or pilot to perform those duties is impaired by the influence of alcohol or any other drug (whether medicinal or otherwise).

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

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

Penalty: 60 penalty units.

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Division 3—Regulations and other matters

87 Regulations relating to alcohol and drug tests

The regulations may make provision in relation to the following:

(a) the authorisation of persons:
  (i) to conduct alcohol tests and drug tests; and
  (ii) to operate devices equipment for that purpose;
(b) the conduct of alcohol tests and drug tests, including random tests and tests with notice;
(c) the devices used in conducting alcohol tests and drug tests, including the calibration, inspection and testing of those devices;
(d) the approval of persons to conduct analyses in connection with such tests;
(e) the procedure for the handling and analysis of samples;
(f) the confidentiality of test results;
(g) the storage and destruction of samples.

88 Evidentiary certificates

(1) A person who conducts an alcohol test or a drug test may issue a certificate stating:
  (a) that he or she conducted an alcohol test or a drug test of a person named in the certificate; and
  (b) the steps taken in conducting the test; and
  (c) that the person was given a statement in writing under section 82.

(2) In any proceedings relating to this Part, a certificate under this section is prima-facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate under this section must, unless the contrary is proved, be taken to be such a certificate and to have been properly issued.

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(4) A certificate must not be admitted in evidence in proceedings in relation to an offence or a civil penalty unless the person against whom the proceedings were instituted has, at least 14 days before the certificate is sought to be admitted, been given:

(a) a copy of the certificate; and

(b) reasonable notice of the intention to produce the certificate as evidence in the proceedings.

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Part 7—General matters relating to seafarers of regulated Australian vessels and foreign vessels

89 Exemption from serving on jury

A seafarer of a regulated Australian vessel or a foreign vessel is exempt from serving as a juror under the law of the Commonwealth or of a State or Territory.

90 Seafarer not to be wrongfully left behind

(1) A person must not:

(a) force onshore and leave behind at a place (whether within Australia or outside Australia) a seafarer of a regulated Australian vessel or a foreign vessel; or

(b) otherwise cause such a seafarer to be left behind at such a place, either onshore or at sea.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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91 Regulations may make provision in relation to property of deceased seafarers

The regulations may make provision in relation to dealing with the property of deceased seafarers of regulated Australian vessels and foreign vessels.

92 Expenses of returning foreign seafarers left behind

If:

(a) a seafarer of a foreign vessel is left behind at an Australian port or dies in Australia; and

(b) the Commonwealth incurs expense in sending the seafarer, the seafarer's body or any property of the seafarer outside Australia;

the Commonwealth may recover the amount of those expenses from the owner, agent or master of the vessel in an eligible court as a debt due and payable by the owner, agent or master to the Commonwealth.

93 Owner of vessel not entitled to limit liability in respect of certain claims

The owner of a regulated Australian vessel or a foreign vessel is not entitled to limit his, her or its liability in respect of any claim described in paragraph 1(a) of Article 2 of the Limitation of Liability for Maritime Claims Convention made by:

(a) a servant (within the meaning of the Convention) of the owner whose duties are connected with the vessel; or

(b) any heir or dependant of the servant or any other person who is, within the meaning of paragraph (e) of Article 3 of the Convention, a person entitled to make such a claim.

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Section 94

94 Employment of seafarers in loading and unloading

(1) A person must not employ a seafarer at an Australian port in handling cargo in connection with the loading or unloading of a regulated Australian vessel or a foreign vessel:
  (a) if sufficient shore labour is available; or
  (b) if sufficient shore labour is not available—other than in accordance with any requirements prescribed by the regulations.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 100 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

95 Copy of this Act to be kept on regulated Australian vessels

(1) The master of a regulated Australian vessel must provide the vessel's seafarers with access (whether electronic or otherwise), at all reasonable times, to a copy of this Act.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 5 penalty units.

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Reference to Act does not include regulations, etc.

(3) In subsection (1), a reference to this Act does not include regulations or other legislative instruments under this Act.

Regulations may require instruments to be accessible

(4) The regulations may require the master of a regulated Australian vessel to provide the vessel's seafarers with access (whether electronic or otherwise), at all reasonable times, to a copy of specified regulations or other legislative instruments made under this Act.

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Chapter 3—Vessel safety

Part 1—Preliminary

96 Simplified outline of this Chapter

(1) This Chapter deals with the safety of regulated Australian vessels and foreign vessels.

(2) Part 2 deals with safety certificates for regulated Australian vessels and documentation for foreign vessels. It provides for offences and civil penalties that apply in relation to:

(a) taking regulated Australian vessels to sea without safety certificates; and

(b) taking foreign vessels to sea without appropriate documents.

(3) Part 3 deals with offences and civil penalties for taking to sea an unseaworthy regulated Australian vessel or foreign vessel.

(4) Part 4 deals with passenger and cargo operations of regulated Australian vessels and foreign vessels, including in relation to:

(a) overloading (Division 3); and

(b) loading (Subdivision A of Division 4); and

(c) dangerous goods (Subdivision B of Division 4).

(5) Part 5 deals with the carrying out of musters and drills on regulated Australian vessels, foreign vessels, domestic commercial vessels and recreational vessels.

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Part 2—Certification

Division 1—Vessels to which this Part applies

97 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) foreign vessels.

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Division 2—Regulations relating to safety certificates

98 Regulations relating to safety certificates

(1) The regulations may make provision in relation to safety certificates.

Note: Part 4 of Chapter 9 contains general provisions that apply to regulations about certificates.

(2) Without limiting subsection (1), the regulations may make provision in relation to giving effect to the following:

(a) the Safety Convention;

(b) the Load Lines Convention.

(3) The regulations may provide that vessels included in a particular class are required to have safety certificates of specified kinds, either generally or in specified circumstances, including certificates relating to the following matters:

(a) survey;

(b) construction;

(c) machinery and equipment;

(d) other matters relating to the safety of vessels.

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Division 3—Issue of safety certificates

99 Persons may apply for a safety certificate

(1) A person may apply to an issuing body for a safety certificate of a kind specified in the regulations for a regulated Australian vessel.

(2) The application must be in accordance with the regulations.

100 Issue of safety certificate

(1) An issuing body may issue a safety certificate for a regulated Australian vessel if:
  (a) an application for the certificate has been made under section 99; and
  (b) the issuing body is satisfied that the criteria prescribed by the regulations in relation to the issue of the certificate are met.

(2) A safety certificate is subject to:
  (a) the conditions (if any) prescribed by the regulations; and
  (b) the conditions (if any) imposed by the issuing body.

101 Issuing body may vary safety certificate

(1) An issuing body may vary a safety certificate if the issuing body is satisfied that the criteria prescribed by the regulations in relation to the variation of the certificate are met.

(2) Without limiting subsection (1), an issuing body may vary a safety certificate to impose, vary or remove a condition on the certificate.

102 Revocation of safety certificate

An issuing body may revoke a safety certificate if the issuing body is satisfied that the criteria prescribed by the regulations in relation to the revocation of the certificate are met.

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Division 4—Offences and civil penalties relating to taking a regulated Australian vessel to sea without safety certificates

103 Taking a regulated Australian vessel to sea without safety certificate—owner

(1) The owner of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a safety certificate of a specified kind; and

(b) such a safety certificate is not in force for the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

104 Taking a regulated Australian vessel to sea without safety certificate—master

(1) The master of a regulated Australian vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a safety certificate of a specified kind; and

(b) such a safety certificate is not in force for the vessel.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

105 Obligation to notify alterations of regulated Australian vessels that relate to safety certificates

(1) A person contravenes this subsection if:

(a) the person is the owner or master of a regulated Australian vessel; and

(b) the vessel is altered so as to affect the safety certificates that vessel is required to have; and

(c) AMSA, and each issuing body that has issued a safety certificate that is in force for the vessel, are not informed of the alterations within the period prescribed by the regulations.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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Division 5—Offences and civil penalties relating to taking foreign vessels to sea without appropriate documents

106 Taking a foreign vessel to sea without appropriate documents—owner

(1) The owner of a foreign vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a certificate of a specified kind and such a certificate is not in force for the vessel; or

(b) if the vessel is not required by the regulations to have a certificate of a specified kind—other documentary evidence attesting that the vessel is seaworthy, issued by or on behalf of the country in which the vessel is or may be registered, is not in force.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

107 Taking a foreign vessel to sea without appropriate documents—master

(1) The master of a foreign vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

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(a) the vessel is required by the regulations to have a certificate of a specified kind and such a certificate is not in force for the vessel; or

(b) if the vessel is not required by the regulations to have a certificate of a specified kind—other documentary evidence attesting that the vessel is seaworthy, issued by or on behalf of the country in which the vessel is registered, is not in force.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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Part 3—Seaworthiness of vessels

108 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) foreign vessels.

109 Taking unseaworthy vessel to sea—owner

(1) The owner of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if the vessel is unseaworthy.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

110 Taking unseaworthy vessel to sea—master

(1) The master of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if the vessel is unseaworthy.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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Part 4—Passenger and cargo operations, and overloading

Division 1—Vessels to which this Part applies

111 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) foreign vessels.

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Division 2—Regulations relating to passenger and cargo operations

112 Regulations relating to passenger and cargo operations

Passengers

(1) The regulations may make provision in relation to the carriage of passengers.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:
  (a) equipment;
  (b) the number of passengers to be carried;
  (c) accommodation;
  (d) provisions and water;
  (e) medical and surgical stores;
  (f) medical inspection;
  (g) medical staff and attendants;
  (h) hospital accommodation;
  (i) sanitary matters;
  (j) discipline;
  (k) passenger lists.

(3) Without limiting subsection (1), the regulations may make provision in relation to:
  (a) the obligations to passengers of the owner and master of a wrecked vessel or a vessel that is unable to proceed on a voyage; and
  (b) the landing of passengers at a port other than in accordance with a contract.

Loading of cargo and livestock

(4) The regulations may make provision in relation to the carriage on a vessel of cargo and livestock.

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(5) Without limiting subsection (4), the regulations may make provision in relation to the following:

(a) the loading, stowing or carriage of cargo or livestock in vessels;

(b) the unloading of cargo and livestock from vessels;

(c) the giving of notices relating to a matter referred to in paragraph (a) or (b).

Dangerous goods

(6) The regulations may make provision in relation to the carriage of dangerous goods.

(7) Without limiting subsection (6), the regulations may make provision in relation to the following:

(a) the classes of vessels in which dangerous goods may be carried;

(b) the quantities of dangerous goods that may be carried from an Australian port;

(c) the precautions to be observed in connection with loading or unloading dangerous goods at an Australian port;

(d) the conditions as to the packing and stowing of dangerous goods loaded at an Australian port, and the ventilation of holds containing such goods.

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Division 3—Regulations relating to overloading

113 Regulations relating to overloading

The regulations may make provision in relation to the following:

(a) when a vessel is overloaded;

(b) the giving of notices relating to the overloading of a vessel.

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Division 4—Offences and civil penalties relating to passenger and cargo operations

Subdivision A—Loading

114 Proper precautions in loading a vessel

(1) A person who is involved in an activity of packing, sending, stowing, loading, unloading, securing or carrying cargo, livestock or ship's stores on a vessel contravenes this subsection if:

(a) the person does not:

(i) ensure, so far as is reasonably practicable, that the activity is carried out in such a way that it does not damage the vessel, risk the safety of a person or damage the environment; and

(ii) carry out, or arrange the carrying out of, such procedures as may be necessary for compliance with subparagraph (i); and

(b) in the case of a foreign vessel—when the activity concerned occurs, the vessel is:

(i) in an Australian port; or

(ii) entering or leaving an Australian port; or

(iii) in the internal waters of Australia; or

(iv) in the territorial sea of Australia, other than in the course of innocent passage.

(2) Without limiting subsection (1), an owner of a vessel contravenes that subsection if the owner does not implement and maintain a safety management system that ensures, so far as is reasonably practicable, that an activity referred to in that paragraph is carried out in such a way that it does not damage the vessel, risk the safety of a person or damage the environment.

Fault-based offence

(3) A person commits an offence if the person:

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(a) contravenes subsection (1); and
(b) is reckless as to whether the activity that constitutes the contravention risks damaging the vessel, the safety of a person or damaging the environment.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

Subdivision B—Dangerous goods

115 Carrying improperly labelled dangerous goods on a vessel

(1) A person contravenes this subsection if:
(a) the person carries dangerous goods on board, or causes or permits dangerous goods to be placed for carriage on board, a regulated Australian vessel or a foreign vessel; and
(b) the outside of the package containing the goods is not distinctly marked with a correct description of the goods; and
(c) if the vessel is a foreign vessel—at the time when the goods are carried or placed on board the vessel, the vessel is:
(i) in an Australian port; or
(ii) entering or leaving an Australian port; or
(iii) in the internal waters of Australia; or
(iv) in the territorial sea of Australia, other than in the course of innocent passage.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

116 Requirement to give a description to master or owner of dangerous goods on a vessel

(1) A person contravenes this subsection if:
  (a) the person causes or permits dangerous goods to be placed on board a vessel; and
  (b) the person is not the owner or master of the vessel; and
  (c) a description in writing of the goods, additional to the description contained in the ordinary shipping documents related to the vessel, is not given to the owner or master of the vessel at or before the time the goods are placed on board the vessel; and
  (d) if the vessel is a foreign vessel—at the time when the goods are placed on board the vessel, the vessel is:
    (i) in an Australian port; or
    (ii) entering or leaving an Australian port; or
    (iii) in the internal waters of Australia; or
    (iv) in the territorial sea of Australia, other than in the course of innocent passage.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 600 penalty units.

117 Carrying etc. dangerous goods under a false description

(1) A person contravenes this subsection if:
  (a) the person carries dangerous goods on board a vessel under a false description, or causes or permits dangerous goods to be carried on board a vessel under a false description; and
  (b) if the vessel is a foreign vessel—at the time when the goods are carried, the vessel is:
    (i) in an Australian port; or
    (ii) entering or leaving an Australian port; or
    (iii) in the internal waters of Australia; or
    (iv) in the territorial sea of Australia, other than in the course of innocent passage.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

118 Falsely describing the sender of dangerous goods

(1) A person contravenes this subsection if:
  (a) dangerous goods are or will be carried on a vessel; and
  (b) the person describes the sender of the goods:
    (i) on the packaging containing the goods; or
    (ii) on any document relating to the carrying of the goods; and

(c) the description is false or misleading in a material particular.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

119 Notice of intention to ship

(1) Before dangerous goods are shipped in a regulated Australian vessel or a foreign vessel, the shipper must give notice of his or her intention, in the manner and to the person prescribed by the regulations, to ship the goods.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

120 Powers of owner or master as to dangerous goods

The owner or master of a vessel may:

(a) refuse to carry any dangerous goods; and

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(b) open and inspect any package suspected of containing dangerous goods;

and is not to be subject to any liability of any kind for so doing.

Subdivision C—Other offences

121 Obstructing vessel or machinery

(1) A passenger or other person on board a vessel must not:

(a) obstruct or interfere with any part of the machinery or equipment of the vessel; or

(b) obstruct, hinder or harm a seafarer on board the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

122 Certain persons may be refused entry to or asked to leave a vessel

(1) A person must not:

(a) board a vessel after being refused permission to board by or on behalf of the owner or master; or

(b) remain on board a vessel after being asked to leave the vessel by or on behalf of the owner or master.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

123 Power of master etc. to detain

(1) If the master or other officer of a vessel reasonably believes that a person (the ***offender***) has contravened section 121, the master or officer, or a person asked by the master or officer to assist, may detain the offender without warrant.

(2) A person who detains an offender under subsection (1) must, as soon as practicable after the detention, arrange for the offender, and any property found on the offender, to be delivered to a constable.

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Part 5—Musters and drills

Division 1—Vessels to which this Part applies

124 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) foreign vessels; and

(c) domestic commercial vessels; and

(d) recreational vessels.

Note: Section 12 may affect the application of this Chapter in certain circumstances relating to State and Territory law.

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Division 2—Regulations relating to musters, drills and tests

125 Regulations relating to musters, drills and tests

(1) The regulations may make provision in relation to musters, drills, checks of machinery and equipment and other tests.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

(a) boat drills, fire drills and collision drills;

(b) safety training and familiarisation;

(c) checks and tests of machinery and equipment;

(d) entries in a vessel's official logbook of musters, drills and safety training and familiarisation.

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Division 3—Offences and civil penalties relating to musters, drills and tests

126 Musters and drills etc. on vessels

(1) The master of a vessel must ensure:

(a) that musters, drills and safety training and familiarisation are held in accordance with the regulations; and

(b) that entries are made in the vessel's official logbook, in accordance with the regulations, in relation to musters, drills and safety training and familiarisation.

