



Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013

Select Legislative Instrument No. 97, 2013

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 *Marine Safety (Domestic Commercial Vessel) National Law 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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Part 1—Preliminary

1 Name of regulation

This regulation is the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

2 Commencement

This regulation commences on 1 July 2013.

3 Authority

This regulation is made under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

4 Definitions

In this section:

Act means the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

dealer means a person who carries on a business trading in:

- (a) new or used vessels; or
- (b) articles used on vessels.

National Law means the Marine Safety (Domestic Commercial Vessel) National Law set out in Schedule 1 to the Act.

sheltered waters has the meaning given by section 1.8 of Part B of the National Standard for Commercial Vessels.

Note: Several other words and expressions used in this regulation have the meaning given by section 6 of the National Law. For example:

- (a) hire and drive vessel
- (b) National Regulator
- (c) National Standard for Commercial Vessels.

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5 Relationship with State and Territory laws

For paragraph 6(2)(a) of the Act, the laws mentioned in the following table are prescribed as laws to which subsection 6(1) of the Act does not apply.

State and Territory laws		
Item	State or Territory	Law
1	New South Wales	<i>The Marine Safety Amendment (Domestic Commercial Vessel National Law Application) Act 2012</i>
2	New South Wales	Sections 52B and 52BA of the <i>Crimes Act 1900</i> (dangerous navigation: substantive matters and dangerous navigation: procedural matters)
3	Victoria	<i>The Marine (Domestic Commercial Vessel National Law Application) Act 2013</i>
4	Victoria	Sections 318 and 319 of the <i>Crimes Act 1958</i> (culpable driving causing death and dangerous driving causing death or serious injury)
5	Victoria	Section 29 of the <i>Marine (Drug, Alcohol and Pollution Control) Act 1988</i> (preliminary breath tests)
6	Queensland	<i>[reserved for future use]</i>
7	Queensland	Section 328A of the <i>Criminal Code Act 1899</i> (dangerous operation of a vehicle)
8	Queensland	For the provisions of the <i>Transport Operations (Marine Safety) Act 1994</i> that relate to marine surveyors—those provisions so far as they relate to marine surveyors
9	Queensland	For the provisions of the <i>Transport Operations (Marine Safety—Accreditation as Ship Designer, Ship Builder or Marine Surveyor) Standard 2006</i> that relate to marine surveyors—those provisions so far as they relate to marine surveyors
10	Western Australia	<i>[reserved for future use]</i>
11	Western Australia	Sections 284 and 304 of the Schedule to the

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State and Territory laws		
Item	State or Territory	Law
		<i>Criminal Code Act Compilation Act 1913</i> (culpable driving (not of motor vehicle) causing death or grievous bodily harm and act or omission causing bodily harm or danger)
12	Western Australia	Subsections 59(1) and (4) of the <i>Western Australian Marine Act 1982</i> (safe navigation)
13	Western Australia	Regulations 14 and 14A of the <i>Navigable Waters Regulations 1958</i> (vessel not to be used to cause nuisance or damage and safe navigation of vessels)
14	South Australia	The <i>Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013</i>
15	South Australia	Sections 19A, 19AB and 19B of the <i>Criminal Law Consolidation Act 1935</i> (causing death or harm by use of vehicle or vessel, leaving accident scene etc after causing death or harm by careless use of vehicle or vessel and alternative verdicts)
16	South Australia	The <i>Crimes at Sea Act 1998</i> (SA)
17	Tasmania	The <i>Marine Safety (Domestic Commercial Vessel) National Law Application Act 2013</i>
18	Northern Territory	The <i>Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act 2013</i>
19	All States and Territories	Laws that relate to a requirement for a hirer of a hire and drive vessel to obtain qualifications

Note: For items 8 and 9, if the prescribed provisions relate to classes of persons other than marine surveyors, those provisions will continue to apply to the classes of persons who are not marine surveyors.

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Part 2—National Law

Division 2.1—Definitions

6 Definition of *domestic commercial vessel*—prescribed community groups

- (1) For subparagraph 7(3)(d)(ii) of the National Law, a community group of a kind mentioned in subsection (2) is prescribed.
- (2) The community group:
 - (a) is incorporated, an unincorporated association or a body established by legislation; and
 - (b) does not operate for profit or gain to its members; and
 - (c) is, by the terms of its constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members.

