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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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**Coastal Trading (Revitalising Australian
Shipping) Bill 2012**

No. , 2012

(Infrastructure and Transport)

**A Bill for an Act to regulate coastal trading, and for
related purposes**

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1 **A Bill for an Act to regulate coastal trading, and for**
2 **related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Coastal Trading (Revitalising*
8 *Australian Shipping) Act 2012*.

9 **2 Commencement**

10 This Act commences on 1 July 2012.

Section 3

1 **3 Object of Act**

- 2 (1) The object of this Act is to provide a regulatory framework for
3 coastal trading in Australia that:
- 4 (a) promotes a viable shipping industry that contributes to the
5 broader Australian economy; and
- 6 (b) facilitates the long term growth of the Australian shipping
7 industry; and
- 8 (c) enhances the efficiency and reliability of Australian shipping
9 as part of the national transport system; and
- 10 (d) maximises the use of vessels registered in the Australian
11 General Shipping Register in coastal trading.
- 12 (2) This Act aims to achieve its object by the following means:
- 13 (a) ensuring that a vessel that is used to engage in coastal trading
14 under a general licence has unrestricted access to Australian
15 waters;
- 16 (b) ensuring that a vessel that is used to engage in coastal trading
17 has access to Australian waters under a temporary licence
18 that is limited in time and to voyages authorised by the
19 licence;
- 20 (c) ensuring that a vessel that is used to engage in coastal trading
21 under an emergency licence has the access to Australian
22 waters required to deal with the emergency to which the
23 licence relates.

24 **4 Constitutional basis for Act**

- 25 (1) Without limiting its effect apart from this section, this Act applies
26 to activities of, or matters that relate to, the following:
- 27 (a) a vessel engaged in trade and commerce:
- 28 (i) among the States; or
- 29 (ii) between a State and a Territory; or
- 30 (iii) between 2 Territories;
- 31 (b) a vessel that is external to Australia;
- 32 (c) a vessel of which the owner, or any of the owners, is a
33 constitutional corporation;

- 1 (d) a vessel, so far as the application of this Act to activities of,
 2 or in relation to, the vessel is reasonably appropriate and
 3 adapted to giving effect to Australia's obligations under an
 4 international agreement;
- 5 (e) a vessel of which the owner, or any of the owners, is the
 6 Commonwealth or a Commonwealth agency;
- 7 (f) navigation or shipping, to the extent that the navigation or
 8 shipping relates to trade and commerce:
 9 (i) among the States; or
 10 (ii) between a State and a Territory; or
 11 (iii) between 2 Territories;
- 12 (g) things that are incidental to activities or matters referred to in
 13 any of the above paragraphs.
- 14 (2) For the purposes of subsection (1), an activity of, or a matter that
 15 relates to, a vessel includes, but is not limited to, an activity done
 16 by a person, or in relation to a person, in the capacity of owner of
 17 the vessel or seafarer working on the vessel.
- 18 (3) For the purposes of subsection (1), *external to Australia* means:
 19 (a) beyond the baseline from which the breadth of the territorial
 20 sea is measured under section 7 of the *Seas and Submerged*
 21 *Lands Act 1973*; or
 22 (b) any waters on the landward side of the territorial sea that are
 23 not within the limits of a State or internal Territory.
- 24 Note: For the baseline see *Australia's territorial sea baseline* (AGPS) 1988:
 25 generally the baseline is the lowest astronomical tide along the coast
 26 but it also includes lines enclosing bays and indentations that are not
 27 bays and straight baselines that depart from the coast.

28 5 Simplified outline

29 The following is a simplified outline of this Act:

- 30 • This Act regulates coastal trading by providing for licences to
 31 be granted that authorise vessels to carry passengers or cargo
 32 between ports in Australia. Using a vessel to engage in coastal
 33 trading without a licence may lead to a pecuniary penalty

Section 5

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being imposed for the contravention of a civil penalty provision.

- Part 2 contains definitions for the Act, including a definition of *coastal trading* and *voyage*.
- Part 3 contains provisions relating to the application of the Act to various kinds of vessels, including provisions allowing the Minister to grant exemptions from the Act for vessels and people.
- Part 4 sets out the 3 kinds of licences (general licences, temporary licences and emergency licences) that may be granted and the application process for each. It also deals with matters such as conditions of licences and the cancellation of licences.
- Part 5 contains provisions relating to the enforcement of the Act.
- Part 6 deals with miscellaneous matters such as the review of certain decisions by the Administrative Appeals Tribunal and the delegation of the Minister's and Secretary's functions and powers under the Act.

Part 2—Interpretation

6 Definitions

(1) In this Act:

acceptable tolerance limits means:

- (a) in relation to cargo authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the volume of cargo authorised to be carried under the licence; or
- (b) in relation to passengers authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the number of passengers authorised to be carried under the licence; or
- (c) in relation to a loading date—5 days before or after the loading date.

Australia, when used in a geographical sense, includes the external Territories.

Australian General Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Australian International Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Australian nationality: a vessel has ***Australian nationality*** if it is a ship that has Australian nationality within the meaning of the *Shipping Registration Act 1981*.

authorised person means a person appointed as an authorised person under section 108.

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory; or
- (d) 27, 28, 29, 30 or 31 December.

Section 6

- 1 **cargo** means any personal property:
2 (a) that is carried on board a vessel; and
3 (b) for which a bill of lading, or a receipt of a similar kind, is
4 issued.
- 5 **civil penalty order** has the meaning given by section 86.
- 6 **civil penalty provision** means a subsection, or a section that is not
7 divided into subsections, that has set out at its foot the words “civil
8 penalty” and one or more amounts in penalty units.
- 9 **coastal trading**: see section 7.
- 10 **Commonwealth agency** includes:
11 (a) an Agency (within the meaning of the *Financial*
12 *Management and Accountability Act 1997*); and
13 (b) a body corporate established for a public purpose under a law
14 of the Commonwealth.
- 15 **Commonwealth vessel** means a vessel that is owned by, or in the
16 possession or control of, the Commonwealth or a Commonwealth
17 agency.
- 18 **emergency licence** means a licence granted under Division 3 of
19 Part 4.
- 20 **evidential burden**, in relation to a matter, means the burden of
21 adducing or pointing to evidence that suggests a reasonable
22 possibility that the matter exists or does not exist.
- 23 **executive officer** of a body corporate means a person, by whatever
24 name called and whether or not a director of the body, who is
25 concerned in, or takes part in, the management of the body.
- 26 **Federal Court** means the Federal Court of Australia.
- 27 **fish** includes turtles, dugong, crustacea, molluscs and any other
28 living resources of the sea or of the seabed.
- 29 **fishing fleet support vessel** means a vessel (other than a
30 Commonwealth vessel or an inland waterways vessel) that is used

1 wholly or primarily in activities in support of the fishing operations
2 of a fishing vessel.

3 Note: For *in support of the fishing operations*, see subsection (2).

4 ***fishing operations*** means:

- 5 (a) the taking, catching or capturing of fish for trading or
6 manufacturing purposes; and
7 (b) the processing or carrying of the fish that are taken, caught or
8 captured.

9 ***fishing vessel*** means a vessel (other than a Commonwealth vessel
10 or an inland waterways vessel) that is used wholly or primarily for
11 fishing operations.

12 ***general licence*** means a licence granted or renewed under
13 Division 1 of Part 4.

14 ***harbour*** means a natural or artificial harbour, and includes an
15 estuary, navigable river, creek, channel, haven, roadstead, dock,
16 pier, jetty or other place in or at which vessels can obtain shelter or
17 load and unload goods or embark and disembark passengers.

18 ***inland waterways vessel*** means a vessel (other than a
19 Commonwealth vessel) that is used wholly in waters other than
20 waters of the sea.

21 ***internal waters of Australia*** has the same meaning as in the *Seas*
22 *and Submerged Lands Act 1973*.

23 ***international agreement*** means a treaty or agreement whose
24 parties are:

- 25 (a) Australia and a foreign country; or
26 (b) Australia and 2 or more foreign countries.

27 ***licence*** means a general licence, a temporary licence or an
28 emergency licence.

29 ***loading date*** means the date passengers or cargo are expected to be
30 loaded on board a vessel.

31 ***master*** of a vessel means a person who has command or charge of
32 the vessel, but does not include a pilot of the vessel.

Section 6

1 **notice in response**, in relation to an application, has the meaning
2 given by section 31.

3 **offshore industry vessel** means a vessel that is used wholly or
4 primarily in, or in any operations or activities associated with or
5 incidental to, exploring or exploiting the mineral and other
6 non-living resources of the seabed and its subsoil.

7 **owner** of a vessel includes:

8 (a) a person who has a legal or beneficial interest in the vessel,
9 other than as a mortgagor; and

10 (b) a person with overall general control and management of the
11 vessel.

12 For this purpose, a person is not taken to have overall general
13 control and management of a vessel merely because he or she is the
14 master or pilot of the vessel.

15 **passenger** means a person who is carried on board a vessel with
16 the knowledge or consent of the owner, charterer or master of the
17 vessel, if consideration (whether monetary or otherwise) is
18 required to be, or has been, paid for the person to be so carried.

19 **permanent visa** has the same meaning as in the *Migration Act*
20 1958.

21 **port** includes a harbour.

22 **recreational vessel** means a vessel (other than a Commonwealth
23 vessel or an inland waterways vessel) that is used wholly for
24 recreational or sporting activities (whether or not let, or intended to
25 be let, for hire or reward or consideration of any kind).

26 **salvage operation** means any act or activity undertaken to assist a
27 vessel or any other property not permanently and intentionally
28 attached to the shoreline (including freight at risk) in danger in any
29 waters.

30 **salvage vessel** means a vessel that is used wholly or primarily for
31 salvage operations.

32 **sea** includes any waters within the ebb and flow of the tide.

1 **seafarer** means any person who is employed or engaged or works
2 in any capacity on board a vessel on the business of the vessel,
3 other than the following:

- 4 (a) a pilot;
5 (b) an owner of the vessel or a person representing the owner;
6 (c) law enforcement personnel;
7 (d) special personnel (within the meaning of section 283 of the
8 *Navigation Act 1912*);
9 (e) a person temporarily employed on the vessel in port;
10 (f) a person prescribed by the regulations.

11 **temporary licence** means a licence granted under Division 2 of
12 Part 4 and includes such a licence as varied under that Division.

13 **temporary visa** has the same meaning as in the *Migration Act*
14 *1958*.

15 **vessel** means any kind of vessel used in navigation by water,
16 however propelled or moved.

17 **voyage** means the movement of a vessel from one port to another
18 port in a way that would satisfy paragraph 7(1)(a), (b) or (c).

- 19 (2) For the purposes of this Act, activities ***in support of the fishing***
20 ***operations*** of a fishing vessel include:
21 (a) the storage and transport of fish taken, caught or captured by
22 the fishing vessel; and
23 (b) the provision of food, fuel and other supplies to the fishing
24 vessel while it is engaged in fishing operations; and
25 (c) the transport of crew to and from the fishing vessel while it is
26 engaged in fishing operations.