(2) Without limiting subsection (1), the master of a vessel contravenes that subsection if the master does not implement and maintain a safety management system that ensures that the musters, drills and safety training and familiarisation are held.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

127 Machinery and equipment checks and tests on vessels

(1) The master of a regulated Australian vessel or a foreign vessel must ensure:

(a) that checks and tests of the machinery and equipment of the vessel are conducted as required by the regulations; and

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(b) that entries are made in the vessel's official logbook, in accordance with the regulations, in relation to such checks and tests.

(2) Without limiting subsection (1), the master of a vessel contravenes that subsection if the master does not implement and maintain a safety management system that ensures that the checks and tests are carried out, and the entries are made.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

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Chapter 4—Prevention of pollution

Part 1—Preliminary

128 Simplified outline of this Chapter

(1) This Chapter deals with pollution from vessels.

(2) Part 2 provides for pollution certificates for regulated Australian vessels and certain other Australian vessels. It provides for offences and civil penalty provisions that apply in relation to taking regulated Australian vessels and certain other Australian vessels to sea without pollution certificates.

(3) Part 3 provides for offences and civil penalties for polluting the marine environment.

(4) Part 4 enables directions to be given to foreign vessels in certain circumstances relating to the Prevention of Pollution Convention.

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Part 2—Pollution certificates

Division 1—Vessels to which this Part applies

129 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and

(b) domestic commercial vessels; and

(c) recreational vessels that have Australian nationality.

Note: Section 12 may affect the application of this Chapter in certain circumstances relating to State and Territory law.

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Division 2—Regulations relating to pollution certificates

130 Regulations relating to pollution certificates

(1) The regulations may make provision in relation to pollution certificates.

(2) Without limiting subsection (1), the regulations may make provision in relation to giving effect to the Prevention of Pollution Convention.

(3) The regulations may provide that specified classes of vessels are required to have specified pollution certificates, either generally or in specified circumstances, including certificates relating to the following:

(a) vessel construction or equipment;

(b) carriage of noxious liquids or oil;

(c) carriage of packaged harmful substances;

(d) sewage or garbage;

(e) air pollution or ozone depleting substances;

(f) energy efficiency.

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Division 3—Issue of pollution certificates

131 Persons may apply for a pollution certificate

(1) A person may apply to an issuing body for a pollution certificate of a kind specified in the regulations for a vessel.

(2) The application must be in accordance with the regulations.

132 Issue of pollution certificate

(1) An issuing body may issue a pollution certificate for a vessel if:
  (a) an application for the certificate has been made under section 131; and
  (b) the issuing body is satisfied that the criteria prescribed by the regulations in relation to the issue of the certificate are met.

(2) A pollution certificate is subject to:
  (a) the conditions (if any) prescribed by the regulations; and
  (b) the conditions (if any) imposed by the issuing body.

(3) Conditions prescribed by the regulations or imposed by the issuing body include, but are not limited to, conditions relating to compliance with specified standards.

133 Issuing body may vary pollution certificate

(1) An issuing body may vary a pollution certificate if the issuing body is satisfied that the criteria prescribed by the regulations in relation to the variation of the certificate are met.

(2) Without limiting subsection (1), an issuing body may vary a pollution certificate to impose a condition on the certificate.

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134 Revocation of pollution certificates

An issuing body may revoke a pollution certificate if the issuing body is satisfied that the criteria prescribed by the regulations in relation to the revocation of the certificate are met.

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Division 4—Offences and civil penalties relating to vessels operating without pollution certificates

135 Taking vessels to sea without pollution certificates—owner

(1) The owner of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a pollution certificate of a specified kind; and

(b) a pollution certificate of that kind is not in force for the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

136 Taking vessels to sea without pollution certificates—master

(1) The master of a vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is required by the regulations to have a pollution certificate of a specified kind; and

(b) a pollution certificate of that kind is not in force for the vessel.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

137 Obligation to notify alterations of vessels that relate to pollution certificates

(1) A person contravenes this subsection if:
  (a) the person is the owner or master of a vessel; and
  (b) the vessel is altered so as to affect the pollution certificates the vessel is required to have; and
  (c) AMSA, and each issuing body that issued a pollution certificate for the vessel, are not informed of the alterations within the period prescribed by the regulations.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

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Part 3—Pollution or damage to the marine environment

Division 1—Vessels to which this Part applies

138 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and
(b) domestic commercial vessels; and
(c) foreign vessels; and
(d) recreational vessels.

139 Geographical application

(1) This Part applies to a vessel situated in any of the following areas:

(a) waters within the coastal sea of Australia;
(b) waters within the exclusive economic zone of Australia;
(c) waters that are beyond the exclusive economic zone of Australia.

(2) Section 9 does not apply to an offence against Division 2 or a civil penalty provision in Division 2.

(3) The master or owner of a foreign vessel, or a recreational vessel that does not have Australian nationality:

(a) does not commit an offence against Division 2 that relates to the vessel; and
(b) is not liable for a civil penalty for a contravention of a civil penalty provision in Division 2 that relates to the vessel;

unless, at the time when the conduct constituting the alleged offence or contravention occurs, the vessel is:

(c) in an Australian port; or
(d) entering or leaving an Australian port; or

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(e) in the internal waters of Australia; or
(f) in the territorial sea of Australia; or
(g) in the exclusive economic zone of Australia.

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Division 2—Vessels polluting or damaging the Australian marine environment

140 Operating a vessel so as to pollute or damage the Australian marine environment

(1) The master of a vessel must not operate the vessel in a manner that causes:

(a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone of Australia; or

(b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone of Australia.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

(3) Recklessness or negligence is the fault element for:

(a) the manner of operation of the vessel; and

(b) the result mentioned in paragraph (1)(a) or (b) occurring.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for an aggravated contravention—6,000 penalty units; or

(b) in any other case—600 penalty units.

141 Failure to ensure vessel is operated so as not to cause pollution or damage to the Australian marine environment

(1) The master of a vessel must ensure that the vessel is operated in a manner that does not cause:

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(a) pollution to the marine environment in the coastal sea of Australia or the exclusive economic zone of Australia; and
(b) damage to the marine environment in the coastal sea of Australia or the exclusive economic zone of Australia.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

(3) Recklessness or negligence is the fault element for:
(a) the operation of the vessel in a manner that causes the result mentioned in paragraph (1)(a) or (b); and
(b) the result mentioned in paragraph (1)(a) or (b) occurring.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:
(a) for an aggravated contravention—6,000 penalty units; or
(b) in any other case—600 penalty units.

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Division 3—Australian vessels polluting or damaging the marine environment outside Australia

142 Operating a vessel so as to pollute or damage the marine environment outside Australia

(1) The master of a regulated Australian vessel, a domestic commercial vessel, or a recreational vessel that has Australian nationality, must not operate the vessel in a manner that causes:

(a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or

(b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

(3) Recklessness or negligence is the fault element for:

(a) the manner of operation of the vessel; and

(b) the result mentioned in paragraph (1)(a) or (b) occurring.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for an aggravated contravention—6,000 penalty units; or

(b) in any other case—600 penalty units.

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143 Failure to ensure vessel is operated so as not to cause pollution or damage to the marine environment outside Australia

(1) The master of a regulated Australian vessel, a domestic commercial vessel or a recreational vessel that has Australian nationality must ensure that the vessel is operated in a manner that does not cause:

(a) pollution to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia; or

(b) damage to the marine environment in seas that are beyond the territorial sea and the exclusive economic zone of Australia.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

(3) Recklessness or negligence is the fault element for:

(a) the manner of operation of the vessel; and

(b) the result mentioned in paragraph (1)(a) or (b) occurring.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for an aggravated contravention—6,000 penalty units; or

(b) in any other case—600 penalty units.

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Division 4—Aggravated contraventions of civil penalty provisions and matters to which eligible court may have regard in determining standard of care etc.

144 Aggravated contraventions of civil penalty provisions

(1) A contravention of a civil penalty provision of this Part by a person is an ***aggravated contravention*** if the person's act or omission that constituted the contravention:

(a) resulted in serious harm to the marine environment; or

(b) had the potential to cause serious harm to the marine environment.

(2) In determining whether an act or omission has resulted in serious harm to the marine environment, the eligible court may have regard to the following:

(a) the harm;

(b) the size of the affected environment;

(c) the sensitivity of the affected environment;

(d) the significance of the affected environment;

(e) whether the harm is irreversible;

(f) the measures required to remedy the harm.

(3) In determining whether an act or omission had the potential to cause serious harm to the marine environment, the eligible court may have regard to the following:

(a) the potential harm;

(b) the size of the potentially affected environment;

(c) the sensitivity of the potentially affected environment;

(d) the significance of the potentially affected environment;

(e) whether the harm would have been irreversible, had it occurred;

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(f) the measures that would have been required to remedy the harm, had it occurred.

(4) If AMSA intends to prove that the person has committed an aggravated contravention, AMSA's application for a civil penalty order in relation to the contravention must specify the relevant aggravated contravention.

(5) If, in proceedings for a civil penalty order in relation to an aggravated contravention of a provision of this Part, the eligible court:

(a) is not satisfied that the person has committed an aggravated contravention of that provision; and

(b) is satisfied beyond reasonable doubt that the person has contravened that provision;

the eligible court may make a civil penalty order against the person not for the aggravated contravention but for the contravention of that provision.

145 Matters to which eligible court may have regard in determining standard of care and risk

In determining the standard of care a reasonable person would exercise in operating a vessel and whether there was a risk that a result mentioned in a provision of this Part would happen, the matters to which the eligible court may have regard include the following:

(a) the characteristics of the vessel;

(b) the vessel's cargo and the risks of pollution or damage to the marine environment if that cargo is released;

(c) the amount of bunker oil on board the vessel and the risk of pollution or damage to the marine environment if that amount of oil is released;

(d) the state of visibility;

(e) the state of the wind, sea and current;

(f) the presence of other vessels in the vicinity;

(g) the presence of navigation hazards in the vicinity;

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(h) the rules under the Prevention of Collisions Convention;

(i) operational requirements imposed by law.

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Part 4—Directions powers relating to foreign vessels

Division 1—Vessels to which this Part applies

146 Vessels to which this Part applies

This Part applies to foreign vessels.

Note: Section 12 may affect the application of this Chapter in certain circumstances relating to State and Territory law.

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Division 2—Directions may be given to vessels

147 Directions in relation to vessels

(1) If AMSA is satisfied that a vessel is not constructed, equipped or operated in accordance with the Prevention of Pollution Convention (whether or not the vessel is required to be so constructed, equipped or operated), AMSA may give to the master or the owner of a vessel a written direction that requires one or more of the following:

(a) that the vessel not enter or use any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia;

(b) that the vessel comply with specified requirements while it:

(a) is approaching, entering, or using any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia; or

(b) is in or is leaving any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia.

(2) AMSA may exercise its powers under subsection (1) in relation to a vessel only to the extent that AMSA is satisfied that it is necessary or expedient to do so for the protection of the environment.

(3) A direction under subsection (1) is not a legislative instrument.

148 Persons must comply with direction

(1) A person who is given a direction under section 147 must comply with the direction.

(2) Subsection (1) does not apply if:

(a) the failure to comply with the direction resulted from the need to save life at sea or was due to an emergency involving a threat to a person's life; or

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(b) compliance with the direction was not possible.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

149 Geographical application

(1) Section 9 does not apply to:
(a) an offence against subsection 148(3); or
(b) a contravention of subsection 148(1), so far as it is a civil penalty provision.

(2) The master or owner of a foreign vessel who is given a direction under section 147:
(a) does not commit an offence against subsection 148(3) that relates to the vessel; and
(b) is not liable for a civil penalty for a contravention of subsection 148(1) that relates to the vessel;

unless, at the time when the conduct constituting the alleged offence or contravention occurs, the vessel concerned is:
(c) in an Australian port; or
(d) entering or leaving an Australian port; or

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(e) in the internal waters of Australia; or
(f) in the territorial sea of Australia; or
(g) in the exclusive economic zone of Australia.

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Chapter 5—Tonnage

Part 1—Preliminary

150 Simplified outline of this Chapter

This Chapter deals with the tonnage of certain vessels.

151 Vessels to which this Chapter applies

This Chapter applies to:

(a) regulated Australian vessels; and

(b) foreign vessels; and

(c) such other vessels as are prescribed by the regulations.

152 Certain vessels taken to be registered

(1) For the purposes of this Chapter, an unregistered vessel flying the flag of a country is taken to be registered in that country.

(2) If a vessel is in the course of construction, or the construction of a vessel has been completed, and the vessel:

(a) has not been registered and is not flying the flag of a country; and

(b) is intended to be registered in a particular country;

the vessel is taken, for the purposes of this Chapter, to be registered in that country.

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Part 2—Tonnage regulations and certificates

153 Tonnage regulations

(1) The regulations may make provision:
  (a) giving effect to the Tonnage Convention; and
  (b) otherwise in relation to the tonnage of vessels.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:
  (a) issuing International Tonnage Certificates (1969);
  (b) issuing other tonnage measurement certificates;
  (c) assigning tonnages to vessels;
  (d) measuring of tonnage of vessels.

154 Applications for tonnage certificates

(1) A person may apply to an issuing body for a tonnage certificate of a kind specified in the regulations for a vessel to which this Chapter applies.

(2) The application must be in accordance with the regulations.

155 Issuing body to issue tonnage certificates

(1) An issuing body may issue a tonnage certificate for a vessel if:
  (a) an application for the tonnage certificate has been made to the issuing body under section 154; and
  (b) the issuing body is satisfied that the criteria prescribed by the regulations in relation to the issue of the tonnage certificate are met.

(2) A tonnage certificate is subject to:
  (a) the conditions (if any) prescribed by the regulations; and
  (b) the conditions (if any) imposed by the issuing body.

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156 Issuing body may vary tonnage certificates

(1) An issuing body may vary a tonnage certificate under this section if the issuing body is satisfied that the criteria prescribed by the regulations in relation to the variation of the certificate are met.

(2) Without limiting subsection (1), an issuing body may vary a tonnage certificate to impose, vary or remove a condition on the certificate.

157 Revocation of tonnage certificates

An issuing body may revoke a tonnage certificate if the issuing body is satisfied that the criteria prescribed by the regulations are met in relation to the revocation of the certificate.

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Part 3—Additional provisions relating to non-Tonnage Convention vessels

158 Register tonnage of non-Tonnage Convention vessels that are registered

Register tonnage of vessel registered in prescribed country

(1) The register tonnage specified in the certificate of registry of a non-Tonnage Convention vessel registered in a country prescribed by the regulations is taken, for the purposes of this Act, to be the register tonnage of the vessel.

Register tonnage of vessel registered in a country other than a prescribed country

(2) The register tonnage of a non-Tonnage Convention vessel that is registered in a country that is not a country prescribed by the regulations is taken, for the purposes of this Act, to be the register tonnage of the vessel determined in accordance with the regulations.

159 Tonnage of non-Tonnage Convention vessels to be measured in certain cases

If:

(a) an unregistered non-Tonnage Convention vessel enters an Australian port; or

(b) a dispute arises as to the tonnage of a non-Tonnage Convention vessel;

the tonnage of the vessel is to be measured in accordance with the regulations.

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160 Assignment of other tonnages to non-Tonnage Convention vessels

(1) The regulations may assign to a non-Tonnage Convention vessel a gross tonnage and a register tonnage, instead of the gross tonnage and register tonnage ascertained in relation to the vessel in accordance with the other provisions of those regulations.

(2) If the regulations assign to a non-Tonnage Convention vessel a gross tonnage and a register tonnage as mentioned in subsection (1), this Act applies in relation to the vessel as if:

(a) references in this Act to gross tonnage were references to the gross tonnage so assigned; and

(b) references in this Act to register tonnage were references to the register tonnage so assigned.

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Chapter 6—Safety of navigation

Part 1—Preliminary

161 Simplified outline of this Chapter

(1) This Chapter deals with the safety of navigation.

(2) Part 2 deals with pilotage for certain vessels. It includes provisions relating to the following:

(a) establishing the requirements for compulsory pilotage and a procedure for seeking exemptions from the requirements;

(b) providing for the issue of licences;

(c) providing for pilots to issue certificates as evidence of the provision of pilotage;

(d) the approval and duties of pilotage providers;

(e) establishing offences and civil penalties for navigation without a licensed pilot, failure to comply with exemption conditions and false representation as a licensed pilot;

(f) providing for the reporting of movement or intended movement of vessels.

(3) Part 3 deals with prevention of collisions.

(4) Part 4 imposes obligations to render assistance and report incidents.

(5) Part 5 deals with aids to navigation. It includes provisions:

(a) empowering AMSA to acquire, establish, maintain and inspect aids to navigation; and

(b) empowering AMSA to deal with things that may interfere with safe navigation; and

(c) establishing offences and civil penalty provisions for the fouling or destruction of, or damage to or interference with, aids to navigation.

