



# Navigation Regulation 2013

## Select Legislative Instrument No. 98, 2013

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I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Navigation Act 2012*.

Dated 30 May 2013

Marie Bashir  
Administrator

By Her Excellency's Command

Anthony Albanese  
Minister for Infrastructure and Transport

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**Schedule 1—Salvage Convention, the Common  
Understanding Concerning Articles 13  
and 14**

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## **Part 1—Preliminary**

### **1 Name of regulation**

This regulation is the *Navigation Regulation 2013*.

### **2 Commencement**

This regulation commences on 1 July 2013.

### **3 Authority**

This regulation is made under the *Navigation Act 2012*.

### **4 Definitions**

In this regulation:

*Act* means the *Navigation Act 2012*.

*CVMP* means a customs vessel management plan.

Note 1: Several other words and expressions used in this regulation have the meaning given by section 14 of the Act, including:

- (a) Marine Order
- (b) recognised organisation
- (c) Salvage Convention.

Note 2: Recognised organisations are prescribed in the Marine Orders—see subsection 342(1) of the Act.

Note 3: Because of section 4AA of the *Customs Administration Act 1985*, *Customs* means the Australian Customs and Border Protection Service.

**Part 2** Customs vessel management plans

**Division 2.1** General

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**Part 2—Customs vessel management plans**

**Division 2.1—General**

**5 Application of Part 2**

For section 11 of the Act, this Part sets out matters in relation to the preparation, review and acceptance of a CVMP for a customs vessel or a person in relation to a customs vessel.

## **Division 2.2—Application for acceptance of customs vessel management plan**

### **6 Application for acceptance of CVMP**

- (1) Customs may apply to AMSA for acceptance of a CVMP for a customs vessel or a person in relation to the customs vessel.
- (2) The CVMP must include the following:
  - (a) the vessel or the class of vessels covered by the CVMP, including:
    - (i) the name of the vessel, or for a class of vessels, the name of each vessel in the class; and
    - (ii) the kind of operations the vessel, or for a class of vessels, the kind of operations each vessel in the class will conduct (including the activities the vessel will undertake); and
    - (iii) the unique identifying number for the vessel (such as the International Maritime Organization (IMO) number), or for a class of vessels, the unique identifying number for each vessel in the class;
  - (b) for each vessel covered by the CVMP:
    - (i) the provision or provisions of the Act that the vessel or person will not comply with; and
    - (ii) an explanation of why the vessel or person will not be able to comply with the provision or provisions;
  - (c) for each provision of the Act that the vessel or person will not comply with:
    - (i) the requirements that the vessel or person will instead comply with; and
    - (ii) an assessment of any risk that may arise from the non-compliance, and how that risk will be averted or mitigated by compliance with the alternative requirements;

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- (d) the process (agreed by Customs and the recognised organisation) of how the CVMP will be reviewed by Customs and the recognised organisation, including:
    - (i) the frequency of reviews; and
    - (ii) the nature of reviews; and
    - (iii) how the reviews will be reported and acted upon;
  - (e) the process by which compliance with the CVMP will be reviewed by a recognised organisation, including the frequency of the reviews and the manner in which the reviews will be reported.
- (3) Customs may only apply to AMSA for acceptance of the CVMP if a recognised organisation has declared that it has reviewed the CVMP and is satisfied of the matters set out in section 7.
- (4) The application for acceptance of the CVMP must:
- (a) be in writing; and
  - (b) include:
    - (i) the applicant's name, address and contact details; and
    - (ii) the name, position, address and contact details of a contact person for the CVMP; and
  - (c) be accompanied by the CVMP; and
  - (d) be accompanied by the declaration of a recognised organisation mentioned in subsection (3).

**7 Review of CVMP by recognised organisation**

For subsection 6(3), the recognised organisation must be satisfied, for each provision of the Act that the vessel or person will not comply with, of the following matters:

- (a) the risk of the non-compliance is adequately assessed;
- (b) the requirements to be met in place of the provision are adequately described and appropriately mitigate the identified risks.



## **8 Acceptance of CVMP by AMSA**

- (1) AMSA must accept the CVMP in writing, within 28 days of receiving an application, if AMSA is satisfied that the requirements of subsection 6(4) have been met.
- (2) If AMSA requires further information in order to assess the application:
  - (a) AMSA must request the information; and
  - (b) the 28 day period for making a decision on the application does not commence until AMSA receives the further information.
- (3) An acceptance of a CVMP expires:
  - (a) on the date of expiry specified in the acceptance; or
  - (b) if no date of expiry is specified in the acceptance, 5 years from the date the written acceptance is given.

Note: An acceptance of a CVMP also expires on the date that AMSA receives notification that Customs will not use the CVMP—see subsection 9(2).

- (4) For paragraph (3)(a), AMSA may specify a later date of expiry for the acceptance.

## **9 Notification that CVMP will no longer be used**

- (1) If Customs decides to not use a CVMP for a customs vessel or a person in relation to a customs vessel, Customs must notify AMSA, in writing, of the decision.
- (2) The acceptance of the CVMP expires on the date that AMSA receives the notification.