7 Definition of *domestic commercial vessel*—prescribed purposes for use of vessel

For paragraph 7(4)(a) of the National Law, the following purposes are prescribed:

- (a) use of the vessel by a volunteer search, rescue or search and rescue organisation for the purpose of conducting searches or searches and rescues (other than if the use of the vessel is by a surf lifesaving organisation in sheltered waters or within 2 nautical miles of the low water mark);
- (b) use of the vessel as a hire and drive vessel for the purpose of hiring the vessel to:
 - (i) for a vessel owned by a school—a person who is not a student at the school; or
 - (ii) for a vessel owned by a community group—a person who is not a member of the group;
- (c) use of the vessel for the purpose of chartering the vessel to:
 - (i) for a vessel owned by a school—a person; or

- (ii) for a vessel owned by a community group—a person who is not a member of the group.

8 Definition of *domestic commercial vessel*—prescribed activities for use of vessel

For paragraph 7(4)(b) of the National Law, the following activity is prescribed—an activity that includes a person, for consideration, training another person (the *trainee*):

- (a) either:
 - (i) for a vessel owned by a school—who is not a student at a school (whether or not at the school that owns the vessel or another school); or
 - (ii) for a vessel owned by a community group—who is not a member of the community group; or
- (b) for a trainee other than a school student—to enable the trainee to obtain a licence that is needed to meet a legislative requirement.

9 Definition of *domestic commercial vessel*—things that are domestic commercial vessels

- (1) For paragraph 7(5)(a) of the National Law, a vessel is a domestic commercial vessel if the vessel is a volunteer search, rescue or search and rescue vessel that undertakes searches or searches and rescues.
- (2) However, subsection (1) does not apply to a volunteer search, rescue or search and rescue vessel that is a surf lifesaving vessel operating in sheltered waters or within 2 nautical miles of the low water mark.

10 Definition of *domestic commercial vessel*—things that are not domestic commercial vessels

- (1) For paragraph 7(5)(b) of the National Law, a vessel is not a domestic commercial vessel:

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- (a) if it would, but for this section, be a domestic commercial vessel only because:
 - (i) it is sponsored during a sporting event; or
 - (ii) it is being used for a promotional activity, including an activity to produce an advertisement, or as part of a film set; or
 - (iii) a person is paid to operate the vessel or to be a member of the crew of the vessel; or
 - (iv) a person (the *trainee*) pays another person to train the trainee in the trainee's vessel; or
- (b) if it is under the control or management of a dealer in the course of that person's business as a dealer; or
- (c) subject to subsection (2), if it is owned by:
 - (i) the Australian Institute of Sport; or
 - (ii) the NSW Institute of Sport; or
 - (iii) the Victorian Institute of Sport; or
 - (iv) the Queensland Academy of Sport; or
 - (v) the South Australian Sports Institute; or
 - (vi) the Tasmanian Institute of Sport; or
 - (vii) the Western Australian Institute of Sport; or
 - (viii) the Northern Territory Institute of Sport; or
 - (ix) the ACT Academy of Sports.

Note: The vessel may still be subject to waterways management requirements of a State or Territory.

- (2) Paragraph (1)(c) does not apply to a vessel owned by a body mentioned in the paragraph if:
 - (a) the vessel is undertaking an activity in which it is hired or chartered to a person who is not a student or a member of the body; or
 - (b) the vessel is being used to train a person, for consideration, who is not a student or a member of the body.

11 Definition of *vessel*—things that are vessels

For paragraph 8(3)(a) of the National Law, each of the following is a vessel:

- (a) a boat;
- (b) a canoe;
- (c) a dinghy;
- (d) a dragon boat;
- (e) a kayak;
- (f) a pontoon;
- (g) a tinnie.

12 Definition of *vessel*—things that are not vessels

For paragraph 8(3)(b) of the National Law, none of the following is a vessel:

- (a) an aquaculture pen;
- (b) an aquaplane;
- (c) a boogie board;
- (d) a floating structure permanently connected to shore;
- (e) an unpowered inflatable raft;
- (f) an inner tube;
- (g) a kiteboard;
- (h) a paddleboard;
- (i) a plank of wood;
- (j) a pontoon connected to the mainland;
- (k) a sailboard;
- (l) a surf ski;
- (m) a surfboard;
- (n) towed recreational equipment;
- (o) a waterski.

