



Maritime Powers Act 2013

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About this compilation

This compilation

This is a compilation of the *Maritime Powers Act 2013* that shows the text of the law as amended and in force on 21 October 2016 (the **compilation date**).

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 the Legislation Register (www.legislation.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 the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Introduction	1
Division 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Act binds the Crown	2
4 Application of Act	2
5 Effect on executive power	2
6 Relationship to other laws	2
Division 2—Guide to this Act	3
7 Guide to this Act	3
Division 3—Definitions	4
8 Definitions	4
9 <i>Involved</i> in a contravention	11
10 <i>Actionable contraventions</i> —aircraft	12
11 <i>Continuous exercise of powers</i>	12
Division 4—International agreements and decisions	14
12 When international agreements and decisions apply	14
13 Treating foreign vessels as Australian vessels	14
14 Applying Australian law in other places	14
Part 2—Exercising powers	16
Division 1—Introduction	16
15 Guide to this Part	16
Division 2—Authorising the exercise of maritime powers	17
16 Authorising officers	17
17 Contraventions	18
18 Monitoring laws	18
19 International agreements and decisions	19
20 Evidential material and warrants	19
21 Identifying vessels and aircraft	19
22 Seizable transit goods—aircraft	20
22A Failure to consider international obligations etc. does not invalidate authorisation	21
22B Rules of natural justice do not apply to authorisations	21

Division 3—Authorisations and approvals	22
23 When authorisations are in force	22
24 When approvals lapse	22
25 Form of authorisations and approvals	22
26 Further authorisations and approvals	23
Division 4—Exercising powers	24
Subdivision A—Effect of Division	24
27 Effect of Division	24
Subdivision B—Exercising powers without authorisation	24
28 Identifying aircraft	24
29 Ensuring safety	24
Subdivision C—Exercising powers with authorisation	24
30 Authorisation required	24
31 Exercising powers for authorised purpose	24
32 Exercising powers for other purposes	25
33 Additional powers and limitations under international agreements and decisions	26
Subdivision D—Scope of power	27
34 Scope of power—vessels, installations, aircraft and protected land areas	27
35 Warrants not required	27
36 Enforcing warrants	27
Subdivision E—Using force and assistance	28
37 Using force	28
38 Requesting assistance	28
39 Requiring assistance	29
Division 5—Geographical limits	30
Subdivision A—Exercising powers in other countries	30
40 Exercising powers in other countries	30
Subdivision B—Exercising powers between countries	30
41 Foreign vessels between countries	30
42 Meaning of <i>chased without interruption</i>	32
43 Foreign installations between countries	33
44 Foreign aircraft between countries	33
Subdivision C—Exercising powers in Australia	34
45 Foreign vessels in Australia—evidence and warrants authorisations	34

46	Vessels, installations and isolated persons in States and internal Territories	34
47	Aircraft in States and internal Territories	35
	Subdivision D—Requests and agreements of other countries	35
48	Manner and form of requests and agreements	35
49	Scope of powers under requests and agreements	36
	Part 3—Maritime powers	37
	Division 1—Introduction	37
50	Guide to this Part	37
51	Effect of Part	37
	Division 2—Boarding	38
52	Boarding vessels, installations and aircraft	38
53	Requirement to facilitate boarding	38
54	Additional powers—vessels	39
55	Additional powers—aircraft	40
	Division 3—Entering on land	42
56	Entering on land	42
	Division 4—Obtaining information	43
57	Requiring answers, records and documents	43
58	Obtaining readings	43
	Division 5—Searching	44
59	Searching places	44
60	Lifting persons or things from the sea	44
61	Searching persons	44
62	Conducting frisk searches	45
	Division 6—Things found or produced	46
63	Examining things	46
64	Securing and marking things	47
65	Copying records or documents	48
66	Securing weapons	48
67	Seizing things	49
68	Retaining things	49
	Division 7—Detaining vessels, aircraft and other conveyances	50
69	Vessels and aircraft	50
69A	Additional provisions relating to taking a vessel or aircraft to a destination under section 69	51

70	Other conveyances.....	52
Division 8—Placing and moving persons		53
71	Placing persons.....	53
72	Persons on detained vessels and aircraft	53
72A	Additional provisions relating to taking a person to a destination under subsection 72(4)	54
73	Using detention provisions	55
74	Safety of persons	56
75	Restraint is not arrest	56
Division 8A—General provisions relating to powers under Divisions 7 and 8		57
75A	Failure to consider international obligations etc. does not invalidate exercise of powers.....	57
75B	Rules of natural justice do not apply to exercise of powers.....	57
75C	Additional provisions about destination to which a vessel, aircraft or person may be taken	57
75D	Exercising powers between countries.....	58
75E	Powers are not limited by the <i>Migration Act 1958</i>	59
75F	Minister may give directions about exercise of powers	60
75G	Compliance with directions.....	61
75H	Certain maritime laws do not apply to certain vessels detained or used in exercise of powers	62
Division 9—Arrest		64
76	Arrest for indictable offences	64
77	Enforcing arrest warrants.....	64
Division 10—Requiring conduct to cease		65
78	Requiring conduct to cease	65
Part 4—Dealing with things taken		66
Division 1—Introduction		66
79	Guide to this Part.....	66
Division 2—Notice of seizure, retention or detention		68
80	Notice of seizure, retention or detention.....	68
81	Information about the return of things	68
82	Notice of Commonwealth ownership	69
Division 3—Using seized things		70
83	Using seized things.....	70
84	Using seized things—State and Territory officers.....	70

85	Operating electronic equipment.....	70
Division 4—Returning things		72
86	Returning seized things	72
87	Returning retained and detained things	72
88	Magistrate may extend holding period	73
89	Returning things if notice of Commonwealth ownership given	73
90	Seizing under other Australian laws	74
Division 5—Disposing of things		76
91	Reasons for disposal	76
92	Methods of disposal.....	77
93	Notice of disposal	77
Part 5—Dealing with persons held		78
Division 1—Introduction		78
94	Guide to this Part.....	78
95	Treatment of persons held	78
96	Doing things as soon as practicable	79
Division 2—Persons detained		80
98	Persons detained under detention provisions	80
Division 3—Persons arrested		81
99	Application of this Division	81
100	Person to be informed of reason for arrest.....	81
101	Person to be brought before magistrate	81
102	Enforcing arrest warrants.....	82
Part 6—Failing to comply with requirements		83
103	Offence	83
Part 7—Miscellaneous		85
Division 1—Maritime officers		85
104	Maritime officers	85
105	Carrying and using arms.....	85
106	Identity cards	86
107	Protection from suit	86
Division 2—Evidentiary certificates		87
108	Evidence of international agreements and decisions	87
109	Evidence of approvals	87

110	Evidence of requests and agreements—geographical limits on exercise of powers	87
111	Certificates are prima facie evidence	88
Division 3—Recovery of costs		89
112	Chase costs	89
113	Seizure costs	89
114	Liability to pay costs is a debt to the Commonwealth	90
Division 4—Gathering and sharing information		91
115	Copying records or documents for other purposes	91
116	Sharing information	91
Division 5—Compensation for acquisition of property		93
117	Compensation for acquisition of property	93
118	Compensation for damage to documents	93
119	Compensation for damage to equipment	93
120	Amount of compensation—proceedings	94
Division 6—Delegation and regulations		95
121	Delegation	95
122	Regulations	95
Endnotes		96
Endnote 1—About the endnotes		96
Endnote 2—Abbreviation key		98
Endnote 3—Legislation history		99
Endnote 4—Amendment history		100

An Act to provide for the administration and enforcement of Australian laws in maritime areas, and for related purposes

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *Maritime Powers Act 2013*.

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.	27 March 2013
2. Sections 3 to 122	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.	27 March 2014

Section 3

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.

3 Act binds the Crown

This Act binds the Crown in each of its capacities.

4 Application of Act

- (1) This Act extends to every external Territory.
- (2) This Act extends to acts, omissions, matters and things outside Australia.

Note: Division 5 of Part 2 sets out geographical limits on the exercise of powers under this Act.

5 Effect on executive power

This Act does not limit the executive power of the Commonwealth.

6 Relationship to other laws

- (1) The provisions of this Act are in addition to, not in substitution for, any other law of the Commonwealth.
- (2) This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

Division 2—Guide to this Act

7 Guide to this Act

This Act provides a broad set of enforcement powers for use in, and in relation to, maritime areas. Most of these powers are set out in Part 3.

The powers can be used by maritime officers to give effect to Australian laws and international agreements and decisions.

The following are maritime officers:

- (a) Customs officers;
- (b) members of the Australian Defence Force;
- (c) members of the Australian Federal Police;
- (d) other persons appointed by the Minister.

An authorisation is necessary to begin the exercise of powers in relation to a vessel, installation, aircraft, protected land area or isolated person. The only exceptions are the exercise of aircraft identification powers and the exercise of powers to ensure the safety of persons.

Once an authorisation is in force, maritime officers can exercise powers for a range of purposes.

Division 3—Definitions

8 Definitions

In this Act:

actionable contravention, in relation to an aircraft, has the meaning given by section 10.

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface.

aircraft identification powers has the meaning given by subsection 55(4).

approval, given by the Minister for the exercise of powers, has the meaning given by section 24.

archipelagic waters has the same meaning as in the Convention.

Australia, when used in a geographical sense, includes:

- (a) the external Territories; and
- (b) the territorial seas of Australia and the external Territories; and
- (c) any installation attached to:
 - (i) the continental shelf of Australia or an external Territory; or
 - (ii) the seabed within the exclusive economic zone of Australia or an external Territory; and
- (d) the safety zone around any such installation; and
- (e) the airspace above Australia (including the airspace above the areas covered by paragraphs (a) to (d)).

Australian aircraft means:

- (a) an aircraft registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*; or

- (b) a Commonwealth aircraft.

Australian law:

- (a) means a law of the Commonwealth or a State or Territory, and includes this Act; but
- (b) does not include a law prescribed by the regulations.

Australian national means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under a law of the Commonwealth or a State or Territory; or
- (c) the Commonwealth or a State or Territory.

Australian vessel means:

- (a) an Australian ship within the meaning of the *Shipping Registration Act 1981*; or
- (b) a vessel that is not registered under the law of a foreign country and is either wholly owned or solely operated by:
 - (i) one or more residents of Australia; or
 - (ii) one or more Australian nationals; or
 - (iii) one or more residents of Australia and one or more Australian nationals.

authorisation has the meaning given by subsection 23(1).

authorising officer has the meaning given by subsection 16(1).

border controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

border controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

chased without interruption, in relation to a vessel, has the meaning given by section 42.

Commonwealth aircraft means an aircraft that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth authority.

Section 8

Commonwealth officer means a person who:

- (a) holds, or performs the duties of, an appointment, office or position under a law of the Commonwealth; or
- (b) is otherwise in the service of the Commonwealth.

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

contiguous zone has the same meaning as in the Convention.

continental shelf has the same meaning as in the Convention.

continuous exercise of powers has the meaning affected by section 11.

contravention, of a law, includes an offence against the law.