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(6) Part 6 deals with safe navigation. It includes provisions about the following:

(a) vessel traffic services (Division 2);

(b) mandatory routeing (Division 3);

(c) reporting of movement of vessels (Division 4);

(d) the Australian Hydrographic Service (Division 5).

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Part 2—Pilotage

Division 1—Vessels to which this Part applies

162 Vessels to which this Part applies

(1) This Part applies to a vessel:
  (a) that is 70 metres or longer in length overall; or
  (b) that is a loaded:
    (i) oil tanker; or
    (ii) chemical carrier; or
    (iii) liquefied gas carrier.

(2) This Part applies to pilots and pilotage in relation to vessels referred to in subsection (1):
  (a) that are in, or in transit to or from, any waters of the coastal sea of Australia prescribed by the regulations; or
  (b) that are in any waters of the exclusive economic zone of Australia prescribed by the regulations.

(3) This Part is not intended to affect the operation of any law of a State or Territory governing pilots or pilotage in relation to a port in the State or Territory that is capable of operating concurrently with this Part.

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Division 2—Regulations relating to pilotage etc.

163 Regulations relating to compulsory pilotage

(1) The regulations may make provision in relation to compulsory pilotage, including prescribing waters that are compulsory pilotage areas for the purposes of this Part.

(2) The waters that may be prescribed for the purposes of subsection (1) must be waters included within the waters prescribed by the regulations made for the purposes of subsection 162(2).

164 Regulations relating to licensing of pilots and pilotage providers

(1) The regulations may make provision in relation to the licensing of pilots and pilotage providers, including standards of competence to be attained and other conditions to be satisfied by a person in order to be licensed as a pilot or a pilotage provider.

Pilots

(2) Without limiting subsection (1), the regulations may make provision in relation to:
  (a) conditions as to age, character, medical fitness, nationality, citizenship or residence relating to the licensing of pilots; and
  (b) the instruction, training and examination of pilots, including:
    (i) the gaining of sea service and other experience; and
    (ii) the conduct of examinations; and
    (iii) the conditions for admission to examinations; and
    (iv) the appointment and remuneration of examiners.

Pilotage providers and pilots

(3) Without limiting subsection (1), the regulations may make provision in relation to the following:

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(a) the manner in which the attainment of a standard or the satisfaction of a condition is to be evidenced;
(b) the issue, recall, surrender, replacement, form and recording of licences of pilots and pilotage providers;
(c) the duration, variation, renewal, suspension and cancellation of such licences.

165 Regulations relating to operations of licensed pilots and licensed pilotage providers

(1) The regulations may make provision in relation to the operations of licensed pilots and licensed pilotage providers.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:
(a) the duties of a licensed pilot or a licensed pilotage provider and the manner of discharging those duties;
(b) the professional relationship between:
(i) a licensed pilot and officers of a vessel; and
(ii) a licensed pilotage provider and a licensed pilot;
(c) the provision of equipment or information by a licensed pilotage provider to a licensed pilot;
(d) matters relating to pilotage safety management systems including the content and implementation of such systems;
(e) the keeping of records;
(f) the training of pilots;
(g) the monitoring of the performance of licensed pilots and licensed pilotage providers;
(h) the professional liability of licensed pilots and licensed pilotage providers and the limitation of that liability;
(i) auditing and monitoring of licensed pilots and licensed pilotage providers.

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Division 3—Requirement to navigate with a licensed pilot

166 Navigating without a licensed pilot

(1) A person contravenes this subsection if:
  (a) the person is the master or owner of a vessel; and
  (b) the vessel navigates without a licensed pilot in a compulsory pilotage area.

Exceptions

(2) Subsection (1) does not apply to a person if:
  (a) the vessel was exempted under section 172 from the requirement to navigate with a licensed pilot in the area; and
  (b) the navigation complied with the terms of the exemption.

(3) Subsection (1) does not apply to a person if the vessel navigated in a compulsory pilotage area because of saving life at sea or other unavoidable cause.

(4) Subsection (1) does not apply to the owner of the vessel if he or she took all reasonable precautions to ensure that the vessel would not navigate in a compulsory pilotage area in contravention of that subsection.

Fault-based offence

(5) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

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Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(7) A person who wishes to rely on subsection (2), (3) or (4) in proceedings for a civil penalty order bears a legal burden in relation to the matters in the subsection concerned.

167 Offences against section 166 by masters of foreign vessels

(1) Section 9 does not apply to an offence against section 166.

(2) The master of a foreign vessel does not commit an offence against section 166 unless, at the time of the act or omission constituting the alleged offence, the vessel is:

(a) in an Australian port; or
(b) entering or leaving an Australian port; or
(c) in the internal waters of Australia; or
(d) in the territorial sea of Australia.

168 Representations about being a licensed pilot or pilotage provider

(1) A person must not make a representation that the person is a licensed pilot or a licensed pilotage provider if the person is not a licensed pilot or a licensed pilotage provider.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

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

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

169 Unlicensed person performing duties of licensed pilot or pilotage provider

(1) A person contravenes this subsection if:
  (a) the person performs duties of a licensed pilot or a licensed pilotage provider that are prescribed by the regulations; and
  (b) the person is not a licensed pilot or a licensed pilotage provider, as the case may be.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

(3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

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

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

170 Licensed pilots to issue certificates

(1) If a licensed pilot has provided pilotage for a vessel in a compulsory pilotage area, the licensed pilot must give the master of the vessel a certificate in the approved form.

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(2) The licensed pilot must give the certificate to the master before disembarking from the vessel after the navigation in the area.

171 Engaging an unqualified person to perform duties of licensed pilot

(1) A person (the ***first person***) contravenes this subsection if:
  (a) the first person engages another person to perform the duties of a licensed pilot under the regulations; and
  (b) the other person is not a licensed pilot.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

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

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,200 penalty units.

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Division 4—Exemption from requirement to navigate with a licensed pilot

172 Application for exemption

(1) The master or an owner of a vessel may apply to AMSA for an exemption from the requirement to navigate the vessel with a licensed pilot in a compulsory pilotage area.

(2) The application must:
  (a) be in writing; and
  (b) contain the information prescribed by the regulations; and
  (c) be in the approved form.

(3) AMSA must, after considering the application:
  (a) by instrument in writing, grant or refuse to grant the exemption applied for; and
  (b) give the applicant a copy of the instrument and, in the case of a refusal, a statement of the reasons for that refusal.

(4) A refusal to grant the exemption applied for may be a refusal to grant the exemption at all or a refusal to grant the exemption as to a part of the vessel's proposed navigation in the compulsory pilotage area.

(5) An exemption under subsection (1) is subject to the conditions specified in the exemption.

(6) An instrument under this section granting or refusing an exemption is not a legislative instrument.

173 Failure to comply with conditions of exemption

(1) A person contravenes this subsection if:
  (a) the person is the master or an owner of a vessel; and
  (b) the vessel is navigating in a compulsory pilotage area; and

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(c) AMSA has granted an exemption from the requirement to navigate with a licensed pilot in respect of the navigation by the vessel in that area; and

(d) the vessel, in navigating in that area, contravenes a condition to which the exemption is subject.

(2) Subsection (1) does not apply to the owner of the vessel if he or she took all reasonable precautions to ensure that the vessel would not navigate in a compulsory pilotage area in contravention of that subsection.

(3) Subsection (1) does not apply if the vessel navigated in a compulsory pilotage area because of stress of weather, saving life at sea or other unavoidable cause.

Strict liability offence

(4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

(6) A person who wishes to rely on subsection (2) or (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in the subsection concerned.

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Division 5—Relationship with the Great Barrier Reef Marine Park Act 1975

174 Part is in addition to the *Great Barrier Reef Marine Park Act 1975*

(1) This Part operates in addition to, and does not limit, any requirement for compulsory pilotage under the *Great Barrier Reef Marine Park Act 1975* within the compulsory pilotage area under that Act.

(2) A person is not liable to be prosecuted under this Act and the *Great Barrier Reef Marine Park Act 1975* in respect of the same act or omission.

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Part 3—Prevention of collisions

Division 1—Vessels to which this Part applies

175 Vessels to which this Part applies

Vessels on the high seas

(1) This Part applies to a vessel on the high seas, if the vessel is any of the following:
  (a) a regulated Australian vessel;
  (b) a domestic commercial vessel;
  (c) a recreational vessel that has Australian nationality.

Vessels not on the high seas

(2) This Part applies to:
  (a) a regulated Australian vessel; or
  (b) a foreign vessel; or
  (c) a domestic commercial vessel; or
  (d) a recreational vessel;

  if the vessel is situated in any of the following areas:
  (e) waters within the territorial sea of Australia;
  (f) unless the vessel is a foreign vessel or a recreational vessel that does not have Australian nationality—waters in the exclusive economic zone of Australia;
  (g) so far as the provision concerned gives effect to the Prevention of Collisions Convention:
    (i) the waters of the sea on the landward side of the territorial sea; or
    (ii) waters within Australia other than waters of the sea.

Note: Section 12 may affect the application of this Part in certain circumstances relating to the Marine Safety (Domestic Commercial Vessel) National Law or State and Territory law.

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Division 2—Collisions, lights and signals

176 Power to make regulations relating to collisions, lights and signals

(1) The regulations may make provision in relation to requirements for the prevention of collisions and may make provision in relation to the provision and use of lights and signals on vessels.

(2) Without limiting subsection (1), the regulations may make provision in relation to giving effect to the Prevention of Collisions Convention.

(3) The regulations may make provision in relation to:

(a) liability for loss of life or injury to a person on board a vessel because of the fault of the vessel and one or more other vessels; and

(b) the division of liability for loss if 2 or more vessels are involved or at fault in a collision; and

(c) the right of contribution in relation to a collision involving 2 or more vessels that results in loss of life or injury to a person on board a vessel.

(4) Regulations made for the purposes of subsection (3) may, despite section 10, be expressed to apply to a vessel referred to in paragraph 10(a) that is operated by Australia.

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Division 3—Operating a vessel in contravention of regulations

177 Operating a vessel in contravention of the regulations—owner

(1) The owner of a vessel must not operate the vessel, or cause or permit another person to operate the vessel, if the operation of the vessel contravenes regulations made for the purposes of section 176.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

178 Operating a vessel in contravention of the regulations—master

(1) The master of a vessel must not operate the vessel, or cause or permit another person to operate the vessel, if the operation of the vessel contravenes regulations made for the purposes of section 176.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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Division 4—No presumption of fault

179 No presumption of fault

If a collision occurs involving one or more vessels:

(a) a vessel is not taken to be at fault merely because of a contravention of this Part in relation to the vessel; and

(b) the collision is not taken to have been caused by the wrongful act, neglect, or default of a seafarer of a vessel merely because of a contravention of this Part in relation to the vessel.

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Part 4—Obligation to render assistance and report incidents

Division 1—Vessels to which this Part applies

180 Vessels to which this Part applies

This Part applies to the following:

(a) a regulated Australian vessel;

(b) a foreign vessel;

(c) a domestic commercial vessel;

(d) a recreational vessel.

Note: Section 12 may affect the application of this Part in certain circumstances relating to the Marine Safety (Domestic Commercial Vessel) Marine Safety (Domestic Commercial Vessel) National Law or State and Territory law.

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Division 2—Obligation to render assistance

181 Obligation to render assistance

(1) The master of a vessel contravenes this subsection if:
  (a) the vessel is at sea; and
  (b) the master has reason to believe that one or more persons are in distress at sea; and
  (c) the master does not both:
    (i) cause the vessel to proceed as fast as practicable to the assistance of the person or persons; and
    (ii) inform the person or persons that the master is doing so.

(2) Subsection (1) does not apply if:
  (a) the master is unable to comply with paragraph (1)(c); or
  (b) in the special circumstances of the case, it is unreasonable or unnecessary for the master to comply with paragraph (1)(c); or
  (c) the master of the vessel is informed by the person or persons in distress, or by the master of another vessel, that assistance is no longer necessary; or
  (d) the master is informed that another vessel has been requisitioned and is complying with the requisition.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 4 years.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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182 Obligation to render assistance if requisitioned

(1) The master of a vessel that is in distress at sea may, after consulting so far as possible with the masters of vessels that answer his or her call for assistance, requisition a vessel that the master considers best able to render assistance.

(2) The master of a vessel contravenes this subsection if:
  (a) the vessel is requisitioned under subsection (1) by the master of another vessel that is in distress at sea; and
  (b) the master does not cause his or her vessel to proceed as fast as practicable to the assistance of the other vessel.

(3) Subsection (2) does not apply if:
  (a) the master is unable to comply with paragraph (2)(b); or
  (b) in the special circumstances of the case, it is unreasonable or unnecessary for the master to comply with paragraph (2)(b); or
  (c) the master of the vessel is informed by the person or persons in distress, or by the master of another vessel, that assistance is no longer necessary; or
  (d) the master is informed that another vessel has been requisitioned and is complying with the requisition.

Fault-based offence

(4) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 10 years.

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

Requisition to assist vessel to which this Part does not apply

(5) The master of a vessel in distress may requisition a vessel under this section even if the vessel in distress is not a vessel to which this Part applies.

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183 Offences against sections 181 and 182 by masters of foreign vessels

(1) Section 9 does not apply to an offence against section 181 or 182.

(2) The master of a foreign vessel does not commit an offence against section 181 or 182 unless, at the time of the act or omission constituting the alleged offence, the vessel is:
  (a) in an Australian port; or
  (b) entering or leaving an Australian port; or
  (c) in the internal waters of Australia; or
  (d) in the territorial sea of Australia.

184 Obligation to record requests for assistance

(1) The master of a vessel contravenes this subsection if the master:
  (a) receives information that a person or persons are in distress at sea, and does not proceed to the assistance of the person or persons in distress; and
  (b) is required by any law to keep a logbook for the vessel; and
  (c) does not record in the vessel's logbook his or her reasons for not so proceeding.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

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

Penalty: 50 penalty units.

185 Reporting of marine incidents to AMSA—owner

(1) An owner of a vessel contravenes this subsection if:
  (a) the vessel is involved in a marine incident that has affected, or is likely to affect, the safety, operation or seaworthiness of the vessel; and

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(b) neither the owner nor the master of the vessel gives a written report of the incident in the approved form to AMSA, within the period prescribed by the regulations, after the owner becomes aware of the incident.

(2) An owner of a vessel contravenes this subsection if:

(a) the vessel is involved in, or causes, a marine incident that involves:

(i) the death of a person; or

(ii) serious injury to a person; or

(iii) the loss of a vessel; or

(iv) the loss of a person from the vessel; or

(v) significant damage to a vessel; or

(vi) loss of cargo of a vessel; and

(b) neither the owner nor the master of the vessel reports the incident to AMSA, within the period prescribed by the regulations, after the owner becomes aware of the incident.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 600 penalty units.

186 Reporting of marine incidents to AMSA—master

(1) The master of a vessel contravenes this subsection if:

(a) the vessel is involved in a marine incident that has affected, or is likely to affect, the safety, operation or seaworthiness of the vessel; and

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(b) neither the owner nor the master of the vessel gives a written report of the incident in the approved form to AMSA, within the period prescribed by the regulations, after the master becomes aware of the incident.

Penalty: 60 penalty units.

(2) The master of a vessel contravenes this subsection if:

(a) the vessel is involved in, or causes, a marine incident that involves:

(i) the death of a person; or

(ii) serious injury to a person; or

(iii) the loss of a vessel; or

(iv) the loss of a person from a vessel; or

(v) significant damage to a vessel; and

(b) neither the owner nor the master of the vessel reports the incident to AMSA, within the period prescribed by the regulations, after the master becomes aware of the incident.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 600 penalty units.

187 Report of dangers to navigation

(1) The master of a vessel contravenes this subsection if:

(a) the master meets with, or is informed of, any serious danger to navigation on or near his or her course; and

(b) the master does not, at the earliest practicable time:

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(i) send out to vessels in the vicinity, by all means of communication available to him or her, the safety signal prescribed by the regulations, followed by a message (the ***danger message***) conveying such information as is prescribed by the regulations; and

(ii) make a report to shore to the person prescribed by the regulations, and in the manner prescribed by the regulations.

(2) Subsection (1) does not apply if compliance with that subsection would interfere with the transmission of a signal of distress.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

Evidential burden

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

Serious danger to navigation

(6) The reference in subsection (1) to a serious danger to navigation includes, but is not limited to, any of the following:

(a) dangerous ice;

(b) a dangerous derelict;

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(c) a tropical storm;
(d) sub-freezing air temperature associated with gale force winds causing severe ice accretion on superstructures;
(e) winds of force 10 on the Beaufort scale for which no storm warning has been received.

Transmission to be free of cost

(7) The transmission under this section of danger messages or safety signals is to be free of cost to the vessels concerned.

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Part 5—Aids to navigation

Division 1—Regulations

188 Regulations relating to aids to navigation

The regulations may make provision in relation to aids to navigation.