27 **7 Meaning of *coastal trading***

- 28 (1) For the purposes of this Act, and subject to subsection (2), a vessel
29 is used to engage in ***coastal trading*** if, for or in connection with a
30 commercial activity:
31 (a) the vessel:
32 (i) takes on board passengers or cargo at a port in a State or
33 Territory; and

Section 7

- 1 (ii) carries the passengers or cargo to a port in another State
2 or Territory where some or all of the passengers
3 disembark or some or all of the cargo is unloaded; or
4 (b) the vessel:
5 (i) takes on board passengers or cargo at a port in a State or
6 Territory; and
7 (ii) carries the passengers or cargo to a port in the same
8 State or Territory where some passengers disembark or
9 some cargo is unloaded; and
10 (iii) carries passengers or cargo to a port in another State or
11 Territory where some or all of the passengers disembark
12 or some or all of the cargo is unloaded; or
13 (c) the vessel:
14 (i) takes on board passengers or cargo at a port in a State or
15 Territory; and
16 (ii) carries the passengers or cargo to a port in the same
17 State or Territory where some or all of the passengers
18 disembark or some or all of the cargo is unloaded; and
19 (iii) is one in relation to which a declaration under
20 subsection 12(2) is in force.
- 21 (2) Subsection (1) does not apply in respect of the following:
22 (a) a passenger who:
23 (i) holds a through ticket to or from a port outside
24 Australia; and
25 (ii) disembarks at a port in Australia for transit purposes
26 only;
27 (b) cargo that:
28 (i) is consigned on a through bill of lading to or from a port
29 outside Australia; and
30 (ii) is unloaded at a port in Australia for transshipment only;
31 (c) passengers, or cargo, of a kind prescribed by the regulations
32 for the purposes of this paragraph.
33

1

2 **Part 3—Provisions relating to the application of**
3 **this Act**

4

5 **8 Extension to Territories**

6 This Act extends to every external Territory.

7 **9 Act to bind the Crown**

8 This Act binds the Crown in each of its capacities.

9 **10 Act does not apply to certain vessels**

10 This Act does not apply to or in relation to the following kinds of
11 vessels:

- 12 (a) a vessel belonging to, or operated by:
13 (i) the Australian Defence Force; or
14 (ii) the naval, military or air forces of a country other than
15 Australia;
- 16 (b) a Commonwealth vessel that is used wholly or primarily for
17 non-commercial activities;
- 18 (c) a fishing vessel or fishing fleet support vessel;
- 19 (d) an inland waterways vessel;
- 20 (e) an offshore industry vessel;
- 21 (f) a recreational vessel;
- 22 (g) a salvage vessel;
- 23 (h) a tugboat.

24 **11 Minister may exempt certain vessels or persons**

- 25 (1) The Minister may, by legislative instrument, direct that this Act
26 does not apply to:
27 (a) a vessel or class of vessels; or
28 (b) a person or class of persons.

Section 12

- 1 (2) An exemption under subsection (1) may be confined to one or both
2 of the following:
- 3 (a) one or more specified periods;
4 (b) one or more specified voyages.
- 5 (3) An exemption under subsection (1) is subject to such conditions (if
6 any) as are specified in the direction.
- 7 Note: Breach of a condition of an exemption is a civil penalty provision, see
8 sections 84 and 85.
- 9 (4) The Minister must not make a direction if the proposed exemption
10 would be inconsistent with an obligation of Australia under an
11 international agreement.
- 12 (5) The Minister must not make a direction unless satisfied that the
13 proposed exemption will not jeopardise the safety of a vessel or
14 persons on board a vessel.

12 Application to vessels on intrastate voyages

- 15 (1) The owner of a vessel may apply to the Minister for a declaration
16 under subsection (2) in relation to the vessel.
- 17 (2) The Minister may, in writing, declare that this Act applies in
18 relation to the vessel even when, for or in connection with a
19 commercial activity, the vessel:
- 20 (a) takes on board passengers or cargo at a port in a State or
21 Territory; and
22 (b) carries the passengers or cargo to a port in the same State or
23 Territory where some or all of the passengers disembark or
24 some or all of the cargo is unloaded.
- 25
- 26 *Expiry or revocation of declaration*
- 27 (3) A declaration made under subsection (2) ceases to have effect at
28 the end of the period, if any, specified in the declaration, unless it
29 is revoked before that time.
- 30 (4) The Minister must revoke a declaration made under subsection (2)
31 if requested to do so by the owner of the vessel to which the
32 declaration relates.

- 1 (5) The Minister may revoke a declaration made under subsection (2)
2 if the Minister is satisfied:
3 (a) that the vessel to which the declaration relates no longer
4 exists or has been lost; or
5 (b) that the name or any other details of the vessel have been
6 changed since the making of the declaration; or
7 (c) that the vessel no longer operates in Australia.

8 *Declaration not a legislative instrument*

- 9 (6) A declaration made under subsection (2) is not a legislative
10 instrument.
11

1

2 **Part 4—Licences**

3 **Division 1—General licences**

4 **Subdivision A—Application for, and grant of, general licences**

5 **13 Application for general licence**

6 (1) A person may apply to the Minister for a general licence, including
7 renewal of a general licence, authorising a vessel to be used to
8 engage in coastal trading if:

- 9 (a) the vessel is registered in the Australian General Shipping
10 Register; and
11 (b) the person is:
12 (i) the owner, charterer, master or agent of the vessel; or
13 (ii) a person of a kind prescribed by the regulations.

14 (2) The application must be in writing and be accompanied by the
15 following:

- 16 (a) evidence that the vessel is registered in the Australian
17 General Shipping Register;
18 (b) a statement that each seafarer working on the vessel, when
19 the vessel is used to engage in coastal trading:
20 (i) is or will be an Australian citizen; or
21 (ii) is or will hold a permanent visa; or
22 (iii) is or will hold a temporary visa that does not prohibit
23 the seafarer from performing the work he or she
24 performs on the vessel;
25 (c) such information as is prescribed by the regulations;
26 (d) the application fee prescribed by the regulations.

27 Note: The Minister may ask the applicant to provide further information, see
28 section 76.

29 (3) The application must relate to one vessel only.

1 **14 Application may be varied or withdrawn**

2 (1) At any time before the Minister decides an application, the
3 applicant may notify the Minister, in writing, that the applicant
4 wishes to:

5 (a) vary the application; or

6 (b) withdraw the application.

7 Note: Varying an application affects the period within which the Minister
8 must decide the application, see section 15.

9 (2) If the applicant withdraws the application, the application fee is not
10 refundable.

11 **15 Deciding applications**

12 (1) The Minister decides an application by:

13 (a) granting the application; or

14 (b) refusing the application.

15 (2) In deciding an application, the Minister may have regard to the
16 following:

17 (a) whether the applicant has previously held a licence that was
18 cancelled;

19 (b) whether the applicant has been issued with an infringement
20 notice under this Act;

21 (c) the object of this Act;

22 (d) any other matters the Minister thinks relevant.

23 (3) The Minister must decide an application:

24 (a) within 10 business days after the day the application is made;
25 or

26 (b) if the applicant varies the application under section 14—
27 within 10 business days after the day the Minister receives
28 written notice of the variation.

29 Note: The period within which an application is to be decided may be
30 affected by section 76.

Section 16

1 **16 Grant of general licence**

- 2 (1) If the Minister grants an application, the Minister must also
3 determine the period for which the general licence is granted or
4 renewed. The period must not be more than 5 years.

5 Note: For conditions of general licences, see sections 21 and 22.

- 6 (2) If the Minister grants an application for a general licence, including
7 renewal of a general licence, the Minister must cause the following
8 information to be published on the Department's website:
9 (a) the general licence number;
10 (b) the holder of the licence;
11 (c) the holder's business name and business address;
12 (d) the vessel to which the licence relates;
13 (e) the period of the licence;
14 (f) any other information prescribed by the regulations.

15 **17 Application taken to be granted in certain circumstances**

16 If the Minister has not decided an application by the end of the
17 period within which a decision is required under section 15, then,
18 at the end of the last day of that period:

- 19 (a) the Minister is taken to have granted the application; and
20 (b) the Minister is taken to have determined that the period for
21 which the general licence is granted or renewed, as the case
22 may be, is 5 years.

23 **18 Issue of general licence**

- 24 (1) If the Minister decides to grant an application, or is taken to have
25 granted an application, he or she must, as soon as practicable, give
26 the applicant a general licence.
27 (2) The licence must specify the following:
28 (a) the general licence number;
29 (b) the holder of the licence;
30 (c) the holder's business name and business address;
31 (d) the vessel to which the licence relates;

- 1 (e) that the licence is subject to conditions under section 21;
2 (f) any additional conditions imposed on the licence under
3 section 22;
4 (g) the day the licence commences and the period of the licence;
5 (h) any other matters prescribed by the regulations.

6 **19 When general licence is in force**

7 A general licence:

- 8 (a) commences on the day specified in the licence; and
9 (b) expires at the end of the period specified in the licence,
10 unless the licence is cancelled or surrendered before that
11 time.

12 Note: A general licence is taken to continue in force beyond its expiry date
13 in certain circumstances, see subsection 24(2).

14 **20 Refusal of application**

15 If the Minister decides to refuse an application, he or she must, as
16 soon as practicable, notify the applicant, in writing, of:

- 17 (a) the decision; and
18 (b) the reasons for the decision.

19 **Subdivision B—Conditions of general licences**

20 **21 Conditions imposed on all general licences**

21 A general licence is subject to the following conditions:

- 22 (a) the vessel to which the licence relates must continue to be
23 registered in the Australian General Shipping Register;
24 (b) when the vessel is used to engage in coastal trading, each
25 seafarer working on the vessel must:
26 (i) be an Australian citizen; or
27 (ii) hold a permanent visa; or
28 (iii) hold a temporary visa that does not prohibit the seafarer
29 from performing the work he or she performs on the
30 vessel;

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- 1 (c) when the vessel is used to engage in coastal trading, a copy
2 of the licence must be displayed on the vessel in a
3 conspicuous place accessible to all persons on board;
4 (d) the holder of the licence must comply with the reporting
5 requirements under section 27;
6 (e) the holder of the licence must comply with any other
7 condition prescribed by the regulations.

8 **22 Additional conditions may be imposed by Minister**

- 9 (1) The Minister may, at any time:
10 (a) impose an additional condition on a general licence; or
11 (b) vary or remove such a condition;
12 by notifying, in writing, the holder of the licence.
13 (2) A condition imposed under subsection (1), including such a
14 condition as varied, must not be inconsistent with a condition
15 under section 21.

16 **23 Breaching condition of general licence**

- 17 A person contravenes this section if:
18 (a) the person is the holder of a general licence; and
19 (b) the person does an act or omits to do an act; and
20 (c) the act or omission breaches a condition imposed on the
21 licence under section 21 or 22.