Convention means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). In 2013, 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).

conveyance includes a vessel, aircraft or vehicle.

cooperating agency has the meaning given by subsection 116(4).

country, when used in a geographical sense, includes:

- (a) the territorial sea, and any archipelagic waters, of the country; and
- (b) any installation attached to the continental shelf, or the seabed within the exclusive economic zone, of the country; and
- (c) any safety zone around any such installation; and
- (d) the airspace above the country (including the airspace above the areas covered by paragraphs (a) to (c)).

destination:

- (a) in relation to a vessel or aircraft detained under subsection 69(1)—see subsections 69(2), (3) and (3A); or
- (b) in relation to a person detained under subsection 72(4)—see subsections 72(4), (4A) and (4B).

Note: See also section 75C.

detained aircraft has the meaning given by subsection 69(5).

detained vessel has the meaning given by subsection 69(4).

detention provision has the meaning given by subsection 73(2).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

evidence and warrants authorisation has the meaning given by subsection 20(2).

evidential material means any thing that may afford evidence of a contravention of an Australian law, including such a thing in electronic form.

exclusive economic zone has the same meaning as in the Convention.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign aircraft means an aircraft other than an Australian aircraft.

foreign installation means an installation controlled by a foreign country.

foreign vessel means a vessel other than an Australian vessel.

frisk search has the meaning given by subsection 61(5).

installation:

- (a) means:

Section 8

- (i) an artificial island within the meaning of the Convention; or
- (ii) an installation within the meaning of the Convention; or
- (iii) a structure within the meaning of the Convention; but
- (b) does not include a thing that has been, or could be, such an island, installation or structure but is not installed.

international agreement means an agreement or arrangement between Australia and one or more other countries.

international decision means a decision made by:

- (a) the Security Council of the United Nations; or
- (b) another international body that, under international law, makes decisions that are binding on its members.

involved, in a contravention of a law, has the meanings given by section 9.

isolated person means a person who is not on, or in the vicinity of, a vessel, installation, aircraft or protected land area.

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 officer has the meaning given by subsection 104(1).

maritime powers means the powers in Part 3.

migration zone has the same meaning as in the *Migration Act 1958*.

monitoring law means:

- (a) the *Customs Act 1901*; or
- (b) the *Fisheries Management Act 1991*; or
- (c) the *Migration Act 1958*; or
- (d) the *Torres Strait Fisheries Act 1984*; or
- (e) section 72.13 or Division 73 or 307 of the *Criminal Code*; or

- (f) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (g) a law prescribed by the regulations.

ordinary search has the meaning given by subsection 61(4).

personal information has the same meaning as in the *Privacy Act 1988*.

person assisting, in the exercise of powers under this Act, has the meaning given by subsection 38(5).

person in charge, in relation to the exercise of powers by a maritime officer:

- (a) in relation to a vessel, installation or aircraft—means the person who appears to the officer to be in charge of the vessel, installation or aircraft; or
- (b) in relation to a protected land area—means the person who appears to the officer to be in control, possession or occupation of the land, or any premises on the land.

protected land area means an area of land that is:

- (a) outside the States and internal Territories; and
- (b) prescribed by the regulations.

resident of Australia means:

- (a) an individual who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
- (b) a body corporate that has its principal place of business in Australia.

retained thing has the meaning given by subsection 68(3).

safety zone, in relation to an installation:

- (a) has the same meaning as in the Convention; and
- (b) includes the column of water below that zone.

seizable transit goods means:

Section 8

- (a) goods that are connected, either directly or indirectly, with the carrying out of a terrorist act, whether the terrorist act has occurred, is occurring or is likely to occur; or
- (b) goods, the existence or the shipment of which, prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

Note: Seizable transit goods may be forfeited to the Commonwealth under the *Customs Act 1901*.

seized thing has the meaning given by subsection 67(3).

support vessel has the meaning given by subsection 9(4).

territorial sea has the same meaning as in the Convention.

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code*.

thing includes a record or document.

this Act includes the regulations.

vessel means a vessel or boat of any description and includes a hovercraft and any floating structure, but does not include an installation.

vessel identification powers means the powers set out in the following provisions:

- (a) section 52 (boarding vessels, installations and aircraft);
- (b) section 53 (requirement to facilitate boarding);
- (c) section 54 (additional powers—vessels);
- (d) section 57 (requiring answers, records and documents);
- (e) section 58 (obtaining readings);
- (f) section 59 (searching places);
- (g) section 61 (searching persons);
- (h) section 63 (examining things);
- (i) section 66 (securing weapons).

vessels without nationality authorisation has the meaning given by subsection 21(2).

weapon includes a thing that:

- (a) is capable of being used to inflict bodily injury (including ammunition); or
- (b) is capable of being used to help a person escape from detention or custody; or
- (c) is capable of being used to cause damage to a vessel, installation or aircraft; or
- (d) except for the absence of, or a defect in, a part of the thing, would be a weapon of a kind mentioned in paragraph (a), (b) or (c); or
- (e) is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a), (b) or (c).

9 Involved in a contravention

Vessels, installations, aircraft and protected land areas

- (1) A vessel, installation, aircraft or protected land area is **involved** in a contravention of a law, if:
 - (a) the law has been, is being, or is intended to be, contravened on, or in the vicinity of, the vessel, installation, aircraft or land; or
 - (b) there is some other connection between the vessel, installation, aircraft or land and a contravention, or intended contravention, of the law.

Vessels, installations and aircraft

- (2) A vessel, installation or aircraft is **involved** in a contravention of a law, if the vessel, installation or aircraft has been, is being, or is intended to be, used in contravention of the law.

Section 10

Support vessels

- (3) A vessel is **involved** in a contravention of a law if it has been, is being, or is intended to be, used:
- (a) in direct support of another vessel or aircraft that is involved in a contravention of the law; or
 - (b) in preparation for a contravention of the law in which another vessel or aircraft is involved.
- (4) A vessel involved in a contravention of a law within the meaning of subsection (3) is a **support vessel**.

Isolated persons

- (5) An isolated person is **involved** in a contravention of a law if:
- (a) the law has been, is being, or is intended to be, contravened by the person; or
 - (b) there is some other connection between the person and a contravention, or intended contravention, of the law.

10 Actionable contraventions—aircraft

A contravention of a law is an **actionable contravention** in relation to an aircraft if:

- (a) the law is prescribed by the regulations; or
- (b) the Minister has approved the exercise of maritime powers in relation to the aircraft for the purposes of investigating the contravention, or contraventions in general, and the approval has not lapsed.

Note: For **approval** by the Minister, see Division 3 of Part 2.

11 Continuous exercise of powers

- (1) For the purposes of this Act, the **continuous exercise of powers** does not end only because there is a period of time between the exercise of one or more of those powers.

Section 11

- (2) To avoid doubt, a *continuous exercise of powers* does not end merely because the destination to which a vessel, aircraft or person is to be taken (or caused to be taken) is changed to a different place under subsection 69(3A) or 72(4B).

Division 4—International agreements and decisions

12 When international agreements and decisions apply

An international agreement or international decision applies to a vessel, installation or aircraft at a particular time if:

- (a) the agreement or decision provides for the exercise of powers by Australia in relation to the vessel, installation or aircraft at that time; and
- (b) either:
 - (i) the agreement or decision is prescribed by the regulations; or
 - (ii) the Minister has approved the exercise of powers under the agreement or decision in relation to the vessel, installation or aircraft, and the approval has not lapsed.

Note 1: For *international agreement* and *international decision*, see section 8.

Note 2: For *approval* by the Minister, see Division 3 of Part 2.

13 Treating foreign vessels as Australian vessels

An Australian law applies in relation to a foreign vessel as if the foreign vessel were an Australian vessel if:

- (a) an international agreement provides for the law to so apply; and
- (b) the country of the vessel's nationality is a party to the agreement.

Note: For *international agreement*, see section 8.

14 Applying Australian law in other places

Places in other countries

- (1) An Australian law applies in, or in relation to, a place in another country as if that place were in Australia if an agreement or

arrangement between Australia and the other country provides for the law to so apply.

Places in exclusive economic zones of other countries

- (2) An Australian law applies in, or in relation to, a place in the exclusive economic zone of another country as if that place were in the exclusive economic zone of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

Places on or above the continental shelves of other countries

- (3) An Australian law applies in, or in relation to, a place on or above the continental shelf of another country as if that place were on or above the continental shelf of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

Part 2—Exercising powers

Division 1—Introduction

15 Guide to this Part

This Part provides for the exercise of maritime powers and powers specified in international agreements and decisions.

An authorisation must be given by an authorising officer before powers can be exercised in relation to a vessel, installation, aircraft, protected land area or isolated person. The only exceptions are:

- (a) the exercise of aircraft identification powers to identify aircraft; and
- (b) the exercise of maritime powers to ensure the safety of a maritime officer or any other person.

Once an authorisation is in force, a maritime officer may exercise powers for the purposes of the authorisation, and for other purposes set out in Division 4.

The exercise of powers in relation to a vessel, installation, aircraft or protected land area extends to persons and things with a connection to the vessel, installation, aircraft or protected land area.

Powers can be exercised in, and in relation to, maritime areas, but their exercise is limited in places outside Australia (see Division 5).

Division 2—Authorising the exercise of maritime powers

16 Authorising officers

- (1) For the purposes of authorising the exercise of maritime powers in relation to a vessel, installation, aircraft, protected land area or isolated person, each of the following is an **authorising officer**:
- (a) the most senior maritime officer who is in a position to exercise any of the maritime powers in person;
 - (b) the most senior member or special member of the Australian Federal Police who is in a position to exercise any of the maritime powers in person;
 - (c) the most senior maritime officer on duty in a duly established operations room;
 - (d) the person in command of a Commonwealth ship or Commonwealth aircraft from which the exercise of powers is to be directed or coordinated;
 - (e) a person appointed in writing by the Minister.

Limited appointments

- (2) The Minister may appoint a person under paragraph (1)(e) as an authorising officer:
- (a) for the purposes of authorising the exercise of powers in relation to one or more of the following only:
 - (i) a specified law;
 - (ii) a specified international agreement or international decision; and
 - (b) subject to any other conditions specified in the appointment.

Purported authorisations

- (3) A purported authorisation given by a person who reasonably believed that he or she was an authorising officer has effect as if it were an authorisation.

Section 17

17 Contraventions

Vessels, installations, protected land areas and isolated persons

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation, protected land area or isolated person if the officer suspects, on reasonable grounds, that the vessel, installation, land or person is involved in a contravention of an Australian law.

Note: For *involved* in a contravention of a law, see section 9.

Aircraft—actionable contraventions

- (2) An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if:
- (a) the officer suspects, on reasonable grounds, that the aircraft is involved in a contravention of an Australian law; and
 - (b) the contravention is an actionable contravention in relation to the aircraft.

Note 1: For *involved* in a contravention of a law, see section 9.

Note 2: For *actionable contravention*, see section 10.

18 Monitoring laws

Vessels, installations, protected land areas and isolated persons

An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation, protected land area or isolated person for the purposes of administering or ensuring compliance with a monitoring law.

Note: For *monitoring law*, see section 8.

19 International agreements and decisions

Vessels, installations and aircraft

An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation or aircraft if the officer suspects, on reasonable grounds, that an international agreement or international decision applies to the vessel, installation or aircraft.

