



Jervis Bay Territory Marine Safety Ordinance 2016

Ordinance No. 1, 2016

made under the

Jervis Bay Territory Acceptance Act 1915

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Jervis Bay Territory Marine Safety Ordinance 2016* that shows the text of the law as amended and in force on 15 October 2024 (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 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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This is the *Jervis Bay Territory Marine Safety Ordinance 2016*.

3 Authority

This Ordinance is made under the *Jervis Bay Territory Acceptance Act 1915*.

5 Object of Ordinance

The object of this Ordinance is to protect the safety and amenity of users of Territory waters and occupiers of adjoining land by:

- (a) ensuring vessels are operated safely in Territory waters; and
- (b) enabling marine accidents in Territory waters to be investigated.

Part 2—Interpretation

6 Definitions

Note: The term ***Territory*** is defined in the *Jervis Bay Territory Acceptance Act 1915* to mean the Jervis Bay Territory.

In this Ordinance:

ACT Road Transport (Alcohol and Drugs) legislation: see subsection 64(2).

Ambulance Service of NSW has the same meaning as in the *Health Services Act 1997* (NSW), as in force on the commencement day.

appropriate lifejacket: see section 7.

appropriate power rating: see subsection 21(2).

boat driving licence, for a vessel, means a boat driving licence (however described) that:

- (a) has been granted under a law of a State or Territory; and
- (b) entitles the holder to operate the vessel in that State or Territory.

channel means an area of Territory waters that, whether or not indicated by navigation marks, provides a passage for vessels.

commencement day means the day this Ordinance commences.

commercial purpose means a purpose for which a vessel is used that results in the vessel being a domestic commercial vessel.

court means a court, including the Supreme Court, of the Australian Capital Territory.

crew of a vessel means the persons (including the master of the vessel) whose duty it is to navigate or work the vessel or to carry out other operations on the vessel.

dangerous to the public includes anything that causes, or is likely to cause, injury to a person or damage to property.

designated person: see subsection 48(6).

Director of National Parks means the Director of National Parks referred to in section 514A of the *Environment Protection and Biodiversity Conservation Act 1999*.

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

drug has the same meaning as in the ACT Road Transport (Alcohol and Drugs) legislation.

emergency patrol duty means an urgent patrol or duty:

- (a) arising from an accident, hazard or other emergency; or
- (b) authorised by a police officer.

emergency patrol signal means an all-round flashing blue light, or flashing blue and red lights.

EPBC Regulations means the *Environment Protection and Biodiversity Conservation Regulations 2000*.

exercise a function includes perform a duty.

fairway means that part of an area of Territory waters that is usually used by vessels for navigation through the area.

foreign vessel has the same meaning as in the *Navigation Act 2012*.

function includes a power, authority or duty.

high range prescribed concentration of alcohol: see section 54.

hire and drive vessel has the same meaning as in the Marine Safety (Domestic Commercial Vessel) National Law.

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

JBT Rural Fire Service means the Jervis Bay Territory Rural Fire Service established by section 8 of the *Jervis Bay Territory Rural Fires Ordinance 2014*.

juvenile operator means a person who:

- (a) is operating a power-driven vessel; and
- (b) is 16 years of age or younger.

kiteboard means any craft used for kitesurfing or another similar activity in which a person is situated on or over water on a board, a ski or skis, and the power of the wind on a controllable kite or similar equipment is used to propel the craft across the water.

kitesurfing:

- (a) means an activity in which a person is situated on or over water on a board, a ski or skis or a vessel and the power of a controllable kite, or similar equipment, is used to propel the person across the surface of the water; and
- (b) includes kiteboarding, flysurfing, kitesailing and other similar activities.

low range prescribed concentration of alcohol: see section 54.

making way: a vessel is **making way** if the vessel is underway and propelled by the vessel's machinery.

mandatory provision means the following provisions:

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- (a) section 13 (operating an unregistered vessel);
- (b) section 14 (contravening a condition of registration);
- (c) section 18 (operating a personal watercraft);
- (d) section 19 (operating an unsafe vessel);
- (e) section 24 (reckless or negligent operation of a vessel);
- (f) section 25 (dangerous operation of a vessel);
- (g) section 26 (towing a person);
- (h) section 29 (conduct that is dangerous to the public);
- (i) section 34 (interfering with the lawful use of waters or land);
- (j) subsection 47(2) (refusal or failure to comply with a direction relating to the conduct of persons—general);
- (k) subsection 50(2) (refusal or failure to comply with a direction to remove an obstruction).

marine accident means any of the following events involving a vessel operating in Territory waters:

- (a) the loss of life of, or injury to, any person on board the vessel;
 - (b) the loss of a person from the vessel;
 - (c) the loss of life, or injury to, a person that is caused by the vessel;
 - (d) the loss, or presumed loss, of the vessel (including the sinking or abandonment of the vessel);
 - (e) the capsizing, grounding or flooding of the vessel;
 - (f) the collision of the vessel with another vessel or with any object;
 - (g) the vessel being disabled (in any case in which it requires assistance);
 - (h) any fire on board the vessel;
 - (i) any damage being caused to the vessel (including any structural failure);
 - (j) any damage to the environment caused by the vessel or by any substance on, or discharged from, the vessel;
 - (k) any incident that causes danger of any of the above occurring;
- but does not include anything excluded from this definition by the rules.

marine investigator: see section 76.

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

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*.

marine safety investigation: see section 75.

marine safety investigation report: see section 78.

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

middle range prescribed concentration of alcohol: see section 54.

monitoring powers: see section 87.

navigation aid means any device used for the safety of navigation (such as a beacon, buoy or marine mark), but does not include a device on board a vessel.

non-displacement craft includes hovercraft and hydrofoils.

NSW Rural Fire Service means the NSW Rural Fire Service established by Part 2 of the *Rural Fires Act 1997* (NSW), as in force on the commencement day.

NSW waters means waters that are State waters within the meaning of the *Marine Safety Act 1998* (NSW), as in force on the commencement day.

obstruction to navigation means anything in, over or on Territory waters (including a vessel, whether wrecked or not) that:

- (a) is a danger to the safe navigation of vessels; or
- (b) is moored, berthed or placed in contravention of this Ordinance, the Marine Safety (Domestic Commercial Vessel) National Law or another law of the Commonwealth;

but does not include anything lawfully erected in, over or on Territory waters.

operate: see section 8.

owner: see section 9.

particulars of a marine accident: see subsection 103(4).

passenger means any person on board a vessel other than:

- (a) a person who is operating the vessel; or
- (b) a member of the crew of the vessel.

personal watercraft: see subsection 18(2).

person assisting a police officer: see section 92.

police officer means:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member of the Australian Federal Police (within the meaning of that Act).

power-driven vessel means a vessel powered by mechanical means but does not include a vessel propelled by oars or paddles.

premises includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

Prevention of Collisions Convention has the same meaning as in the *Navigation Act 2012*.

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prohibited part: see subsection 33(3).

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes things in action.

recreational vessel means a vessel other than a domestic commercial vessel, a regulated Australian vessel or a foreign vessel.

regulated Australian vessel has the same meaning as in the *Navigation Act 2012*.

relevant officer: see subsection 48(6).

required safety equipment: see subsection 66(3).

required standards: see subsection 66(3).

RMS means the Roads and Maritime Services constituted under the *Transport Administration Act 1988* (NSW), as in force on the commencement day.

rules means rules made under section 118.

safe distance: see subsection 23(3).

safe loading requirement: see subsection 28(3).

sailboard means any craft (other than a kiteboard) used for sailboarding or windsurfing, which is fitted with an apparatus or mechanism that is required to be controlled or operated by the user in order to harness the power of the wind to move the craft.

sailing vessel means a vessel operating under sail only.

shapes or lights indicating safe passage: see subsection 35(3).

special range prescribed concentration of alcohol: see section 54.

speed means the speed of a vessel measured by reference to the actual distance travelled over the ground.

swimming area: see subsection 22(2).

Territory waters means any navigable waters within the limits of the Territory.

underway means not at anchor or secured to the shore or ground, and includes drifting.

unsafe vessel: a vessel is an ***unsafe vessel*** if the operation of the vessel is a danger to human life because of any of the following:

- (a) the condition of the vessel;
- (b) the condition of equipment on the vessel;
- (c) the manner or place in which cargo or equipment on the vessel is stowed or secured;
- (d) the nature of the cargo;

(e) the overloading of the vessel.

vessel: see section 10.

youth range prescribed concentration of alcohol: see section 54.

7 Meaning of *appropriate lifejacket*

- (1) Subject to subsections (2) and (3), ***appropriate lifejacket***, for a vessel, means a lifejacket that a person on the vessel would be required to wear, or that the vessel would be required to carry, if the vessel were in NSW waters.
- (2) A lifejacket is not an ***appropriate lifejacket*** if:
 - (a) it relies solely on oral inflation for buoyancy; or
 - (b) it is not the correct size for the wearer or intended wearer.
- (3) An inflatable lifejacket is not an ***appropriate lifejacket*** at a particular time unless:
 - (a) it was purchased or otherwise acquired new by the current owner no more than 12 months before that time; or
 - (b) it has been serviced:
 - (i) at intervals of 12 months or less; or
 - (ii) at least at such longer intervals as are indicated by the manufacturer's instructions (if any) provided for the lifejacket.

8 Meaning of *operate*

A person ***operates*** a vessel if the person:

- (a) determines or exercises control over the course or direction of the vessel or over the means of propulsion of the vessel (whether or not the vessel is underway); or
- (b) is the owner of the vessel and causes or allows the vessel to be operated by someone else.

9 Meaning of *owner*

- (1) The ***owner*** of a vessel includes:
 - (a) a person registered as an owner of the vessel in:
 - (i) a certificate of registry issued for the vessel under a law of a State or Territory; or
 - (ii) a certificate or unique identifier issued for the vessel under the Marine Safety (Domestic Commercial Vessel) National Law; or
 - (iii) a registration certificate granted for the vessel under the *Shipping Registration Act 1981*; and
 - (b) a person who is the charterer of the vessel; and
 - (c) a person who is a joint owner of the vessel; and
 - (d) a person who, whether on the person's own behalf or on behalf of another:
 - (i) exercises any of the functions of the owner of the vessel; or

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- (ii) publicly represents that he or she has those functions or accepts the obligation to exercise those functions.
- (2) A person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired.