- 22 Civil penalty:
23 (a) for an individual—50 penalty units; and
24 (b) for a body corporate—250 penalty units.

25 **Subdivision C—Renewal, cancellation and surrender of general**
26 **licences**

27 **24 Renewal of general licence**

- 28 (1) The Minister may renew a general licence if the holder of the
29 licence makes an application for renewal before the licence
30 expires.

1 (2) If an application for renewal of a general licence is made, the
2 licence is taken to continue to be in force until the application is
3 decided.

4 (3) A general licence may be renewed more than once.

5 **25 Cancellation of general licence**

6 *Minister to give show cause notice*

7 (1) If the Minister believes on reasonable grounds that a condition of a
8 general licence has been contravened, the Minister may give a
9 written notice (a *show cause notice*) to the holder of the licence.

10 (2) The show cause notice must:

- 11 (a) state the grounds on which the notice is given; and
12 (b) invite the holder of the licence to give the Minister, within 10
13 business days after the day the notice is given, a written
14 statement showing cause why the licence should not be
15 cancelled.

16 *Minister may decide to cancel licence*

17 (3) If the Minister:

- 18 (a) has given a show cause notice under subsection (1) to the
19 holder of a general licence; and
20 (b) after considering any written statement given in accordance
21 with the show cause notice, is satisfied that a condition of the
22 licence has been contravened;
23 the Minister may cancel the licence.

24 Note: Section 107 provides that an application may be made to the
25 Administrative Appeals Tribunal for review of a decision by the
26 Minister to cancel a general licence.

27 (4) The Minister must give written notice of the cancellation to the
28 holder of the licence. The notice must set out:

- 29 (a) the day the cancellation takes effect; and
30 (b) the reasons for the cancellation; and
31 (c) the effect of subsection (5).

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Holder of licence to return cancelled licence

- (5) The holder of a general licence contravenes this subsection if:
- (a) the licence is cancelled under this section; and
 - (b) the holder of the licence does not return the licence to the Minister within 10 business days after the day the cancellation takes effect.

Civil penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—250 penalty units.

Show cause notice not a legislative instrument

- (6) A show cause notice given under subsection (1) is not a legislative instrument.

26 Surrender of general licence

- (1) The holder of a general licence may, at any time, surrender the licence by:
- (a) returning the licence to the Minister; and
 - (b) giving the Minister written notice that it is surrendered.
- (2) The surrender of the licence takes effect on the day the notice is received by the Minister or, if a later day is specified in the notice, on that later day.

Subdivision D—Miscellaneous

27 Reporting requirements for general licences

- (1) A person who holds a general licence at any time during a financial year must give to the Department a report containing the following information relating to the vessel used to engage in coastal trading under the licence during the year:
- (a) if passengers were carried during the year:
 - (i) the number of passengers carried; and
 - (ii) the ports at which the passengers were taken on board; and

- 1 (iii) the ports at which the passengers disembarked;
2 (b) if cargo was carried during the year:
3 (i) the kinds and volume of cargo carried; and
4 (ii) the ports at which the cargo was taken on board; and
5 (iii) the ports at which the cargo was unloaded;
6 (c) such other information as is prescribed by the regulations.
- 7 (2) The report must be given to the Department no later than 30
8 business days after the end of the financial year to which the report
9 relates.
- 10 (3) A person contravenes this subsection if:
11 (a) the person holds a general licence at any time during a
12 financial year; and
13 (b) the person fails to give the Department a report containing
14 the information required by subsection (1) within the time
15 required by subsection (2).
- 16 Civil penalty:
17 (a) for an individual—50 penalty units; and
18 (b) for a body corporate—250 penalty units.
- 19 (4) After the end of each financial year, the Minister must cause a
20 summary of the information contained in the reports given under
21 subsection (1) in respect of the year to be published on the
22 Department's website.
23

1

2 **Division 2—Temporary licences**

3 **Subdivision A—Application for, and grant of, temporary**
4 **licences**

5 **28 Application for temporary licence**

- 6 (1) A person may apply to the Minister for a temporary licence to
7 enable a vessel to be used to engage in coastal trading over a
8 12-month period if the person is:
9 (a) the owner, charterer, master or agent of a vessel; or
10 (b) a shipper.
- 11 (2) The application must be in writing and specify the following:
12 (a) the number of voyages, which must be 5 or more, to be
13 authorised by the licence;
14 (b) the expected loading dates;
15 (c) the number of passengers expected to be carried (if any);
16 (d) the kinds and volume of cargo expected to be carried (if any);
17 (e) the type and size, or type and capacity, of the vessel to be
18 used to carry the passengers or cargo (if known);
19 (f) the ports at which the passengers or cargo are expected to be
20 taken on board;
21 (g) the ports at which the passengers are expected to disembark
22 or the cargo is expected to be unloaded;
23 (h) such other information as is prescribed by the regulations.
- 24 Note: The Minister may ask the applicant to provide further information, see
25 section 77.
- 26 (3) The application must be accompanied by the application fee
27 prescribed by the regulations.

28 **29 Application may be withdrawn**

- 29 (1) At any time before the Minister decides an application, the
30 applicant may notify the Minister, in writing, that the applicant
31 wishes to withdraw the application.

- 1 (2) If the applicant withdraws the application, the application fee is not
2 refundable.

3 **30 Publication and notification of application**

4 Within 2 business days after the day the Minister receives an
5 application under section 28, the Minister must:

- 6 (a) cause to be published on the Department's website a copy of
7 the application, but must delete from the copy information
8 that the Minister is satisfied:
9 (i) is commercial in confidence; or
10 (ii) consists of personal details of an individual; and
11 (b) cause the following persons to be notified of the application:
12 (i) every holder of a general licence;
13 (ii) a body or organisation that the Minister considers would
14 be directly affected, or whose members would be
15 directly affected, if the application were granted.

16 **31 Holder of general licence may give notice in response**

17 The holder of a general licence may, within 2 business days after
18 the day an application is published under section 30, give the
19 Minister a written notice (a *notice in response*):

- 20 (a) stating that:
21 (i) all of the passengers specified in the application could
22 be carried under the holder's general licence; or
23 (ii) all of a particular kind of cargo specified in the
24 application could be carried under the holder's general
25 licence; or
26 (iii) all of the passengers and all of a particular kind of cargo
27 specified in the application could be carried under the
28 holder's general licence; or
29 (iv) all of the passengers and all of the cargo specified in the
30 application could be carried under the holder's general
31 licence; or
32 (v) one or more voyages specified in the application could
33 be undertaken under the holder's general licence; and

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- 1 (b) if subparagraph (a)(i), (ii) or (iii) applies—identifying which
2 passengers or cargo could be so carried; and
3 (c) if subparagraph (a)(v) applies—identifying which voyage or
4 voyages could be so undertaken.

5 Note: The period within which the Minister must decide an application does
6 not run if the Minister receives a notice in response in relation to the
7 application, see subsection 34(5).

8 **32 Process if notice in response received**

9 *Minister to give copy of notice in response to applicant*

- 10 (1) If the Minister receives one or more notices in response in relation
11 to an application, the Minister must, as soon as practicable after the
12 end of the 2 business day period mentioned in section 31, give a
13 copy of each notice in response to the applicant.

14 *Negotiation between applicant and holder of general licence*

- 15 (2) Within 2 business days after the day the applicant receives a copy
16 of each notice in response, the applicant must:
17 (a) undertake negotiations in accordance with subsection (3); and
18 (b) notify the Minister, in writing, of the outcome of the
19 negotiations.
- 20 (3) For the purposes of paragraph (2)(a), the applicant must negotiate,
21 with each holder of a general licence who gave a notice in
22 response, in respect of the following matters:
23 (a) whether, and to what extent, the vessel authorised by the
24 holder's general licence is equipped to carry the passengers
25 or cargo specified in the application;
26 (b) whether those passengers or cargo can be carried in a timely
27 manner.
- 28 (4) If an application relates to the carriage of cargo, negotiations under
29 subsection (3) in relation to the application must have regard to the
30 requirements of the shipper of the cargo.

1 **33 Comments by third parties**

2 Within 2 business days after the day an application is published
3 under section 30, written comments on the application may be
4 given to the Minister by:

- 5 (a) a person (other than the holder of a general licence) who
6 would be directly affected if the application were, or were
7 not, granted; or
8 (b) a body or organisation that would be directly affected, or
9 whose members would be directly affected, if the application
10 were, or were not, granted.

11 **34 Minister to decide applications**

12 (1) The Minister decides an application by:

- 13 (a) granting the application; or
14 (b) refusing the application.

15 (2) In deciding an application, the Minister may have regard to the
16 following (whether or not the Minister receives a notice in
17 response in relation to the application):

- 18 (a) whether the applicant has previously held, or applied for, a
19 temporary licence;
20 (b) whether the applicant has previously held a licence that was
21 cancelled;
22 (c) whether the applicant has been issued with an infringement
23 notice under this Act;
24 (d) any written comments received by the Minister in relation to
25 the application;
26 (e) any report given to the Department by the applicant under
27 section 62;
28 (f) the object of this Act;
29 (g) any other matters the Minister thinks relevant.

30 (3) If the Minister receives one or more notices in response in relation
31 to an application, the Minister must have regard to the following in
32 deciding the application:

- 33 (a) the outcome of negotiations, as notified by the applicant
34 under paragraph 32(2)(b);

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- 1 (b) whether, and to what extent, the vessel authorised by the
2 holder's general licence is equipped to carry the passengers
3 or cargo specified in the application;
4 (c) whether those passengers or cargo can be carried in a timely
5 manner;
6 (d) if the application relates to the carriage of cargo—the
7 reasonable requirements of a shipper of the kind of cargo
8 specified in the application.
- 9 (4) The Minister must decide an application for a temporary licence
10 within 15 business days after the day the application is made.
- 11 (5) A day is not to be counted as a business day for the purposes of
12 subsection (4) if it is:
13 (a) on or after the day the Minister receives a notice in response
14 in respect of the application; and
15 (b) on or before:
16 (i) the day the applicant notifies the Minister under
17 paragraph 32(2)(b); or
18 (ii) if the applicant fails to notify the Minister under that
19 paragraph—the last day of the period within which the
20 applicant was required to notify the Minister under that
21 paragraph.
- 22 Note: The period within which an application is to be decided may also be
23 affected by section 77.

35 Grant of temporary licence

- 24
- 25 (1) If the Minister grants an application:
26 (a) the licence is valid for 12 months; and
27 (b) the Minister must determine the number of voyages
28 authorised by the licence.
- 29 Note: For conditions of temporary licences, see sections 40 and 41.
- 30 (2) If the Minister grants an application for a temporary licence, the
31 Minister must cause the following information to be published on
32 the Department's website:
33 (a) the temporary licence number;
34 (b) the day the licence commences;
-

- 1 (c) the number of voyages authorised by the licence;
- 2 (d) the loading dates;
- 3 (e) the number of passengers (if any) authorised to be carried
- 4 under the licence;
- 5 (f) the kinds and volume of cargo (if any) authorised to be
- 6 carried under the licence;
- 7 (g) the ports at which the passengers or cargo will be taken on
- 8 board;
- 9 (h) the ports at which the passengers will disembark or the cargo
- 10 will be unloaded;
- 11 (i) any other information prescribed by the regulations.