Note 1: For when international agreements and international decisions apply, see section 12.

Note 2: The regulations may provide for additional powers, or for limited powers, to be exercised under an international agreement or international decision: see section 33.

20 Evidential material and warrants

Vessels, installations and protected land areas

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation or protected land area if the officer:
 - (a) suspects, on reasonable grounds, that there is evidential material on the vessel, installation or land; or
 - (b) believes, on reasonable grounds, that the exercise of the powers is necessary to enforce a warrant that is in force under an Australian law.

*Meaning of **evidence and warrants authorisation***

- (2) An authorisation under this section is an **evidence and warrants authorisation**.

21 Identifying vessels and aircraft

Vessels without nationality

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel if:

Part 2 Exercising powers

Division 2 Authorising the exercise of maritime powers

Section 22

- (a) the vessel is not flying the flag of a State; or
- (b) the officer suspects, on reasonable grounds, that the vessel:
 - (i) has been flying the flag of more than one State; or
 - (ii) is flying the flag of a State that it is not entitled to fly; or
 - (iii) is not entitled to fly the flag of any State.

Meaning of vessels without nationality authorisation

- (2) An authorisation under subsection (1) is a ***vessels without nationality authorisation***.

Aircraft that fail to meet identification requirements

- (3) An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if:
- (a) a requirement made in the exercise of aircraft identification powers in relation to the aircraft has not been complied with; or
 - (b) the officer suspects, on reasonable grounds, that information given in response to such a requirement is false or misleading in a material particular.

Note 1: Aircraft identification powers can be exercised without authorisation: see section 28.

Note 2: For ***aircraft identification powers***, see subsection 55(4).

22 Seizable transit goods—aircraft

An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if the officer suspects, on reasonable grounds, that the aircraft is carrying seizable transit goods.

Note: For ***seizable transit goods***, see section 8.

22A Failure to consider international obligations etc. does not invalidate authorisation

- (1) The exercise of a power to give an authorisation under a provision of this Division is not invalid:
 - (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

22B Rules of natural justice do not apply to authorisations

- (1) The rules of natural justice do not apply to the exercise of a power to give an authorisation under a provision of this Division.
- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

Division 3—Authorisations and approvals

23 When authorisations are in force

- (1) An **authorisation** given by an authorising officer under Division 2 is in force until:
- (a) it is spent; or
 - (b) it lapses.

When authorisation is spent

- (2) An authorisation is spent when the continuous exercise of powers under the authorisation ends.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

When authorisation lapses

- (3) An authorisation lapses if powers have not been exercised under the authorisation within 72 hours after it is given.

24 When approvals lapse

An **approval** given by the Minister for the purposes of one of the following provisions lapses 14 days after it is given:

- (a) paragraph 10(b) (actionable contraventions);
- (b) subparagraph 12(b)(ii) (when international agreements and decisions apply).

25 Form of authorisations and approvals

- (1) An authorisation or approval need not be in writing.
- (2) An authorisation or approval in writing is not a legislative instrument.

26 Further authorisations and approvals

Nothing in this Division prevents the giving of further authorisations or approvals in relation to a particular vessel, installation, aircraft, protected land area or isolated person.

Division 4—Exercising powers

Subdivision A—Effect of Division

27 Effect of Division

This Division has effect subject to Division 5 (geographical limits).

Subdivision B—Exercising powers without authorisation

28 Identifying aircraft

A maritime officer may, without authorisation, exercise aircraft identification powers to identify an aircraft.

Note: For *aircraft identification powers*, see subsection 55(4).

29 Ensuring safety

A maritime officer may, without authorisation, exercise maritime powers to ensure the safety of the officer or any other person.

Subdivision C—Exercising powers with authorisation

30 Authorisation required

If an authorisation is in force in relation to a vessel, installation, aircraft, protected land area or isolated person, a maritime officer may exercise powers in relation to the vessel, installation, aircraft, land or person in accordance with this Subdivision.

31 Exercising powers for authorised purpose

The maritime officer may exercise maritime powers to do whichever of the following applies in accordance with the authorisation:

- (a) investigate or prevent the contravention;

- (b) administer or ensure compliance with the monitoring law;
- (c) administer, ensure compliance with or investigate a contravention of the international agreement or international decision;
- (d) access or seize the evidential material;
- (e) enforce the warrant that is in force under an Australian law;
- (f) identify the vessel or aircraft;
- (g) retain the seizable transit goods.

32 Exercising powers for other purposes

- (1) The maritime officer may also exercise maritime powers as follows:
 - (a) to investigate or prevent any contravention of an Australian law that the officer suspects, on reasonable grounds, the vessel, installation, aircraft, protected land area or isolated person to be involved in;
 - (b) to administer or ensure compliance with any monitoring law;
 - (c) in the case of a vessel, installation or aircraft—to administer, ensure compliance with or investigate a contravention of any international agreement or international decision that the officer suspects, on reasonable grounds, applies to the vessel, installation or aircraft;
 - (d) to access or seize any thing that the officer suspects, on reasonable grounds, is:
 - (i) evidential material; or
 - (ii) a border controlled drug or border controlled plant; or
 - (iii) owned by the Commonwealth or a State or Territory;
 - (e) to arrest any person whom the officer suspects, on reasonable grounds, has committed an indictable offence against an Australian law;
 - (f) to enforce any warrant that is in force under an Australian law;
 - (g) to retain any thing that the officer believes, on reasonable grounds, could be seized under an Australian law;

Section 33

- (h) in the case of a vessel or aircraft—to identify the vessel or aircraft.

Exception—aircraft in flight

- (2) Subsection (1) does not apply in relation to an aircraft in flight.

33 Additional powers and limitations under international agreements and decisions

Additional powers

- (1) The maritime officer may also exercise powers in the case of a vessel, installation or aircraft if the powers are:
 - (a) specified in an international agreement or international decision that applies to the vessel, installation or aircraft; and
 - (b) prescribed by the regulations as powers that may be exercised in relation to vessels, installations or aircraft of that kind; and
 - (c) exercised for the purposes of administering, ensuring compliance with or investigating a contravention of the agreement or decision.

Limitations on powers

- (2) However, the officer must not exercise a power in relation to a vessel, installation or aircraft to administer, ensure compliance with or investigate a contravention of an international agreement or international decision if:
 - (a) the power is prescribed by the regulations as a power that must not be exercised under the agreement or decision in relation to vessels, installations or aircraft of that kind; or
 - (b) the officer is of a kind prescribed by the regulations as officers who must not exercise powers under the agreement or decision in relation to vessels, installations or aircraft of that kind.
- (3) Subsection (2) has effect despite any other provision of this Subdivision.

Subdivision D—Scope of power

34 Scope of power—vessels, installations, aircraft and protected land areas

A maritime officer exercising powers in relation to a vessel, installation, aircraft or protected land area may exercise the powers:

- (a) on or in any part of the vessel, installation, aircraft or land; or
- (b) in relation to any person or thing on, or in the vicinity of, the vessel, installation, aircraft or land; or
- (c) in relation to any person whom the officer suspects, on reasonable grounds, was on or is intending to go onto the vessel, installation, aircraft or land; or
- (d) in relation to any thing that the officer suspects, on reasonable grounds:
 - (i) was on or is to be taken onto the vessel, installation, aircraft or land; or
 - (ii) is, was or is to be, attached to or controlled or directed from the vessel, installation, aircraft or land.

35 Warrants not required

A maritime officer is not required to obtain a warrant to exercise any power under this Act.

36 Enforcing warrants

In enforcing a warrant that is in force under an Australian law, a maritime officer must comply with any requirements in the warrant that would have to be complied with by a person executing the warrant.

Subdivision E—Using force and assistance

37 Using force

- (1) In exercising powers under this Act, a maritime officer may use such force against a person or thing as is necessary and reasonable in the circumstances.
- (2) The maritime officer must not:
 - (a) subject a person to greater indignity than is necessary and reasonable to exercise the powers; or
 - (b) do anything that is likely to cause the death of, or grievous bodily harm to, a person unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or prevent serious injury to another person (including the officer); and
 - (ii) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

38 Requesting assistance

- (1) A maritime officer may request the assistance of any other person (including an officer of another country).
- (2) The request may include a request to:
 - (a) operate a vessel, aircraft or installation in a particular manner; or
 - (b) operate machinery or equipment on a vessel, aircraft, installation or land in a particular manner; or
 - (c) search a person; or
 - (d) assist the officer to access data held in, or accessible from, an electronic device that is on a vessel, aircraft, installation or land.
- (3) Subsection (2) does not limit subsection (1).

- (4) The person may refuse to assist.
- (5) If the person agrees to assist, he or she:
 - (a) must follow any directions given by the officer; and
 - (b) is a *person assisting*.

Use of force by person assisting

- (6) A person assisting may use such force against a thing as is necessary and reasonable in the circumstances.

39 Requiring assistance

- (1) A maritime officer exercising powers in relation to a vessel, installation, aircraft or protected land area may require the assistance of a person who is on, in or in the vicinity of the vessel, installation, aircraft or land.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may include a requirement to:
 - (a) operate the vessel, installation or aircraft in a particular manner; or
 - (b) operate machinery or equipment on the vessel, installation, aircraft or land in a particular manner; or
 - (c) assist the officer to access data held in, or accessible from, an electronic device or any other equipment on the vessel, installation, aircraft or land; or
 - (d) use such force against a thing as is necessary and reasonable in the circumstances.
- (3) Subsection (2) does not limit subsection (1).
- (4) However, the officer must not require the person to do anything that would endanger the health or safety of the person or any other person.

Division 5—Geographical limits

Subdivision A—Exercising powers in other countries

40 Exercising powers in other countries

This Act does not authorise the exercise of powers at a place in another country unless the powers are exercised:

- (a) at the request or with the agreement of the other country; or
- (b) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies in that place; or
- (c) to investigate a contravention of a law that:
 - (i) applies in that place; and
 - (ii) is prescribed by the regulations; or
- (d) to administer or ensure compliance with a monitoring law that:
 - (i) applies in that place; and
 - (ii) is prescribed by the regulations; or
- (e) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Subdivision B—Exercising powers between countries

41 Foreign vessels between countries

- (1) This Act does not authorise the exercise of powers in relation to a foreign vessel at a place between Australia and another country unless the powers are exercised:
 - (a) to investigate a contravention of a law that applies to foreign vessels, or persons on foreign vessels, in that place; or
 - (b) in relation to a contravention covered by paragraph (a), to:
 - (i) arrest a person; or
 - (ii) require a person to cease conduct; or

- (c) in the contiguous zone of Australia to:
 - (i) investigate a contravention of a customs, fiscal, immigration or sanitary law prescribed by the regulations that occurred in Australia; or
 - (ii) prevent a contravention of such a law occurring in Australia; or
- (d) to administer or ensure compliance with a monitoring law that applies to foreign vessels, or persons on foreign vessels, in that place; or
- (e) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign vessels, or persons on foreign vessels, in that place; or
- (f) to identify the vessel under a vessels without nationality authorisation; or
- (g) in relation to a support vessel supporting a vessel involved in a contravention in Australia; or
- (h) in relation to a support vessel supporting a vessel that is:
 - (i) an Australian vessel involved in a contravention within the exclusive economic zone, or waters above the continental shelf, of Australia; or
 - (ii) a foreign vessel involved in a contravention of a law that applies to the foreign vessel, or persons on the foreign vessel, in that place; or
- (i) after the vessel has been chased without interruption to that place; or
- (j) at the request or with the agreement of the country of the vessel's nationality; or
- (k) to seize a border controlled drug or border controlled plant; or
- (l) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note 1: For *chased without interruption*, see section 42.