10 Meaning of *vessel*

- (1) A ***vessel*** includes a watercraft of any description that is used, or capable of being used, as a means of transportation on water.
- (2) Without limiting subsection (1), ***vessel*** includes:
 - (a) a non-displacement craft; and
 - (b) a seaplane, but only while it is on water; and
 - (c) anything used on water that is declared by the rules to be a vessel.
- (3) However, ***vessel*** does not include anything declared by the rules not to be a vessel.

Part 3—Provisions relating to the application of this Ordinance

11 Ordinance to bind the Crown

- (1) This Ordinance binds the Crown in each of its capacities.
- (2) This Ordinance does not make the Crown liable to be prosecuted for an offence.

12 Ordinance does not apply to defence force vessels etc.

This Ordinance does not apply to, or in relation to, a vessel that is operated by:

- (a) the Australian Defence Force; or
- (b) the naval, military or air forces of another country.

Part 4—Vessel registration

13 Offence—operating an unregistered vessel

A person commits an offence if:

- (a) the person operates a power-driven vessel in Territory waters; and
- (b) the engine of the vessel is rated, by the manufacturer of the engine, as having a power of more than 3,728.5 watts (5 horse power); and
- (c) the vessel is not registered under a law of a State or Territory that allows the vessel to be operated in that State or Territory.

Penalty: 50 penalty units.

14 Offence—contravening a condition of registration

A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the vessel is registered under a law of a State or Territory that allows the vessel to be operated in that State or Territory; and
- (c) the vessel is being operated in contravention of a condition of its registration.

Penalty: 50 penalty units.

Part 5—Boat driving licences

15 Offence—operating a vessel without a current boat driving licence

- (1) A person commits an offence if:
- (a) the person operates a power-driven vessel in or from Territory waters as its master; and
 - (b) the speed of the vessel when operated is more than 10 knots; and
 - (c) the person does not hold a current boat driving licence for the vessel.

Penalty: 15 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the vessel is a domestic commercial vessel; and
 - (b) the person holds a certificate of competency under the Marine Safety (Domestic Commercial Vessel) National Law in relation to the person's functions on the vessel.

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Part 6—Safety of navigation

Division 1—Notices relating to safety

16 Power to make a notice relating to safety

- (1) The Minister may prohibit or regulate the operation of vessels in Territory waters by a notice displayed in, or in the vicinity of, those waters.
- (2) The Minister may, by such a notice, impose any restriction considered appropriate for the safety of the public or for the protection of vessels or other property. In particular, the Minister may impose restrictions on the following:
 - (a) the speed of vessels;
 - (b) the mooring or anchoring of vessels;
 - (c) the use of vessels for particular purposes.
- (3) A notice under subsection (1) may apply:
 - (a) to vessels generally or to any class of vessels specified in the notice; and
 - (b) at all times or at such times specified in the notice; and
 - (c) in any other circumstances specified in the notice.
- (4) A notice under subsection (1) is a legislative instrument.
- (5) Nothing in this section affects any law that prohibits or regulates the operation of vessels or any power relating to the navigation or other use of vessels conferred on any person or body by the Marine Safety (Domestic Commercial Vessel) National Law or any other law of the Commonwealth.

17 Offence—failure to comply with a notice

- (1) A person commits an offence if:
 - (a) the person operates a vessel to which a notice under section 16 applies; and
 - (b) the operation of the vessel contravenes the notice.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to:
 - (a) a vessel operated in a manner that does not comply with the notice in order to avoid an immediate risk of injuring persons or damaging property; and
 - (b) if the notice imposes a restriction on the speed of vessels—a vessel that is not a power-driven vessel.

Note: The Minister may also exempt a vessel from compliance with a notice under section 16 (see section 111).

- (3) In any proceedings for an offence against subsection (1), proof of the display of a notice in accordance with subsection 16(1) is not required until evidence is given to the contrary.

Division 2—Operation of vessels

18 Offence—operating a personal watercraft

- (1) A person commits an offence if the person operates a personal watercraft in Territory waters.

Penalty: 50 penalty units.

- (2) In this section:

personal watercraft means a power-driven vessel that:

- (a) has a fully enclosed hull; and
 - (b) does not retain water taken on if it capsizes; and
 - (c) is designed to be operated by a person lying, standing, sitting astride or kneeling on the vessel but not seated within the vessel;
- and includes a jet powered surfboard.

19 Offence—operating an unsafe vessel

A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the vessel is an unsafe vessel.

Penalty: Imprisonment for 20 months or 100 penalty units, or both.

20 Offence—speed restriction when person under 18 on a vessel

A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the speed of the vessel is more than 60 knots; and
- (c) there is a person under the age of 18 years on board the vessel.

Penalty: 50 penalty units.

21 Offence—exceeding the appropriate power rating for a vessel

- (1) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the vessel has a motor that exceeds the appropriate power rating for the vessel.

Penalty: 50 penalty units.

- (2) In this section:

appropriate power rating for a vessel means:

- (a) the power rating specified for the vessel by the manufacturer; or

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- (b) if there is no power rating specified for the vessel by the manufacturer or the power rating is not apparent:
 - (i) in the case of a vessel with an outboard motor—the maximum power capacity as calculated in accordance with section 2.6 of Australian Standard AS 1799.1—2009, *Small craft—General requirements for power boats*, as in force on the commencement day; or
 - (ii) in any other case—the power rating (if any) for vessels of that kind approved by RMS for the purposes of clause 13 of the *Marine Safety Regulation 2016* (NSW), as in force on the commencement day.

22 Offence—operating a power-driven vessel in or near a swimming area

- (1) A person commits an offence if the person operates a power-driven vessel in, or within 60 metres of, a swimming area.

Penalty: 50 penalty units.

- (2) In this section:

swimming area means the area of Territory waters adjacent to Green Patch beach that:

- (a) is designated for use by swimmers by the placement of buoys by the Director of National Parks; and
- (b) has boundaries comprising:
 - (i) an imaginary straight line running between the buoys; and
 - (ii) imaginary straight lines running from each buoy to the shore, perpendicular to the shore.

23 Offence—failure to comply with minimum distance requirements

- (1) A person who operates a vessel (the **first vessel**) in Territory waters must ensure that, when the speed of the first vessel is 10 knots or more, the first vessel is:
 - (a) at least 60 metres or, if that is not possible, a safe distance, from:
 - (i) any person in or on the water; and
 - (ii) any other vessel (other than a power-driven vessel or a vessel that is moored or anchored); and
 - (b) at least 30 metres or, if that is not possible, a safe distance, from:
 - (i) any power-driven vessel; and
 - (ii) any vessel that is moored or anchored; and
 - (iii) any land, structure or other thing.

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

Penalty: 50 penalty units.

- (3) For the purposes of subsection (1), the first vessel is a **safe distance** from a person, another vessel or a thing at a particular time if, having regard to all relevant safety factors at the time, including the weather conditions, visibility, the speed of the first vessel and any obstructions to navigation that are present,

the first vessel is at a distance from the person, the other vessel or the thing that will ensure that:

- (a) in the case of a person—the first vessel will not cause danger or injury to the person; and
- (b) in the case of another vessel or a thing—the first vessel will not cause damage to the other vessel or the thing.

24 Offence—reckless or negligent operation of a vessel

A person (the *first person*) commits an offence if:

- (a) the first person operates a vessel in Territory waters; and
- (b) the operation of the vessel gives rise to a danger of:
 - (i) harm or death to another person; or
 - (ii) damage to property of another person; and
- (c) the first person is reckless or negligent as to whether the operation of the vessel would give rise to the danger.

Penalty: Imprisonment for 10 months or 50 penalty units, or both.

25 Offence—dangerous operation of a vessel

A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the operation of the vessel is:
 - (i) at a speed that is dangerous to the public; or
 - (ii) dangerous to the public in another way.

Penalty: 50 penalty units.

26 Offence—towing a person

A person commits an offence if the person:

- (a) operates a vessel in Territory waters behind which a person is towed; or
- (b) is towed behind a vessel in Territory waters.

Penalty: 50 penalty units.

27 Offence—unsafe towing of a vessel etc.

(1) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the vessel is towing or pushing another vessel or an object; and
- (c) the other vessel or object is not safely secured to the towing or pushing vessel during the period of the tow.

Penalty: 50 penalty units.

(2) A person commits an offence if:

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- (a) the person operates a vessel in Territory waters; and
- (b) the vessel is towing or pushing another vessel or an object; and
- (c) either:
 - (i) the other vessel or object is not positioned so that the vessel or object, or anything on the vessel or object, does not obscure visibility from the towing or pushing vessel; or
 - (ii) there is no person providing safety instructions to the operator from an appropriate position.

Penalty: 50 penalty units.

28 Offence—contravening a safe loading requirement

- (1) A person commits an offence if:
 - (a) the person:
 - (i) operates a vessel in Territory waters; or
 - (ii) is the owner of a vessel that is in Territory waters; and
 - (b) the vessel contravenes a safe loading requirement that applies to the vessel under a law of the State or Territory where:
 - (i) the vessel is registered; or
 - (ii) the vessel's owner resides.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the vessel is any of the following:
 - (a) a vessel used solely for the purpose of racing or competition;
 - (b) a vessel propelled by oars or paddles and that does not have an engine;
 - (c) a sailing vessel with or without an engine;
 - (d) a domestic commercial vessel operating in accordance with a certificate of survey in force under the Marine Safety (Domestic Commercial Vessel) National Law.
- (3) In this section:

safe loading requirement means a requirement relating to the maximum number or weight of persons and equipment that a vessel may carry and includes any requirement to display a label on a vessel relating to the maximum safe load or maximum number of persons that the vessel may carry.