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Division 2—AMSA's powers in relation to aids to navigation

189 Acquisition of aids to navigation by compulsory process

(1) This section applies if AMSA is unable to enter into an agreement with a State or Territory for the acquisition of any particular aid to navigation belonging to that State or Territory.

(2) The Minister may acquire by compulsory process:
  (a) the aid to navigation; and
  (b) any other property used in connection with the aid to navigation; and
  (c) so much of the land (if any) required or used for the purpose of the aid to navigation as AMSA thinks sufficient.

(3) The provisions of the *Lands Acquisition Act 1989* relating to the acquisition of interests in land by compulsory process and to the determination of the amount of compensation payable in respect of interests so acquired apply, so far as applicable, in relation to the acquisition of property under this section.

190 Power to establish, maintain and inspect aids to navigation

(1) AMSA may:
  (a) establish and maintain aids to navigation; and
  (b) add to, alter or remove any aid to navigation that is owned or controlled by AMSA; and
  (c) vary the character of any aid to navigation that is owned or controlled by AMSA.

(2) AMSA, or a person authorised in writing by AMSA may, at any reasonable time of the day or night:
  (a) inspect any aid to navigation or any lamp or light which, in the opinion of AMSA or the authorised person, may affect

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the safety or convenience of navigation, whether the aid to navigation or the lamp or light is the property of:

(i) a State or Territory; or

(ii) an agency of a State or Territory; or

(iii) any other person; and

(b) enter any property, whether public or private, for the purposes of an inspection under paragraph (a); and

(c) transport, or cause to be transported, any goods through any property, whether public or private, for any purpose in connection with:

(i) the maintenance of an aid to navigation that is owned or controlled by AMSA; or

(ii) the establishment of any aid to navigation by AMSA.

191 Other powers in relation to aids to navigation

(1) If in AMSA's opinion it is desirable for the safety of navigation to do so, AMSA may, by notice in writing given to the owner of an aid to navigation, or a lamp or light, require the owner of the aid, lamp or light:

(a) before the end of the period specified in the notice—to remove it entirely or to move it to another position; or

(b) before the end of the period specified in the notice—to modify it or to alter its character to such an extent and in such a manner as AMSA specifies in the notice; or

(c) in the case of a lamp or light, with effect from a day specified in the notice:

(i) to refrain from lighting the lamp or light either entirely or for the period AMSA specifies in the notice; or

(ii) to cease showing the lamp or light either entirely or for the period AMSA specifies in the notice.

(2) The period specified in a notice referred to in paragraph (1)(a) or (b) must be at least 14 days, other than in exceptional circumstances relating to the safety of persons or vessels.

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(3) If the notice is not complied with, AMSA may do in regard to the aid to navigation, lamp or light anything that the owner was required by the notice to do.

(4) Any expense incurred by AMSA under this section may be recovered by AMSA from the owner, as a debt due by the owner to AMSA.

(5) In this section:

owner, of an aid to navigation, lamp or light, includes a State or Territory government, or any agency of a State or Territory, that has the control or management of the aid, lamp or light.

(6) A notice under subsection (1) is not a legislative instrument.

192 Returns of aids to navigation

(1) A harbour authority or other local authority that has control of any aid to navigation must notify AMSA of the following matters:
  (a) the description and situation of each aid to navigation under its control;
  (b) any change to the characteristics of an aid to navigation that could affect the safety of navigation.

(2) A notification under subsection (1) in relation to an aid to navigation must be made:
  (a) when the aid to navigation first commences operation; and
  (b) when the aid to navigation is decommissioned; and
  (c) when a change referred to in paragraph (1)(b) occurs.

(3) A notification under subsection (1) must be in accordance with the regulations.

Strict liability offence

(4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 30 penalty units.

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

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Division 3—Offences and civil penalties relating to aids to navigation

Subdivision A—Failure to comply with notice

193 Failure to comply with a notice about aids to navigation

(1) A person contravenes this subsection if:
  (a) the person is given a notice under subsection 191(1); and
  (b) the person fails to comply with the notice.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: The defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

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Subdivision B—Destruction etc. of aids to navigation

194 Intentionally destroying, fouling or damaging aids to navigation

(1) A person contravenes this subsection if:

(a) the person does an act or omits to do an act; and

(b) the act or omission results in:

(i) the destruction or fouling of an AMSA aid to navigation; or

(ii) damage to, or reduction in or limitation of the effectiveness of, an AMSA aid to navigation; and

(c) the person intends that the act or omission will have that result.

(2) Subsection (1) does not apply if:

(a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and

(b) the person took all reasonable steps to avoid the destruction, fouling, damage, reduction or limitation.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

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195 Recklessly destroying, fouling or damaging aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in:
    (i) the destruction or fouling of an AMSA aid to navigation; or
    (ii) damage to, or reduction in or limitation of the effectiveness of, an AMSA aid to navigation; and
  (c) the person is reckless as to whether the act or omission will have that result.

(2) Subsection (1) does not apply if:
  (a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and
  (b) the person took all reasonable steps to avoid the destruction, fouling, damage, reduction or limitation.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

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196 Negligently destroying, fouling or damaging aids to navigation

(1) A person contravenes this subsection if:

(a) the person does an act or omits to do an act; and

(b) the act or omission results in:

(i) the destruction or fouling of an AMSA aid to navigation; or

(ii) damage to, or reduction in or limitation of the effectiveness of, an AMSA aid to navigation; and

(c) the person is negligent as to whether the act or omission will have that result.

(2) Subsection (1) does not apply if:

(a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and

(b) the person took all reasonable steps to avoid the destruction, fouling, damage, reduction or limitation.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,500 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

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197 Intentionally obstructing the view of aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in the obstruction of the view of an AMSA aid to navigation; and
  (c) the person intends that the act or omission will have that result.

(2) Subsection (1) does not apply if:
  (a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and
  (b) the person took all reasonable steps to avoid that obstruction.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

198 Recklessly obstructing the view of aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and

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(b) the act or omission results in the obstruction of the view of an AMSA aid to navigation; and

(c) the person is reckless as to whether the act or omission will have that result.

(2) Subsection (1) does not apply if:

(a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and

(b) the person took all reasonable steps to avoid that obstruction.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

199 Negligently obstructing the view of aids to navigation

(1) A person contravenes this subsection if:

(a) the person does an act or omits to do an act; and

(b) the act or omission results in the obstruction of the view of an AMSA aid to navigation; and

(c) the person is negligent as to whether the act or omission will have that result.

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(2) Subsection (1) does not apply if:
  (a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and
  (b) the person took all reasonable steps to avoid that obstruction.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,500 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

200 Intentionally interfering with aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in an interference with the operation of, or the use by another person of, an AMSA aid to navigation; and
  (c) the person intends that the act or omission will have that result.

(2) Subsection (1) does not apply if:
  (a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and

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(b) the person took all reasonable steps to avoid causing that interference.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

201 Recklessly interfering with aids to navigation

(1) A person contravenes this subsection if:
(a) the person does an act or omits to do an act; and
(b) the act or omission results in an interference with the operation of, or the use by another person of, an AMSA aid to navigation; and
(c) the person is reckless as to whether the act or omission will have that result.

(2) Subsection (1) does not apply if:
(a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and
(b) the person took all reasonable steps to avoid that interference.

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Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

202 Negligently interfering with aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in an interference with the operation of, or the use by another person of, an AMSA aid to navigation; and
  (c) the person is negligent as to whether the act or omission will have that result.

(2) Subsection (1) does not apply if:
  (a) the act or omission was necessary to save a life or a vessel, or to prevent pollution; and
  (b) the person took all reasonable steps to avoid that interference.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

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Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,500 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

203 Intentional removal or alteration of aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in the removal or alteration of an AMSA aid to navigation; and
  (c) the person intends that the act or omission will have that result.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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204 Reckless removal or alteration of aids to navigation

(1) A person contravenes this subsection if:
  (a) the person does an act or omits to do an act; and
  (b) the act or omission results in the removal or alteration of an AMSA aid to navigation; and
  (c) the person is reckless as to whether the act or omission will have that result.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 3,000 penalty units.

205 Riding by or making fast to aids to navigation

(1) A person contravenes this subsection if:
  (a) the person rides by or makes fast to an object; and
  (b) the object is an AMSA aid to navigation and the person is reckless as to that fact.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

Subdivision C—Other offences relating to aids to navigation

206 Trespassing on aids to navigation

(1) A person must not trespass on an AMSA aid to navigation.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

207 Trespassing on vessels or property used by AMSA

(1) A person contravenes this subsection if:
(a) the person trespasses on a vessel or property; and
(b) the vessel or property is used by, or on behalf of, AMSA in establishing, maintaining or servicing aids to navigation.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

208 Notice of damage to aid to navigation

(1) A person who, or the master of a vessel that, damages an AMSA aid to navigation must, as soon as practicable having regard to the means of communication available to the person or the master, report the damage to AMSA.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

Subdivision D—Geographical application

209 Geographical application

(1) Section 9 does not apply to:
  (a) an offence against Subdivision B; or
  (b) a contravention of a civil penalty provision in Subdivision B.

(2) The master or owner of a foreign vessel, or a recreational vessel that does not have Australian nationality:
  (a) does not commit an offence against Subdivision B that involves the vessel; and

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(b) is not liable for a contravention of a civil penalty provision of Subdivision B that involves the vessel;

unless, at the time of the act or omission constituting the alleged offence or contravention, the vessel is:

(c) in an Australian port; or

(d) entering or leaving an Australian port; or

(e) in the internal waters of Australia; or

(f) in the territorial sea of Australia.

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Division 4—Additional matters relating to aids to navigation

210 Liability for damage, etc.

(1) If a person is convicted of an offence, or found to have contravened a civil penalty provision, under Division 3, an eligible court may (in addition to imposing a penalty on the person) order the person to pay an amount up to:

(a) the amount of the damage caused by the offence or contravention; or

(b) the cost of repairing, replacing or reinstating the aid to navigation.

(2) If an AMSA aid to navigation is removed, damaged or destroyed by a person, the person is liable to pay to AMSA the cost of repairing, replacing or reinstating the AMSA aid to navigation.

(3) If an AMSA aid to navigation is removed, damaged or destroyed by a vessel, the master and owner of the vessel are jointly and severally liable to pay to AMSA the cost of repairing, replacing or reinstating the AMSA aid to navigation.

211 Transfer of aids to navigation to be valid

(1) This section applies if AMSA has entered into an agreement with a State, a Territory or any other person, for the acquisition by AMSA of an aid to navigation.

(2) Any instrument or assurance for granting or transferring the aid to navigation to AMSA is, because of this Act, and despite anything in the law of a State or Territory, effective to vest the aid to navigation in AMSA according to its tenor.

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Part 6—Safe navigation

Division 1—Preliminary

212 Vessels to which this Part applies

This Part applies to:

(a) regulated Australian vessels; and
(b) foreign vessels; and
(c) domestic commercial vessels; and
(d) recreational vessels.

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Division 2—Vessel traffic services

213 Regulations relating to vessel traffic services

(1) The regulations may make provision in relation to vessel traffic services.

(2) Without limiting subsection (1), the regulations may make provision in relation to the following:

(a) establishment and recognition of vessel traffic services;

(b) authorisation by AMSA of vessel traffic services;

(c) testing of vessel traffic services;

(d) training, certification and auditing in relation to vessel traffic services;

(e) provision of reports and information to a vessel traffic service authority by specified persons in relation to the identity, intended passage and geographical location of vessels;

(f) the form of such reports and information and the period within which such reports are to be provided.

214 Liability of master or owner under vessel traffic service arrangements

(1) The master of a vessel is not relieved from responsibility for the conduct and navigation of the vessel merely because the vessel is subject to vessel traffic service arrangements.

(2) A requirement under a law of the Commonwealth or of a State or Territory that vessel traffic service arrangements be complied with does not affect the liability of the owner or master of a vessel that complies with such arrangements for:

(a) loss or damage caused by the vessel; or

(b) loss or damage caused by a fault of the navigation of the vessel.

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215 Reports must be provided to a vessel traffic service authority

(1) A person contravenes this subsection if:

(a) the person is required by the regulations to provide a report or information to a vessel traffic service authority; and

(b) the person does not provide the report or information.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 240 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,400 penalty units.

216 False or misleading information provided to a vessel traffic service authority

(1) A person contravenes this subsection if:

(a) the person provides a report or information to a vessel traffic service authority; and

(b) the report or information is false or misleading in a material particular.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 240 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,400 penalty units.

217 Geographical application

(1) Section 9 does not apply to:
  (a) an offence against:
    (i) regulations made for the purposes of section 213; or
    (ii) subsection 215(2) or 216(2); or
  (b) a contravention of the following civil penalty provisions:
    (i) a civil penalty provision in regulations made for the purposes of section 213;
    (ii) subsection 215(1) or 216(1).

(2) The master or owner of a foreign vessel, or a recreational vessel that does not have Australian nationality:
  (a) does not commit an offence against a provision referred to in paragraph (1)(a) that relates to the vessel; and
  (b) is not liable for a civil penalty because of a contravention of a provision referred to in paragraph (1)(b) that relates to the vessel;

unless, at the time of the act or omission constituting the alleged offence or contravention, the vessel concerned is:
  (c) in an Australian port; or
  (d) entering or leaving an Australian port; or
  (e) in the internal waters of Australia; or
  (f) in the territorial sea of Australia; or
  (g) in the exclusive economic zone of Australia.

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Division 3—Mandatory routeing

218 Mandatory ship routeing systems

(1) The master of a vessel contravenes this subsection if:
  (a) a mandatory ship routeing system applies to the vessel; and
  (b) the master does not navigate in accordance with the system.

(2) Subsection (1) does not apply if the master did not navigate in accordance with the mandatory ship routeing system because of stress of weather, saving life at sea or other unavoidable cause.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

219 Geographical application

(1) Section 9 does not apply to:
  (a) an offence against subsection 218(3); or
  (b) a contravention of subsection 218(1), so far as it is a civil penalty provision.

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(2) The master of a foreign vessel or a recreational vessel that does not have Australian nationality:

(a) does not commit an offence against subsection 218(3) that relates to the vessel; and

(b) is not liable for a civil penalty for a contravention of subsection 218(1) that relates to the vessel;

unless, at the time of the act or omission constituting the alleged offence or contravention, the vessel concerned is:

(c) in an Australian port; or

(d) entering or leaving an Australian port; or

(e) in the internal waters of Australia; or

(f) in the territorial sea of Australia; or

(g) in the exclusive economic zone of Australia.

220 Navigation not in accordance with mandatory ship routeing system to be entered in log

(1) The master of a vessel contravenes this subsection if:

(a) a mandatory ship routeing system applies to the vessel; and

(b) the master does not navigate in accordance with the system; and

(c) if the master of the vessel is required to keep a logbook for the vessel—the master does not enter details of that navigation in the vessel's logbook.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 100 penalty units.

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Division 4—Reporting of movement of vessels

221 Regulations relating to reporting requirements

(1) The regulations may make provision for the reporting requirements:

(a) of foreign vessels that are in, or in the process of entering or leaving, the prescribed area in relation to a reporting matter; and

(b) of all regulated Australian vessels in any area.

(2) Without limiting subsection (1), the regulations may provide for:

(a) the form and content of sailing plans for foreign vessels proposing to leave an Australian port bound for another port, whether or not the other port is an Australian port; and

(b) the form and content of sailing plans for regulated Australian vessels proposing to leave a port bound for another port, whether or not the ports are Australian ports; and

(c) the form and content of reports on the movement of foreign vessels entering, traversing or leaving the prescribed area in relation to a reporting matter, including reports on position, course and speed and such other matters as the regulations prescribe; and

(d) the form and content of reports on the movement of regulated Australian vessels, including reports on position, course and speed and such other matters as the regulations prescribe; and

(e) the requirement to notify the cancellation of sailing plans and to give additional reports on movement if a vessel deviates, by more than an amount prescribed by the regulations, from a previously indicated course; and

(f) the time at which and manner in which sailing plans, reports on movements and cancellations of sailing plans are to be notified.

(3) In this section:

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prescribed area, in relation to any reporting matter or matters, means an area of sea around Australia that comprises so much of:

(a) the area for which Australia has responsibility for search and rescue; and

(b) any area of the sea beyond the outer limits of the area referred to in paragraph (a) that is an area in respect of which Australia is required or permitted, under an international instrument, to obtain reports relating to the movement, or intended movement, of vessels;

as is prescribed by the regulations for the purposes of this Division in relation to that matter or those matters.

reporting matter means any matter relating to the movement, or intended movement, of vessels, including any such matter that is referred to under an international instrument that confers rights or imposes duties on Australia as a contracting party.

222 Geographical application

(1) Section 9 does not apply to:

(a) an offence against a regulation made under section 221; or

(b) a civil penalty provision in regulations made for the purposes of section 221.