Note 2: This section does not apply to the exercise of powers under Divisions 7 and 8 of Part 3 in some circumstances: see section 75D.

Section 42

- (2) Only vessel identification powers may be exercised under paragraph (1)(f).

Note: For *vessel identification powers*, see section 8.

42 Meaning of *chased without interruption*

- (1) A vessel is *chased without interruption* if:
- (a) at a place where a maritime officer may exercise powers in relation to the vessel without having chased the vessel, a maritime officer requires the person in charge of the vessel to:
 - (i) stop the vessel; or
 - (ii) facilitate boarding of the vessel; and
 - (b) the requirement is not complied with; and
 - (c) the vessel is chased from that place; and
 - (d) the chase is not interrupted.

Note: For requirements to facilitate boarding and stop, see sections 53 and 54.

- (2) The chase is not interrupted only because:
- (a) it is continued by another maritime officer; or
 - (b) it is begun, or taken over, by a vessel or aircraft (including a vessel or aircraft of a foreign country) other than the vessel or aircraft from which the requirement was made; or
 - (c) if the chase is continued by a vessel or aircraft of a foreign country—there is no maritime officer on board the vessel or aircraft; or
 - (d) the vessel is out of sight of any or all of the maritime officers, or officers of a foreign country, involved in the chase; or
 - (e) the vessel cannot be tracked by remote means, including radio, radar, satellite or sonar.

43 Foreign installations between countries

This Act does not authorise the exercise of powers in relation to a foreign installation at a place between Australia and another country unless the powers are exercised:

- (a) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign installations, or persons on foreign installations, in that place; or
- (b) at the request or with the agreement of the country that controls the installation; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

44 Foreign aircraft between countries

This Act does not authorise the exercise of powers, other than aircraft identification powers, in relation to a foreign aircraft at a place between Australia and another country unless the powers are exercised:

- (a) to investigate a contravention of a law that applies to foreign aircraft, or persons on foreign aircraft, in that place; or
- (b) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign aircraft, or persons on foreign aircraft, in that place; or
- (c) at the request or with the agreement of the country of the aircraft's nationality; or
- (d) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Section 45

Subdivision C—Exercising powers in Australia

45 Foreign vessels in Australia—evidence and warrants authorisations

- (1) This Act does not authorise the exercise of powers in relation to a foreign vessel under an evidence and warrants authorisation at a place in Australia unless:
- (a) the vessel is at a place in the internal waters of Australia; or
 - (b) the vessel is passing through the territorial sea of Australia after leaving the internal waters of Australia; or
 - (c) the powers are exercised:
 - (i) at the request or with the agreement of the country of the vessel's nationality; or
 - (ii) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.
- (2) Subsection (1) has effect subject to section 46.

46 Vessels, installations and isolated persons in States and internal Territories

This Act does not authorise the exercise of powers in relation to a vessel, installation or isolated person in a State or internal Territory unless the powers are exercised:

- (a) both:
 - (i) as part of the continuous exercise of powers begun outside the State or internal Territory; and
 - (ii) in relation to conduct that occurred outside a State or internal Territory; or
- (b) in relation to a law of the Commonwealth in waters navigable from waters of the sea; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

47 Aircraft in States and internal Territories

This Act does not authorise the exercise of powers in relation to an aircraft in a State or internal Territory unless the powers are exercised:

- (a) as part of the continuous exercise of powers begun outside the State or internal Territory in relation to conduct that occurred outside a State or internal Territory; or
- (b) in relation to a law of the Commonwealth; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

Subdivision D—Requests and agreements of other countries

48 Manner and form of requests and agreements

- (1) For the purposes of this Division, a request or agreement of another country:
 - (a) need not be in writing; and
 - (b) includes the following:
 - (i) a standing request or agreement;
 - (ii) a request or agreement relating to particular circumstances;
 - (iii) a request or agreement that covers a particular period of time.
- (2) The request or agreement may be made or given by any of the following:
 - (a) the head of state of the country;

Section 49

- (b) the head of the government of the country;
- (c) the minister of the government of the country who is responsible for foreign affairs;
- (d) the minister of the government of the country who is responsible for defence;
- (e) any official or body of the country that has, or could be expected to have, authority to make or give such a request or agreement.

49 Scope of powers under requests and agreements

- (1) If:
 - (a) the request or agreement of another country is made or given for the exercise of powers in relation to a vessel, installation, aircraft or isolated person for a particular purpose (the ***agreed purpose***); and
 - (b) the request or agreement is relied on for the purposes of this Division;a maritime officer may exercise any maritime power in relation to the vessel, installation, aircraft or person for the agreed purpose.
- (2) However, subsection (1) does not authorise the exercise of a power specified in the request or agreement as a power that must not be exercised under the request or agreement in relation to the vessel, installation, aircraft or person.

Part 3—Maritime powers

Division 1—Introduction

50 Guide to this Part

This Part sets out maritime powers.

Maritime powers may be exercised only in accordance with Part 2 and include the following:

- (a) boarding and entry powers;
- (b) information gathering powers;
- (c) search powers;
- (d) powers to seize and retain things;
- (e) powers to detain vessels and aircraft;
- (f) powers to place, detain, move and arrest persons;
- (g) the power to require persons to cease conduct that contravenes Australian law.

51 Effect of Part

The powers in this Part may be exercised only in accordance with Part 2.

Division 2—Boarding

52 Boarding vessels, installations and aircraft

- (1) A maritime officer may board a vessel, installation or aircraft.
- (2) If the person in charge of the vessel, installation or aircraft requests the officer to produce identification, the officer must produce:
 - (a) the officer's identity card; or
 - (b) other written evidence of the fact that the officer is a Commonwealth officer.
- (3) If the officer fails to produce the identity card or other written evidence, the officer must:
 - (a) leave the vessel, installation or aircraft; and
 - (b) not re-board the vessel, installation or aircraft without producing the identity card or other written evidence.
- (4) Subsections (2) and (3) do not apply if the officer is one of the following in uniform:
 - (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) an officer prescribed by the regulations.

53 Requirement to facilitate boarding

- (1) A maritime officer may require the person in charge of a vessel, installation or aircraft to take reasonable steps to facilitate the boarding of the vessel, installation or aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may be made by any reasonable means.

- (3) The requirement is made whether or not the person in charge of the vessel, installation or aircraft understands or is aware of the requirement.

54 Additional powers—vessels

Stopping, manoeuvring etc.

- (1) A maritime officer may require the person in charge of a 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.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement is made whether or not the person in charge of the vessel understands or is aware of the requirement.

Chasing

- (3) If the person in charge of a vessel does not comply with a requirement to stop or facilitate boarding of the vessel, a maritime officer may do one or more of the following:
- (a) chase the vessel;
 - (b) use any reasonable means to obstruct the passage of the vessel;
 - (c) use any reasonable means to halt or slow the passage of the vessel, including by fouling the propellers of the vessel;
 - (d) after firing a warning shot, fire at or into the vessel to disable it or compel it to be brought to for boarding.

Requirement taken to be made to support vessels

- (4) A requirement made to a person in charge of a vessel (the **supported vessel**) to stop or facilitate boarding of the supported vessel, is taken to have been made also to the person in charge of any vessel supporting the supported vessel.

55 Additional powers—aircraft

Identifying

- (1) A maritime officer may require the person in charge of an aircraft to disclose any or all of the following to the officer:
 - (a) the identity of the aircraft;
 - (b) the identity of all persons on the aircraft;
 - (c) the flight path of the aircraft;
 - (d) the flight plan of the aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may be made by any reasonable means.
- (3) The requirement is made whether or not the person in charge of the aircraft understands or is aware of the requirement.
- (4) The powers in subsection (1) are *aircraft identification powers*.

Intercepting

- (5) A maritime officer who is on board an aircraft may use his or her aircraft to intercept another aircraft.
- (6) The interception must be in accordance with the practices recommended in Annex 2 (headed “Rules of the Air”) to the Convention on International Civil Aviation done at Chicago on 7 December 1944 (that was adopted in accordance with that Convention).

Note: The text of the Convention is set out in Australian Treaty Series 1957 No. 5 ([1957] ATS 5). In 2013, 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).

Landing

- (7) A maritime officer may require the person in charge of an aircraft to land the aircraft:

Section 55

- (a) at the nearest airport in Australia; or
- (b) at another place in Australia that the officer considers appropriate.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (8) A maritime officer must have regard to the safety of the aircraft when making a requirement under subsection (7).

Division 3—Entering on land

56 Entering on land

- (1) A maritime officer may enter onto land.
- (2) If the person in charge of the land requests the officer to produce identification, the officer must produce:
 - (a) the officer's identity card; or
 - (b) other written evidence of the fact that the officer is a Commonwealth officer.
- (3) If the officer fails to produce the identity card or other written evidence, the officer must:
 - (a) leave the land; and
 - (b) not re-enter the land without producing the identity card or other written evidence.
- (4) Subsections (2) and (3) do not apply if the officer is one of the following in uniform:
 - (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) an officer prescribed by the regulations.

Note: The exercise of powers on land is limited: see the definition of ***protected land area*** in section 8 and the geographical limits on the exercise of powers set out in sections 46 and 47.

Division 4—Obtaining information

57 Requiring answers, records and documents

- (1) A maritime officer may require a person to answer questions or produce records or documents.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The questions, records or documents may be about, or relate to:
- (a) a vessel, installation, aircraft or land; or
 - (b) the operations of a vessel, installation or aircraft, or activities conducted on a vessel, installation, aircraft or land; or
 - (c) any thing on or in the vicinity of a vessel, installation, aircraft or land (including stores and cargo); or
 - (d) the identity of the person or any other person; or
 - (e) the reasons for the person or any other person being on or in the vicinity of a vessel, installation, aircraft or land; or
 - (f) any journey undertaken by the person or any other person; or
 - (g) any contravention, or suspected contravention, of an Australian law.

- (3) Subsection (2) does not limit subsection (1).

58 Obtaining readings

A maritime officer may read, make readings from, or require the person in charge of a vessel, installation or aircraft to show the officer readings of, navigational or other instruments that relate to the operations of a vessel, installation or aircraft.

Note: It is an offence to fail to comply with a requirement under this section: see section 103.

Division 5—Searching

59 Searching places

- (1) A maritime officer may conduct a search, including a search of private living quarters.

Opening holds etc.

- (2) In conducting a search, a maritime officer may break open any space (including a hold, compartment, container, receptacle or any place that could be used as a receptacle).
- (3) Before breaking open a space, a maritime officer must give the person in charge of the vessel, installation, aircraft or land concerned a reasonable opportunity to open the space.
- (4) Subsection (3) does not apply if it is not reasonably practicable to give the person such an opportunity.