Division 3—Conduct of persons

29 Offence—conduct that is dangerous to the public

A person commits an offence if:

- (a) the person is on a vessel in Territory waters; and
- (b) the person does something that is dangerous to the public.

Penalty: 50 penalty units.

30 Offence—keeping all parts of the body within a vessel while underway etc.

- (1) This section applies in relation to power-driven vessels (other than personal watercraft) that are:

- (a) recreational vessels; or
- (b) hire and drive vessels.

- (2) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) while the vessel is making way, a person on board the vessel extends a part of his or her body outside the perimeter of the vessel.

Penalty: 50 penalty units.

- (3) A person commits an offence if:

- (a) the person is on board a vessel in Territory waters; and
- (b) while the vessel is making way, the person extends a part of his or her body outside the perimeter of the vessel.

Penalty: 50 penalty units.

- (4) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) while the vessel is making way, another person is on the bow of the vessel in a position that puts him or her at increased risk of falling overboard.

Penalty: 50 penalty units.

- (5) A person commits an offence if:

- (a) the person is on board a vessel in Territory waters; and
- (b) while the vessel is making way, the person is on the bow of the vessel in a position that puts him or her at increased risk of falling overboard.

Penalty: 50 penalty units.

- (6) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) while the vessel is making way, another person sits on, rides on or hangs onto a swim ladder, swim platform or transom attached to the vessel.

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Penalty: 50 penalty units.

- (7) A person commits an offence if:
- (a) the person is on board a vessel in Territory waters; and
 - (b) while the vessel is making way, the person sits on, rides on or hangs onto a swim ladder, swim platform or transom attached to the vessel.

Penalty: 50 penalty units.

- (8) Subsections (2) to (7) do not apply to a person who is:
- (a) anchoring, fishing, mooring or casting off; or
 - (b) involved in any activity relating to securing the safety of any person or property.

31 Offence—unauthorised entry to certain areas

- (1) A person commits an offence if:
- (a) the person is in Territory waters; and
 - (b) the person is either:
 - (i) within 30 metres of any moored or anchored seagoing ship, sunken or stranded vessel, or site on which construction work is being carried on by or for RMS or another public or local authority; or
 - (ii) within 100 metres of any wharf or installation used for the shipment, unshipment or storage of any oil, inflammable liquids, dangerous goods or explosives.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to:
- (a) a person or a class of persons authorised to enter or be in the area by an officer of RMS, the owner or master of the vessel concerned or a person in charge of the site, wharf or installation concerned; or
 - (b) a person on board a vessel that is operated by a police officer, or an officer or member of staff of RMS, acting in the exercise of his or her functions; or
 - (c) a person who is within the distances referred to in subsection (1) because of an emergency or in order to avoid an immediate risk of injuring persons or damaging property.

32 Offence—climbing etc. onto a vessel

- (1) A person commits an offence if the person:
- (a) climbs onto or attaches himself or herself to a vessel in Territory waters; or
 - (b) assists any person to climb onto or attach himself or herself to any vessel in Territory waters.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply to a person who is authorised to climb onto, or attach himself or herself to, a vessel by the owner or master of the vessel.

33 Offences—conduct of passengers on a domestic commercial vessel

- (1) A person commits an offence if:
- (a) the person is a passenger on a domestic commercial vessel in Territory waters; and
 - (b) the person:
 - (i) obstructs someone engaged in the navigation or other operation of the vessel; or
 - (ii) wilfully damages, or uses for a purpose for which it was not intended, any part of the vessel or any equipment on the vessel; or
 - (iii) removes, damages or defaces any sign or notice on the vessel that relates to the vessel's safe and proper use or any survey plate.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person is a passenger on a domestic commercial vessel in Territory waters; and
 - (b) the passenger is in or on a prohibited part of the vessel.

Penalty: 50 penalty units.

- (3) A part of a vessel is a ***prohibited part*** if:
- (a) it is a roof, awning or mast on the vessel; or
 - (b) there is a notice displayed at each place on the vessel designed for entry to the part that prohibits a passenger's entry to that part.

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Division 4—Interference

34 Offence—interfering with the lawful use of waters or land

A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the operation of the vessel interferes with the lawful use, by another person, of Territory waters or adjoining land.

Penalty: 50 penalty units.

35 Offence—interfering with other vessels

(1) A person commits an offence if:

- (a) the person operates a vessel in Territory waters; and
- (b) the operation of the vessel causes wash that damages or impacts unreasonably on another vessel.

Penalty: 50 penalty units.

(2) A person commits an offence if:

- (a) the person operates a vessel (the *first vessel*) in Territory waters; and
- (b) when passing a dredge or other vessel restricted in its ability to manoeuvre, the first vessel does not pass on the side of the dredge or other vessel that is displaying the shapes or lights indicating safe passage.

Penalty: 50 penalty units.

(3) In this section:

shapes or lights indicating safe passage means the shapes or lights specified in rule 27 of, and clause 4 of Annex 1 to, the Prevention of Collisions Convention as it applies to vessels in Territory waters under the *Navigation Act 2012*.

36 Offence—interfering etc. with lightships and navigation aids

A person commits an offence if the person:

- (a) is on, damages or interferes with a lightship in Territory waters; or
- (b) secures any vessel to a navigation aid in Territory waters.

Penalty: 100 penalty units.

37 Offence—interfering with equipment on a vessel

A person commits an offence if the person:

- (a) cuts, breaks, destroys, casts off, unties or detaches any rope, cable, chain or other means by which a vessel is secured in Territory waters; and
- (b) is not authorised to do so by the owner or operator of the vessel.

Penalty: 50 penalty units.

38 Offence—interfering with safety equipment

- (1) A person commits an offence if the person unties or detaches any safety equipment located in the vicinity of Territory waters.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person unties or detaches the safety equipment for the purpose of securing the safety of any person or preventing the loss of, or damage to, any property.

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Division 5—Signals and lights

39 Offence—unwarranted use of distress signals etc.

- (1) A person commits an offence if:
- (a) the person is:
 - (i) on board a vessel in Territory waters; or
 - (ii) in, or in the vicinity of, Territory waters; and
 - (b) the person:
 - (i) uses distress signalling equipment; or
 - (ii) makes a distress signal;other than for the purpose of indicating distress.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a vessel in Territory waters; and
 - (b) another person on board the vessel contravenes subsection (1).

Penalty: 50 penalty units.

40 Offence—use of lights and signals without proper reason

- (1) A person commits an offence if:
- (a) the person is:
 - (i) on board a vessel in Territory waters; or
 - (ii) in, or in the vicinity of, Territory waters; and
 - (b) the person displays or makes a light or other visual signal or makes a sound signal; and
 - (c) the light or signal is used as a warning or guide to vessels; and
 - (d) the person does not have a proper reason to display or make the light or signal.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a vessel in Territory waters; and
 - (b) another person on board the vessel contravenes subsection (1).

Penalty: 50 penalty units.

41 Offence—unauthorised use of an emergency patrol signal

- (1) A person commits an offence if:
- (a) the person operates a vessel in Territory waters; and
 - (b) the vessel displays an emergency patrol signal.

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Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the display of the emergency patrol signal has been authorised in writing by a police officer for the purpose of enabling the carrying out of emergency patrol duty; or
 - (b) the vessel is operated on behalf of a police officer, the JBT Rural Fire Service, the NSW Rural Fire Service or the Ambulance Service of NSW, for the purpose of carrying out an emergency patrol duty.

Division 6—Obstructions to navigation

42 Offence—failure to give warning about an obstruction to navigation etc.

A person commits an offence if:

- (a) the person operates a vessel; and
- (b) the vessel, or any equipment associated with the vessel, is:
 - (i) a potential obstruction to navigation; or
 - (ii) a danger to other vessels in Territory waters; and
- (c) the person does not give other vessel operators in Territory waters adequate warning of the potential obstruction or danger.

Penalty: 50 penalty units.

43 Offence—obstructing fairways and channels

A person commits an offence if:

- (a) the person operates a vessel; and
- (b) the vessel:
 - (i) obstructs, or restricts or impedes access to, any fairway or channel in Territory waters; or
 - (ii) obstructs the approach to, or restricts or impedes the proper use of, any wharf, jetty or other landing place, or any boatshed, slip, launching ramp or courtesy or emergency mooring, in Territory waters.

Penalty: 50 penalty units.

44 Offence—obstructing vessels etc.

A person commits an offence if the person obstructs, or in any way impedes:

- (a) the launching, removal from the water or securing of a vessel in Territory waters; or
- (b) the handling of cargo or the embarking or disembarking of passengers in respect of a vessel in Territory waters; or
- (c) the safe navigation of a vessel in Territory waters.

Penalty: 50 penalty units.

45 Offence—causing an obstruction, danger or nuisance with objects

A person commits an offence if:

- (a) the person:
 - (i) causes an object or apparatus to float on, extend over or be in Territory waters; or
 - (ii) throws or otherwise projects an object or apparatus into Territory waters; and

- (b) the object or apparatus:
 - (i) obstructs, or is likely to obstruct, navigation; or
 - (ii) causes, or is likely to cause, nuisance or danger to any person; or
 - (iii) causes, or is likely to cause, damage to any property.

Penalty: 50 penalty units.

46 Offence—failure to light or mark an obstruction to navigation

A person commits an offence if the person:

- (a) owns an obstruction to navigation; and
- (b) does not mark and light the obstruction so that it does not cause a danger to navigation.

Penalty: 50 penalty units.

Division 7—Directions and other powers relating to safety

47 Directions relating to the conduct of persons—general

Police officer may give a direction

- (1) A police officer may give a direction to a person in, on or near Territory waters if the officer believes on reasonable grounds that:
 - (a) the giving of the direction is necessary to ensure the safety of any person, or to prevent damage to property, in, on or near Territory waters; and
 - (b) the direction is reasonable in the circumstances for achieving that objective.