12 **36 Application taken to be granted in certain circumstances**

13 If the Minister has not decided an application by the end of the
14 period within which a decision is required under section 34, then,
15 at the end of the last day of that period, the Minister is taken to
16 have:

- 17 (a) granted the application; and
- 18 (b) determined that the matters specified in the application are
- 19 authorised by the licence.

20 **37 Issue of temporary licence**

- 21 (1) If the Minister decides to grant an application, or is taken to have
- 22 granted an application, he or she must, as soon as practicable, give
- 23 the applicant a temporary licence.
- 24 (2) The licence must specify the following:
- 25 (a) the temporary licence number;
- 26 (b) the holder of the licence;
- 27 (c) the holder's business name and business address;
- 28 (d) the number of voyages authorised by the licence;
- 29 (e) the loading dates;
- 30 (f) that the loading dates are subject to acceptable tolerance
- 31 limits;
- 32 (g) the number of passengers authorised to be carried under the
- 33 licence (if any);

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- 1 (h) that, if paragraph (g) applies, the number of passengers is
2 subject to acceptable tolerance limits;
- 3 (i) the kinds and volume of cargo authorised to be carried under
4 the licence (if any);
- 5 (j) that, if paragraph (i) applies, the volume of cargo is subject to
6 acceptable tolerance limits;
- 7 (k) the ports at which the passengers or cargo are authorised to
8 be taken on board;
- 9 (l) the ports at which the passengers are authorised to disembark
10 or the cargo is authorised to be unloaded;
- 11 (m) that the licence is subject to conditions under section 40;
- 12 (n) any additional conditions imposed on the licence under
13 section 41;
- 14 (o) the day the licence commences;
- 15 (p) any other matters prescribed by the regulations.
- 16 (3) If the Minister grants an application for which he or she received
17 one or more notices in response, the Minister must, as soon as
18 practicable, give written notice of the decision to each holder of a
19 general licence who gave a notice in response.

20 **38 When temporary licence is in force**

21 A temporary licence:

- 22 (a) commences on the day specified in the licence; and
23 (b) expires at the end of the period specified in the licence,
24 unless it is cancelled or surrendered before that time.

25 **39 Refusal of application**

- 26 (1) If the Minister decides to refuse an application, he or she must, as
27 soon as practicable, notify the applicant, in writing, of:
28 (a) the decision; and
29 (b) the reasons for the decision.
- 30 (2) The Minister must cause the decision to be published on the
31 Department's website.

1 **Subdivision B—Conditions of temporary licences**

2 **40 Conditions imposed on all temporary licences**

3 A temporary licence is subject to the following conditions:

- 4 (a) any vessel used to undertake a voyage authorised by the
5 licence must be registered in the Australian International
6 Shipping Register or under a law of a foreign country;
- 7 (b) when a vessel undertakes such a voyage, a copy of the
8 licence must be displayed on the vessel in a conspicuous
9 place accessible to all persons on board;
- 10 (c) the holder of the licence must comply with what is authorised
11 by the licence, as specified in the licence under section 37;
- 12 (d) the holder of the licence must comply with the notification
13 requirements under section 61;
- 14 (e) the holder of the licence must comply with the reporting
15 requirements under section 62;
- 16 (f) the holder of the licence must comply with any other
17 condition prescribed by the regulations.

18 **41 Additional conditions may be imposed by Minister**

- 19 (1) The Minister may, at any time:
- 20 (a) impose an additional condition on a temporary licence; or
21 (b) vary or remove such a condition;
- 22 by notifying, in writing, the holder of the licence.
- 23 (2) A condition imposed under subsection (1), including such a
24 condition as varied, must not be inconsistent with a condition
25 under section 40.

26 **42 Breaching condition of temporary licence**

27 A person contravenes this section if:

- 28 (a) the person is the holder of a temporary licence; and
29 (b) the person does an act or omits to do an act; and
30 (c) the act or omission breaches a condition imposed on the
31 licence under section 40 or 41.

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- 1 Civil penalty:
2 (a) for an individual—50 penalty units; and
3 (b) for a body corporate—250 penalty units.

4 **Subdivision C—Variation of matters authorised by temporary**
5 **licences**

6 **43 Application to vary matters authorised by temporary licence**

- 7 (1) A person may apply to the Minister for a variation of a matter
8 authorised by a temporary licence.
- 9 (2) The application must:
10 (a) be in writing; and
11 (b) specify:
12 (i) the matter authorised by the temporary licence that the
13 applicant wishes to vary; and
14 (ii) how the applicant wishes to vary that matter; and
15 (c) be accompanied by the application fee prescribed by the
16 regulations.

17 **44 Application may be withdrawn**

- 18 (1) At any time before the Minister decides an application, the
19 applicant may notify the Minister, in writing, that the applicant
20 wishes to withdraw the application.
- 21 (2) If the applicant withdraws the application, the application fee is not
22 refundable.

23 **45 Consultation on proposed variation**

- 24 (1) As soon as the Minister receives an application under section 43,
25 the Minister must cause the following persons to be notified of the
26 application:
27 (a) every holder of a general licence;
28 (b) a body or organisation that the Minister considers would be
29 directly affected, or whose members would be directly
30 affected, if the application were granted.

- 1 (2) If the variation proposed by the application could be
2 accommodated by a voyage to be undertaken under a holder's
3 general licence, the holder must notify the Minister, in writing, of
4 that fact.
- 5 (3) Notification must be provided to the Minister within 24 hours of
6 receiving notification of the application.

7 **46 Minister to decide application**

- 8 (1) The Minister decides an application by:
9 (a) granting the application; or
10 (b) refusing the application.
- 11 (2) In deciding an application, the Minister may have regard to the
12 following:
13 (a) whether the applicant has previously held, or applied for, a
14 temporary licence;
15 (b) whether the applicant has previously applied for a variation
16 of a temporary licence (whether under this Subdivision or
17 Subdivision D of this Division);
18 (c) whether the applicant has previously held a licence that was
19 cancelled;
20 (d) whether the applicant has been issued with an infringement
21 notice under this Act;
22 (e) any report given to the Department by the applicant under
23 section 62;
24 (f) the object of this Act;
25 (g) any other matters the Minister thinks relevant.
- 26 (3) If the Minister is notified that the variation proposed by the
27 application could be accommodated by a voyage to be undertaken
28 under a holder's general licence, the Minister must have regard to
29 that fact in deciding the application.
- 30 (4) The Minister must decide an application for variation of a
31 temporary licence within 2 business days after the day the
32 application is made.

1 **47 Grant of variation to temporary licence**

2 If the Minister grants an application for the variation of a
3 temporary licence, the Minister must cause the details of the
4 variation to be published on the Department's website.

5 **48 Issue of varied temporary licence**

6 (1) If the Minister decides to grant an application, he or she must, as
7 soon as practicable, give the applicant a varied temporary licence.

8 (2) The licence must specify the matters set out in subsection 37(2).

9 **49 Refusal of application**

10 (1) If the Minister decides to refuse an application, he or she must, as
11 soon as practicable, notify the applicant, in writing, of:

- 12 (a) the decision; and
13 (b) the reasons for the decision.

14 (2) The Minister must cause the decision to be published on the
15 Department's website.

16 **Subdivision D—Variation of temporary licences to include new**
17 **matters**

18 **50 Application of Subdivision**

19 This Subdivision applies if a holder of a temporary licence
20 proposes to vary the licence to include a matter not already
21 authorised by the licence.

22 **51 Application to vary temporary licence**

23 (1) A holder of a temporary licence may apply to the Minister for a
24 variation of the licence.

25 (2) The application must be in writing and specify the following:

- 26 (a) the number of voyages, which must be 5 or more, to be
27 authorised by the licence;

- 1 (b) the expected loading dates;
2 (c) the number of passengers expected to be carried;
3 (d) the kinds and volume of cargo expected to be carried (if any);
4 (e) the type and size, or type and capacity, of the vessel to be
5 used to carry the passengers or cargo (if known);
6 (f) the ports at which the passengers or cargo are expected to be
7 taken on board;
8 (g) the ports at which the passengers are expected to disembark
9 or the cargo is expected to be unloaded;
10 (h) such other information as is prescribed by the regulations.
- 11 (3) The application must be accompanied by the application fee
12 prescribed by the regulations.

13 **52 Application may be withdrawn**

- 14 (1) At any time before the Minister decides an application, the
15 applicant may notify the Minister, in writing, that the applicant
16 wishes to withdraw the application.
- 17 (2) If the applicant withdraws the application, the application fee is not
18 refundable.

19 **53 Process for deciding application**

20 Sections 30 to 34 apply in relation to an application made under
21 subsection 51(1), except that, in deciding the application, the
22 Minister may also have regard to whether the applicant has
23 previously applied for a variation of a temporary licence (whether
24 under this Subdivision or Subdivision C of this Division).

25 **54 Time for deciding application**

- 26 (1) The Minister must decide an application for variation of a
27 temporary licence within 7 business days after the day the
28 application is made.
- 29 (2) A day is not to be counted as a business day for the purposes of
30 subsection (1) if it is:

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- 1 (a) on or after the day the Minister receives a notice in response
2 in respect of the application; and
3 (b) on or before:
4 (i) the day the applicant notifies the Minister under
5 paragraph 32(2)(b); or
6 (ii) if the applicant fails to notify the Minister under that
7 paragraph—the last day of the period within which the
8 applicant was required to notify the Minister under that
9 paragraph.
- 10 Note: The period within which an application is to be decided may also be
11 affected by section 77.

12 **55 Grant of variation to temporary licence**

13 If the Minister grants an application for the variation of a
14 temporary licence, the Minister must cause the details of the
15 variation to be published on the Department’s website.

16 **56 Application taken to be granted in certain circumstances**

17 If the Minister has not decided an application by the end of the
18 period within which a decision is required under section 54, then,
19 at the end of the last day of that period, the Minister is taken to
20 have varied the licence in accordance with the application.

21 **57 Issue of varied temporary licence**

- 22 (1) If the Minister decides to grant an application, he or she must, as
23 soon as practicable, give the applicant a varied temporary licence.
24 (2) The licence must specify the matters set out in subsection 37(2).
25 (3) If the Minister grants an application for which he or she received
26 one or more notices in response, the Minister must, as soon as
27 practicable, give written notice of the decision to each holder of a
28 general licence who gave a notice in response.