Use of dogs, equipment etc.

- (5) A maritime officer may use a dog or any equipment or other thing to assist in a search.

60 Lifting persons or things from the sea

A maritime officer may cause a person or thing to be lifted from the sea.

61 Searching persons

- (1) A maritime officer may search a person.
- (2) The search may be either or both of the following:
 - (a) an ordinary search;
 - (b) a frisk search.

- (3) The officer may require the production of any thing found as a result of the search.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

*Meanings of **ordinary search** and **frisk search***

- (4) An **ordinary search** is a search of a person, or of articles in the possession of a person, that may include:
- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
 - (b) an examination of those items.
- (5) A **frisk search** is:
- (a) a search of a person conducted by quickly running hands over the person's outer garments; and
 - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

62 Conducting frisk searches

- (1) A frisk search must be conducted by a maritime officer or person assisting who is of the same sex as the person being searched.
- Note: For **person assisting**, see paragraph 38(5)(b).
- (2) If the search is conducted by a person assisting, the search must be conducted in the presence of a maritime officer.
- (3) If:
- (a) there is no maritime officer of the same sex available; and
 - (b) no other suitable person of the same sex will agree to assist;
- any maritime officer may conduct the search.

Division 6—Things found or produced

63 Examining things

Maritime officer may examine things

- (1) A maritime officer may examine a thing.

Examples of examining

- (2) The officer may do the following:
- (a) open any package in which the thing is or may be contained;
 - (b) use a device, such as an X-ray machine or ion scanning equipment, on the thing;
 - (c) test or analyse the thing;
 - (d) measure or count the thing;
 - (e) take samples of the thing (even if the sampling destroys the thing);
 - (f) operate the thing;
 - (g) if the thing is or contains a record or document—read the record or document either directly or with the use of an electronic device;
 - (h) use a dog to assist in examining the thing;
 - (i) take photographs or a video recording of the thing;
 - (j) make sketches of the thing.
- (3) Subsection (2) does not limit subsection (1).

Use of force to examine

- (4) The officer may use force to open the thing, or any part of the thing.
- (5) However, before doing so, the officer must give a reasonable opportunity to open the thing, or the part of the thing, to:
- (a) the person in whose possession the thing was found; and

- (b) if the thing was found on a vessel, installation, aircraft or land—the person in charge of the vessel, installation, aircraft or land.
- (6) Subsection (5) does not apply if it is not reasonably practicable to give such an opportunity.

64 Securing and marking things

- (1) A maritime officer may do one or more of the following:
 - (a) seal a thing;
 - (b) mark a thing;
 - (c) lock up, or otherwise secure a thing (including in the hold of a vessel or aircraft);
 - (d) if the thing is a live plant:
 - (i) mark or label a cage or container in which the plant is kept or in which the plant is growing; or
 - (ii) place a label or tag on the plant;
 - (e) if the thing is a live animal:
 - (i) implant a scannable device in the animal; or
 - (ii) place a band on any part of the animal; or
 - (iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; or
 - (iv) mark or label a cage or container within which the animal is kept.

Offences

- (2) A person commits an offence if:
 - (a) in the exercise of powers in relation to a vessel, installation, aircraft or land, a maritime officer seals, marks, labels, locks up or secures a thing; and
 - (b) the continuous exercise of those powers has not ceased; and
 - (c) the person:
 - (i) breaks or defaces the seal; or
 - (ii) erases or defaces the mark or label; or

Part 3 Maritime powers

Division 6 Things found or produced

Section 65

(iii) breaks or unlocks the lock or otherwise causes the thing to be unsecured; and

(d) the person does so without the consent of a maritime officer.

Penalty: 50 penalty units.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

(3) A person commits an offence if:

(a) in the exercise of powers in relation to a vessel, installation, aircraft or land, a maritime officer:

(i) implants a scannable device in an animal; or

(ii) places a band on any part of an animal; or

(iii) places (whether by piercing or otherwise) a tag or ring on any part of an animal; and

(b) the continuous exercise of those powers has not ceased; and

(c) the person removes, or interferes with, the implant, band, tag or ring; and

(d) the person does so without the consent of a maritime officer.

Penalty: 50 penalty units.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

65 Copying records or documents

A maritime officer may copy a record or document, or a part of a record or document.

66 Securing weapons

(1) A maritime officer may secure a weapon.

(2) The officer may:

(a) take temporary possession of the weapon; or

Section 67

- (b) give temporary possession of the weapon to another person;
or
 - (c) move or guard the weapon; or
 - (d) disarm or dismantle the weapon.
- (3) Subsection (2) does not limit subsection (1).

Note: A weapon can be seized under section 67 (seizing things), and could be retained under section 68 (retaining things).

67 Seizing things

- (1) A maritime officer may seize:
- (a) a weapon; or
 - (b) any thing that the officer suspects, on reasonable grounds:
 - (i) is evidential material; or
 - (ii) is a border controlled drug or border controlled plant; or
 - (iii) is owned by the Commonwealth or a State or Territory.

Note: Written notice must be given if a thing is seized: see section 80.

- (2) To avoid doubt, a thing owned by the Commonwealth or a State or Territory includes a thing that has been forfeited to the Commonwealth or the State or Territory.
- (3) A thing seized under subsection (1) is a *seized thing*.

68 Retaining things

- (1) A maritime officer may retain any thing that the officer suspects, on reasonable grounds, could be seized under an Australian law.

Note: Written notice must be given if a thing is retained: see section 80.

- (2) The officer may retain the thing even if a warrant would be required to take possession of the thing under that law.
- (3) A thing retained under subsection (1) is a *retained thing*.

Division 7—Detaining vessels, aircraft and other conveyances

69 Vessels and aircraft

- (1) A maritime officer may detain a vessel or aircraft.

Note: For other provisions affecting powers under this section, see section 69A and Division 8A.

- (2) The officer may:

- (a) take the vessel or aircraft, or cause the vessel or aircraft to be taken, to a place (the *destination*); and
- (b) remain in control of the vessel or aircraft, or require the person in charge of the vessel or aircraft to remain in control of the vessel or aircraft, at the destination, until whichever of the following occurs first:
 - (i) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (ii) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

- (3) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

- (3A) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

- (4) A vessel detained under subsection (1) is a *detained vessel*.
- (5) An aircraft detained under subsection (1) is a *detained aircraft*.

69A Additional provisions relating to taking a vessel or aircraft to a destination under section 69

- (1) For the purpose of taking a vessel or aircraft (or causing a vessel or aircraft to be taken) to a destination under paragraph 69(2)(a), the vessel or aircraft may be detained under subsection 69(1):
 - (a) for any period reasonably required:
 - (i) to decide which place should be the destination; or
 - (ii) to consider whether the destination should be changed to a different place under subsection 69(3A), and (if it should be changed) to decide what that different place is; and
 - (b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:
 - (i) a matter referred to in subparagraph (a)(i) or (ii); or
 - (ii) any other matter relating to the exercise of powers in relation to the vessel or aircraft, or in relation to persons on (or suspected as having been on) the vessel or aircraft; and
 - (c) for the period it actually takes to travel to the destination.

Note: The total period for which the vessel or aircraft is detained may be longer than the periods covered by this subsection: see subsection (3) and section 87.

- (2) For the purpose of paragraph (1)(c):
 - (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
 - (b) there is no requirement that the most direct route to the destination must be taken.

Part 3 Maritime powers

Division 7 Detaining vessels, aircraft and other conveyances

Section 70

- (3) Days in periods covered by subsection (1) do not count towards the 28 day limit specified in paragraph 87(2)(a).

70 Other conveyances

A maritime officer may detain a vehicle or other conveyance on land.

Division 8—Placing and moving persons

71 Placing persons

A maritime officer exercising powers in relation to a vessel, installation, aircraft or land may place or keep a person in a particular place on the vessel, installation, aircraft or land.

Note 1: The exercise of powers under this Act must be for a purpose set out in Division 4 of Part 2.

Note 2: A maritime officer must not subject a person to greater indignity than is necessary and reasonable in the exercise of powers: see section 37.

Note 3: A person arrested, detained or otherwise held under this Act must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment: see section 95.

72 Persons on detained vessels and aircraft

- (1) This section applies to a person:
- (a) on a detained vessel or detained aircraft; or
 - (b) whom a maritime officer reasonably suspects was on a vessel or aircraft when it was detained.

Note 1: For detaining vessels and aircraft, see section 69.

Note 2: For other provisions affecting powers under this section, see section 72A and Division 8A.

- (2) A maritime officer may return the person to the vessel or aircraft.
- (3) A maritime officer may require the person to remain on the vessel or aircraft until whichever of the following occurs first:
- (a) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (b) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

Section 72A

- (4) A maritime officer may detain the person and take the person, or cause the person to be taken, to a place (the *destination*).

- (4A) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

- (4B) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

- (5) For the purposes of taking the person to the destination, a maritime officer may within or outside Australia:

- (a) place the person on a vessel or aircraft, or in a particular place on a vessel or aircraft; or
- (b) restrain the person on a vessel or aircraft, or in a particular place on a vessel or aircraft; or
- (c) remove the person from a vessel or aircraft.

72A Additional provisions relating to taking a person to a destination under subsection 72(4)

- (1) A person may be detained under subsection 72(4):

- (a) for any period reasonably required:
 - (i) to decide which place should be the destination; or
 - (ii) to consider whether the destination should be changed to a different place under subsection 72(4B), and (if it should be changed) to decide what that different place is; and

- (b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:
 - (i) a matter referred to in subparagraph (a)(i) or (ii); or
 - (ii) any other matter relating to the exercise of powers in relation to the person; and
 - (c) for the period it actually takes to travel to the destination; and
 - (d) for any period reasonably required to make and effect arrangements relating to the release of the person.
- (2) For the purpose of paragraph (1)(c):
- (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
 - (b) there is no requirement that the most direct route to the destination must be taken.
- (3) The person must not be detained under subsection 72(4) for any longer than is permitted by subsection (1) of this section.
- (4) Powers may be exercised in accordance with subsection 72(5) in relation to the person at any time while the person continues to be detained under subsection 72(4).
- (5) Subsection (3) does not prevent:
- (a) the arrest of the person; or
 - (b) the detention of the person under another Australian law; or
 - (c) the exercise of any other power in relation to the person.

73 Using detention provisions

- (1) A maritime officer may detain a person under a detention provision as if the officer were an officer (however described) within the meaning of that provision.

Note: For dealing with a person who has been detained under a detention provision, see section 98.

Section 74

- (2) Each of the following is a *detention provision*:
- (a) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (b) clause 8 of Schedule 1A to the *Fisheries Management Act 1991*;
 - (c) clause 8 of Schedule 2 to the *Torres Strait Fisheries Act 1984*;
 - (d) a provision prescribed by the regulations.

74 Safety of persons

A maritime officer must not place or keep a person in a place, unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place.

75 Restraint is not arrest

- (1) Any restraint on the liberty of a person that results from the operation of this Division does not constitute arrest, and is not unlawful.
- (2) Proceedings, whether civil or criminal, in respect of that restraint may not be instituted or continued in any court against the Commonwealth, a maritime officer or a person assisting.