(2) The master or owner of a foreign vessel or a recreational vessel that does not have Australian nationality:

(a) does not commit an offence against a regulation made for the purposes of section 221 that relates to the vessel; and

(b) is not liable for a civil penalty for a contravention of such a regulation that relates to the vessel;

unless at the time of the act or omission constituting the alleged offence or contravention, the vessel concerned is:

(c) in an Australian port; or

(d) entering or leaving an Australian port; or

(e) in the internal waters of Australia; or

(f) in the territorial sea of Australia; or

(g) in the exclusive economic zone of Australia.

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Division 5—The Australian Hydrographic Service and offences and civil penalties relating to taking a vessel to sea without charts, etc.

223 Functions of the Australian Hydrographic Service

(1) The Australian Hydrographic Service is that part of the Australian Navy known as the Australian Hydrographic Service.

(2) The functions of the Australian Hydrographic Service are:
  (a) to be responsible for the provision of hydrographic services required by the Safety Convention; and
  (b) to collect, compile and collate hydrographic data; and
  (c) to maintain and disseminate hydrographic and other nautical information and nautical publications; and
  (d) to maintain and disseminate nautical charts, including authorising charts for use in Australian waters.

224 Taking a vessel to sea without nautical charts and publications—owner

(1) The owner of a regulated Australian vessel or a foreign vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:
  (a) the vessel is not supplied with:
    (i) nautical charts (including charts in electronic form), of a suitable scale and properly corrected at the time of sailing; and
    (ii) nautical publications;
  necessary for use on the particular voyage; or
  (b) the vessel is supplied with the charts and publications referred to in paragraph (a), but free access to them is not made available to seafarers involved in the navigation of the vessel.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

225 Taking a vessel to sea without nautical charts and publications—master

(1) The master of a regulated Australian vessel or a foreign vessel must not take the vessel to sea, or cause or permit another person to take the vessel to sea, if:

(a) the vessel is not supplied with:

(i) nautical charts (including charts in electronic form), of a suitable scale and properly corrected at the time of sailing; and

(ii) nautical publications;

necessary for use on the particular voyage; or

(b) the vessel is supplied with the charts and publications referred to in paragraph (a), but free access to them is not made available to seafarers involved in the navigation of the vessel.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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Chapter 7—Wrecks and salvage

Part 1—Preliminary

226 Simplified outline of this Chapter

(1) This Chapter deals with wrecks and salvage.

(2) Part 2 provides for the establishment of a regime for notifying wrecks and dealing with wrecks.

(3) Part 3 provides for the following:
  (a) giving effect to the Salvage Convention;
  (b) determining the scope of salvage operations that are subject to this Act;
  (c) salvage claims by, or against, the Crown.

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Part 2—Wrecks

Division 1—Wrecks to which this Part applies

227 Wrecks to which this Part applies

This Part applies to any wreck of or from:

(a) regulated Australian vessels; and

(b) foreign vessels.

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Division 2—Rights and powers in relation to wrecks

228 Right of Commonwealth to unclaimed wreck

The Commonwealth is entitled to all unclaimed wreck found in Australia.

229 Dealing with wrecks

(1) AMSA has the following powers in relation to any wreck:

(a) to require, by written notice, the legal owner of the wreck, within the period specified in the notice:

(i) to remove the wreck, or a specified part of the wreck; or

(ii) to give security to the satisfaction of AMSA for such removal;

(b) to require, by written notice, the legal owner of the wreck, within the period specified in the notice:

(i) to mark the wreck, or a specified part of the wreck; or

(ii) to give security to the satisfaction of AMSA for such marking;

(c) to mark or remove the wreck, or a part of the wreck, in any manner it sees fit, if:

(i) AMSA considers it necessary for the purposes of saving human life, securing the safe navigation of vessels or protecting the marine environment; or

(ii) there is no legal owner of the wreck, or AMSA cannot, despite making reasonable efforts, locate or contact the legal owner; or

(iii) the legal owner does not comply with a notice given to him or her under paragraph (a) or (b) within the period specified in the notice;

(d) to destroy or sink the wreck, or a part of the wreck, in any manner it sees fit, if AMSA considers it necessary for the purposes of saving human life, securing the safe navigation of vessels or protecting the marine environment;

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(e) to recover from the legal owner of the wreck any expenses incurred by AMSA in connection with locating, marking, removing, destroying or sinking the wreck.

(2) AMSA may exercise the powers in paragraphs (1)(a) and (b) in respect of the following:

(a) a wreck of, or wreck from, a regulated Australian vessel wherever it is situated;

(b) a wreck of, or wreck from, a foreign vessel situated in the territorial sea of Australia.

(3) AMSA may exercise the powers referred to in paragraphs (1)(c) and (d) in respect of the following:

(a) a wreck of, or wreck from, a regulated Australian vessel situated:

(i) in the exclusive economic zone of Australia; or

(ii) in the territorial sea of Australia;

(b) a wreck of, or wreck from, a foreign vessel situated in the territorial sea of Australia.

(4) A notice under subsection (1) is not a legislative instrument.

230 Person must comply with notice

(1) A legal owner of any wreck contravenes this subsection if:

(a) the owner is required under subsection 229(1) to remove or mark the wreck, or a specified part of the wreck; and

(b) the owner fails to comply with the requirement.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

231 Powers to pass over land and require assistance etc.

(1) AMSA may gain access to any wreck, including by crossing land without the consent of the occupier of the land, for the purpose of rendering assistance or saving life.

(2) AMSA may deposit any wreck on land without the consent of the occupier of the land.

(3) A person must not impede AMSA in exercising its powers under subsection (1) or (2).

Fault-based offence

(4) A person commits an offence if the person contravenes subsection (3).

Penalty: 5 years imprisonment or 300 penalty units, or both.

Civil penalty

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 3,000 penalty units.

232 Notification about wrecks

(1) The master or owner of any vessel that is wrecked, stranded, sunk or abandoned or has foundered must notify AMSA within the period prescribed by the regulations of the following matters:

(a) the name and principal place of business of the owner of the vessel;

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(b) the location of the vessel;
(c) the type, size and construction of the vessel;
(d) the nature and quantity of cargo and any hazardous or noxious substances on board the vessel;
(e) the amount and type of oil, including bunker and lubricating oil, on board the vessel.

(2) Subsection (1) does not apply to a foreign vessel if it is not situated in the territorial sea of Australia.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

233 Finding or taking possession of wreck

(1) A person who finds or takes possession of any wreck in, or brings any wreck into, the territorial sea of Australia must give notice to AMSA within the period prescribed by the regulations:
(a) that the person has found or taken possession of the wreck or brought the wreck into the territorial sea of Australia; and
(b) of the location of the wreck and the marks by which it may be recognised.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 180 penalty units.

234 AMSA must give notice of wreck

(1) This section applies if AMSA is given a notice under section 232 or 233 in relation to a vessel or any wreck, or otherwise becomes aware of any wreck.

(2) AMSA must, as soon as reasonably practicable after being given the notice, or becoming aware of the wreck, publish a notice on its website or in a nautical publication prescribed by the regulations that sets out the details prescribed by the regulations relating to the vessel or wreck.

235 Defacing or obliterating marks on a wreck

(1) A person must not do an act, or omit to do an act, if the act or omission results, or is likely to result, in the defacement or obliteration of a mark on:

(a) a wreck of, or wreck from, a regulated Australian vessel situated:

(i) in the exclusive economic zone of Australia; or

(ii) in the territorial sea of Australia; or

(b) a wreck of, or wreck from, a foreign vessel situated in the territorial sea of Australia.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 900 penalty units.

236 Removing a wreck without consent

(1) A person must not remove any wreck if the person does not have the consent of the legal owner of the wreck or of AMSA.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,200 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,600 penalty units.

237 Powers of officers of Customs

This Part does not derogate from or interfere with the powers of an officer of Customs conferred by any Act.

238 Limits on powers to deal with wrecks

(1) This section applies to the following:

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(a) a historic wreck;
(b) a wreck:
(i) that is a historic shipwreck or historic relic within the meaning of a law of a State or of the Northern Territory that relates to shipwrecks or relics of historic significance; and
(ii) in relation to which the provisions of that law apply.

(2) AMSA must not exercise any of the powers referred to in section 229 in relation to the wreck unless, in AMSA's opinion, it is necessary to do so for the purpose of:
(a) saving human life; or
(b) securing the safe navigation of vessels; or
(c) dealing with an emergency involving a serious threat to the environment.

239 Certain provisions not applicable to historic wrecks

Sections 233 and 236 do not apply to:
(a) a historic wreck; or
(b) a wreck:
(i) that is a historic shipwreck or historic relic within the meaning of a law of a State or of the Northern Territory that relates to shipwrecks or relics of historic significance; and
(ii) in relation to which the provisions of that law apply.

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Part 3—Salvage

Division 1—Vessels to which this Part applies

240 Vessels to which this Part applies

(1) Subject to subsections (2) and (3), this Part applies:
  (a) to all vessels; and
  (b) whenever judicial or arbitral proceedings relating to the provision of salvage operations are brought in Australia.

(2) This Part does not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of mineral resources of the seabed or its subsoil.

(3) This Part does not apply to any salvage operation:
  (a) that takes place in inland waters and that involves vessels all of which are of inland navigation; or
  (b) that takes place in inland waters and does not involve a vessel; or
  (c) to the extent that it involves property:
    (i) that is maritime cultural property of prehistoric, archaeological or historic interest; and
    (ii) that is situated on the seabed.

(4) This Part does not derogate from or interfere with the powers of an officer of Customs conferred by any Act.

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Division 2—Regulations relating to salvage

241 Regulations relating to salvage

(1) The regulations may make provision in relation to:
  (a) giving effect to the Salvage Convention; and
  (b) salvage operations, and claims relating to salvage operations, conducted by or on behalf of the Commonwealth, a State, a Territory or the government of a country prescribed by the regulations.

(2) Without limiting subsection (1), the regulations may make provision in relation to:
  (a) the action to be taken with respect to vessels and other property saved as a result of salvage operations conducted by or on behalf of the Commonwealth or a State or Territory; and
  (b) the execution of bonds for the payment of salvage operations so conducted; and
  (c) the taking of security for the performance of bonds executed under regulations made for the purposes of paragraph (b); and
  (d) the adjudication on, and the enforcement of, bonds executed under regulations made for the purposes of paragraph (b) or under a law that is a law of a country prescribed by the regulations and corresponds with regulations made for the purposes of paragraph (b); and
  (e) the conditions subject to which claims relating to salvage operations may be made by the seafarers of a Government vessel or a vessel belonging to a foreign country prescribed by the regulations.

(3) A charge that arises under subsection (2) in relation to a vessel has priority over any PPSA security interest within the meaning of the *Personal Property Securities Act 2009* in the vessel.

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(4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge that arises under subsection (2).

Note: The effect of this subsection is that the priority between a charge that arises under subsection (2) and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

(5) Section 10 does not limit this section.

242 Salvage claims against the Crown, etc.

(1) Subject to subsection (2), regulations made for the purposes of this Part apply in relation to salvage operations conducted:

(a) to save life from, or to assist, a Government vessel—as if the vessel were not a Government vessel; or

(b) to save any wreck, cargo or equipment that belongs to the Commonwealth or a State or Territory—as if the wreck, cargo or equipment belonged to a person other than the Commonwealth, a State or a Territory.

(2) A claim does not lie against the Commonwealth or the Australian Postal Corporation because of this section in respect of anything done or suffered in relation to an article in the course of post, or the contents of an article in the course of post, while the article is or was being carried by sea.

(3) Section 10 does not limit this section.

243 Salvage claims by the Crown, etc.

If salvage operations are conducted by or on behalf of the Commonwealth, a State, a Territory or the government of a country prescribed by the regulations, the Commonwealth, the State, the Territory or that government is entitled to claim payment in respect of those operations to the same extent, and has the same rights and remedies, as any other salvor.

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Chapter 8—Enforcement

Part 1—Preliminary

244 Simplified outline of this Chapter

(1) This Chapter provides for compliance with, and enforcement of, this Act.

(2) Part 2 confers wide-ranging powers on AMSA to give directions in relation to vessels.

(3) Part 3 deals with the detention of vessels and provides an offence for operating a detained vessel. The Part also empowers an officer of Customs to refuse clearance to vessels.

(4) Part 4 provides for the appointment of inspectors and sets out their powers and functions including the following:
  (a) powers to board vessels;
  (b) powers of inspection, search and seizure;
  (c) powers to issue prohibition and improvement notices.

(5) Part 5 contains provisions that support the civil penalty provisions.

(6) Part 6 relates to infringement notices and voluntary enforceable undertakings.

245 Vessels to which Chapter applies

This Chapter applies to all vessels.

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Part 2—Directions powers

246 Directions in relation to vessels

(1) AMSA may, by notice in writing given to the master or the owner of a vessel, give any of the following directions:

(a) that the vessel not enter or use any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia;

(b) that the vessel comply with specified requirements while it:

(a) is approaching, entering, or using any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia; or

(b) is in or is leaving any port, or a specified port or specified ports, in Australia or the exclusive economic zone of Australia.

(2) AMSA may give a direction under subsection (1) in relation to a foreign vessel only if the vessel is:

(a) in an Australian port; or

(b) entering or leaving an Australian port; or

(c) in the internal waters of Australia; or

(d) in the territorial sea of Australia, other than in the course of innocent passage.

(3) A direction under subsection (1) is not a legislative instrument.

247 Persons must comply with directions

(1) A person who is given a direction under section 246 must comply with the direction or ensure that the direction is complied with.

(2) Subsection (1) does not apply if non-compliance with the direction is necessary to save a person's life at sea or is due to an emergency involving a threat to a person's life.

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Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

(5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

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Part 3—Detention powers

248 Power for AMSA to detain

(1) AMSA may detain a vessel and may also bring it, or cause it to be brought, to a port, or to another place that AMSA considers appropriate, if:

(a) AMSA reasonably suspects that the vessel is unseaworthy or substandard; or

(b) AMSA reasonably suspects that the vessel has been, is or will be involved in a contravention, either in or outside Australia, of this Act; or

(c) AMSA reasonably suspects that a seafarer of the vessel or a person on board the vessel has been, is or will be involved in a contravention, either in or outside Australia, of this Act; or

(d) both of the following apply:

(i) AMSA reasonably suspects that the master of the vessel, or a seafarer of the vessel, would contravene this Act if he or she operated the vessel without a particular certificate or certificates, or other documentary evidence;

(ii) the master of the vessel, or the seafarer, does not produce the certificate or certificates or the other documentary evidence to AMSA when requested to do so; or

(e) a provision of this Act provides for AMSA to detain the vessel.

(2) If AMSA detains a vessel under subsection (1), AMSA must give written notice, within 14 days, to:

(a) the master of the vessel; or

(b) the person who had possession or control of the vessel immediately before it was detained.

(3) The notice must:

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(a) identify the vessel; and
(b) state that the vessel has been detained; and
(c) specify the reason for the detention; and
(d) specify contact details of an inspector who can provide further information; and
(e) specify any conditions to which the detention of the vessel is subject.

(4) The regulations may make provision in relation to the release of detained vessels.

(5) AMSA may detain a foreign vessel only if the vessel is:
(a) in an Australian port; or
(b) entering or leaving an Australian port; or
(c) in the internal waters of Australia; or
(d) in the territorial sea of Australia, other than in the course of innocent passage.

249 Operating a detained vessel

(1) A person must not operate a vessel if:
(a) the vessel has been detained under subsection 248(1) (detention by AMSA) or 252(3) (detention by an officer of Customs); and
(b) the vessel has not been released from detention; and
(c) an inspector has not consented to the operation of the vessel by the person.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

250 Releasing a vessel from detention

(1) AMSA or an officer of Customs may release a detained vessel if AMSA or the officer of Customs is satisfied that its further detention is no longer necessary.

(2) AMSA or an officer of Customs may release a detained vessel subject to conditions if AMSA or the officer of Customs considers that it is appropriate to do so.

251 Costs of detention

(1) AMSA is liable to pay to the owner of a vessel a reasonable amount of compensation:

(a) for the costs of, or incidental to, the detention of the vessel; and

(b) for any loss or damage incurred by the owner as a result of the detention of the vessel;

if the detention of the vessel was not reasonable in the circumstances.

(2) If:

(a) a vessel is detained under this Part; and

(b) AMSA incurs costs in connection with, or incidental to, the detention of the vessel; and

(c) the detention was reasonable in the circumstances;

the owner of the vessel is liable to pay to AMSA compensation of a reasonable amount in respect of the detention of the vessel.

(3) If AMSA and the owner of the vessel do not agree on the amount of compensation payable under subsection (1) or (2), AMSA or the owner may institute proceedings in an eligible court for the

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recovery from the owner or AMSA of such reasonable amount of compensation as the eligible court determines.