1 **58 Refusal of application**

- 2 (1) If the Minister decides to refuse an application, he or she must, as
3 soon as practicable, notify the applicant, in writing, of:
4 (a) the decision; and
5 (b) the reasons for the decision.
- 6 (2) The Minister must cause the decision to be published on the
7 Department's website.

8 **Subdivision E—Cancellation and surrender of temporary**
9 **licences**

10 **59 Cancellation of temporary licence**

11 *Minister to give show cause notice*

- 12 (1) If the Minister believes on reasonable grounds that a condition of a
13 temporary licence has been contravened, the Minister may give a
14 written notice (a **show cause notice**) to the holder of the licence.

15 Note: The Minister may also give a show cause notice if the Minister
16 considers that a temporary licence is being used inappropriately, see
17 section 63.

- 18 (2) The show cause notice must:
19 (a) state the grounds on which the notice is given; and
20 (b) invite the holder of the licence to give the Minister, within 10
21 business days after the day the notice is given, a written
22 statement showing cause why the licence should not be
23 cancelled.

24 *Minister may decide to cancel licence*

- 25 (3) If the Minister:
26 (a) has given a show cause notice under subsection (1) to the
27 holder of a temporary licence; and
28 (b) after considering any written statement given in accordance
29 with the show cause notice, is satisfied that a condition of the
30 licence has been contravened;
31 the Minister may cancel the licence.
-

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1 Note: Section 107 provides that an application may be made to the
2 Administrative Appeals Tribunal for review of a decision by the
3 Minister to cancel a temporary licence.

- 4 (4) The Minister must give written notice of the cancellation to the
5 holder of the licence. The notice must set out:
6 (a) the day the cancellation takes effect; and
7 (b) the reasons for the cancellation; and
8 (c) the effect of subsection (5).

9 *Holder of licence to return cancelled licence*

- 10 (5) The holder of a temporary licence contravenes this subsection if:
11 (a) the licence is cancelled under this section; and
12 (b) the holder of the licence does not return the licence to the
13 Minister within 10 business days after the day the
14 cancellation takes effect.

15 *Civil penalty:*

- 16 (a) for an individual—50 penalty units; and
17 (b) for a body corporate—250 penalty units.

18 *Show cause notice not a legislative instrument*

- 19 (6) A show cause notice given under subsection (1) is not a legislative
20 instrument.

21 **60 Surrender of temporary licence**

- 22 (1) The holder of a temporary licence may, at any time, surrender the
23 licence by:
24 (a) returning the licence to the Minister; and
25 (b) giving the Minister written notice that it is surrendered.
26 (2) The surrender of the licence takes effect on the day the notice is
27 received by the Minister or, if a later day is specified in the notice,
28 on that later day.

1 **Subdivision F—Miscellaneous**

2 **61 Voyage notification requirements for temporary licences**

3 The holder of a temporary licence must, at least 2 business days
4 before the actual loading date for a voyage authorised by the
5 licence, notify the Minister, in writing, of the following:

- 6 (a) the vessel to be used to undertake the voyage;
7 (b) evidence that the vessel to be used is registered in the
8 Australian International Shipping Register or under a law of a
9 foreign country;
10 (c) the number of passengers to be carried during the voyage (if
11 any);
12 (d) the kinds and volume of cargo to be carried during the
13 voyage (if any);
14 (e) the ports at which the passengers or cargo will be taken on
15 board;
16 (f) the ports at which the passengers will disembark or the cargo
17 will be unloaded.

18 Civil penalty:

- 19 (a) for an individual—50 penalty units; and
20 (b) for a body corporate—250 penalty units.

21 **62 Reporting requirements for temporary licences**

22 (1) A person who is or was the holder of a temporary licence must
23 give to the Department a report containing the following
24 information in respect of each voyage authorised by the licence:

- 25 (a) the name of the vessel used;
26 (b) the actual loading date for the voyage;
27 (c) if passengers were carried during the voyage:
28 (i) the number of passengers carried; and
29 (ii) the dates the passengers were carried; and
30 (iii) the ports at which the passengers were taken on board;
31 and
32 (iv) the ports at which the passengers disembarked;
33 (d) if cargo was carried during the voyage:
-

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Division 2 Temporary licences

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- 1 (i) the kinds and volume of cargo carried; and
2 (ii) the dates the cargo was carried; and
3 (iii) the ports at which the cargo was taken on board; and
4 (iv) the ports at which the cargo was unloaded;
5 (e) such other information as is prescribed by the regulations.
- 6 (2) The report must be given to the Department no later than 10
7 business days after the end of each voyage authorised by the
8 licence.
- 9 (3) A person contravenes this subsection if:
10 (a) the person is or was the holder of a temporary licence; and
11 (b) the person fails to give the Department a report containing
12 the information required by subsection (1) within the time
13 required by subsection (2).
- 14 Civil penalty:
15 (a) for an individual—50 penalty units; and
16 (b) for a body corporate—250 penalty units.
- 17 (4) The Minister must cause a copy of each report given under
18 subsection (1) to be published on the Department’s website.

63 Inappropriate use of temporary licence

- 19 (1) The Minister may give a written notice (a *show cause notice*) to
20 the holder of a temporary licence under subsection 59(1) if the
21 Minister considers that, having regard to:
22 (a) the number of voyages authorised by the temporary licence;
23 and
24 (b) the loading dates authorised by the temporary licence; and
25 (c) the ports at which passengers or cargo are taken on board;
26 and
27 (d) the ports at which passengers disembark or cargo is
28 unloaded; and
29 (e) whether the licence has been varied under Subdivision C or
30 D of this Division, and if so, how many times; and
31 (f) the provisions of Division 1 of this Part for the grant of a
32 general licence;
33

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1 the temporary licence is being used in a way that circumvents the
2 purpose of the general licence provisions or the object of this Act.

3 (2) If subsection (1) applies, paragraph 59(3)(b) applies as if it
4 required the Minister, after considering any written statement given
5 in accordance with the show cause notice, to be satisfied that the
6 temporary licence is being used in a way that circumvents the
7 purpose of the general licence provisions or the object of this Act.

8 Note: The Minister may cancel a temporary licence under subsection 59(3).
9

1

2 **Division 3—Emergency licences**

3 **Subdivision A—Application for, and grant of, emergency**
4 **licences**

5 **64 Application for emergency licence**

- 6 (1) A person may apply to the Minister for an emergency licence for
7 one or more vessels to be used to engage in coastal trading if:
8 (a) the person is the owner, charterer, master or agent of the
9 vessel or those vessels; or
10 (b) a shipper.
- 11 (2) The application must:
12 (a) be in writing; and
13 (b) specify:
14 (i) details of the emergency, being an emergency of a kind
15 prescribed by the regulations; and
16 (ii) the number of voyages for which the applicant is
17 seeking the licence (if known); and
18 (iii) the number of passengers expected to be carried (if
19 any); and
20 (iv) the kinds and volume of cargo expected to be carried (if
21 any) and the shipper of the cargo; and
22 (v) the ports at which the passengers or cargo are expected
23 to be taken on board (if known); and
24 (vi) the ports at which the passengers are expected to
25 disembark or the cargo is expected to be unloaded (if
26 known); and
27 (c) set out the reasons why the voyages cannot be undertaken by
28 a vessel authorised to be used to engage in coastal trading
29 under a general licence.
- 30 (3) The application must be accompanied by:
31 (a) if the vessel, or each vessel, to which the licence will relate is
32 known at the time the application is made—evidence that the

- 1 vessel, or each vessel, is registered in the Australian General
2 Shipping Register, the Australian International Shipping
3 Register or under a law of a foreign country; and
4 (b) such other information as is prescribed by the regulations;
5 and
6 (c) the application fee prescribed by the regulations.

7 Note: The Minister may ask the applicant to provide further information, see
8 section 76.

9 **65 Application may be varied or withdrawn**

10 (1) At any time before the Minister decides an application, the
11 applicant may notify the Minister, in writing, that the applicant
12 wishes to:

- 13 (a) vary the application; or
14 (b) withdraw the application.

15 Note: Varying an application affects the period within which the Minister
16 must decide the application, see section 66.

17 (2) If the applicant withdraws the application, the application fee is not
18 refundable.

19 **66 Deciding applications**

20 (1) The Minister decides an application by:

- 21 (a) granting the application; or
22 (b) refusing the application.

23 (2) In deciding an application, the Minister may have regard to the
24 following:

- 25 (a) whether the applicant has previously held a licence that was
26 cancelled;
27 (b) whether the applicant has been issued with an infringement
28 notice under this Act;
29 (c) the object of this Act;
30 (d) any other matters the Minister thinks relevant.

31 (3) The Minister must not grant an application unless he or she is
32 satisfied that the emergency specified in the application exists.

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Division 3 Emergency licences

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- 1 (4) The Minister must decide an application:
2 (a) within 3 business days after the application is made; or
3 (b) if the applicant varies the application under section 65—
4 within 3 business days after the Minister receives written
5 notice of the variation.

6 Note: The period within which an application is to be decided may be
7 affected by section 76.

8 **67 Grant of emergency licence**

- 9 (1) If the Minister grants an application, the Minister must also
10 determine the period for which the emergency licence is granted,
11 which must not be more than 30 days.

12 Note: For conditions of emergency licences, see sections 72 and 73.

- 13 (2) If the Minister grants an application for an emergency licence, the
14 Minister must cause the following information to be published on
15 the Department's website:
16 (a) the holder of the licence;
17 (b) the holder's business name and business address;
18 (c) the period of the licence;
19 (d) any other information prescribed by the regulations.

20 **68 Application taken to be granted in certain circumstances**

21 If the Minister has not decided an application by the end of the
22 period within which a decision is required under section 66, then,
23 at the end of the last day of that period:

- 24 (a) the Minister is taken to have granted the application; and
25 (b) the Minister is taken to have determined that the period for
26 which the emergency licence is granted is 30 days.

27 **69 Issue of emergency licence**

- 28 (1) If the Minister decides to grant an application, or is taken to have
29 granted an application, he or she must, as soon as practicable, give
30 the applicant an emergency licence.
31 (2) The licence must specify the following:

- 1 (a) the holder of the licence;
2 (b) the holder's business name and business address;
3 (c) the number of passengers authorised to be carried under the
4 licence (if any);
5 (d) the kinds and volume of cargo authorised to be carried under
6 the licence (if any);
7 (e) the ports at which the passengers or cargo are authorised to
8 be taken on board (if known);
9 (f) the ports at which the passengers are authorised to disembark
10 or the cargo is authorised to be unloaded (if known);
11 (g) that the licence is subject to conditions under section 72;
12 (h) any additional conditions imposed on the licence under
13 section 73;
14 (i) the day the licence commences and the period of the licence;
15 (j) any other matters prescribed by the regulations.

16 **70 When emergency licence is in force**

17 An emergency licence:

- 18 (a) commences on the day specified in the licence; and
19 (b) expires at the end of the period specified in the licence.