Note: This section does not affect the jurisdiction of the High Court under section 75 of the Constitution.

Division 8A—General provisions relating to powers under Divisions 7 and 8

75A Failure to consider international obligations etc. does not invalidate exercise of powers

- (1) The exercise of a power under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H is not invalid:
 - (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

75B Rules of natural justice do not apply to exercise of powers

- (1) The rules of natural justice do not apply to the exercise of powers under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H.
- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

75C Additional provisions about destination to which a vessel, aircraft or person may be taken

- (1) To avoid doubt:
 - (a) the destination to which a vessel, aircraft or person is taken (or caused to be taken) under section 69 or 72:

Section 75D

- (i) does not have to be in a country; and
 - (ii) without limiting subparagraph (i)—may be just outside a country; and
 - (iii) may be a vessel; and
- (b) a vessel, aircraft or person may be taken (or caused to be taken) to a destination under section 69 or 72:
 - (i) whether or not Australia has an agreement or arrangement with any other country relating to the vessel or aircraft (or the persons on it), or the person; and
 - (ii) irrespective of the international obligations or domestic law of any other country.

Note: The definition of *country* in section 8 includes the territorial sea and archipelagic waters of the country, as well as various other areas.

- (2) However, if the destination is in another country, section 40 (exercising powers in other countries) must be complied with.

75D Exercising powers between countries

- (1) Section 41 (foreign vessels between countries) does not apply to an exercise of power under section 69, 69A, 71, 72, 72A or 74 if:
 - (a) the exercise of power is:
 - (i) covered by a determination in force under subsection (2); or
 - (ii) required by a direction in force under paragraph 75F(2)(a); and
 - (b) the exercise of power is part of a continuous exercise of powers that commenced in accordance with any applicable requirements of Division 5 of Part 2.
- (2) For the purpose of subparagraph (1)(a)(i), the Minister may make a written determination that is expressed to cover the exercise, in a specified circumstance, of powers under one or more of the sections referred to in subsection (1).

Section 75E

- (3) The Minister may, in writing, vary or revoke a determination made under subsection (2).
- (4) The only condition for the exercise of the power to make a determination under subsection (2), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.

Note: There are no conditions for the exercise of the power to revoke a determination.

- (5) A determination under subsection (2), or an instrument varying or revoking a determination, comes into force:
 - (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (6) A determination under subsection (2) remains in force until whichever of the following occurs first:
 - (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (7) A determination under subsection (2), or a variation or revocation of a determination, is not a legislative instrument.

75E Powers are not limited by the *Migration Act 1958*

- (1) Powers under sections 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H are not in any respect subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).
- (2) Subsection (1) of this section is not to be taken to imply that other powers under this Act are subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).

Section 75F

75F Minister may give directions about exercise of powers

- (1) This section applies in relation to the powers in sections 69, 69A, 71, 72 and 72A.
- (2) The Minister may, in writing, give directions:
 - (a) requiring the exercise of a power or powers in a specified circumstance, or in circumstances in a specified class, in a specified manner; or
 - (b) relating to the exercise of a power or powers in a specified circumstance, in a specified class of circumstances or more generally.
- (3) Without limiting subsection (2), the Minister may give a direction under that subsection:
 - (a) specifying a place that is to be, or is not to be, the destination to which a vessel, aircraft or person is taken under paragraph 69(2)(a) or subsection 72(4); or
 - (b) specifying matters to be taken into account in deciding the destination to which a vessel, aircraft or person is to be so taken.
- (4) The Minister may, in writing, vary or revoke a direction given under subsection (2).
- (5) The only condition for the exercise of the power to give a direction under subsection (2), or to vary a direction, is that the Minister thinks that it is in the national interest to give or vary the direction.

Note: There are no conditions for the exercise of the power to revoke a direction.
- (6) A direction under subsection (2) may specify circumstances in which the direction need not be complied with.
- (7) A direction under subsection (2), or an instrument varying or revoking a direction, comes into force:
 - (a) unless paragraph (b) applies—when it is made; or
 - (b) if the direction or instrument specifies a later time as the time when it is to come into force—at that later time.

- (8) A direction under subsection (2) remains in force until whichever of the following occurs first:
 - (a) an instrument revoking the direction comes into force;
 - (b) if the direction is expressed to cease to be in force at a specified time—the time so specified.
- (9) If the Minister gives a direction as mentioned in paragraph (2)(a):
 - (a) the direction is taken to constitute an authorisation of the exercise of the power or powers in accordance with the direction; and
 - (b) that authorisation is taken (despite section 23) to remain in force while the direction is in force.
- (10) A direction under subsection (2), or an instrument varying or revoking a direction, is not a legislative instrument.

75G Compliance with directions

- (1) Subject to subsections (2) and (3) of this section, and subsection 75F(6), a maritime officer must comply with any applicable directions in force under section 75F. However, a failure to comply does not invalidate any exercise of power by a maritime officer.
- (2) A maritime officer who is a member of the Australian Defence Force is not required to comply with a direction under section 75F to the extent that the direction is inconsistent with an order or other exercise of command under sections 8 and 9 of the *Defence Act 1903*.
- (3) A maritime officer is not required to comply with a direction under section 75F to the extent that he or she reasonably believes that it would be unsafe to do so.

Section 75H

75H Certain maritime laws do not apply to certain vessels detained or used in exercise of powers

Vessels detained under section 69

- (1) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the vessel is detained in exercise (or purported exercise) of powers under section 69.

Vessels used in exercise of powers under subsections 72(4) or (5)

- (2) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the following paragraphs are satisfied:
 - (a) the vessel is being used in the exercise (or purported exercise) of powers under subsection 72(4) or (5), or the Commonwealth intends that the vessel is for use in the exercise of such powers;
 - (b) the vessel is specified in, or is included in a class of vessels specified in, a determination under subsection (4) that is in force;
 - (c) if the determination states that it has effect, in relation to the vessel or class of vessels, only in specified circumstances—those circumstances exist;
 - (d) if the determination states that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods—the time is in that period, or one of those periods.

Note: Paragraph (c) and (d) do not have to be satisfied unless the determination states as mentioned in those paragraphs.

The laws that are disapplied

- (3) The laws that, because of subsection (1) or (2), do not apply in relation to a vessel are:
 - (a) the *Navigation Act 2012*; and
 - (b) the *Shipping Registration Act 1981*; and

- (c) the Marine Safety (Domestic Commercial Vessel) National Law.

Determinations of vessels and classes of vessels

- (4) For the purpose of paragraph (2)(b), the Minister may make a written determination specifying a vessel, or a class of vessels. The determination may also state either or both of the following:
- (a) that it has effect, in relation to the vessel or class of vessels, only in specified circumstances;
 - (b) that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods.
- (5) The Minister may, in writing, vary or revoke a determination made under subsection (4).
- (6) The only condition for the exercise of the power to make a determination under subsection (4), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.
- Note: There are no conditions for the exercise of the power to revoke a determination.
- (7) A determination under subsection (4), or an instrument varying or revoking a determination, comes into force:
- (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (8) A determination under subsection (4) remains in force until whichever of the following occurs first:
- (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (9) A determination under subsection (4), or a variation or revocation of a determination, is not a legislative instrument.

Division 9—Arrest

76 Arrest for indictable offences

- (1) A maritime officer may arrest a person if the officer suspects, on reasonable grounds, that the person has committed an indictable offence against an Australian law.

Note: For dealing with a person who has been arrested, see section 100.

Release from arrest

- (2) The person must be released from arrest if, before the person is charged with the offence, the officer ceases to suspect, on reasonable grounds, that the person committed the offence.

77 Enforcing arrest warrants

A maritime officer may arrest a person for whom an arrest warrant is in force under an Australian law.

Note: For dealing with a person who has been arrested, see section 100.

Division 10—Requiring conduct to cease

78 Requiring conduct to cease

A maritime officer may require a person to cease conduct if the officer believes, on reasonable grounds, that the conduct constitutes a contravention of an Australian law.

Note: It is an offence to fail to comply with a requirement under this section: see section 103.

Part 4—Dealing with things taken

Division 1—Introduction

79 Guide to this Part

This Part sets out processes for dealing with things taken in the exercise of powers under this Act.

Things taken fall into the following 3 categories:

- (a) seized things;
- (b) retained things;
- (c) detained vessels and aircraft.

Written notice must be given to the owner of a seized, retained or detained thing, or to a person who had possession or control of the thing.

Seized things may be used for certain purposes, but must be returned unless:

- (a) they are required for proceedings; or
- (b) they have been disposed of under an Australian law; or
- (c) they are seized under another Australian law; or
- (d) the Commonwealth claims ownership of them.

Retained and detained things must be returned unless:

Section 79

- (a) they have been disposed of under an Australian law; or
- (b) they are seized under an Australian law; or
- (c) the Commonwealth claims ownership of them.

The Minister may dispose of seized, retained and detained things on the grounds set out in Division 5.

If the Commonwealth claims ownership of a seized, retained or detained thing, a person may apply to a court for its return.

Division 2—Notice of seizure, retention or detention

80 Notice of seizure, retention or detention

- (1) If a maritime officer seizes or retains a thing, or detains a vessel or aircraft (also the *thing*), the officer must give written notice, within 14 days, to:

- (a) the owner of the thing; or
- (b) a person who had possession or control of the thing immediately before it was seized, retained or detained.

Note: Things may be seized under section 67 and retained under section 68. Vessels and aircraft may be detained under section 69.

- (2) If the officer cannot conveniently give the notice in person, the officer may give the notice by fixing the notice to a prominent part of the thing, unless the thing is perishable.
- (3) The notice must:
- (a) identify the thing; and
 - (b) state that the thing has been seized, retained or detained; and
 - (c) specify the reason for this; and
 - (d) specify contact details of an officer who can provide further information; and
 - (e) include information about the return of the thing.

81 Information about the return of things

Seized things

- (1) Information about the return of a seized thing must state that the thing will be returned within 120 days of its seizure unless:
- (a) the thing is required for the purposes of proceedings that have been instituted, or an appeal arising from such proceedings; or
 - (b) the period of 120 days is extended by a magistrate under section 88; or

- (c) the thing is disposed of under an Australian law; or
- (d) the thing is seized under another Australian law; or
- (e) notice of Commonwealth ownership of the thing is given.

Retained things and detained vessels and aircraft

- (2) Information about the return of a retained thing, or a detained vessel or detained aircraft (also the **thing**), must state that the thing will be returned within 28 days of its retention or detention unless:
 - (a) the period of 28 days is extended by a magistrate under section 88; or
 - (b) the thing is disposed of under an Australian law; or
 - (c) the thing is seized under an Australian law; or
 - (d) notice of Commonwealth ownership of the thing is given.
- (3) If a detained vessel or aircraft is to be taken to a destination under paragraph 69(2)(a), the information must also explain the effect of subsection 69A(3).

82 Notice of Commonwealth ownership

- (1) Notice of Commonwealth ownership of a thing may be given at any time.
- (2) The notice must:
 - (a) state that the Commonwealth claims ownership of the thing; and
 - (b) state that any other person who claims ownership or possession of the thing may apply to a court of competent jurisdiction, within 30 days after the notice is given, for an order for the return of the thing.
- (3) If the notice cannot conveniently be given in person, the officer may give the notice by fixing the notice to a prominent part of the thing, unless the thing is perishable.