Offence—refusing or failing to comply with a direction

- (2) A person commits an offence if:
 - (a) the person is given a direction by a police officer under subsection (1); and
 - (b) at the time the direction is given, the police officer:
 - (i) identifies himself or herself as a police officer; and
 - (ii) warns the person that refusing or failing to comply with the direction is an offence; and
 - (c) the person refuses or fails to comply with the direction.

Penalty: 30 penalty units.

- (3) Subsection (2) applies whether or not a person may contravene another provision of this Ordinance by complying with the direction.

Defence to prosecution for other offences if complying with direction

- (4) It is a defence to the prosecution of a person for an offence against this Ordinance if, at the time of the offence, the person was complying with a direction given under subsection (1).

References to persons or property in, on or near Territory waters

- (5) In this section:
 - (a) a reference to a person in, on or near Territory waters includes a reference to a person on a vessel, or on any apparatus, in, on or near Territory waters; and
 - (b) a reference to property in, on or near Territory waters includes a reference to property on a vessel.

48 Directions relating to the conduct of persons—domestic commercial vessels

Directions not to board or remain on board a vessel

- (1) A designated person for a domestic commercial vessel that is in Territory waters may give a direction to a person not to board, or not to remain on board, the vessel if the designated person is of the opinion that the direction is necessary to ensure that the maximum number of persons that the vessel is authorised to carry is not exceeded.

Directions not to enter or remain in a part of a vessel

- (2) A designated person for a domestic commercial vessel that is in Territory waters may give a direction to a person not to enter, or not to remain in, a part of the vessel if the designated person is of the opinion that the direction is necessary to ensure that the maximum number of persons authorised to be carried in that part of the vessel is not exceeded.

Directions to move to or from a part of a vessel etc.

- (3) A designated person for a domestic commercial vessel that is in Territory waters may give a direction to a person on the vessel to move to or from a part of the vessel, or cease an activity in which the person is engaged on the vessel, if the designated person is of the opinion that the direction is necessary to ensure the proper and orderly management, operation or navigation of the vessel.

Directions not to be given to a relevant officer

- (4) A designated person for a domestic commercial vessel that is in Territory waters may not give a direction under this section to a relevant officer who is exercising his or her functions as a relevant officer.

Offence—refusing or failing to comply with a direction

- (5) A person commits an offence if:
- (a) the person is given a direction under this section; and
 - (b) the person refuses or fails to comply with the direction.

Penalty: 50 penalty units.

Definitions

- (6) In this section:

designated person for a domestic commercial vessel means a person on board the vessel who is concerned in the navigation, operation or management of the vessel and includes, for the purposes of subsections (1) and (2), a person who is concerned in the conduct of operations at the berth of the vessel.

relevant officer means:

- (a) a police officer; or

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- (b) an officer of the Commonwealth or New South Wales Government; or
- (c) an officer of a statutory authority created under a law of the Commonwealth or New South Wales.

49 Directions relating to lighting and marking obstructions

Police officer may give a direction to the owner of an obstruction

- (1) A police officer may, in writing, direct a person who is the owner of an obstruction to navigation to:
 - (a) mark or light the obstruction in the time and manner specified in the direction; and
 - (b) maintain the marking or lighting in good condition.

Offence—refusing or failing to comply with a direction

- (2) A person commits an offence if:
 - (a) the person is given a direction under subsection (1); and
 - (b) the person refuses or fails to comply with the direction.

Penalty: 50 penalty units.

Requirement to notify if defect to marking or lighting of obstruction

- (3) The owner of an obstruction to navigation to whom a direction is given under subsection (1) must notify a police officer in the Territory as soon as the owner becomes aware of any defect in relation to the marking or lighting of the obstruction.

Police officer may cause obstruction to be marked or lit

- (4) If the owner of an obstruction to navigation refuses or fails to comply with a direction under subsection (1), a police officer may take action to cause the obstruction to be marked or lit.
- (5) If:
 - (a) a police officer takes action under subsection (4) in relation to an obstruction to navigation; and
 - (b) the Commonwealth incurs reasonable costs and expenses as a result of the action taken;the Commonwealth may recover the amount of those costs and expenses from the owner of the obstruction as a debt in a court of competent jurisdiction.

50 Directions to remove obstructions

- (1) The Minister may, by notice in writing given to a person who is the owner of, or responsible for, an obstruction to navigation, direct the person to remove the obstruction within such time as is specified in the notice.
 - (2) A person commits an offence if:
-

- (a) the person is given a direction under subsection (1); and
- (b) the person refuses or fails to comply with the direction.

Penalty: 50 penalty units.

51 Power to remove obstructions

- (1) The Minister may remove, or authorise the removal of, any obstruction to navigation in such manner as the Minister thinks fit (whether or not the Minister has issued a direction for its removal under subsection 50(1)). The obstruction may be removed by its destruction if it is reasonable to do so in the circumstances.
- (2) The Commonwealth may recover as a debt in a court of competent jurisdiction the reasonable costs and expenses incurred by the Commonwealth in the exercise of the Minister's powers under this section from the owner of, or person responsible for, the obstruction to navigation.

52 Power to dispose of obstructions

- (1) The Minister may dispose of anything removed (other than by its destruction) under section 51 if:
 - (a) the Minister has taken reasonable steps to return the thing to its owner; and
 - (b) one of the following applies:
 - (i) the Minister has been unable to locate the person, despite making reasonable efforts;
 - (ii) the person has refused to take possession of the thing;
 - (iii) the Minister has contacted the person about the return of the thing, and the person has not refused to take possession of the thing, but has not taken possession of the thing within 3 months of the contact.
- (2) The Minister may dispose of the thing in such manner as the Minister thinks appropriate.

Part 7—Alcohol and drug use

Division 1—Preliminary

53 Vessels to which this Part applies

- (1) This Part does not apply to a surfboard or similar device used by a swimmer or surfer to support the swimmer or surfer in the water (other than a sailboard or a kiteboard).
- (2) This Part applies to a vessel only while the vessel is underway.

54 Prescribed concentrations of alcohol

In this Part:

high range prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

low range prescribed concentration of alcohol means a concentration of 0.05 grams or more, but less than 0.08 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

middle range prescribed concentration of alcohol means a concentration of 0.08 grams or more, but less than 0.15 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

special range prescribed concentration of alcohol means a concentration of 0.02 grams or more, but less than 0.05 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

youth range prescribed concentration of alcohol means a concentration of more than zero grams, but less than 0.02 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

Division 2—Offences etc. relating to alcohol and drugs

55 Offence—operating a vessel under the influence of alcohol or another drug

- (1) A person commits an offence if:
- (a) the person:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
 - (b) the person is under the influence of alcohol or any other drug.

Penalty: 15 penalty units.

- (2) The master of a vessel commits an offence if:
- (a) the master permits a person to operate, or to supervise a juvenile operator of, the vessel in Territory waters; and
 - (b) the master is aware, or has reasonable cause to believe, that the person is under the influence of alcohol or any other drug.

Penalty: 15 penalty units.

- (3) If a person is charged with an offence against subsection (1), or the master of a vessel is charged with an offence against subsection (2) in respect of a person:
- (a) the court attendance notice may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice; and
 - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the person was under the influence of:
 - (i) a drug described in the court attendance notice; or
 - (ii) a combination of drugs at least one of which was described in the court attendance notice.

56 Offence—youth range prescribed concentration of alcohol

- A person commits an offence if:
- (a) the person is under the age of 18 years; and
 - (b) the person either:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
 - (c) the person does so while there is present in his or her breath or blood the youth range prescribed concentration of alcohol.

Penalty: 20 penalty units.

57 Offence—special range prescribed concentration of alcohol

- A person commits an offence if:

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- (a) the person either:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
- (b) the person does so while there is present in his or her breath or blood the special range prescribed concentration of alcohol; and
- (c) either of the following apply:
 - (i) the person is under 18 years of age;
 - (ii) the person, or juvenile operator, is operating the vessel for a commercial purpose.

Penalty: 20 penalty units.

58 Offence—low range prescribed concentration of alcohol

A person commits an offence if:

- (a) the person either:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
- (b) the person does so while there is present in his or her breath or blood the low range prescribed concentration of alcohol.

Penalty: 20 penalty units.

59 Offence—middle range prescribed concentration of alcohol

A person commits an offence if:

- (a) the person either:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
- (b) the person does so while there is present in his or her breath or blood the middle range prescribed concentration of alcohol.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

60 Offence—high range prescribed concentration of alcohol

A person commits an offence if:

- (a) the person either:
 - (i) operates a vessel in Territory waters; or
 - (ii) supervises a juvenile operator in Territory waters; and
- (b) the person does so while there is present in his or her breath or blood the high range prescribed concentration of alcohol.

Penalty: Imprisonment for 10 months or 50 penalty units, or both.

61 Alternative verdicts for lesser offences

Alternative verdict in prosecution for middle range prescribed concentration of alcohol

- (1) If, in a prosecution of a person for an offence against section 59, the court is satisfied that, at the time the person operated the vessel, or supervised a juvenile operator of the vessel:
- (a) there was not present in the person's breath or blood the middle range prescribed concentration of alcohol; but
 - (b) there was present in the person's breath or blood the low range prescribed concentration of alcohol;
- the court may convict the person of an offence against section 58.

Alternative verdict in prosecution for high range prescribed concentration of alcohol

- (2) If, in a prosecution of a person for an offence against section 60, the court is satisfied that, at the time the person operated the vessel, or supervised a juvenile operator of the vessel, there was not present in the person's breath or blood the high range prescribed concentration of alcohol:
- (a) the court may convict the person of an offence against section 59 if the court is satisfied that the middle range prescribed concentration of alcohol was present in the person's breath or blood; or
 - (b) the court may convict the person of an offence against section 58 if the court is satisfied that the low range prescribed concentration of alcohol was present in the person's breath or blood.

Alternative verdict in prosecution for low, middle and high range prescribed concentrations of alcohol

- (3) If, in a prosecution of a person for an offence against section 58, 59 or 60, the court is satisfied that, at the time the person operated the vessel or supervised a juvenile operator of the vessel:
- (a) the person was under the age of 18 years, or the person or juvenile operator was operating the vessel for a commercial purpose; and
 - (b) there was not present in the person's breath or blood the low, middle or high range prescribed concentration of alcohol, but there was present in the person's breath or blood the special range prescribed concentration of alcohol;
- the court may convict the person of an offence against section 57.