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Division 2.2—Transitional matters

13 Definitions for Division 2.2

In this Division:

increased level of risk, for a vessel's operations, includes an increase in the level of risk in the operation of the vessel, or to a person on the vessel, because of any of the following circumstances:

- (a) an upgrade in the service category of the vessel;
- (b) an increase in the propulsion power of the vessel;
- (c) an increase in the vessel's displacement;
- (d) the commencement of overnight operations;
- (e) an increase in the passenger numbers for the vessel;
- (f) a modification of the vessel that may affect safety;
- (g) a change to the vessel that requires a review of the vessel's stability.

14 Unique identifiers

- (1) In this section:

new unique identifier means an identifier issued by the National Regulator under section 31 of the National Law.

old unique identifier:

- (a) means an identifier issued for, or assigned to, a domestic commercial vessel by an agency of a State or the Northern Territory before 1 July 2013:
 - (i) that uniquely identifies the vessel in the State or the Northern Territory; and
 - (ii) a record of which is kept by an agency of the State or the Northern Territory immediately before 1 July 2013; and
- (b) does not include an identifier issued for, or assigned to, a fishing vessel that would be removed from the vessel if:

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- (i) the ownership of the vessel is transferred; or
 - (ii) a fishing licence ceases to apply to the vessel.
- (2) For subsection 165(4) of the National Law, an old unique identifier is taken to be, in the period starting from 1 July 2013, a new unique identifier.
- (3) For subsection 165(3) of the National Law, the operation of section 34 of the National Law is taken to be modified by repealing paragraph (1)(b) and substituting the following paragraph:
 - (b) a unique identifier is not displayed on the vessel in accordance with:
 - (i) for a vessel which has an old unique identifier within the meaning of section 14 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, and which immediately before 1 July 2013 displays the old unique identifier on the outside of the vessel—the State or Northern Territory requirements for the display of the unique identifier that applied to the unique identifier immediately before 1 July 2013; or
 - (ii) for a vessel which has an old unique identifier within the meaning of section 14 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, and which immediately before 1 July 2013 does not display the old unique identifier on the outside of the vessel:
 - (A) in the period starting from 1 July 2013 and ending on 30 June 2016—the State or Northern Territory requirements for the display of the unique identifier that applied to the unique identifier immediately before 1 July 2013; and
 - (B) from 1 July 2016—the regulations; or
 - (iii) for any other vessel—the regulations.
- (4) For subsection 165(3) of the National Law, the operation of section 35 of the National Law is taken to be modified by repealing paragraph (1)(b) and substituting the following paragraph:

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- (b) a unique identifier is not displayed on the vessel in accordance with:
 - (i) for a vessel which has an old unique identifier within the meaning of section 14 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, and which immediately before 1 July 2013 displays the old unique identifier on the outside of the vessel—the State or Northern Territory requirements for the display of the unique identifier that applied to the unique identifier immediately before 1 July 2013; or
 - (ii) for a vessel which has an old unique identifier within the meaning of section 14 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, and which immediately before 1 July 2013 does not display the old unique identifier on the outside of the vessel:
 - (A) in the period starting from 1 July 2013 and ending on 30 June 2016—the State or Northern Territory requirements for the display of the unique identifier that applied to the unique identifier immediately before 1 July 2013; and
 - (B) from 1 July 2016—the regulations; or
 - (iii) for any other vessel—the regulations.

15 Certificates of survey

- (1) In this section:

new certificate of survey means a certificate of survey issued by the National Regulator under section 38 of the National Law.

old certificate of survey means a certificate of survey (however described) issued for a commercial domestic vessel by the Commonwealth, a State or the Northern Territory:

- (a) for a certificate in force immediately before 1 July 2013—before 1 July 2013; or

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- (b) for a certificate applied for before 1 July 2013, but for which the application was not finally determined by 1 July 2013—before 1 January 2014.