Division 3—Using seized things

83 Using seized things

- (1) A maritime officer may use a seized thing, or make a seized thing available to another Commonwealth officer to use as follows:
 - (a) to prevent, investigate or prosecute a contravention of:
 - (i) an Australian law; or
 - (ii) an international agreement or international decision;
 - (b) to administer or ensure compliance with:
 - (i) a monitoring law; or
 - (ii) an international agreement or international decision;
 - (c) for any other purpose under another Australian law, as if the thing had been seized, produced or required (however described) under that law;
 - (d) to decide whether to use the thing as mentioned in any of paragraphs (a) to (c).
- (2) To avoid doubt, paragraph (1)(c) applies even if a warrant would have been required to seize or access the thing under that law.

Note: The thing will have to be returned in accordance with section 86, unless an exception under subsection 86(3) applies.

84 Using seized things—State and Territory officers

A Commonwealth officer may make a seized thing available to an officer of a State or Territory to be:

- (a) seized under a law of the State or Territory; or
- (b) used for any other purpose under a law of the State or Territory.

Note: The thing will have to be returned in accordance with section 86, unless an exception under subsection 86(3) applies.

85 Operating electronic equipment

If:

- (a) a seized thing may be used under this Division for a particular purpose; and
- (b) the thing is electronic equipment;
the thing may be operated for that purpose.

Division 4—Returning things

86 Returning seized things

- (1) If a seized thing is no longer required for a purpose mentioned in Division 3 (using seized things), the person who has control of the thing must take reasonable steps to return the thing to:
 - (a) the owner of the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized.
- (2) The thing must be returned within:
 - (a) 120 days after it is seized; or
 - (b) that period as extended under section 88.
- (3) Subsections (1) and (2) do not apply if:
 - (a) the thing is required for the purposes of proceedings that have been instituted, or an appeal arising from such proceedings; or
 - (b) the thing has been disposed of under an Australian law; or
 - (c) the thing has been seized under another Australian law; or
 - (d) notice of Commonwealth ownership of the thing has been given.

87 Returning retained and detained things

- (1) A retained thing, or a detained vessel or detained aircraft (also the **thing**), must be returned to:
 - (a) the owner of the thing; or
 - (b) a person who had possession or control of the thing immediately before it was retained or detained.
- (2) The thing must be returned within:
 - (a) 28 days after it is retained or detained; or
 - (b) that period as extended under section 88.

Note: In the case of a detained vessel or aircraft that is taken to a destination under paragraph 69(2)(a), days in periods covered by subsection 69A(1) (such as the period it takes to travel to the destination) do not count towards the 28 day limit: see subsection 69A(3).

- (3) Subsections (1) and (2) do not apply if:
- (a) the thing has been disposed of under an Australian law; or
 - (b) the thing has been seized under an Australian law; or
 - (c) notice of Commonwealth ownership of the thing has been given.

88 Magistrate may extend holding period

- (1) The person who has control of a seized thing or retained thing, or a detained vessel or detained aircraft (also the *thing*), may apply to a magistrate for an order extending, or further extending, the period for which the thing may be held.
- (2) The magistrate may make an order extending the period for which the thing may be held if the magistrate is satisfied that:
 - (a) the thing is required for a purpose mentioned in Division 3 (using seized things); or
 - (b) there are other grounds for extending the period.
- (3) Before making the application, the person who has control of the thing must:
 - (a) take reasonable steps to discover who has an interest in the thing; and
 - (b) if it is practicable to do so, notify each such person of the proposed application.

89 Returning things if notice of Commonwealth ownership given

Application to court

- (1) If notice of Commonwealth ownership of a thing is given, a person who claims ownership or possession of the thing may apply to a

Section 90

court of competent jurisdiction for an order for the return of the thing.

- (2) The application must be made within 30 days after the notice of Commonwealth ownership is given.

Order for return of thing

- (3) The court may order the return of the thing if:
- (a) the court is not satisfied that the Commonwealth owns the thing; and
 - (b) the thing has not been:
 - (i) seized under another Australian law; or
 - (ii) disposed of under an Australian law.

90 Seizing under other Australian laws

- (1) If a seized thing is seized under another Australian law, its seizure under this Act does not:
- (a) count as seizure under the other law; or
 - (b) remove or fulfil any requirement under the other law to:
 - (i) give notice or information; or
 - (ii) act under a warrant; or
 - (iii) do any other thing in relation to the seizure under the other law.
- (2) If a retained thing, or a detained vessel or detained aircraft (also the **thing**), is seized under an Australian law (the **other law**), its retention or detention under this Act does not:
- (a) count as seizure under the other law; or
 - (b) remove or fulfil any requirement under the other law to:
 - (i) give notice or information; or
 - (ii) act under a warrant; or
 - (iii) do any other thing in relation to the seizure under the other law.

- (3) Subsections (1) and (2) have effect subject to any express provision to the contrary in an Australian law.

Division 5—Disposing of things

91 Reasons for disposal

- (1) The Minister may dispose of a seized thing or retained thing, or a detained vessel or detained aircraft (also the *thing*), if:
 - (a) custody or maintenance (including any necessary movement or transport) of the thing creates serious difficulties; or
 - (b) the expenses of custody or maintenance (including any necessary movement or transport) of the thing are likely to exceed its value; or
 - (c) the thing is a live plant or animal and its return to its native environment would be beneficial to its survival; or
 - (d) if notice of Commonwealth ownership of the thing has been given:
 - (i) an application for an order for the return of the thing has not been made within the time allowed under section 89; or
 - (ii) proceedings in relation to such an application have been finally determined without an order for the return of the thing being made.
- (2) For the purposes of paragraph (1)(a), the custody or maintenance of the thing is taken to create serious difficulties if:
 - (a) the thing is perishable; or
 - (b) storage of the thing would be impractical; or
 - (c) the thing poses a serious risk to navigation, safety or public health; or
 - (ca) the thing poses an unacceptable level of biosecurity risk (within the meaning of the *Biosecurity Act 2015*); or
 - (d) the thing poses a serious risk of damage to property or the environment; or
 - (e) if the thing is a vessel—it is unseaworthy; or
 - (f) despite reasonable efforts, it has not been possible to return the thing.

- (3) Subsection (2) does not limit paragraph (1)(a).

92 Methods of disposal

- (1) The thing may be:
- (a) sold; or
 - (b) destroyed; or
 - (c) if the thing is a live plant or animal—returned to its native environment; or
 - (d) disposed of in any other way.
- (2) The regulations may prescribe the way in which a thing prescribed by the regulations must be disposed of.

93 Notice of disposal

- (1) If the thing is disposed of under paragraph 91(1)(a), (b) or (c) (reasons for disposal), the Minister must give written notice, as soon as practicable after the disposal, to:
- (a) the person who owned the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized, retained or detained.
- (2) The notice must state:
- (a) that the thing has been disposed of; and
 - (b) the reason for the disposal; and
 - (c) that compensation may be payable under section 117.

Note: A person may be paid compensation under section 117 if the disposal of the thing results in an acquisition of property otherwise than on just terms.

- (3) Subsection (1) does not apply if, despite making reasonable efforts, the Minister cannot locate any person to whom the notice may be given under that subsection.

Part 5—Dealing with persons held

Division 1—Introduction

94 Guide to this Part

This Part sets out requirements for dealing with persons held in the exercise of powers under this Act.

Persons arrested, detained or otherwise held:

- (a) must not be subject to greater indignity than is necessary and reasonable (see section 37); and
- (b) must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment (see section 95).

Persons detained under provisions of other Acts must be dealt with under those Acts.

Persons arrested must, as soon as practicable, be:

- (a) taken before a magistrate; or
- (b) delivered to a police officer or other appropriate person.

95 Treatment of persons held

A person arrested, detained or otherwise held under this Act must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment.

96 Doing things as soon as practicable

The following are to be taken into account in determining whether a maritime officer has done something as soon as practicable under this Part:

- (a) the location of the place where a person is arrested or detained;
- (b) the weather conditions at the time;
- (c) the means of transport available;
- (d) the need to proceed or continue with the exercise of powers under this Act;
- (e) the need to ensure the safety of a vessel, installation or aircraft;
- (f) the need to take action to:
 - (i) protect human life, animal life or the environment; or
 - (ii) aid a vessel in distress; or
 - (iii) obtain medical assistance for any person.

Division 2—Persons detained

98 Persons detained under detention provisions

Person must be delivered into custody

- (1) If a maritime officer detains a person under a detention provision, the officer must deliver the person, or make arrangements for the person to be delivered, as soon as practicable, into the custody of an officer (however described) within the meaning of the detention provision.

Note: For detention under detention provisions, see section 73.

How detention law applies

- (2) The Act in which the detention provision is contained has effect as if the officer to whom the person is delivered had detained the person at the time when the person is delivered into the officer's custody.

Division 3—Persons arrested

99 Application of this Division

This Division applies to a person arrested under this Act.

100 Person to be informed of reason for arrest

- (1) A maritime officer must inform the person, at the time of the arrest, of the offence for which the person is being arrested.

Note: For arrest powers, see sections 76 and 77.

- (2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

Person need not be informed if impracticable etc.

- (3) Subsection (1) does not apply if:
- (a) the person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
 - (b) the person's actions make it impracticable for the officer to inform the person of the offence for which he or she is being arrested; or
 - (c) the officer believes on reasonable grounds that the person does not speak English and it is not practicable for the officer to inform the person, in a language he or she understands, of the offence for which he or she is being arrested.

101 Person to be brought before magistrate

The officer must:

- (a) take the person, or make arrangements for the person to be taken, as soon as practicable, before a magistrate; or
- (b) deliver the person, or make arrangements for the person to be delivered, on land, as soon as practicable, to:

Section 102

- (i) the Australian Federal Police; or
- (ii) the police force of a State or Territory; or
- (iii) if the arrest relates to an offence against another law—a person with the power to arrest, or the power to deal with a person who has been arrested, under that law.

102 Enforcing arrest warrants

If the person is arrested for the purposes of enforcing an arrest warrant that is in force under an Australian law (see section 77), the arresting officer:

- (a) must, as soon as practicable, comply with any requirements in the warrant that would have to be complied with by a person executing the warrant; and
- (b) need not comply with section 101 (person to be brought before magistrate) to the extent that it is inconsistent with any such requirements.

Part 6—Failing to comply with requirements

103 Offence

A person commits an offence if:

- (a) a requirement is made under a provision mentioned in the table below; and
- (b) the person engages in conduct; and
- (c) the result of the conduct is that the requirement is not complied with.