Alternative verdict in prosecution for low, middle, high and special range prescribed concentrations of alcohol

- (4) If, in a prosecution of a person for an offence against section 57, 58, 59 or 60, the court is satisfied that, at the time the person was operating the vessel or supervising a juvenile operator of the vessel:
- (a) the person was under the age of 18 years; and

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- (b) there was not present in the person's breath or blood the low, middle, high or special range prescribed concentration of alcohol, but there was present in the person's breath or blood the youth range prescribed concentration of alcohol;

the court may convict the person of an offence against section 56.

62 Presence of higher concentration of alcohol not a defence

- (1) It is not a defence to a prosecution for an offence against section 56 if the defendant proves that, at the time he or she was operating the vessel, or supervising a juvenile operator of the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.02 grams or more in 210 litres of breath or 100 millilitres of blood.
- (2) It is not a defence to a prosecution for an offence against section 57 if the defendant proves that, at the time he or she was operating the vessel, or supervising a juvenile operator of the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.05 grams or more in 210 litres of breath or 100 millilitres of blood.
- (3) It is not a defence to a prosecution for an offence against section 58 if the defendant proves that, at the time he or she was operating the vessel, or supervising a juvenile operator of the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.08 grams or more in 210 litres of breath or 100 millilitres of blood.
- (4) It is not a defence to a prosecution for an offence against section 59 if the defendant proves that, at the time he or she was operating the vessel, or supervising a juvenile operator of the vessel, there was present in the defendant's breath or blood a concentration of alcohol of 0.15 grams or more in 210 litres of breath or 100 millilitres of blood.

63 Defence for offence relating to youth range prescribed concentration of alcohol

It is a defence to a prosecution for an offence against section 56 if the defendant proves that, at the time the defendant was operating the vessel, or supervising a juvenile operator of the vessel, the presence in the defendant's breath or blood of the youth range prescribed concentration of alcohol was not caused (in whole or in part) by either of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance);
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

Division 3—Alcohol and drug testing

64 Application of ACT Road Transport (Alcohol and Drugs) legislation

- (1) The ACT Road Transport (Alcohol and Drugs) legislation applies in relation to a person who operates a vessel in Territory waters as if:
- (a) a reference to a driver of a motor vehicle on a road in the Territory included a reference to a person operating a vessel in Territory waters; and
 - (b) a reference to a driver of a motor vehicle included a reference to a person who operates a vessel; and
 - (c) a reference to driving included a reference to operating; and
 - (d) a reference to a motor vehicle included a reference to a vessel; and
 - (e) a reference to a motor vehicle involved in an accident included a reference to a vessel involved in a marine accident; and
 - (f) a reference to a prescribed concentration of alcohol included a reference to a prescribed concentration mentioned in section 54 of this Ordinance; and
 - (g) a reference to an offence against section 24 included a reference to an offence against section 55 of this Ordinance; and
 - (h) a reference to an offence against this Act included a reference to an offence against Part 7 of this Ordinance; and
 - (i) a reference to this Act included a reference to Part 7 of this Ordinance.

- (2) In this section:

ACT Road Transport (Alcohol and Drugs) legislation means the following provisions of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT), and any regulations made under or for the purposes of those provisions, as in force in the Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*:

- (a) Part 1;
- (b) Part 1A (other than sections 4B to 4C, 4E and 4F);
- (c) Part 2 (other than sections 9A, 10, 13BA, 13C, 18A and 18B);
- (d) Part 3 (other than sections 19 to 20, 24 and 24A);
- (e) Part 7;
- (f) Part 9 (other than sections 48 to 51);
- (g) Schedule 1;
- (h) the Dictionary.

Part 8—Mandatory safety equipment

Division 1—Safety equipment requirements for certain recreational vessels

65 Application of this Division

- (1) Subject to subsections (2) and (3), this Division applies to recreational vessels.
- (2) This Division does not apply to the following recreational vessels:
 - (a) canoes;
 - (b) kayaks;
 - (c) sailboards;
 - (d) kiteboards.
- (3) Except to the extent that it imposes obligations relating to lifejackets, this Division does not apply to a recreational vessel that:
 - (a) is not ordinarily operated in Territory waters or NSW waters; and
 - (b) has not been continuously in Territory waters or NSW waters for a period of more than 3 months; and
 - (c) complies with the requirements for the carriage of safety equipment that apply to the vessel's place of registration or home port.

66 Obligations of owners and operators in relation to safety equipment

- (1) A person who is the owner of a recreational vessel that is in Territory waters, or who operates a recreational vessel in Territory waters, must ensure that:
 - (a) the vessel carries the required safety equipment for the vessel; and
 - (b) the required safety equipment carried on the vessel:
 - (i) complies with any required standards for the equipment; and
 - (ii) is in good condition; and
 - (iii) is maintained in accordance with the manufacturer's instructions (if any) provided for the equipment; and
 - (iv) is replaced when the manufacturer's expiry date (if any) for the equipment is reached; and
 - (c) the required safety equipment is stored or placed on the vessel so as to enable quick and easy access to it; and
 - (d) each person on board the vessel is aware of where the required safety equipment is stored or placed on the vessel; and
 - (e) if the required safety equipment for the vessel includes appropriate lifejackets—the lifejackets (while not in use) are:
 - (i) kept clearly visible to persons on board the vessel; and
 - (ii) stored in a location that is unobstructed and marked by a clearly visible sign that has the word "lifejackets" in red letters on a white background or white letters on a red background.

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

Penalty: 50 penalty units.

- (3) In this section:

required safety equipment, for a vessel, means the equipment specified in the rules as being safety equipment that the vessel is required to carry.

required standards, for equipment, means the standards specified in the rules as being standards that the equipment must comply with.

67 Power to require production of evidence relating to safety equipment

- (1) A police officer may require a person who is the owner or operator of a recreational vessel that is in Territory waters to produce evidence relating to the maintenance, condition or storage of any required safety equipment for the vessel.
- (2) If the person does not have the evidence in his or her possession at the time the requirement is made, the person must produce the evidence to a police officer within 24 hours or within any longer period approved by a police officer.
- (3) A person commits an offence if:
- (a) the person is required to produce evidence under subsection (1); and
 - (b) either:
 - (i) if subsection (2) applies—the person fails to produce the evidence in accordance with that subsection; or
 - (ii) otherwise—the person fails to produce the evidence.

Penalty: 50 penalty units.

Section 68

Division 2—Requirements to wear lifejackets

68 Lifejacket requirements for children under 12 years of age

- (1) A person commits an offence if:
- (a) the person operates a recreational vessel in Territory waters; and
 - (b) the vessel is less than 4.8 metres in length; and
 - (c) a child under the age of 12 years is:
 - (i) on board the vessel; and
 - (ii) not wearing an appropriate lifejacket.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a recreational vessel in Territory waters; and
 - (b) the vessel is less than 8 metres in length and underway; and
 - (c) a child under the age of 12 years is:
 - (i) in an open area on board the vessel; and
 - (ii) not wearing an appropriate lifejacket.

Penalty: 50 penalty units.

69 Lifejacket requirements for vessels under 4.8 metres in length

- (1) A person commits an offence if:
- (a) the person is on board a vessel in Territory waters; and
 - (b) the vessel is less than 4.8 metres in length; and
 - (c) the person is not wearing an appropriate lifejacket; and
 - (d) any of the following apply:
 - (i) the person is on board the vessel at night;
 - (ii) another person, who is 12 years of age or older, is not also on board the vessel.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person operates a vessel in Territory waters; and
 - (b) the vessel is less than 4.8 metres in length; and
 - (c) another person on board the vessel contravenes subsection (1).

Penalty: 50 penalty units.

70 Requirement to wear a lifejacket if directed by the master of a vessel

- A person commits an offence if:
- (a) the person is on board a recreational vessel in Territory waters; and

- (b) the master of the vessel directs the person to wear an appropriate lifejacket;
and
- (c) the person fails to comply with the direction.

Penalty: 50 penalty units.

71 General defences to lifejacket requirements

- (1) A person does not commit an offence under this Division by failing to wear an appropriate lifejacket on a vessel if the person:
 - (a) is not operating the vessel; and
 - (b) establishes that there was no available appropriate lifejacket on board the vessel at the time concerned.
- (2) A person (the *operator*) who operates a vessel does not commit an offence under this Division by failing to ensure that another person on the vessel is wearing an appropriate lifejacket if the operator establishes that he or she took all reasonable measures to ensure that the other person was wearing an appropriate lifejacket.

Section 72

Division 3—Requirements for hatches and exterior doors

72 Application of this Division

This Division does not apply to a recreational vessel that:

- (a) is not ordinarily operated in Territory waters or NSW waters; and
- (b) has not been continuously in Territory waters or NSW waters for a period of more than 3 months; and
- (c) complies with the requirements for the carriage of safety equipment that apply to the vessel's place of registration or home port.

73 Hatches and exterior doors—construction

- (1) This section applies to a recreational vessel if the hull construction of the vessel commenced on or after 1 January 1991.

Owners and operators of recreational vessels

- (2) A person who is the owner of a recreational vessel that is in Territory waters, or who operates a recreational vessel in Territory waters, must ensure that any hatch or exterior door on the vessel that can be used as a means of entering or leaving the vessel is capable of being opened from both the outside and the inside of the vessel.
- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

Suppliers of recreational vessels

- (4) A person (the **first person**) commits an offence if:
 - (a) the first person supplies a recreational vessel to another person; and
 - (b) the first person knows that the vessel will be, or is likely to be, used for recreational purposes; and
 - (c) either:
 - (i) there is no hatch or exterior door on the vessel that can be used as a means of entering or leaving the vessel; or
 - (ii) there is such a hatch or exterior door on the vessel but the hatch or exterior door is not capable of being opened from both the outside and the inside of the vessel.