Example

Certificate of inspection (South Australia)

trigger date, for an old certificate of survey, means the earlier of:

- (a) the date when any of the following occurs:
- (i) the vessel is altered or modified to an extent that it must be reassessed against the construction, subdivision or stability standard that applies to it;
 - (ii) the vessel's operations change, and as a result of the change, there is an increased level of risk;
 - (iii) the operational area for the vessel changes;
 - (iv) the certificate ceases under State or Northern Territory law; and
- (b) 30 June 2016.
- (2) For subsection 165(4) of the National Law:
- (a) an old certificate of survey mentioned in paragraph (a) of the definition of **old certificate of survey** is taken to be, in the period starting on 1 July 2013 and ending on the trigger date, a new certificate of survey; and
 - (b) an old certificate of survey mentioned in paragraph (b) of the definition of **old certificate of survey** is taken to be, in the period starting on the date that the certificate is issued and ending on the trigger date, a new certificate of survey.
- (3) For subsection 165(3) of the National Law, the operation of section 38 of the National Law is taken to be modified by repealing paragraph (3)(a) and substituting the following paragraphs:
- (a) for a vessel issued with an old certificate of survey within the meaning of section 15 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*:
 - (i) the conditions (if any) in relation to the design, construction, ongoing condition and maintenance of the vessel that applied to the old certificate of survey

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immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; and

(ii) either:

(A) the survey requirements in relation to the design, construction, ongoing condition and maintenance of the vessel that applied to the vessel immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; or

(B) the conditions or requirements of section 4 of the National Standard for the Administration of Marine Safety, published by the National Marine Safety Committee, as existing from time to time, that are conditions or requirements for a certificate of survey;

(ab) for a vessel mentioned in paragraph (a)—any transitional requirements of subsection C7A of the National Standard for Commercial Vessels that are relevant to the vessel; and

(ac) for any other vessel—the conditions (if any) prescribed by the regulations; and

(4) For subsection 165(3) of the National Law, the operation of section 38 of the National Law is taken to be modified by the insertion of the following note after subsection (3):

Note for sub-subparagraph(a)(ii)(B) The National Standard for the Administration of Marine Safety is located at www.nmsc.gov.au.

(5) For subsection 165(3) of the National Law, the operation of section 38 of the National Law is taken to be modified by repealing paragraph (5)(b) and substituting the following paragraph:

(b) subject to subsection (6), remains in force until:

(i) for a vessel issued with an old certificate of survey within the meaning of section 15 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*—the trigger date mentioned in subsection 15(1) of the *Marine Safety (Domestic*

- Commercial Vessel) National Law Regulation 2013*,
unless it is revoked earlier; or
- (ii) for any other vessel—the day specified in the certificate,
unless it is revoked earlier.

16 Certificates of operation

- (1) In this section:

new certificate of operation means a certificate of operation issued by the National Regulator under section 48 of the National Law.

old certificate of operation means a certificate of operation (however described) or an authority that is not a certificate (however described), issued or given by the maritime safety authority of the Commonwealth, a State or the Northern Territory for a domestic commercial vessel, that entitled the vessel to operate under a law of the Commonwealth, a State or the Northern Territory:

- (a) for a certificate or authority in force immediately before 1 July 2013—before 1 July 2013; or
- (b) for a certificate or authority applied for before 1 July 2013, but for which the application was not finally determined by 1 July 2013—before 1 January 2014.

Examples of a certificate of operation

Example (a): Certificate of inspection

Example (b): Certificate of survey

Example (c): Certificate of registration

Example (d): Certificate of safe operation.

trigger date, for an old certificate of operation, means the earlier of:

- (a) the date when any of the following occurs:
- (i) the vessel is altered or modified to an extent that it must be reassessed against the construction, subdivision or stability standard that applies to it;

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- (ii) the vessel's operations have changed to the extent that there is an increased level of risk;
 - (iii) the operational area for the vessel changes;
 - (iv) the certificate or authority ceases under the State or Northern Territory law; and
 - (b) 30 June 2016.
- (2) For subsection 165(4) of the National Law:
- (a) an old certificate of operation mentioned in paragraph (a) of the definition of ***old certificate of operation*** is taken to be, in the period starting on 1 July 2013 and ending on the trigger date, a new certificate of operation; and
 - (b) an old certificate of operation mentioned in paragraph (b) of the definition of ***old certificate of operation*** is taken to be, in the period starting on the date that the certificate is issued and ending on the trigger date, a new certificate of operation.
- (3) For subsection 165(3) of the National Law, the operation of section 48 of the National Law is taken to be modified by repealing paragraph (4)(a) and substituting the following paragraph:
- (a) for a vessel issued with an old certificate of operation mentioned in subsection 16(2) of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*:
 - (i) the conditions (if any) that applied to the certificate immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued, including the conditions that applied in relation to the following matters:
 - (A) the number of the crew required to be on board while the vessel is being operated;
 - (B) the qualifications of the master and crew; and
 - (ii) the requirements (if any) that applied to the certificate by operation of a provision of a law of the State or the Northern Territory immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; and

