Navigation Regulation 2013

Select Legislative Instrument No. 98, 2013

made under the

Navigation Act 2012

Compilation No. 1

Compilation date:	1 July 2015
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About this compilation

This compilation

This is a compilation of the *Navigation Regulation 2013* that shows the text of the law as amended and in force on 1 July 2015 (the ***compilation date***).

This compilation was prepared on 27 July 2015.

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

Uncommenced amendments

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

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.

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 ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of regulation

This regulation is the *Navigation Regulation 2013*.

3 Authority

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

4 Definitions

In this regulation:

Act means the *Navigation Act 2012*.

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

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.

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Part 2—Australian Border Force 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 an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel.

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Division 2.2—Application for acceptance of Australian Border Force vessel management plan

6 Application for acceptance of CVMP

(1) The Comptroller-General of Customs may apply to AMSA for acceptance of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel.

(2) The Australian Border Force vessel management plan must include the following:

(a) the vessel or the class of vessels covered by the Australian Border Force vessel management plan, 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 Australian Border Force vessel management plan:

(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

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(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;

(d) the process (agreed by the Comptroller-General of Customs and the recognised organisation) of how the Australian Border Force vessel management plan will be reviewed by the Comptroller-General of 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 Australian Border Force vessel management plan will be reviewed by a recognised organisation, including the frequency of the reviews and the manner in which the reviews will be reported.

(3) The Comptroller-General of Customs may only apply to AMSA for acceptance of the Australian Border Force vessel management plan if a recognised organisation has declared that it has reviewed the Australian Border Force vessel management plan and is satisfied of the matters set out in section 7.

(4) The application for acceptance of the Australian Border Force vessel management plan 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 Australian Border Force vessel management plan; and

(c) be accompanied by the Australian Border Force vessel management plan; and

(d) be accompanied by the declaration of a recognised organisation mentioned in subsection (3).

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7 Review of Australian Border Force vessel management plan 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 Australian Border Force vessel management plan by AMSA

(1) AMSA must accept the Australian Border Force vessel management plan 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 an Australian Border Force vessel management plan 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 an Australian Border Force vessel management plan also expires on the date that AMSA receives notification that the Comptroller-General of Customs will not use the plan—see subsection 9(2).

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

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Section 9

9 Notification that Australian Border Force vessel management plan will no longer be used

(1) If the Comptroller-General of Customs decides to not use an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel, the Comptroller-General of Customs must notify AMSA, in writing, of the decision.

(2) The acceptance of the Australian Border Force vessel management plan expires on the date that AMSA receives the notification.

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Division 2.3—Variation of Australian Border Force vessel management plan

10 Application for acceptance of variation of Australian Border Force vessel management plan

(1) The Comptroller-General of Customs must apply to AMSA for an acceptance of a variation of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force 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 Australian Border Force vessel management plan as a provision that cannot be complied with.

(2) The Comptroller-General of Customs may only apply to AMSA for acceptance of a variation of an Australian Border Force vessel management plan if the recognised organisation for the plan 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 an Australian Border Force vessel management plan must:

(a) be in writing; and

(b) set out the variation; and

(c) be accompanied by a copy of the part of the Australian Border Force vessel management plan 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:

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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 Australian Border Force vessel management plan 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 Australian Border Force vessel management plan by AMSA

(1) AMSA must accept a variation of an Australian Border Force vessel management plan, 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.

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Division 2.4—Ongoing review of Australian Border Force vessel management plan

12 Reporting of non-compliance with requirements of Australian Border Force vessel management plan

If a recognised organisation becomes aware that an Australian Border Force vessel or a person has not complied with a requirement of the Australian Border Force vessel management plan 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.

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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.

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(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.

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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.

Part 5—Transitional matters

18 Amendments made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015*

(1) An application under subsection 6(1) that was pending immediately before 1 July 2015 is taken on and after that day to be an application under that subsection for acceptance of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel.

(2) An application under subsection 10(1) that was pending immediately before 1 July 2015 is taken on and after that day to be an application under that subsection for an acceptance of a variation of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel.

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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.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

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

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
98, 2013	3 June 2013 (F2013L00897)	1 July 2013 (s 2)	
90, 2015	19 Jun 2015 (F2015L00854)	Sch 2 (items 143–179): 1 July 2015 (s 2(1) item 2)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LIA s 48D
s 4	am No 90, 2015
Part 2	
Part 2 heading	rs No 90, 2015
Division 2.1	
s 5	am No 90, 2015
Division 2.2	
Division 2.2 heading	rs No 90, 2015
s 6	am No 90, 2015
s 7	am No 90, 2015
s 8	am No 90, 2015
s 9	am No 90, 2015
Division 2.3	
Division 2.3 heading	rs No 90, 2015
s 10	am No 90, 2015
s 11	am No 90, 2015
Division 2.4	
Division 2.4 heading	rs No 90, 2015
s 12	am No 90, 2015
Part 5	
Part 5	ad No 90, 2015
s 18	ad No 90, 2015