Penalty: 50 penalty units.

74 Hatches and exterior doors—locking

- (1) A person who operates a recreational vessel in Territory waters must ensure that, while the vessel is underway, any hatch or exterior door on the vessel that can be

used as a means of entering or leaving the vessel is kept unlocked if it is reasonably practicable to do so.

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

Penalty: 50 penalty units.

Part 9—Marine investigation and enforcement

Division 1—Marine safety investigations

75 Marine safety investigations

- (1) The Minister may order an investigation (a *marine safety investigation*) into any of the following matters:
 - (a) a marine accident that has been reported under section 103 or that the Minister believes may have occurred;
 - (b) any situation that has the potential to cause a marine accident;
 - (c) any alleged incompetence or misconduct of the operator of a vessel who is required under section 15 to hold a current boat driving licence;
 - (d) a vessel that has been detained under section 89 in relation to an offence against section 19 (operating an unsafe vessel).
- (2) The principal purposes of a marine safety investigation are:
 - (a) to determine the circumstances of or concerning a marine accident or other matter as they affect marine safety; and
 - (b) to make recommendations to prevent the reoccurrence of a similar marine accident or other matter.
- (3) A marine safety investigation may be carried out whether or not it relates to a matter that:
 - (a) is being investigated, or has been investigated, under another law; or
 - (b) is or may be subject to criminal or civil proceedings.
- (4) If the Minister orders a marine safety investigation into alleged incompetence or misconduct of the holder of a current boat driving licence, the Minister may notify the State or Territory authority that granted the licence of the investigation.

76 Appointment of marine investigators

- (1) If the Minister orders a marine safety investigation, the Minister may appoint, in writing, one or more investigators (a *marine investigator*) to carry out the investigation.
- (2) The Minister may appoint either of the following as a marine investigator:
 - (a) a police officer;
 - (b) a person who possesses qualifications or experience relevant to the investigation.
- (3) A marine investigator is subject to the control and direction of the Minister, except in relation to the contents of a marine safety investigation report.

77 Conduct of marine safety investigations

- (1) A marine investigator is to conduct a marine safety investigation in such manner as the marine investigator considers appropriate having regard to the principal purposes of the investigation.
- (2) A marine safety investigation may extend to all relevant events and circumstances preceding the marine accident or other matter to which it relates.
- (3) In conducting a marine safety investigation, a marine investigator:
 - (a) may rely on any evidence relating to the matter under investigation given in any criminal or civil proceedings or in any coronial or other judicial inquiry; and
 - (b) if the marine investigator is not a police officer—has the same powers and obligations as a police officer would have under Divisions 2 to 6 of this Part if the police officer were conducting the marine safety investigation.
- (4) At any time during the course of a marine safety investigation, the Minister may determine that the investigation is to be discontinued and that a marine safety investigation report is to be prepared and submitted by the marine investigator.

78 Marine safety investigation reports

- (1) After completing a marine safety investigation into a marine accident or other matter, or if requested to do so by the Minister under subsection 77(4), a marine investigator must prepare and submit a report (a *marine safety investigation report*) to the Minister.
- (2) The report must include:
 - (a) findings as to the facts of the marine accident or other matter, and where the facts cannot be established with certainty, an opinion as to the most probable facts; and
 - (b) in the case of a marine accident—the cause or most probable cause of the accident; and
 - (c) any observations and recommendations to prevent the recurrence of similar marine accidents or matters that the marine investigator considers should be made.
- (3) A marine investigator may, at any time during a marine safety investigation, prepare an interim marine safety investigation report and submit it to the Minister.

79 Representations by persons affected by a marine safety investigation report

- (1) If all or part of a marine safety investigation report relates to a person's affairs to a material extent, the marine investigator must, if it is reasonable to do so, serve that person with a copy of the report or the relevant part of the report.

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- (2) A person who is served with all or part of a marine safety investigation report may, within 14 days after receiving it, make written representations relating to the report or the relevant part of the report to the marine investigator.
- (3) If a person makes representations to the marine investigator under subsection (2), the marine investigator:
 - (a) must consider the representations; and
 - (b) may make further investigations; and
 - (c) if the marine investigator makes further investigations, may either:
 - (i) amend the marine safety investigation report as a result; or
 - (ii) make no change to the report; and
 - (d) must notify the person who made the representations of the result of the person's representations; and
 - (e) must submit a final report to the Minister setting out the substance of the representations and the conclusions and action taken by the marine investigator with respect to them.

80 Action by Minister following marine safety investigation

- (1) After receiving a marine safety investigation report, the Minister may do one or more of the following:
 - (a) take no action;
 - (b) take action to improve marine safety procedures;
 - (c) reprimand the holder of a boat driving licence for any incompetence or misconduct;
 - (d) inform the State or Territory authority that granted the boat driving licence of the report and any action taken by the Minister on the report;
 - (e) recommend to the Commonwealth Director of Public Prosecutions or other law enforcement agency that criminal or other legal proceedings be taken against a person.
- (2) Before taking action under this section, the Minister may conduct a further investigation of the matter or refer the matter to the same or a different marine investigator for further investigation and report under this Division.
- (3) Any action taken under this section may extend to more than one boat driving licence held by a person.
- (4) The Minister must give written notice to the holder of a boat driving licence of any action taken under this section against that holder, together with a copy of the final marine safety investigation report.

81 Public release of a marine safety investigation report etc.

- (1) A marine investigator may, at any time during the course of a marine safety investigation, make recommendations to the Minister. The Minister may cause the recommendations to be made public if the Minister considers that it is in the interests of marine safety to do so.

- (2) The Minister may publicly release all or part of any report submitted to the Minister by a marine investigator.
- (3) The Minister is not to publicly release all or part of a report if to do so might prejudice the rights of any person in any criminal proceedings instituted in connection with the matter.

82 Protection from liability

If a person supplies information to the Minister or to a marine investigator in connection with a marine safety investigation, civil proceedings in respect of any matter contained in that information that is or is alleged to be defamatory or a breach of confidence may not be brought against:

- (a) the Commonwealth; or
- (b) the Minister; or
- (c) the marine investigator; or
- (d) the person who supplied the information.

Section 83

Division 2—Entry, search, seizure, detention and information gathering powers

83 Power to board a vessel

- (1) A police officer may board a vessel and exercise the monitoring powers set out in section 87 for any of the following purposes:
 - (a) finding out whether this Ordinance and the rules are being, or have been, complied with;
 - (b) investigating a marine accident;
 - (c) conducting a marine safety investigation;
 - (d) asking questions under section 86.
- (2) If the master of the vessel requests the police officer to produce identification, the police officer must produce appropriate identification.
- (3) If the police officer fails to produce appropriate identification, the officer must:
 - (a) leave the vessel; and
 - (b) not re-board the vessel without producing the identification.
- (4) A police officer is not required to comply with subsection (2) or (3) if he or she believes on reasonable grounds that to do so would endanger a person.
- (5) If a police officer does not comply with subsection (2) or (3) because of subsection (4), the police officer must, as soon as practicable after the request was made, show appropriate identification to the master.

84 Power to enter premises to access a vessel

- (1) A police officer may enter any premises that are a structure, building or place, and are not used as a residence, to gain access to a vessel for a purpose referred to in subsection 83(1).
- (2) Subsection (1) does not authorise a police officer to enter premises unless the police officer produces appropriate identification if required by the occupier of the premises.
- (3) A police officer is not required to comply with subsection (2) if he or she believes on reasonable grounds that to do so would endanger a person.
- (4) If:
 - (a) a police officer does not comply with subsection (2) because of subsection (3); and
 - (b) the occupier of the premises is present at the premises;the police officer must show appropriate identification to the occupier as soon as practicable after entering the premises.

85 Power to enter premises with consent

- (1) A police officer may enter any premises and exercise the monitoring powers set out in section 87 for any of the following purposes:
 - (a) finding out whether this Ordinance and the rules are being, or have been, complied with;
 - (b) investigating a marine accident;
 - (c) conducting a marine safety investigation.
- (2) However, a police officer is not authorised to enter premises under this section unless the occupier of the premises has consented to the entry, and the police officer has shown appropriate identification if required by the occupier.

Note: If entry to the premises is with the occupier's consent, the police officer must leave the premises if the consent ceases to have effect (see section 93).

86 Power to require master to answer questions

- (1) A police officer may require the master of a vessel to:
 - (a) answer questions put by the police officer about the nature or operations of the vessel; and
 - (b) produce any books, records or documents about the nature or operations of the vessel that are in the master's possession.
- (2) A police officer may require a person to provide all the information the person has about the identity and address of the owner or master of a vessel.
- (3) A person commits an offence if:
 - (a) a requirement is made of the person under subsection (1) or (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

87 Monitoring powers

Powers relating to vessels and premises

- (1) A police officer who boards a vessel under section 83 or enters premises under section 85 may exercise the following **monitoring powers**:
 - (a) the power to search the vessel or premises and any thing on the vessel or premises;
 - (b) the power to examine or observe any activity conducted on the vessel or premises;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the vessel or premises;
 - (d) the power to make any still or moving image or any recording of the vessel or any thing on the vessel or premises;
 - (e) the power to inspect any document on the vessel or premises;
 - (f) the power to take extracts from, or make copies of, any such document;

Section 87

- (g) the power to take onto the vessel or premises such equipment and materials as the police officer requires for the purpose of exercising powers in relation to the vessel or premises;
- (h) the power to request that a person on the vessel or premises demonstrate the operation of machinery or equipment on the vessel or premises;
- (i) if the officer has boarded a vessel under section 83—the power to require a person on the vessel to give the officer one or more of the following:
 - (i) the person’s name;
 - (ii) the person’s residential address;
 - (iii) the person’s date of birth;
 - (iv) evidence of the person’s identity;
- (j) the powers set out in subsections (2), (3) and (4).

Additional powers relating to vessels

- (2) If a police officer boards a vessel under section 83, the **monitoring powers** include the power to require the master of the vessel to do one or more of the following:
 - (a) stop or manoeuvre the vessel;
 - (b) adopt a specified course or speed;
 - (c) maintain a specified course or speed;
 - (d) take the vessel to a specified place.