- (iii) from 30 June 2014—if the vessel is a class 4 vessel, the operational requirements mentioned for a class 4 vessel in Part F of the National Standard for Commercial Vessels; and
- (iv) the limitations on the area of operation that applied to the vessel immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; or
- (ab) for any other vessel—the conditions (if any) prescribed by the regulations; and

Note for subparagraph (a)(iii): The operational requirements of Part F are those that require an operator to maintain a safety management plan or system. For example, in the National Standard for Commercial Vessels, Part F Section 2, clauses 5.4, 6.4, 7.4, 8.4, 9.4, 10.6 and B4 require the operators of different leisure craft (eg houseboats) to maintain safety management plans or systems tailored to their activities.

- (4) For subsection 165(3) of the National Law, the operation of section 48 of the National Law is taken to be modified by repealing paragraph (6)(b) and substituting the following paragraph:
 - (b) subject to subsection(7), remains in force until:
 - (i) for a vessel issued with an old certificate of operation within the meaning of section 16 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*—the trigger date mentioned in subsection 14(1) of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*, unless it is revoked earlier; or
 - (ii) for any other vessel—the day specified in the certificate, unless it is revoked earlier.
- (5) For subsection 165(4) of the National Law, the following requirement is prescribed—for a vessel entitled to operate under a certificate of operation (however described), the certificate must be displayed in a prominent manner on the vessel, unless it is impracticable for the certificate to be displayed in this manner.

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17 Certificates of competency

- (1) In this section:

new certificate of competency means a certificate of competency issued by the National Regulator under section 60 of the National Law.

old certificate of competency means a certificate of competency (however described) issued by the maritime safety authority of a State or the Northern Territory:

- (a) for a certificate in force immediately before 1 July 2013—before 1 July 2013; or
- (b) for a certificate applied for before 1 July 2013, but for which the application was not finally determined by 1 July 2013—before 1 January 2014.

trigger date, for an old certificate of competency, means the date on which the certificate ceases under the State or Northern Territory law.

- (2) For subsection 165(4) of the National Law:

- (a) an old certificate of competency mentioned in paragraph (a) of the definition of ***old certificate of competency*** is taken to be, in the period starting on 1 July 2013 and ending on the trigger date, a new certificate of competency; and
- (b) an old certificate of competency mentioned in paragraph (b) of the definition of ***old certificate of competency*** is taken to be, in the period starting on the date that the certificate is issued and ending on the trigger date, a new certificate of competency.

- (3) For subsection 165(3) of the National Law, the operation of section 60 of the National Law is taken to be modified by repealing paragraph (4)(a) and substituting the following paragraph:

- (a) for an old certificate of competency mentioned in subsection 17(2) of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*:

- (i) the conditions (if any) that applied to the certificate immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; and
 - (ii) the requirements (if any) that applied to the certificate by operation of a provision of a law of the State or the Northern Territory immediately before 1 July 2013 or, if the certificate was issued within 6 months of 1 July 2013, on the day that the certificate was issued; and
- (ab) for any other certificate of competency—the conditions (if any) prescribed by the regulations; and

18 Approved training organisations

- (1) In this section:

new approval, of a training organisation, means an approval of the organisation as a training organisation under regulations made for paragraph 160(1)(b) of the National Law.

old approval, of a training organisation, means an approval or recognition of the organisation as a training organisation by a maritime safety authority of a State or the Northern Territory given before commencement.

trigger date, for an old approval, means the earlier of:

- (a) the date (if any) the old approval would have ceased under the State or Northern Territory law; and
 - (b) 30 June 2016.
- (2) For subsection 165(4) of the National Law, an old approval is taken to be, during the period starting on 1 July 2013 and ending on the trigger date, a new approval.