252 Power for officer of Customs to detain or refuse clearance

(1) This section applies if:

(a) an application is made for a clearance of a vessel under the *Customs Act 1901* for a voyage from an Australian port; and

(b) the master of the vessel would contravene a provision of this Act if he or she operated the vessel or took the vessel to sea on that voyage from that port without a particular certificate or certificates, or other documentary evidence.

Master must produce certificates

(2) The master of the vessel must, if required by an officer of Customs, produce to the officer of Customs:

(a) the certificate or certificates, or the other documentary evidence; and

(b) any exemption in force in respect of the vessel.

Officer of Customs may detain if certificates not produced

(3) If an officer of Customs has required the master of a vessel to produce a certificate or certificates, other documentary evidence or an exemption under subsection (2), the vessel may be detained by an officer of Customs until the certificate or certificates, other documentary evidence or exemption is produced.

(4) If an officer of Customs detains a vessel under subsection (3), an officer of Customs must give written notice, within 14 days, to:

(a) the master of the vessel; or

(b) the person who had possession or control of the vessel immediately before it was detained.

(5) The notice must:

(a) identify the vessel; and

(b) state that the vessel has been detained; and

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(c) specify the reason for the detention; and
(d) specify contact details of an officer of Customs who can provide further information; and
(e) specify any conditions to which the detention of the vessel is subject.

(6) An officer of Customs may detain a foreign vessel under this section only if the vessel is:
(a) in an Australian port; or
(b) entering or leaving an Australian port; or
(c) in the internal waters of Australia; or
(d) in the territorial sea of Australia, other than in the course of innocent passage.

253 Refusal of clearance

An officer of Customs may refuse to grant clearance under the *Customs Act 1901* to a vessel if:
(a) the vessel is, or may be detained under section 248 or 252; or
(b) the requirements of this Act in relation to the vessel or its seafarers or equipment have not been complied with.

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Part 4—Inspectors

Division 1—Appointment of inspectors etc.

254 Appointment of inspectors

(1) AMSA may, in writing, appoint any of the following as an inspector:
  (a) an officer or employee of an agency of the Commonwealth;
  (b) an officer or employee of an agency of a State or Territory.

(2) An inspector may exercise all of the powers of an inspector under this Act, or such of those powers as are specified in the inspector's instrument of appointment.

(3) AMSA must not appoint a person as an inspector unless AMSA is satisfied that the person has suitable qualifications or experience to properly exercise the powers of an inspector.

(4) AMSA must not appoint an officer or employee of an agency of a State or Territory as an inspector without the agreement of the State or Territory.

(5) In exercising his or her powers or performing his or her functions as an inspector, an inspector must comply with any direction of AMSA.

255 Identity cards

(1) AMSA must issue an identity card to an inspector.

(2) The identity card must:
  (a) be in the approved form; and
  (b) contain a recent photograph of the inspector; and
  (c) state the powers that the inspector may exercise.

(3) A person contravenes this subsection if:

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(a) the person has been issued with an identity card; and
(b) the person ceases to be an inspector; and
(c) the person does not, as soon as practicable after so ceasing, return the identity card to AMSA.

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

Strict liability offence

(5) A person commits an offence of strict liability if the person contravenes subsection (3).

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Penalty: 1 penalty unit.

Identity card to be carried

(6) An inspector must carry his or her identity card at all times when exercising powers and performing functions and duties as an inspector.

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Division 2—Search and seizure powers of inspectors

256 Inspector may enter premises by consent or under a warrant

(1) For the purposes of finding out whether this Act is being, or has been, complied with or assessing the correctness of information provided under this Act, an inspector may:
  (a) enter any premises; and
  (b) exercise the monitoring powers set out in section 259.

(2) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
  (a) enter the premises; and
  (b) exercise the enforcement powers set out in section 260.

(3) However, an inspector is not authorised to enter premises under this section unless:
  (a) the occupier of the premises has consented to the entry, and the inspector has shown his or her identity card if required by the occupier; or
  (b) the entry is made under a warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 271.

257 Inspector may board a vessel without consent or warrant

(1) For the purposes of finding out whether this Act is being, or has been, complied with or assessing the correctness of information provided under this Act, an inspector may:
  (a) board a vessel (including a wreck); and
  (b) exercise the monitoring powers set out in section 259.

(2) If the master of the vessel requests the inspector to produce identification, the inspector must produce his or her identity card.

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(3) If the inspector fails to produce the identity card, the inspector must:
  (a) leave the vessel; and
  (b) not re-board the vessel without producing the identity card.

(4) An inspector must not board a foreign vessel under this section unless the vessel is:
  (a) in an Australian port; or
  (b) entering or leaving an Australian port; or
  (c) in the internal waters of Australia; or
  (d) in the territorial sea of Australia, other than in the course of innocent passage.

258 Requirement to facilitate boarding of vessels

(1) An inspector may require a person to take reasonable steps to facilitate the boarding of the vessel under paragraph 256(1)(a) or (2)(a) or paragraph 257(1)(a).

(2) A requirement under subsection (1) may be made by any reasonable means.

(3) The requirement is made whether or not the person in charge of the vessel understands or is aware of the requirement.

(4) A person contravenes this subsection if:
  (a) a requirement is made of the person under subsection (1); and
  (b) the person fails to comply with the requirement.

Strict liability offence

(5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

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

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259 Monitoring powers of inspectors

(1) An inspector who enters premises under subsection 256(1) or 257(1) may exercise the following ***monitoring powers***:

(a) the power to search the premises and any thing on the premises;

(b) the power to examine or observe any activity conducted on the premises;

(c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;

(d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

(e) the power to inspect any document on the premises;

(f) the power to take extracts from, or make copies of, any such document;

(g) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(h) the power to request that a person on the premises demonstrate the operation of machinery or equipment on the premises;

(i) the powers set out in subsections (2), (3), (4) and (6).

(2) If the premises are a vessel, the ***monitoring powers*** include the power to require the master of the vessel to do one or more of the following:

(a) stop or manoeuvre the vessel;

(b) adopt a specified course or speed;

(c) maintain a specified course or speed.

(3) The ***monitoring powers*** include the power to operate or to require a person to operate electronic equipment on the premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is on the premises; and

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(ii) can be used with the equipment or is associated with it;

contains information (***data***) that is relevant to determining:

(c) whether this Act is being, or has been, complied with; or

(d) the correctness of information provided under this Act.

(4) The ***monitoring powers*** include the following powers in relation to data found in the exercise of the power under subsection (3):

(a) the power to operate or to require a person to operate electronic equipment on the premises to put the data in documentary form and remove the documents so produced from the premises;

(b) the power to operate or to require a person to operate electronic equipment on the premises to transfer the data to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises, and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and to remove the disk, tape or other storage device from the premises.

(5) An inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(6) If entry to the premises is under a monitoring warrant, the ***monitoring powers*** include the power to secure a thing for a period not exceeding 24 hours if:

(a) the thing is found during the exercise of monitoring powers on the premises; and

(b) an inspector believes on reasonable grounds that:

(i) the thing affords evidence of the commission of an offence against this Act; and

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(ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and

(iii) it is necessary to secure the thing without an enforcement warrant because the circumstances are serious and urgent.

(7) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.

(8) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

(9) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.

(10) The 24-hour period may be extended more than once.

260 Enforcement powers of inspectors

(1) The following are the ***enforcement powers*** that an inspector may exercise in relation to premises under subsection 256(2):

(a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;

(b) if entry to the premises is under an enforcement warrant:

(i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and

(ii) the power to seize evidential material of that kind if the inspector finds it on the premises;

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(c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);

(d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);

(e) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(f) the powers set out in subsections (2), (3), (4) and (7).

(2) If the premises are a vessel, the ***enforcement powers*** include the power to require the master of the vessel to do one or more of the following:

(a) stop or manoeuvre the vessel;

(b) adopt a specified course or speed;

(c) maintain a specified course or speed.

(3) The ***enforcement powers*** include the power to operate electronic equipment on the premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is on the premises; and

(ii) can be used with the equipment or is associated with it;

contains evidential material referred to in paragraph (1)(a) or (b).

(4) The ***enforcement powers*** include the following powers in relation to evidential material described in subsection (3) found in the exercise of the power under that subsection:

(a) if entry to the premises is under an enforcement warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;

(b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;

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(c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises and the use of which for that purpose has been agreed, in writing, by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

(5) An inspector may operate electronic equipment as mentioned in subsection (3) or (4) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(6) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (4)(a) only if:

(a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (4)(b) or to transfer the evidential material as mentioned in paragraph (4)(c); or

(b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth, a State or a Territory.

(7) If:

(a) entry to the premises is under an enforcement warrant; and

(b) the inspector, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the inspector believes on reasonable grounds to be other evidential material; and

(c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

then the ***enforcement powers*** include seizing the thing.

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261 Persons assisting inspectors

(1) An inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

(2) A person assisting the inspector:
  (a) may enter the premises; and
  (b) may exercise powers and perform functions and duties under this Part; and
  (c) must do so in accordance with a direction given by the inspector to the person assisting.

(3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.

(4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.

262 Use of force in executing a warrant

In executing a warrant, an inspector or a person assisting may use such force against things as is necessary and reasonable in the circumstances.

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Division 3—Other powers of inspectors

263 Power to require persons to answer questions and produce documents

(1) An inspector who is on or in premises that he or she has entered under a warrant may require anyone on the premises to:
  (a) answer any questions put by the inspector; and
  (b) produce any books, records or documents requested by the inspector.

(2) A person contravenes this subsection if:
  (a) a requirement is made of the person under subsection (1); and
  (b) the person fails to comply with the requirement.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Fault-based offence

(4) A person commits an offence if the person contravenes subsection (2).

Penalty: 30 penalty units.

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

264 Inspector may give directions

(1) If an inspector believes, on reasonable grounds, that:
  (a) a person is not complying with this Act in respect of a thing; and
  (b) one of the following applies:
    (i) it is necessary to exercise powers under this section in order to protect the health and safety of people or to protect the environment;

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(ii) it is desirable in the public interest, having regard to the matters specified in subsection (2), for the inspector to exercise powers under this section;

the inspector may give directions to the person, by written notice, requiring the person, within the period specified in the notice, to take such steps in relation to the thing as are reasonable in the circumstances for the person to comply with this Act.

(2) For the purposes of deciding under subparagraph (1)(b)(ii) whether it is desirable to exercise powers under this section to give directions to a person, the inspector must have regard to the following:

(a) whether measures have been, or are being, taken to address the non-compliance with this Act that the inspector believes is occurring (the ***suspected non-compliance***);

(b) the likelihood of the person not complying with this Act at a future time;

(c) the severity of the suspected non-compliance;

(d) whether, on one or more occasions, the person:

(i) has been charged with or convicted of an offence against this Act; or

(ii) has been given a direction under this section;

(e) other means available to the inspector to address the suspected non-compliance;

(f) whether, in the inspector's opinion, the suspected non-compliance is deliberate;

(g) the desirability of deterring future non-compliance with this Act.

(3) A person contravenes this subsection if the person does not take the steps specified in a notice under subsection (1) within the period specified in the notice.

Fault-based offence

(4) A person commits an offence if the person contravenes subsection (3).

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Penalty: 60 penalty units.

Inspector may arrange for steps to be taken

(5) If the person does not take the steps specified in the notice within the period specified in the notice, the inspector may arrange for those steps to be taken.

Costs

(6) If AMSA incurs costs because of arrangements made by the inspector under subsection (5), the person is liable to pay to AMSA an amount equal to the costs, and the amount may be recovered by AMSA as a debt due to AMSA in an eligible court.

Reasonable period

(7) A period specified in a notice under subsection (1) must be reasonable having regard to the circumstances.

265 Inspector may give improvement notices

(1) If an inspector believes on reasonable grounds that a person:
  (a) is contravening a provision of this Act; or
  (b) has contravened a provision of this Act and is likely to contravene that provision again;

the inspector may give a notice (an ***improvement notice***), in writing, to the person.

(2) The improvement notice must:
  (a) specify the contravention of this Act that the inspector believes is occurring or is likely to occur; and
  (b) set out the reasons for that belief; and
  (c) specify a period within which the person is to take the action necessary to prevent any further contravention, or to prevent the likely contravention, as the case may be.

(3) The period specified in the improvement notice must be reasonable.

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(4) The improvement notice may specify action that the person is to take during the period specified in the notice.

(5) Before the end of the specified period, the inspector may extend that period in writing.

266 Person must comply with improvement notice

(1) A person who is given an improvement notice must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

267 Inspector may give prohibition notices

(1) This section applies if an inspector believes, on reasonable grounds, that:

(a) an activity is occurring in relation to a vessel that involves or will involve a serious risk to the health or safety of a person; or

(b) an activity may occur in relation to a vessel that, if it occurs, will involve a serious risk to the health or safety of a person.

(2) The inspector may give a prohibition notice to the responsible person in relation to the vessel. For this purpose, the ***responsible person*** is:

(a) the master of the vessel; or

(b) if the inspector cannot locate the master—the person who has immediate control over the vessel.

(3) The prohibition notice must:

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(a) specify the activity in respect of which the inspector believes the risk to health or safety has arisen, and set out the reasons for that belief; and

(b) either:

(i) direct the responsible person to ensure that the activity is not engaged in; or

(ii) direct the responsible person to ensure that the activity is not engaged in in a specified manner.

(4) A specified manner may relate to any one or more of the following:

(a) any vessel, or part of a vessel, in relation to which the activity is not to be engaged in;

(b) any thing that is not to be used in connection with the activity;

(c) any procedure that is not to be followed in connection with the activity.

(5) If an inspector is satisfied that action taken by the responsible person to remove the threat to health or safety is not adequate, the inspector must inform the person accordingly.

(6) In making a decision under subsection (5), an inspector may exercise any of the monitoring powers that the inspector considers necessary for the purposes of making the decision.

(7) The prohibition notice ceases to have effect when an inspector notifies the responsible person that the inspector is satisfied that the responsible person has taken adequate action to remove the risk to health or safety.

(8) The prohibition notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the risk to health or safety.

268 Person must comply with prohibition notice

(1) A person who is given a prohibition notice must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

269 Display and distribution of copies of notices

If a person (the ***recipient***) is given an improvement notice or a prohibition notice in relation to a vessel:

(a) the recipient must cause a copy of the notice to be displayed in a prominent place on or near the vessel; and

(b) the inspector issuing the notice must give a copy of the notice to the master of the vessel.

270 Notices not to be tampered with or removed

(1) A person must not:

(a) tamper with a notice while it is displayed under section 269; or

(b) remove a notice that has been displayed, before the notice has ceased to have effect.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 30 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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Division 4—Obligations and incidental powers of inspectors

271 Consent

(1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 256(3)(a), inform the occupier that the occupier may refuse consent.

(2) A consent has no effect unless the consent is voluntary.

(3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

272 Announcement before entry under warrant

(1) An inspector must, before entering premises under a warrant:
  (a) announce that he or she is authorised to enter the premises; and
  (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  (c) give any person at the premises an opportunity to allow entry to the premises.

(2) However, an inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  (a) to ensure the safety of a person; or

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(b) to ensure that the effective execution of the warrant is not frustrated.

(3) If:

(a) an inspector does not comply with subsection (1) because of subsection (2); and

(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

273 Inspector to be in possession of warrant

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

274 Details of warrant etc. to be given to occupier

If:

(a) a warrant is being executed in relation to premises; and

(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

an inspector executing the warrant must, as soon as practicable:

(c) make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it); and

(d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 5.

275 Completing execution of warrant after temporary cessation

(1) This section applies if an inspector, and all persons assisting, who are executing a warrant in relation to premises temporarily cease its execution and leave the premises.

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(2) The inspector, and persons assisting, may complete the execution of the warrant if:
  (a) the warrant is still in force; and
  (b) the inspector and persons assisting are absent from the premises:
    (i) for not more than 1 hour; or
    (ii) if there is an emergency—for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
    (iii) for a longer period if the occupier of the premises consents in writing.

(3) An inspector, or person assisting, may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
  (a) there is an emergency; and
  (b) the inspector or person assisting believes on reasonable grounds that the inspector and the persons assisting will not be able to return to the premises within that period.

(4) If it is practicable to do so, before making the application, the inspector or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

(5) A magistrate may extend the period during which the inspector and persons assisting may be away from the premises if:
  (a) an application is made under subsection (3); and
  (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  (c) the extension would not result in the period ending after the warrant ceases to be in force.

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276 Completing execution of warrant stopped by court order

An inspector, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

(a) the order is later revoked or reversed on appeal; and

(b) the warrant is still in force when the order is revoked or reversed.

277 Expert assistance to operate electronic equipment

(1) This section applies to premises to which a warrant relates.

(2) If an inspector believes on reasonable grounds that:

(a) there is on the premises information (***data***) relevant to determining:

(i) whether this Act is being, or has been, complied with; or

(ii) the correctness of information provided under this Act; or

(iii) whether there is evidential material on the premises; and

(b) the data may be accessible by operating electronic equipment on the premises; and

(c) expert assistance is required to operate the equipment; and

(d) if he or she does not take action under this subsection, the data may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.