Operation of electronic equipment etc.

- (3) The **monitoring powers** include the power to operate or to require a person to operate electronic equipment on the vessel or premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the vessel or premises; and
 - (ii) can be used with the equipment or is associated with it;contains information (**data**) that is relevant to:
 - (c) whether this Ordinance and the rules are being, or have been, complied with; or
 - (d) a marine accident; or
 - (e) a marine safety investigation.
- (4) The **monitoring powers** include the following powers in relation to data found in the exercise of the power under subsection (3):
 - (a) the power to operate or require a person to operate electronic equipment on the vessel or premises to put the data in documentary form and remove the documents so produced from the vessel or premises;
 - (b) the power to operate or to require a person to operate electronic equipment on the vessel or premises to transfer the data to a disk, tape or other storage device that:
 - (i) is brought onto the vessel or premises for the exercise of the power; or

(ii) is on the vessel or premises and the use of which for that purpose has been agreed in writing by the occupier of the vessel or premises; and to remove the disk, tape or other storage device from the vessel or premises.

- (5) A police officer may operate electronic equipment as mentioned in subsection (3) or (4) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Offence

- (6) A person commits an offence if:
- (a) a requirement is made of the person:
 - (i) under paragraph (1)(h) (to show, or demonstrate the operation of, machinery or equipment on a vessel); or
 - (ii) under paragraph (1)(i) (to give a police officer the person's name, the person's residential address, the person's date of birth or evidence of the person's identity); or
 - (iii) under subsection (2) (to stop or manoeuvre a vessel, adopt or maintain a specified course or speed or take a vessel to a specified place); and
 - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse.
- (8) An offence against subsection (6) is an offence of strict liability.

88 Sampling, securing or seizing things found using monitoring powers in relation to a vessel

- (1) This section applies if:
- (a) a thing is found during the exercise of monitoring powers in relation to a vessel; and
 - (b) a police officer believes on reasonable grounds that:
 - (i) the thing is evidential material; and
 - (ii) any of the powers under this section need to be exercised without a warrant, either because of serious and urgent circumstances or because it is not practicable to obtain a warrant, in order to prevent concealment, loss or destruction of the evidential material.

Note: For example, it may be necessary to seize evidential material after a marine accident in order to prevent destruction of evidential material relevant to the marine accident.

- (2) The police officer may take a sample of the thing and remove the sample from the vessel.
- (3) The police officer may secure the thing for up to 72 hours.
- (4) The police officer may seize the thing.

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- (5) However, if the thing is equipment, or a disk, tape or other storage device, that has been operated under subsection 87(4), the police officer may seize the thing only if:
- (a) it is not practicable to put all the evidential material the thing contains in documentary form as mentioned in paragraph 87(4)(a) or to transfer all that evidential material as mentioned in paragraph 87(4)(b); or
 - (b) possession of the equipment or the disk, tape or other storage device by the occupier of the vessel could constitute an offence against a law of the Commonwealth, a State or a Territory.

Note: Division 5 requires police officers to deal with seized things in certain ways.

- (6) If the police officer exercises a power under this section on the basis that he or she believes on reasonable grounds the power needs to be exercised without a warrant because it is not practicable to obtain a warrant, he or she must give the Minister a report describing:
- (a) the exercise of the power; and
 - (b) the grounds for his or her belief.

89 Power to detain vessels

- (1) A police officer may detain a vessel in Territory waters and bring it, or cause it to be brought, to a holding area, if the police officer reasonably suspects that the vessel is, will be or has been involved in an offence against this Ordinance.
- (2) If a police officer detains a vessel under subsection (1), the police officer must give written notice, within 14 days, to:
- (a) the owner of the vessel; or
 - (b) if the owner is not able to be located—the person who had possession or control of the vessel immediately before it was detained.
- (3) If the police officer cannot conveniently give the notice in person, the officer may give the notice by fixing the notice to a prominent part of the vessel.
- (4) The notice must:
- (a) identify the vessel; and
 - (b) state that the vessel has been detained; and
 - (c) specify the reason for this; and
 - (d) specify contact details of a police officer who can provide further information; and
 - (e) include information about the return of the vessel.

Note: Division 5 deals with costs of detention.

- (5) A person commits an offence if:
- (a) the person operates a vessel, or causes or permits the operation of a vessel, that has been detained under subsection (1); and
 - (b) the vessel has not been released from detention; and
 - (c) a police officer has not consented to the operation of the vessel by the person.

Penalty: 50 penalty units.

90 Power to require production of a boat driving licence

- (1) A police officer may require the holder of a boat driving licence who is doing anything for which the licence is required to produce the holder's licence.
- (2) If the holder does not have the licence in his or her possession at the time the requirement is made, the holder must produce the licence to a police officer within 24 hours or within any longer period approved by a police officer.
- (3) A police officer may seize any boat driving licence that has ceased to have effect or that the officer has reason to believe is false.
- (4) A person commits an offence if:
 - (a) the person is required to produce a boat driving licence under subsection (1); and
 - (b) either:
 - (i) if subsection (2) applies—the person fails to produce the licence in accordance with that subsection; or
 - (ii) otherwise—the person fails to produce the licence.

Penalty: 50 penalty units.

91 Power to require persons to give information, produce documents or answer questions

- (1) A police officer may give a notice to a person under subsection (2) if the police officer has reason to believe that the person has information or a document that is relevant to a marine safety investigation.
- (2) The police officer may, by written notice given to the person, require the person:
 - (a) to give any such information to a specified police officer; or
 - (b) to produce any such document to a specified police officer; or
 - (c) to appear before a specified police officer to answer questions.

Note: For self-incrimination, see section 106.

- (3) The notice must:
 - (a) if paragraph (2)(a) or (b) applies:
 - (i) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
 - (ii) specify the manner in which the person is required to comply with the notice; and
 - (b) if paragraph (2)(c) applies—specify a time and place at which the person is to appear; and
 - (c) in any case—state the effect of subsection (7) (offence for failure to comply).

Section 91

Oath or affirmation

- (4) A police officer may require answers provided under paragraph (2)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.
- (5) A police officer to whom information or answers are verified or given may administer the oath or affirmation.

Payment for expenses

- (6) If the place specified in the notice for the purpose of paragraph (3)(b) is more than 16 kilometres from the person's usual place of residence at the time the person receives the notice, the person is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in connection with appearing before the police officer.

Offence

- (7) A person commits an offence if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Penalty: 50 penalty units.

Division 3—Persons assisting police officers

92 Persons assisting police officers

- (1) A police officer may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the police officer.
- (2) A person assisting the police officer:
 - (a) may board the vessel or enter the premises; and
 - (b) may exercise powers and perform functions and duties under this Part; and
 - (c) must do so in accordance with a direction given by the police officer to the person assisting.
- (3) A power exercised by a person assisting the police officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the police officer.
- (4) A function or duty performed by a person assisting the police officer as mentioned in subsection (2) is taken for all purposes to have been performed by the police officer.

Section 93

Division 4—Obligations and incidental powers of police officers

93 Consent

- (1) A police officer must, before obtaining the consent of an occupier of premises for the purposes of section 85, inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If a police officer entered premises under section 85 because of the consent of the occupier of the premises, the police officer, and any person assisting the police officer, must leave the premises if the consent ceases to have effect.

94 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in this Part:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) For the purposes of subsection (1):

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

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Division 5—General provisions relating to seizure and detention

95 Copies of seized things to be provided

- (1) This section applies if a police officer seizes one or more of the following from a vessel or premises under this Part:
 - (a) a document, film, computer file or other thing that can be readily copied;
 - (b) a storage device, the information in which can be readily copied.
- (2) The master of the vessel or the occupier of the premises may request the police officer to give a copy of the thing or the information to the master or occupier.
- (3) The police officer must comply with the request as soon as practicable after the seizure.
- (4) However, the police officer is not required to comply with the request if possession of the document, film, computer file, thing or information by the master or occupier could constitute an offence against a law of the Commonwealth, a State or a Territory.

96 Receipts for seized things

- (1) If a thing is seized under this Part, a police officer must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

97 Return of seized things

- (1) A police officer must take reasonable steps to return a thing seized under this Part when the earliest of the following happens:
 - (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

Note: See subsections (2) and (3) for exceptions to this rule.

Exceptions

- (2) Subsection (1):
 - (a) is subject to any contrary order of a court; and
 - (b) does not apply if the thing:
 - (i) is forfeited or forfeitable to the Commonwealth; or
 - (ii) is the subject of a dispute as to ownership.
- (3) The police officer is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) the thing may continue to be retained because of an order under section 98; or
- (c) the Commonwealth or a police officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth, a State or a Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

98 Magistrate may permit a thing to be retained

- (1) A police officer may apply to a magistrate for an order permitting the retention of the thing for a further period if:
 - (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;proceedings in respect of which the thing may afford evidence have not been instituted.
- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
 - (a) for the purposes of an investigation in respect of an offence against this Ordinance; or
 - (b) to enable evidence of an offence against this Ordinance to be secured for the purposes of a prosecution;the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).
- (3) Before making the application, the police officer must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to have such an interest of the proposed application.

99 Disposal of seized things

- (1) The Minister may dispose of a thing seized under this Part if:
 - (a) a police officer has, under section 97, taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the police officer has been unable to locate the person, despite making reasonable efforts; or

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- (ii) the person has refused to take possession of the thing.
- (2) The Minister may dispose of the thing in such manner as the Minister thinks appropriate.

100 Costs of detention

- (1) The Commonwealth is liable to pay to the owner of a vessel a reasonable amount of compensation:
 - (a) for the costs of, and incidental to, the detention of the vessel; and
 - (b) for any loss or damage incurred by the owner as a result of the detention of the vessel;if there was no reasonable or probable cause for the detention of the vessel.
- (2) If:
 - (a) a vessel is detained under this Part; and
 - (b) the Commonwealth incurs costs in connection with the detention of the vessel; and
 - (c) the detention was reasonable in the circumstances;the owner of the vessel is liable to pay to the Commonwealth compensation of a reasonable amount in respect of the detention of the vessel.
- (3) If the Commonwealth and the owner of the vessel do not agree on the amount of compensation payable under subsection (1) or (2), the Commonwealth or the owner may institute proceedings in a court of competent jurisdiction for the recovery of such reasonable amount of compensation as the court determines.