20 **71 Refusal of application**

21 If the Minister decides to refuse an application, he or she must, as
22 soon as practicable, notify the applicant, in writing, of:

- 23 (a) the decision; and
24 (b) the reasons for the decision.

25 **Subdivision B—Conditions of emergency licences**

26 **72 Conditions imposed on all emergency licences**

27 An emergency licence is subject to the following conditions:

- 28 (a) any vessel used to undertake a voyage under the licence must
29 be registered in the Australian General Shipping Register, the
30 Australian International Shipping Register or under a law of a
31 foreign country;

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- 1 (b) when a vessel undertakes a voyage under the licence, a copy
2 of the licence must be displayed on the vessel in a
3 conspicuous place accessible to all persons on board;
- 4 (c) the holder of the licence must comply with what is authorised
5 by the licence, as specified in the licence under section 69;
- 6 (d) the holder of the licence must comply with the reporting
7 requirements under section 75;
- 8 (e) the holder of the licence must comply with any other
9 condition prescribed by the regulations.

10 **73 Additional conditions may be imposed by Minister**

- 11 (1) The Minister may, at any time:
- 12 (a) impose an additional condition on an emergency licence; or
13 (b) vary or remove such a condition;
14 by notifying, in writing, the holder of the licence.
- 15 (2) A condition imposed under subsection (1), including such a
16 condition as varied, must not be inconsistent with a condition
17 under section 72.

18 **74 Breaching condition of emergency licence**

- 19 A person contravenes this section if:
- 20 (a) the person is the holder of an emergency licence; and
21 (b) the person does an act or omits to do an act; and
22 (c) the act or omission breaches a condition imposed on the
23 licence under section 72 or 73.
- 24 Civil penalty:
- 25 (a) for an individual—50 penalty units; and
26 (b) for a body corporate—250 penalty units.

27 **75 Reporting requirements for emergency licences**

- 28 (1) A person who is or was the holder of an emergency licence must
29 give to the Department a report containing the following
30 information in respect of each voyage undertaken under the
31 licence:

- 1 (a) the name of the vessel used;
2 (b) if passengers were carried during the voyage:
3 (i) the number of passengers carried; and
4 (ii) the dates the passengers were carried; and
5 (iii) the ports at which the passengers were taken on board;
6 and
7 (iv) the ports at which the passengers disembarked;
8 (c) if cargo was carried during the voyage:
9 (i) the kinds and volume of cargo carried; and
10 (ii) the dates the cargo was carried; and
11 (iii) the ports at which the cargo was taken on board; and
12 (iv) the ports at which the cargo was unloaded;
13 (d) such other information as is prescribed by the regulations.
- 14 (2) The report must be given to the Department no later than 10
15 business days after the end of each voyage undertaken under the
16 licence.
- 17 (3) A person contravenes this subsection if:
18 (a) the person is or was the holder of an emergency licence; and
19 (b) the person fails to give the Department a report containing
20 the information required by subsection (1) within the time
21 required by subsection (2).
- 22 Civil penalty:
23 (a) for an individual—50 penalty units; and
24 (b) for a body corporate—250 penalty units.
- 25 (4) The Minister must cause a copy of each report given under
26 subsection (1) to be published on the Department's website.
27

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2 **Division 4—Miscellaneous**

3 **76 Requests for further information—general and emergency**
4 **licence applications**

- 5 (1) If the Minister needs further information to decide an application
6 made under section 13 or 64, the Minister may, by written notice,
7 ask the applicant to provide the information to the Minister.
- 8 (2) The Minister must, as soon as practicable after receiving the
9 information, notify the applicant, in writing, whether or not the
10 information provided satisfies the Minister's request.
- 11 (3) A day is not to be counted as a business day for the purposes of
12 section 15 or 66, as applicable, if it is:
- 13 (a) on or after the day the Minister asks for the further
14 information; and
- 15 (b) on or before the day the Minister notifies the applicant that
16 the further information provided satisfies the Minister's
17 request.

18 **77 Requests for further information—temporary licence**
19 **applications**

- 20 (1) If the Minister needs further information to decide an application
21 made under section 28 or 51, the Minister may, by written notice,
22 ask one or more of the following persons (as the Minister considers
23 appropriate):
- 24 (a) the applicant;
- 25 (b) any holder of a general licence who has given a notice in
26 response in relation to the application;
27 to provide the information to the Minister.
- 28 (2) A request under subsection (1) in relation to an application must
29 not be made before:
- 30 (a) if one or more notices in response have been given in relation
31 to the application—either:

- 1 (i) the day the applicant notifies the Minister under
2 paragraph 32(2)(b); or
3 (ii) in a case where the applicant fails to notify the Minister
4 under that paragraph—the end of the period within
5 which the applicant was required to notify the Minister
6 under that paragraph; or
7 (b) otherwise—the end of the 2 business day period mentioned in
8 section 31.
- 9 (3) The Minister must, as soon as practicable after receiving the
10 information, notify the person who provided the information, in
11 writing, whether or not the information provided satisfies the
12 Minister's request.
- 13 (4) A day is not to be counted as a business day for the purposes of
14 subsection 34(4) or 54(1) if it is:
15 (a) on or after the day the Minister asks a person for further
16 information under subsection (1); and
17 (b) on or before the day the Minister notifies the person that the
18 further information provided satisfies the Minister's request.

19 **78 Basis on which licences granted**

- 20 A licence granted under this Act is granted on the basis that:
21 (a) conditions may be imposed on the licence, varied or removed
22 under section 22, 41 or 73, respectively; and
23 (b) the licence may be cancelled under section 25 or 59, as
24 applicable; and
25 (c) the licence may be cancelled, revoked, terminated or varied
26 by or under later legislation; and
27 (d) no compensation is payable if:
28 (i) conditions are imposed on the licence, varied or
29 removed, as mentioned in paragraph (a); or
30 (ii) the licence is cancelled, revoked, terminated or varied as
31 mentioned in any of the above paragraphs.
32

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2 **Part 5—Enforcement**

3 **Division 1—Requiring people to give information and**
4 **produce documents or things**

5 **Subdivision A—Notices to give information or produce**
6 **documents or things**

7 **79 Notice to give information or produce document or thing**

- 8 (1) For the purposes of this Act, an authorised person may, by notice
9 in writing, require a person to do one or more of the following:
10 (a) give the information specified in the notice;
11 (b) produce the documents or things specified in the notice;
12 (c) appear before an authorised person specified in the notice to
13 answer any questions put by the authorised person;
14 if the authorised person has reasonable grounds to believe that the
15 person is capable of giving the information, producing the
16 documents or things, or answering the questions.
- 17 (2) The authorised person may require that information to be provided
18 under paragraph (1)(a) is to be provided in writing.
- 19 (3) The authorised person may require that:
20 (a) information to be provided under paragraph (1)(a) be verified
21 on oath; or
22 (b) answers under paragraph (1)(c) be given on oath;
23 and for that purpose the authorised person may administer an oath.
- 24 (4) The notice must:
25 (a) be served on the person; and
26 (b) be signed by the authorised person; and
27 (c) if paragraph (1)(a) or (b) applies—specify the period within
28 which the person must comply with the notice; and
29 (d) if paragraph (1)(c) applies—both:

- 1 (i) specify the time and place at which the person must
2 appear; and
3 (ii) state that the person may be accompanied by a lawyer;
4 and
5 (e) set out the effect of sections 81 and 82.
- 6 (5) The period specified under paragraph (4)(c) must be at least 14
7 days after the notice is served on the person.
- 8 (6) The person must comply with the notice within the time specified
9 in the notice, or within such further time as the authorised person
10 allows.
- 11 Note: Failure to comply with a notice is an offence, see section 81.

12 **80 Department may retain documents and things**

- 13 (1) If a document or thing is produced to an authorised person in
14 accordance with a notice served under section 79:
15 (a) the authorised person may take possession of, and may make
16 copies of, the document or thing, or take extracts from the
17 document; and
18 (b) the Department may retain possession of the document or
19 thing for such period as is necessary:
20 (i) for the purposes of this Act; or
21 (ii) for the purposes of an investigation to which the
22 document or thing relates; or
23 (iii) to enable evidence to be secured for the purposes of a
24 prosecution or proceedings for a civil penalty order.
- 25 (2) While the Department retains the document or thing, it must allow
26 a person who would otherwise be entitled to inspect the document
27 or view the thing to do so at the times that the person would
28 ordinarily be able to do so.

29 **Subdivision B—Offence and related provisions**

30 **81 Failure to comply with notice etc.**

- 31 (1) A person commits an offence if:
-

Part 5 Enforcement

Division 1 Requiring people to give information and produce documents or things

Section 82

- 1 (a) the person is served with a notice under section 79; and
2 (b) the notice requires the person to:
3 (i) give information; or
4 (ii) produce documents or things;
5 specified in the notice; and
6 (c) the person fails to comply with the notice:
7 (i) within the period specified in the notice; or
8 (ii) if the authorised person has allowed the person further
9 time under subsection 79(6)—within such further time.

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

- 11 (2) A person commits an offence if:
12 (a) the person is served with a notice under section 79; and
13 (b) the notice requires the person to appear before an authorised
14 person to answer questions put by the authorised person; and
15 (c) the person fails to comply with the notice.

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

- 17 (3) A person commits an offence if:
18 (a) the person is required to take an oath; and
19 (b) the person refuses or fails to comply with the requirement.

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

- 21 (4) A person commits an offence if:
22 (a) the person is served with a notice under section 79; and
23 (b) the notice requires the person to appear before an authorised
24 person to answer questions put by the authorised person; and
25 (c) the person refuses or fails to answer a question put by the
26 authorised person.

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

28 **82 Self-incrimination etc.**

- 29 (1) A person is not excused from:
30 (a) giving information; or

- 1 (b) producing a document or thing; or
2 (c) answering a question asked by an authorised person;
3 in relation to a notice under section 79 on the ground that doing so
4 might tend to incriminate the person or expose the person to a
5 penalty.
- 6 (2) However, in the case of an individual, none of the following:
7 (a) the information or answer given;
8 (b) the document or thing produced;
9 (c) the giving of the information or the answer, or the producing
10 of the document or thing;
11 (d) any information, document or thing obtained as a direct or
12 indirect consequence of giving the information or answer, or
13 producing the document or thing;
14 is admissible in evidence against the individual in:
15 (e) criminal proceedings, other than:
16 (i) proceedings for an offence against section 81; or
17 (ii) proceedings for an offence against section 137.1 or
18 137.2 of the *Criminal Code* (which deal with false or
19 misleading information or documents) that relates to
20 this Act; or
21 (iii) proceedings for an offence against section 149.1 of the
22 *Criminal Code* (which deals with obstruction of
23 Commonwealth public officials) that relates to this Act;
24 and
25 (f) civil proceedings for a contravention of a civil penalty
26 provision.
27

Section 83

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2 **Division 2—Civil penalty provisions**

3 **83 Engaging in coastal trading without licence**

- 4 A person contravenes this section if:
- 5 (a) the person is:
- 6 (i) the owner, charterer, master or agent of a vessel; or
- 7 (ii) a shipper in relation to a vessel; and
- 8 (b) the vessel is used to engage in coastal trading; and
- 9 (c) the vessel is not authorised by a licence to be used to engage
- 10 in coastal trading; and
- 11 (d) neither of the following apply:
- 12 (i) the vessel is not subject to an exemption under
- 13 section 11;
- 14 (ii) the person is not subject to an exemption under
- 15 section 11.