## **Division 2.3—Variation of customs vessel management plan**

### **10 Application for acceptance of variation of CVMP**

- (1) Customs must apply to AMSA for an acceptance of a variation of a CVMP for a customs vessel or a person in relation to a customs vessel if:
  - (a) either:
    - (i) there is a significant change to the vessel; or
    - (ii) there is a significant change to the operation of the vessel; and
  - (b) the significant change requires the undertaking of a new risk assessment in relation to a provision of the Act identified in the CVMP as a provision that cannot be complied with.
- (2) Customs may only apply to AMSA for acceptance of a variation of a CVMP if the recognised organisation for the CVMP has declared that it has reviewed the variation and is satisfied of the matters set out in section 7.
- (3) The application for acceptance of a variation of a CVMP must:
  - (a) be in writing; and
  - (b) set out the variation; and
  - (c) be accompanied by a copy of the part of the CVMP affected by the variation, clearly identifying the variation; and
  - (d) be accompanied by the declaration of a recognised organisation mentioned in subsection (2).
- (4) In this regulation:

**significant change:**

  - (a) for a vessel—means:
    - (i) a variation to a certificate issued for the vessel under the Act; or
    - (ii) a change to the vessel by a repair, alteration or modification that substantially alters the dimensions of

- the vessel or the passenger accommodation spaces, or substantially increases the vessel's service life; and
- (b) for the operation of a vessel—means a change to the kind of operations, described in the CVMP for the vessel or the class of vessels to which the vessel belongs, that the vessel will conduct (including a change to the activities the vessel will undertake).

## **11 Acceptance of variation of CVMP by AMSA**

- (1) AMSA must accept a variation of a CVMP, within 28 days of receiving an application, if AMSA is satisfied of the matters mentioned in subsection 10(3).
- (2) If AMSA requires further information in order to assess the application:
- (a) AMSA must request the information; and
- (b) the 28 day period for making a decision on the application does not commence until AMSA receives the further information.

**Division 2.4—Ongoing review of customs vessel management plan**

**12 Reporting of non-compliance with requirements of CVMP**

If a recognised organisation becomes aware that a customs vessel or person has not complied with a requirement of the CVMP related to the vessel or person, the recognised organisation must, as soon as practicable:

- (a) notify AMSA of the non-compliance; and
- (b) provide any relevant documentation about the non-compliance to AMSA.

## **Part 3—Safety of navigation**

### **Division 3.1—Liability for loss of life, division of liability and right of contribution**

#### **13 Application of Division 3.1**

This Division is made for subsection 176(3) of the Act.

#### **14 Damages for personal injuries**

- (1) If a person on board a vessel suffers a personal injury or dies because of the fault of the vessel and of another vessel, the liability of the owners of the vessels is joint and several.
- (2) This section does not:
  - (a) deprive a person of a right of defence on which, independently of this section, the person might have relied in an action brought against him or her by:
    - (i) the person injured; or
    - (ii) a person entitled to sue in respect of the death; or
  - (b) affect the right of a person to limit his or her liability in a case to which this section relates in the manner provided by law.

#### **15 Rule as to division of loss**

- (1) If, because of 2 or more vessels, damage or loss is caused to:
  - (a) those vessels or one or more other vessels; or
  - (b) the cargo or freight of those vessels or one or more other vessels; or
  - (c) property on board those vessels or one or more other vessels;the liability to make good the damage or loss must be in proportion to the degree in which each vessel was in fault.

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- (2) However, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability is apportioned equally.
- (3) This section does not make a ship liable for loss or damage if it was not at fault.
- (4) This section does not:
- (a) affect the liability of a person under a contract, including a contract of carriage; or
  - (b) impose a liability on a person from which the person is exempted by a contract or by a provision of law; or
  - (c) affect the right of a person to limit his or her liability in the manner provided by law.
- (5) In this section:

*damage or loss*, caused by the fault of a vessel, includes salvage or other expenses arising from that fault, recoverable at law by way of damages.

*freight* includes passage money and hire.

**16 Right of contribution**

- (1) If:
- (a) a person suffers personal injury or dies on board a vessel because of the fault of the vessel and another vessel; and
  - (b) a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which it was in fault;
- the owner may recover by way of contribution the amount of the excess from the owner of the other vessel to the extent to which that vessel was at fault.
- (2) This section does not allow an amount to be recovered by a person entitled to sue for damages which the person could not otherwise recover.

- (3) In addition to any other remedy provided by law, a person entitled to a contribution in accordance with subsection (1), for the purpose of recovering the contribution, has the same rights and powers as a person entitled to sue for damages.

## Part 4—Salvage

### 17 Certain provisions of Salvage Convention to have force of law

For paragraph 241(1)(a) of the Act, the following provisions of the Salvage Convention have the force of law in Australia:

- (a) Articles 6 to 8, 12 to 19, 21 to 23, 26 and 30;
- (b) the common understanding concerning Articles 13 and 14, as set out in Schedule 1.

Note: For the definition and location of the *Salvage Convention*, see section 14 of the Act.



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## **Schedule 1—Salvage Convention, the Common Understanding Concerning Articles 13 and 14**

Note: See section 17.

### **COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE INTERNATIONAL CONVENTION ON SALVAGE, 1989**

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.