(3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

(4) The equipment may be secured:

(a) until the 24-hour period ends; or

(b) until the equipment has been operated by the expert;

whichever happens first.

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(5) If an inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.

(6) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

(7) The provisions of this Part relating to the issue of warrants apply, with such modifications as are necessary, to the grant of an extension.

(8) The 24-hour period may be extended more than once.

278 Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in this Part:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) AMSA must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as AMSA and the owner or user agree on.

(3) However, if the owner or user and AMSA fail to agree, the owner or user may institute proceedings in an eligible court for such reasonable amount of compensation as the eligible court determines.

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(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) In this section:

damage, in relation to data, includes damage by erasure of data or addition of other data.

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Division 5—Occupier's rights and responsibilities

279 Occupier entitled to observe execution of warrant

(1) If:

(a) a warrant is being executed in relation to premises; and

(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the occupier or other person is entitled to observe the execution of the warrant.

(2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.

(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

280 Occupier to provide inspector with facilities and assistance

(1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:

(a) an inspector executing the warrant; and

(b) any person assisting the inspector;

with all reasonable facilities and assistance for the effective exercise of their powers.

(2) A person contravenes this subsection if:

(a) the person is subject to subsection (1); and

(b) the person fails to comply with that subsection.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: 30 penalty units.

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Division 6—General provisions relating to seizure

281 Copies of seized things to be provided

(1) This section applies if:

(a) an enforcement warrant is being executed in relation to premises; and

(b) an inspector seizes one or more of the following from the premises under this Part:

(i) a document, film, computer file or other thing that can be readily copied;

(ii) a storage device, the information in which can be readily copied.

(2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, may request the inspector to give a copy of the thing or the information to the occupier or other person.

(3) The inspector must comply with the request as soon as practicable after the seizure.

(4) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth, a State or a Territory.

282 Receipts for seized things

(1) If a thing is seized under this Part, an inspector must provide a receipt for the thing.

(2) If 2 or more things are seized, they may be covered in the one receipt.

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283 Return of seized things

(1) An inspector must take reasonable steps to return a thing seized under this Part when the earliest of the following happens:

(a) the reason for the thing's seizure no longer exists;

(b) it is decided that the thing is not to be used in evidence;

(c) the period of 60 days after the thing's seizure ends.

Note: See subsections (2) and (3) for exceptions to this rule.

Exceptions

(2) Subsection (1):

(a) is subject to any contrary order of a court; and

(b) does not apply if the thing:

(i) is forfeited or forfeitable to the Commonwealth; or

(ii) is the subject of a dispute as to ownership.

(3) The inspector is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) the thing may continue to be retained because of an order under section 284; or

(c) the Commonwealth, AMSA or an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

(4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

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284 Magistrate may permit a thing to be retained

(1) An inspector may:

(a) before the end of 60 days after a seizure of a thing under this Part; or

(b) before the end of a period previously specified in an order of a magistrate under this section;

apply to a magistrate for an order permitting the retention of the thing for a further period, unless proceedings in respect of which the thing may afford evidence have commenced.

(2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:

(a) for the purposes of an investigation in respect of an offence against this Act or a contravention of a civil penalty provision; or

(b) to enable evidence of such an offence or contravention to be secured for the purposes of a prosecution or proceedings for a civil penalty order;

the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).

(3) Before making the application, the inspector must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

285 Disposal of things

(1) AMSA may dispose of a thing seized under this Part if:

(a) an inspector has under section 283 taken reasonable steps to return the thing to a person; and

(b) either:

(i) the inspector has been unable to locate the person, despite making reasonable efforts; or

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(ii) the person has refused to take possession of the thing.

(2) AMSA may dispose of the thing in such manner as AMSA thinks appropriate.

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Division 7—Warrants

286 Monitoring warrants

(1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of determining:
  (a) whether this Act is being, or has been, complied with; or
  (b) the correctness of information provided under this Act.

(3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must:
  (a) describe the premises to which the warrant relates; and
  (b) state that the warrant is issued under this section; and
  (c) state the purpose for which the warrant is issued; and
  (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
    (i) to enter the premises; and
    (ii) to exercise the powers set out in Divisions 2, 3 and 4 in relation to the premises; and
  (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

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287 Enforcement warrants

(1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.

(3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must:
- (a) describe the premises to which the warrant relates; and
- (b) state that the warrant is issued under this section; and
- (c) specify the offence or contravention to which the warrant relates; and
- (d) specify the kind of evidential material that is to be searched for under the warrant; and
- (e) name one or more inspectors; and
- (f) authorise the inspector or inspectors so named:
  - (i) to enter the premises; and
  - (ii) to exercise the powers set out in Divisions 2, 3, 4 and 6 in relation to the premises; and
- (g) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
- (h) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

288 Enforcement warrants by telephone, fax etc.

(1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 287 in relation to premises:

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(a) in an urgent case; or

(b) if the inspector believes, on reasonable grounds, that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

(3) An application under this section must include all information of the kind mentioned in subsection 287(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

(4) If the magistrate is satisfied:

(a) after considering the terms of the information; and

(b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 287 if the application had been made under that section.

(5) If the magistrate completes and signs the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:

(a) the terms of the warrant; and

(b) the day on which, and the time at which, the warrant was signed.

(6) The inspector must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form:

(a) the name of the magistrate; and

(b) the day on which, and the time at which, the warrant was signed.

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(7) The inspector must also, not later than the day after the day on which the warrant ceased to be in force or the day of execution of the warrant, whichever is earlier, send to the magistrate:
  (a) the form of warrant completed by the inspector; and
  (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

(8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.

(9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.

(10) If:
  (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

289 Offence relating to warrants by telephone, fax etc.

(1) An inspector contravenes this subsection if:
  (a) the inspector states in a document that purports to be a form of warrant under section 288 the name of a magistrate, unless that magistrate signed the warrant; or
  (b) the inspector states on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
  (c) the inspector purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:
    (i) has not been approved by a magistrate under that section; or

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(ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or

(d) the inspector gives to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years.

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Division 8—Powers of magistrates

290 Powers of magistrates

(1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  (a) in a personal capacity; and
  (b) not as a court or a member of a court.

(2) The magistrate need not accept the power conferred.

(3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
  (a) as the court of which the magistrate is a member; or
  (b) as a member of the court of which the magistrate is a member.

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Part 5—Civil penalty supporting provisions

Division 1—Obtaining a civil penalty order

291 Civil penalty orders

Application for order

(1) AMSA may apply to an eligible court for an order that a person who is alleged to have contravened a civil penalty provision pay a pecuniary penalty.

(2) AMSA must make the application within 6 years of the alleged contravention.

Eligible court may order person to pay pecuniary penalty

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

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

(4) An order under subsection (3) is a ***civil penalty order***.

Determining pecuniary penalty

(5) The pecuniary penalty must not be more than:
(a) if the person is a body corporate—5 times the civil penalty specified for the contravention; and
(b) otherwise—the civil penalty specified for the contravention.

(6) In determining the pecuniary penalty, the eligible court may take into account all relevant matters, including:
(a) the nature and extent of the contravention; and

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(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 in proceedings under one or more of the following to have engaged in any similar conduct:
(i) this Act;
(ii) the Marine Safety (Domestic Commercial Vessel) National Law;
(iii) the *Crimes Act 1914* or the *Criminal Code* in relation to this Act.

292 Civil enforcement of penalty

(1) A pecuniary penalty is a debt payable to AMSA on behalf of the Commonwealth.

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

293 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 Part 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 this Part in relation to the same conduct.

294 Multiple contraventions

(1) An eligible 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,

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or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

(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.

295 Proceedings may be heard together

An eligible court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

296 Civil evidence and procedure rules for civil penalty orders

An eligible court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

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Division 2—Civil proceedings and criminal proceedings

297 Civil proceedings after criminal proceedings

An eligible court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

298 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are commenced or have already been commenced against the person for an offence; and

(b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

299 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

300 Evidence given in civil proceedings not admissible in criminal proceedings

(1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

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(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

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Division 3—Miscellaneous

301 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 303 (which provides that a person's state of mind does not need to be proved in relation to a civil penalty provision) does not apply to this subsection.

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

302 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:

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(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 a matter in subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

303 State of mind

(1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than because of subsection 301(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;

other than as expressly provided.

(2) An expression used in a civil penalty provision that expressly provides for a state of mind has the same meaning as in the *Criminal Code*.

(3) Subsection (1) does not affect the operation of section 302 (mistake of fact).

304 Civil penalty provisions contravened by employees, agents or officers

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

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within his or her actual or apparent authority, the element must also be attributed to the body corporate.

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Part 6—Infringement notices and voluntary enforceable undertakings

305 Regulations—infringement notices

(1) The regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty as an alternative to civil proceedings.

(2) The penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for contravention of that provision.

306 Acceptance of undertakings

(1) AMSA may accept any of the following undertakings:
   (a) a written undertaking given by a person that the person will, in order to comply with an offence provision or a civil penalty provision of this Act, take specified action;
   (b) a written undertaking given by a person that the person will, in order to comply with an offence provision or a civil penalty provision of this Act, refrain from taking specified action;
   (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene an offence provision or a civil penalty provision of this Act, or is unlikely to contravene such a provision, in the future.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the written consent of AMSA.

(4) An acceptance given by AMSA is not a legislative instrument.

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(5) AMSA may, by written notice given to the person, cancel the undertaking.

(6) AMSA may publish a copy of the undertaking on its website.

307 Enforcement of undertakings

(1) AMSA may apply to an eligible court for an order under subsection (2) if:

(a) a person has given an undertaking; and

(b) the undertaking has been accepted under section 306 and has not been withdrawn or cancelled; and

(c) AMSA considers that the person has breached the undertaking.

(2) If the eligible court is satisfied that the person has breached the undertaking, the eligible court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to AMSA an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the eligible court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the eligible court considers appropriate.

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Chapter 9—Other matters

Part 1—Preliminary

308 Simplified outline of this Chapter

(1) This Chapter is a collection of various matters that relate to the other provisions of the Act.

(2) Part 2 deals with the official logbook for a vessel.

(3) Part 3 provides for administrative review of decisions.

(4) Part 4 contains general provisions relating to certificates.

(5) Part 5 provides for miscellaneous matters, including the following:
- (a) offences relating to AMSA (Division 1);
- (b) provisions relating to various legal matters (Division 2);
- (c) alternative constitutional bases (Division 3);
- (d) exemptions (Division 4);
- (e) various other matters (Division 5).

(6) Part 6 relates to regulations and other legislative instruments.

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Part 2—The official logbook for a vessel

309 Keeping official logbook

(1) The master of a regulated Australian vessel must keep an official logbook for the vessel in accordance with the regulations.

(2) The regulations may make provision in relation to the keeping of logbooks, including but not limited to the following:
  (a) prescribing the entries that are to be made in a logbook and the circumstances in which those entries are to be made;
  (b) prescribing the period within which entries are to be made in the logbook;
  (c) requiring entries in the logbook to be signed.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 30 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

310 Offences relating to content of official logbook

(1) A person must not:
  (a) destroy or mutilate a vessel's official logbook or an entry in such a logbook; or
  (b) render such an entry illegible; or
  (c) make or sign an entry in a vessel's official logbook, knowing that the entry is false or fraudulent; or

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(d) omit to make an entry in a vessel's official logbook, knowing that the omission will result in the logbook being false or fraudulent.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

311 Retention of official logbook after removal from vessel

(1) The person who is the owner of a vessel when the vessel's official logbook is removed from the vessel must keep the logbook for a period of 5 years beginning when the logbook is removed.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

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312 Births, deaths etc.

(1) The master of a regulated Australian vessel contravenes this subsection if:

(a) either:

(i) a person carried on the vessel gives birth to a child, dies or disappears; or

(ii) a seafarer is injured or contracts an illness that incapacitates him or her from the performance of his or her duty; and

(b) the master fails to do both of the following:

(i) record the occurrence in the vessel's official logbook together with such particulars with respect to the occurrence as are prescribed by the regulations;

(ii) as soon as practicable, give a report in writing in the approved form of the occurrence to a person prescribed by the regulations.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 180 penalty units.

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Part 3—Administrative review

313 Review of decisions

(1) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of an issuing body:

(a) a decision under section 17 to refuse to make a declaration in relation to a vessel;

(b) a decision under section 19 to refuse to make a declaration in relation to a vessel;

(c) a decision under section 25 to refuse to make a declaration in relation to a vessel;

(d) a decision under section 31 to refuse to issue a seafarer certificate;

(e) a decision under section 31 to impose a condition on a seafarer certificate;

(f) a decision under section 32 to vary, or refuse to vary, a seafarer certificate;

(g) a decision under section 33 to revoke a seafarer certificate;

(h) a decision under section 44 to refuse to issue a maritime labour certificate;

(i) a decision under section 44 to impose a condition on a maritime labour certificate;

(j) a decision under section 45 to vary, or refuse to vary, a maritime labour certificate;

(k) a decision under section 46 to revoke a maritime labour certificate;

(l) a decision under section 51 to determine the seafarers to be carried by a vessel;

(m) a decision under section 100 to refuse to issue a safety certificate;

(n) a decision under section 100 to impose a condition on a safety certificate;

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(o) a decision under section 101 to vary, or refuse to vary, a safety certificate;
(p) a decision under section 102 to revoke a safety certificate;
(q) a decision under section 132 to refuse to issue a pollution certificate;
(r) a decision under section 132 to impose a condition on a pollution certificate;
(s) a decision under section 133 to vary, or to refuse to vary, a pollution certificate;
(t) a decision under section 134 to revoke a pollution certificate;
(u) a decision under section 147 to give a direction;
(v) a decision under section 155 to refuse to issue a tonnage certificate;
(w) a decision under section 155 to impose a condition on a tonnage certificate;
(x) a decision under section 156 to vary, or to refuse to vary, a tonnage certificate;
(y) a decision under section 157 to revoke a tonnage certificate;
(z) a decision under section 172 to refuse to grant an exemption;
(za) a decision under section 172 to impose a condition on an exemption;
(zb) a decision under section 191 to give a notice;
(zc) a decision under section 246 to give a direction;
(zd) a decision under section 248 to detain a vessel;
(ze) a decision under section 250 to release a detained vessel subject to a condition;
(zf) a decision under section 306 not to accept, or to cancel, an undertaking;
(zg) a decision under section 334 not to exempt a vessel or a class of vessel.

(2) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of an officer of Customs:
(a) a decision under section 250 to release a detained vessel;
(b) a decision under subsection 252(3)

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to detain a vessel.

(3) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under section 334 not to exempt a vessel.

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Part 4—General provisions relating to certificates

314 Regulations may provide for particular matters relating to certificates

(1) The regulations may prescribe the following matters in relation to applying for certificates:
  (a) the persons who may make applications;
  (b) forms for the making of applications;
  (c) the manner of making applications;
  (d) information required to be included in applications;
  (e) documents that must accompany applications.

(2) The regulations may require information included in applications to be verified by statutory declaration.

(3) The regulations may prescribe the following in relation to certificates:
  (a) criteria that must be satisfied in order for issuing bodies to issue, vary, or revoke certificates;
  (b) the time limits within which applications for certificates are to be determined;
  (c) the information to be included in certificates;
  (d) the person in whose name a certificate is to be issued;
  (e) conditions to which certificates are subject;
  (f) conditions that may be imposed upon certificates by issuing bodies;
  (g) the time certificates, variations of certificates and revocations of certificates come into force;
  (h) the time certificates cease to be in force;
  (i) the methods of replacing certificates.

(4) The criteria that may be prescribed for the purposes of paragraph (3)(a) and the conditions that may be prescribed for the

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purposes of paragraphs (3)(e) and (f) include criteria or conditions relating to compliance with specified standards.

(5) The regulations may make provision in relation to the following:
   (a) the renewal of certificates;
   (b) the suspension of certificates;
   (c) the transfer of certificates;
   (d) the surrender of certificates;
   (e) reports and declarations of issuing bodies, inspectors or other persons.

315 AMSA may require delivery of revoked certificates

(1) If a certificate issued in respect of a regulated Australian vessel is revoked, AMSA may:
   (a) require the certificate to be delivered to AMSA or to such other person as AMSA specifies; and
   (b) detain the vessel under subsection 247(1) until the requirement is complied with.

(2) A requirement in relation to a vessel is to be given by notice in writing addressed to the owner, agent or master of the vessel.

316 Issue, variation and revocation of certificates by issuing bodies other than AMSA

(1) An issuing body that issues, varies or revokes a certificate under this Act does so on behalf of AMSA.

(2) An issuing body other than AMSA must not vary or revoke a certificate under this Act unless the issuing body originally issued the certificate.