Division 6—Rights and responsibilities of masters etc.

Subdivision A—Responsibilities relating to marine accidents

101 Obligation to stop and give assistance

The master of a vessel commits an offence if:

- (a) the vessel is involved in a marine accident involving another vessel or the death of, or injury to, a person; and
- (b) the master either:
 - (i) fails to stop the vessel; or
 - (ii) fails to give any necessary assistance that the master is able to give to any person injured, or vessel damaged, in the accident.

Penalty: 50 penalty units.

102 Obligation to produce licence and give particulars

The master of a vessel commits an offence if:

- (a) the vessel is involved in a marine accident; and
- (b) a person having reasonable grounds to do so requires the master to do either or both of the following:
 - (i) produce any boat driving licence held by the master;
 - (ii) give particulars of the master's name and place of residence, the name and address of the owner of the vessel, the name of the vessel and any distinguishing number that is, or is required to be, displayed on the vessel by law; and
- (c) the master fails to comply with the requirement.

Penalty: 50 penalty units.

103 Obligation to report marine accidents to the Minister

- (1) If a marine accident occurs in connection with a vessel, the master of the vessel (and the owner of the vessel if aware of the accident) must send a report to the Minister containing particulars of the marine accident as soon as practicable by the quickest means available.
- (2) A report is not required to be sent:
 - (a) if a report of the marine accident has already been sent by the owner or master; or
 - (b) if the marine accident involves recreational vessels only and does not result in any of the following:
 - (i) loss of life or injury to a person;
 - (ii) property damage of a value greater than \$5,000;
 - (iii) damage to, or the danger of damage to, the environment.

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- (3) A person commits an offence if:
- (a) the person is required to send a report under this section; and
 - (b) the person fails to send the report.

Penalty: 50 penalty units.

- (4) In this section:

particulars of a marine accident means the following:

- (a) the time, place and nature of the marine accident;
- (b) the name and distinguishing number (if any) of each vessel involved in the marine accident;
- (c) the name and address of each person who was involved in, or was a material witness to, the marine accident;
- (d) any loss of life, or the estimated extent of any injury or damage, resulting from the marine accident.

104 Obligation to preserve evidence

- (1) A person commits an offence if:
- (a) the person is:
 - (i) the owner or the master of a vessel involved in a marine accident; or
 - (ii) otherwise concerned in a marine accident; and
 - (b) the person has reason to believe that evidence relating to the marine accident may be required for an investigation into the marine accident; and
 - (c) the person fails to take all reasonable measures to preserve the evidence.

Penalty: 50 penalty units.

- (2) For the purposes of paragraph (1)(b), evidence relating to the marine accident may include nautical charts, log books and other documents.

Note: Under section 2B of the *Acts Interpretation Act 1901* a **document** includes anything from which sounds, images or writings can be reproduced with or without the aid of anything else.

Subdivision B—Other rights and responsibilities

105 Requirement to facilitate boarding

- (1) A police officer may require a person to take reasonable steps to facilitate the boarding of a vessel under this Part.
- (2) A requirement under subsection (1) may be made by any reasonable means.
- (3) The requirement is made whether or not the person in charge of the vessel understands or is aware of the requirement.

Offence—non-compliance with requirement

- (4) A person commits an offence if:

- (a) a requirement is made of the person under subsection (1); and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.
- (6) An offence against subsection (4) is an offence of strict liability.

106 Self-incrimination

- (1) A person is not excused from giving information, producing a document or thing or answering a question under section 86, paragraph 87(1)(i) or section 91 on the ground that the information, the production of the document or thing, or answer to the question, might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the information given, the document or thing produced or the answer given; and
 - (b) giving the information, producing the document or thing or answering the question; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or thing or answering the question;

are not admissible in evidence against the individual in any criminal proceedings, other than a proceeding in respect of whether the information, document, thing or answer is false or misleading.

Part 10—Miscellaneous

Division 1—Exemptions

107 Exemption on safety or emergency grounds

- (1) Subject to subsection (3), a person does not contravene a provision of this Ordinance by reason only of acting, or omitting to act, for the purpose of securing the safety of a person or avoiding significant risk to the environment.
- (2) Subject to subsection (3), a person who is operating a vessel does not contravene a provision of this Ordinance if the vessel is displaying an emergency patrol signal in a circumstance mentioned in paragraph 41(2)(a) or (b).
- (3) Subsections (1) and (2) do not apply in relation to a contravention of a mandatory provision.

108 Exemption for certain activities

An offence against a provision of this Ordinance (other than an offence against section 19, 20, 22, 23, 24, 25, 29, 55, 56, 57, 58, 59 or 60) does not apply to an activity that:

- (a) is authorised by a permit in force under subregulation 12.06(2) of the EPBC Regulations; or
- (b) is carried out by an Indigenous person in accordance with conditions mentioned in regulation 12.08 of the EPBC Regulations; or
- (c) is done in accordance with a permit mentioned in subregulation 12.09(1) of the EPBC Regulations.

109 Exemption for police officers acting in course of duties

A provision of Part 6, does not apply to a police officer who is acting in the course of his or her duties as a police officer if:

- (a) the provision is section 17 or a provision of any of Divisions 2 to 6 of Part 6; and
- (b) in the circumstances:
 - (i) the police officer is taking reasonable care; and
 - (ii) it is reasonable that the provision should not apply.

110 Exemption for persons assisting Australian Defence Force etc.

An offence against any of the following provisions of this Ordinance does not apply to a person who is acting in the course of providing assistance to the Australian Defence Force or the naval, military or air forces of another country (a *defence force*) if the assistance is provided at the request or direction of the defence force:

- (a) subparagraph 25(b)(i) (operation of a vessel at a dangerous speed);

- (b) section 30 (keeping all parts of the body within a vessel while underway etc.);
- (c) section 32 (climbing etc. onto a vessel);
- (d) section 35 (interfering with other vessels);
- (e) section 37 (interfering with equipment on a vessel);
- (f) section 38 (interfering with safety equipment);
- (g) section 39 (unwarranted use of distress signals etc.);
- (h) section 40 (use of lights and signals without proper reason).

111 Exemption by the Minister

- (1) Subject to subsections (4) and (5), the Minister may, by notice in writing:
 - (a) exempt a specified person from the application of the following:
 - (i) this Ordinance or a specified provision of this Ordinance;
 - (ii) the rules or a specified provision of the rules; and
 - (b) exempt a specified vessel from the application of the following:
 - (i) this Ordinance or a specified provision of this Ordinance;
 - (ii) the rules or a specified provision of the rules;
 - (iii) a notice made under subsection 16(1).
- (2) An exemption under subsection (1) must be given to each person, or master of each vessel, to which it applies.
- (3) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the exemption.
- (4) The Minister must not grant an exemption under subsection (1), or impose conditions under subsection (3), unless the Minister is satisfied that the exemption concerned, taken together with the conditions to which it is subject, will not:
 - (a) jeopardise the safety of a vessel or a person on board a vessel; or
 - (b) compromise the conduct of a marine safety investigation.
- (5) The Minister must not grant an exemption under subsection (1) from the application of a mandatory provision.
- (6) Applications may be made to the Administrative Review Tribunal for review of decisions of the Minister under subsection (1) to not exempt a person or a vessel.

112 Exemption by the rules

- (1) Subject to subsection (3), the rules may provide that:
 - (a) a class of persons is exempt from the application of the following:
 - (i) this Ordinance or a specified provision of this Ordinance;
 - (ii) the rules or a specified provision of the rules; and
 - (b) a class of vessels is exempt from the application of the following:
 - (i) this Ordinance or a specified provision of this Ordinance;

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- (ii) the rules or a specified provision of the rules;
 - (iii) a notice made under subsection 16(1).
- (2) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the rules.
- (3) The rules must not provide that a class of persons or a class of vessels is exempt from the application of a mandatory provision.

113 Offence—breaching a condition of an exemption

- (1) A person commits an offence if:
 - (a) the person operates a vessel in Territory waters; and
 - (b) an exemption under section 111 or 112 in relation to the person or the vessel is subject to a condition; and
 - (c) the person breaches the condition.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Division 2—Other matters

114 Delegation by Minister

- (1) The Minister may, in writing, delegate any or all of his or her functions or powers under this Ordinance or the rules (other than section 118 of this Ordinance and this power of delegation) to an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Minister.

115 Summary proceedings for offences

Proceedings for an offence against this Ordinance may be dealt with summarily before a court.

116 Persons who may bring proceedings

Proceedings for an offence against this Ordinance may be brought by a police officer.

117 Compensation for acquisition of property

- (1) If the operation of this Ordinance would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

118 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Ordinance to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;

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- (c) impose a tax;
- (d) directly amend the text of this Ordinance.

Part 11—Application, savings and transitional provisions

119 Savings—proceedings for offences

Despite the repeal of the *Marine Safety Ordinance 2007* (the ***old Ordinance***) by Schedule 1 to this Ordinance, sections 23 and 24 of the old Ordinance continue to apply, on and after the commencement day, in relation to any proceeding for an offence against the old Ordinance.

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 how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

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

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Jervis Bay Territory Marine Safety Ordinance 2016	14 Nov 2016 (F2016L01756)	15 Nov 2016 (s 2(1) item 1)	
Jervis Bay Territory Legislation Amendment (Administrative Review Tribunal and Other Matters) Ordinance 2024	14 Oct 2024 (F2024L01294)	Sch 1 (item 2): 15 Oct 2024 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2.....	rep LA s 48D
s 4.....	rep LA s 48C
Part 10	
Division 1	
s 111.....	am F2024L01294
Schedule 1.....	rep LA s 48C