- 16 Civil penalty:
- 17 (a) for an individual—300 penalty units; and
- 18 (b) for a body corporate—1,500 penalty units.

19 **84 Breaching condition of exemption—vessels**

- 20 The owner and the master of a vessel contravene this section if:
- 21 (a) the vessel is subject to an exemption under section 11; and
- 22 (b) a condition applies to the exemption; and
- 23 (c) the condition of the exemption is breached.

- 24 Civil penalty:
- 25 (a) for an individual—300 penalty units; and
- 26 (b) for a body corporate—1,500 penalty units.

27 **85 Breaching condition of exemption—persons**

- 28 A person contravenes this section if:
- 29 (a) the person is subject to an exemption under section 11; and

Section 85

- 1 (b) the person does an act or omits to do an act; and
2 (c) the act or omission breaches a condition of the exemption.

3 Civil penalty:

- 4 (a) for an individual—300 penalty units; and
5 (b) for a body corporate—1,500 penalty units.
6

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2 **Division 3—Civil penalty proceedings**

3 **Subdivision A—Obtaining a civil penalty order**

4 **86 Civil penalty orders**

5 *Application for order*

- 6 (1) The Secretary may apply to the Federal Court or the Federal
7 Magistrates Court for an order that a person, who is alleged to have
8 contravened a civil penalty provision, pay the Commonwealth a
9 pecuniary penalty.
- 10 (2) The Secretary must make the application within 6 years of the
11 alleged contravention.

12 *Court may order person to pay pecuniary penalty*

- 13 (3) If the court is satisfied that the person has contravened the civil
14 penalty provision, the court may order the person to pay to the
15 Commonwealth such pecuniary penalty for the contravention as the
16 court determines appropriate.

17 Note: Subsection (5) sets out the maximum penalty that the court may order
18 the person to pay.

- 19 (4) An order under subsection (3) is a *civil penalty order*.
- 20 (5) In determining a pecuniary penalty, the court may take into
21 account all relevant matters, including:
- 22 (a) the nature and extent of the contravention; and
23 (b) the nature and extent of any loss or damage suffered because
24 of the contravention; and
25 (c) the circumstances in which the contravention took place; and
26 (d) whether the person has previously been found by a court to
27 have engaged in any similar conduct.

1 **87 Civil enforcement of penalty**

- 2 (1) A pecuniary penalty is a debt payable to the Commonwealth.
- 3 (2) The Commonwealth may enforce a civil penalty order as if it were
4 an order made in civil proceedings against a person to recover a
5 debt due by the person. The debt arising from the order is taken to
6 be a judgement debt.

7 **88 Conduct contravening more than one civil penalty provision**

- 8 (1) If conduct constitutes a contravention of 2 or more civil penalty
9 provisions, proceedings may be instituted under this Subdivision
10 against a person in relation to the contravention of any one or more
11 of those provisions.
- 12 (2) However, the person is not liable to more than one pecuniary
13 penalty under a law of the Commonwealth in relation to the same
14 conduct.

15 **89 Multiple contraventions**

- 16 (1) A court may make a single civil penalty order against a person for
17 multiple contraventions of a civil penalty provision if proceedings
18 for the contraventions are founded on the same facts, or if the
19 contraventions form, or are part of, a series of contraventions of the
20 same or a similar character.

21 Note: For continuing contraventions of civil penalty provisions, see
22 section 94.

- 23 (2) However, the penalty must not exceed the sum of the maximum
24 penalties that could be ordered if a separate penalty were ordered
25 for each of the contraventions.

26 **90 Proceedings may be heard together**

27 A court may direct that 2 or more proceedings relating to a
28 contravention, or proposed contravention, of a civil penalty
29 provision be heard together.

Section 91

1 **91 Civil evidence and procedure rules to apply**

2 A court must apply the rules of evidence and procedure for civil
3 matters when hearing and determining an application relating to a
4 contravention, or proposed contravention, of a civil penalty
5 provision.

6 **92 Contravening a civil penalty provision is not an offence**

7 A contravention of a civil penalty provision is not an offence.

8 **Subdivision B—Miscellaneous**

9 **93 Ancillary contravention of civil penalty provisions**

- 10 (1) A person must not:
- 11 (a) attempt to contravene a civil penalty provision; or
- 12 (b) aid, abet, counsel or procure a contravention of a civil
13 penalty provision; or
- 14 (c) induce (by threats, promises or otherwise) a contravention of
15 a civil penalty provision; or
- 16 (d) be in any way, directly or indirectly, knowingly concerned in,
17 or party to, a contravention of a civil penalty provision; or
- 18 (e) conspire with others to effect a contravention of a civil
19 penalty provision.

20 Note: Section 96 (which provides that a person's state of mind does not need
21 to be proven in relation to a civil penalty provision) does not apply to
22 this subsection.

23 *Civil penalty*

- 24 (2) A person who contravenes subsection (1) in relation to a civil
25 penalty provision is taken to have contravened the provision.

26 **94 Continuing contraventions of civil penalty provisions**

- 27 (1) If an act or thing is required under a civil penalty provision to be
28 done:
- 29 (a) within a particular period; or
- 30 (b) before a particular time;

- 1 then the obligation to do that act or thing continues until the act or
2 thing is done (even if the period has expired or the time has
3 passed).
- 4 (2) A person who contravenes a civil penalty provision that requires an
5 act or thing to be done:
6 (a) within a particular period; or
7 (b) before a particular time;
8 commits a separate contravention of that provision in respect of
9 each day during which the contravention occurs (including the day
10 the relevant civil penalty order is made or any later day).

11 **95 Mistake of fact**

- 12 (1) A person is not liable to have a civil penalty order made against the
13 person for a contravention of a civil penalty provision if:
14 (a) at or before the time of the conduct constituting the
15 contravention, the person:
16 (i) considered whether or not facts existed; and
17 (ii) was under a mistaken but reasonable belief about those
18 facts; and
19 (b) had those facts existed, the conduct would not have
20 constituted a contravention of the civil penalty provision.
- 21 (2) For the purposes of subsection (1), a person may be regarded as
22 having considered whether or not facts existed if:
23 (a) the person had considered, on a previous occasion, whether
24 those facts existed in the circumstances surrounding that
25 occasion; and
26 (b) the person honestly and reasonably believed that the
27 circumstances surrounding the present occasion were the
28 same, or substantially the same, as those surrounding the
29 previous occasion.
- 30 (3) A person who wishes to rely on subsection (1) or (2) in
31 proceedings for a civil penalty order bears an evidential burden in
32 relation to that matter.

Section 96

1 **96 State of mind**

2 (1) In proceedings for a civil penalty order against a person for a
3 contravention of a civil penalty provision (other than subsection
4 93(1)), it is not necessary to prove:

- 5 (a) the person's intention; or
6 (b) the person's knowledge; or
7 (c) the person's recklessness; or
8 (d) the person's negligence; or
9 (e) any other state of mind of the person.

10 (2) Subsection (1) of this section does not affect the operation of
11 section 95 (which is about mistake of fact).

12 **97 Civil penalty provisions contravened by employees, agents or**
13 **officers**

14 If an element of a civil penalty provision is done by an employee,
15 agent or officer of a body corporate acting within the actual or
16 apparent scope of his or her employment, or within his or her
17 actual or apparent authority, the element must also be attributed to
18 the body corporate.

19 **98 Civil penalty provisions contravened by executive officers**

20 (1) An executive officer of a body corporate contravenes this
21 subsection if:

- 22 (a) the body corporate contravenes a civil penalty provision; and
23 (b) the officer knew that the contravention would occur; and
24 (c) the officer was in a position to influence the conduct of the
25 body in relation to the contravention; and
26 (d) the officer failed to take all reasonable steps to prevent the
27 contravention.

28 (2) The civil penalty for a contravention of subsection (1) is the civil
29 penalty that a Court could impose in respect of an individual for
30 the civil penalty provision contravened by the body corporate.

1 **99 Establishing whether an executive officer took reasonable steps to**
2 **prevent the contravention of a civil penalty provision**

- 3 (1) For the purposes of section 98, in determining whether an
4 executive officer of a body corporate failed to take all reasonable
5 steps to prevent the contravention of a civil penalty provision, a
6 court is to have regard to:
- 7 (a) what action (if any) the officer took towards ensuring that the
8 body's employees, agents and contractors have a reasonable
9 knowledge and understanding of the requirements to comply
10 with this Act, in so far as those requirements affect the
11 employees, agents or contractors concerned; and
- 12 (b) what action (if any) the officer took when he or she became
13 aware that the body was contravening this Act.
- 14 (2) This section does not, by implication, limit the generality of
15 section 98.
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2 **Division 4—Infringement notices**

3 **100 Enforceable provisions**

4 A civil penalty provision is *enforceable* under this Division.

5 **101 When an infringement notice may be given**

- 6 (1) If an authorised person has reasonable grounds to believe that a
7 person has contravened a provision enforceable under this
8 Division, the authorised person may give the person an
9 infringement notice for the alleged contravention.
- 10 (2) The infringement notice must be given within 12 months after the
11 day the contravention is alleged to have taken place.
- 12 (3) A single infringement notice must relate only to a single
13 contravention of a single provision enforceable under this Division.

14 **102 Matters to be included in an infringement notice**

- 15 (1) An infringement notice must:
- 16 (a) be identified by a unique number; and
17 (b) state the day on which it is given; and
18 (c) state the name of the person to whom the notice is given; and
19 (d) state the name of the person who gave the notice; and
20 (e) give brief details of the alleged contravention, including:
21 (i) the provision that was allegedly contravened; and
22 (ii) the maximum penalty that a court could impose for the
23 contravention; and
24 (iii) the time (if known) and day of, and the place of, the
25 alleged contravention; and
26 (f) state the amount that is payable under the notice; and
27 (g) give an explanation of how payment of the amount is to be
28 made; and
29 (h) state that, if the person to whom the notice is given pays the
30 amount within 28 days after the day the notice is given, then

- 1 (unless the notice is withdrawn) proceedings seeking a civil
2 penalty order will not be brought in relation to the alleged
3 contravention; and
- 4 (i) state that payment of the amount is not an admission of guilt
5 or liability; and
- 6 (j) state that the person may apply to the Secretary to have the
7 period in which to pay the amount extended; and
- 8 (k) state that the person may choose not to pay the amount and, if
9 the person does so, proceedings seeking a civil penalty order
10 may be brought in relation to the alleged contravention; and
- 11 (l) set out how the notice can be withdrawn; and
- 12 (m) state that, if the notice is withdrawn, proceedings seeking a
13 civil penalty order may be brought in relation to the alleged
14 contravention; and
- 15 (n) state that the person may make written representations to the
16 Secretary seeking the withdrawal of the notice.
- 17 (2) For the purposes of paragraph (1)(f), the amount to be stated in the
18 notice for the alleged contravention of the provision must be equal
19 to one-fifth of the maximum penalty that a court could impose on
20 the person for that contravention.