Penalties		
Item	If the requirement is made under ...	The penalty is ...
1	Subsection 39(1) (requirement to assist)	Imprisonment for 2 years or 120 penalty units, or both
2	Subsection 53(1) (requirement to facilitate boarding)	Imprisonment for 2 years or 120 penalty units, or both
3	Subsection 54(1) (additional powers—vessels)	Imprisonment for 2 years or 120 penalty units, or both
4	Subsection 55(1) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
5	Subsection 55(7) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
6	Subsection 57(1) (requiring answers, records and documents)	Imprisonment for 2 years or 120 penalty units, or both
7	Section 58 (obtaining readings)	Imprisonment for 2 years or 120 penalty units, or both
8	Subsection 61(3) (searching persons)	Imprisonment for 2 years or 120 penalty units, or both
9	Paragraph 69(2)(b) (detaining vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both
10	Subsection 72(3) (persons on detained vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both

Part 6 Failing to comply with requirements

Section 103

Penalties		
Item	If the requirement is made under ...	The penalty is ...
11	Section 78 (requirement to cease conduct)	Imprisonment for 2 years or 120 penalty units, or both

Part 7—Miscellaneous

Division 1—Maritime officers

104 Maritime officers

- (1) Each of the following is a *maritime officer*:
- (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) a person appointed as a maritime officer by the Minister.

Limited appointments

- (2) The Minister may appoint a person under paragraph (1)(d) as a maritime officer:
- (a) in relation to one or more of the following only:
 - (i) a specified law;
 - (ii) a specified international agreement or international decision; and
 - (b) subject to any other conditions specified in the appointment.
- (3) The appointment may limit the exercise of powers by the person as a maritime officer.
- (4) Subsection (3) does not limit paragraph (2)(b).

105 Carrying and using arms

- (1) A maritime officer who is authorised in another capacity as an officer (however described) of the Commonwealth or a State or Territory to carry and use arms may carry and use arms as a maritime officer.

Section 106

- (2) Any conditions applying to the carriage or use of arms by the officer in the officer's other capacity apply in like manner to the carriage and use of arms by the officer as a maritime officer.

106 Identity cards

- (1) The Minister may issue an identity card to a maritime officer.
- (2) The identity card must:
 - (a) contain a recent photograph of the officer; and
 - (b) be in a form approved in writing by the Minister.
- (3) A person commits an offence if:
 - (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be a maritime officer; and
 - (c) the person does not immediately return the identity card to the Minister or a person nominated by the Minister.

Penalty: 1 penalty unit.

107 Protection from suit

None of the following is liable to an action, suit or proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, in good faith in the exercise or performance, or the purported exercise or performance, of a power or function under this Act:

- (a) an authorising officer;
- (b) a maritime officer;
- (c) a person assisting;
- (d) any other person acting under the direction or authority of a maritime officer.

Note: For *person assisting*, see subsection 38(5).

Division 2—Evidentiary certificates

108 Evidence of international agreements and decisions

The Foreign Affairs Minister may, by signed writing, certify that, at a particular time, an international agreement or international decision provided for the exercise of powers by Australia in relation to a particular vessel, installation or aircraft.

Note: Certificates under this section relate to requirements set out in paragraph 12(a).

109 Evidence of approvals

The Minister may, by signed writing, certify that the Minister had, at a particular time, approved without writing one or more of the following:

- (a) the exercise of maritime powers in relation to a particular aircraft for the purposes of investigating a particular contravention, or contraventions in general;
- (b) the exercise of powers under a particular international agreement or international decision in relation to a particular vessel, installation or aircraft.

Note: Certificates under this section relate to requirements set out in paragraph 10(b) and subparagraph 12(b)(ii).

110 Evidence of requests and agreements—geographical limits on exercise of powers

The Foreign Affairs Minister may, by signed writing, certify:

- (a) that a particular country requested or agreed to the exercise of powers as required by a provision of Division 5 of Part 2 (geographical limits); and
- (b) the conditions or restrictions (if any) on which the request or agreement was made or given.

Section 111

111 Certificates are prima facie evidence

For all purposes and in all proceedings, a certificate under this Division is prima facie evidence of the matters certified.

Division 3—Recovery of costs

112 Chase costs

- (1) This section applies if a maritime officer chases a vessel under subsection 54(3).
- (2) The owner of the vessel or, if the vessel is owned by the Commonwealth or a State or Territory, any person who purports to own the vessel is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in conducting the chase.
- (3) If the vessel has more than one owner or purported owner, the owners or purported owners are jointly and severally liable.

113 Seizure costs

- (1) This section applies if:
 - (a) notice of Commonwealth ownership of a thing is given; and
 - (b) an application for an order for the return of the thing is made under section 89; and
 - (c) proceedings in relation to the application have been finally determined without such an order being made.
- (2) The person who made the application is liable to pay to the Commonwealth an amount equal to the sum of the costs reasonably incurred by the Commonwealth in relation to the following:
 - (a) the custody of the thing;
 - (b) the maintenance of the thing;
 - (c) transport of the thing;
 - (d) the costs of disposal of the thing.
- (3) However, subsection (2) does not apply in relation to any costs:
 - (a) met by the person who made the application; and
 - (b) incurred with the agreement of the Commonwealth officer who has control of the thing.

Section 114

- (4) For the purposes of meeting such costs, the thing may be released into the custody of the person on such conditions as the Commonwealth officer thinks appropriate.

114 Liability to pay costs is a debt to the Commonwealth

- (1) An amount payable by a person under this Division is a debt due by the person to the Commonwealth.
- (2) The amount may be recovered by action in a court of competent jurisdiction.
- (3) The Commonwealth's right to recover the whole or a part of the amount may be waived by:
 - (a) the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*); or
 - (b) the Secretary of the Department administered by the Minister who administers the *Defence Act 1903*.

Division 4—Gathering and sharing information

115 Copying records or documents for other purposes

A maritime officer may copy a record or document, or a part of a record or document, found or produced in the exercise of powers under this Act if the officer is satisfied, on reasonable grounds, that the record or document may contain information relevant to:

- (a) security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
- (b) the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*; or
- (c) the performance of functions under section 6 of the *Intelligence Services Act 2001*.

116 Sharing information

- (1) A maritime officer may give information, a record or document, or a copy of a record or document, obtained in the exercise of powers under this Act (the **maritime information**) to a cooperating agency for use by that agency in relation to:
 - (a) matters concerning maritime security, maritime safety or maritime domain awareness; or
 - (b) the exercise of the functions or powers of the agency.
- (2) The maritime information may be or include personal information.

Note: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.
- (3) A maritime officer who is an officer (however described) of the Commonwealth in another capacity may disclose or provide maritime information as if the maritime information had been obtained by the officer in that other capacity.
- (4) Each of the following is a **cooperating agency**:
 - (a) the Australian Defence Force;
 - (b) the Australian Federal Police;

Section 116

- (c) the police force of a State or Territory;
- (d) any other agency of the Commonwealth, or a State or Territory, responsible for:
 - (i) investigating contraventions of laws; or
 - (ii) administering or ensuring compliance with laws; or
 - (iii) gathering or evaluating intelligence; or
 - (iv) security; or
 - (v) defence;
- (e) an international body responsible for:
 - (i) investigating contraventions of international agreements or international decisions; or
 - (ii) administering or ensuring compliance with international agreements or international decisions;
- (f) any other body or agency prescribed by the regulations.

Division 5—Compensation for acquisition of property

117 Compensation for acquisition of property

- (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) 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.

118 Compensation for damage to documents

- (1) This section applies if:
- (a) as a result of the exercise of powers under this Act, a document is lost, destroyed or damaged; and
 - (b) the loss, destruction or damage occurred wholly or partly as a result of:
 - (i) insufficient care being taken in selecting the person to exercise the powers; or
 - (ii) insufficient care being taken by the person exercising the powers.
- (2) The Commonwealth is liable to pay the owner of the document a reasonable amount of compensation.

119 Compensation for damage to equipment

- (1) This section applies if:
- (a) as a result of equipment being operated in the exercise of powers under this Act:

Section 120

- (i) damage is caused to the equipment; or
 - (ii) damage is caused to any data recorded on the equipment or data access to which was obtained from the operation of the equipment; 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) The Commonwealth is liable to pay the owner of the equipment, or the user of the data or programs, a reasonable amount of compensation.
- (3) If the equipment was moved or seized, then, in determining the amount of compensation payable, regard is to be had to whether a person responsible for the equipment at the time provided any appropriate warning or guidance on the operation of the equipment.
- (4) In this section:

damage, in relation to data, includes damage by erasure of data or addition of other data.

120 Amount of compensation—proceedings

If the Commonwealth does not agree with a person on the amount of the compensation to be paid under this Division, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Division 6—Delegation and regulations

121 Delegation

- (1) The Minister may, by writing, delegate any or all of his or her functions and powers under this Act, other than the powers under section 75D, 75F or 75H, to:
 - (a) the Chief of the Defence Force; or
 - (b) the Commissioner or a Deputy Commissioner of the Australian Federal Police; or
 - (c) an Agency Head (within the meaning of the *Public Service Act 1999*); or
 - (d) an officer of the Australian Navy who holds a rank not below Commodore; or
 - (e) an officer of the Australian Army who holds a rank not below Brigadier; or
 - (f) an officer of the Australian Air Force who holds a rank not below Air Commodore; or
 - (g) an SES employee with a classification not below Senior Executive Band 1 or equivalent.
- (2) In exercising functions or powers delegated under subsection (1), the delegate must comply with any directions of the Minister.

122 Regulations

The Governor-General may make regulations prescribing matters:

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

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide 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

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.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

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

Endnote 1—About the endnotes

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.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Maritime Powers Act 2013	15, 2013	27 Mar 2013	s 3–122: 27 Mar 2014 (s 2(1) item 2) Remainder: 27 Mar 2013 (s 2(1) item 1)	
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014	135, 2014	15 Dec 2014	Sch 1 (items 1–30, 39): 16 Dec 2014 (s 2(1) item 2)	Sch 1 (item 39)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 6 (items 129, 130) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 6 (item 130) and Sch 9
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 28, 29) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 58, 59, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 4 (items 4, 5): 21 Oct 2016 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 2	
s 7	am No 135, 2014
Division 3	
s 8	am No 135, 2014; No 61, 2016
s 11	am No 135, 2014
Part 2	
Division 2	
s 22A	ad No 135, 2014
s 22B.....	ad No 135, 2014
Division 4	
Subdivision C	
s 31	am No 135, 2014
Division 5	
Subdivision B	
s 41	am No 135, 2014
Part 3	
Division 7	
s 69	am No 135, 2014
s 69A	ad No 135, 2014
Division 8	
s 72	am No 135, 2014
s 72A	am No 135, 2014
Division 8A	
Division 8A	ad No 135, 2014
s 75A	ad No 135, 2014
s 75B.....	ad No 135, 2014
s 75C.....	ad No 135, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 75D	ad No 135, 2014
s 75E.....	ad No 135, 2014
s 75F	ad No 135, 2014
s 75G	ad No 135, 2014
s 75H	ad No 135, 2014
Part 4	
Division 1	
s 79	am No 135, 2014
Division 2	
s 80	am No 135, 2014
s 81	am No 135, 2014
Division 4	
s 86	am No 135, 2014
s 87	am No 135, 2014
Division 5	
s 91	am No 62, 2015
s 93	am No 135, 2014
Part 5	
Division 1	
s 94	am No 135, 2014
Division 2	
s 97	rep No 135, 2014
Part 7	
Division 1	
s 107	am No 135, 2014
Division 3	
s 114	am No 41, 2015; No 164, 2015
Division 6	
s 121	am No 135, 2014; No 164, 2015