317 Certificates to be made available

(1) A person contravenes this subsection if:
   (a) the person is the owner or master of a vessel; and

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(b) a certificate under this Act is in force in relation to the vessel; and

(c) a copy of the certificate is not made available at all reasonable times for examination on request by any of the following:

(i) any person on board the vessel;

(ii) AMSA;

(iii) an inspector;

(iv) an officer of Customs.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

318 AMSA may request a foreign country to issue certificates

(1) AMSA may request the government of a foreign country to issue or to authorise the issue of, or to endorse or to authorise the endorsement of, in respect of a vessel registered in Australia, a certificate that:

(a) the government of that country may issue or authorise the issue of, or endorse or authorise the endorsement of, in respect of a vessel registered in that country; and

(b) corresponds, or substantially corresponds, with a certificate that AMSA may issue under this Act in respect of that vessel.

(2) A certificate issued or endorsed following such a request, and containing a statement that it has been so issued or endorsed, has

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effect, for the purposes of this Act, as if it were a certificate of the kind to which it corresponds issued or endorsed under this Act.

319 Foreign countries may request AMSA to issue certificates

(1) AMSA or another issuing body may, on request of the government of a foreign country:

(a) issue, or authorise the issue of, a certificate to a vessel registered in the foreign country; or

(b) endorse, or authorise the endorsement of, a certificate of a vessel registered in the foreign country;

if AMSA or the other issuing body could do so if the vessel were registered in under the *Shipping Registration Act 1981*.

(2) A certificate issued or endorsed under this section:

(a) must contain a statement to the effect that it has been issued or endorsed at the request of the government of the country in which the vessel is registered; and

(b) has effect, for the purposes of this Act, as if it had been issued or endorsed by the government that requested its issue or its endorsement.

320 AMSA may recognise certificates

(1) AMSA may, by written instrument, recognise a certificate, or a class of certificates, issued in relation to a vessel under the Marine Safety (Domestic Commercial Vessel) National Law, a law of a State or Territory or a law of a foreign country if AMSA is satisfied:

(a) that the certificate is the equivalent of, or that it is appropriate to recognise the certificate as the equivalent of, a certificate prescribed by the regulations; or

(b) that the class of certificates is the equivalent of, or that it is appropriate to recognise the class as the equivalent of, a class of certificates prescribed by the regulations.

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(2) At a time when a certificate in force in relation to a vessel is recognised under this section, the prescribed certificate is taken to be in force in relation to the vessel.

(3) AMSA may specify conditions to which the recognition of the certificate is subject.

(4) The recognition of a certificate ceases to have effect if a condition to which it is subject is contravened.

(5) An instrument made under subsection (1) is not a legislative instrument.

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Part 5—Miscellaneous matters

Division 1—Offences and civil penalties relating to obstruction etc.

321 Obstructing or hindering AMSA

(1) A person must not obstruct or hinder AMSA in the performance of a function or the exercise of a power under this Act.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 180 penalty units.

322 Damaging AMSA vessels or equipment

(1) A person must not damage a vessel or equipment owned or operated by AMSA.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

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Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 180 penalty units.

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Division 2—Provisions relating to various legal matters

323 Presumption of jurisdiction

If, in any legal proceeding under this Act, a question arises whether a provision of this Act applies to a vessel or a person, the provision is taken to apply to the vessel or the person unless the contrary is proved.

324 Immunity from suit

Criminal or civil proceedings do not lie against:

(a) AMSA; or

(b) a member of the staff of AMSA; or

(c) a delegate of AMSA; or

(d) an inspector;

because of an act done or omitted to be done in the exercise of any power conferred on AMSA or an inspector by or under this Act.

325 Abolition of defence of common employment

If injury or damage is suffered by a seafarer because of the wrongful act, neglect or default of another person engaged in common employment with the seafarer, the employer is liable in damages in respect of that injury or damage in the same manner and in the same cases as if they had not been engaged in common employment.

326 Civil liability in relation to a vessel under pilotage

(1) A pilot who has the conduct of a vessel is subject to the authority of the master of the vessel.

(2) The master of a vessel is not relieved of responsibility for the conduct and navigation of the vessel only because the vessel is under pilotage.

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(3) The liability of the master or owner of a vessel in relation to loss or damage caused by the vessel or by a fault in the navigation of the vessel is not affected only because pilotage is compulsory under a law of the Commonwealth, a State or a Territory.

(4) Neither the pilot of a vessel, nor any pilotage provider responsible for providing the pilot, is liable in civil proceedings for loss or damage caused to or by the vessel because of an act done, an instruction given, or information or advice provided in good faith and in the course of the pilot's duty.

327 Service of summons

Any summons or other document in any proceeding under this Act may (in addition to any other mode of service) be served on a seafarer by being left for the seafarer on board the seafarer's vessel, with the person being or appearing to be in command or charge of the vessel.

328 Service of certain documents if no master

(1) This section applies if:
(a) a statement or document (however described) is required or permitted to be given to the master of a vessel under this Act; and
(b) the vessel does not have a master; and
(c) the vessel is in Australia.

(2) The statement or document:
(a) may be given to the owner of the vessel in Australia; or
(b) if there is no owner in Australia—may be given to an agent of the owner who is in Australia.

329 Proceedings against the Crown

(1) Nothing in this Act:
(a) authorises proceedings in rem in respect of:

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(i) a claim against the Commonwealth or a State or Territory; or

(ii) the arrest, detention or sale of a Government vessel or of cargo or other property belonging to the Commonwealth or a State or Territory; or

(b) gives to any person a lien on a Government vessel or cargo or other property belonging to the Commonwealth or a State or Territory.

(2) Section 10 does not limit subsection (1) of this section.

330 Compensation for acquisition of property or causing damage etc.

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in an eligible court for the recovery from the Commonwealth of such reasonable amount of compensation as the eligible court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

331 Offences against certain provisions of Act and regulations

(1) Section 19B of the *Crimes Act 1914* does not apply to offences against the following provisions of this Act:

(a) section 34;

(b) section 35;

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(c) section 36;
(d) section 37;
(e) section 38;
(f) section 52;
(g) section 66;
(h) section 103;
(i) section 104;
(j) section 105;
(k) section 106;
(l) section 107;
(m) section 114;
(n) section 115;
(o) section 117;
(p) section 118;
(q) section 119;
(r) section 126;
(s) section 127;
(t) section 140;
(u) section 141;
(v) section 142;
(w) section 143;
(x) section 169;
(y) section 185;
(z) section 186;
(za) section 187;
(zb) section 335.

(2) The regulations may provide that section 19B of the *Crimes Act 1914* does not apply to specified offences against the regulations.

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332 Physical elements of offences

For the purposes of applying Chapter 2 of the *Criminal Code* to an offence against this Act, the physical elements of the offence are set out in the subsection contravention of which is an offence.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

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Division 3—Alternative constitutional bases

333 Alternative constitutional bases

(1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.

(2) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies.

(3) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce:

(a) between Australia and a place outside Australia; or

(b) among the States; or

(c) within a Territory, between a State and a Territory or between 2 Territories.

(4) This Act also has the effect it would have if the provisions of this Act were expressly confined to acts or omissions relating to lighthouses, lightships, beacons and buoys.

(5) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in a Territory.

(6) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place outside Australia.

(7) This Act also has the effect that it would have if its operation were expressly confined to matters:

(a) in relation to which the Commonwealth is under an obligation under an international agreement; or

(b) that are of international concern.

(8) This Act also has the effect that it would have if the provisions of this Act relating to vessels or the acts or omissions of persons in,

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around or on vessels were expressly confined to cases where the vessel is:

(a) engaged or used in trade or commerce:
  (i) between Australia and a place outside Australia; or
  (ii) among the States; or
  (iii) within a Territory, between a State and a Territory or between 2 Territories; or
(b) operated or controlled by a corporation to which paragraph 51(xx) of the Constitution applies.

(9) This Act also has the effect it would have if the provisions of this Act were expressly confined to acts or omissions relating to postal, telegraphic, telephonic or other like services.

Definitions

(10) A term used in this section and the Constitution has the same meaning in this section as it has in the Constitution.

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Division 4—Exemption

334 Power of exemption

(1) The Minister or AMSA may exempt from the application of this Act, or specified provisions of this Act:
  (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 or operations.

(3) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the instrument of exemption.

(4) An exemption under subsection (1) is not a legislative instrument.

(5) An exemption under subsection (1) must not be inconsistent with an obligation of Australia under an international agreement.

(6) Before making an exemption under subsection (1), the Minister or AMSA must be satisfied that the exemption will not jeopardise the safety of a vessel or persons on board a vessel.

335 Person must not contravene condition of exemption

(1) A person must not contravene a condition of an exemption under subsection 334(3) that applies to a vessel or to the person.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 600 penalty units.

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Division 5—Other matters

336 Publication of information about vessels

(1) AMSA may publish such information as is prescribed by the regulations that is obtained about a vessel:
  (a) during an inspection or survey of that vessel; or
  (b) during an inspection or survey of that vessel conducted otherwise than under this Act; or
  (c) otherwise than by an inspection or survey.

(2) The regulations may make provision in relation to:
  (a) the manner in which information obtained:
    (i) during an inspection or survey; or
    (ii) otherwise than by inspection or survey;
  will be published; and
  (b) the nature of the information that will be published; and
  (c) the time at which the publication of information will occur.

(3) This section does not permit AMSA to publish information if the publication of the information would contravene the *Privacy Act 1988* or another law of the Commonwealth.

337 Penalty for receiving fees for supply of seafarers

(1) A person must not demand or receive, directly or indirectly, remuneration from an individual for providing or promising to provide the individual with employment as a seafarer on a vessel.

(2) A person commits an offence if the person contravenes subsection (1).

  Penalty: 30 penalty units.

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 300 penalty units.

338 AMSA may approve form

AMSA may, in writing, approve a form for the purposes of a provision of this Act.

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Part 6—Regulations and other legislative instruments

339 General regulation-making power

(1) 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.

(2) Without limiting subsection (1), regulations may make provision for or in relation to the following:
  (a) design and construction of vessels;
  (b) machinery and equipment to be carried on board vessels, including but not limited to the following:
    (i) machinery and equipment for sending or receiving distress, urgency and other signals;
    (ii) radio installations, radio navigational aids and communications equipment;
    (iii) compasses;
    (iv) lights;
  (c) operating, maintaining, checking and testing any such machinery and equipment;
  (d) marking of load lines on vessels;
  (e) the stability of vessels including information about, and testing of, the stability of vessels;
  (f) operating watertight doors;
  (g) saving of life at sea, including:
    (i) the equipment to be carried on board vessels; and
    (ii) measures to be carried out for the purpose of saving life at sea;
  (h) prevention, detection and extinguishment of fires at sea, including:

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(i) equipment to be carried on board vessels; and
(ii) measures to be carried out for the purpose of preventing, detecting and extinguishing fires at sea;

(i) maintenance, testing, survey and certification of vessels;
(j) special purpose vessels;
(k) nuclear vessels;
(l) logbooks;
(m) records relating to compliance with this Act;
(n) the exercise of powers, and performance of functions, of issuing bodies under this Act;
(o) matters of a transitional nature (including matters of an application or saving nature) arising out of the enactment of this Act or the repeal of the *Navigation Act 1912* or the *Lighthouses Act 1911*.

(3) Regulations made for the purposes of paragraph (2)(o) may:
(a) provide for specified certificates in force under the *Navigation Act 1912* immediately before its repeal to have effect, subject to any specified conditions or limitations, for the purposes of this Act or specified provisions of this Act as if those certificates had been issued under specified provisions of this Act; and
(b) provide for specified things done under the *Navigation Act 1912*, or under regulations or instruments made under that Act, to have effect, subject to any specified conditions or limitations, for the purposes of this Act or specified provisions of this Act as if those things had been done under specified provisions of this Act; and
(c) provide that all or specified agreements that were in force immediately before the repeal of the *Navigation Act 1912* and that, immediately before that repeal complied with one or more specified provisions of Division 8 of Part II of that Act, comply with regulations made for the purposes of subsection 54(5) of this Act, subject to specified limitations.

This subsection does not limit paragraph (2)(o).

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(4) To avoid doubt, regulations under this section may be expressed to apply to vessels that are not regulated Australian vessels.

340 Regulation-making power to implement Conventions

(1) The regulations may make provision in relation to giving effect to the following:

(a) the Safety Convention;
(b) the Prevention of Collisions Convention;
(c) the Prevention of Pollution Convention;
(d) the Load Lines Convention;
(e) the Tonnage Convention;
(f) the Container Convention;
(g) the Limitation of Liability for Maritime Claims Convention;
(h) the STCW Convention;
(i) the Maritime Labour Convention.

Note: Sections 12 and 13 may affect the application of the regulations in certain circumstances relating to the Marine Safety (Domestic Commercial Vessel) National Law or State and Territory law.

(2) Regulations that make provision in relation to giving effect to the Container Convention must not impose, or authorise the imposition of, structural safety requirements or tests on containers to which the Container Convention applies that are not required or permitted by that Convention to be imposed on such containers.

Note: Section 13 may affect the application of the regulations in certain circumstances relating to State and Territory law.

(3) To avoid doubt, regulations made for the purposes of this section may be expressed to apply to vessels that are not regulated Australian vessels.

341 General provisions relating to regulations

(1) The regulations may provide for:

(a) the imposition of penalties of not more than 50 penalty units for a contravention of:

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(i) a provision of the regulations; or
(ii) a notice, order, direction or instruction given, issued or made under, or in force because of, the regulations; and

(b) the imposition of civil penalties for a contraventions of a kind referred to in subparagraph (a)(i) or (ii) of not more than:
(i) 50 penalty units for an individual; or
(ii) 250 penalty units for a body corporate;

(c) the manner in which notices, orders, directions, instructions or other documents under this Act may be given, issued or notified; and

(d) the charging of fees in respect of any matters under this Act.

(2) Despite section 14 of the *Legislative Instruments Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document:
(a) as in force or existing at a particular time; or
(b) as in force or existing from time to time;
even if the instrument or other document does not exist when the regulations come into operation.

(3) The regulations may:
(a) vest an eligible court with jurisdiction in a matter or matters arising under the regulations; and
(b) provide for review of decisions under the regulations.

342 Marine Orders

(1) AMSA may, by legislative instrument, make an order (to be known as a Marine Order) with respect to any matter for which provision must or may be made by the regulations.

(2) If a Marine Order is inconsistent with this Act, the Marine Order is of no effect to the extent of the inconsistency.

(3) A reference to this Act in subsection (2) does not include a reference to a Marine Order.

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(4) Despite section 14 of the *Legislative Instruments Act 2003*, a Marine Order may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time;

even if the instrument or other document does not exist when the Marine Order comes into operation.

343 Regulations and orders under the *Navigation Act 1912*

(1) The regulations may provide for specified regulations and orders that were in force under the *Navigation Act 1912* immediately before its repeal to have effect, for the purposes of this Act, with such modifications as are specified in the regulations.

(2) The Marine Orders may provide for specified orders that were in force under the *Navigation Act 1912* immediately before its repeal to have effect, for the purposes of this Act, with such modifications as are specified in the Marine Orders.

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

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

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

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

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

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Endnote 2—Abbreviation key

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

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Navigation Act 2012	128, 2012	13 Sept 2012	s 3–343: 1 July 2013 (s 2(1) item 2) Remainder: 13 Sept 2012 (s 2(1) item 1)	
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 3: 21 Aug 2013 (s 2(1) item 3)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (item 52): 24 June 2014 (s 2(1) item 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (item 311) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): awaiting commencement (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): awaiting commencement (s 2(1) item 2)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 107–136) and Sch 9: 1 July 2015 (s 2(1) item 2)	Sch 5 (item 136) and Sch 9
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 452): awaiting commencement (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 66, 67, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Maritime Legislation Amendment Act 2015	176, 2015	11 Dec 2015	Sch 1 (items 1–3): 8 Jan 2016 (s 2(1) item 2)	Sch 1 (item 12)

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 3	
s 11	am No 41, 2015
s 12	am No 129, 2013
Part 4	
s 14	am No 129, 2013; No 62, 2014; No 41, 2015; No 164, 2015; No 176, 2015
s 15	am No 41, 2015
s 17	am No 41, 2015
s 24	am No 129, 2013
Chapter 3	
Part 1	
s 96	am No 176, 2015
Chapter 6	
Part 6	
Division 5	
s 223	am No 164, 2015
Chapter 7	
Part 2	
Division 2	
s 237	am No 41, 2015
Part 3	
Division 1	
s 240	am No 41, 2015
Chapter 8	
Part 1	
s 244	am No 41, 2015
Part 3	
s 249	am No 41, 2015
s 252	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 253	am No 41, 2015
Chapter 9	
Part 3	
s 313	am No 31, 2014; No 41, 2015
Part 6	
s 340	am No 129, 2013
s 341	am No 126, 2015
s 342	am No 126, 2015

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