21 **103 Extension of time to pay amount**

- 22 (1) A person to whom an infringement notice has been given may
23 apply to the Secretary for an extension of the period referred to in
24 paragraph 102(1)(h).
- 25 (2) If the application is made before the end of that period, the
26 Secretary may, in writing, extend that period. The Secretary may
27 do so before or after the end of that period.
- 28 (3) If the Secretary extends that period, a reference in this Division to
29 the period referred to in paragraph 102(1)(h), is taken to be a
30 reference to that period so extended.
- 31 (4) If the Secretary does not extend that period, a reference in this
32 Division to the period referred to in paragraph 102(1)(h) is taken to
33 be a reference to the period that ends on the later of the following
34 days:

Section 104

- 1 (a) the day that is the last day of the period referred to in
2 paragraph 102(1)(h);
3 (b) the day that is 7 days after the day the person was given
4 notice of the Secretary's decision not to extend.
- 5 (5) The Secretary may extend the period more than once under
6 subsection (2).

7 **104 Withdrawal of an infringement notice**

8 *Representations seeking withdrawal of notice*

- 9 (1) A person to whom an infringement notice has been given may
10 make written representations to the Secretary seeking the
11 withdrawal of the notice.

12 *Withdrawal of notice*

- 13 (2) The Secretary may withdraw an infringement notice given to a
14 person (whether or not the person has made written representations
15 seeking the withdrawal).

- 16 (3) When deciding whether or not to withdraw an infringement notice
17 (the *relevant infringement notice*), the Secretary:

18 (a) must take into account any written representations seeking
19 the withdrawal that were given by the person to the
20 Secretary; and

21 (b) may take into account the following:

22 (i) whether a court has previously imposed a penalty on the
23 person for a contravention of a provision enforceable
24 under this Division if the contravention is constituted by
25 conduct that is the same, or substantially the same, as
26 the conduct alleged to constitute the contravention in the
27 relevant infringement notice;

28 (ii) the circumstances of the alleged contravention;

29 (iii) whether the person has paid an amount, stated in an
30 earlier infringement notice, for a contravention of a
31 provision enforceable under this Division if the
32 contravention is constituted by conduct that is the same,
33 or substantially the same, as the conduct alleged to

- 1 constitute the contravention in the relevant infringement
2 notice;
3 (iv) any other matter the Secretary considers relevant.

4 *Notice of withdrawal*

- 5 (4) Notice of the withdrawal of the infringement notice must be given
6 to the person. The withdrawal notice must state:
7 (a) the person's name and address; and
8 (b) the day the infringement notice was given; and
9 (c) the identifying number of the infringement notice; and
10 (d) that the infringement notice is withdrawn; and
11 (e) that proceedings seeking a civil penalty order may be brought
12 in relation to the alleged contravention.

13 *Refund of amount if infringement notice withdrawn*

- 14 (5) If:
15 (a) the Secretary withdraws the infringement notice; and
16 (b) the person has already paid the amount stated in the notice;
17 the Commonwealth must refund to the person an amount equal to
18 the amount paid.

19 **105 Effect of payment of amount**

- 20 (1) If the person to whom an infringement notice for an alleged
21 contravention is given pays the amount stated in the notice before
22 the end of the period referred to in paragraph 102(1)(h):
23 (a) any liability of the person for the alleged contravention is
24 discharged; and
25 (b) proceedings seeking a civil penalty order may not be brought
26 against the person in relation to the alleged contravention;
27 and
28 (c) the person is not regarded as having admitted guilt or liability
29 for the alleged contravention.
30 (2) Subsection (1) does not apply if the notice has been withdrawn.

1 **106 Effect of this Division**

2 This Division does not:

- 3 (a) require an infringement notice to be given to a person for an
4 alleged contravention of a provision enforceable under this
5 Division; or
- 6 (b) affect the liability of a person for an alleged contravention of
7 a provision enforceable under this Division if:
- 8 (i) the person does not comply with an infringement notice
9 given to the person for the contravention; or
- 10 (ii) an infringement notice is not given to the person for the
11 contravention; or
- 12 (iii) an infringement notice is given to the person for the
13 contravention and is subsequently withdrawn; or
- 14 (c) prevent the giving of 2 or more infringement notices to a
15 person for an alleged contravention of a provision
16 enforceable under this Division; or
- 17 (d) limit a court's discretion to determine the amount of a
18 penalty to be imposed on a person who is found to have
19 contravened a provision enforceable under this Division.
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2 **Part 6—Miscellaneous**

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3 **Division 1—Review of decisions**

3

4 **107 Review by the Administrative Appeals Tribunal**

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5 (1) Applications may be made to the Administrative Appeals Tribunal
6 for review of any of the following decisions:

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(a) a decision under section 11 refusing to exempt a particular vessel or a particular person from this Act;

(b) a decision to grant an exemption under section 11 subject to conditions;

(c) a decision under section 12 refusing to make a declaration in relation to a vessel;

(d) a decision by the Minister to cancel a general licence under subsection 25(3);

(e) a decision by the Minister to cancel a temporary licence under subsection 59(3).

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(2) A person who made an application for a temporary licence under section 28 may apply to the Administrative Appeals Tribunal for review of a decision by the Minister to refuse the application under section 39.

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(3) A person who applied for a variation of a temporary licence under section 51 may apply to the Administrative Appeals Tribunal for review of a decision by the Minister to refuse the application under section 58.

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(4) The holder of a general licence who gave the Minister a notice in response to an application for a temporary licence may apply to the Administrative Appeals Tribunal for review of:

(a) a decision by the Minister to grant the application under section 35; or

(b) a decision by the Minister to have taken to have granted the application under section 36.

Part 6 Miscellaneous

Division 1 Review of decisions

Section 107

1 Note: The decision under review continues to operate during the review
2 process, see section 41 of the *Administrative Appeals Tribunal Act*
3 *1975*.

4 (5) The holder of a general licence who gave the Minister a notice in
5 response to an application for a variation of a temporary licence
6 under section 51 may apply to the Administrative Appeals Tribunal
7 for review of:

8 (a) a decision by the Minister to grant the application under
9 section 55; or

10 (b) a decision by the Minister to have taken to have granted the
11 application under section 56.

12 Note: The decision under review continues to operate during the review
13 process, see section 41 of the *Administrative Appeals Tribunal Act*
14 *1975*.

15 (6) An application for review mentioned in subsection (2) or (3) must
16 be made within 20 business days after the day the person is notified
17 of the decision.

18 (7) An application for review mentioned in subsection (4) or (5) must
19 be made within 20 business days after the day of the holder of the
20 general licence is notified of the decision.

21 Note: Other applications for review must be made within the time prescribed
22 for the purposes of paragraph 29(1)(d) of the *Administrative Appeals*
23 *Tribunal Act 1975*.

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2 **Division 2—Appointment of authorised persons etc.**

3 **108 Appointment of authorised persons**

- 4 (1) The Secretary may, in writing, appoint:
5 (a) a person engaged under the *Public Service Act 1999*; or
6 (b) a member of staff of the Australian Maritime Safety
7 Authority;
8 to be an authorised person for the purposes of this Act.
- 9 (2) The Secretary must not appoint a person as an authorised person
10 unless the Secretary is satisfied that the person has suitable
11 qualifications and experience to properly exercise the powers of an
12 authorised person.
- 13 (3) An authorised person must, in exercising powers as an authorised
14 person, comply with any directions of the Secretary.
- 15 (4) If a direction is given under subsection (3) in writing, the direction
16 is not a legislative instrument.

17 **109 Identity cards**

- 18 (1) The Secretary must issue an identity card to an authorised person.

19 *Form of identity card*

- 20 (2) The identity card must:
21 (a) be in the form approved by the Secretary; and
22 (b) contain a recent photograph of the authorised person.

23 *Offence*

- 24 (3) A person commits an offence if:
25 (a) the person has been issued with an identity card; and
26 (b) the person ceases to be an authorised person; and
27 (c) the person does not, as soon as practicable after so ceasing,
28 return the identity card to the Secretary.

Part 6 Miscellaneous

Division 2 Appointment of authorised persons etc.

Section 109

1 Penalty: 1 penalty unit.

2 (4) Subsection (3) is an offence of strict liability.

3 Note: For strict liability, see section 6.1 of the *Criminal Code*.

4 *Defence: card lost or destroyed*

5 (5) Subsection (3) does not apply if the identity card was lost or
6 destroyed.

7 Note: A defendant bears an evidential burden in relation to the matter in this
8 subsection, see subsection 13.3(3) of the *Criminal Code*.

9 *Authorised person must carry card*

10 (6) An authorised person must carry his or her identity card at all times
11 when exercising powers as an authorised person.

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2 **Division 3—Disclosure of information**

3 **110 Disclosure of information by the Secretary**

4 (1) The Secretary may disclose any information, or give any
5 document, obtained or generated for the purposes of this Act, to:

6 (a) the Minister; or

7 (b) the head (however described) of:

8 (i) an Agency within the meaning of the *Financial*
9 *Management and Accountability Act 1997*; or

10 (ii) a Commonwealth authority, within the meaning of the
11 *Commonwealth Authorities and Companies Act 1997*;

12 for a purpose connected with administering this Act.

13 (2) The Secretary may disclose information under subsection (1) only
14 if the Secretary is satisfied that the recipient of the information will
15 not disclose the information to anyone else without the Secretary's
16 consent.

17 (3) The Secretary may give a document under subsection (1) only if
18 the Secretary is satisfied that the recipient of the document will not
19 disclose any of the contents of the document to anyone else
20 without the Secretary's consent.

21 *Relationship with other laws*

22 (4) Subsection (1) applies despite:

23 (a) a law of the Commonwealth other than this section; and

24 (b) a law of a State or a Territory.

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2 **Division 4—Miscellaneous**

3 **111 Delegation**

4 (1) The Minister may, by writing, delegate all or any of his or her
5 functions and powers under this Act (other than under section 11)
6 to an SES employee or acting SES employee in the Department.

7 (2) The Secretary may, by writing, delegate all or any of his or her
8 functions and powers under this Act to an SES employee or acting
9 SES employee in the Department.

10 **112 Customs treatment of certain vessels**

11 A vessel is not imported into Australia for the purposes of the
12 *Customs Act 1901* only because it is used to carry passengers or
13 cargo under a temporary licence or an emergency licence.

14 **113 Regulations**

15 The Governor-General may make regulations prescribing matters:

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